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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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

Plaintiff,

vs.

SUNNY DELIGHT BEVERAGES CO., a Florida corporation; and DOES 1 through 100, inclusive,

Defendant.

Case No. 30-2022-01280502-CU-OE-CXC

[*Assigned for all purposes to the Honorable Melissa R. McCormick, Dept. CX104*]

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

Date: January 4, 2024
Time: 2:00 p.m.
Dept.: CX104

Reservation Number: 74183044

[FAC Filed: November 21, 2022]
[Complaint Filed: September 14, 2022]

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 4, 2024 at 2:00 p.m. in Department CX 104 of the above-entitled Court, located at 751 West Santa Ana Blvd, Santa Ana, CA 92701, Plaintiff Rene Lopez ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

   > All current and former hourly-paid non-exempt employees who are or previously were employed by Defendant Sunny Delight Beverages Co. who worked at any time in California during the Class Period.
   >
   > For purposes of this Settlement Agreement, the "Class Period" is defined as of September 14, 2018 through December 31, 2023, or the date the Court enters an Order Granting Preliminary Approval, whichever is sooner, unless Defendant elects to close the Class Period earlier pursuant to the Escalator Clause.

3. Preliminary appointment of Plaintiff Rene Lopez as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators ("Phoenix") as the third-party Settlement Administrator for mailing the court-approved Notice Packets; and
7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement, Notice of Individual Settlement Award, Objection

Form and Request for Exclusion Form) and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Rene Lopez, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: January 4, 2024

Respectfully Submitted,
LIDMAN LAW, APC

By: Milan Moore
Milan Moore
Attorney for Plaintiff
RENE LOPEZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Rene Lopez ("Plaintiff") brought this class and representative action against Defendant Sunny Delight Beverages Co. (hereinafter "Sunny Delight" or "Defendant") alleging various wage and hour and related violations. Plaintiff's primary allegations are that Sunny Delight: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed to pay all wages owed upon termination; (8) engaged in unlawful business practices; (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"); and (10) failed to pay sick pay wages at the correct rate of pay.

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,[1] in which Sunny Delight has agreed to pay Eight Hundred Fifty Thousand Dollars (**$850,000**) to the following Settlement Class:

> All current and former hourly-paid non-exempt employees who are or previously were employed by Defendant Sunny Delight Beverages Co. who worked at any time in California during the Class Period.
>
> For purposes of this Settlement Agreement, the "Class Period" is defined as of September 14, 2018 through December 31, 2023, or the date the Court enters an Order Granting Preliminary Approval, whichever is sooner, unless Defendant elects to close the Class Period earlier pursuant to the Escalator Clause.[2]

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[1] The Stipulation of Class and PAGA Action Settlement ("Settlement") is attached to the Declaration of Milan Moore as Exhibit 2. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement, Notice of Individual Settlement Award, Request for Exclusion Form, and Objection Form) is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement.

[2] Prior to the mailing of the Court-approved Notice Packets, the administrator will calculate the workweeks to determine if the Escalator Clause is triggered. If triggered, and Defendant elects to cut the class period off, the end date of the class period will be included in the Notice Packet and only employees that worked during the class period will receive the Notice Packet.

Additionally, for the purposes of this settlement only, PAGA Employees shall be defined as:

> All current and former hourly-paid non-exempt employees of Defendant Sunny Delight Beverages Co., who worked at any time during the PAGA Period. For purposes of this Settlement Agreement, the "PAGA Period" shall mean the time period between September 14, 2021 and December 31, 2023, or the date the Court enters an Order Granting Preliminary Approval, whichever is sooner, unless Defendant elects to close the PAGA Period earlier pursuant to the Escalator Clause.

Significantly, Settlement Class members do not need to file a claim. All Settlement Class members will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff's service award, attorneys' fees and costs, and PAGA civil penalties, the remaining Net Settlement Amount ("NSA") of approximately $482,666.67 will be distributed to all Settlement Class members who do not opt-out of the Settlement. There are approximately 162 Settlement Class members, which means the average payment to each Settlement Class member is currently expected to be approximately **<u>$2,979.42</u>**, which does **<u>not</u>** include the $10,000.00 PAGA Amount to PAGA Employees. The estimated lowest settlement is approximately $24.61 for a Settlement Class member that workweek one (1) workweek and the highest estimated settlement is approximately $6,792.92 for a Settlement Class member that worked 276 workweeks, which is the entire relevant time period of September 14, 2018 through December 31, 2023 (assuming December 31, 2023 is the end date of the class period).

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

II. <u>SUMMARY OF THE LITIGATION</u>

A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS

1. <u>The Parties</u>

Sunny Delight is a leading producer of juice-based drinks. Plaintiff worked for Sunny Delight since approximately September 1995 as a Machine Operator. *See* Declaration of Rene Lopez ("Lopez

Decl."), ¶ 2.

2. Procedural History

On September 14, 2022, Plaintiff filed a putative class action complaint against Sunny Delight in Orange County Superior Court. Declaration of Milan Moore ("Moore Decl."), ¶ 5. On November 21, 2022, Plaintiff filed a First Amended Complaint against Defendant. *Id*. On January 4, 2024 to effectuate the terms of the Settlement, the Parties filed a joint stipulation for Plaintiff to file a Second Amended Class and Representative Action Complaint. Once Plaintiff receives a Court order granting Plaintiff leave to amend, he will file the Second Amended Complaint. Therefore, Plaintiff alleges that Sunny Delight: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed to pay all wages owed upon termination; (8) engaged in unlawful business practices; (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"); and (10) failed to pay sick pay wages at the correct rate of pay. *Id*.

3. Discovery

After agreeing to participate in early mediation, Sunny Delight informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for a 25% sampling of the putative class. Moore Decl., ¶ 6. Additionally, Sunny Delight produced information and data points needed for a fruitful mediation, including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal and rest period policies and procedures, and payroll policies. After a review and analysis of the documents and information produced by Sunny Delight, 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 Sunny Delight's defenses thereto, if a settlement could not be reached.

4. Arms-Length Negotiations

On October 20, 2023, after research and analysis, a mediation was held with Jeffrey Krivis, Esq. a well-respected wage and hour class action mediator. Moore Decl., ¶ 7. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*. Ultimately, the parties agreed in principle on a class-wide resolution. *Id*. In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class and PAGA Action Settlement ("Settlement"). *Id*.

III. <u>ARGUMENT</u>

A. <u>CLASS CERTIFICATION FOR SETTLEMENT PURPOSES</u>

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

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

1. <u>Numerosity is Satisfied.</u>

Here, the proposed Settlement Class consists of approximately 162 members, and is therefore sufficiently numerous as to make joinder impracticable. *See* Moore Decl., ¶ 9; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied.

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as "all current and former hourly-paid non-exempt employees who are or previously were employed by Defendant Sunny Delight Beverages Co. who worked at any time in California during the Class Period. For purposes of this Settlement Agreement, the "Class Period" is defined as of September 14, 2018 through December 31, 2023, or the date the Court enters an Order Granting Preliminary Approval, whichever is sooner, unless Defendant elects to close the Class Period earlier pursuant to the Escalator Clause." Here, the proposed Settlement Class is ascertainable through Sunny Delight's personnel files and employee records maintained in the regular course of business. *See* Moore Decl., ¶ 9.

2. <u>Commonality is Satisfied.</u>

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

Here, Plaintiff contends that Settlement Class Members' claims arise from Sunny Delight's common, uniform policies and practices that applied to Settlement Class members during the class period. Moore Decl., ¶ 10. Specifically, Plaintiff alleged that Sunny Delight's common and uniform policies and practices resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to reimburse necessary business expenses; (7) failure to pay all wages owed upon termination; (8) unlawful business practices; (9) liability for civil penalties under PAGA and (10) failure to pay sick pay at the correct rate of pay. *Id*. As a result of the common and uniform policies and practices that applied to all Settlement Class Members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Sunny Delight properly all minimum wages;
2. Whether Sunny Delight properly paid all overtime wages;
3. Whether Sunny Delight provided all legally required meal periods;
4. Whether Sunny Delight authorized and permitted all legally required rest periods;
5. Whether Sunny Delight reimbursed necessary business expenditures;
6. Whether Sunny Delight failed to furnish accurate, itemized wage statements;

7. Whether Sunny Delight paid all wages owed upon termination;
8. Whether Sunny Delight paid sick pay at the correct rate of pay; and
9. Whether Sunny Delight's conduct constituted unlawful and/or unfair business practices;

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

3. <u>Typicality is Satisfied.</u>

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

Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by Sunny Delight during the Class Period as a non-exempt employee and was subject to Sunny Delight's wage and hour policies at issue in this case. *See* Lopez Decl., ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he, like the members of the Classes, was not provided all legally required minimum and overtime wages, was not provided all legally required meal periods, was not authorized nor permitted to take all legally required rest periods, was not reimbursed for business expenses, was not paid sick pay at the correct rate of pay, was not paid all wages upon separation of his employment with Defendant, and was not provided with accurate, itemized wage statements. *Id*. Given that Sunny Delight's policies and practices applied to all non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

4. <u>Adequacy is Satisfied.</u>

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

Here, Plaintiff contends there are no conflicts of interest between Plaintiff and the Settlement Class she seeks to represent. Plaintiff's interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Moore Decl., ¶¶2-8; Declaration of Scott M. Lidman ("Lidman Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Elizabeth Nguyen ("Nguyen Decl."), ¶¶ 2-4.

B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, ADEQUATE, AND REASONABLE

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

1. The Preliminary Approval Standard is Met

To make a fairness determination, the Court should consider several factors, including: "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the 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. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff's Case

Although Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described below, Sunny Delight 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 ultimately trial, success was far from certain.

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

Although the parties engaged in formal and informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled. Moore Decl., ¶ 33. 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. *Id*. 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 not certain. 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, Sunny Delight will pay a Gross Settlement Amount ("GSA") of $850,000.[3] Moore Decl., ¶ 7, Exh. 2 (Settlement, ¶ 5). Significantly, this Settlement is

[3] Defendant represents there are approximately 153 Class Members who worked 19,611 Workweeks between September 14, 2018 and October 10, 2023, the date of the Parties' mediation. If the actual number of Workweeks during the Class Period is more than 10% greater than this figure (i.e., there are 21,572 or more Workweeks worked by the Class Members, Defendant will either, at its option to either: (1) increase the Gross Settlement Amount by a proportional amount above the 10% figure (i.e., if there was 11% increase in the number Workweeks during the Class Period, Defendant would agree to increase

non-reversionary, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* (Settlement at ¶ 5.D.). 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"):	**$850,000.00**
Minus Court-approved attorneys' fees (1/3 of GSA):	$283,333.33
Minus Court-approved, verified costs (up to):	$28,000.00
Minus Court-approved Class Representative Service Award (up to):	$7,500.00
Minus Settlement Administration Costs:	$8,500.00
Minus PAGA Civil Penalties:	$40,000.00
Net Settlement Amount ("NSA"):	**$482,666.67**

Defendant shall deposit the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause if such increase is triggered and elected by Defendant) and Defendant's share of all payroll taxes on the portion allocated as wages with the Settlement Administrator within (30) days after the Effective Date.[4] *See* Settlement, ¶ 5.C.

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 Sunny Delight to pay a Net Settlement Amount ("NSA") of at least $482,666.67 to all Settlement Class members who do not timely opt out. Moore Decl*.*, ¶ 8. This amount does not include the $10,000.00 PAGA Amount to be paid to the Settlement Class members.

According to Sunny Delight, there are approximately 162 total Settlement Class members. Moore Decl., ¶ 9. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:

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the Gross Settlement Amount by 1%); *or* (2) elect to shorten the Class Period, PAGA Period, and release periods to end on the date on which the aggregate workweeks is closest to without exceeding 21,572 workweeks worked by the Class Members. *See* Settlement, ¶ 5.F.

[4] This Settlement shall become effective on the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. *See* Settlement, ¶ 5.B.

Each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all Settlement Class Members who worked during the Class Period. Settlement, ¶ 7.B.i. Thus, the average Individual Settlement Award is projected to be approximately **$2,979.42**. *Id*. The estimated lowest settlement is approximately $24.61 for a Settlement Class member that workweek one (1) workweek and the highest estimated settlement is approximately $6,792.92 for a Settlement Class member that worked 276 workweeks, which is the entire relevant time period of September 14, 2018 through December 31, 2023 (assuming December 31, 2023 is the end date of the class period). *Id*.

In addition, Ten Thousand Dollars and Zero Cents ($10,000.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. Settlement, ¶ 7.B.b. There are approximately 119 PAGA Employees. Thus, the average PAGA payment is about $84.03.

Settlement Class members will have 60 calendar days from the mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review the Notice Packet without unduly delaying the Settlement. *See* Settlement, ¶ 12.C. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Sunny Delight included within the Settlement, for the period between September 14, 2018 through December 31, 2023, or the date the Court enters an Order Granting Preliminary Approval, whichever is sooner, unless Defendant elects to close the Class Period earlier pursuant to the Escalator Clause. *See* Settlement, ¶ 2.

e. <u>The Parties Engaged in Fair and Honest Negotiations.</u>

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of a mediator. In connection with mediation, Sunny Delight produced a 25% sampling of the time records and payroll data and other documents and policies, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Moore Decl., ¶¶ 7-8. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Sunny Delight's defenses thereto, if a settlement could not be reached. *Id*.

On October 10, 2023, the parties participated in full-day mediation with Jeffrey Krivis, a preeminent wage and hour class action mediator. Moore Decl., ¶ 6. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, the legal basis for the claims and defenses. *Id*. The Parties ultimately reached a settlement that would resolve this matter in its entirety. Since mediation, the Parties finalized the terms and executed the Settlement. Moore Decl., ¶ 7, Exhibit 2.

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 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* Moore Decl., ¶¶ 6-7; *See Kullar*, *supra*, 168 Cal.App.4th at 130.

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. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

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

<u>Unlawful Rounding/Off-the-Clock</u>: Plaintiff alleges that Sunny Delight failed to compensate its non-exempt employees for all time worked. Moore Decl., ¶ 11. Specifically, Plaintiff alleges that Sunny Delight recorded its employees' hours to the quarter hour, which means the employees did not

have the actual start and stop times recorded and/or paid for. *Id*. Accordingly, based on 5 minutes of unpaid time each shift, Plaintiff estimates Defendant's exposure at a total of approximately $362,967.00. *Id*.

Sunny Delight contends that it compensated Class Members for all of their time worked, and any unpaid time was *de minimis* and therefore non-compensable. Moore Decl., ¶ 12. Sunny Delight further asserts that Plaintiff would be unable to certify this class given the individualized inquiries that would be required. In light of these defenses, Plaintiff discounted the maximum exposure by 55% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately $98,001.09.

<u>Miscalculation of Regular Rate (Incentive Pay)</u>: Plaintiff alleges that throughout the relevant time period, that he and the other non-exempt employees received bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate ("Incentive Pay"). Moore Decl., ¶ 13. Plaintiff alleges that Sunny Delight failed, however, to include the Incentive Pay when calculating the regular rate of pay for purposes of paying Plaintiff and the other Settlement Class Members' overtime wages. *Id*. Accordingly, Plaintiff contends that Sunny Delight did not properly calculate the regular rate of pay for Plaintiff and the other Settlement Class Members, thereby causing them to be underpaid for all their required overtime wages. *Id*. Plaintiff calculated Sunny Delight's exposure for miscalculation of regular rate at $75,716.00. *Id*.

Sunny Delight contends that Settlement Class members received all overtime wages to which they were entitled. Moore Decl., ¶ 14. Accordingly, based on these risks, Plaintiff discounted the maximum exposure of by 65% for the risk of non-certification, and an additional 40% to account for Sunny Delight's defenses on the merits to arrive at an estimated exposure of $15,900.36. *Id*.

<u>Sunny Delight is Liable for Unpaid Sick Pay</u>: Plaintiff alleges that Sunny Delight is also liable for failing to pay sick pay at the regular rate. Moore Decl., ¶ 15. Specifically, Labor Code section 246(l) states that "… paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Here, Plaintiff alleges that Sunny Delight failed

to pay Plaintiff and other former non-exempt employees their sick pay in a manner that fully complies with Labor Code section 246(l) as the bonuses were not included in the rate of pay. Therefore, Plaintiff calculated Sunny Delight's maximum exposure at approximately $59,154.00**.** *Id*.

Sunny Delight asserts it paid sick pay at the appropriate rate of pay. Moore Decl., ¶ 16. Sunny Delight also argues that this claim is not suitable for class treatment because it would require individualized determinations. Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 55% to account for Sunny Delight's defenses on the merits, to arrive at an estimated exposure of $14,640.62. *Id*.

<u>Meal Period Violations</u>: Plaintiff alleges that he and the Settlement Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Moore Decl., ¶ 17. Specifically, Plaintiff alleges that Sunny Delight failed to meet its obligation of recording the start and stop time for meal periods in approximately 65% of meal enabling shifts. Additionally, Plaintiff contends that Sunny Delight failed to provide second meal periods and that the timekeeping records will support Plaintiff's contentions that meal periods were not provided during the relevant time period were over 10.0 hours. *Id*. Accordingly, Plaintiff calculated Sunny Delight's liability on 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 $2,889,312.00. *Id*.

Sunny Delight counters that it has always maintained a lawful meal period policy and provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Sunny Delight. Moore Decl., ¶ 18. Sunny Delight points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and an additional 65% to account for Sunny Delight's defenses on the merits to arrive at an estimated exposure of

$405,903.68. *Id*.

Rest Period Violations: Plaintiff alleges that she and Settlement Class Members were also not authorized and permitted to take all required rest periods due to Sunny Delight's rest period policies and practices. Moore Decl., ¶ 19. Specifically, Plaintiff alleges that he and other non-exempt employees experienced at least one rest period violation on every shift worked in excess of 3.5 hours, which was majority of the shifts worked. *Id*. Therefore, Plaintiff calculated Sunny Delight's maximum exposure for the alleged rest period violations at approximately $2,995,488.00. *Id*.

Sunny Delight contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Moore Decl., ¶ 20. Sunny Delight also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 70% to account for Sunny Delight's defenses on the merits to arrive at an estimated exposure of $314,526.24. *Id*.

Sunny Delight Failed to Reimburse Necessary Business Expenses: Plaintiff alleges that Sunny Delight failed to reimburse him and Settlement Class members for necessary business expenditures, including the use of their personal cellular phones for work activities, as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Moore Decl., ¶ 21. Plaintiff contends that Sunny Delight required its non-exempt employees to use their personal cellular phones for work-related purposes but Sunny Delight did not reimburse the putative class members for the cell phones and/or the data usage. *Id*. Accordingly, Plaintiff calculates Sunny Delight's maximum exposure for this claim at approximately $146,206.00. *Id*.

Sunny Delight argues that any expenses incurred were minimal given the affordability of cellular usage plans. Moore Decl., ¶ 22. Sunny Delight also argues that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone and how often. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 55% for the risk of non-certification, and an additional 45% to account for Sunny Delight's defenses on the merits, to arrive at an estimated exposure of $36,185.99. *Id*.

Wage Statement Violations: Plaintiff further alleges that Sunny Delight 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. Moore Decl., ¶ 23. 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 calculated Sunny Delight's maximum exposure for wage statement violations at approximately $881,178.00. *Id*.

Sunny Delight argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Moore Decl., ¶ 24. As such, Plaintiff discounted the calculated exposure by 70% for a risk of non-certification and an additional 60% for a risk of being unsuccessful on the merits, to arrive at an estimated total of approximately $105,741.36. *Id*.

Waiting Time Penalties: Plaintiff alleges that Sunny Delight is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Moore Decl., ¶ 25. Based on the data provided by Sunny Delight, there were approximately 59 Settlement Class Members who have separated their employment with Sunny Delight during the relevant time period who could be entitled to waiting time penalties. *Id*. Therefore, Plaintiff calculated Sunny Delight's maximum exposure for waiting time penalties at approximately $544,796.00. *Id*.

Sunny Delight asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Moore Decl., ¶ 26. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by

50% for the risk of non-certification, and an additional 55% to account for Sunny Delight's defenses on the merits, to arrive at an estimated exposure of approximately $122,579.10. *Id*.

PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Moore Decl., ¶ 27. Plaintiff calculated Sunny Delight's maximum exposure at $2,579,847.00 based on the civil penalties for each underlying labor code violation. *Id*.; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Sunny Delight argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Moore Decl., ¶ 28; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Sunny Delight 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 Sunny Delight 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 60% for a risk of being unsuccessful on the merits, and an additional 45% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $567,566.34. *Id*.

g. The Settlement Is Within the Range of Possible Approval

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $1,681,044.77. Moore Decl., ¶ 29. The proposed settlement of $850,000.00 therefore represents approximately 51% of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class members, and will still provide an average recovery to Settlement Class members of *nearly $3,000.00.* *Id*.

The proposed settlement reflects approximately 51% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation and collection risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

h. <u>The Experience and Views of Counsel</u>

"Parties represented by competent counsel are better positioned than courts to produce a settlement 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 counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of Sunny Delight's policies and timekeeping and payroll records, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Moore Decl., ¶¶ 5-20. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. *Id*. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

i. <u>Attorneys' Fees and Costs</u>

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

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be $283,333.33, and up to $28,000.00 in verified costs reimbursement. *See* Moore Decl., ¶ 30 and Exh. 2 (Settlement, ¶ 8). Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Moore Decl., ¶ 31. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Sunny Delight's documents and policies, analyzing Plaintiff's 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. Moore Decl., ¶ 30. Class Counsel expects 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. <u>Administration Costs</u>

Phoenix Settlement Administrator's fees and expenses are estimated not to exceed $8,500.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the proposed class size of approximately 162 Settlement Class Members and the costs and expenses associated with administering the Notice Packets and distributing the awards, including translating the documents to Spanish by a Court certified translator.

k. <u>Class Representative Service Award</u>

"[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. Moore Decl., ¶ 7, Exh. 2 (Settlement, ¶ 9); Lopez 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, multiple conferences 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. Moreover, Plaintiff has agreed to a general release of all claims and waiver of Civil Code § 1542. *See* Moore Decl., ¶ 32; Lopez Decl, ¶¶ 3-12.

l. <u>PAGA Civil Penalties</u>

The parties have agreed to a PAGA award of $40,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or $30,000. Settlement ¶ 5.D.5. This $40,000.00 represents 4.7% of the $850,000.00 Gross Settlement Amount and is within the range 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).

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m. <u>Payroll Taxes and Tax Allocation</u>

Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount and is due within (30) days after the Effective Date. Settlement ¶ 5.E.

n. <u>Uncashed Funds</u>

Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member. Settlement ¶ 7.E. As all settlement funds will be distributed to the Settlement Class members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

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. 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.

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

Before the final approval hearing, the Court requires adequate notice of the settlement be given to all class members. This Court should order distribution to the Settlement Class of the proposed Notice Packet by first-class regular U.S. Mail, postage prepaid, using last known mailing address information provided by Sunny Delight, as updated by the Settlement Administrator through the National Change of Address database. *See* Settlement, ¶ 12.B. The Notice Packets, which shall include the Notice of Pendency of Class Action and Proposed Settlement, Notice of Individual Settlement Award, Objection Form and Request for Exclusion Form, will be mailed in both English and Spanish. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be administered by Phoenix, an experienced class action settlement administrator. *See generally*

Lawrence Decl. and attached exhibits. Settlement Class Members' addresses will be ascertainable through Sunny Delight's personnel and payroll records, which Sunny Delight will provide to Phoenix within 20 days of preliminary approval of the Settlement. *See* Settlement ¶ 12.A. Within 10 business days of receipt of the Settlement Class Members' addresses, Phoenix will run the addresses through the United States Postal Service Notice of Change of Address database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the notices to Settlement Class members. *See* Settlement ¶ 10.B. To the extent that any notices are returned, Phoenix will perform a "skip trace" to track any Class Member's current mailing address. *See* Settlement ¶ 12.F.

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

E. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order

Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Dated: January 4, 2024

Respectfully Submitted,
LIDMAN LAW, APC

By: ______________________
Milan Moore
Attorney for Plaintiff
RENE LOPEZ