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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ALICIA VELASQUEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LINZER PRODUCTS CORPORATION, a
New York corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22STCV28665

*[Assigned for all purposes to the Hon. Lawrence P.
Riff, Dept. SSC-7]*

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

Date: December 5, 2023
Time: 10:00 a.m.
Dept.: SSC-7

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 December 5, 2023 at 10:00 a.m. in Department SSC-7 of the above-entitled Court, located at 312 North
4 Spring Street, Los Angeles, California, 90012, Plaintiff Alicia Velasquez (“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, and for settlement
8 purposes only, provisional certification of the following Settlement Class defined as follows:

9 All current and former non-exempt, hourly employees of Defendant Linzer
10 Products Corp. who worked for Defendant Linzer Products Corp. at any time in
11 California during the Class Period, including all current and former non-exempt,
12 hourly employees assigned by staffing agencies Partnership Staffing Solutions,
13 LLC, Partnership 3, Inc., or Partners Personnel Management Services, LLC to
work for Defendant Linzer Products Corp. at any time in California during the
Class Period.

14 Class Period means the time period between September 2, 2018 and Preliminary
15 Approval, unless Defendant elects to exercise its option to end the Class Period
earlier pursuant to the Escalator Clause.

- 16 3. Preliminary appointment of Plaintiff Alicia Velazquez as Class Representative;
17 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
18 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
19 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
20 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
21 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
22 costs to Class Counsel;
23 6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement
24 Administrator for mailing notices; and
25 7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final
26 Court Approval (“Class Notice”), which is attached to the Settlement as Exhibit A and an
27
28

1 order that it be disseminated to the proposed Settlement Class Members as provided in the
2 Settlement Agreement.

3 This Motion is based on this notice of motion, the memorandum of points and authorities, the
4 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Alicia
5 Velazquez, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits
6 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
7 documentary evidence or argument presented at the time of hearing.

8
9 Dated: September 14, 2023

Respectfully submitted,
LIDMAN LAW, APC

10
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12 By:



13 Milan Moore
14 Attorney for Plaintiff
15 ALICIA VELASQUEZ
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alicia Velasquez (“Plaintiff”) brought this class and representative action against
4 Defendant Linzer Products Corp. (hereinafter “Linzer” or “Defendant”) alleging various wage and hour
5 and related violations. Plaintiff’s primary claims are that Linzer: (1) failed to pay all minimum wages
6 owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods;
7 (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized
8 wage statements; (6) failed to reimburse necessary business expenses; (7) engaged in unlawful business
9 practices; (8) failed to pay all wages upon separation of employment; and (9) is liable for civil penalties
10 under the 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 Linzer has agreed to pay Nine Hundred Seventy-Five Thousand
13 Dollars and Zero Cents (\$975,000) on behalf of the following Settlement Class:

14 All current and former non-exempt, hourly employees of Defendant Linzer
15 Products Corp. who worked for Defendant Linzer Products Corp. at any time in
16 California during the Class Period, including all current and former non-exempt,
17 hourly employees assigned by staffing agencies Partnership Staffing Solutions,
18 LLC, Partnership 3, Inc., or Partners Personnel Management Services, LLC to
19 work for Defendant Linzer Products Corp. during the Class Period.

20 Class Period means the time period between September 2, 2018 and Preliminary
21 Approval, unless Defendant elects to exercise its option to end the Class Period
22 earlier pursuant to the Escalator Clause.

23 Significantly, Settlement Class Members do not need to file a claim to benefit from the
24 Settlement because all Settlement Class Members will automatically receive a payment unless they
25 affirmatively opt-out. After deducting administration costs, Plaintiff’s service payment, attorneys’ fees
26 and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount (“NSA”) of
27 approximately \$547,750.00 will be distributed to all Class Members who do not opt-out of the
28 Settlement. There were approximately 420 Class Members as of the date of mediation, and including
the \$18,750 for 238 Aggrieved Employees, the average payment to participating Class Members is

¹ The Settlement is attached to the Declaration of Scott M. Lidman as Exhibit 3. The proposed Class Notice is attached to the Settlement as Exhibit A.

1 estimated to be approximately **\$1,304.17**

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

6 **II. SUMMARY OF THE LITIGATION**

7 **A. THE PARTIES**

8 Linzer manufactures painting supplies and tools, including rollers, roller covers, brushes, and
9 trays. Plaintiff worked for Linzer as an hourly, non-exempt employee since approximately May 2012.
10 *See* Declaration of Alicia Velasquez (“Velasquez Decl.”), ¶ 2.

11 **B. BRIEF PROCEDURAL HISTORY**

12 On September 2, 2022, Plaintiff filed the instant putative class action complaint. Declaration of
13 Scott M. Lidman (“Lidman Decl.”), ¶ 10. On September 12, 2022, Plaintiff submitted a letter to the
14 California Labor & Workforce Development Agency (“LWDA”) and Linzer of her intention of filing a
15 PAGA claim based on the labor code violations as alleged in his complaint. *Id.* at **Exhibit 1**. On May
16 25, 2023, after exhausting her administrative remedies, Plaintiff filed a First Amended Class and
17 Representative Action Complaint adding a cause of action for civil penalties under the PAGA. *Id.* On
18 July 21, 2023, pursuant to the settlement, Plaintiff submitted a supplemental letter to the LWDA and
19 Linzer of her intention of adding a cause of action for waiting time penalties. *Id.* at **Exhibit 2**. The
20 Parties will submit a request for leave to file a Second Amended Class and Representative Action
21 Complaint adding a cause of action for waiting time penalties. *Id.*

22 Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the
23 LWDA on the same date she files this Motion and will submit a supplemental declaration showing the
24 submission. Lidman Decl., ¶ 34.

25 **III. DUNK/KULLAR ANALYSIS**

26 Settlement is the preferred means of dispute resolution, particularly in complex class action
27 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
28 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

1 Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of a
2 mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

3 **A. INVESTIGATION AND DISCOVERY**

4 In advance of mediation, Linzer produced a 20% sampling timekeeping and payroll data for the
5 putative class, as well as its wage and hour policies and other relevant documents and information
6 relevant to the claims alleged. Lidman Decl., ¶ 11.

7 Specifically, Plaintiff received a list of unique Employee ID numbers. The Parties agreed that
8 Plaintiff's sample shall represent 20% of the total Employee ID numbers. *Id.* Using Excel's "RAND"
9 function which randomly generates a value between 0 and 1, each of the 422 Employee ID numbers
10 was randomly assigned such a value. After the random assignment, the list of Employee ID numbers
11 was sorted in ascending order according to the values randomly assigned. After the list was sorted,
12 Plaintiff selected the first 84 Employee ID numbers, which represents a 20% sampling. *Id.*

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

21 Here, the statistical analysis of the time punch and payroll data was used for the limited purpose
22 of determining the predominance of rounding and meal period violations in support of Plaintiff's claims
23 that Linzer maintained policies and practices during the relevant time period of not paying its non-
24 exempt employees for all time worked and not providing all legally compliant meal periods. Indeed,
25 based on the time punch data produced which included actual time punches and rounded paid hours,
26 Plaintiff was able to conduct a rounding analysis and conclude that Linzer's rounding practice was
27 widespread during the entire relevant time period. Moreover, from the time and payroll data, Plaintiff
28 was able to analyze the meal records and find an approximate 98.7% potential meal period violation

1 rate in which the majority of meal period violations were for short meal periods. *Id.* The Settlement
2 Class members worked at the same facility, did similar work, and were paid under the same wage and
3 hour policies and procedures. Given these circumstances, the experiences of a subset of employees –
4 the 20% sampling- can be probative as to the experiences of all of the Settlement Class. *Lubin v. The*
5 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938 (As in *Tyson*, under these circumstances the percentage
6 of the subset of employees who signed meal agreements lacking the required revocation language during
7 a given time period is probative as to the percentage of the class that signed meal agreements lacking
8 the required revocation language.) Further, if all Settlement Class members brought lawsuits for unpaid
9 wages and/or meal period violations, they would rely on timekeeping records similar to the ones in this
10 sampling which also supports a finding that the sampling is statistically reliable.

11 In addition to the representative sampling, Linzer produced key data points and all relevant
12 written wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was
13 provided with the following:

- 14 • Plaintiff's personnel files and timekeeping and payroll documents;
- 15 • Key data points, including total number of employees, workweeks, and pay periods during
16 the relevant time period;
- 17 • Exemplars of the wage statements provided during the relevant time period;
- 18 • Linzer's Bell Schedule;
- 19 • Linzer's job descriptions;
- 20 • Linzer's Employee Handbook for 2018;

21 This information coupled with the representative data sampling, enabled Plaintiff to extrapolate to the
22 entire class and aided in Plaintiff's creation of a class-wide exposure model for all the claims at issue,
23 including unpaid wages and penalties potentially owed for alleged minimum and overtime wages, and
24 meal and rest and unpaid wages violations. Ultimately, this discovery allowed the parties to assess the
25 merits and value of Plaintiff's claims and Linzer's defenses thereto. *Id.*

26 **B. ARMS-LENGTH NEGOTIATIONS**

27 On April 19, 2023, a mediation was held with Jeffrey Ross, Esq., a well-respected wage and
28 hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their
opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the

1 claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution. *Id.*

2 **C. 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; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
9 review of Linzer’s policies and timekeeping and payroll records and drew on their extensive experience
10 in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Lidman Decl., ¶¶ 10-28.
11 The Settlement was also reached with the assistance of a mediator. *Id.* This factor strongly supports
12 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

17 Linzer Failed to Pay for All Hours Worked: Plaintiff alleges the Class Members were not fully
18 compensated for all of their time worked due to unlawful shaving of time worked and/or rounding such
19 that they would not be fully paid for all time worked. Lidman Decl., ¶ 16. Plaintiff also alleges that
20 this practice was not even-handed over time and the employees were routinely underpaid for their time
21 worked. Based on Plaintiff’s review of the timekeeping and payroll data, it appeared that on average
22 Class Members were underpaid about 12 minutes per shift. Additionally, Plaintiff alleges that Linzer
23 required her and other Class Members to complete daily screening questionnaires in connection with
24 the COVID-19 pandemic but failed to compensate them for such time, which took approximately 5
25 minutes to complete. Plaintiff’s estimates the total underpayment of wages due to unlawful rounding
26 and the COVID-19 screening is approximately \$595,295. *Id.*

27 Linzer contends that it compensated Class Members for all of their time worked. Lidman Decl.,
28 ¶ 17. Linzer also contends that its rounding practices were lawful, Class Members who clocked in prior

1 to the start of their shift were not working, could not be working given the nature of the work, and
2 therefore the time was not compensable, and any purported unpaid time was *de minimis* and therefore
3 non-compensable. *Id.* Linzer also contends that the screening questionnaire took seconds, not minutes,
4 and was compensated time. Linzer further asserts that Plaintiff would be unable to certify a rounding
5 class given the individualized inquiries that would be required, and also that Linzer's rounding
6 policy/mechanism was, according to it, neutral on its face and in its application. *Id.* In light of these
7 defenses, and Linzer's contention that Class Members executed arbitration agreements, Plaintiff
8 discounted the maximum exposure by 35% for the risk of non-certification, and an additional 45% to
9 account for Linzer's defenses on the merits, to arrive at an estimated exposure of \$212,817.96. *Id.*

10 Linzer Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that as a result of
11 the work demands imposed by Linzer and the bell signaling system, the Settlement Class Members were
12 not provided a full uninterrupted 30-minute meal period before the end of the fifth hour of work. *Id.*
13 Based on a review of the timekeeping data, Plaintiff calculated Linzer's maximum exposure for the
14 alleged meal period violations at approximately \$1,788,495, based on the following violations: (1) late
15 first lunch; (2) missed first meal period; (3) short first meal break; and (4) missed second meal break on
16 shifts over 10 hours. *Id.*

17 Linzer counters that it has always maintained a lawful meal period policy and provided non-
18 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
19 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
20 than any policy or practice of Linzer. Lidman Decl., ¶ 19. Linzer also contends its bell signaling system
21 alerts its employees exactly at the start and end of the meal period. Further, Linzer points out that under
22 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the
23 opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done
24 so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Linzer contends Plaintiff's
25 meal period claim is not suited for class certification, since individual inquiries would be required to
26 assess which employees took non-compliant meal periods, how many meal periods were non-compliant
27 or missed, and the reasons why a particular employee took a non-compliant meal period or missed a
28 meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by

1 40% for the risk of non-certification, and an additional 40% to account for Linzer's defenses on the
2 merits to arrive at an estimated exposure of \$938,959.88. *Id.*

3 Linzer Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that as a result of the
4 bell signaling system imposed by Linzer, non-exempt employees were not authorized and permitted to
5 take duty-free net 10-minute rest periods. Lidman Decl., ¶ 20. A bell rang at the beginning of the rest
6 period and then a second bell rang exactly 10 minutes later signaling the end of the rest period. Linzer's
7 policy required the employees to return to their workstation prior to the second bell ringing. Thus,
8 Plaintiff alleges the Class Members experienced at least one rest period violation on every shift worked
9 in excess of 3.5 hours. *Id.* Therefore, Plaintiff calculated Linzer's maximum exposure for the alleged
10 rest period violations at approximately \$1,823,461. *Id.*

11 Linzer contends that its policies and procedures authorized and permitted Settlement Class
12 Members to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Linzer
13 also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an
14 individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted
15 to take a compliant rest period, which would evolve into an unmanageable series of mini-trials. *Id.*
16 Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and
17 an additional 50% to account for Linzer's defenses on the merits to arrive at an estimated exposure of
18 \$501,451.78. *Id.*

19 Linzer Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that Linzer issued
20 inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid
21 minimum wages and overtime wages, and meal and rest period premium wages described above.
22 Lidman Decl., ¶ 22. Plaintiff also contends that this conduct violated Labor Code section 226(a) because
23 the wage statements issued to Settlement Class Members did not include all hours worked and the rate
24 at which they were being paid. *Id.* Plaintiff's data analysis reflected that there were approximately
25 8,857 wage statements issued during the relevant time period. *Id.* Therefore, applying \$50 for the first
26 violation and \$100 for each subsequent violation, Plaintiff calculated Linzer's maximum exposure for
27 wage statement violations at approximately \$864,700. *Id.*

28 Linzer argues that its alleged wage statement violations could not be shown to be "knowing and

1 intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result
2 of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties.
3 Lidman Decl., ¶ 23. Linzer also argues that the assessing of wage statements at the \$100 for each
4 subsequent violation is improper and misapplies the law. As such, Plaintiff discounted the calculated
5 exposure by 40% for a risk of non-certification and an additional 35% for a risk of being unsuccessful
6 on the merits, to arrive at an estimated total of \$337,233.00. *Id.*

7 Linzer Failed to Reimburse Business Expenses: Plaintiff alleges that Linzer required its non-
8 exempt employees to use their personal cellular phones for work-related purposes to complete the daily
9 COVID-19 screening survey but Linzer did not reimburse the Class Members for the cell phones and/or
10 the data usage. Plaintiff estimated employees should have been reimbursed approximately \$25.00 for
11 cellular related expenses and calculated Linzer’s exposure at \$107,600. *Id.*

12 Linzer contends that any purportedly necessary expenses incurred by employees were minimal.
13 Lidman Decl., ¶ 25. Linzer also contends the employees did not have to complete the surveys on their
14 cellular phones as there were paper surveys, and later, tablets, available to all employees. Linzer also
15 argues that this claim is not suitable for class treatment, it maintained a lawful expense reimbursement
16 policy, and individualized determinations would be required as to how often each employee used their
17 personal cellular phone and how long it took to complete the survey screening. *Id.* Accordingly,
18 Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional
19 35% to account for Linzer’s defenses on the merits and financial condition, to arrive at an estimated
20 exposure of \$41,964.00. *Id.*

21 Linzer is Liable for Waiting Time Penalties: Plaintiff alleges that Linzer is also liable for waiting
22 time penalties under Labor Code section 203 as a result of its failure to timely pay all wages upon
23 separation. Lidman Decl., ¶ 26. There are approximately 328 Class Members who have separated their
24 employment during the relevant time period. *Id.* Therefore, Plaintiff calculated Linzer’s maximum
25 exposure for waiting time penalties at approximately \$1,203,629. *Id.*

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

1 imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
2 that “good faith dispute” over whether employee was exempt precluded imposition of waiting time
3 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
4 45% for the risk of non-certification, and an additional 40% to account for Linzer’s defenses on the
5 merits, to arrive at an estimated exposure of \$397,197.57. *Id.*

6 Linzer is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA
7 as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. Plaintiff calculated
8 Linzer’s maximum exposure at \$885,700 (8,857 pay periods x \$100 initial violation rate). *Id.*; *see*
9 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies
10 until employer is notified that it is violating a Labor Code provision).

11 Linzer argues that Plaintiff’s PAGA claim will fail for the same reasons that her underlying
12 claims will fail. Lidman Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
13 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Linzer
14 also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially
15 reduce any PAGA penalties if it were to find Linzer liable for any of Plaintiff’s claims. *See* Lab. Code
16 § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming
17 reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487
18 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.*
19 Therefore, Plaintiff discounted the maximum exposure figure by 35% for a risk of being unsuccessful
20 on the merits, and an additional 45% to account for the possibility of this Court reducing penalties, to
21 arrive at an estimated exposure of \$316,637.75. *Id.*

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

23 Using these estimated figures for each of the claims described above, Plaintiff predicted the
24 realistic total recovery for the Settlement Class would be approximately \$2,746,261.93. Lidman Decl.,
25 ¶30. The proposed settlement of \$975,000.00 therefore represents approximately 36% of the reasonably
26 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
27 will provide tangible monetary relief to Settlement Class Members and will still provide an average
28 recovery to Settlement Class Members of over \$1,300.00.

1 The proposed settlement reflects approximately 36% of the estimated recovery the Settlement
2 Class could reasonably expect in light of the significant litigation risks and will provide tangible
3 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
4 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler*
5 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
6 recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus,
7 Plaintiff submits that the proposed settlement is within the range of approval, such that notice should
8 be provided to the Settlement Class so that they can consider the Settlement. The Court will have the
9 opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has
10 expired.

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

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

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

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

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

1 typical of the claims of absent Settlement Class Members; and (4) Plaintiff and his counsel will fairly
2 and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

3 **A. NUMEROSITY IS SATISFIED.**

4 Here, the proposed Settlement Class consists of at least 420 members, and is therefore
5 sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v.*
6 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
7 numerous). Thus, numerosity is satisfied.

8 Further, the class is "ascertainable" because it is defined as "all current and former non-exempt,
9 hourly employees of Defendant Linzer Products Corp. who worked for Defendant Linzer Products
10 Corp. at any time in California during the Class Period, including all current and former non-exempt,
11 hourly employees assigned by staffing agencies Partnership Staffing Solutions, LLC, Partnership 3,
12 Inc., or Partners Personnel Management Services, LLC to work for Defendant Linzer Products Corp.
13 at any time between September 2, 2018 and Preliminary Approval, unless Defendant elects to exercise
14 its option to end the Class Period earlier pursuant to the Escalator Clause" and such members can be
15 identified from Defendant's personnel/business records. Lidman Decl., ¶ 14.

16 **B. COMMONALITY IS SATISFIED.**

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

20 Here, Plaintiff alleges Class Members' claims arise from Linzer's common, uniform policies
21 and practices that applied to Settlement Class Members during the class period. Lidman Decl., ¶ 15.
22 Specifically, Plaintiff alleged that Linzer's common and uniform policies and practices resulted in the
23 following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages
24 owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all
25 legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to
26 reimburse necessary business expenses; (7) engagement in unlawful business practices; (8) failed to
27 timely pay all wages upon separation of employment; and (9) liability for civil penalties under the
28 PAGA. As a result of the common and uniform policies and practices that applied to all Class Members,

1 their claims involve common questions of law and fact as to whether in fact Linzer committed these
2 alleged violations.

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

5 **C. TYPICALITY IS SATISFIED.**

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

15 **D. ADEQUACY IS SATISFIED.**

16 The adequacy requirement examines conflicts of interest between named parties and the
17 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
18 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
19 Settlement Class she seeks to represent. *Lidman Decl.*, ¶ 38, *Velasquez Decl.*, ¶ 12. Indeed, Plaintiff's
20 interests are aligned with those of the Class Members, as they all seek monetary relief under the same
21 facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the
22 Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. Further,
23 Class Counsel also have extensive experience in wage and hour class action litigation and have
24 vigorously litigated this case. *See Lidman Decl.*, ¶¶ 2-8; Declaration of Elizabeth Nguyen ("Nguyen
25 Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan Moore
26 ("Moore Decl."), ¶¶ 2-4.

1 **V. SETTLEMENT AGREEMENT**

2 **A. THE BASICS**

3 1. Class Definition and Release Period

4 The proposed Settlement Class is defined as: all current and former non-exempt, hourly
5 employees of Defendant Linzer Products Corp. who worked for Defendant Linzer Products Corp. at
6 any time in California during the Class Period, including all current and former non-exempt, hourly
7 employees assigned by staffing agencies Partnership Staffing Solutions, LLC, Partnership 3, Inc., or
8 Partners Personnel Management Services, LLC to work for Defendant Linzer Products Corp. at any
9 time in California during the Class Period.

10 Lidman Decl., ¶ 14. For purposes of this Settlement Agreement, the “Class Period” shall mean
11 the time period of September 2, 2018 and Preliminary Approval, unless Defendant elects to exercise its
12 option to end the Class Period earlier pursuant to the Escalator Clause. *Id.*

13 2. Aggrieved Employees and PAGA Period

14 The proposed Aggrieved Employees are defined as: all current and former non-exempt, hourly
15 employees of Defendant Linzer Products Corp. who worked for Defendant Linzer Products Corp. at
16 any time in California during the PAGA Period, including all current and former non-exempt, hourly
17 employees assigned by staffing agencies Partnership Staffing Solutions, LLC, Partnership 3, Inc., or
18 Partners Personnel Management Services, LLC to work for Defendant Linzer Products Corp. at any
19 time in California during the PAGA Period.

20 Lidman Decl., ¶ 14.

21 The “PAGA Period” is defined as the time period of September 12, 2021 and Preliminary
22 Approval, unless Defendant elects to exercise its option to end the Class Period earlier pursuant to the
23 Escalator Clause. *Id.*

24 **B. RELEASE OF CLAIMS**

25 1. Scope of Participating Class Members’ Release

26 All Participating Class Members, on behalf of themselves and their respective former and
27 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and
28 discharge Released Parties from all claims, demands, rights, liabilities and causes of action that have
been and will be pled in the Second Amended Complaint as well as all claims, demands, rights, liabilities

1 and causes of action that could have been alleged based on the facts that have been and will be alleged
2 in the Second Amended Complaint, that arose during the Class Period defined above with respect to the
3 following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages
4 owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure
5 to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to
6 reimburse necessary business expenses (f) failure to issue accurate, itemized wage statements; (g)
7 failure to timely pay wages upon separation of employment; and (h) all claims for unfair business
8 practices that could have been premised on the facts, claims, causes of action, or legal theories described
9 above. Except as set forth in Paragraph 5.3 of this Agreement, Participating Class Members do not
10 release any other claims, including claims for vested benefits, wrongful termination, violation of the
11 Fair Employment and Housing Act, unemployment insurance, disability, social security, workers'
12 compensation, or claims based on facts occurring outside the Class Period. Settlement, ¶ 5.2.

13 2. Scope of Aggrieved Employees' Release

14 All Aggrieved Employees are deemed to release, on behalf of themselves and their respective
15 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
16 Released Parties, from all claims, demands, rights, liabilities and causes of action for PAGA penalties
17 as asserted in the Second Amended Complaint and asserted in the letters sent to the LWDA on
18 September 12, 2022 and July 7, 2023 that arose during the PAGA Period. Settlement, ¶ 5.3.

19 3. Releases Effective Date

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

24 C. **MONETARY TERMS OF SETTLEMENT**

25 1. Gross Settlement Amount and Timing of Payment

26 If the Court approves this Settlement, Linzer will pay a Gross Settlement Amount ("GSA") of
27 \$975,000.00.² Lidman Decl., ¶¶ 13, Exh. 4 (Settlement, ¶ 3.1). Significantly, this Settlement is **non-**

28 ² Based on a review of its records to date, Linzer represents that there are an estimated 25,455 workweeks during the Class Period. If the actual number of workweeks during the Class Period is more than 12% greater than this figure (i.e., if there

reversionary, and no Class Member will have to submit a claim form to receive a Settlement Award. *Id.* Each Class Member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

Linzer shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay Linzer's share of payroll taxes, by transmitting such funds to the Administrator no later than 15 business days after the Effective Date. *See* Settlement, ¶ 4.3. "Effective Date" means the earliest date by which both of the following have occurred: (a) the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment becomes "Final." Final," as used in the definition of Effective Date shall mean the latest of: (i) if there is an appeal of the Court's judgment, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for certiorari in the United States Supreme Court petition or a petition for review in the California Supreme Court, as applicable; or (ii) if such a petition is filed, the date of denial of the petition, or the date the judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal from the judgment. Settlement, ¶ 1.18.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$975,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$325,000.00
Minus Court-approved, verified costs (up to \$30,000.00):	\$30,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$11,000.00
Minus PAGA payment to the LWDA:	\$56,250.00
Net Settlement Amount ("NSA"):	\$547,750.00
Settlement Class Members	420
Average Individual Payment: NSA/Settlement Class	\$1,304.17

are 28,510 or more workweeks worked by the Class Members), Defendant agrees to either: (1) increase the Gross Settlement Amount on a proportional basis (i.e., if there was a 14% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 2%); or (2) at Defendant's option, elect to end the Class Period, PAGA Period, and release periods on the date the total number of workweeks is closest to and does not exceed 28,510 workweeks. Settlement, ¶ 8.

1 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service
2 Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the
3 Settlement results in a Net Settlement Amount ("NSA") of at least \$547,750.00 to be paid out to all
4 Settlement Class Members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 3.

5 Therefore, this calculation of $\$547,750/420 = \$1,304.17$, assumes the Court approves the
6 requested attorneys' fees, maximum attorneys' costs, service payment, settlement administration costs,
7 and payment to the LWDA. *Id.* This calculation also assumes that all 420 putative class members
8 participate in the settlement and do not submit timely requests for exclusions. *Id.*

9 3. Class Representative Service Payment

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

13 Plaintiff will separately apply for a service payment at the time of seeking final approval in the
14 amount of \$5,000.00. Lidman Decl., ¶ 33, Exh. 4 (Settlement, ¶ 3.2.1.); Velazquez Decl., ¶¶ 3-12. As
15 will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to
16 recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing
17 substantial factual information and documents to Class Counsel, attending multiple meetings with
18 Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks
19 Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff
20 has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman
21 Decl., ¶31; Velazquez Decl., ¶¶ 3-8; Settlement ¶ 3.2.1.

22 The Class Representative Service Payment awarded by the Court shall be paid by the
23 Settlement Administrator to Plaintiff from the Gross Settlement Amount within 10 business days after
24 Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

25 4. Attorneys' Fees and Costs

26 California courts recognize an appropriate method for awarding attorneys' fees in class actions
27 is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*
28 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the

1 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
2 fund settlements.

3 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
4 is currently estimated to be \$325,000.00, and up to \$30,000.00 in verified costs reimbursement. *See*
5 Settlement, ¶ 3.2.2.; Lidman Decl., ¶ 31. Plaintiff submits the requested fee is fair compensation for
6 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
7 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman
8 Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
9 analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records,
10 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
11 Motion, and otherwise litigating the case. Lidman Decl., ¶ 31. Class Counsel expect to expend
12 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
13 fielding questions from Settlement Class Members, preparing the final approval papers, and attending
14 the Final Approval hearing. *Id.*

15 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
16 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
17 include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the
18 Settlement Administrator to Class Counsel from the Gross Settlement Amount 10 business days after
19 Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

19 5. Payroll Taxes

20 The Settlement provides that Linzer's payroll taxes shall be paid separately from, and in addition
21 to, and the Gross Settlement Amount. Settlement ¶¶ 3.1 and 4.3.

22 6. Payment Formula

23 There were approximately 420 total Class Members as of the date of mediation. Lidman Decl.,
24 ¶ 14.

25 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
26 number of Workweeks worked by all Participating Class Members during the Class Period, and (b)
27 multiplying the result by the total Workweeks worked by each Participating Class Member during the
28 Class Period. Settlement, ¶ 3.2.4. Thus, the average Individual Class Payment is \$1,297.99.

1 Additionally, there were approximately 238 Aggrieved Employees. Lidman Decl., ¶ 14.

2 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
3 the Aggrieved Employees' 25% share of PAGA Penalties (\$18,750.00) by the total number of PAGA
4 Pay Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA Pay
5 Periods worked by each Aggrieved Employee. Each Aggrieved Employee assumes full responsibility
6 and liability for any taxes owed on his or her Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

7 Thus, the average Individual PAGA Payment is projected to be approximately **\$78.78**. *Id.*

8 7. Tax Allocation

9 The Parties agreed that 33% of each Participating Class Member's Individual Class Payment
10 will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to
11 tax withholding and will be reported on IRS Form W-2. The remaining 67% of each Participating Class
12 Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties
13 (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
14 reported on IRS Forms 1099. Settlement, ¶ 3.2.4.1.

15 8. PAGA Penalty

16 The parties have agreed to a PAGA award of \$75,000.00 and in accordance with California
17 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
18 – or \$56,250.00. Settlement ¶ 3.2.5. This \$75,000 represents roughly 23% of the \$316,637.75 estimated
19 realistic exposure on PAGA. It is also approximately 7.6% of the \$975,000 Gross Settlement Amount
20 and is in line with the zero to two percent range for PAGA claims approved by Courts. *See, e.g., In re*
21 *M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13,
22 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom Comm'n Cases*, 186 Cal. App.
23 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under
24 which no money was allocated to the PAGA claims).

25 VI. NOTICE ADMINISTRATION

26 A. SETTLEMENT ADMINISTRATOR

27 Phoenix Class Action Administration Solutions ("Phoenix") costs are estimated not to exceed
28 \$11,000.00. *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

1 proposed class size of approximately 420 Class Members and the costs and expenses associated with
2 administering the notices and distributing the awards. Additionally, Phoenix will translate the Class
3 Notices and mail them in both English and Spanish to Class Members.

4 Phoenix has extensive experience administering class action matters. Phoenix has administered
5 complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,
6 ERISA and PAGA class action matters, though final approval and distribution. Phoenix has developed
7 a system of quality assurance measures, to ensure the highest quality service is provided in our cases
8 and to class members. Lawrence Decl., ¶ 5.

9 **B. CLASS LIST FROM DEFENDANT**

10 No later than 30 calendar days after entry of an order preliminarily approving the Settlement,
11 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft
12 Excel spreadsheet. Settlement, ¶ 4.2. To protect Class Members' privacy rights, the Administrator must
13 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for
14 no other purpose, and restrict access to the Class Data to Administrator employees who need access to
15 the Class Data to effect and perform under this Agreement. *Id.*

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

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

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

23 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
24 advises Class Members of the nature of the claims, basic contentions and denials of the parties, and the
25 key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
26 procedures by which to do so, explains the recovery formula and expected recovery amount for each
27 Class Member, provides them the opportunity to contest their total workweeks included in the notice,
28 and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See*
Settlement, Exh. A. The proposed Class Notice will also notify Class Members of the final approval

1 hearing date and provides Class Members the contact information for Class Counsel and advises Class
2 Members that they may enter an appearance through counsel if they wish to. This manner of giving
3 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of
4 reaching Settlement Class Members.

5 Moreover, the Class Notice includes the sentence “To receive your check, you should
6 immediately notify the Administrator if you move or otherwise change your mailing address.”

7 **E. PROCESSING OF PAYMENTS**

8 Within 10 business days after Linzer funds the Gross Settlement Amount, the Administrator will
9 mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
10 Payment, the Administration Expenses Payment, the Class Counsel Fee Award, the Class Counsel
11 Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class
12 Counsel Fee Award, the Class Counsel Litigation Expenses Payment and the Class Representative
13 Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
14 Payments. Settlement, ¶ 4.4. Before mailing any checks, the Settlement Administrator must update the
15 recipients’ mailing addresses using the National Change of Address Database. Settlement, ¶ 4.4.1.

16 **F. UNDELIVERABLE SETTLEMENT NOTICES**

17 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by
18 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address
19 provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall
20 conduct a Class Member Address Search, and re-mail the Class Notice to the most current address
21 obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice
22 to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 7.4.3.

23 The Administrator will send checks for Individual Settlement Payments to all Participating Class
24 Members (including those for whom Class Notice was returned undelivered). The Administrator will
25 send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating
26 Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was
27 returned undelivered). Settlement, ¶ 4.4.1.
28

1 **VII. RESPONSES TO SETTLEMENT NOTICE**

2 **A. REQUESTS FOR EXCLUSION**

3 Class Members who wish to exclude themselves from (or opt-out of) the Settlement's release of
4 class action claims must send the Administrator, by fax, email, or mail, a signed written Request for
5 Exclusion no later than the Response Deadline – *i.e.*, 60 days after the Administrator mails the Class
6 Notice (plus an additional 14 days for any Class Member whose Class Notice is re-mailed). A Request
7 for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
8 the Class Member's choice to be excluded from the Settlement and includes the Class Member's name,
9 address, and email address or telephone number. To be valid, a Request for Exclusion must be timely
10 faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶ 7.5.1.

11 **B. RE-MAILED NOTICES**

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

16 **C. OBJECTION PROCEDURES**

17 Only Participating Class Members may object to the class action components of the Settlement
18 and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested
19 for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class
20 Representative Service Payment. Settlement, ¶ 7.7.1.

21 Participating Class Members may send written objections to the Administrator, by fax, email,
22 or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to
23 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
24 Member who elects to send a written objection to the Administrator must do so not later than the
25 Response Deadline – *i.e.* 60 days after the Administrator's mailing of the Class Notice (plus an
26 additional 14 days for Class Members whose Class Notice was re-mailed after having been returned as
27 undeliverable). Settlement, ¶ 7.6.2.

1 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

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

5 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
6 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds
7 represented by such checks to the California Controller's Unclaimed Property Fund in the name of the
8 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
9 Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

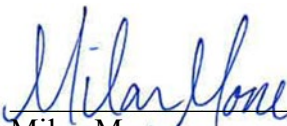
10 **IX. CONCLUSION**

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

14
15 Dated: September 14, 2023

Respectfully submitted,
LIDMAN LAW, APC

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18 By:


Milan Moore
Attorney for Plaintiff
ALICIA VELASQUEZ