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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELENA ORELLANA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LIBERTY BUILDING MAINTENANCE &
SERVICES, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No. 22STCV19544

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

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: December 18, 2023

Time: 10:00 a.m.

Dept.: SSC-11

Complaint Filed: June 15, 2022

Trial Date: None Set

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 December 18, 2023, at 10:00 a.m. in Department SSC-11 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Elena Orellana and Rocio Navarro (“Plaintiffs”), individually and on behalf of a class of similarly situated individuals, will and hereby do 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 non-exempt employees who worked for Defendant Liberty Building Maintenance & Services, Inc. in California from June 15, 2018 through April 1, 2021 (the “Class Period”).
3. Preliminary appointment of Plaintiffs Elena Orellana and Rocio Navarro as Class Representatives;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Joel Gordon 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 Class Representative Enhancement Payments to Plaintiffs, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices;
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the declarations of Paul K. Haines, Sean M. Blakely, Joel Gordon, Elena Orellana,
3 Rocio Navarro, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits
4 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
5 documentary evidence or argument presented at the time of hearing.

6
7 Dated: November 22, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By:



10 Paul K. Haines
11 Sean M. Blakely
12 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Elena Orellana and Rocio Navarro (hereinafter “Plaintiffs”) brought this class
4 action for various wage and hour violations on behalf of former non-exempt employees of
5 Defendant Liberty Building Maintenance & Services, Inc. (“Liberty Building”) in California at
6 any time from June 15, 2018 through April 1, 2021 (the “Class Period”). Plaintiffs’ primary
7 allegations are that Liberty Building: (1) failed to pay all wages due to its allegedly unlawful
8 timekeeping policies and practices; (2) failed to provide all legally compliant meal periods; (3)
9 failed to authorize and permit all legally compliant rest periods; and (4) failed to reimburse
10 employees for necessary business expenditures. Based on these alleged wage and hour violations,
11 Plaintiffs also brought derivative claims for alleged waiting time penalties, Liberty Building’s
12 alleged failure to issue accurate and compliant wage statements, and for civil penalties under the
13 Private Attorneys General Act (“PAGA”).¹

14 Plaintiffs now respectfully request that this Court preliminarily approve this non-
15 reversionary, common-fund class action settlement,² in which Liberty Building has agreed to pay
16 Five Hundred Fifty Thousand Dollars and Zero Cents (\$550,000.00) to the following Settlement
17 Class:

18 All current and former non-exempt employees who worked for Defendant
19 Liberty Building Maintenance & Services, Inc. in California from June 15,
20 2018 through April 1, 2021 (the “Class Period”).

21 If the Settlement is approved, Liberty Building will pay a non-reversionary Gross
22 Settlement Amount of \$550,000.00. After deducting estimated administration costs, Plaintiffs’

23 ¹ Plaintiffs’ operative Second Amended Class and Representative Action Complaint (“SAC”)
24 pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
25 wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6)
26 waiting time penalties; (7) failure to reimburse for necessary business expenditures; (8) unfair
competition; and (9) civil penalties under PAGA.

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
28 as **Exhibit A**. The proposed Class Notice and Notice of Estimated Settlement Award are attached
to the Settlement as **Exhibits 1** and **2**, respectively. All defined terms in this motion have the same
definition as that in the Settlement.

requested Class Representative Enhancement Payments, and requested attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately \$309,166.67 will be distributed to all Settlement Class members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 308 Settlement Class members, and the average payment to participating Settlement Class members is projected to be approximately \$1,003.79.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Liberty Building was a provider of janitorial and building maintenance services for commercial office buildings throughout Los Angeles. *See* Declaration of Sean M. Blakely (“Blakely Decl.”), ¶ 8. On or about April 1, 2021, Liberty Building was sold to Haynes Building Service, LLC and ceased all operations. *Id.* Plaintiff Orellana worked for Liberty Building as a non-exempt “janitor” from approximately August 2016 until April 1, 2021. *See* Declaration of Elena Orellana (“Orellana Decl.”), ¶ 2. Plaintiff Navarro worked for Liberty Building as a non-exempt “janitor” from approximately March 18, 2020 until approximately April 1, 2021. *See* Declaration of Rocio Navarro (“Navarro Decl.”), ¶ 2.

On June 15, 2022, Plaintiff Orellana filed a Class Action Complaint against Liberty Building in Los Angeles County Superior Court, alleging causes of actions for: (1) failure to pay all overtime wages; (2) failure to pay all minimum wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; and (7) unfair

1 competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl.,
2 ¶ 9. On October 21, 2022, Plaintiff Orellana sent her PAGA notice letter to the LWDA. *Id.*;
3 **Exhibit B** (LWDA Letter). On December 27, 2022, Plaintiff Orellana filed a First Amended
4 Class and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties
5 under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq.* *Id.* As part
6 of the Settlement, the Parties stipulated to the filing of a Second Amended Class and
7 Representative Action Complaint (“SAC”), which added Plaintiff Navarro as a named Plaintiff
8 and certain factual allegations. *Id.*, at ¶ 10. Plaintiffs filed the SAC on November 20, 2023. *Id.* ³

9 **B. PLAINTIFFS’ CLAIMS AND LIBERTY BUILDING’S DEFENSES**

10 **1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices**

11 Plaintiffs allege that Liberty Building utilized a timekeeping system that systematically
12 underpaid wages to Settlement Class members. Blakely Decl., ¶ 16. Specifically, from the
13 beginning of the Class Period through January 1, 2020, Plaintiffs allege that Liberty Building’s
14 supervisors recorded employees’ start and end times, and always recorded hours worked in
15 quarter-hour increments, resulting in a failure to compensate for all hours worked. *Id.* After
16 January 2020, Plaintiffs allege employees were required to download the PayCom application on
17 their cell phones and record their hours worked through the PayCom application. *Id.* Plaintiffs
18 allege that after January 2020, Liberty Building continued to round time-keeping entries in
19 quarter-hour increments, resulting in a failure to compensate for all hours worked. *Id.*

20 Plaintiffs further allege that around 15% of Settlement Class members regularly worked
21 at multiple buildings during the same shift, and that Liberty Building failed to compensate these
22 employees for required travel time between work sites. Blakely Decl., ¶ 17. Rather, Plaintiffs
23 allege Liberty Building required Settlement Class members to clock out before traveling to
24

25 ³ Although Plaintiffs brought a cause of action for civil penalties under the PAGA, Plaintiffs
26 learned that Liberty Building ceased all operations as of April 1, 2021 and the company was sold
27 to Haynes Building Service, LLC on or around that date. Blakely Decl., ¶ 11. Plaintiff Orellana
28 served her PAGA letter on October 21, 2022. *Id.* Because Liberty Building was sold on April 1,
2021 and ceased all operations as of that date, Liberty Building contends it does not have any
potential PAGA liability. *Id.*

1 another site, where employees were then required to clock back in at this second work site. *Id.*

2 Liberty Building argues that its timekeeping policies/practices complied with California
3 law and that it has always properly compensated Settlement Class members for all hours worked
4 throughout the Class Period. Blakely Decl., ¶ 16. Liberty Building contends that it utilized an
5 even-handed timekeeping system that, on balance, resulted in employees being paid for all hours
6 actually worked. *Id.* Finally, Liberty Building asserts that Plaintiffs would be unable to certify
7 this claim since its timekeeping policies/practices are facially neutral and individualized inquiries
8 would be necessary as to whether employees were in fact underpaid or potentially overpaid for
9 each workday in question (including whether they were actually working when they were clocked
10 in), resulting in an unmanageable series of mini-trials. *Id.*

11 **2. Meal Period Claims**

12 Plaintiffs allege that Liberty Building failed to provide all compliant first-meal periods to
13 its non-exempt employees. Blakely Decl., ¶ 18. Plaintiffs allege that first meal periods were
14 regularly provided after the completion of five hours of work and/or less than a full 30-minutes
15 due to work demands imposed by Liberty Building. *Id.*

16 Liberty Building counters it has always maintained compliant written meal period policies
17 throughout the Class Period and has always provided compliant meal periods in line with those
18 policies. Blakely Decl., ¶ 18. Liberty Building contends that under *Brinker*, it is only required to
19 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; see
20 *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure”
21 standard and holding employers only have to “provide” employees the opportunity to take meal
22 periods). Liberty Building also maintains that any short, missed, or late first meal periods were
23 the result of lawful employee waiver or choice, thereby precluding liability. Blakely Decl., ¶ 18.
24 Lastly, Liberty Building argues Plaintiffs’ meal period claim is not suited for class certification
25 since individual inquiries would be needed to assess which employees, if any, took non-compliant
26 or missed meal periods, how many meal periods were non-compliant or missed, and the reasons
27 why a particular employee did not take a meal period on a particular shift, thereby making class
28 certification of this claim unlikely. *Id.*

1 **3. Rest Period Claims**

2 Plaintiffs allege that Liberty Building failed to authorize and permit all legally-required
3 off-duty rest periods. Blakely Decl., ¶ 19. Specifically, Plaintiffs allege that due to persistent
4 understaffing, employees were not always provided with all off-duty rest periods. *Id.*

5 Liberty Building argues that it has always maintained and enforced lawful rest period
6 policies/practices during the Class Period, and has, in fact, authorized and permitted all required
7 rest periods to Settlement Class members. Blakely Decl., ¶ 19. Liberty Building also asserts this
8 claim is not amenable to class treatment as individualized inquiries would be required to
9 determine which employees failed to take a rest period, and the reasons why. *Id.* These
10 manageability concerns are especially present with respect to rest period claims, Liberty Building
11 argues, given that rest periods are not recorded. *Id.*

12 **4. Unreimbursed Business Expenditures**

13 Plaintiffs allege that beginning in January 2020, Liberty Building required Settlement
14 Class members to use their personal cellular phones to clock in and out of their work shifts.
15 Blakely Decl., ¶ 20. Despite requiring Plaintiffs and Settlement Class members to incur these
16 expenses on a daily basis, Plaintiffs allege that Liberty Building failed to reimburse Settlement
17 Class members for these necessary business expenses, in violation of Labor Code § 2802(a) (“An
18 employer shall indemnify his or her employee for all necessary expenditures or losses incurred
19 by the employee in direct consequence of the discharge of his or her duties”) *Id.*; *see also Cochran*
20 *v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding employer must reimburse
21 use of personal cell phone, even where employee already has “unlimited” plan).

22 Liberty Building maintains that it did, in fact, provide some reimbursement for each pay
23 period for cellular data usage. Blakely Decl., ¶ 20. Liberty Building further argues that any
24 expenses incurred by Settlement Class members were extremely minimal, given the wide
25 availability of low-cost cellular phone plans. *Id.* Liberty Building further contends that this claim
26 would require individual inquiries into whether Settlement Class members actually used their
27 personal cellular phones for work purposes, how much expense they incurred, whether they
28 submitted a request for reimbursement, and the reasonableness of that expense, thus precluding

1 class certification. *Id.*; see also, e.g., *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568
2 (2007) (“In calculating the reimbursement amount due under section 2802, the employer may
3 consider not only the actual expenses that the employee incurred, but also whether each of those
4 expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee’s
5 choices”).

6 **5. Wage Statement Penalties**

7 As a result of the unpaid wages and unpaid meal and rest period premium wages described
8 above, Plaintiffs allege that Liberty Building is liable for wage statement penalties. Blakely Decl.,
9 ¶ 21. Liberty Building claims that any alleged wage statement violations were not “knowing and
10 intentional,” and Plaintiffs cannot show they or other employees “suffer[ed] injury” due to the
11 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
12 penalties. *Id.* Finally, Liberty Building contends its wage statements always accurately reflected
13 hours worked and amounts paid as well as all other required information, precluding liability for
14 wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-
15 37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in
16 that they correctly reflected the hours worked and the pay received...The purpose of section 226
17 is to *document the paid wages* to ensure the employee is fully informed regarding the calculation
18 of those wages.”) (Italics in original).

19 **6. Waiting Time Penalties**

20 Plaintiffs allege that as a further result of its failure to pay all wages earned, as well as its
21 failure to pay all meal and rest period premiums, Liberty Building is liable for waiting time
22 penalties pursuant to Labor Code §§ 201-203. Blakely Decl., ¶ 22. Liberty Building argues that
23 it possesses strong, good-faith defenses to Plaintiffs’ underlying claims, thus precluding recovery
24 of waiting time penalties, which are only available for the “willful” failure to pay wages. *Id.*; see
25 also 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude
26 imposition of waiting time penalties under Section 203 . . . A ‘good faith’ dispute that any wages
27 are due occurs when an employer presents a defense, based in law or fact which, if successful,
28 would preclude any recovery on the part of the employee.”). Liberty Building further asserts that

1 Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee
2 experienced the alleged Labor Code violations. Blakely Decl., ¶ 22.

3 **C. DISCOVERY AND MEDIATION**

4 In connection with mediation, the Parties engaged in extensive informal discovery.
5 Blakely Decl., ¶ 12. Liberty Building produced timekeeping and payroll records for all 308
6 putative class members. *Id.* Liberty Building also provided a detailed Class List, which included
7 putative class members' date of hire, date of termination (if applicable), and hourly rate of pay,
8 as well as its written wage and hour policies and employee handbooks. *Id.* Plaintiffs hired a labor
9 economist with a Ph.D. in economics to assist Plaintiffs in conducting a comprehensive analysis
10 of the payroll and timekeeping data produced by Liberty Building to calculate class-wide damages
11 for each of Plaintiffs' claims. *Id.* This discovery allowed the Parties to assess the merits and value
12 of Plaintiffs' claims, the chances of certification of Plaintiffs' claims, and Liberty Building's
13 potential defenses. *Id.*

14 On August 8, 2023, the Parties participated in a full-day mediation with Tripper Ortman,
15 Esq., a highly experienced wage and hour class action mediator. Blakely Decl., ¶ 13. During
16 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
17 certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Id.* At the
18 conclusion of mediation, Mr. Ortman issued a mediator's proposal for a class-wide settlement,
19 which was accepted by all Parties. *Id.* During the months that followed, the Parties finalized the
20 terms of the Settlement and executed the long-form Settlement Agreement now before the court.
21 *Id.*

22 **III. THE PROPOSED SETTLEMENT**

23 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

24 If the Court preliminarily approves the Settlement, Liberty Building will pay a Gross
25 Settlement Amount of \$550,000. *See* Settlement, ¶ 3. Significantly, this Settlement is non-
26 reversionary, and no Settlement Class member will have to submit a claim form to receive an
27 Individual Settlement Award. *Id.*, ¶¶ 3-4. Each Settlement Class member will automatically
28 receive an Individual Settlement Award unless he or she affirmatively opts out of the Settlement.

1 *Id.* The monetary terms of the Settlement are summarized below:

2	• Gross Settlement Amount:	\$550,000.00
3	• Minus Court-approved attorneys' fees:	\$183,333.33
4	• Minus Court-approved verified costs (up to):	\$35,000.00
5	• Minus Court-approved Enhancement Payments:	\$12,500.00
5	• <u>Minus estimated Settlement Administration costs:</u>	<u>\$10,000.00</u>
6	Net Settlement Amount ("NSA"):	\$309,166.67

6 **1. The Settlement Provides for Reasonable Monetary Payments**

7 After deducting amounts for the Court-approved attorneys' fees and costs, the Class
8 Representative Enhancement Payments to Plaintiffs, and Settlement Administrator's fees and
9 expenses, the Settlement requires Liberty Building to pay a Net Settlement Amount ("NSA") of
10 at least \$309,166.67 to all Settlement Class members who do not timely opt out. *See* Settlement,
11 ¶ 4. The NSA shall be allocated among Settlement Class members (except those who submit a
12 timely and valid Request for Exclusion) based on each participating Settlement Class member's
13 proportionate workweeks worked during the Class Period. *See* Settlement, ¶ 4(B). Based on
14 information from Liberty Building, there are approximately 308 Settlement Class members.
15 Blakely Decl., ¶ 15. Therefore, the average Individual Settlement Amount from the NSA is
16 projected to be approximately \$1,003.79. *Id.*

17 Settlement Class members will have sixty (60) calendar days from the mailing of the
18 Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the
19 Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(C), (D). Settlement
20 Class members who do not opt out of the Settlement will be bound by its terms and will release
21 all claims against Liberty Building included within the Settlement. *See Id.*, ¶ 2(A).

22 **2. Attorneys' Fees and Costs, and Enhancement Payments**

23 Plaintiffs will apply for Class Representative Enhancement Payments at the time of
24 seeking final approval of the proposed class action settlement in the amount of \$7,500 for Plaintiff
25 Orellana, and \$5,000 to Plaintiff Navarro, for their service to the Settlement Class. *See* Settlement,
26 ¶¶ 3(C)(3), 6. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to
27 compensate class representatives for work done on behalf of the class [and] to make up for
28 financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination*

1 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final
2 approval, Plaintiffs’ requested Enhancement Payments are intended to recognize the time and
3 effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial
4 factual information and documents to Class Counsel, discussing the claims and theories at issue
5 in the litigation, actively participating in the prosecution of their claims, as well as the significant
6 risks Plaintiffs undertook by agreeing to serve as named plaintiffs in this case, and the fact that
7 Plaintiffs agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See*
8 Settlement, ¶ 2(C), 6; Blakely Decl., ¶ 26; *see also* Orellana Decl., ¶¶ 4-7; Navarro Decl., ¶¶ 4-7.

9 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
10 Settlement Amount, which is currently estimated to be \$183,333.33, and up to \$35,000.00 in
11 verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; Blakely Decl., ¶ 25. Plaintiffs submit
12 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
13 consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 25. Class Counsel has
14 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiffs’
15 claims, conducting legal research, conducting extensive informal discovery, analyzing Settlement
16 Class members’ timekeeping and payroll records with the help of a retained expert, creating a
17 comprehensive damages model, preparing for and attending mediation, negotiating and preparing
18 the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.*
19 Class Counsel expects to expend additional attorney time in attending the hearing on this Motion,
20 overseeing the Notice process and fielding questions from Settlement Class members, preparing
21 the Final Approval papers, and attending the Final Approval hearing. *Id.*

22 California courts recognize an appropriate method for awarding attorneys’ fees in class
23 actions is to award a percentage of the “common fund” created as a result of a settlement. *See*
24 *e.g., Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of fund
25 method survives in California class action cases”). Class Counsel’s request for fees of one-third
26 of the Gross Settlement Amount is well within the range of reasonableness, and indeed is
27 considered the typical rate for common fund settlements. Historically, courts have awarded
28 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4

1 Newberg on Class Actions § 14.6 (4th Ed. 2013).

2 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
3 overall percentage of the Settlement and in light of the substantial risks and significant work
4 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
5 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
6 and verified costs upon seeking final approval.

7 **IV. ARGUMENT**

8 **A. PRELIMINARY APPROVAL IS WARRANTED**

9 California Rule of Court 3.769 conditions settlement of a class action on court approval,
10 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
11 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
12 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and
13 adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
14 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair,
15 adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly
16 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
17 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the
18 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
19 presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class
20 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
21 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

22 **1. Standard for Preliminary Approval**

23 To make a fairness determination, the Court should consider several factors, including:
24 "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further
25 litigation, the risk of maintaining class action status through trial, the amount offered in
26 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
27 experience and views of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
28 "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.*, 91 Cal.App.4th at 245 (2001). 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 Plaintiffs’ Case

Although Plaintiffs steadfastly maintain that their claims are meritorious, they also acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As described above, Liberty Building presented multiple defenses to Plaintiffs’ claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

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

Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not settled. Blakely Decl., ¶ 24. This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the classes, 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.*

c. Risk of Maintaining Class Action Status

Absent settlement, there is a risk that the class would not be certified prior to trial, or, if it were certified, a risk that the class definition would be narrowed and the value of the case diminished accordingly. This would potentially be accomplished either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Liberty Building with individual class members by way of *Pick-up-Stix* type settlement agreements⁴, and the expected recovery could be significantly reduced, given

⁴ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those

the settlement amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

d. **Amount Offered in Settlement Given Realistic Value of Claims**

The Settlement provides a positive recovery for the Settlement Class in the face of hotly disputed claims. Plaintiffs, with the help of their retained expert, conducted an analysis of underpaid wages due to Liberty Building's alleged unlawful timekeeping policies/practices, potential meal and rest period premiums owing, unreimbursed business expenditures, and wage statement and waiting time penalties. A summary of the results of Plaintiffs' exposure analysis are discussed below:

Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$184,136

Based on Plaintiffs' review of employee timekeeping and payroll records, Plaintiffs estimate that Liberty Building's timekeeping policies/practices have resulted in an underpayment of approximately fifteen (15) minutes per shift. Blakely Decl., ¶ 16. Plaintiffs estimate there were approximately 85,450 shifts worked during the Class Period, and that the average hourly rate of pay was \$13.06. *Id.* Accordingly, Plaintiffs calculate the maximum potential exposure for this claim at approximately \$557,988 (85,450 shifts * 15/60 * \$13.06 average hourly rate of pay * 2 for liquidated damages). *Id.*

However, as argued above, Liberty Building counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period, that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked, and that Plaintiffs would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable

individual employees from recovery in class action litigation against the employer for the same wage claims.

1 series of mini-trials. Blakely Decl., ¶ 16. Given these defenses, Plaintiffs discounted this
2 maximum amount by 40% for risk of non-certification and an additional 45% for a risk of being
3 unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated
4 realistic exposure of approximately \$184,136. *Id.*

5 Unpaid Wages Due to Travel Between Multiple Sites: \$110,482

6 Based on Plaintiffs' review of employee records, Plaintiffs estimate approximately 15%
7 of Settlement Class members were required to travel to multiple work sites in the same day and
8 were not compensated for this required travel time. Blakely Decl., ¶ 17. Plaintiffs calculated the
9 maximum potential exposure for this claim is approximately \$334,793 (15% * 85,450 total shifts
10 in Class Period * 1 hour of travel time * \$13.06 average hourly rate of pay * 2 for liquidated
11 damages). *Id.*

12 However, as noted above, Liberty Building counters that no was actually being performed
13 while employees were clocked out, that its timekeeping policies/practices complied with
14 California law, that it has always properly compensated Settlement Class members for all hours
15 worked throughout the Class Period, and that Plaintiffs would be unable to certify this claim since
16 its timekeeping policies/practices are facially neutral and individualized inquiries would be
17 necessary as to whether employees were in fact underpaid or overpaid for each workday in
18 question, resulting in an unmanageable series of mini-trials. Blakely Decl., ¶ 17. Given these
19 defenses, Plaintiffs discounted this maximum amount by 40% for risk of non-certification and an
20 additional 45% for a risk of being unsuccessful on the merits or of failing to recover the full
21 amount sought, to arrive at an estimated realistic exposure of approximately \$110,482. *Id.*

22 Meal Period Violations: \$63,487

23 As described above, Plaintiffs allege that Liberty Building failed to provide all compliant
24 first meal periods to its non-exempt employees. Blakely Decl., ¶ 18. Based on Plaintiffs' review
25 of Liberty Building's timekeeping records, Plaintiffs estimate that approximately 17,677 shifts
26 over 6.0 hours reflected a non-compliant first meal period. *Id.* Accordingly, Plaintiffs calculated
27 Liberty Building's maximum meal period exposure as \$230,862 (17,677 non-compliant first meal
28 periods * \$13.06 average premium).

1 However, given Liberty Building's defenses to liability and its assertion that class
2 certification on this claim is unlikely given the individualized inquiries that would need to be
3 made, Plaintiffs discounted this maximum amount by 45% for risk of non-certification and an
4 additional 50% for a risk of being unsuccessful on the merits or of failing to recover the full
5 amount sought, to arrive at an estimated realistic exposure of approximately \$63,487. Blakely
6 Decl., ¶ 18.

7 Rest Period Violations: \$93,742

8 Plaintiffs allege that Liberty Building failed to authorize and permit all legally-required
9 off-duty rest periods. Blakely Decl., ¶ 19. Based on Plaintiffs' expert's review of Liberty
10 Building's timekeeping records, there were approximately 85,450 shifts worked over 3.5 hours,
11 entitling employees to at least one off-duty rest period. *Id.* Plaintiffs estimated that Settlement
12 Class members did not receive complaint off-duty rest periods on approximately 60% of all shifts
13 over 3.5 hours. *Id.* Accordingly, Plaintiffs calculated Liberty Building's maximum exposure for
14 rest period violations at approximately \$669,586 (60% * 85,450 shifts * \$13.06 average
15 premium).

16 However, Liberty Building argues that it has always maintained and enforced lawful rest
17 period policies/practices during the Class Period, and has, in fact, authorized and permitted all
18 required rest periods to Settlement Class members. Blakely Decl., ¶ 19. Liberty Building also
19 asserts this claim is not amenable to class treatment as individualized inquiries would be required
20 to determine which employees failed to take a rest period, and the reasons why. *Id.* These
21 manageability concerns are especially present with respect to rest period claims, Liberty Building
22 argues, given that rest periods are not recorded. *Id.* In light of these defenses, Plaintiffs discounted
23 this maximum amount by 60% for risk of non-certification and an additional 65% for a risk of
24 being unsuccessful on the merits or failing to recover the full amount sought, to arrive at an
25 estimated realistic exposure of approximately \$93,742. *Id.*

26 Unreimbursed Business Expenditures: \$4,226

27 Starting in January 2020, Plaintiffs allege that Liberty Building required Settlement Class
28 members to use their personal cellular phones to clock in and out of their work shifts through the

1 PayCom timekeeping application. Blakely Decl., ¶ 20. Settlement Class members worked
2 approximately 8,625 workweeks between January 1, 2020 and April 1, 2021, when Liberty
3 Building required employees to record their hours worked through the PayCom application. *Id.*
4 Using a conservative estimate of \$5 per week in reasonable work-related personal cell phone use,
5 minus the \$1.50 for which employees were already reimbursed by Liberty Building, Plaintiffs
6 calculate Liberty Building's maximum liability for the remaining unreimbursed business
7 expenses at approximately \$30,188 (\$3.50/week * 8,625 weeks). *Id.*

8 However, Liberty Building maintains that it did, in fact, provide some reimbursement for
9 each pay period for cellular data usage. Blakely Decl., ¶ 20. Liberty Building further argues that
10 any expenses incurred by Settlement Class members were extremely minimal, given the wide
11 availability of low-cost cellular phone plans. *Id.* Liberty Building further contends that this claim
12 would require individual inquiries into whether Settlement Class members actually used their
13 personal cellular phones for work purposes, how much expense they incurred, whether they
14 submitted a request for reimbursement, and the reasonableness of that expense, thus precluding
15 class certification. *Id.* Based on these defenses, Plaintiffs discounted this maximum amount by
16 60% for risk of non-certification and an additional 65% for a risk of being unsuccessful on the
17 merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure
18 of approximately \$4,226. *Id.*

19 Wage Statement Penalties: \$107,800

20 Plaintiffs allege that Liberty Building faces derivative wage statement liability as a result
21 of its failure to pay all wages as well as its failure to pay all meal and rest period premium wages.
22 Blakely Decl., ¶ 21. The maximum possible exposure for all Settlement Class members is
23 calculated as \$1,232,000 (308 employees * \$4,000 maximum penalty per Labor Code § 226(e)).
24 *Id.*

25 In light of Liberty Building's arguments that no violations occurred, that employees
26 suffered no "injury," that any alleged violations were not "knowing and intentional," that the
27 wage statements always accurately reflected hours worked and amounts paid to employees, as
28 well as risks associated with Plaintiffs' underlying claims discussed above, Plaintiffs discounted

1 this maximum amount by 65% for risk of non-certification and an additional 75% for a risk of
2 being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an
3 estimated realistic exposure of approximately \$107,800. *Id.*

4 Waiting Time Penalties: \$78,702

5 Liberty Building's records reflected approximately 205 former Settlement Class members
6 who worked for the company on or after June 15, 2019, and are therefore eligible for waiting time
7 penalties. Blakely Decl., ¶ 22. Assuming an average waiting time penalty of \$3,134 (\$13.06
8 average hourly rate * 8 hours * 30 days), Plaintiffs calculate Liberty Building's maximum waiting
9 time exposure at approximately \$642,470 (205 former employees * \$3,134 average waiting time
10 penalty). *Id.*

11 Liberty Building argues that it possesses strong, good-faith defenses to Plaintiffs'
12 underlying claims, thus precluding recovery of waiting time penalties, which are only available
13 for the "willful" failure to pay wages. Blakely Decl., ¶ 22. Liberty Building further asserts that
14 Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee
15 experienced the alleged Labor Code violations. *Id.* To account for these defenses, Plaintiffs
16 discounted the maximum exposure by 65% for the risk of non-certification, and an additional
17 65% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive
18 at an estimated exposure of approximately \$78,702. *Id.*

19 Using these estimated figures for each of the claims described above, Plaintiffs predicted
20 that the potential recovery for the Settlement Class would be approximately \$642,575. Blakely
21 Decl., ¶ 23. The proposed Settlement of \$550,000.00 therefore represents approximately 85.6%
22 of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
23 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
24 which is consistent with what Plaintiffs' counsel believes could have been recovered had the case
25 proceeded through trial.

26 e. The Experience and Views of Counsel

27 "Parties represented by competent counsel are better positioned than courts to produce a
28 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*

1 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented
2 by competent, experienced counsel who possess extensive experience prosecuting and defending
3 wage-and-hour class actions, and who have been appointed as class counsel in numerous cases
4 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines
5 Decl.”), ¶¶ 2-8; Declaration of Joel Gordon (“Gordon Decl.”), ¶¶ 2-5. Class Counsel, with the
6 help of a retained expert, conducted an in-depth review of Liberty Building’s timekeeping and
7 payroll records and drew on their extensive experience in similar cases to assess the strengths and
8 weaknesses of Plaintiffs’ case. The Settlement was also reached with the assistance of an
9 experienced and respected wage-and-hour class action mediator. This factor strongly supports
10 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

11 **2. The Preliminary Approval Standard Is Met**

12 At this stage, the Court can grant preliminary approval of the settlement and direct that
13 notice be given if the proposed settlement: (1) falls within the range of possible approval; (2)
14 appears to be the product of serious, informed and non-collusive negotiations; and (3) has no
15 obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on
16 Class Actions § 11:24-25 (4th Ed. 2013).

17 **a. The Settlement Is Within the Range of Possible Approval**

18 The proposed settlement reflects approximately 85.6% of the estimated recovery the
19 Settlement Class could reasonably expect in light of the significant litigation risks, and will
20 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
21 percentage of the liability exposure recovered in this case far exceeds percentages routinely
22 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
23 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
24 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
25 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
26 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
27 be acceptable even though it amounts to only a fraction of the potential recovery that might be
28 available to the Settlement Class members at trial”). Further, the average Individual Settlement

Award of approximately \$1,003.79 exceeds average payments achieved in other wage and hour class action settlements.⁵ Thus, Plaintiffs submit that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members 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 members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims at issue and reviewed extensive timekeeping and payroll data and conducted a detailed statistical analysis of the data with the help of a retained expert to arrive at their estimated classwide damages figures. *See Blakely Decl.*, ¶¶ 16-23. Thus, this factor supports preliminary approval.

⁵ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 **c. The Settlement Is Devoid of Obvious Deficiencies**

2 Preliminary approval of the Settlement is also warranted because there are no obvious
3 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
4 members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, settlement
5 administration costs, and Plaintiffs’ Class Representative Enhancement Payments, are all
6 reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
7 obvious deficiencies, this factor supports preliminary approval.

8 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

9 The Settlement Class satisfies the criteria for certification of a settlement class under
10 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
11 (2) common questions of law and fact predominate over individual questions such that class
12 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs’
13 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiffs and their
14 counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ.
15 Proc. § 382.

16 **1. The Proposed Class Is Ascertainable and Numerous**

17 A class is “ascertainable” where the members “may be readily identified without
18 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
19 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
20 defined as all current and former non-exempt employees employed by Liberty Building in
21 California during the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can
22 be identified from Liberty Building’s personnel and employment records. Based on information
23 provided by Liberty Building, the Settlement Class consists of approximately 308 non-exempt
24 employees. *See* Blakely Decl., ¶ 15. It would therefore be impracticable to bring all Settlement
25 Class members before the Court, or for each Settlement Class member to bring an individual
26 lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup.*
27 *Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently
28 numerous).

1 **2. Common Issues of Law and Fact Predominate**

2 The focus in a certification dispute is not the merits, but rather on what types of questions,
3 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
4 *Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated on Liberty Building’s
5 uniform timekeeping policies and/or practices, and meal and rest period policies and/or practices.
6 These types of claims are commonly held to be proper for class certification. *See e.g., Benton v.*
7 *Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest
8 period claims).

9 **3. The Claims of the Named Plaintiffs Are Typical**

10 The typicality requirement is satisfied where class representatives have claims that are
11 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
12 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named plaintiff purchased the
13 same goods as the putative class in a consumer class action). Here, Plaintiffs’ claims are typical
14 of those held by the Settlement Class members. First, Liberty Building employed Plaintiffs as
15 non-exempt employees during the Class Period, and Plaintiffs were subject to Liberty Building’s
16 wage and hour policies at issue in this case. *See Orellana Decl.*, ¶ 2; *Navarro Decl.*, ¶ 2. Second,
17 Plaintiffs were injured by the same challenged policies/practices that allegedly injured the
18 Settlement Class as a whole. For example, Plaintiffs assert that they were deprived of all wages
19 due to Liberty Building’s timekeeping policies/practices and contend that they were deprived of
20 all legally compliant meal and rest periods. *See generally*, Orellana and Navarro Decls. Plaintiffs
21 further assert that they did not receive all wages at the time of separation of employment. *Id.*
22 Because Plaintiffs have suffered the same injuries as the other members of the Settlement Class,
23 the typicality requirement is satisfied.

24 **4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the**
25 **Class**

26 The adequacy requirement examines conflicts of interest between named parties and the
27 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
28 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the

1 Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class,
2 and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v.*
3 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
4 indication that Class Counsel were not qualified and the named plaintiff had no interests
5 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
6 and hour class action litigation. *See Haines Decl.*, ¶¶ 2-8; *Blakely Decl.*, ¶¶ 2-6; *Gordon Decl.*, ¶¶
7 2-6.

8 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

9 This Court should order distribution to the Settlement Class of the proposed Class Notice
10 and Notice of Estimated Settlement Award (the “Notice Packet”) by U.S. Mail, postage prepaid,
11 in English and Spanish, using last known mailing address information provided by Liberty
12 Building. *See Settlement*, ¶ 9. This manner of giving notice is the “best notice practicable” under
13 the circumstances because it provides “individual notice to all members who can be identified
14 through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the
15 Parties have agreed that the Settlement be administered by Phoenix Settlement Administrators.
16 (“Phoenix”), an experienced class action settlement administrator. *See generally* Declaration of
17 Jodey Lawrence (“Lawrence Decl.”) and attached exhibits. Settlement Class members’ addresses
18 will be ascertainable through Liberty Building’s personnel and payroll records, which Liberty
19 Building will provide to Phoenix within ten (10) business days of preliminary approval of the
20 Settlement. *See Settlement*, ¶ 9(A). Within ten (10) business days from receipt of this information,
21 the Settlement Administrator will run the names of all Settlement Class members through the
22 National Change of Address (“NCOA”) database to determine any updated addresses for
23 Settlement Class members, and mail a Notice Packet to each Settlement Class Member in English
24 and Spanish at his or her last known address. *See Settlement*, ¶ 9(B). To the extent that any notices
25 are returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s current
26 mailing address. *Id.*, at ¶ 9(G).

27 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
28 because it advises Settlement Class members of the nature of the claims, basic contentions and

1 denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object
2 to the Settlement and the procedures by which to do so, explains the recovery formula and
3 expected recovery amount for each Settlement Class member, and advises them that they will be
4 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1 and 2 to
5 Exh. A; Settlement, ¶¶ 9(C)-(D). The proposed Class Notice will also notify Settlement Class
6 members of the final approval hearing date and provides the Settlement Class contact information
7 for Class Counsel and advises Settlement Class members that they may enter an appearance
8 through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court
9 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

10 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

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

14 **V. CONCLUSION**

15 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
16 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
17 Proposed Order submitted concurrently herewith.

18
19 Dated: November 22, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

20
21 By:



22 Paul K. Haines
23 Sean M. Blakely
24 Attorneys for Plaintiffs
25
26
27
28