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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

SERGIO RODRIGUEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

SUPERIOR TANK CO., INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. BCV-23-100144 consolidated with
Case No. BCV-23-100926

*[Case Assigned to Hon T. Mark Smith
department T-2]*

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

Date: July 15, 2024
Time: 8:30 a.m.
Dept.: T-2

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 July
3 15, 2024 at 8:30 a.m. in Department T-2 of the above-entitled Court, located at 3131 Arrow St,
4 Bakersfield, CA 93308, Plaintiff Sergio Rodriguez (“Plaintiff”), individually and on behalf of a class of
5 similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt employees of Defendant Superior Tank, Inc.
10 who worked at any time in California during the Class Period.

- 11 3. For purposes of the Settlement, the “Class Period” shall mean the time period between
12 January 17, 2019 through the date the Court issues an order preliminarily approving the
13 Settlement.
14 4. Preliminary appointment of Plaintiff Sergio Rodriguez as Class Representative;
15 5. Preliminary appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and
16 Paul K. Haines of Haines Law Group, APC as Class Counsel;
17 6. The scheduling of a hearing to consider whether the Settlement should be finally approved
18 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
19 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
20 costs to Class Counsel;
21 7. Appointment of Phoenix Settlement Administrators (“Phoenix”) as the third-party
22 Settlement Administrator for mailing notices; and
23 8. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
24 Class Action and Proposed Settlement and Notice of Individual Settlement Award) and an
25 order that it be disseminated to the proposed Settlement Class Members as provided in the
26 Settlement Agreement.

27 This Motion is based on this notice of motion, the memorandum of points and authorities, the
28 declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Sergio Rodriguez, and Jodey

1 Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and
2 other papers filed in this action, and on any further oral or documentary evidence or argument presented
3 at the time of hearing.

4
5 Dated: June 14, 2024

Respectfully submitted,
LIDMAN LAW, APC

6
7
8 By:



Scott M. Lidman
Attorneys for Plaintiff
SCOTT M. LIDMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Sergio Rodriguez (“Plaintiff”) brought this class and representative action against
4 Defendant Superior Tank, Inc. (hereinafter referred to as “Superior Tank” or “Defendant”) alleging
5 various wage and hour violations. Plaintiff’s primary allegations are that Defendant: (1) failed to pay all
6 overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally required
7 meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide
8 accurate, itemized wage statements; (6) failure to reimburse all business expenses; (7) failed to timely pay
9 all wages upon separation of employment; (8) engaged in unlawful business practices; and (9) is liable for
10 civil penalties 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 Defendant have agreed to pay \$550,000.00 to the following Settlement
13 Class:

14 All current and former non-exempt employees of Defendant Superior Tank, Inc.
15 who worked at any time in California during the Class Period.

16 For purposes of the Settlement, the “Class Period” shall mean the time period
17 between January 17, 2019 and the date the Court preliminarily approves the
18 Settlement.

19 Settlement Class members do not need to file a claim and will automatically receive a payment
20 unless they affirmatively opt-out. After deducting administration costs, Plaintiff’s service award,
21 attorneys’ fees and costs, and PAGA civil penalties, the remaining Net Settlement Amount (“NSA”) of
22 approximately \$300,916.67 will be distributed to all Settlement Class members who do not opt-out. With
23 approximately 215 Settlement Class members, the average payment to each Settlement Class member is
24 currently expected to be approximately **\$1,399.61**, which does not include the \$5,000.00 PAGA Amount
25 to the PAGA Employees.

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

28 ¹ The Stipulation of Class Action and PAGA Settlement (“Settlement”) is attached to the Declaration of Scott M. Lidman as Exhibit 1. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award) is attached to the Settlement as Exhibit B. All defined terms in this motion have the same definitions as used in the Settlement.

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

4 **II. SUMMARY OF THE LITIGATION**

5 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH** 6 **NEGOTIATIONS**

7 **1. The Parties**

8 Superior Tank does business by manufacturing and installing a complete line of bolted and welded
9 steel storage tanks for potable water, wastewater, fire protection, rain harvesting, and crude oil industries
10 since 1984. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a former non-exempt
11 employee, worked for Defendant from approximately December 13, 2006 through approximately
12 November 8, 2022 as a Bolted Tank Installer and Driver. *See* Declaration of Sergio Rodriguez
13 (“Rodriguez Decl.”), ¶ 2.

14 **2. Procedural History**

15 On January 17, 2023, Plaintiff filed the instant putative class action complaint against Defendant
16 in Kern County Superior Court alleging the following class action claims against Defendant: (a) failure to
17 pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to provide all meal
18 periods; (d) failure to authorize and permit all rest periods; (e) failure to provide accurate, itemized wage
19 statements; (f) failure to reimburse all business expenses; (g) failure to pay all wages upon termination of
20 employment; and (h) unfair business practices. Lidman Decl., ¶ 11.

21 On March 20, 2023, the Court in the Class Action, pursuant to a stipulation between the Parties,
22 ordered the Class Action to binding arbitration and otherwise stayed the Class Action. Lidman Decl., ¶
23 12. On March 30, 2023, Plaintiff submitted the Class Action to arbitration before the American
24 Arbitration Association, AAA Case No. 012300013261. *Id.*

25 After having exhausted his administrative remedies with the California Labor & Workforce
26 Development Agency (“LWDA”) by way of a letter submitted to the LWDA on January 17, 2023, on
27 September 5, 2023, Plaintiff filed a representative action Complaint against Defendant in Kern County
28 Superior Court, in the matter entitled *Sergio Rodriguez, as an individual and on behalf of all others*
similarly situated v. Superior Tank Co., Inc., a California corporation; and Does 1 through 100, inclusive,

Case No. BCV-23-100926 (the “PAGA Action”) asserting a single claim for violations of the California Labor Code Private Attorney General Act (“PAGA) premised on the alleged Labor Code violations set forth in the January 17, 2023 letter to the LWDA. Lidman Decl., ¶ 13.

On July 28, 2023, pursuant to a stipulation between the Parties, the Court in the PAGA Action ordered Plaintiff’s individually based PAGA claims to binding arbitration and otherwise stayed the representative claims under the PAGA. Lidman Decl., ¶ 14. On September 8, 2023, Plaintiff filed in the Class Action in arbitration a First Amended Demand against Defendant which added Plaintiff’s individually-based claims under the PAGA to the pending arbitration. *Id.*

On April 30, 2024, the arbitrator dismissed the arbitration without prejudice so that the Class Action could return to this Court, and the Parties could appropriately seek approval of this Settlement. Lidman Decl., ¶ 15. On May 24, 2024, this Court lifted the stay in this action to allow Plaintiff to file a Motion for Preliminary Approval of the class-wide settlement. *Id.* Further, on May 24, 2024, this Court, pursuant to a stipulation between the Parties, consolidated for all purposes the instant action and the PAGA Action. *Id.*

3. Discovery

After agreeing to participate in early mediation, Defendant informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for an approximate 15 % sampling of the putative class. Lidman Decl., ¶ 16. Additionally, Defendant produced information and data points needed for a fruitful mediation, including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal and rest period policies and procedures, and payroll policies. After a review and analysis of the documents and information produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff’s claims and Defendant’ defenses thereto, if a settlement could not be reached.

4. Arms-Length Negotiations

On April 10, 2024, a mediation was held with Michael Ludwig, Esq., a well-respected mediator. Lidman Decl., ¶ 17. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution. In the weeks that followed, the parties finalized

the terms of settlement and executed the Stipulation of Class Action and PAGA Settlement (“Settlement”).
Id.

III. ARGUMENT

A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

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

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

1. Numerosity is Satisfied.

Here, there are approximately 215 Settlement Class Members. Therefore, numerosity is satisfied. *See* Lidman Decl., ¶ 21; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

Further, a class is “ascertainable” where the members “may be readily identified without unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as “All current and former non-exempt employees of Defendant Superior Tank, Inc. who worked at any time in California during the Class Period.” For purposes of this Settlement Agreement, the “Class Period” shall mean the time period between January 17, 2019 and the date the Court preliminarily approves the Settlement. Lidman Decl., ¶ 21.

In addition, PAGA Employees is defined as: “All current and former non-exempt employees of Defendant Superior Tank, Inc. who worked at any time in California during the PAGA Period.” For

1 purposes of this Settlement Agreement, the “PAGA Period” shall mean the time period between January
2 17, 2022 and the date the Court preliminarily approves the Settlement. *Id.*

3 **2. Commonality is Satisfied.**

4 The focus in a certification dispute is not the merits, but rather on what types of questions,
5 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court*
6 *(Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members’ claims arise from Defendant’s
7 common, uniform policies and practices that applied to Plaintiff and Settlement Class Members during
8 the class period. Lidman Decl., ¶ 22. As a result of the common and uniform policies and practices that
9 applied to all Settlement Class Members, their claims involve common questions of law and fact,
10 including but not limited to:

- 11 1. Whether Defendant properly paid all minimum wages;
- 12 2. Whether Defendant properly paid all overtime wages;
- 13 3. Whether Defendant provided all legally compliant meal periods;
- 14 4. Whether Defendant authorized and permitted all legally required rest periods;
- 15 5. Whether Defendant failed to furnish accurate, itemized wage statements;
- 16 6. Whether Defendant failed to reimburse all necessary business expenses;
- 17 7. Whether Defendant failed to timely pay all wages owed upon separation; and
- 18 8. Whether Defendant’ conduct constituted unlawful and/or unfair business practices.

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

21 **3. Typicality is Satisfied.**

22 The typicality requirement is satisfied where class representatives have claims that are typical of
23 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
24 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
in a consumer class action).

25 Here, Plaintiff’s claims are typical of those held by the Settlement Class. First, Plaintiff was
26 employed by Defendant during the Class Period as a non-exempt employee and was subject to
27 Defendant’s wage and hour policies at issue in this case. *See Rodriguez Decl.*, ¶ 2. Second, Plaintiff was
28 injured by the same challenged policies that injured the Settlement Class as a whole. For example,

1 Plaintiff asserts that he, like the Settlement Class, was not paid all legally required minimum wages and
2 overtime wages, was not provided with all required meal periods, was not authorized and permitted to
3 take all required rest periods, did not receive meal and rest period premium wages when he was not
4 provided compliant meal or rest periods, was not provided with accurate, itemized wage statements, was
5 not reimbursed for all necessary business expenses, and was not paid all of his wages owed upon
6 separation of employment. *Id.* Given that Defendant's policies and practices applied to all non-exempt
7 employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries
8 as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the
9 same conduct, typicality is satisfied.

10 **4. Adequacy is Satisfied.**

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

14 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he
15 seeks to represent. *See Rodriguez Decl.*, ¶ 14. Indeed, Plaintiff's interests are aligned with those of the
16 Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *Id.*
17 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee*
18 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication
19 that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the
20 proposed class).

21 Further, Class Counsel also have extensive experience in wage and hour class action litigation and
22 have vigorously litigated this case. *See Lidman Decl.*, ¶¶2-8; Declaration of Paul K. Haines ("Haines
23 Decl."), ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-4.

24 **B. THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND**
REASONABLE

25 Settlement is the preferred means of dispute resolution, particularly in complex class action
26 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in
27 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
28 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an

1 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168
2 Cal.App.4th 116, 130.

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

4 To make a fairness determination, the Court should consider several factors, including: “the
5 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk
6 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
7 completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford*
8 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to
9 engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba*
10 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. The Settlement is fair, adequate, and reasonable
11 in light of the overall balance of factors in this case for the following reasons.

12 **a. The Strength of Plaintiff’s Case**

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

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

18 Although the parties engaged in informal discovery throughout this action, the parties still had
19 significant discovery to complete in formal litigation had the matter not settled. *Lidman Decl.*, ¶ 41.
20 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of
21 a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if
22 the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably
23 more attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*
24 This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary
25 approval.

26 **c. Risk of Maintaining Class Action Status**

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

1 **d. Overview of the Settlement Agreement**

2 If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount (“GSA”) of
3 \$550,000.00.² Lidman Decl., ¶ 18, Exh. 1 (Settlement, ¶ 5). Significantly, this Settlement is **non-**
4 **reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement
5 Award. *Id.* (Settlement, ¶ 5). Each Settlement Class member will automatically receive a Settlement
6 Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement
7 are summarized below:

8 Gross Settlement Amount (“GSA”):	\$550,000.00
9 Minus Court-approved attorneys’ fees (1/3 of GSA):	\$183,333.33
10 Minus Court-approved, verified costs (up to):	\$30,000.00
11 Minus Court-approved Class Representative Service Award (up to):	\$7,500.00
12 Minus Settlement Administration Costs:	\$8,250.00
13 Minus PAGA civil penalties:	\$20,000.00
14 Net Settlement Amount (“NSA”):	\$300,916.67

15 The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set
16 up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA
17 Employees. Defendant agrees to deposit the Gross Settlement Amount and the required employer-side
18 taxes with the Settlement Administrator within sixty (60) calendar days after the “Effective Date” which
19 is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf
20 of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been
21 filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been
22 filed. Lidman Decl., ¶ 19, Exh. 1 Settlement ¶ 4.B.

23 After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award
24 to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the Settlement requires
25 Defendant to pay a Net Settlement Amount (“NSA”) of at least **\$300,916.67** to all Settlement Class

26 _____
27 ² Defendant represents that there are an estimated 26,262 workweeks worked by settlement class members from January 17,
28 2019 through April 10, 2024 (date of mediation). If the number of workweeks during the Class Period is more than 10% greater
than this figure (i.e., if there are 28,889 or more workweeks worked by the settlement Class Members during the Class Period),
Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase in the
number of workweeks worked during the Class Period by Class Members, Defendant will increase the Gross Settlement
Amount by 11%). See Settlement ¶ 4.E.

Members who do not timely opt out. This amount does not include the \$5,000.00 PAGA Amount to be paid to the PAGA Employees. Lidman Decl., ¶ 20, Exh. 1 (Settlement ¶ 5.A).

The Individual Settlement Awards shall be determined as follows:

- i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of weeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked as a non-exempt employees during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period. *See Settlement, ¶ 5.B.i.*
- ii. PAGA Amount: Five Thousand Five Hundred Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099. *See Settlement, ¶ 5.C.*

According to Defendant, there are approximately 215 total Settlement Class Members (who worked a total of approximately 26,262 workweeks during the relevant time period). Lidman Decl., ¶ 21. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is projected to be approximately **\$1,399.61, exclusive of any PAGA civil penalties, which is approximately \$11.46 per workweek** (\$300,916.67/26,262). *Id.*

Additionally, there are approximately 10,654 PAGA pay periods during the relevant time period). *Id.*

Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See Settlement, ¶ 10.C.-D.* Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement, for the period between January 17, 2019 and the date the Court preliminarily approves the Settlement. *See Settlement, ¶ 3.* Settlement Class Members who opt-out of Settlement will still receive a portion of the PAGA Amount if they are a PAGA Employee during the PAGA Period.

1 As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a
2 Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out
3 shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not
4 opt-out. *See* Settlement, ¶ 4.C.

5 **e. The Parties Engaged in Fair and Honest Negotiations.**

6 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
7 of a mediator. After the detailed review of the information, data and other documents and policies
8 produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the
9 strengths and weaknesses of Plaintiff's case. Lidman Decl., ¶ 16. This discovery allowed the parties to
10 assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could
11 not be reached. *Id.*

12 On April 10, 2023, the parties participated in mediation with Michael Ludwig, Esq. Lidman
13 Decl., ¶ 17. During mediation, the parties vigorously debated their opposing legal positions, the
14 likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses.
15 Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the weeks that followed, the
16 parties finalized the terms of settlement and executed the Settlement. *Id.*, Exhibit 1.

17 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of:
18 factual investigation and data analysis; the exchange of substantial information and class data, including
19 timekeeping and payroll records; wage and hour policies and practices; arm's length negotiations by
20 counsel; and mediation before an experienced wage and hour class action mediator. *See* Lidman Decl.,
21 ¶¶ 16-17; *See Kullar, supra*, 168 Cal.App.4th at 130. Thus, these factors support preliminary approval.

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

28 **f. Amount Offered in Settlement Given Realistic Value of Claims**

Unpaid Wages: Plaintiff alleges that Defendant failed to compensate its non-exempt employees

1 for all time worked. Lidman Decl., ¶ 23. Specifically, Plaintiff alleges that Defendant failed to account
2 for time spent at the yard before and after a shift, and also unlawfully rounded time. *Id.* This time-
3 shaving and/or rounding practice utilized by Defendant was not even-handed over time and would almost
4 exclusively round and shave in Defendant's favor such that Plaintiff was routinely underpaid for all his
5 time worked. *Id.* As a result, Defendant failed to pay Plaintiff and other non-exempt employees for all
6 minimum and overtime wages owed. *Id.* Accordingly, based on 1 hour of unpaid overtime time each
7 week for the 26,262 workweeks at issue, Plaintiff estimates Defendant's exposure at a total of
8 \$1,112,458.32 (26,262 workweeks x 1 hour x \$42.36 (average overtime rate) = \$1,112,458.32). *Id.*

9 Defendant contends that it compensated Settlement Class members for all of their time worked,
10 that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-
11 compensable. Lidman Decl., ¶ 24. Defendant further asserts that Plaintiff would be unable to certify an
12 unpaid wages class given the individualized inquiries that would be required, and also that Defendant
13 rounding mechanism was, according to it, allegedly facially neutral. Further, Defendant contends that
14 Plaintiff's assessment of the claim at the overtime rate is inflated and incorrect. In light of these defenses,
15 Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional
16 40% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately
17 \$333,737.50.

18 Meal Period Violations: Plaintiff alleges that he and Settlement Class Members were not provided
19 with all legally-required meal periods in compliance with California law due to Defendant's unlawful meal
20 period policies/practices. Lidman Decl., ¶ 25. Due to work demands and the manner in which Defendant
21 tracked the time of its employees, Plaintiff was often prevented from taking meal periods that commenced
22 before the end of the 5th hour of work and/or which were at least 30 minutes in length. Therefore, based
23 on a review of the sampling of the time punch data and payroll records, Plaintiff calculated a 21.6%
24 violation rate. Thus, Plaintiff calculated Defendant's maximum exposure for the alleged meal period
25 violations for (1) late first meal breaks; (2) missed first meal breaks; (3) short first meal breaks; and (4)
26 missed second meal break on shifts over 10 hours to be \$800,696.99 (26,262 weeks x 5 shifts per week x
27 21.6% violation rate x \$28.24 average hourly rate). *Id.*

28 Defendant counters that it has always provided non-exempt employees with an opportunity to take

1 legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping
2 records were solely the result of employee choice, rather than any policy or practice of Defendant. Lidman
3 Decl., ¶ 26. Defendant also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53
4 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal
5 periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure”
6 standard). Defendant further contends there are no second meal period violations because the employee
7 signed valid second meal period waivers. Finally, Defendant contends Plaintiff’s meal period claim is not
8 suited for class certification and individual inquiries would be required to assess which employees took
9 non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why
10 a particular employee took a non-compliant meal period or missed a meal period during a particular shift.
11 *Id.* Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and
12 an additional 55% to account for Defendant’ defenses on the merits to arrive at an estimated exposure of
13 \$180,218.25. *Id.*

14 Rest Period Violations: Plaintiff alleges that he and other Settlement Class Members were not
15 authorized and permitted to take all required rest periods due to Defendant’ rest period policies/practices
16 which fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*.
17 Lidman Decl., ¶ 27. Based on 26,262 workweeks, there were approximately 131,310 shifts worked
18 during the relevant time period. Thus, Plaintiff calculated Defendant’ exposure on unique rest period
19 violations at \$3,708,194.40 (22,262 x 5 x \$28.24). *Id.*

20 Defendant contends it has always maintained and enforced lawful rest period policies and
21 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
22 periods in compliance with California law. Lidman Decl., ¶ 28. Defendant argues that Plaintiff’s rest
23 period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether
24 each Settlement Class member was in fact authorized and permitted to take a compliant rest period, which
25 would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the
26 maximum exposure by 75% for the risk of non-certification, and an additional 50% to account for
27 Defendant’s defenses on the merits to arrive at an estimated exposure of \$463,524.30. *Id.*

28 Wage Statement Violations: Plaintiff further alleges that Defendant issued inaccurate wage

1 statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest
2 period premium wages described above. Lidman Decl., ¶ 29. Specifically, Plaintiff contends that this
3 conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members
4 did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff
5 calculated Defendant’ maximum exposure for wage statement violations based on the 10,654 wage
6 statements issued during the relevant time period and applying the maximum \$4000 recovery per employee
7 at \$860,000. *Id.*

8 Defendant argues that its alleged wage statement violations could not be shown to be “knowing
9 and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result
10 of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties.
11 Lidman Decl., ¶ 30. As such, Plaintiff discounted the calculated exposure by 35% for a risk of non-
12 certification and an additional 60% for a risk of being unsuccessful on the merits to arrive at an estimated
13 total of \$223,600. *Id.*

14 Waiting Time Penalties: Plaintiff alleges that Defendant is also liable for waiting time penalties
15 under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment.
16 Lidman Decl., ¶ 31. Based on the data provided by Defendant, there were approximately 95 Settlement
17 Class Members who have separated their employment with Defendant during the relevant time period who
18 could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Defendant’ maximum
19 exposure for waiting time penalties at approximately \$643,872.00 (95 separated employees x \$28.24 x 8
20 x 30). *Id.*

21 Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith
22 disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 32. *See*
23 *also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of
24 waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith
25 dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested
26 wages owed). Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-
27 certification, and an additional 45% to account for Defendant’ defenses on the merits to arrive at an
28 estimated exposure of approximately \$194,771.28. *Id.*

1 Unreimbursed Business Expenses: Plaintiff further alleges that Defendants required its employees
2 to use their personal cellular phones and tools to discharge their duties but did not reimburse them for the
3 cell phones and/or the data usage. Lidman Decl., ¶ 33. Plaintiff alleges that Defendants knew or should
4 have known that Plaintiff and the other employees were necessarily incurring expenses due to the use of
5 their personal cellular phone and/or tools in the direct discharge of their duties. *Id.* Yet, despite the
6 necessity of Plaintiff and the other drivers using their cellular phone for work activities and Defendants
7 knowing or should have knowing about same, Plaintiff and the other drivers never reimbursed for a
8 reasonable portion of their cellular phone expenses by Defendants, as mandated by *Cochran v. Schwan's*
9 *Home Service, Inc.* (2014) 228 Cal.App.4th 1137. *Id.*

10 Plaintiff estimated employees should have been reimbursed approximately \$50.00 per month for
11 cellular related expenses and tools and calculated Defendants' exposure at \$328,275. (26,262/4
12 workweeks x \$50/month = \$328,275). *Id.*

13 Defendant contends that it never required its employees to purchase or use their own tools and
14 provided everything the employees needed. It further contends it did not require the employees to use their
15 cell phones for any business reasons. Lidman Decl., ¶ 34. Defendants further contend that any purportedly
16 necessary expenses incurred by drivers were minimal. *Id.* Accordingly, Plaintiff discounted the maximum
17 exposure by 50% for the risk of non-certification, and an additional 45% to account for Defendant's
18 defenses on the merits and financial condition, to arrive at an estimated exposure of \$90,275.63.

19 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
20 foregoing alleged Labor Code violations. Lidman Decl., ¶ 35. Plaintiff calculated Defendant' exposure
21 at the initial rate of \$100 for a total of \$1,065,400.00. *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163
22 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating
23 a Labor Code provision).

24 Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying
25 claims will fail. Lidman Decl., ¶ 36; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
26 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
27 Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to
28 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims.

1 See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
2 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-
3 01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).
4 *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 45% for a risk of being unsuccessful
5 on the merits, and an additional 40% to account for the possibility of this Court reducing penalties, to arrive
6 at an estimated exposure of approximately \$351,582.00. *Id.*

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

8 Using these estimated figures for each of the claims described above, Plaintiff predicted the
9 realistic total recovery for the Settlement Class would be approximately \$1,837,708.96. Lidman Decl., ¶
10 37. The proposed settlement of \$550,000.00 therefore represents approximately 29.9% of the reasonably
11 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
12 will provide tangible monetary relief to Settlement Class Members.

13 The proposed settlement reflects approximately 29.9% of the estimated recovery the Settlement
14 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
15 monetary compensation for disputed claims. Indeed, the percentage of the liability exposure recovered
16 in this case exceeds percentages routinely approved by courts. See, e.g., *Glass v. UBS Finan. Servs.*
17 (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing
18 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
19 settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV,*
20 *Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be
21 acceptable even though it amounts to only a fraction of the potential recovery that might be available to
22 the Settlement Class members at trial”). Thus, Plaintiff submits the settlement is within the range of
23 possible approval, such that notice should be provided to the Settlement Class so that they can consider
24 the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement
25 after the Settlement Class has had the opportunity to opt-out or object.

26 **h. 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 Enterprises*
Securities Litigation (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,

1 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
2 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*;
3 Lidman Decl., ¶¶ 2-8; Moore Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
4 review of Defendant’s policies and timekeeping and payroll records and drew on their extensive
5 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Lidman Decl.,
6 ¶¶ 16-17. The Settlement was also reached with the assistance of an experienced and respected wage and
7 hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See*
8 *Kullar, supra*, 168 Cal.App.4th at 130.

9 **i. Attorneys’ Fees and Costs**

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

17 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
18 is currently estimated to be \$183,333.33, and up to \$30,000 in verified costs reimbursement. *See*
19 Settlement, ¶ 4.C.(4); Lidman Decl., ¶ 38. Plaintiff submits the requested fee is fair compensation for
20 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
21 *Id.* Further, Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman
22 Decl., ¶ 39. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
23 analyzing Plaintiff’s claims, conducting legal research, reviewing Defendant’s documents and policies,
24 analyzing Settlement Class Members’ timekeeping data and payroll records, preparing for and attending
25 mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise
26 litigating the case. Lidman Decl., ¶ 38. Class Counsel expect to expend additional attorney time in
27 attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement
28 Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

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

7 **j. Administration Costs**

8 Phoenix Settlement Administrator's fees and expenses are estimated not to exceed \$8,250.00. *See*
9 Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed
10 concurrently herewith ("Lawrence Decl."). This includes sending the Notice in English and Spanish. This
11 request is reasonable in light of the proposed class size of approximately 215 Settlement Class Members
12 and the costs and expenses associated with administering the notices in English and Spanish and
13 distributing the awards.

14 **k. Class Representative Service Award**

15 "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class
16 representatives for work done on behalf of the class [and] to make up for financial or reputational risk
17 undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
18 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of
19 seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for his services
20 to the Settlement Class. Lidman Decl., ¶ 40; Settlement, ¶ 4.C.3; Rodriguez Decl., ¶¶ 9-15. As will be
21 fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the
22 time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial
23 factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to
24 discuss the claims and theories at issue in the litigation, participating in the mediation, as well as the
25 significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, the fact that
26 Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman
27 Decl., ¶ 40; Rodriguez Decl., ¶¶ 9-12; Settlement ¶ 3.E.

1 **I. PAGA Civil Penalties**

2 The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor
3 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
4 \$15,000.00. Settlement ¶ 4.C.5. This \$20,000.00 represents roughly 3.6% of the \$550,000.00 Gross
5 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.
6 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D.
7 Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
8 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr.
9 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
10 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
11 claims and PAGA claims under which no money was allocated to the PAGA claims).

12 **m. Payroll Taxes**

13 The Settlement provides that the employer’s share of payroll taxes shall be paid separately from,
14 and in addition to, the Gross Settlement Amount. Settlement ¶ 4.D.

15 **n. Uncashed Funds**

16 The Settlement provides that Settlement Class Members with 180 days from the date the
17 Settlement Administrator mails the checks and any funds remaining after 180 days be transferred to the
18 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
19 of the Settlement Class member. Settlement ¶ 5.F. As all settlement funds will be distributed to the
20 Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

21 **C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

22 Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies.
23 The Settlement will provide monetary relief to participating Settlement Class Members. The amounts
24 proposed for Class Counsel’s attorneys’ fees and costs, and service award are all reasonable and
25 appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
26 factor supports preliminary approval.

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

 Before the final approval hearing, the Court requires adequate notice of the settlement be given

1 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
2 Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and
3 Notice of Individual Settlement Award) by first-class regular U.S. Mail, postage prepaid, using last
4 known mailing address information provided by Defendant. *See* Settlement, ¶ 10, Exh. B. The Notice
5 Packet will be mailed in both English and Spanish due to the nature of Defendant’s workforce.

6 This manner of giving notice is the “best notice practicable” under the circumstances because it
7 provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen*
8 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be
9 administered by Phoenix, an experienced class action settlement administrator. *See generally* Lawrence
10 Decl. and attached exhibits. Class Data will be ascertainable through Defendant’s personnel and payroll
11 records, which Defendant will provide to Phoenix within 10 business days of preliminary approval of the
12 Settlement. *See* Settlement ¶ 10.A. Within 10 business days of receipt of the Settlement Class Members’
13 addresses, Phoenix will run the names of all Settlement Class Members through the United States Postal
14 Service Notice of Change of Address database (which provides updated addresses for any individual who
15 has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address),
16 calculate the estimated Settlement Award for each Settlement Class member, and mail the notices to
17 Settlement Class Members. *See* Settlement ¶ 10.B. To the extent that any notices are returned, Phoenix
18 will perform a “skip trace” to track any Class Member’s current mailing address. *See* Settlement ¶ 10.F.

19 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it
20 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the parties,
21 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
22 procedures by which to do so, explains the recovery formula and expected recovery amount for each
23 Settlement Class member, provides them the opportunity to contest their total workweeks included in the
24 notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out.
25 *See* Lidman Decl., Exh. 1 (Settlement, Exh. B). The proposed Notice Packet will also notify Settlement
26 Class Members of the final approval hearing date and provides Settlement Class Members the contact
27 information for Class Counsel, and advises Settlement Class Members that they may enter an appearance
28 through counsel if they wish to.

Additionally, as stated in the proposed Notice Packet, any changes to the Final Approval hearing date, time, or location will be posted on the Settlement Administrator's website. *Id.* Furthermore, the Settlement Administrator will post the notice of final judgment on its website. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

E. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

IV. CONCLUSION

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

Dated: June 14, 2024

Respectfully submitted,
LIDMAN LAW, APC

By:

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