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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

GABRIELA OROPEZA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SPECIALTY COATING SYSTEMS, INC., a
Delaware corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. CIVSB2314473

*[Assigned for All Purposes to Hon. Jessica Morgan,
Dept. S-26]*

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

Date: November 14, 2024
Time: 8:30 a.m.
Dept.: S-26

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 November 14, 2024 at 8:30 a.m. in Department S-26 of the above-entitled Court, located at 247 West
4 Third Street, San Bernardino, California 92415, Plaintiff Gabriela Oropeza (“Plaintiff”), individually
5 and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt employees of Specialty Coating Systems, 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 June 27, 2019 through the date
12 the Court issues an order preliminarily approving the settlement.
13 4. Preliminary appointment of Plaintiff Gabriela Oropeza as Class Representative;
14 5. Preliminary appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and
15 Paul K. Haines of Haines Law Group, APC as Class Counsel;
16 6. The scheduling of a hearing to consider whether the Settlement should be finally approved
17 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
18 payable to the California Labor & Workforce Development Agency, and attorneys’ fees and
19 costs to Class Counsel;
20 7. Appointment of Phoenix Settlement Administrators (“Phoenix”) as the third-party
21 Settlement Administrator for mailing notices; and
22 8. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
23 Class Action and Proposed Settlement and Notice of Settlement Award) and an order that it
24 be disseminated to the proposed Settlement Class Members as provided in the Settlement
25 Agreement.

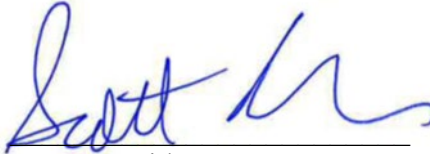
26 This Motion is based on this notice of motion, the memorandum of points and authorities, the
27 declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Gabriela Oropeza, and Jodey
28 Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and

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

3
4 Dated: August 9, 2024

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Scott M. Lidman
Attorneys for Plaintiff
Gabriela Oropeza

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Gabriela Oropeza (“Plaintiff”) brought this class and representative action against Defendant Specialty Coating Systems, Inc. (hereinafter referred to as “Specialty Coating” or “Defendant”) alleging various wage and hour violations. Plaintiff’s primary allegations are that Specialty Coating: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to reimburse necessary business expenditures; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,¹ in which Defendant have agreed to pay \$294,105.00 USD to the following Settlement Class:

All current and former non-exempt employees of Specialty Coating Systems, Inc. who worked at any time in California during the Class Period.

For purposes of the Settlement, the Class Period shall mean June 27, 2019 through the date the Court issues an order preliminarily approving the settlement.

Settlement Class members do not need to file a claim and will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees and costs, and PAGA civil penalties, the remaining Net Settlement Amount (“NSA”) of approximately \$131,802 will be distributed to all Settlement Class members who do not opt-out. With approximately 75 Settlement Class members, the average payment to each Settlement Class member is currently expected to be approximately \$1,757.36, which does not include the \$5,000.00 PAGA Amount to the approximate 25 PAGA Employees.

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

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 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.

respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

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

1. The Parties

Specialty Coating provides conformal coatings for medical devices, circuits and aerospace parts. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a current employee, has been employed by Specialty Coating since approximately December 31, 2011 as a Masking Lead. *See* Declaration of Gabriela Oropeza (“Oropeza Decl.”), ¶ 2.

2. Procedural History

On June 27, 2023, Plaintiff filed a putative class action complaint against Defendant in San Bernardino County Superior Court. Lidman Decl., ¶ 10. On June 28, 2023, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) and Specialty Coating regarding Defendant’s alleged Labor Code violations and her intent to bring a claim for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). *See* Settlement, Exh. A. On September 5, 2023, Plaintiff filed a First Amended Class and Representative Action Complaint. Lidman Decl., ¶ 10. Plaintiff’s operative complaint alleges that Specialty Coating: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to reimburse all necessary business expenditures; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the PAGA. *Id.*

3. Discovery

After agreeing to participate in early mediation, Specialty Coating informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for a 25% sampling of the putative class. Lidman Decl., ¶ 11. Additionally, Specialty Coating 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 Specialty Coating, 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 Specialty Coating’s defenses thereto, if a settlement

could not be reached.

4. Arms-Length Negotiations

On March 5, 2024, a mediation was held with Steven G. Mehta, Esq., a well-respected mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the 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 and for settlement purposes only, the Settlement Class satisfies the criteria for conditional 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 her counsel will fairly and adequately represent Settlement Class Members’ interest. *See* Cal. Civ. Proc. § 382.

1. Numerosity is Satisfied.

Here, there are approximately 75 Settlement Class Members. Therefore, numerosity is satisfied. *See* Lidman Decl., ¶ 14; *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

1 as “All current and former non-exempt employees of Specialty Coating Systems, Inc. who worked at any
2 time in California during the Class Period.” For purposes of the Settlement, the Class Period shall mean
3 June 27, 2019 through the date the Court issues an order preliminarily approving the settlement. Lidman
4 Decl., ¶ 14.

5 In addition, PAGA Employees are defined as: “All current and former non-exempt, employees of
6 Specialty Coating Systems, Inc. who worked at any time in California during the PAGA Period. The
7 PAGA Period shall mean June 27, 2022 through the date of preliminary approval. *Id.*

8 **2. Commonality is Satisfied.**

9 The focus in a certification dispute is not the merits, but rather on what types of questions,
10 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court*
11 *(Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members’ claims arise from Specialty
12 Coating’s common, uniform policies and practices that applied to Plaintiff and Settlement Class Members
13 during the class period. Lidman Decl., ¶ 15. As a result of the common and uniform policies and practices
14 that applied to all Settlement Class Members, their claims involve common questions of law and fact,
15 including but not limited to:

- 16 1. Whether Specialty Coating properly paid all minimum wages;
- 17 2. Whether Specialty Coating properly paid all overtime wages;
- 18 3. Whether Specialty Coating provided all legally compliant meal periods;
- 19 4. Whether Specialty Coating authorized and permitted all legally required rest periods;
- 20 5. Whether Specialty Coating failed to furnish accurate, itemized wage statements;
- 21 6. Whether Specialty Coating failed to reimburse for business expenses; and
- 22 7. Whether Specialty Coating’s conduct constituted unlawful and/or unfair business practices.

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

25 **3. Typicality is Satisfied.**

26 The typicality requirement is satisfied where class representatives have claims that are typical of
27 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
28 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
in a consumer class action).

1 Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff was
2 employed by Specialty Coating during the Class Period as a non-exempt employee and was subject to
3 Defendant's wage and hour policies at issue in this case. *See Oropeza Decl.*, ¶ 2. Second, Plaintiff was
4 injured by the same challenged policies that injured the Settlement Class as a whole. For example,
5 Plaintiff asserts that she, like the Settlement Class, was not paid all legally required minimum wages and
6 overtime wages, was not provided with all required meal periods, was not authorized and permitted to
7 take all required rest periods, did not receive meal and rest period premium wages when she was not
8 provided compliant meal or rest periods, was not provided with accurate, itemized wage statements, and
9 was not reimbursed for business expenses. *Id.* Given that Defendant's policies and practices applied to
10 all non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar
11 alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all
12 arise from the same conduct, typicality is satisfied.

13 **4. Adequacy is Satisfied.**

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

17 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class she
18 seeks to represent. *See Oropeza Decl.*, ¶ 11. Indeed, Plaintiff's interests are aligned with those of the
19 Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *Id.*
20 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee*
21 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication
22 that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the
23 proposed class).

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

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

Settlement is the preferred means of dispute resolution, particularly in complex class action

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

1. The Preliminary Approval Standard is Met

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

a. The Strength of Plaintiff’s Case

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

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

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

c. Risk of Maintaining Class Action Status

Plaintiff had not yet filed her motion for class certification and as such, the extent to which

Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial.

d. Overview of the Settlement Agreement

If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of \$294,105.² Lidman Decl., ¶ 13, Exh. 1 (Settlement, ¶ 5). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* (Settlement, ¶ 5). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$294,105.00
Minus Court-approved attorneys' fees (1/3 of GSA):	\$98,053.00
Minus Court-approved, verified costs (up to):	\$30,000.00
Minus Court-approved Class Representative Service Award (up to):	\$7,500.00
Minus Settlement Administration Costs:	\$6,750.00
Minus PAGA civil penalties:	\$20,000.00
Net Settlement Amount ("NSA"):	\$131,802.00

With the exception of the Settlement Administrator's fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal

² Defendant represents that there are an estimated 8,400 workweeks worked by settlement class members from June 27, 2019 through March 5, 2024 (date of mediation). If the number of workweeks during the Class Period increases by more than 10% above 8,400 (i.e., if there are 9,241 or more workweeks worked by the Class Members during the Class Period), Defendant will at its option either (a) agree to increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 11%), or (b) agree to shorten and close the Class Period on the date that is closest to without exceeding 9,241 workweeks worked by the Class Members so as to eliminate the need to increase the Gross Settlement Amount. If Defendant elects to shorten the Class Period if this provision is triggered, the PAGA Period will also close on the date that the Class Period closes. Defendant will notify Plaintiff's counsel of its election prior to the hearing date on the preliminary hearing motion. *See* Settlement ¶ 4.E.

has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. Lidman Decl., ¶ 13, Exh. 1 Settlement ¶ 4.B.

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the Settlement requires Defendant to pay a Net Settlement Amount ("NSA") of at least **\$131,802.00** to all Settlement Class 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., ¶ 13, Exh. 2 (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 workweeks 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 employee 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 US Dollars and Zero Cents (\$5,000.00 USD) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the PAGA Period 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 an employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees during this time period. *See* Settlement, ¶ 5.C.

According to Defendant, there are approximately 75 total Settlement Class Members (who worked a total of approximately 8,400 workweeks during the relevant time period). Lidman Decl., ¶ 14. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is projected to be approximately **\$1,757.36, exclusive of any PAGA civil penalties, which is approximately \$15.69 per workweek** (\$131,802/8,400). *Id.*

Additionally, there are approximately 25 PAGA Employees (who worked a total of approximately 1,600 pay periods during the relevant time period). *Id.* Thus, the average individual portion of PAGA Amount is approximately **\$200.00, which is approximately 3.13 per pay period** (\$5,000/1,600 pay periods).

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, 10.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 of June 27, 2019 through the date the Court issues an order preliminarily approving 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.

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

e. The Parties Engaged in Fair and Honest Negotiations.

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

On March 5, 2024, the parties participated in mediation with Steven Mehta, Esq. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Settlement. Lidman Decl., ¶ 12, Exhibit 1.

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

Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential treatment to the class representative or segments of the class, and is within the range of possible approval,

as discussed in detail below. The Settlement will provide monetary relief to Settlement Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, and service award are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

f. Amount Offered in Settlement Given Realistic Value of Claims

Unlawful Rounding/Off-the-Clock: Plaintiff alleges that Defendant failed to compensate its non-exempt employees for all time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges that Defendant would keep track of Plaintiff's time worked and would unlawfully round/shave time worked such that Plaintiff would not be fully paid for all time worked. *Id.* This time-shaving and/or rounding practice utilized by Defendant was not even-handed over time and would almost exclusively round and shave in Defendant's favor such that Plaintiff was routinely underpaid for all her time worked. *Id.* As a result, Defendant failed to pay Plaintiff and other non-exempt employees for all minimum and overtime wages owed. *Id.* Accordingly, based on 5 minutes of unpaid time each shift, Plaintiff estimates Defendant's exposure at a total of \$7,434. *Id.*

Specialty Coating contends that it compensated Settlement Class members for all of their time worked, that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-compensable. Lidman Decl., ¶ 17. Specialty Coating further asserts that Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be required, and also that Specialty Coating's rounding mechanism was, according to it, allegedly facially neutral. In light of these defenses, Plaintiff discounted the maximum exposure by 35% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately \$2,899.26.

Meal Period Violations: Plaintiff alleges that she and Settlement Class Members were not provided with all legally-required meal periods in compliance with California law due to Defendant's unlawful meal period policies/practices. Lidman Decl., ¶ 18. Due to work demands, Plaintiff was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. Also, there was a 100% violation rate for second meal periods on shifts over 10.0 hours. Therefore, based on a review of the time punch data and payroll records, Plaintiff calculated Defendant's maximum exposure for the alleged meal period violations for (1) late first meal break; (2) missed first meal

break; (3) short first meal break; and (4) missed second meal break on shifts over 10 hours is \$440,288. *Id.*

Specialty Coating counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Specialty Coating. Lidman Decl., ¶ 19. Specialty Coating also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Specialty Coating contends there are no second meal period violations because the employee signed valid second meal period waivers. Finally, Specialty Coating contends Plaintiff’s meal period claim is not suited for class certification and individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification, and an additional 20% to account for Specialty Coating’s defenses on the merits to arrive at an estimated exposure of \$264,172.80. *Id.*

Rest Period Violations: Plaintiff alleges that she and other Settlement Class Members were not authorized and permitted to take all required rest periods due to Specialty Coating’s rest period policies/practices which fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 20. Specifically, Plaintiff worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid rest period. *Id.* Based on the timekeeping records, there were approximately 18,768 shifts worked during this time period over 3.5 hours and 38,813 shifts worked in excess of 3.5 hours during the relevant time period. Thus, Plaintiff calculated Specialty Coating’s exposure on unique rest period violations at \$711,644. *Id.*

Specialty Coating contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Specialty Coating argues that Plaintiff’s rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry into

1 whether each Settlement Class member was in fact authorized and permitted to take a compliant rest
2 period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
3 discounted the maximum exposure by 35% for the risk of non-certification, and an additional 30% to
4 account for Defendant’s defenses on the merits to arrive at an estimated exposure of \$323,798.02. *Id.*

5 Wage Statement Violations: Plaintiff further alleges that Specialty Coating issued inaccurate wage
6 statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest
7 period premium wages described above. Lidman Decl., ¶ 22. Specifically, Plaintiff contends that this
8 conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members
9 did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff
10 calculated Specialty Coating’s maximum exposure for wage statement violations based on the 1,613 wage
11 statements issued during the relevant time period and applying \$50/\$100 at approximately \$158,700. *Id.*

12 Specialty Coating argues that its alleged wage statement violations could not be shown to be
13 “knowing and intentional,” and that Plaintiff cannot show that she or any other employee “suffer[ed]
14 injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
15 imposition of penalties. Lidman Decl., ¶ 23. As such, Plaintiff discounted the calculated exposure by 35%
16 for a risk of non-certification and an additional 40% for a risk of being unsuccessful on the merits to arrive
17 at an estimated total of \$61,893. *Id.*

18 Unreimbursed Expenses: Plaintiff alleges that Specialty Coating required her and the other
19 settlement class members to use their cellular phone for business purposes. Lidman Decl., ¶ 24. Despite
20 knowing that putative class members had incurred necessary business expenses to communicate with
21 supervisors through their own personal electronic devices with access to the internet access, Specialty
22 Coating failed to reimburse putative class members in violation of Section 2802 and *Cochran, supra*, 228
23 Cal. App. 4th at 1144. *Id.* Therefore, Plaintiff calculated Specialty Coating’s maximum exposure at
24 \$30/month, for a total of approximately \$62,820. *Id.*

25 Specialty Coating asserts that settlement class members did not have to use their personal cellular
26 phones to discharge their duties. Lidman Decl., ¶ 25. Also given the wide array of cellular phone plans,
27 Defendant contends that any expenses would be *de minimis*. Accordingly, Plaintiff discounted the
28 maximum exposure by 35% for the risk of non-certification, and an additional 45% to account for Specialty

Coating's defenses on the merits to arrive at an estimated exposure of approximately \$22,458.15. *Id.*

PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. Plaintiff calculated Specialty Coating's exposure at the initial rate of \$100 for a total of \$161,300. *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Specialty Coating argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying claims will fail. Lidman Decl., ¶ 27; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Specialty Coating also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Specialty Coating liable for any of Plaintiff's claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 35% for a risk of being unsuccessful on the merits, and an additional 25% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$78,633.75. *Id.*

g. The Settlement Is Within the Range of Possible Approval

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$753,854.98. Lidman Decl., ¶ 28. The proposed settlement of \$294,105.00 therefore represents approximately 39% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class Members, and will still provide an average recovery to Settlement Class Members of over \$1,700.00.

The proposed settlement reflects approximately 39% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. See, e.g., *Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing

25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Thus, Plaintiff submits the settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

h. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*; Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of Defendant’s policies and timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Lidman Decl., ¶¶ 10-27. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

i. Attorneys’ Fees and Costs

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

1 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
2 is currently estimated to be \$98,053.00, and up to \$30,000 in verified costs reimbursement. *See*
3 Settlement, ¶ 6; Lidman Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for
4 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
5 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman
6 Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
7 analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's documents and policies,
8 analyzing Settlement Class Members' timekeeping data and payroll records, preparing for and attending
9 mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise
10 litigating the case. Lidman Decl., ¶ 31. Class Counsel expect to expend additional attorney time in
11 attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement
12 Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

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

19 **j. Administration Costs**

20 Phoenix Settlement Administrator's fees and expenses are estimated not to exceed \$6,750.00. *See*
21 Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed
22 concurrently herewith ("Lawrence Decl."). This includes sending the Notice in English and Spanish. This
23 request is reasonable in light of the proposed class size of approximately 75 Settlement Class Members
24 and the costs and expenses associated with administering the notices in English and Spanish and
25 distributing the awards.

26 **k. Class Representative Service Award**

27 "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class
28 representatives for work done on behalf of the class [and] to make up for financial or reputational risk
undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,

1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for her services to the Settlement Class. Lidman Decl., ¶ 31; Settlement, ¶ 4.3.C; Oropeza Decl., ¶¶ 3-12. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, participating in the mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. See Lidman Decl., ¶ 31; Oropeza Decl., ¶¶ 3-11; Settlement ¶ 3.E.

l. PAGA Civil Penalties

The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$15,000.00. Settlement ¶ 4.C.5. This \$20,000.00 represents roughly 6.8% of the \$294,105.00 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts. See, e.g., *In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

m. Payroll Taxes

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

n. Uncashed Funds

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

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

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

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

9 Before the final approval hearing, the Court requires adequate notice of the settlement be given
10 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
11 Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and
12 Notice of Settlement Award) by first-class regular U.S. Mail, postage prepaid, using last known mailing
13 address information provided by Defendant. *See* Settlement, ¶ 11, Exh. B. The Notice Packet will be
14 mailed in both English and Spanish only due to the nature of Defendant’s workforce.

15 This manner of giving notice is the “best notice practicable” under the circumstances because it
16 provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen*
17 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be
18 administered by Phoenix, an experienced class action settlement administrator. *See generally* Lawrence
19 Decl. and attached exhibits. Class Data will be ascertainable through Defendant’s personnel and payroll
20 records, which Defendant will provide to Phoenix within 30 calendar days of preliminary approval of the
21 Settlement. *See* Settlement ¶ 10.A. Within 10 business days of receipt of the Settlement Class Members’
22 addresses, Phoenix will run the names of all Settlement Class Members through the United States Postal
23 Service Notice of Change of Address database (which provides updated addresses for any individual who
24 has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address),
25 calculate the estimated Settlement Award for each Settlement Class member, and mail the notices to
26 Settlement Class Members. *See* Settlement ¶ 10.B. To the extent that any notices are returned, Phoenix
27 will perform a “skip trace” to track any Class Member’s current mailing address. *See* Settlement ¶ 10.F.

28 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it
 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the parties,
 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the

procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, provides them the opportunity to contest their total workweeks included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Lidman Decl., Exh. 1 (Settlement, Exh. B). The proposed Notice Packet will also notify Settlement Class Members of the final approval hearing date and provides Settlement Class Members the contact information for Class Counsel, and advises Settlement Class Members that they may enter an appearance through counsel if they wish to.

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.

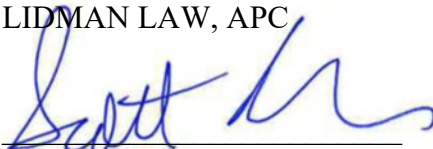
E. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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, conditionally certify the Settlement Class, and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Dated: August 9, 2024

Respectfully submitted,
LIDMAN LAW, APC
By: 
Scott M. Lidman
Attorneys for Plaintiff
GABRIELA OROPEZA