LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Tiara Gose-Hardy (SBN 323823)
tgose@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
ANA RODRIGUEZ TAPIA

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
ANA RODRIGUEZ TAPIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Plaintiff,

vs.

FRANCO WHOLE FOODS, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No. 37-2023-00046908-CU-OE-CTL

[*Assigned for all purposes to the Hon. Gregory W. Pollack, Dept. C-71*]

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

Date: May 23, 2025
Time: 9:30 a.m.
Dept.: C-71

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 23, 2025 at 9:30 a.m. in Department C-71 of the above-entitled Court, located at 330 West Broadway, San Diego, CA 92101, Plaintiff Ana Rodriguez Tapia ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

   > All current and former non-exempt direct-hire and non-direct hire employees of Defendant Franco Whole Foods, LLC who worked in the State of California during the Class Period.
   >
   > The "Class Period" is the time period of October 27, 2019 through March 11, 2025.

3. Preliminary appointment of Plaintiff Ana Rodriguez Tapia as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award, and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

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

Dated: April 23, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman
Attorney for Plaintiff
ANA RODRIGUEZ TAPIA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ana Rodriguez Tapia ("Plaintiff") brought this class and representative action against Defendant Franco Whole Foods, LLC (hereinafter "Defendant") alleging that Defendant: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide meal periods; (4) failed to authorize and permit all rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to pay all wages upon termination; (7) engaged in unfair competition; 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 has agreed to pay Three Hundred Thirty Thousand Dollars and Zero Cents ($330,000.00) on behalf of the following Settlement Class:

> All current and former non-exempt direct-hire and non-direct hire employees of Defendant Franco Whole Foods, LLC who worked in the State of California during the Class Period.
>
> The "Class Period" is the time period of October 27, 2019 through March 11, 2025.

Significantly, Settlement Class members do not need to file a claim to benefit from the Settlement because all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff's service award, attorneys' fees and costs, employer's side of payroll taxes, and payment of PAGA civil penalties, the remaining Net Settlement Amount ("NSA") of approximately $159,550.00 will be distributed to all Settlement Class members who do not opt-out of the Settlement. There are approximately 185 Settlement Class members, rendering the average payment to participating Settlement Class members to be approximately **$862.43**.

The Settlement was reached only after the parties mediated the action with Daniel J. Turner, a well-respected wage and hour class action mediator, and also included Defendant's production of various documents and information related to time and payroll records. This proposed Settlement is well-within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced,

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[1] The Stipulation of Settlement ("Settlement") is attached to the Declaration of Scott M. Lidman as Exhibit 2. The proposed Notice Packet (consisting of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement) is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement.

including the risks and costs of further litigation.

II. SUMMARY OF THE LITIGATION

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

1. The Parties

Defendant is in the business of developing, manufacturing, and distributing premium uncooked tortillas and other fresh food items with no preservatives and healthy or organic options. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff, a former non-exempt employee, was employed by Defendant from approximately December 2020 through approximately April 23, 2022. *See* Declaration of Ana Rodriguez Tapia ("Tapia Decl."), ¶ 2. During her employment, Plaintiff 's job title was Packager and her primary duty was packaging tortillas. *Id*.

2. Procedural History

On October 27, 2023, Plaintiff filed a putative class action complaint against Defendant in San Diego County Superior Court. Lidman Decl., ¶ 10. On January 4, 2024, Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the Labor Code Private Attorneys General Act ("PAGA"). *Id*.

3. Discovery

In the instant action, the Parties have engaged in formal discovery. Lidman Decl., ¶ 11. On February 15, 2024, Plaintiff served the following written discovery on Defendant: Form Interrogatories – General (Set One), Form Interrogatories – Employment Law (Set Once), Special Interrogatories (Set One), Special Interrogatories (Set Two), and Requests for Production of Documents (Set One). *Id*. On April 4, 2024, Defendant served its responses and objections to Plaintiff's discovery requests. *Id*.

Further, after agreeing to participate in an early mediation, Defendant informally produced a sampling of timekeeping and payroll data for the putative class, as well as relevant data points, including without limitation, the number of workweeks and pay periods at issue and total class size. Lidman Decl., ¶ 12.

After the detailed review of Defendant's discovery responses and document production, as well as the documents and information informally produced, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Lidman Decl., ¶ 12. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*.

4. **Arms-Length Negotiations**

On November 13, 2024, after extensive research and analysis, mediation was held with Daniel J. Turner, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 13. 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, through the mediator's proposal, the Parties were able to reach a class-wide settlement at mediation. *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 further explained below, the Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and her counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

1. **Numerosity is Satisfied.**

Here, the proposed Settlement Class consists of approximately 185 members, and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 16; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied. Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records."

See Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as "current and former non-exempt direct-hire and non-direct hire employees of Defendant Franco Whole Foods, LLC who worked in the State of California during the Class Period." Lidman Decl., ¶ 16. For purposes of the Settlement, the "Class Period" shall mean the time period of October 27, 2019 through March 11, 2025. *Id*.

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

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class members' claims arise from Defendant's common, uniform policies and practices that applied to Settlement Class members during the class period. Lidman Decl., ¶ 17. Specifically, Plaintiff alleged that Defendant's common and uniform policies and practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed; (3) failure to provide meal periods; (4) failure to authorize and permit all rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to pay all wages upon termination; (7) unfair competition; and (8) liability for civil penalties under the PAGA. *Id*. As a result of the common and uniform policies and practices that applied to all Settlement Class members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Defendant properly paid all minimum wages owed;
2. Whether Defendant properly paid all overtime wages owed;
3. Whether Defendant provided all legally compliant meal periods;
4. Whether Defendant authorized and permitted all legally required rest periods;
5. Whether Defendant failed to furnish accurate, itemized wage statements;
6. Whether Defendant paid all wages upon separation of employment; and
7. Whether Defendant's conduct constituted unfair competition.

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

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

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

Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by Defendant during the Class Period as a non-exempt employee and was subject to Defendant's wage and hour policies at issue in this case. *See* Tapia Decl., ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that she was not paid for all minimum and overtime hours worked, was not provided all meal periods, was not authorized and permitted all rest periods, received inaccurate itemized wage statements, similar to those received by the Settlement Class members, and was not paid all wages upon her separation of employment with Defendant. Tapia Decl., ¶¶ 2-5. Given that Defendant's policies and practices applied to all non-exempt employees, Settlement Class members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, typicality is satisfied.

4. Adequacy is Satisfied.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class she seeks to represent. Tapia Decl., ¶ 12. Indeed, Plaintiff's interests are aligned with those of the Settlement Class members, as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. Lidman Decl., ¶ 32; *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

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

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

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

1. The Preliminary Approval Standard is Met

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

a. The Strength of Plaintiff's Case

Although Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and class certification. Thus, while Plaintiff was prepared to litigate these claims through certification, and ultimately trial, success was far from certain.

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

Although the parties engaged in formal and informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 34. Moreover, Plaintiff still had to notice depositions, 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 $330,000.00. Lidman Decl., ¶¶ 15, Exh. 2 (Settlement, ¶ 4). 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 at ¶ 4). 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"):	**$330,000.00**
Minus Court-approved attorneys' fees (1/3 of GSA):	$110,000.00
Minus Court-approved, verified costs (up to $15,000.00):	$15,000.00
Minus Court-approved Class Representative Award:	$7,500.00
Minus Settlement Administration Costs:	$7,950.00
Minus PAGA payment to the LWDA:	$22,500.00
Minus PAGA payment to Aggrieved Employees:	$7,500.00
Net Settlement Amount ("NSA"):	**$159,550.00**

The Gross Settlement Amount (and employer-side taxes separate from 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. Defendant shall fund the Gross Settlement Payment thirty (30) days after the Effective Date. *See* Settlement, ¶ 4.B.[2]

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

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and PAGA penalties, the Settlement requires Defendant to pay a Net Settlement Amount ("NSA") of at least $159,550.00 to all Settlement Class members who do not timely opt out. Lidman Decl., ¶ 15, Exh. 2.

According to Defendant there are approximately 185 total Settlement Class members. Lidman Decl., ¶ 16. Each Settlement Class member's payment will be based on the following formula:

The Net Settlement Amount, not including the PAGA Amount payable to PAGA Employees, 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 during the Class Period, the numerator of which is the Settlement Class member's total Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all Settlement Class Members who worked during the Class Period. Settlement, ¶ 6.B.

Thus, the average Individual Settlement Award (assuming all Settlement Class members worked the same length of time) is projected to be approximately **$862.43**. Lidman Decl., ¶ 16. 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 October 27, 2019 through March 11, 2025. *See* Settlement, ¶ 3.B.

Additionally, Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount". Each participating Settlement Class member who was employed by Defendant at any time during the PAGA Period shall receive a portion of the PAGA Amount proportionate to the number of any periods that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees during the PAGA Period. *See* Settlement, ¶ 5.B.ii. The PAGA Period is the time period of October 30, 2022 through March 11, 2025. *See* Settlement, ¶ 2.

According to Defendant, there are approximately 135 total PAGA Employees. Lidman Decl., ¶ 16. Thus, the average PAGA payment is projected to be approximately **$55.55**. *Id*.

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. In addition to formal discovery and in connection with mediation, Defendant produced a sampling of timekeeping and payroll data. Plaintiff conducted an analysis of the timekeeping and payroll data produced by Defendant, from which Class Counsel analyzed the potential exposure for Plaintiff's claims. After the detailed review of the timekeeping and payroll records produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Lidman Decl., ¶ 12. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*. On November 13, 2024, the Parties participated in full-day mediation with Daniel J. Turner, a respected wage and hour class action mediator. Lidman Decl., ¶ 13. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, as well as the legal basis for the claims and defenses. *Id*. The Parties ultimately agreed in principle on a class-wide resolution. Lidman Decl., ¶ 13, Exhibit 2.

Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of factual investigation and data analysis; the exchange of substantial information and class data, including timekeeping and payroll records; arm's length negotiations by counsel; and mediation before an experienced wage and hour class action mediator. *See* Lidman Decl., ¶¶ 11-12; *See Kullar*, *supra,* 168 Cal.App.4th at 130. The Parties attended mediation, then worked collaboratively in the following weeks to finalize the Settlement. *See* Lidman Decl., ¶¶ 13-14. Thus, this factor supports 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 awards 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**

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

Unpaid Wages Claim: Plaintiff alleges that she and Settlement Class members were not fully compensated for all of their time worked. Lidman Decl., ¶ 18. Specifically, Plaintiff was required by Defendant to arrive at work approximately 10 to 15 minutes prior to clocking in and the start of her scheduled shift in order to don her safety gear and complete stretches. *Id*. However, despite being under Defendant's direction and control during this time, Defendant only paid Plaintiff from the time she clocked in and failed to pay Plaintiff for the time she was required by Defendant to don her safety gear and stretch. *Id*. Further, Plaintiff was required to doff her safety gear after clocking out. *Id*. As a result of Defendant's policies and practices, Plaintiff and Settlement Class members were routinely underpaid for their time worked. *Id*. Plaintiff estimates she and other non-exempt employees were underpaid approximately 15 minutes per shift or 75 minutes per workweek (employees regularly and consistently worked over eight hours) as a result of Defendant's timekeeping policies and practices. *Id*. Accordingly, Plaintiff calculated Defendant's maximum exposure for unpaid wages at $150,928 (14,973 workweeks x .42 per workweek x $24.00 average overtime rate). *Id*.

Defendant contends that it compensated Settlement Class members for all of their time worked. Lidman Decl., ¶ 19. Defendant also contends that any unpaid time was *de minimis* and therefore non-compensable. *Id*. Defendant further asserts that Plaintiff would be unable to certify this class given the individualized inquiries that would be required. *Id*. In light of these defenses, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 60% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of $33,204.16. *Id*.

Meal Period Claim: Plaintiff alleges that she and Settlement Class members were not provided with all legally-required off-duty first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 20. Specifically, due to the work demands imposed by Defendant, Plaintiff alleges she was often prevented from taking meal periods that commenced before the end of the fifth hour of work. *Id*. Further, Defendant required Plaintiff to remove her safety gear when taking a meal period, and then put such gear back on before she returned to work from her meal period. *Id*. Plaintiff was required to doff her safety gear after clocking out for her meal period and to don her safety gear prior to clocking back in from her meal period. *Id*. Plaintiff was required to clock in and be ready to work after 30 minutes, meaning Plaintiff had to cut her meal period short, to approximately 25 minutes, in order to have time to put her safety equipment back on and clock in to be ready to work after 30 minutes. *Id*. This resulted in Plaintiff not being provided a full 30 minutes of duty-free time for her meal periods. *Id*. Accordingly, Plaintiff estimates there was at least one meal period violation during every shift over 6 hours during the relevant time period. *Id*. Therefore, Plaintiff calculated Defendant's maximum exposure for the alleged meal period violations at approximately $1,197,840 (14,973 workweeks x 5 meal period violations/week x $16.00 average hourly rate). *Id*.

Defendant 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, if any, were solely the result of employee choice, rather than any policy or practice of Defendant. Lidman Decl., ¶ 21. Defendant 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. *Id*.; *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Further, Defendant argues that Settlement Class members were allowed a full 30 minutes for meal periods. *Id*. Finally, Defendant contends that Plaintiff's meal period claim is not suited for class certification since 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 45% for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $329,406.00. *Id*.

<u>Rest Period Claim</u>: Plaintiff alleges that she and Settlement Class members were also not authorized and permitted to take legally compliant rest periods when they worked shifts in excess of 3.5 hours. Lidman Decl., ¶ 22. Specifically, Defendant failed to provide rest periods of at least 10 minutes. *Id*. Similar to meal periods, Plaintiff could not take a rest period until they were relieved by the lead and the employees were required to leave their workstation for rest periods. *Id*. As a result of having to leave the processing plant, Plaintiff was required to don and doff safety gear during the rest periods, resulting in breaks of less than the requisite 10 minutes. *Id*. Plaintiff estimates there was at least one rest period violation on each shift worked over 3.5 hours and virtually all the during the relevant time period, and from the records produced by Defendant, virtually 100 percent of the shifts worked were in excess of 3.5

hours. *Id*. Accordingly, Plaintiff calculated Defendant's maximum exposure for rest period violations at $1,197,840 (14,973 workweeks x 5 shifts over 3.5 hours x $16.00 average hourly rate). *Id*.

Defendant 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., ¶ 23. Defendant counters that Plaintiff and Settlement Class members were permitted to take all rest periods and at a full 10 minutes. *Id*. Defendant argues that Plaintiff's rest period claim is inherently unsuited for class treatment because the claim requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 65% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $209,622. *Id*.

Wage Statements Claim: Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid wages and meal and rest period premium wages described above. Lidman Decl., ¶ 24. Specifically, Plaintiff contends that this conduct violated Labor Code section 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id*. Plaintiff's data analysis reflected that there were approximately 4,212 wage statements issued during the relevant time period. *Id*. Therefore, Plaintiff calculated Defendant's maximum exposure for wage statement violations at approximately $416,150 ($50 initial violation rate x 101 current employees) + ($100 subsequent violation rate x 4,111 subsequent violations)). *Id*.

Defendant argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 25. As such, Plaintiff discounted the calculated exposure by 20% for a risk of non-certification and an additional 20% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $266,336.00. *Id*.

Waiting Time Penalties: Plaintiff alleges that Defendant is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Lidman Decl., ¶ 26. Based on the data provided by Defendant, there were approximately 84 Settlement Class members who have separated their employment with Defendant during the relevant time period who could be entitled to waiting time penalties. *Id*. Therefore, Plaintiff calculated Defendant's maximum exposure for waiting time penalties at approximately $322,560 ($16.00 average hourly rate x 8 hours x 30 days x 84 former employees). *Id*.

Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 27*; See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 45% 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 $106,444.80. *Id*.

<u>PAGA Civil Penalties</u>: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. Plaintiff calculated Defendant's maximum exposure at $421,200 (4,212 pay periods x $100 initial violation rate). *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).

Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying claims will fail. Lidman Decl., ¶ 29; *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."). Defendant 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 Defendant liable for any of Plaintiff's claims. *Id*.; *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 45% for a risk of being unsuccessful on the merits, and an additional 60% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $92,644.00. *Id*.

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

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $1,037,676.96. Lidman Decl., ¶ 30. The proposed settlement of $330,000.00 therefore represents approximately 30.8 percent 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 approximately ***$860***, which is a good result.

The proposed settlement reflects approximately 30.8 percent of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages).[3] Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

h. **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; Moore Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. Lidman Decl., ¶ 13. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

[3] *See* also *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 settlement may be acceptable even though it amounts to only a fraction of the potential recovery).

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).

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be $110,000.00, and up to $15,000.00 in verified costs reimbursement. *See* Settlement, ¶ 4.D.(4); Lidman Decl., ¶ 31. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. *Id*. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, drafting and serving discovery requests, reviewing discovery responses, analyzing Settlement Class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the memorandum of understanding and long-form settlement agreement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 32. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing. *Id*. Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

j. **Administration Costs**

Phoenix Settlement Administrators' fees and expenses are estimated not to exceed $7,950.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the proposed class size of approximately 185 Settlement Class members and the costs and expenses associated with administering the notices in both English and Spanish and distributing the awards.

k. Class Representative Service Award

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of $7,500.00 for her services to the Settlement Class. Lidman Decl., ¶ 33; Settlement, ¶ 4.D.(3); Tapia 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, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. *Id*. Plaintiff also agreed to a general and 1542 release. Tapia Decl., ¶ 10; *See* Settlement ¶ 3.C.

l. PAGA Penalty

The parties have agreed to a PAGA award of $30,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or $22,500.00. Settlement ¶ 4.D.(5). This $22,500.00 represents roughly 6.8 percent of the $330,000.00 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.[4]

m. Payroll Taxes

Defendant's payroll taxes shall be paid separately and apart from the Gross Settlement Amount. Settlement ¶ 4.E.

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[4] *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).

n. Uncashed Funds

The Settlement provides Settlement Class members with 180 days from the date the Settlement Administrator mails the checks and any funds remaining after 180 days will be delivered to the California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class member. Settlement ¶ 5.E. As all settlement funds will be distributed to the Settlement Class members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES

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

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

Before the final approval hearing, the Court requires adequate notice of the settlement be given to all class members. This Court should order distribution to the Settlement Class of the proposed Notice Packet by first-class regular U.S. Mail in English and Spanish, postage prepaid, using last known mailing address information provided by Defendant. *See* Settlement, ¶ 10, Exh. A. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Settlement Class members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to Phoenix Settlement Administrators ("PSA") within ten (10) days of preliminary approval of the Settlement. *See* Settlement ¶ 10.A. Within ten (10) business days of receipt of the Settlement Class members' addresses, PSA will run the addresses through the United States Postal Service Notice of Change of Address database and mail the notices to Settlement Class members. *See* Settlement ¶ 10.B. To the extent that any notices are returned, PSA will perform a "skip trace" to track any Class Member's current mailing address. *See* Settlement ¶ 10.F.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims 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. 2 (Settlement, Exh. A). The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provides Settlement Class members the contact information for Class Counsel. This manner of giving notice satisfies California Rule of Court 3.766(e).

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. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement.

Respectfully submitted,

Dated: April 23, 2025

LIDMAN LAW, APC

By: ______________________

Scott M. Lidman
Attorney for Plaintiff
ANA RODRIGUEZ TAPIA