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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FATIMA FLORES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

A.I. FOODS CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 22STCV27843

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

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

Date: January 16, 2024
Time: 11:00 a.m.
Dept.: SSC-7

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 January 16, 2024 at 11:00 a.m. in Department SSC-7 of the above-entitled Court, located at 312 North
4 Spring Street, Los Angeles, California, 90012, Plaintiff Fatima Flores (“Plaintiff”), individually and on
5 behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt, hourly employees of Defendant A.I. Foods
10 Corporation who worked at any time in California between August 26, 2018 and
11 the date the Preliminary Approval Order is entered.

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

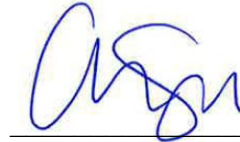
25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Fatima
27 Flores, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits
28

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

3
4 Dated: December 8, 2023

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Elizabeth Nguyen
Attorney for Plaintiff
FATIMA FLORES

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Fatima Flores (“Plaintiff”) brought this class and representative action against
4 Defendant A.I. Foods Corporation (hereinafter “A.I. Foods” or “Defendant”) alleging various wage and
5 hour and related violations. Plaintiff’s primary claims/allegations are that A.I. Foods: (1) failed to pay
6 all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally
7 required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to
8 provide accurate, itemized wage statements; (6) engaged in unlawful business practices; (7) failed to
9 pay all wages upon separation of employment; and (8) is liable for civil penalties under the Labor Code
10 Private Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which A.I. Foods has agreed to pay Three Hundred Ninety-Five Thousand
13 Dollars and Zero Cents (\$395,000) on behalf of the following Settlement Class:

14 All current and former non-exempt, hourly employees of Defendant A.I. Foods
15 Corporation who worked at any time in California between August 26, 2018 and
16 the date of preliminary approval.

17 Significantly, Class Members do not need to file a claim to benefit from the Settlement because
18 all Class Members will automatically receive a payment unless they affirmatively opt-out. After
19 deducting administration costs, Plaintiff’s service payment, attorneys’ fees and costs, and the PAGA
20 Payment to the LWDA, the remaining Net Settlement Amount (“NSA”) of approximately \$201,333.34
21 will be distributed to all Class Members who do not opt-out of the Settlement. There were
22 approximately 132 Class Members as of the date of mediation, and not including the \$6,250.00 for 70
23 Aggrieved Employees, the average payment to participating Class Members is estimated to be
24 approximately **\$1,525.25.**

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

28 ¹ The Settlement is attached to the Declaration of Elizabeth Nguyen as Exhibit 2. The proposed Class Notice is attached to
the Settlement as Exhibit A.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

A.I. Foods is in the business of food production and manufacturing. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. Plaintiff worked for A.I. Foods as an hourly, non-exempt employee since approximately January 25, 2020 in the Packaging Department. *See* Declaration of Fatima Flores (“Fatima Flores Decl.”), ¶ 2.

B. BRIEF PROCEDURAL HISTORY

On August 26, 2022, Plaintiff filed the instant putative class action complaint. Nguyen Decl., ¶ 10. On October 12, 2023, pursuant to the terms of the settlement, Plaintiff submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and A.I. Foods of her intention of filing a PAGA claim based on the labor code violations as alleged in her complaint. *Id.*, **Exhibit 1**. The Parties intend to submit a stipulation permitting, subject to Court approval, to file a First Amended Class and Representative Action Complaint Amended Complaint after PAGA exhausts adding causes of action for: (i) wage statement violations; (ii) waiting time penalties; and (iii) civil penalties under the PAGA. *Id.*

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

III. DUNK/KULLAR ANALYSIS

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 a mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

A. INVESTIGATION AND DISCOVERY

In advance of mediation, A.I. Foods produced a 20% sampling timekeeping and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and information

1 relevant to the claims alleged. Nguyen Decl., ¶ 11.

2 Specifically, Plaintiff received a list of unique Employee ID numbers for 132 employees. The
3 Parties agreed that Plaintiff's sample shall represent 20% of the total Employee ID numbers. *Id.* Using
4 Excel's "RAND" function which randomly generates a value between 0 and 1, each of the 132
5 Employee ID numbers was randomly assigned such a value. After the random assignment, the list of
6 Employee ID numbers was sorted in ascending order according to the values randomly assigned. After
7 the list was sorted, Plaintiff selected the agreed upon 20% sampling. *Id.*

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

16 Here, the statistical analysis of the time punch and payroll data was used for the limited purpose
17 of determining the predominance of rounding and meal period violations in support of Plaintiff's claims
18 that A.I. Foods maintained policies and practices during the relevant time period of not paying its non-
19 exempt employees for all time worked and not providing all legally compliant meal periods. Indeed,
20 based on the time punch data produced which included actual time punches and rounded paid hours,
21 Plaintiff was able to conduct a rounding analysis and conclude that A.I. Foods' rounding practice was
22 widespread during the entire relevant time period. Moreover, from the time and payroll data, Plaintiff
23 was able to analyze the meal records and find an approximate 68.1% potential meal period violation
24 rate in which the majority of meal period violations were for late meal periods. *Id.* The Settlement
25 Class members worked at the same facility, did similar work, and were paid under the same wage and
26 hour policies and procedures. Given these circumstances, the experiences of a subset of employees –
27 the 20% sampling- can be probative as to the experiences of all of the Settlement Class. *Lubin v. The*
28 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938 (As in *Tyson*, under these circumstances the percentage

1 of the subset of employees who signed meal agreements lacking the required revocation language during
2 a given time period is probative as to the percentage of the class that signed meal agreements lacking
3 the required revocation language.) Further, if all Settlement Class members brought lawsuits for unpaid
4 wages and/or meal period violations, they would rely on timekeeping records similar to the ones in this
5 sampling which also supports a finding that the sampling is statistically reliable.

6 In addition to the representative sampling, A.I. Foods produced key data points and all relevant
7 written wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was
8 provided with the following:

- 9 • Plaintiff's personnel files and timekeeping and payroll documents;
- 10 • Key data points, including total number of employees, workweeks, and pay periods during
11 the relevant time period;
- 12 • Exemplars of the wage statements provided during the relevant time period;
- 13 • A.I. Foods' Meal & Rest Period Policy;
- 14 • A.I. Foods' job descriptions;
- 15 • A.I. Foods' Employee Handbook for 2023;

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

21 **B. ARMS-LENGTH NEGOTIATIONS**

22 On June 30, 2023, a mediation was held with Kelly Knight, Esq. a well-respected mediator with
23 ADR Services, Inc.. Nguyen Decl., ¶ 12. During mediation, the parties vigorously debated their
24 opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the
25 claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution. *Id.*

26 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

27 "Parties represented by competent counsel are better positioned than courts to produce a
28 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises
Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,

1 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
2 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
3 Nguyen Decl., ¶¶ 2-8; Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
4 review of A.I. Foods’ policies and timekeeping and payroll records, and drew on their extensive
5 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Nguyen Decl.,
6 ¶¶ 10-28. The Settlement was also reached with the assistance of a mediator. *Id.* This factor strongly
7 supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

13 A.I. Foods Failed to Pay for All Hours Worked: Plaintiff alleges the Class Members were not
14 fully compensated for all of their time worked due to unlawful shaving of time worked and/or rounding
15 such that they would not be fully paid for all time worked. Nguyen Decl., ¶ 16. Plaintiff also alleges
16 that this practice was not-even handed over time and would almost exclusively benefit A.I. Foods and
17 the employees were routinely underpaid for their time worked. Indeed, based on Plaintiff’s review of
18 the timekeeping and payroll data produced in connection with mediation, it appeared that 58% of the
19 relevant pay periods had an underpayment to the employees due to rounding and that on average Class
20 Members were underpaid about 2 minutes per shift. Additionally, Plaintiff alleges that A.I. Foods
21 required her and other Class Members were subject to temperature checks in connection with the
22 COVID-19 pandemic but failed to compensate them for such time, which took approximately 5 minutes
23 to complete. Plaintiff estimates the total underpayment of wages due to unlawful rounding and the
24 COVID-19 screening is approximately \$115,960. *Id.*

25 A.I. Foods contends that it compensated Class Members for all of their time worked. Nguyen
26 Decl., ¶ 17. A.I. Foods also contends that its rounding practices were lawful, and any unpaid time was
27 *de minimis* and therefore non-compensable. *Id.* A.I. Foods also contends that the temperature checks
28 took seconds not minutes and was compensated time. A.I. Foods further asserts that Plaintiff would be
unable to certify a rounding class given the individualized inquiries that would be required, and also

1 that A.I. Foods' rounding policy/mechanism was, according to it, neutral on its face and in its
2 application. *Id.* In light of these defenses, and A.I. Foods's contention that Class Members executed
3 arbitration agreements, Plaintiff discounted the maximum exposure by 35% for the risk of non-
4 certification, and an additional 45% to account for A.I. Foods's defenses on the merits, to arrive at an
5 estimated exposure of \$41,455.70. *Id.*

6 A.I. Foods Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that Class
7 Members were not provided with all legally-compliant first meal periods beginning before the end of
8 the fifth hour of work. Nguyen Decl., ¶ 18. Specifically, Plaintiff alleges that as a result of the work
9 demands imposed by A.I. Foods, the Settlement Class Members were not provided a full uninterrupted
10 30-minute meal period before the end of the fifth hour of work. *Id.* Based on a review of the timekeeping
11 data, there was an approximate 68.1% violation rate, with the majority of the violations being for short
12 meal periods. *Id.* Additionally, it appeared to be a virtual 100% violation rate for second meal periods.
13 Accordingly, Plaintiff calculated A.I. Foods' maximum exposure for the alleged meal period violations
14 at approximately \$533,543, based on the following violations: (1) late first lunch; (2) missed first meal
15 period; (3) short first meal break; and (4) missed second meal break on shifts over 10 hours. *Id.*

16 A.I. Foods counters that it has always maintained a lawful meal period policy and provided non-
17 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
18 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
19 than any policy or practice of A.I. Foods. Nguyen Decl., ¶ 19. Further, A.I. Foods points out that under
20 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the
21 opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done
22 so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, A.I. Foods contends
23 Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be
24 required to assess which employees took non-compliant meal periods, how many meal periods were
25 non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period
26 or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum
27 exposure by 40% for the risk of non-certification, and an additional 40% to account for A.I. Foods's
28 defenses on the merits to arrive at an estimated exposure of \$280,110.08. *Id.*

1 A.I. Foods Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that the Class
2 Members were not authorized and permitted to take all required rest periods due to A.I. Foods’ rest
3 period policies and practices. Nguyen Decl., ¶ 20. Specifically, Plaintiff contends A.I. Foods failed to
4 authorize second and/or third rest periods on shifts worked in excess of 6.0 and/or 10.0 hours. Based on
5 Plaintiff’s review of the timekeeping records, virtually all of the shifts worked during the relevant time
6 period were in excess of 6.0 hours. *Id.* Therefore, Plaintiff calculated A.I. Foods’s maximum exposure
7 for the alleged rest period violations at approximately \$780,341. *Id.*

8 A.I. Foods contends that its policies and procedures authorized and permitted Settlement Class
9 Members to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 21. A.I.
10 Foods also argues that Plaintiff’s rest period claim is inherently unsuited for class treatment as it requires
11 an individualized inquiry into whether each Settlement Class Member was in fact authorized and
12 permitted to take a compliant rest period, which would evolve into an unmanageable series of mini-
13 trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-
14 certification, and an additional 50% to account for A.I. Foods’ defenses on the merits to arrive at an
15 estimated exposure of \$214,593.78. *Id.*

16 A.I. Foods Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that A.I. Foods
17 issued inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid
18 minimum wages and overtime wages, and meal and rest period premium wages described above.
19 Nguyen Decl., ¶ 22. Plaintiff also contends that this conduct violated Labor Code section 226(a) because
20 the wage statements issued to Settlement Class Members did not include all hours worked and the rate
21 at which they were being paid. *Id.* Plaintiff’s data analysis reflected that there were approximately
22 3,886 wage statements issued during the relevant time period. *Id.* Therefore, applying \$50 for the first
23 violation and \$100 for each subsequent violation, Plaintiff calculated A.I. Foods’s maximum exposure
24 for wage statement violations at approximately \$280,000. *Id.*

25 A.I. Foods argues that its alleged wage statement violations could not be shown to be “knowing
26 and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a
27 result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of
28 penalties. Nguyen Decl., ¶ 23. As such, and in light of A.I. Foods’s contention of an enforceable

1 arbitration agreement, Plaintiff discounted the calculated exposure by 35% for a risk of non-certification
2 and an additional 30% for a risk of being unsuccessful on the merits, to arrive at an estimated total of
3 \$168,000.00. *Id.*

4 A.I. Foods is Liable for Waiting Time Penalties: Plaintiff alleges that A.I. Foods is also liable
5 for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all wages
6 upon separation. Nguyen Decl., ¶ 24. There are approximately 75 Class Members who have separated
7 their employment during the relevant time period. *Id.* Therefore, Plaintiff calculated Electro Adapter’s
8 maximum exposure for waiting time penalties at approximately \$305,584. *Id.*

9 A.I. Foods asserts it has strong defenses to the waiting time claim because there exist good-faith
10 disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25.
11 *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude
12 imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
13 that “good faith dispute” over whether employee was exempt precluded imposition of waiting time
14 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
15 45% for the risk of non-certification, and an additional 40% to account for A.I. Foods’ defenses on the
16 merits, to arrive at an estimated exposure of \$100,842.72. *Id.*

17 A.I. Foods is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the
18 PAGA as a result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 26. Plaintiff
19 calculated A.I. Foods’s maximum exposure at \$388,600 (3,886 pay periods x \$100 initial violation rate).
20 *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation
21 rate applies until employer is notified that it is violating a Labor Code provision).

22 A.I. Foods argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying
23 claims will fail. Nguyen Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
24 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). A.I.
25 Foods also maintains that, given its good faith defenses, this Court would exercise its discretion to
26 substantially reduce any PAGA penalties if it were to find A.I. Foods liable for any of Plaintiff’s claims.
27 *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112,
28 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 35% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$138,924.50. *Id.*

E. 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 \$943,926.77. Nguyen Decl., ¶28. The proposed settlement of \$395,000.00 therefore represents approximately 42% 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 \$1,500.00.

The proposed settlement reflects approximately 42% 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., 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. Thus, Plaintiff submits that the proposed settlement is within the range of 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 time to opt-out or object has expired.

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

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. Nguyen 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 were certified, the parties would incur considerably more attorneys' fees and costs

1 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those
2 risks and the accompanying expense. Thus, this factor supports preliminary approval.

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

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

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

13 **A. NUMEROSITY IS SATISFIED.**

14 Here, the proposed Settlement Class consists of at least 132 members, and is therefore
15 sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v.*
16 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
17 numerous). Thus, numerosity is satisfied.

18 Further, the class is "ascertainable" because it is defined as "all current and former non-exempt,
19 hourly employees of Defendant A.I. Foods Corporation who worked at any time in California between
20 August 26, 2018 and the date of preliminary approval" and such members can be identified from
21 Defendant's personnel/business records. Nguyen Decl., ¶ 14.

22 **B. COMMONALITY IS SATISFIED.**

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

26 Here, Plaintiff alleges Class Members' claims arise from A.I. Foods' common, uniform policies
27 and practices that applied to Settlement Class Members during the class period. Nguyen Decl., ¶ 15.
28 Specifically, Plaintiff alleged that A.I. Foods's common and uniform policies and practices resulted in
the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime

1 wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit
2 all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6)
3 engagement in unlawful business practices; (7) failed to timely pay all wages upon separation of
4 employment; and (8) liability for civil penalties under the PAGA. As a result of the common and
5 uniform policies and practices that applied to all Class Members, their claims involve common
6 questions of law and fact as to whether in fact A.I. Foods committed these alleged violations.

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

9 **C. TYPICALITY IS SATISFIED.**

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

18 **D. ADEQUACY IS SATISFIED.**

19 The adequacy requirement examines conflicts of interest between named parties and the
20 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
21 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
22 Settlement Class she seeks to represent. *Nguyen Decl., ¶ 34, Flores Decl., ¶ 12.* Indeed, Plaintiff's
23 interests are aligned with those of the Class Members, as they all seek monetary relief under the same
24 facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the
25 Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

26 Further, Class Counsel also have extensive experience in wage and hour class action litigation
27 and have vigorously litigated this case. *See Nguyen Decl., ¶¶2-8; Declaration of Scott M. Lidman*

1 (“Lidman Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of Milan
2 Moore (“Moore Decl.”), ¶¶ 2-4.

3 **V. SETTLEMENT AGREEMENT**

4 **A. THE BASICS**

5 1. Class Definition and Release Period

6 The proposed Settlement Class is defined as: all current and former non-exempt, hourly
7 employees of Defendant A.I. Foods Corporation who worked at any time in California between August
8 26, 2018 and the date of preliminary approval. Nguyen Decl., ¶ 14. For purposes of this Settlement
9 Agreement, the “Class Period” shall mean the time period of August 26, 2018 and the date of
10 preliminary approval. *Id.*

11 2. Aggrieved Employees and PAGA Period

12 The proposed Aggrieved Employees are defined as: all current and former non-exempt, hourly
13 employees of A.I. Foods Corporation who worked at any time in California between August 26, 2021
14 and the date of preliminary approval.” Nguyen Decl., ¶ 14. The “PAGA Period” is defined as the time
15 period of August 26, 2021 and the date of preliminary approval. *Id.*

16 **B. RELEASE OF CLAIMS**

17 1. Scope of Participating Class Members’ Release

18 All Participating Class Members, on behalf of themselves and their respective former and
19 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and
20 discharge AI Foods Corporation and each of its former and present directors, officers, shareholders,
21 owners, attorneys, insurers, managers, employees, agents, principals, heirs, representatives,
22 accountants, auditors, consultants, and their respective successors and predecessors in interest,
23 subsidiaries, affiliates, parents and attorneys, (“Released Parties”) from all claims, demands, rights,
24 liabilities and causes of action that have been and will be pled in the Complaints in the Action as well
25 as all claims, demands, rights, liabilities and causes of action that could have been alleged based on the
26 facts that have been and will be alleged in the Complaints in the Action, that arose during the Class
27 Period defined above with respect to the following claims: (a) failure to pay all minimum wages owed;
28 (b) failure to pay all overtime wages owed, (c) failure to provide meal periods, or premium pay for non-
compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-

compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to timely pay all wages due upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above. Except as set forth in Paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. Settlement, ¶ 5.2.

2. Scope of Aggrieved Employees' Release

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including, e.g., failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed, (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to timely pay all wages due upon separation of employment ("Released PAGA Claims"). Settlement, ¶ 5.3.

3. Releases Effective Date

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

C. **MONETARY TERMS OF SETTLEMENT**

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, A.I. Foods will pay a Gross Settlement Amount ("GSA") of \$395,000.00.² Nguyen Decl., ¶¶ 13, Exh. 2 (Settlement, ¶ 3.1). Significantly, this Settlement is **non-**

² Based on a review of its records to date, AI Foods represents that there were an estimated 11,250 workweeks during the Class Period. If it is determined that the number of workweeks worked by the Class Members during the Class Period is 10% greater than this figure (*i.e.*, if there were actually more than 12,376 Workweeks worked by the Class Members during the Class Period), then Defendant, at its option agrees to either: (1) increase the Gross Settlement Amount on a proportional

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

A.I. Foods shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay A.I. Foods's share of payroll taxes, by transmitting such funds to the Administrator within 30 days of the Effective Date. *See* Settlement, ¶ 4.3. "Effective Date" means the latter of the follow: (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; (c) the final resolution of any appeal that has been filed. Settlement, ¶ 1.19.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$395,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$131,666.66
Minus Court-approved, verified costs (up to \$30,000.00):	\$30,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$8,250.00
Minus PAGA payment to the LWDA:	\$18,750.00
Net Settlement Amount ("NSA"):	\$201,333.34
Settlement Class Members	132
Average Individual Payment: NSA/Settlement Class	\$1,525.25

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement results in a Net Settlement Amount ("NSA") of at least \$201,333.34 to be paid out to all Settlement Class Members who do not timely opt out. Nguyen Decl., ¶ 13, Exh. 2.

Therefore, this calculation of $\$201,333.34/132 = \$1,525.25$, assumes the Court approves the

basis to the extent the threshold is exceeded (*e.g.*, if there was an 11% increase in the number of Workweeks worked by the Class Members during the Class Period), the Gross Settlement Amount will increase by eleven percent (11%); or (2) elect to end the Class Period, PAGA Period and release periods on the date on which the total number of actual workweeks is closest to and does not exceed 12,375 total workweeks). Settlement, ¶ 9.

1 requested attorneys' fees, maximum attorneys' costs, service payment, settlement administration costs,
2 and payment to the LWDA. *Id.* This calculation also assumes that all 132 putative class members
3 participate in the settlement and do not submit timely requests for exclusions. *Id.*

4 3. Class Representative Service Payment

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

8 Plaintiff will separately apply for a service payment at the time of seeking final approval in the
9 amount of \$5,000.00. Nguyen Decl., ¶ 31, Exh. 2 (Settlement, ¶ 3.2.1.); Flores Decl., ¶¶ 3-12. As will
10 be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize
11 the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial
12 factual information and documents to Class Counsel, attending multiple meetings with Class Counsel
13 to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff
14 undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed
15 to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶31;
16 Flores Decl., ¶¶ 3-8; Settlement ¶ 3.2.1.

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

20 4. Attorneys' Fees and Costs

21 California courts recognize an appropriate method for awarding attorneys' fees in class actions
22 is to award a percentage of the “common fund” created as a result of a settlement. *See e.g., Laffitte v.*
23 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the
24 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
25 fund settlements.

26 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
27 is currently estimated to be \$131,666.66, and up to \$30,000.00 in verified costs reimbursement. *See*
28 Settlement, ¶ 3.2.2.; Nguyen Decl., ¶ 29. 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. Nguyen Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Nguyen Decl., ¶ 29. 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.*

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. Class Counsel's fees and costs awarded by the Court shall be paid by the Settlement Administrator to Class Counsel from the Gross Settlement Amount 10 business days after Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

5. Payroll Taxes

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

6. Payment Formula

There were approximately 132 total Class Members as of the date of mediation. Nguyen Decl., ¶ 14.

An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the total Workweeks worked by each Participating Class Member during the Class Period. Settlement, ¶ 3.2.4. Thus, the average Individual Class Payment is \$1,525.25.

Additionally, there were approximately 70 Aggrieved Employees. Nguyen Decl., ¶ 14.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA Pay

Periods worked by each Aggrieved Employee. Each Aggrieved Employee assumes full responsibility and liability for any taxes owed on his or her Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

Thus, the average Individual PAGA Payment is projected to be approximately **\$89.29**. *Id.*

7. Tax Allocation

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

8. PAGA Penalty

The parties have agreed to a PAGA award of \$25,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$18,750.00. Settlement ¶ 3.2.5. This \$18,750.00 represents roughly 4.7% of the \$395,000.00 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); *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).

VI. NOTICE ADMINISTRATION

A. SETTLEMENT ADMINISTRATOR

Phoenix Class Action Administration Solutions ("Phoenix") costs are estimated not to exceed \$8,250.00. *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 132 Class Members and the costs and expenses associated with administering the notices and distributing the awards. Additionally, Phoenix will translate the Class Notices and mail them in both English and Spanish to Class Members.

Phoenix has extensive experience administering class action matters. Phoenix has administered complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,

1 ERISA and PAGA class action matters, though final approval and distribution. Phoenix has developed
2 a system of quality assurance measures, to ensure the highest quality service is provided in our cases
3 and to class members. Lawrence Decl., ¶ 5.

4 **B. CLASS LIST FROM DEFENDANT**

5 No later than 20 calendar days after entry of an order preliminarily approving the Settlement,
6 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft
7 Excel spreadsheet. Settlement, ¶ 4.2. To protect Class Members' privacy rights, the Administrator must
8 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for
9 no other purpose, and restrict access to the Class Data to Administrator employees who need access to
10 the Class Data to effect and perform under this Agreement. *Id.*

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

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

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

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

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

E. PROCESSING OF PAYMENTS

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

F. UNDELIVERABLE SETTLEMENT NOTICES

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

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

VII. RESPONSES TO SETTLEMENT NOTICE

A. REQUESTS FOR EXCLUSION

Class Members who wish to exclude themselves from (or opt-out of) the Settlement’s release of class action claims must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion no later than the Response Deadline – *i.e.*, 60 days after the Administrator mails the Class Notice (plus an additional 14 days for any Class Member whose Class Notice is re-mailed). A Request

1 for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
2 the Class Member's choice to be excluded from the Settlement and includes the Class Member's name,
3 address, and email address or telephone number. To be valid, a Request for Exclusion must be timely
4 faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶ 7.5.1.

5 **B. RE-MAILED NOTICES**

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

11 **C. OBJECTION PROCEDURES**

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

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

23 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

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

27 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
28 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds
represented by such checks to the California Controller's Unclaimed Property Fund in the name of the

1 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
2 Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

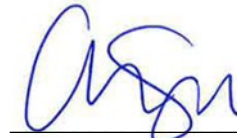
3 **IX. CONCLUSION**

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

7
8 Dated: December 8, 2023

Respectfully submitted,
LIDMAN LAW, APC

9
10
11 By:



Elizabeth Nguyen
Attorney for Plaintiff
FATIMA FLORES