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Members, and Aggrieved Employees*

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

ANDRES GONZALEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CATALINA CHANNEL EXPRESS, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. BC707664 (Related to Case No.
BC620021)

CLASS ACTION

*[Assigned for all purposes to the Hon.
Carolyn B. Kuhl, Dept. SSC-12]*

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

Date: April 21, 2020
Time: 10:30 a.m.
Dept.: SSC-12

Complaint Filed: May 29, 2018
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 21, 2020 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department 12 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Andres Gonzalez (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement and Release (“Settlement Agreement”), effective May 1, 2020;¹

2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the proposed Settlement Class, defined as follows:

All current and former non-exempt land-based employees (i.e., non-exempt employees working in job positions other than as Captains, Second Operators, Deckhands, and Cabin Attendants in Vessel Operations) who worked for Defendant Catalina Channel Express, Inc. from May 29, 2014 through June 16, 2019 (the “Class Period”).

3. Preliminary appointment of Plaintiff Andres Gonzalez as Class Representative;

4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Daniel B. Marin-Finn of Haines Law Group as Class Counsel;

5. Appointment of Phoenix Class Action Administration as the third-party Settlement Administrator;

6. Approval of the proposed Notice, and an order that the Notice be disseminated to the proposed Settlement Class as provided in the Settlement Agreement;

7. The scheduling of a hearing to consider whether the class settlement should be finally approved and to award an amount for enhancement payment to the Class Representative, and attorneys’ fees and costs to Class Counsel; and

8. An order granting Plaintiff’s unopposed request to file a Second Amended Class and Representative Action Complaint adding causes of action for failure to reimburse necessary business expenditures, wage statement penalties, and PAGA civil penalties, as of May 1, 2020.

¹ As explained herein, Plaintiff will have exhausted his administrative remedies under PAGA on May 1, 2020, and thus will be able to assert the PAGA claim in the proposed Second Amended Complaint and to include it in the Settlement.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declarations of Paul K. Haines, Sean M. Blakely, Daniel Marin-Finn and exhibits attached thereto; the declaration of Jodey Lawrence and exhibits attached thereto; the declaration of Andres Gonzalez; 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.

Respectfully Submitted,

Dated: March 26, 2020

HAINES LAW GROUP, APC

By:

P. K.

Paul K. Haines

Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Andres Gonzalez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant Catalina Channel Express, Inc. (“Catalina”
5 or “Defendant”). The Settlement resolves a class and representative action pending before this
6 Court (the “Action”), in which Plaintiff alleges that Catalina: failed to pay minimum wages for
7 all hours worked; failed to pay overtime wages; failed to provide compliant meal periods; failed
8 to timely pay all wages, including wages owing at the time of termination; and all claims for
9 unfair business practices that could have been premised on the above allegations. In addition, and
10 as part of the Settlement, the parties have stipulated to the filing of a Second Amended Complaint
11 (“SAC”) to add causes of action for failure to reimburse for necessary business expenditures,
12 wage statement penalties, and civil penalties under the Private Attorneys General act (“PAGA”)
13 based on these alleged Labor Code violations, once Plaintiff has exhausted his administrative
14 remedies under the PAGA on May 1, 2020.²

15 Plaintiff now respectfully requests that this Court preliminarily approve this non-
16 reversionary, common-fund class action Settlement,³ in which Catalina has agreed to pay
17 \$600,000.00 to the following Settlement Class, consisting of up to approximately 552 individuals:

18 All current and former non-exempt land-based employees (i.e., non-
19 exempt employees working in job positions other than as Captains,
20 Second Operators, Deckhands, and Cabin Attendants in Vessel
Operations) who worked for Defendant Catalina Channel Express,
Inc. from May 29, 2014 through June 16, 2019 (the “Class Period”).

21 This Settlement is a good result for Settlement Class members, with the average individual
22 settlement payment projected to be nearly \$600.00. The Settlement was reached after the parties
23 engaged in mediation with the Honorable Peter D. Lichtman (Ret.), an experienced wage and
24 hour class action mediator. In connection with mediation, Catalina provided Plaintiff with

25 ² Plaintiff submitted a PAGA letter on February 26, 2020 to the Labor Workforce Development
26 Agency (“LWDA”), as required to exhaust his administrative remedies under PAGA. Thus, as
27 part of this Motion, Plaintiff seeks leave to file the proposed SAC on May 1, 2020, after the 65-
day PAGA notice period will have exhausted. The SAC is attached as Exhibit B to the
Declaration of Paul K. Haines submitted herewith.

28 ³ The Settlement is attached as Exhibit A to the Declaration of Paul K. Haines submitted herewith.
The Class Notice and Estimated Settlement Payment Form are attached as Exhibits 1 and 2,
respectively, to the Settlement.

1 extensive informal discovery, including a sampling of timekeeping and payroll records for
2 putative class members for a vast majority of the Class Period; Catalina's relevant wage and hour
3 policies; data points including the approximate total number of putative class members, putative
4 class members' average rates of pay, and information that enabled Plaintiff to calculate the
5 approximate total number of workweeks worked by putative class members during the Class
6 Period; and other data and documents. After extensive research and investigation, including a
7 detailed analysis of Catalina's potential exposure made with the assistance of Plaintiff's expert
8 economist who holds a Ph.D. in economics, the parties attended a full-day mediation with Judge
9 Lichtman on September 23, 2019. At mediation the parties reached an agreement in principle,
10 and over the following months, the parties negotiated and finalized the Settlement.

11 Settlement Class members are not required to submit a claim form to receive a payment
12 ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be
13 distributed to all Settlement Class members who do not affirmatively opt out. After deductions
14 for proposed settlement administration costs, attorneys' fees and costs, Plaintiff's enhancement
15 payment, and the LWDA share of PAGA civil penalties, the average Individual Settlement
16 Payment is estimated to be at least \$596.92. For the reasons discussed herein, Plaintiff respectfully
17 requests that the Court grant preliminary approval of the Settlement.

18 **II. SUMMARY OF THE LITIGATION**

19 **A. FACTUAL AND PROCEDURAL BACKGROUND**

20 Catalina operates a fleet of high-end vessels providing transportation to Catalina Island
21 from Long Beach, San Pedro and Dana Point. Declaration of Paul K. Haines ("Haines Decl."), ¶
22 10. Plaintiff worked for Catalina as a non-exempt employee in a maintenance position, until his
23 termination in or about January 2017. Plaintiff and Settlement Class Members are all current and
24 former non-exempt land-based employees (i.e., non-exempt employees working in job positions
25 other than as Captains, Second Operators, Deckhands, and Cabin Attendants in Vessel
26 Operations) who worked for Catalina throughout the Class Period. *Id.*

27 On May 29, 2018, Plaintiff filed the instant action, alleging claims for failure to pay
28 minimum and overtime wages, meal period violations, and waiting time penalties. Haines Decl.,

¶ 11. On March 28, 2019, Plaintiff filed a First Amended Complaint in which he excluded sea-based positions from the putative class, as those employees' claims were resolved by a class action settlement in *Beard v. Catalina Channel Express, Inc.*, LASC Case No. BC620021. *Id.*

As part of this Motion, Plaintiff respectfully requests that the Court approve the filing of a Second Amended Complaint ("SAC") adding causes of action for failure to reimburse necessary business expenditures, wage statement penalties, and PAGA civil penalties. Haines Decl., ¶ 11. Because Plaintiff's PAGA letter was mailed on February 26, 2020, and therefore the required 65-day waiting period under the PAGA will have exhausted on May 1, 2020, Plaintiff requests that the Court approve the filing of the SAC on May 1, 2020.

B. PLAINTIFF'S CLAIMS AND CATALINA'S DEFENSES

1. Underpaid Overtime Due to Failure to Accurately Calculate "Regular Rate"

Plaintiff alleges that Catalina paid Plaintiff and other non-exempt employees non-discretionary performance bonuses, and other forms of non-discretionary pay, but failed to include these payments when calculating employees' "regular rate" when determining overtime compensation. Haines Decl., ¶ 16. This, Plaintiff asserts, resulted in underpayment of overtime wages. *Id.* Catalina counters that any bonus payments were discretionary and, in any event, were not tied to employees' hours worked, and therefore need not be included in the regular rate. *Id.*; *see also* 29 U.S.C. § 207(e)(2) (payments which are not compensation for hours worked need not be included in regular rate). Catalina also argues that differences in frequency, type, and amount of bonuses received by putative class members would preclude class certification. *Id.*

2. Unpaid Wages Due to Unlawful Time-Rounding

Plaintiff alleges that Catalina pays its employees in quarter-hour increments in a manner than consistently favored Catalina, and that its time-rounding practice has resulted in a systemic underpayment of minimum and overtime wages. Haines Decl., ¶ 17. *Id.* Catalina counters that it utilizes a neutral time-rounding mechanism that results, over time, in employees being paid for all hours worked. *Id.*; *see also See's Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer "applies a consistent rounding policy that, on average, favors neither overpayment nor underpayment."). In fact, Catalina contends – and Plaintiff's

analysis confirmed – that most employees were in fact *overpaid* due to rounding. *Id.* Finally, Catalina asserts this claim would not be amenable to class certification due to required individualized inquiries, as Catalina maintains most employees were *overpaid* due to rounding while others were underpaid. *Id.*

3. Meal Period Claim

Plaintiff alleges Catalina failed to provide legally compliant meal periods. Haines Decl., ¶ 18. Specifically, Plaintiff alleges Catalina provides employees with late meal periods (i.e., more than 5 hours into the shift), short (less than 30 minutes) and fails to provide second meal periods on shifts over 10.0 hours. *Id.* Catalina counters it has always provided employees the *opportunity* to take legally compliant meal periods, and that it is not required to “ensure” meal periods are taken. *Id.*; *see also Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard). Any non-compliant meal periods were a result of employee choice, Catalina contends, rather than any policy or practice of Catalina. *Id.* Catalina further contends many employees choose to waive the second meal period under Labor Code § 512(a), to avoid staying at work an extra unpaid 30 minutes. *Id.* Catalina also asserts it has paid nearly 1,500 meal period premiums during the Class Period, which, Catalina contends, demonstrates its commitment to ensuring meal periods are provided, and paying the appropriate remedy when they are not. *Id.* Catalina further asserts employees rarely work shifts over 10.0 hours, and thus any damages for second meal periods would be minimal. *Id.* Finally, Catalina argues this claim is not suited for class treatment, as individual inquiries would be needed to assess which employees took non-compliant or missed meal periods, how many meal periods were non-compliant or missed, and the reason(s) why a particular employee did not take a meal period on a particular shift. *Id.*

4. Claim for Unreimbursed Expenses

Plaintiff alleges that he and other employees have been required to use their personal cell phones to maintain communication with management, and that he and some other employees occasionally used personal vehicles to travel between the Long Beach and San Pedro ports. Haines Decl., ¶ 19. Catalina counters it does not require employees to use personal cell phones, and that there is no legitimate business reason for employees to do so. *Id.* Catalina further argues

1 that employees very rarely travel between ports, and when they do, they are not required to use
2 personal vehicles. *Id.* Catalina further argues that whether an employee is owed reimbursement
3 would turn on the reasonableness of the expense, and individual inquiries would be needed to
4 establish not only whether the employee incurred an expense, how much the expense was, and
5 whether it was reimbursed, but also whether the expense was “reasonable.” *Id.* These individual
6 inquiries, which Catalina asserts go to both liability and damages, would preclude class
7 certification. *Id.*; *see also Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) (“In
8 calculating the reimbursement amount due under section 2802, the employer may consider not
9 only the actual expenses that the employee incurred, but also whether each of those expenses was
10 ‘necessary,’ which in turn depends on the reasonableness of the employee’s choices”); *Grissom*
11 *v. Vons Cos., Inc.*, 1 Cal.App.4th 52, 58 (1991) (“ascertaining what was a necessary expenditure
12 will require an inquiry into what was reasonable under the circumstances.”).

13 **5. Claims Under Lab. Code §§ 203, 226, and the PAGA**

14 As a result of these alleged wage and hour violations, Plaintiff asserts that Catalina failed
15 to comply with its final payment and wage statement obligations, in violation of Cal. Labor Code
16 §§ 203 and 226, respectively. Haines Decl., ¶¶ 20-21. Finally, Plaintiff seeks civil penalties under
17 the PAGA, based on the aforementioned claims. Haines Decl., ¶ 22.

18 Catalina asserts it has strong, good-faith defenses to Plaintiff’s underlying claims,
19 precluding imposition of waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a “good faith
20 dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy*
21 *Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of
22 waiting time penalties). Catalina further contends Plaintiff’s meal period claim cannot support a
23 claim for waiting time or wage statement penalties, as a Court of Appeal recently held in *Naranjo*
24 *v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th 444, 473-75 (2019) (*review granted* Jan. 2,
25 2020). Catalina further contends any alleged wage statement violations could not be shown to be
26 “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show
27 he or other employees “suffer[ed] injury” due to alleged wage statement violations, as required
28 by Lab. Code § 226(e); and that wage statements always accurately reflected hours worked and

1 amounts paid to employees. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-
2 37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in
3 that they correctly reflected the hours worked and the pay received).” Haines Decl., ¶ 21.

4 Finally, Catalina contends Plaintiff’s PAGA claim fails because the underlying claims fail.
5 *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
6 causes of action fail, the derivative UCL and PAGA claims also fail.”). Catalina further maintains
7 that given its good-faith defenses, the Court would substantially reduce PAGA civil penalties.
8 Haines Decl., ¶ 22; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in
9 court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012)
10 (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK
11 (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%);
12 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of
13 just \$5 per pay period where employer made “good faith attempts” to comply with the law).

14 **C. DISCOVERY AND MEDIATION**

15 In preparation for mediation, the parties engaged in extensive informal discovery. Plaintiff
16 hired a labor economist with a Ph.D. in economics to analyze and extrapolate the data produced
17 by Catalina. Haines Decl., ¶ 12. Specifically, Catalina produced timekeeping and payroll records
18 for a sampling of class members, its relevant wage and hour policies, as well as other relevant
19 data and information, which allowed Plaintiff to calculate the putative class size, average rates of
20 pay, total workweeks, and other data points. *Id.* This discovery allowed the parties to assess the
21 merits and value of Plaintiff’s claims, as well as the chances for class certification. *Id.*

22 The parties attended a full-day mediation on September 23, 2019 with Judge Lichtman.
23 Haines Decl., ¶ 13. The parties vigorously debated their legal positions, the likelihood of
24 certification of Plaintiff’s claims, and the legal bases for the claims and defenses. *Id.* With Judge
25 Lichtman’s assistance, the parties eventually agreed to a settlement, and over the following
26 months the parties negotiated and formalized their Settlement now before the Court. *Id.*

27 ///

28 ///

1 **III. THE PROPOSED SETTLEMENT**

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

3 Under the Settlement, Catalina will pay a non-reversionary Maximum Settlement Amount
4 of \$600,000.00. No Settlement Class member will need to file a claim in order to receive payment.
5 All Settlement Class members will automatically receive an Individual Settlement Payment
6 unless they affirmatively opt-out. The monetary terms of the Settlement are summarized below:

7	• Maximum Settlement Amount (“MSA”):	\$600,000.00
8	• Minus Court-approved attorneys’ fees (one-third):	\$200,000.00
9	• Minus Court-approved verified costs (up to):	\$30,000.00
10	• Minus Court-approved Class Service Award:	\$5,000.00
11	• Minus Amount Designated as PAGA penalties:	\$30,000.00
12	• <u>Minus estimated settlement administration costs:</u>	<u>\$13,000.00</u>
	Net Settlement Amount (“NSA”):	\$322,000.00
	• PLUS 25% of PAGA penalties to Settlement Class:	\$7,500.00
	Total Amount Paid to Settlement Class members:	\$329,500.00

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

14 After deducting amounts for a court-approved enhancement payment, administration
15 costs, attorneys’ fees and costs, and PAGA payment to the LWDA, Catalina will pay at least
16 \$329,500.00 to Settlement Class members who do not timely opt-out. *See* Settlement, § 3(C).
17 Catalina represents there are up to approximately 552 Settlement Class members. *Id.*, § 3(E).
18 Thus, the average Individual Settlement Payment is projected to be at least \$596.92. Catalina will
19 pay employer-side payroll taxes on the wage portion of each payment separately from, and in
20 addition to, the MSA. *Id.*, § 3(D). Settlement Class members will have 60 days from the Notice
21 mailing to opt-out or object, providing ample time to review the Notice without unduly delaying
the Settlement. *See id.*, § 9(C)-(D).

22 Individual Settlement Payments will be calculated as follows: First, (i) 75% of the NSA
23 will be designated the “Wage Claims Amount,” to be paid to all participating Settlement Class
24 members, and will be divided into seven “Sub-Funds,” one for each Job Category
25 (Administration, Central Services, Food and Beverage, Reservations, Ticketing, Vessel
26 Engineering, and Vessel Engineering Support). The portion of the Wage Claims Amount
27 allocated to each Sub-Fund will be determined based upon the proportion of hours worked and
28 average pay rates paid to each Job Category, as shown in the table on the following page:

A	B	C	D	E	F
Job Category	Approximate Average Rate of Pay for Job Category	Approximate Hours Worked During Class Period	Percentage of Total Hours Worked by Job Category (Column C ÷ Column C Total)	Percent Total Hours Multiplied by Approximate Average Pay Rate (Column B x Column D)	Job Category Sub-Fund Percentage (Column E ÷ Column E Total)
Administration	\$17.00	125,444.75	10.28%	\$1.75	10.94%
Central Services	\$14.00	72,776.67	5.96%	\$0.83	5.22%
Food and Beverage	\$14.00	267,979.13	21.95%	\$3.07	19.24%
Reservations	\$15.00	271,763.44	22.26%	\$3.34	20.90%
Ticketing	\$15.00	344,053.58	28.18%	\$4.23	26.46%
Vessel Engineering	\$30.00	85,356.17	6.99%	\$2.10	13.13%
Vessel Engineering Support	\$15.00	53,350.50	4.37%	\$0.66	4.10%
Total	N/A	1,220,724.24	100.00%	\$15.98	100.00%

The total amount allocated to each Job Category Sub-Fund will equal the total Wage Claims Amount multiplied by the Job Category Sub-Fund Percentage shown in the table above. Counsel agreed on this distribution formula to most fairly compensate Settlement Class members based on the extent of potential harm suffered, as employees' hours worked vary within a given workweek and because wage rates vary from position to position.⁴ See Settlement, § 4(B)(i). Next, (ii) 15% of the NSA shall be designated as the "Waiting Time Amount" and equally distributed to all participating Settlement Class members whose employment with Catalina ended at any time from May 29, 2015 through the end of the Class Period (the "Waiting Time Period"). *Id.*, § 4(B)(ii). Third, (iii) the final 10% of the NSA is set aside as the "Other Penalty Claims Amount" and will be distributed to all participating Settlement Class members who worked for Catalina from May 29, 2017 to the end of the Class Period, based on the proportionate number of pay periods worked during that period. *Id.*, § 4(B)(iii). Finally, (iv) in addition to the NSA, the \$7,500.00 "PAGA Amount" (25% of total PAGA penalties) will be distributed to all participating Settlement Class members who worked for Catalina from February 26, 2019 through the preliminary approval ("PAGA Period"), based on the proportionate number of pay periods worked by each participating Settlement Class member during the PAGA Period. *Id.*, § 4(B)(iv).

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⁴ The Wage Claims Amount distribution mirrors a similar payment distribution found in the related case of *Beard et al. v. Catalina Channel Express, Inc.*, LASC Case No. BC620021, which was granted final approval by this Court on August 20, 2019.

Settlement Class members who do not opt out will be bound by the Settlement, and shall release all claims, demands, rights, liabilities, and causes of action that are asserted in the Second Amended Complaint, or could have been pled based on the facts alleged against Catalina in Plaintiff's lawsuit, during the Class Period. *See* Settlement, § 2.

2. Attorneys' Fees and Costs, Representative Service and PAGA Payments

At final approval, Plaintiff will separately apply for a Class Representative Service Award in the amount of \$5,000. Haines Decl., ¶ 26; Settlement, § 3(C)(3). "[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*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, Plaintiff's requested Award is in recognition of the time and effort he expended on behalf of the Settlement Class, including providing factual information and documents to counsel, identifying potential witnesses, attending in-person and telephonic meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of this case. Haines Decl., ¶ 26. Plaintiff respectfully submits that this requested payment, which is only 0.83% of the MSA, is well within the range of permissible approval. *See Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 enhancement award to each of five named plaintiffs from \$505,058.60 settlement).

The parties have also agreed to designate \$30,000.00 of the MSA as PAGA penalties, of which \$22,500 (i.e., 75%) will be paid to the LWDA, with the remaining \$7,500.00 (i.e., 25%) distributed to the Settlement Class as described above, consistent with the PAGA's requirement that 75% of such penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved employees (Labor Code § 2699(i)). *See* Settlement Agreement, § 3(C)(5). Plaintiff submits this allocation to the LWDA is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million settlement).

1 At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the MSA
2 (estimated at \$200,000), and up to \$30,000 in litigation costs. Haines Decl., ¶ 25; Settlement, §
3 3(C)(4). Plaintiff submits the requested fee is fair compensation for undertaking complex, risky,
4 expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel have incurred
5 substantial attorneys' fees conducting pre-filing investigation; analyzing Plaintiff's claims;
6 conducting legal research; analyzing timekeeping, payroll, and other data with Plaintiff's expert
7 to create a comprehensive damages model; preparing for and attending mediation; negotiating
8 and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. *Id.*
9 Further, Plaintiff's counsel will incur significant future attorneys' fees in overseeing the Notice
10 process, fielding phone calls from Settlement Class members, preparing the Final Approval
11 Motion and supporting documents, and appearing at the Final Approval Hearing. *Id.*

12 It is appropriate to award attorneys' fees as a percentage of the "common fund" created
13 by the settlement. *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding "the percentage
14 of fund method survives in California class action cases"). Counsel's request for fees of one-third
15 of the MSA is well within the range of reasonableness and is typical for common fund settlements.
16 *Newberg on Class Actions* § 14.6 (4th Ed. 2013) (historically, courts have awarded percentage
17 fees in the range of 20% to 50%). Counsel submit their request for fees is reasonable in light of
18 the substantial risks and significant work undertaken, the results obtained, and the efficiency with
19 which counsel conducted the litigation.

20 **IV. ARGUMENT**

21 **A. PRELIMINARY APPROVAL IS WARRANTED**

22 Rule of Court 3.769 conditions class action settlements on court approval, which is
23 generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
24 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
25 "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*,
26 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a proposed
27 settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of
28 dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*,

1 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role is to ensure the agreement taken as a whole
2 is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a presumption
3 of fairness when a settlement is negotiated at arm’s length by counsel. *See, e.g., Kullar v. Foot*
4 *Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

5 **1. Standard for Preliminary Approval**

6 To make a fairness determination, the Court should consider several factors, including:
7 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
8 litigation, the risk of maintaining class action status through trial, the amount offered in
9 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
10 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
11 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
12 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
13 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed settlement is fair, adequate,
14 and reasonable in light of the overall balance of factors in this case.

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

16 Although he maintains his claims are meritorious, Plaintiff acknowledges there were
17 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
18 merits. As described in section II.B., *supra*, Catalina presented multiple defenses to Plaintiff’s
19 claims, both on the merits and to class certification. While Plaintiff was prepared to litigate his
20 claims through class certification and ultimately trial, success was far from certain.

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

22 Although the parties engaged in significant informal discovery, they had not completed
23 formal written and deposition discovery, which would have required expenditure of substantial
24 time and resources. Haines Decl., ¶ 24. Plaintiff also still had to file for class certification. *Id.*
25 Even if Plaintiff obtained certification, the parties would incur considerable attorneys’ fees and
26 costs through a possible decertification motion, motions for summary judgment, trial, and
27 potential appeals. *Id.* This settlement avoids those risks and the accompanying expense. *Id.* Thus,
28 this factor supports preliminary approval.

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

2 Plaintiff has not yet filed his class certification motion, and as such, the extent to which
3 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
4 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
5 significantly smaller group of employees than the proposed Settlement Class, and the expected
6 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

8 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
9 for disputed claims. With the assistance of a retained economist with a Ph.D., Plaintiff conducted
10 an analysis of potential damages due to Catalina's allegedly unlawful policies and practices.
11 Plaintiff's analyses of realistic expected recoveries for each theory of liability are set forth below:

12 Underpaid Overtime Due to Regular Rate Miscalculation: \$8,314

13 Plaintiff alleges that Catalina paid Plaintiff and other non-exempt employees performance
14 bonuses, and other forms of incentive pay which Plaintiff contends cannot be excluded from the
15 "regular rate" of pay, but failed to include those payments in the "regular rate," thereby
16 underpaying employees' overtime wages. Haines Decl., ¶ 16. Based on Plaintiff's expert's
17 analysis and extrapolation of payroll data provided by Catalina, Plaintiff calculated that putative
18 class members were underpaid by approximately \$13,856 in overtime during the Class Period as
19 a result of Catalina's alleged failure to calculate the Class Members "regular rate" of pay. *Id.*
20 However, as noted above, Catalina counters that the incentive payments at issue are not tied to
21 employees' hours worked and therefore do not need to be included in the regular rate, and/or are
22 discretionary bonuses which need not be included in the regular rate. *Id.* Catalina further argues
23 that differences in the frequency, type, and amount of incentive pay received by different
24 employees would preclude class certification of this claim. *Id.* Based on these defenses, Plaintiff
25 discounted the estimated maximum by 20% for risk of non-certification, and by an additional
26 25% to account for risk of losing on the merits or failure to recover the full amount sought, to
27 arrive at an estimated exposure of \$8,314. *Id.*

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1 Unpaid Wages Due to Rounding: No Value

2 Plaintiff alleged that Catalina pays its employees in quarter-hour increments, and that
3 employees have been underpaid as a result. Haines Decl., ¶ 17. However, Catalina argues that it
4 utilized a facially neutral rounding mechanism that was applied evenly throughout the Class
5 Period, and Plaintiff's analysis largely confirmed this contention. *Id.* Indeed, Plaintiff's analysis
6 of the Settlement Class members' timekeeping and payroll records revealed that employees were
7 actually *overpaid* an average of 1.9 minutes per shift. *Id.* Plaintiff's analysis further showed that
8 Catalina's rounding system favored *employees* on about 52.76% of all shifts. *Id.* These analyses
9 led Plaintiff to conclude that he would likely not recover on his rounding claim. *Id.* Catalina also
10 contends that this claim would not be certified, since its rounding policy is facially neutral and
11 individualized inquiries would be necessary as to whether employees were in fact underpaid or
12 overpaid for each workday in question, resulting in an unmanageable series of mini-trials. *Id.*; *see*
13 *also, e.g., Ramirez v. United Rentals, Inc.*, No. 5:10-cv-04374 EJD, 2013 WL 2646648 at *6
14 (N.D. Cal. Jun. 12, 2013) (denying certification of rounding claim). Because Plaintiff's analysis
15 reflected a net overpayment to the Settlement Class, Plaintiff determined it would be very difficult
16 to overcome Catalina's defenses and therefore assigned this claim zero value. Haines Decl., ¶ 17.

17 Meal Period Premium Wages: \$303,003

18 Plaintiff alleges Catalina failed to provide timely first meal periods of at least 30 minutes
19 in duration prior to the conclusion of the fifth hour of work. Haines Decl., ¶ 18. Plaintiff further
20 alleges that Catalina failed to provide second meal periods on shifts over 10.0 hours. *Id.* Based
21 on Plaintiff's expert's analysis and extrapolation of timekeeping records, a total of approximately
22 78,600 shifts during the Class Period reflect a potential first meal period violation, and/or were
23 over 10.0 hours and thus reflected a potential second meal period violation. Thus, based on the
24 \$15.42 average hourly rate, Plaintiff estimated total maximum damages on this claim as
25 approximately \$1,212,012 (\$15.42 * 78,600 shifts). *Id.* As noted above, however, Catalina
26 maintains its written meal period policies comply with California law; that under *Brinker*, it is
27 only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are
28 taken, and that it has always done so; and that many employees choose to waive their right to a

1 second meal period so that they would not need to stay at work for an extra unpaid 30 minutes.
2 *Id.* Catalina also points to the fact that it has paid nearly 1,500 meal period premiums during the
3 Class Period as evidence of its good-faith efforts to comply with meal period requirements. *Id.*
4 Finally, Catalina maintains the meal period claim is not suited for class treatment, as individual
5 inquiries would be needed as to which employees took non-compliant meal periods or missed
6 meal periods, how many meal periods were non-compliant or missed, and why a particular
7 employee did not take a compliant meal period on a particular shift. *Id.* Based on these defenses,
8 Plaintiff discounted the maximum amount by 50% for risk of non-certification and an additional
9 50% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an
10 estimated exposure of \$303,003 *Id.*

11 Unreimbursed Cell Phone and Vehicle Expenses: \$49,435

12 Plaintiff contends he and other employees have incurred costs in using their personal cell
13 phones for work purposes, including to keep in contact with management and that Vessel
14 Engineering and Vessel Engineering Support employees have used their personal vehicles to
15 travel between the Long Beach and San Pedro ports. Haines Decl., ¶ 19. In calculating exposure
16 for this claim, and based on his own experience and investigation, Plaintiff assumed an average
17 monthly cell phone bill of approximately \$50 per month, and that approximately 30% of the
18 average employee's cell phone use, or \$15 per month, was work-related. Plaintiff further
19 estimated, based on records produced by Catalina, that Settlement Class members worked about
20 10,000 work-months during the Class Period, for a maximum potential of \$150,000 in cell phone
21 expenses. In addition, Plaintiff estimated Vessel Engineering and Vessel Engineering Support
22 employees, who collectively worked about 1,100 work-months during the Class Period, drove up
23 to 24 miles (consisting of two round-trip 6-mile trips between Long Beach and San Pedro) per
24 month. Based on the average IRS mileage rate of about \$.56 during the Class Period, Plaintiff
25 estimated a total of \$14,784 in unreimbursed mileage (24 * \$.56 * 1,100). *Id.* Thus, Plaintiff
26 calculated Catalina's maximum potential exposure on this claim as approximately \$164,784. *Id.*
27 As noted above, however, Catalina counters that there was no reason for employees to use their
28 personal cell phones and vehicles for work purposes, that there were alternative means for

1 employees to communicate with managers and to travel between ports that did not require use of
2 personal cell phones or vehicles. *Id.* Catalina further argues that individual inquiries would be
3 needed to establish not only whether the employee incurred an expense but also whether the
4 expense was reasonable and necessary, thereby precluding class certification. *Id.* Based on these
5 defenses, Plaintiff discounted the maximum value of this claim by 40% for risk of non-
6 certification, and an additional 50% for risk of losing on the merits or failure to recover the full
7 amount, to arrive at a realistic exposure of \$49,435 on this claim. *Id.*

8 **Wage Statement Penalties: \$76,566**

9 Plaintiff's expert's analysis reflected that there were approximately 10,938 bi-weekly pay
10 periods within the one-year liability window under Labor Code § 226. Haines Decl., ¶ 21. In
11 calculating Catalina's exposure, Plaintiff assumed he could recover the "initial" wage statement
12 penalty of \$50 for each violation, for a total of \$546,900 in potential penalties. *Id.*; *see also* Lab.
13 Code § 226(e) (providing \$50 penalty for "initial" violations); *Amaral v. Cintas Corp. No. 2*, 163
14 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer has been
15 notified it violated Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43
16 (N.D. Cal. 2014) (citing *Amaral* and applying "initial" \$50 penalty to all pay periods in calculating
17 amount-in-controversy for wage statement claim). However, given Catalina's arguments that no
18 violations occurred, that class members suffered no "injury," that any alleged violations were not
19 "knowing and intentional," and that a meal period claim cannot support wage statement penalties,
20 as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted
21 the maximum exposure by 60% for risk of non-certification, and by an additional 65% for risk of
22 being unsuccessful on the merits, for an estimated realistic exposure of \$76,566. *Id.*

23 **Waiting Time Penalties: \$217,619**

24 Based on data provided by Catalina, there are approximately 294 Settlement Class
25 members who have separated their employment with Catalina since May 29, 2015, with an
26 average rate of pay of \$15.42. Haines Decl., ¶ 20. Plaintiff therefore estimated an average waiting
27 time penalty of \$3,701 (\$15.42 * 8 hours * 30 days), and calculated Catalina's maximum waiting
28 time penalty exposure as approximately \$1,088,094 (294 former employees * \$3,701). *Id.* As

1 noted above, however, Catalina asserts it has strong, good-faith defenses to Plaintiff's underlying
2 claims, and thus, even if Plaintiff were able to recover on his underlying claims, he would not be
3 able to recover waiting time penalties. *Id.* Catalina further contends Plaintiff's meal period claims
4 cannot support a claim for waiting time penalties, as multiple courts have held. *Id.* Moreover,
5 because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would
6 need to overcome Catalina's defenses, both as to class certification and as to the merits, to his
7 underlying claims. Based on these defenses, Plaintiff discounted Catalina maximum exposure by
8 50% for risk of non-certification and by an additional 60% for risk of being unsuccessful on the
9 merits, to arrive at an estimated total of \$217,619. *Id.*

10 **PAGA Civil Penalties: \$65,625**

11 Plaintiff estimated a maximum PAGA exposure of \$437,500, based on approximately
12 4,375 pay periods during the PAGA Period at the \$100 "initial" violation rate under Lab. Code §
13 2699(f). Haines Decl., ¶ 22; *Amaral*, 163 Cal.App.4th at 1209. However, these penalties derive
14 from Plaintiff's underlying claims, each of which Catalina vigorously disputes. *Green v.*
15 *Lawrence Service Co.*, No. LA-CV-12-6155-JAK (VBKx), 2013 WL 3907506 at *5, fn. 5 (C.D.
16 Cal. July 23, 2013) (PAGA claim's success is determined by merits of underlying claims). The
17 PAGA also grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)),
18 and Catalina argues the Court would reduce penalties significantly given its good-faith defenses.
19 *Id.* Thus, Plaintiff discounted the maximum figure by 50% for risk of losing on the merits, and by
20 an additional 70% for risk of the Court reducing penalties, to arrive at an estimated exposure of
21 \$65,625. *Id.*; see also *Thurman*, 203 Cal.App.4th at 1135-36 (affirming reduction of PAGA
22 penalties); *Fleming*, 2011 WL 7563047 at *4 (reducing PAGA penalties by more than 82%);
23 *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

24 Using these estimated figures, Plaintiff predicted the realistic total recovery for the
25 Settlement Class would be approximately \$720,562. Haines Decl., ¶ 23. The proposed settlement
26 of \$600,000 therefore represents approximately 83.3% of Plaintiff's reasonably forecasted
27 recovery. *Id.* This recovery is significant, and preliminary approval is appropriate as the
28 Settlement will provide significant monetary relief to the Settlement Class.

1 **e. The Experience and Views of Counsel**

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter.*
4 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff’s counsel have extensive
5 experience litigating wage and hour class actions from both the plaintiff and defense side, and
6 have been appointed class counsel in numerous cases alleging similar claims. *See* Haines Decl.,
7 ¶¶ 3-8; Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6; Declaration of Daniel B. Marin-
8 Finn (“Marin-Finn Decl.”), ¶¶ 2-5. Counsel conducted an in-depth review of Catalina’s policies,
9 timekeeping and payroll records, and other relevant data, and drew on their extensive experience
10 to assess Plaintiff’s claims. Haines Decl., ¶¶ 12-26. The Settlement was also reached with the
11 assistance of Judge Lichtman, a respected wage and hour class action mediator. *Id.*, ¶ 12. This
12 strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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

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

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

19 As noted, the Settlement reflects over 83% of the realistic estimated recovery on Plaintiff’s
20 claims, and will provide tangible, monetary compensation for hotly disputed wage claims on a
21 classwide basis. Plaintiff submits the Settlement is within the range of possible approval, such
22 that notice should be provided to the Settlement Class so that they can consider the settlement.
23 The Court will again have the opportunity to assess the reasonableness of the settlement after the
24 Settlement Class has had the opportunity to opt-out and/or object.

25 **b. The Settlement Resulted from Serious, Informed Negotiations**

26 The Settlement resulted from an exchange of substantial information, arm’s-length
27 negotiations, and a full-day mediation with an experienced mediator. Thus, the Settlement is
28 entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiff carefully vetted the

claims at issue, and conducted a detailed analysis of the relevant data and information with the help of a retained expert. Haines Decl., ¶¶ 16-23. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is warranted because there are no obvious deficiencies. The Settlement provides tangible monetary relief to the Settlement Class, and the amounts proposed for attorneys' fees, costs, Plaintiff's service award, and PAGA penalties are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The proposed Settlement Class satisfies the criteria for certification of a settlement class under California law because: 1) the individuals in the Settlement Class are ascertainable and numerous; 2) common questions of law and fact predominate; 3) Plaintiff's claims are typical of the claims of the Settlement Class; and 4) Plaintiff and his counsel will fairly and adequately represent the interests of the Settlement Class. Cal. Code Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes all current and former non-exempt land-based employees (i.e., non-exempt employees working in job positions other than as Captains, Second Operators, Deckhands, and Cabin Attendants in Vessel Operations) who worked for Catalina during the Class Period. Thus, they can be identified from Catalina's records. Catalina represents there are approximately 525 Settlement Class members, rendering it impracticable to bring them all before the Court. Settlement, § 3(E). Thus, numerosity is satisfied.

2. Common Issues of Law and Fact Predominate

The focus on certification is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated primarily on Catalina's allegedly unlawful regular rate calculation, meal period policies and practices, and unreimbursed

business expenses. These claims are commonly held proper for class certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (reversing denial of certification of meal and rest period claims); *Faulkinbury v. Boyd & Assoc.*, 216 Cal.App.4th 220, 240 (2013) (certifying regular rate miscalculation claim); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (reversing denial of certification of reimbursement claim)

3. The Named Plaintiff's Claims Are Typical

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.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff was employed by Catalina as a non-exempt employee in California during the proposed Class Period and was subject to Catalina's wage and hour policies at issue in this lawsuit. Plaintiff alleges he was injured by the same challenged policies that injured the Settlement Class as a whole. *See* Andres Gonzalez Decl., ¶¶ 2-5. Thus, typicality is satisfied.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

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 Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiff and the Settlement Class. *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation, as noted above.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED CLASS NOTICE

This Court should order distribution of the proposed Notice by U.S. Mail, postage prepaid, using last known mailing address information provided by Catalina. *See* Settlement Agreement, § 9(A)-(B). This manner of giving notice is the "best notice practicable" under the circumstances as it provides "individual notice to all members who can be identified through reasonable effort."

1 *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes the settlement be
2 administered by Phoenix Settlement Administrators, an experienced class action settlement
3 administrator. *See* Declaration of Jodey Lawrence and attached exhibits. Settlement Class
4 members' addresses will be ascertainable through Catalina's employment records. Phoenix will
5 also run all addresses through the U.S. Postal Service National Change of Address database and/or
6 perform "skip traces" to obtain current addresses. *See* Settlement, § 9(B) and (F).

7 The content of the proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises
8 Settlement Class members of the nature of the claims, the basic contentions and denials of the
9 parties and the key terms of the Settlement, the 60-day deadline to opt-out or object to the
10 settlement and the procedures by which to do so, explains the recovery formula and expected
11 recovery amount for each class member, and advises that they will be bound by the terms of the
12 settlement if they do not request exclusion. *See* Haines Decl., Exh. A to Exh. 1. The proposed
13 Notice will also notify Settlement Class members of the final approval hearing date and time,
14 provides contact information for Class Counsel, and advises Settlement Class members that they
15 may enter an appearance through counsel if they wish. This Notice satisfies Cal. Rule of Court
16 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

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

18 Finally, the Court should set a hearing for final approval of the settlement on a date
19 appropriately scheduled to follow the deadline by which Settlement Class members must file
20 objections to the settlement or opt-out. *See* Cal. Rule of Court 3.769.

21 **V. CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
23 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
24 Proposed Order submitted concurrently herewith.

25
26 Dated: March 26, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

27 By: _____
28

Paul K. Haines
Attorneys for Plaintiff