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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

OLIVIA ROSE RAMIREZ and KRYSTAL
PECORARO, as individuals and on behalf of
all others similarly situated,

Plaintiffs,

v.

WYNDHAM VACATION OWNERSHIP,
INC., a Delaware Corporation; and DOES 1-
100,

Defendants.

Case No.: 20CV01715

*[Assigned for all purposes to the Hon.
James F. Rigali, Dept. 2]*

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

Date: October 10, 2023

Time: 8:30 a.m.

Dept.: 2

Action Filed: April 17, 2020

Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on October 10, 2023, at 8:00 a.m., or as soon thereafter as the matter may be heard, in Department 2 of the Santa Barbara County Court, Cook Division, located at 312 East Cook Street Building E, Santa Maria, CA 93454, Plaintiff Olivia Rose Ramirez, individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement in this lawsuit;
2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

All current and former non-exempt housekeeping and guest services employees of Defendant Wyndham Vacation Ownership, Inc. in California who worked at any time between February 5, 2016, and May 23, 2023.

3. Preliminary appointment of Plaintiff Olivia Rose Ramirez as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Stipulation of Settlement should be finally approved and to award amounts for the Class Representative Enhancement Payment, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, and Class Counsel's attorneys' fees and costs;
6. Appointment of CPT Group, Inc. as the third-party settlement administrator; and
7. Approval of the proposed Class Notice and Notice of Settlement Payment, and entry of the proposed Order instructing the Class Notice and Notice of Settlement Payment be disseminated to the proposed Settlement Class in English and Spanish, as provided in the Stipulation of Settlement.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, Plaintiff Olivia Rose Ramirez, and Julie Green of CPT Group, Inc., and the exhibits attached

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

3
4 Dated: September 15, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

5
6 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Olivia Rose Ramirez (“Plaintiff”), individually and on behalf of all current and
4 former non-exempt housekeeping and guest services employees of Defendant Wyndham
5 Vacation Ownership, Inc. in California who worked at any time between February 5, 2016, and
6 May 23, 2023 (the “Class Period”), respectfully requests that this Court preliminarily approve the
7 Stipulation of Settlement (“Settlement Agreement” or “Settlement”),¹ entered into by Plaintiff
8 and Defendant Wyndham Vacation Ownership, Inc. (“Defendant”) (Plaintiff and Defendant are
9 referred to collectively herein as the “Parties”).

10 This non-reversionary \$3,800,000 class action settlement is brought on behalf of
11 approximately 2,757 potential Settlement Class Members. After Court-approved deductions for
12 Plaintiff’s Class Representative Enhancement Payment, settlement administrator costs, the
13 Private Attorneys General Act (“PAGA”) payment to the Labor & Workforce Development
14 Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the remaining Net Settlement
15 Amount (“NSA”) is estimated to be no less than \$2,180,833.33. This Settlement results in average
16 Individual Settlement Payments of approximately \$791.02.

17 Settlement Class Members do not need to file a claim form in order to receive an
18 Individual Settlement Payment, and all Settlement Class Members who do not opt-out will
19 automatically receive their share of the Settlement. This Settlement represents a fair and
20 reasonable result for Settlement Class Members, who will only release claims that were actually
21 asserted, or which could have been asserted based on the facts alleged in Plaintiff’s operative First
22 Amended Complaint (“FAC”).²

23
24 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Fletcher W. Schmidt, (“Schmidt
25 Decl.”), filed concurrently herewith, and the Notice of Class Action Settlement and Notice of Settlement
Award (collectively, the “Notice Packet”) are attached to the Schmidt Decl. as Exhibit 2.

26 ² The Settlement also includes a release of PAGA claims on behalf of all current and former non-exempt
27 housekeeping and guest services employees of Defendant in California who worked at any time between
28 February 5, 2019, and May 23, 2023 (the “PAGA Period”). These individuals (“PAGA Aggrieved
Employees”), regardless of whether they opt out from the Settlement, will receive their share of funds set
aside for PAGA civil penalties and will release their claims for civil penalties under PAGA based on the

1 This proposed Settlement is well within the range of possible approval in light of the
2 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
3 and the monetary benefit to the Settlement Class Members. For the reasons discussed herein,
4 Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

5 **II. SUMMARY OF THE LITIGATION**

6 **A. Factual And Procedural Background**

7 Defendant operates a chain of vacation ownership resorts and employed Plaintiff as a non-
8 exempt employee from approximately May 2016 to February 2019. Schmidt Decl., ¶ 8;
9 Declaration of Olivia Rose Ramirez (“Ramirez Decl.”), ¶ 2. Plaintiff worked in the position of
10 “Housekeeper” and “Guest Services Agent,” primarily answering phones and checking-in guests.
11 *Id.* Like all Settlement Class Members, Plaintiff was subject to Defendant’s wage and hour
12 policies and practices. Schmidt Decl., ¶ 8.

13 On February 5, 2020, Plaintiff filed a class action complaint in Santa Barbara Superior
14 Court, Case No. 20CV00759, alleging Defendant failed to: (i) pay all overtime wages owed;
15 (ii) pay all minimum wages; (iii) provide all lawful meal periods; (iv) authorize and permit all
16 lawful rest periods; (v) issue accurate and itemized wage statements; (vi) timely pay all final
17 wages upon separation; and (vii) comply with California’s Unfair Competition laws (“Class
18 Action”). Schmidt Decl., ¶ 9. On February 11, 2020, Plaintiff submitted a letter to the LWDA to
19 advise the LWDA and Defendant of her intent to pursue civil penalties under PAGA based on the
20 Labor Code violations pled in the Class Action. *Id.* On April 16, 2020, Defendant removed the
21 action to the United States District Court, Central District, Case No. 2:20-cv-03528. *Id.* On April
22 17, 2020, Plaintiff filed a separate representative action complaint against Defendant alleging a
23 single cause of action for civil penalties under PAGA (“PAGA Action”). *Id.* The Court granted
24 the Parties’ stipulation to stay the PAGA Action on October 23, 2020. *Id.* The Parties then
25 engaged in significant formal class certification related discovery in the Class Action, including
26
27

28 Labor Code violations pled in Plaintiff’s operative FAC and Plaintiff’s letter to the LWDA, submitted on
February 1, 2023. *See* Settlement, ¶ 4B.

1 formal written discovery, mailing a *Belaire-West* notice to the Settlement Class Members, and
2 taking the depositions of Defendant’s five FRCP 30(b)(6) witnesses. *Id.*

3 In anticipation of mediation, Defendant provided Plaintiff with electronic timekeeping
4 records and corresponding payroll records for all Settlement Class Members who worked during
5 the relevant time period. Schmidt Decl., ¶ 10. Through formal discovery, Defendant produced
6 thousands of pages of policies, handbooks, bonus plans, and other relevant documents in effect
7 during the relevant time period. *Id.* Plaintiff retained an expert with a Ph.D. in economics to
8 analyze the data and create a class-wide exposure model for the claims at issue. *Id.* On February
9 2, 2023, the Parties participated in a full-day mediation with Jeffrey Krivis, Esq., a well-respected
10 wage and hour class action mediator. *Id.*, ¶ 11. Although the matter did not settle on that day, the
11 Parties continued settlement negotiations through Mr. Krivis and were eventually able to agree
12 on terms to a global settlement of all claims in the Class Action and PAGA Action. *Id.* Over the
13 following months, the Parties negotiated and executed the long-form Settlement Agreement that
14 is now before this Court for preliminary approval. *Id.* As a material term of the Settlement
15 Agreement, the Parties stipulated to consolidating the claims in the Class Action into the PAGA
16 Action (this was completed on May 25, 2023), dismissing the Class Action without prejudice,
17 and moving forward with settlement approval of all claims in this Court.³ *Id.*

18 **B. Plaintiff’s Claims and Defendant’s Defenses**

19 **1. Meal Period Violations**

20 Plaintiff asserts that Defendant failed to provide Plaintiff and the Settlement Class
21 Members with all duty-free, uninterrupted 30-minute meal periods commencing before the end
22 of the fifth hour of work, and regularly failed to provide second, duty-free, uninterrupted 30-
23 minute meal periods commencing before the end of the tenth hour of work. Schmidt Decl., ¶ 12;
24 *see also* Labor Code § 512(a); *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1041 (“We
25

26 ³ As part of this consolidation process, Krystal Pecoraro was removed as a named plaintiff and will not
27 take part in this Settlement. Ms. Pecoraro resolved all of her claims as part of a previous class action
28 settlement on behalf of Defendant’s piece-rate employees, titled *Socorro Chavez de Barrios v. Wyndham*
Vacation Ownership, Inc., Monterey County Superior Court Case No. 15CV000228, final approval
granted on January 29, 2018.

1 conclude that, absent waiver, section 512 requires a first meal period no later than the end of an
2 employee's fifth hour of work..."); *Benton v. Telecom Network Specialists, Inc.* (2013) 220
3 Cal.App.4th 701, 728-29 ("[The wage order] imposes an affirmative obligation on every
4 employer to authorize and provide legally required meal and rest breaks; if it fails to do so, it has
5 violated the law and is liable."). Specifically, Plaintiff alleges that she and other non-exempt
6 employees in the "Guest Services Agent" position were regularly unable to take their meal periods
7 if it left the front desk unattended in their absence. Schmidt Decl., ¶ 12. Further, Plaintiff
8 maintains that she and other non-exempt employees in the "Housekeeper" position were regularly
9 unable to take their meal periods due to Defendant's strict cleaning requirements as well as the
10 volume of rooms to clean each day. *Id.*.

11 Defendant argues it maintains a legally-compliant meal period policy, that it has always
12 provided meal periods consistent with that policy, and that it is only required to "provide" the
13 opportunity to take meal periods, not "ensure" meal periods are taken. Schmidt Decl., ¶ 13; *see*
14 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard and holding employers only have
15 to "provide" employees the opportunity to take meal periods). Defendant further maintains that
16 any meal period violations reflected in timekeeping records were the result of employee choice,
17 not Defendant's policies, thereby precluding liability. Schmidt Decl., ¶ 13. Defendant further
18 contends that putative class members signed valid meal period waivers for shifts between 10 and
19 12 hours. *Id.* Defendant also argues that, even though Defendant always provided compliant
20 meals, Defendant paid meal period premium payments in instances that a meal period was not
21 taken. *Id.* Defendant also argues individualized inquiries into why meal periods are late, short, or
22 missed for the "Guest Services Agent" and "Housekeeper" positions, whether there was a valid
23 waiver, and whether a premium was paid, thereby precluding class certification of this claim. *Id.*

24 **2. Rest Period Violations**

25 Plaintiff alleges that Defendant failed to authorize and permit Settlement Class Members
26 to take all lawful rest periods to which they were entitled. Schmidt Decl., ¶ 14.; *see also See*
27 *Brinker, supra*, 53 Cal.4th at 1029 ("Employees are entitled to 10 minutes' rest for shifts from
28 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10

1 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on”). As with meal
2 periods, Plaintiff contends Defendant failed to provide her and other non-exempt employees in
3 the “Guest Services Agent” position with front desk coverage, resulting in an inability to take rest
4 periods on a regular basis. Schmidt Decl., ¶ 14. Similarly, Plaintiff maintains that she and other
5 non-exempt employees in the “Housekeeper” position were scheduled to clean a high volume of
6 rooms in a workday, which did not include time for 10-minute uninterrupted rest periods. *Id.*

7 Defendant asserts it has always authorized and permitted all required rest periods for their
8 non-exempt employees. Schmidt Decl., ¶ 15. Defendant argues it maintained lawful rest period
9 policies throughout the Class Period, and that company policy did not prohibit employees from
10 taking their rest periods. *Id.* Further, Defendant asserts that this claim is unmanageable, as it
11 requires individualized inquiries into why rest periods were missed for “Guest Services Agent”
12 and “Housekeeper” positions, whether specific employees were prevented from taking their
13 authorized rest periods, and on which days, all of which, Defendant argues, Plaintiff will be
14 unable to substantiate with any common, documentary evidence, as rest periods are not required
15 to be recorded. *Id.*

16 **3. Unpaid Wages – Rounding**

17 Plaintiff asserts that, for a portion of the Class Period (from February 5, 2016, through
18 January 5, 2018), Defendant maintained an unlawful rounding practice that resulted in Defendant
19 systematically underpaying Plaintiff and other Settlement Class Members’ earned wages.
20 Schmidt Decl., ¶ 16; *see also Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638
21 (holding that “[I]f an employer...can capture and has captured the exact amount of time an
22 employee has worked during a shift, the employer must pay the employee for all the time
23 worked.” (Internal quotations omitted)). Specifically, Plaintiff claims Defendant recorded
24 Plaintiff and other Settlement Class Members’ timeclock punches to the minute, but rounded
25 Plaintiff’s and other Settlement Class Members’ timekeeping entries in an uneven manner to the
26 employees’ detriment. Schmidt Decl., ¶ 16. Plaintiff asserts that this rounding practice resulted in
27 unpaid wages. *Id.*; *see also* Wage Order 5, § 3-4; Labor Code §§ 510(a), 1197, and 1182.12.

1 In response, Defendant contends that its timekeeping and rounding practice are neutral
2 and operate in an even-handed way, which Defendant asserts is lawful under the ruling in *See's*
3 *Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Schmidt Decl., ¶ 17; *see also*
4 *AHMC Healthcare, Inc. v. Superior Ct.* (2018) 24 Cal.App.5th 1014, 1027-29 (finding
5 employer's time-rounding policy lawful where it was neutral "on its face" and "in practice").
6 Further, Defendant argues it has voluntarily compensated Settlement Class Members for any
7 potential underpayment due to the rounding practice, thereby drastically minimizing any alleged
8 exposure. Schmidt Decl., ¶ 17. As a result, Defendant contends that Plaintiff will have difficulty
9 certifying this claim as there is no substantial benefit to maintaining a class when employees have
10 been paid back the allegedly unpaid wages already. *Id.*

11 **4. Unpaid Overtime - Regular Rate Miscalculation**

12 Plaintiff asserts that Defendant paid the Settlement Class Members non-discretionary
13 incentive pay, but failed to correctly include the value of the incentive pay when calculating the
14 employees' respective regular rates of pay for overtime purposes, which resulted in Defendant
15 underpaying Plaintiff and the Settlement Class Members for overtime wages earned during the
16 Class Period. Schmidt Decl., ¶ 18; *see* Lab. Code § 510(a); *see Huntington Memorial Hosp. v.*
17 *Sup. Ct.* (2005) 131 Cal.App.4th 893, 902-03 ("[I]n determining what payments are to be included
18 in or excluded from the calculation of the regular rate of pay, California will adhere to the
19 standards adopted by the U.S. Department of Labor."); *see also* 29 C.F.R. §778.211(c) ("Bonuses
20 which are announced to employees to induce them to work more steadily or more rapidly ... are
21 regarded as part of the regular rate of pay. Most attendance bonuses, individual or group
22 production bonuses, bonuses for quality and accuracy of work ... must be included in the regular
23 rate of pay."). Specifically, Plaintiff alleges that Defendant rewarded Plaintiff and other
24 Settlement Class Members with retention bonuses, monthly and quarterly attendance bonuses,
25 and bonuses based on customer feedback (collectively "Incentive Pay"). Schmidt Decl., ¶ 18.
26 Plaintiff's expert confirmed that Defendant did not accurately incorporate this Incentive Pay into
27 the Settlement Class Members' regular rate of pay when computing overtime. *Id.*

1 In response, Defendant asserts that the Incentive Pay payments were implemented on a
2 location-by-location basis, were based on various and changing criteria, and were ultimately
3 discretionary. Schmidt Decl., ¶ 19. As a result, Defendant asserts that this claim is unmanageable,
4 as it requires individualized inquiries into each payment to determine the terms by which each
5 bonus could be earned, whether each employee met those terms, whether the communication of
6 the bonus to employees meets the criteria necessary for a non-discretionary payment, and whether
7 there was actually any underpayment of overtime on any given week due to the bonus. Each of
8 these steps would result in an unmanageable series of mini-trials. *Id.*

9 **5. Wage Statement Penalties, Waiting Time Penalties, and PAGA Penalties**

10 As a result of Defendant’s alleged failure to pay all overtime wages, minimum wages, and
11 meal period and rest period premiums, Plaintiff asserts that Defendant also failed to issue accurate
12 and itemized wage statements and failed to timely pay all final wages at the time of separation.
13 Schmidt Decl., ¶ 20; *see also* Labor Code §§ 203(a) and 226(a). Plaintiff also seeks PAGA civil
14 penalties on behalf of all aggrieved employees. Schmidt Decl., ¶ 20; *see also Amaral v. Cintas*
15 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 (“As we have explained, they [civil penalties
16 under PAGA] are mandatory, not discretionary.”).

17 In response, Defendant argues that Plaintiff’s underlying claims will fail and, as a result,
18 the derivative wage statement, waiting time, and PAGA claims will also fail. Schmidt Decl., ¶ 24;
19 *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes
20 of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains that
21 Plaintiff cannot show that the wage statement violations were “knowing and intentional,” or that
22 the putative Settlement Class Members “suffer[ed] injury” as a result of the alleged violations, as
23 required by Labor Code § 226(e) for the imposition of wage statement penalties. Schmidt Decl.,
24 ¶ 24; *see* Labor Code § 226(e)(1). Moreover, Defendant maintains that its good faith defenses to
25 Plaintiff’s underlying claims and its voluntary repayment of disputed wages would preclude the
26 recovery of waiting time penalties, which are only available for the “willful” failure to pay wages,
27 and that this Court would exercise its discretion to substantially reduce any PAGA penalties
28 awarded. Schmidt Decl., ¶ 24; *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that

any wages are due will preclude imposition of waiting time penalties under Section 203.”); Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of exposure).

III. THE PROPOSED SETTLEMENT

A. Essential Terms Of The Settlement

If the Court preliminarily approves this Settlement, Defendant will pay a Maximum Settlement Amount (“MSA”) of \$3,800,000. Schmidt Decl., ¶ 26; Settlement, ¶ 5. This Settlement is non-reversionary, and Settlement Class Members will automatically receive their Individual Settlement Payments unless they affirmatively opt-out. Settlement, ¶ 5.C. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$3,800,000.00
Minus Court-approved attorneys’ fees (1/3):	\$1,266,666.67
Minus Court-approved attorneys’ costs (up to):	\$100,000.00
Minus Court-approved enhancement payment:	\$5,000.00
Minus settlement administrator costs (up to):	\$22,500.00
Minus LWDA’s share of PAGA penalties:	\$225,000.00
Net Settlement Amount:	\$2,180,833.33

1. Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys’ fees and costs, Plaintiff’s Class Representative Enhancement Payment, settlement administration costs, and the LWDA’s share of PAGA civil penalties, the Settlement provides for an estimated NSA of no less than \$2,180,833.33. *See* Settlement, ¶ 6.A. Individual Settlement Payments will be calculated based on the proportionate number of eligible workweeks worked by each participating Settlement Class Member during the Class Period divided by the total number of eligible workweeks worked by all participating Settlement Class Members. *Id.*, ¶ 6.B.ii. The employee share of PAGA civil penalties (\$75,000) will be paid to all PAGA Aggrieved Employees, regardless of their decision to participate in the Settlement, based on the proportionate number of pay periods worked by the PAGA Aggrieved Employee during the PAGA Period. *Id.*, ¶¶ 3, 4.B., 6.B.i.

Defendant represents that there were approximately 2,757 Settlement Class Members,

1 who worked approximately 200,000 workweeks at the time of mediation. Schmidt Decl., ¶ 26;
2 Settlement, ¶ 5.E. Based on the estimated NSA, average Individual Settlement Payments are
3 projected to be approximately \$791.02. Schmidt Decl., ¶ 26. Settlement Class Members will have
4 60 calendar days from the date of the initial mailing of the Notice Packet to opt-out or object to
5 the Settlement, thereby providing ample time to review the Class Notice without unduly delaying
6 the Settlement. *See* Settlement, ¶ 11.D. Those individuals who do not opt-out of the Settlement
7 will be bound by its terms and will release all claims against Defendant as detailed in the
8 Settlement. *Id.*, ¶ 4.A.

9 **2. Attorneys' Fees, Costs, and Class Representative Enhancement Payment**

10 At the time of seeking final settlement approval, Plaintiff will apply for a Class
11 Representative Enhancement Payment in the amount of \$5,000 for her service to the Settlement
12 Class and her general release of all claims. Schmidt Decl., ¶ 27; *see* Settlement ¶¶ 4.C., 8.
13 Plaintiff's requested class representative Enhancement Payment is intended to recognize the
14 significant time and effort that she expended on behalf of the Settlement Class, including
15 gathering relevant documents for use in the lawsuit and providing factual information to her
16 attorneys, holding various phone calls with her attorneys to discuss the claims in the lawsuit and
17 Defendant's practices, helping identify other Settlement Class Members who experienced the
18 same violations as Plaintiff, assisting her attorneys in preparing for mediation, making herself
19 available the entire day of mediation, and otherwise assisting her attorneys in moving the case
20 towards resolution, the significant risks Plaintiff undertook by serving as the named plaintiff, and
21 the fact that she agreed to a general release of all claims subject to a waiver of Civil Code § 1542.
22 Schmidt Decl., ¶ 27; Ramirez Decl., ¶ 4; Settlement, ¶¶ 4.C., 8.

23 Class Counsel will also apply for a Class Counsel Award of up to one third of the MSA
24 (currently estimated at \$1,266,666.67), and up to \$100,000 in reimbursement for actual litigation
25 costs. Schmidt Decl., ¶ 28; *see* Settlement, ¶¶ 5.C, 7. Plaintiff submits that the requested fee is
26 fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
27 purely contingent fee basis. Schmidt Decl., ¶ 28. Class Counsel has incurred substantial attorneys'
28 fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research

1 and analysis, engaged in formal class certification related discovery, including drafting, meeting
2 and conferring with Defendant's counsel, and mailing out the *Belair-West* notice to the
3 Settlement Class Members, *taking five separate depositions* of Defendant's FRCP
4 30(b)(6) witnesses, drafting a class certification motion, reviewing thousands of pages of policies,
5 handbooks, bonus plans, and other relevant documents produced by Defendant, extensively
6 reviewing and evaluating the produced timekeeping and payroll records with the assistance of a
7 retained expert to build a comprehensive damages model, preparing for and attending mediation,
8 negotiating and drafting the long-form Settlement Agreement, and Notice Packet documents,
9 preparing this motion for preliminary approval, and otherwise litigating the case. *Id.* Class
10 Counsel will also expend future attorney time attending the hearing on this Motion, overseeing
11 the Notice process, drafting the Final Approval Motion and supporting documents, attending the
12 Final Approval hearing, and fielding questions from Settlement Class Members. *Id.*

13 Both California and federal courts have recognized that an appropriate method for
14 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
15 as a result of the settlement. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506;
16 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. Historically, courts have
17 awarded percentage fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6 (4th
18 Ed. 2013). Class Counsel submits that the request for attorneys' fees is reasonable when viewed
19 as an overall percentage of the Settlement in light of the risks and work undertaken, the positive
20 results obtained for the class, and the efficiency with which the Parties have conducted the
21 litigation. Class Counsel will seek an award of attorneys' fees when seeking final approval.

22 **IV. ARGUMENT**

23 **A. Preliminary Approval Is Warranted**

24 California Rule of Court 3.769 conditions the settlement of a class action on court
25 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
26 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
27 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the
28 settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d

1 1011, 1026 (9th Cir. 1998) (stating that Rule 23(e) requires the trial court to determine “whether
2 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
3 preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor*
4 *ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed
5 settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product
6 of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027.
7 There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s
8 length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

9 **1. Standard for Preliminary Approval**

10 The Court should consider the following factors when making a fairness determination:
11 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
12 litigation, the risk of maintaining class action status through trial, the amount offered in
13 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
14 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
15 “[T]he court is free to engage in a balancing and weighing of factors depending on the
16 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the
17 proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

18 **a. Strength of Plaintiff’s Case**

19 Class Counsel, along with their expert with a Ph.D. in economics, carefully vetted the
20 claims at issue, reviewed all Settlement Class Member timekeeping and payroll records along
21 with relevant policy documents, and created a comprehensive damages model for Defendant’s
22 liability. *See Schmidt Decl.*, ¶ 29. Although Plaintiff steadfastly maintains that her claims are
23 meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in
24 proceeding with class certification and trial. As explained in detail in Section II.B., *supra*,
25 Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and with respect
26 to class certification. Although she was prepared to litigate these claims through class certification
27 and ultimately through trial, it was far from certain that Plaintiff would be able to recover a greater
28 amount should this matter proceed through trial. Thus, this factor supports preliminary approval.

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

2 At the time the Parties reached the proposed Settlement, Plaintiff's deadline to file her
3 Motion for Class Certification was less than a month away. Schmidt Decl., ¶ 29. Absent
4 settlement, the Parties would have had to expend substantial time and resources fully briefing that
5 motion along with additional depositions and merits discovery. *Id.* Although the Parties engaged
6 in substantial formal and informal discovery and information exchange prior to mediation, the
7 Parties will incur considerably more attorneys' fees and costs through trial. *Id.* This Settlement
8 avoids these considerable costs, risks, and the accompanying burden of continued litigation on
9 the Court. Thus, this factor supports preliminary approval.

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

11 At the time of the proposed Settlement, Plaintiff had not filed her motion for class
12 certification. *See* Schmidt Decl., ¶ 29. Had the Court certified any claims, Plaintiff anticipated
13 that Defendant would seek decertification of any classes. Thus, this factor supports approval.

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

15 This proposed Settlement provides a fair and reasonable recovery for the Settlement Class
16 in the face of disputed claims. After analyzing Defendant's produced data, Class Counsel's expert
17 conducted a class-wide exposure analysis, forecasting the total expected recovery as follows:

18 Meal Period Violations: \$978,913

19 Based on Plaintiff's expert's analysis of Defendant's records, and giving credit for meal
20 period premiums already paid, Plaintiff calculated Defendant's maximum exposure for meal
21 period violations at \$3,915,652 (190,334 first meal violations + 87,665 second meal violations x
22 \$15.49 average meal period premium – \$390,553 meal period premiums). Schmidt Decl., ¶ 12.
23 However, Defendant maintains that it provided all legally compliant meal periods to the
24 Settlement Class Members and that any missed or non-compliant meal periods were the result of
25 employee choice, not Defendant's policy. *Id.*, ¶ 13. Defendant also argues Plaintiff's meal period
26 claim is not suited for class certification, since individualized inquiries will be required to
27 determine why each meal period was late, short, or missed for the "Guest Services Agent" and
28 "Housekeeper" positions, whether there was a valid waiver, and whether a premium was paid on

1 each such shift, thereby precluding class certification of this claim. *Id.* Given these potential
2 defenses, Plaintiff discounted Defendant's maximum exposure by 50% for the risk of non-
3 certification and 50% for the risk of being unsuccessful on the merits or obtaining reduced
4 damages, to arrive at an estimated exposure of \$978,913. *Id.*, ¶ 12.

5 Rest Period Violations: \$447,963

6 Plaintiff's data analysis revealed that non-exempt employees worked an aggregate total
7 of 1,204,980 shifts during the Class Period. Schmidt Decl., ¶ 14. Due to Defendant's unlawful
8 rest period practices, Plaintiff contends that she was prevented from taking a full, uninterrupted
9 10-minute rest period at least 3 shifts per week during the Class Period. *Id.* Accordingly, Plaintiff
10 calculated Defendant's maximum potential exposure on this claim at \$11,199,084 (722,988 rest
11 period violations x \$15.49 average rest period premium). *Id.* But as noted above, Defendant
12 argues it have always authorized and permitted duty-free rest periods in accordance with
13 California law and any failure to take a rest period is a result of individual employee choice, rather
14 than company-wide policies or practices. *Id.*, ¶ 15. Further, Defendant asserts that this claim is
15 not amenable to class certification given the individual inquiries required to determine whether
16 and why each employee missed a rest period on any given shift, particularly given that rest periods
17 were not recorded. *Id.* Given these defenses, Plaintiff discounted the maximum exposure by 80%
18 for the risk of non-certification, and by an additional 80% for risk of losing on the merits, to arrive
19 at an estimated exposure of \$447,963. *Id.*, ¶ 14.

20 Unpaid Wages – Rounding: \$39,157

21 Plaintiff's data analysis of Defendant's timekeeping and payroll data revealed that
22 Defendant's rounding practice resulted in the putative class members not being paid for an
23 aggregate of 13,482 recorded hours of work. Schmidt Decl., ¶ 16. Therefore, Plaintiff calculated
24 Defendant's exposure on this claim at \$208,836 (13,482 unpaid hours x \$15.49 average regular
25 rate). *Id.* Defendant argues that its rounding practice was neutral, both on its face and in practice,
26 and that such a policy is lawful under *See's Candy*. *Id.*, ¶ 17. Defendant contends that it paid all
27 wages owed to employees and that its rounding system did not operate in a way to deprive
28 employees of time worked. *Id.* Additionally, Defendant contends that it stopped its rounding

practice and paid back allegedly underpaid wages. *Id.* Moreover, because *Camp v. Home Depot* has been granted review by the California Supreme Court, there is a potential risk that *Camp* could be overruled, casting doubt on Plaintiff's ability to recover anything for this claim. Plaintiff therefore discounted the maximum potential exposure by 25% for the risk of non-certification and 75% for the risk of being unsuccessful on the merits or an inability to recover the entire damages figure, to arrive at an estimated exposure of \$39,157. *Id.*, ¶ 16.

Unpaid Overtime - Regular Rate Miscalculation: \$5,388

Giving Defendant full credit for overtime true-ups already paid, Plaintiff's expert determined the Settlement Class Members was underpaid an aggregate amount of \$9,579 in overtime wages due to Defendant's regular rate miscalculation during the Class Period. Schmidt Decl., ¶ 18. Defendant asserts it accurately compensated its employees for all overtime wages owed through the use of overtime true-up payments and the Incentive Pay at issue was only in effect at a minority of its locations for a limited time. *Id.*, ¶ 19. Further, Defendant asserts that this claim is unmanageable, as it requires individualized inquiries into each specific bonus to determine whether the bonus was actually non-discretionary, resulting in an unmanageable series of mini-trials. *Id.* Given these potential defenses, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification and 25% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$5,388. *Id.*, ¶ 18.

Wage Statement Penalties: \$1,486,900

According to the key data points provided by Defendant, approximately 1,598 Settlement Class Members are eligible for wage statement penalties, and a total of 60,275 wage statements were issued during the relevant one-year statute of limitations period. Schmidt Decl., ¶ 21. Plaintiff calculated Defendant's maximum possible wage statement exposure as \$5,947,600 ((1,598 initial violations x \$50 per pay period) + (58,677 subsequent pay periods x \$100 per pay period)). *Id.* However, Defendant raised numerous defenses, including that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff could not show that the Settlement Class Members "suffer[ed] injury" as a result of any alleged violations. *Id.*, ¶ 24. Defendant further argued that Plaintiff's underlying claims would fail, and, therefore, her

1 derivative wage statement claim would also fail. *Id.* Therefore, Plaintiff discounted the maximum
2 exposure by 50% for the risk of non-certification of the underlying claims and 50% for a risk of
3 being unsuccessful on the merits, for an estimated recovery on this claim of \$1,486,900. *Id.*, ¶ 21.

4 **Waiting Time Penalties: \$665,079**

5 Based on data provided by Defendant, approximately 1,789 Settlement Class Members
6 separated their employment during the Class Period. Schmidt Decl., ¶ 22. Assuming Plaintiff can
7 prove that each of these employees were owed wages at the time of their separation, Plaintiff
8 calculated a maximum exposure of \$6,650,786 (1,789 former employees x \$15.49 average hourly
9 rate x 8 hours x 30 days). *Id.* Defendant maintains that waiting time penalties are not appropriate
10 because Plaintiff's claims fail on the merits, and given its defenses, including the fact that it made
11 numerous "good faith" repayments to employees during the Class Period, Plaintiff cannot show
12 that any failure by Defendant to pay all final wages was wilful under 8 Cal. Code Regs. § 13520.
13 *Id.*, ¶ 24. Thus, Plaintiff discounted this claim by 50% for the risk of non-certification and by an
14 additional 80% for risk of being unsuccessful on the merits or failing to establish willfulness, for
15 an estimated recovery of \$665,079. *Id.*, ¶ 22.

16 **PAGA Penalties: \$1,205,500**

17 Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in
18 which she could prove an underlying Labor Code violation. Schmidt Decl., ¶ 23. According to
19 Plaintiff's data analysis, the Settlement Class Members worked a combined total of 60,275 pay
20 periods during the PAGA liability period. *Id.* Plaintiff therefore calculates Defendant's maximum
21 PAGA exposure at \$6,027,500 (60,275 pay periods x \$100 per violation). *Id.*; *see also Amaral*,
22 *supra*, 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified
23 that it is violating a Labor Code provision). However, these penalties are exclusively derivative
24 of the underlying violations that Defendant vigorously dispute, both as to certification and the
25 merits. *See Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D. Cal.
26 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying
27 claims). Plaintiff also recognizes that the Court has discretion to substantially reduce any award
28 of PAGA penalties. Schmidt Decl., ¶ 24. Therefore, Plaintiff discounted the maximum figure by

80% to account for the risk of non-certification, the risk that she would not prevail on the underlying claims, and for the likely possibility that this Court would reduce the awarded PAGA penalties, to arrive at an estimated exposure of \$1,205,500. *Id.*, ¶ 23.

Using these estimated figures, Plaintiff estimated that a potential recovery for the Settlement Class would be approximately \$4,828,900. Schmidt Decl., ¶ 25. Thus, the proposed recovery to the Settlement Class of \$3,800,000 represents approximately 78.7% of Plaintiff's potential class-wide recovery, which is well within the range approved by courts as being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding towards class certification and trial. *Id.*; see, e.g., *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval..."); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotations omitted). Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to the Settlement Class Members without the uncertainty, delay, and additional expense of further litigation.

e. Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions from both the plaintiff and defense side, and who have been appointed as class counsel in numerous cases alleging similar claims. Schmidt Decl., ¶¶ 2-7; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; and Declaration of Andrew J. Rowbotham ("Rowbotham Decl."), ¶¶ 2-7. Class Counsel retained an expert who conducted an extensive review and analysis of Defendant's produced timekeeping and payroll records and drew on their extensive experience

1 in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Schmidt Decl.,
2 ¶¶ 10-11. It was only after the completion of this work, and extensive discovery, that the Parties
3 attended mediation and ultimately accepted a mediator's proposal for a class-wide settlement of
4 all claims at issue. *Id.* Thus, this factor strongly supports preliminary approval of the Settlement.

5 **2. Preliminary Approval Standard is Met**

6 At this stage, the Court can grant preliminary approval of the Settlement and direct that
7 the Class Notice be given if the proposed Settlement: (1) falls within the range of possible
8 approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and
9 (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3rd Ed. 1995);
10 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

11 **a. Settlement is Within the Range of Possible Approval**

12 The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class
13 Members in light of the significant risks of litigation. The proposed Settlement will provide
14 compensation for contested claims, while only releasing the claims actually at issue in this
15 litigation. The average payment of \$791.02 is a significant recovery in the wage and hour class
16 action context. Thus, the proposed Settlement is within the range of possible approval such that
17 notice should be provided to the Settlement Class Members to consider the Settlement. The Court
18 will have the opportunity to again assess the reasonableness of the Settlement after the Settlement
19 Class Members have had the opportunity to opt-out or object.

20 **b. Settlement Resulted from Serious, Informed, Non-Collusive Negotiations**

21 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
22 of the exchange of pertinent information, including all relevant policies, employee timekeeping
23 and payroll records, and key data points which were analyzed by Plaintiff and her retained expert;
24 arm's-length negotiations by counsel; mediation before an experienced wage and hour class
25 action mediator; and additional negotiations until the terms of the long-form Settlement were
26 agreed upon and finalized. Schmidt Decl., ¶¶ 10-11; *see also* Kullar, *supra*, 168 Cal.App.4th at
27 130. Thus, this factor supports preliminary approval.

1 **c. Settlement is Devoid of Obvious Deficiencies**

2 The Settlement will provide tangible monetary relief to the Settlement Class Members.
3 Moreover, the amounts proposed for Plaintiff’s class representative Enhancement Payment,
4 settlement administration costs, attorneys’ fees and costs to Class Counsel, and the LWDA’s
5 portion of PAGA civil penalties are all reasonable and appropriate. Because the Settlement is
6 devoid of obvious deficiencies, this final factor supports preliminary approval.

7 **B. Court Should Certify The Settlement Class**

8 The proposed Settlement Class satisfies the criteria for certification of a settlement class
9 under California law because: (1) the individuals in the Settlement Class are so numerous that
10 joinder would be impractical; (2) common questions of law and fact predominate over individual
11 questions such that class certification is the most efficient and desirable way to maintain this
12 litigation; (3) Plaintiff’s claims are typical of the claims of the absent Settlement Class Members;
13 and (4) Plaintiff and Plaintiff’s counsel will fairly and adequately represent the interests of the
14 absent Settlement Class Members. *See* Cal. Code Civ. Proc. § 382.

15 **1. Proposed Class is Ascertainable and Numerous**

16 A class is “ascertainable” where the members “may be readily identified without
17 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
18 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
19 Class is defined as all current and former non-exempt housekeeping and guest services employees
20 who worked for Defendant in California at any time between February 5, 2016, and May 23,
21 2023. *See* Settlement, ¶ 2. Settlement Class Members can be easily identified using employment
22 and payroll records. *See* Schmidt Decl., ¶ 10. Defendant represents that the Settlement Class
23 consists of approximately 2,757 individuals (as of the time of mediation), rendering it
24 impracticable to bring all Settlement Class Members before the Court. *Id.*, ¶ 26. Thus, the
25 proposed Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

26 **2. Common Issues of Law and Fact Predominate**

27 The focus in a certification dispute is not on the merits of the case, but rather on what
28 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*

1 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated
2 on Defendant's alleged failures to pay all minimum and overtime wages owed, pay all meal and
3 rest period premiums, furnish accurate and itemized wage statements, and pay all final wages
4 owed upon separation of employment. These types of claims are commonly held to be proper for
5 class certification.

6 **3. Claims of the Named Plaintiff are Typical**

7 The typicality requirement is satisfied where class representatives have claims that are
8 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
9 Cal.App.3d 1341, 1347. Here, like other Settlement Class Members, Plaintiff was employed by
10 Defendant as a non-exempt employee in California and was subject to Defendant's allegedly
11 unlawful wage and hour policies/practices during the Class Period. Ramirez Decl., ¶¶ 2-4.
12 Plaintiff received incentive compensation, was subject to Defendant's rounding practice, was not
13 provided all of her meal and rest periods, was not provided accurate wage statements, and was
14 not paid all final wages owed to her upon separation. *Id.* Plaintiff was therefore impacted by the
15 same challenged policies that allegedly injured the Settlement Class as a whole and was subject
16 to the same defenses forwarded by Defendant as to the Settlement Class, and is therefore typical.

17 **4. Plaintiff and Class Counsel are Adequate to Represent the Class**

18 The adequacy of representation requirement examines conflicts of interest between named
19 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
20 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will
21 adequately represent the Settlement Class Members as there are no conflicts between the named
22 Plaintiff and the Settlement Class Members she seeks to represent, and Plaintiff possesses claims
23 that are in line with those of the Settlement Class Members. *See McGhee v. Bank of America*
24 (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the
25 plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those
26 of the proposed class). Class Counsel also has extensive experience in wage and hour class action
27 litigation. *See* Schmidt Decl., ¶¶ 2-7; Haines Decl., ¶¶ 2-8; Rowbotham Decl., ¶¶ 2-7.

1 **C. Court Should Order Distribution Of The Proposed Class Notice**

2 This Court should order distribution of the proposed Notice Packet in both English and
3 Spanish to the Settlement Class Members by first class mail, postage prepaid, using the last known
4 mailing address information provided by Defendant. This manner of giving notice is the “best
5 notice practicable” under the circumstances because it provides “individual notice to all members
6 who can be identified through reasonable effort.” *See Eisen v. Carlisle and Jacquelin*, 417 U.S.
7 156, 173 (1974). The Parties propose that the settlement be administered by CPT Group, Inc.
8 (“CPT”), an experienced class action settlement administrator. *See Declaration of Julie Green*.
9 Settlement Class Members’ addresses will be ascertainable through Defendant’s personnel
10 records, and Defendant will provide all Settlement Class Members’ full names, last known
11 mailing addresses, social security numbers, and workweek data to CPT within thirty (30) calendar
12 days after of the Court signs an order preliminarily approving the Settlement. *See Settlement*,
13 ¶ 11.A. CPT will run the Settlement Class Members’ addresses through the National Change of
14 Address database and/or conduct skip traces to obtain current address information. *Id.*, ¶ 11.B.

15 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
16 because it advises the Settlement Class Members of the nature of the claims, basic contentions
17 and denials of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out
18 or object to the Settlement and the procedures by which to do so, explains the recovery formula
19 and expected recovery amount for each Class Member, and advises them that they will be bound
20 by the terms of the Settlement if they do not request exclusion. *See Schmidt Decl.*, Exhibit 2. The
21 proposed Class Notice will also notify the Settlement Class of the Final Approval Hearing date,
22 provide Class Counsel’s contact information, and advise Settlement Class Members that they may
23 enter an appearance through counsel if they so wish. *Id.* Plaintiff contends this manner of giving
24 notice is the most reliable and cost-effective method of reaching Settlement Class Members.
25 Notice of the Settlement has also been submitted to the LWDA. *See id.*, ¶ 30, Exhibit 3.

26 **D. Court Should Set A Final Approval Hearing**

27 This Court should set a hearing for final approval of the Settlement on a date appropriately
28 scheduled to follow the deadline by which Settlement Class Members must file objections to the

1 Settlement or opt-out. *See* California Rule of Court 3.769.

2 **V. CONCLUSION**

3 Plaintiff respectfully requests that the Court preliminarily approve the proposed
4 Settlement, provisionally certify the Settlement Class, and enter the [Proposed] Order submitted
5 concurrently herewith.

6
7 Dated: September 15, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

8 By:

9 
Fletcher W. Schmidt
Attorneys for Plaintiff