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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JESSICA GARCIA, RUDY JIMENEZ, individually and on behalf of other individuals similarly situated,

Plaintiffs,

v.

THE MERCHANT OF TENNIS, INC., a California corporation, dba U.S. Merchants, and DOES 1 through 100,

Defendants.

Case No. CIVDS2005614

[*Assigned for all purposes to Hon. Joseph B. Widman, Dept. S36-SBJC*]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: April 23, 2026
Time: 9:00 a.m.
Dept.: S36-SBJC

Complaint Filed: February 26, 2020
Trial Date: None Set

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PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 23, 2026 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department S36-SBJC of the above-entitled Court, located at 247 West 3rd Street, San Bernardino, California 92415, Plaintiffs Jessica Garcia and Jose Hernandez Solis ("Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

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

   > All non-exempt, hourly employees who worked for Defendant The Merchant of Tennis, Inc. in California at any time from June 8, 2019 through December 10, 2025 (the "Class Period").

3. Preliminary appointment of Plaintiffs Jessica Garcia and Jose Hernandez Solis as Class Representatives;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC and Marcus J. Bradley and Kiley L. Grombacher of Bradley/Grombacher, LLP as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Service Payments to Plaintiffs, civil penalties payable to the Labor & Workforce Development Agency ("LWDA"), settlement administration costs, and attorneys' fees and costs to Class Counsel;
6. Appointment of Apex Class Action LLC as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Class Action and PAGA Settlement Agreement ("Settlement Agreement").

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the declarations of attorneys Paul K. Haines and Marcus J. Bradley, Plaintiffs Jessica Garcia and Jose Hernandez Solis, Sean Hartranft of Apex Class Action LLC, and the exhibits attached thereto; the Settlement Agreement; 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.

Defendant does not intend to oppose this Motion and given the multiplicity of issues addressed in this Motion, Plaintiffs' memorandum of points and authorities exceeds the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiffs respectfully request the Court's consideration of Plaintiffs' memorandum of points and authorities, which is 26 pages in length.

Dated: March 16, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jessica Garcia and Jose Hernandez Solis ("Plaintiffs") seek preliminary approval of a class and representative action settlement ("Settlement") with Defendant The Merchant of Tennis, Inc. ("MOT") (collectively with Plaintiffs, the "Parties"). This is a significant non-reversionary settlement reached after six years of heavy litigation, and only after Plaintiffs successfully defeated MOT's Motions for Summary Judgment, Plaintiffs' Motion for Class Certification was fully briefed, the parties litigated issues to a published Court of Appeal decision, and after the Parties participated in two full-day mediations.

In this case, Plaintiffs allege that MOT failed to: (1) provide all required meal periods; (2) authorize and permit all required rest periods; (3) pay all wages owed due to its allegedly unlawful timekeeping policies/practices and off-the-clock required COVID screenings and security checks. Based on these alleged wage and hour violations, Plaintiffs also brought derivative claims for alleged waiting time penalties, MOT's alleged failure to issue accurate and compliant wage statements, and for civil penalties under the Private Attorneys General Act ("PAGA").[1]

Plaintiffs respectfully request that this Court preliminarily approve this non-reversionary, common-fund class action settlement,[2] in which MOT has agreed to pay a Gross Settlement Amount of **$8,375,328.22** to the Settlement Class, defined as:

> All non-exempt, hourly employees who worked for Defendant The Merchant of Tennis, Inc. in California at any time from June 8, 2019 through December 10, 2025 (the "Class Period").

If the Settlement is approved, MOT will pay a non-reversionary Gross Settlement Amount of $8,375,328.22. After deducting the *Pick-Up-Stix* payments previously made by MOT as a result of this litigation, settlement administration costs, Plaintiffs' requested Class Representative Service Payments, the amount designated as PAGA civil penalties, and requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately $3,913,635.13 will be

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[1] The Third Amended Consolidated Class Action Complaint is the operative complaint.

[2] The Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") is attached to the Declaration of Paul K. Haines as **Exhibit A**. The proposed Notice of Settlement of Class Action ("Class Notice") is attached to the Settlement as **Exhibit 1**.

distributed to all Class Members who do not opt out of the Settlement based on the following formula: (i) each Class Member who did not accept MOT's settlement offer as part of the *Pick-Up-Stix* process shall be paid an amount equal to the amount that was or would have been offered to them by MOT as part of the *Pick-Up-Stix* process from the Net Settlement Amount; (ii) the remainder of the Net Settlement Amount shall be allocated to all participating Class Members in proportion to the number of workweeks worked by each participating Class Member during the Class Period.

Significantly, Class Members do not need to file a claim to reap the financial benefits of the Settlement, as all Class Members will automatically receive an Individual Class Payment unless they affirmatively opt-out. There are approximately 3,917 Class Members, and the average award to participating Class Members is projected to be approximately $1,222.07.

The proposed Settlement is well within the range of possible approval in light of the significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by Plaintiffs and the Settlement Class. For the reasons discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

MOT is a plastic mold injection company that manufactures various items such as packaging, display and crates. *See* Declaration of Paul K. Haines ("Haines Decl."), ¶ 14. Plaintiff Garcia worked for MOT as a non-exempt employee from 2015 through 2016 and then again during 2017 and 2019. *See* Declaration of Jessica Garcia ("Garcia Decl."), ¶ 3. Plaintiff Solis worked for MOT as an hourly employee in the production department from approximately April 2020 to approximately June 2020. *See* Declaration of Jose Hernandez Solis ("Solis Decl."), ¶ 2.

On February 26, 2020, Plaintiff Garcia filed a class action complaint against MOT in San Bernardino County Superior Court, *entitled Jessica Garcia, et al. v. The Merchant of Tennis, Inc*., Case No. CIVDS2005614 (the "Action"), alleging class action claims against Defendant under the California Labor Code. Haines Decl., ¶ 15. On February 25, 2020, Plaintiff Garcia sent her

PAGA notification letter to the Labor & Workforce Development Agency ("LWDA"). Haines Decl., ¶ 15, Exh. B. On February 19, 2021, Plaintiff Garcia filed a Second Amended Complaint in this Action, which included a claim under the Private Attorneys General Act, Labor Code § 2698, et seq. ("PAGA"). Haines Decl., ¶ 15.

On March 15, 2021, Plaintiff Solis filed a class and collective action in the United States District Court for the Central District of California, entitled *Jose Hernandez Solis v. The Merchant of Tennis, Inc.*, Case No. 5:21-CV-00459 (the "Solis Class Action"), alleging class and collective claims against Defendant under the California Labor Code and Fair Labor Standards Act. *See* Haines Decl., ¶ 16. On March 22, 2021, Plaintiff Solis sent his PAGA notification letter to the Labor & Workforce Development Agency ("LWDA"). *Id.*; Exh. C. On June 9, 2021, Plaintiff Solis filed a representative action in San Bernardino County Superior Court, entitled *Jose Hernandez Solis v. The Merchant of Tennis, Inc.*, Case No. CIV SB 2116264 (the "Solis PAGA Action"), alleging a claim against Defendant for civil penalties under PAGA. *See* Haines Decl., ¶ 16.

On August 30, 2021, the Parties in both the *Garcia* and *Solis* actions attended a full-day mediation with Jeffrey L. Krivis, Esq., an experienced wage and hour class action mediator, in an effort to resolve all of the above referenced actions. Haines Decl., ¶ 17. During mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiffs' claims, and the legal bases for the claims and defenses. *Id.* The Parties were not able to reach a settlement at the August 30, 2021 mediation. *Id*.

By way of stipulation, the parties agreed to consolidate the *Garcia* action pending in Superior Court with the *Solis* Class Action pending in federal court and the *Solis* PAGA Action Superior Court, in this action. Haines Decl., ¶ 18. On May 6, 2022, the Garcia and Solis Plaintiffs filed the Third Amended Complaint in this action which is the operative Complaint. *Id*.

The Parties also engaged in extensive formal discovery and motion practice. Plaintiffs served multiple sets of written discovery seeking, among other items, timekeeping and payroll records for Class Members, MOT's written wage and hour policies and procedures, and contact information for the Class Members. Haines Decl., ¶ 19. Plaintiffs obtained a sampling of timekeeping and payroll records for Class Members, MOT's written wage and hour policies and procedures, as well as the contact information for Class Members. *Id*. In the following months, Plaintiffs' counsel interviewed dozens of Class Members regarding their work experiences with MOT. *Id*.

MOT took the deposition of Plaintiff Garcia over the course of two days, on November 17, 2020 and June 4, 2021. Haines Decl., ¶ 20. MOT took the deposition of Plaintiff Solis on October 26, 2021. *Id*. Plaintiffs also took multiple depositions of MOT's Person(s) Most Qualified regarding MOT's wage and hour policies and practices on February 4, 2022 March 24, 2023. *Id*. Plaintiffs also took the deposition of MOT's general manager on March 20, 2023. *Id*. In total, there were approximately 25 depositions taken in this case. *Id*.

On January 27, 2023, MOT filed Motions for Summary Judgment against Plaintiffs Garcia and Solis. Haines Decl., ¶ 21. Plaintiffs retained a labor economist to analyze Plaintiffs' timekeeping and payroll records in support of their Opposition to MOT's Motion for Summary Judgment. *Id*. On February 20, 2024, the Court denied MOT's Motions for Summary Judgment, with the exception of a couple of claims that Plaintiffs voluntarily agreed to dismiss. *Id*.

On May 30, 2024, Plaintiffs filed their Motion for Class Certification. Haines Decl., ¶ 22. In support of their Motion for Class Certification, Plaintiffs submitted declarations from Plaintiffs and 8 putative class members as well as Expert Reports from Plaintiffs' retained labor economist and mechanical engineer who conducted site visits where she measured various walking distances across MOT's facilities. *Id*.

In support of its Opposition to Plaintiffs' Motion for Class Certification, MOT deposed many of Plaintiffs' declarants and Plaintiffs' retained experts. Haines Decl., ¶ 23. Additionally, shortly after the filing of Plaintiffs' Motion for Class Certification, MOT began extending individual settlement offers to hundreds of Class Members. *Id.; see Chindarah v. Pick Up Stix Inc.*, 171 Cal.App.4th 796 (2009). Upon learning that MOT was offering individual settlement agreements to putative class members, Plaintiffs served written discovery seeking the information provided to these Class Members about the settlement offers being extended by MOT. Haines Decl., ¶ 23. Plaintiffs also took the depositions of many putative class members who submitted declarations in support of MOT's Opposition to Plaintiffs' Motion for Class Certification. *Id*.

After this extensive discovery was completed, on November 12, 2024, Plaintiffs filed their Reply Brief in Support of Plaintiffs' Motion for Class Certification. Haines Decl., ¶ 24. On that same date, Plaintiffs filed their Motion to Invalidate Settlement Agreements Obtained from Approximately 954 Putative Class Members as well as Plaintiffs' Motion to Strike Seventeen of Defendant's Employee Declarations Filed in Support of Defendant's Opposition to Plaintiff's Motion for Class Certification. *Id*.

On January 23, 2025, the Court granted, in part, Plaintiffs' Motion to Invalidate Settlement Agreements Obtained from Approximately 954 Putative Class Members, ordering that the individual settlement agreements were voidable at the election of each settling putative class member, and the Court further ordered the Parties to meet and confer regarding a curative notice to be sent to putative class members who signed the individual settlement agreements. Haines Decl., ¶ 25. The Court continued the hearings on Plaintiffs' Motion for Class Certification and Defendant's Motion to Strike Three Declarations of Putative Class Members Filed in Support of Plaintiffs' Motion for Class Certification and MOT's Motion for Leave to File Amended Answer to Plaintiffs' Third Amended Consolidated Class Action Complaint, pending the completion of the curative notice process. *Id*.

On February 28, 2025, after a hearing on the curative notice, the Court issued an Order detailing the contents of the curative notice to be sent to employees who signed individual settlement agreements. Haines Decl., ¶ 26. The Court's curative notice informed employees that if they choose to revoke their acceptance to the settlement agreement, any amount paid may be treated as an offset to any other recovery, and further informed employees that they would not be required to return any payment they previously received from MOT. *Id*.

On March 24, 2025, MOT filed a Petition for Writ of Mandate, Prohibition, and/or Other Appropriate Relief regarding the Court's February 28, 2025 Order. Haines Decl., ¶ 27. On March 27, 2025, the Court of Appeal stayed this Action pending determination of MOT's writ petition. *Id*. While this Action was stayed pending determination of MOT's writ, the Parties agreed to attend a second mediation session on December 7, 2025 with Monique Ngo-Bonnici, Esq., an experienced wage and hour class action mediator. *Id*. With the assistance of Ms. Ngo-Bonnici, the Parties were able to reach a tentative classwide settlement of this Action. *Id*. On January 14, 2026, after the Parties reached the tentative classwide settlement, the Court of Appeal, Fourth Appellate District, issued its ruling regarding MOT's writ of mandate. *Id*.

B. PLAINTIFFS' CLAIMS AND MOT'S DEFENSES

1. Meal Period Claims

Plaintiffs allege that MOT systemically failed to provide its non-exempt employees with legally compliant meal periods in two distinct ways. Haines Decl., ¶ 31. First, Plaintiffs allege that MOT routinely failed to provide first meal periods before the start of the sixth hour of work, resulting in late meal periods. *Id*. Plaintiffs allege that MOT's supervisors informed employees when it was time to take their meal periods and therefore controlled when they were taken. *Id*. As a result, Plaintiffs contend that MOT is responsible for the many late meal periods evidenced by employees' timekeeping records. *Id*. Second, Plaintiffs allege MOT's policies and practices resulted in habitually short meal periods of less than 30 minutes because they required employees to be back at their workstations punctually at the end of the 30-minute meal period, causing employees to cut their meal periods short. *Id*. Because it can take several minutes to walk from the time clock back to the workstation, Plaintiffs allege employees necessarily take less than 30 minutes of actual meal break time in order to comply with MOT's policies. *Id*. As a result, Plaintiffs allege that MOT is liable for meal period premiums under Labor Code § 226.7. *Id*.

MOT counters it has maintained compliant written meal period policies throughout the Class Period and has always provided compliant meal periods in line with those policies. Haines Decl., ¶ 31. MOT contends that under *Brinker*, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. Haines Decl., ¶ 31; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Therefore, MOT maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 31. MOT contends that Class Members did not have to be "released" by their supervisors to take a meal period. *Id*. MOT points to declarations submitted by Class Members in support of its Opposition to Plaintiff's Motion for Class Certification which show that employees took timely first meal periods and were reminded by MOT to take meal periods by the fifth hour of work. *Id*. MOT further argues that Plaintiffs did not experience meal period violations, and therefore, are not typical of those Class Members who timekeeping records reflect non-compliant meal periods. *Id*. As for Plaintiffs' claims that MOT provided short meal periods, MOT argues that it provided a full thirty minutes – and sometimes longer, without reprimand. *Id*. Lastly, MOT argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, thereby making class certification of this claim unlikely. *Id*.

2. <u>Rest Period Claims</u>

Plaintiffs allege that MOT failed to authorize and permit legally compliant rest periods because: (1) MOT's policies/practices do not provide employees with sufficient time to take 10 minutes of "net rest" in an area appropriate for rest away from the workstation because MOT requires employees to be back at their work stations by the end of the 10-minute period and the time it takes to walk to and from rest areas significantly shortens the rest periods, and (2) MOT requires employees to remain on-premises during rest periods, in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 265 (2016) ("…employers must relieve their employees of all duties and relinquish any control over how employees pending their break time"). Haines Decl., ¶ 32.

MOT counters that it maintained compliant written rest period policies throughout the Class Period and has always authorized and permitted employees a 10-minute rest period for each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was a result of employee choice, rather than any MOT policy and/or practice. Haines Decl., ¶ 32. MOT argues that MOT allowed for additional walk time which exceeded the ten minutes for rest periods and contends that employees took rest periods at different places, some of which do not require any walk time from their workstations. *Id*. As for Plaintiffs' on-premises theory, MOT argues that it did not prohibit employees from leaving MOT premises during rest periods. *Id*. MOT also argues that Plaintiffs' rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which Class Members failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id*. These manageability concerns are especially present with respect to rest period claims, MOT argues, given that rest periods are not recorded. *Id*.

3. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices, Security Checks, and COVID Screenings

Plaintiffs allege that MOT failed to pay Class Members all wages owed due to: (1) unlawful time rounding policies for a small portion of the Class Period; (2) failure to compensate for mandatory off-the-clock security checks; and (3) failure to compensate for mandatory off-the-clock COVID-19 screenings. Haines Decl., ¶ 33. With respect to the unlawful time rounding, Plaintiffs contend that from June 8, 2019 to September 9, 2019, MOT utilized an unlawful time rounding practice that systemically underpaid wages. *Id*. During this period, Plaintiff alleges MOT required employees to accurately record their time worked to the minute; however, MOT would thereafter round employees' recorded time to the quarter-hour, which resulted in consistent underpayment. *Id*. With respect to off-the-clock security checks, Plaintiffs contend that MOT required Class Members to participate in mandatory bag checks before exiting MOT's Ontario and Eastvale facilities, and that MOT failed to compensate employees for this time, which could take several minutes to complete. *Id*. With respect to off-the-clock COVID screenings, Plaintiffs contend that from approximately May 2020 through July 2021, MOT required its non-exempt employees to undergo mandatory COVID-19 screenings, which could take several minutes, before clocking in for the beginning of their shifts, but MOT did not compensate employees for this time. *Id*.

MOT argues that its timekeeping policies/practices complied with California law and that MOT compensated Class Members for all hours worked throughout the Class Period. Haines Decl., ¶ 33. MOT also argues that it changed its timekeeping policies/practices in September 2019, and began to compensate employees to the minute, thereby cutting off its potential liability for this claim. *Id*. With respect to the security checks and COVID screenings, MOT argues that the time spent on these were minimal and that they occurred when employees were on the clock. *Id*. Finally, MOT argues that Plaintiffs would be unable to certify these claims since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid for each workday in question (including whether they were actually working when they were clocked in), whether and how long they waited for security checks and COVID screenings, and whether they were on the clock for them, resulting in an unmanageable series of mini-trials. *Id*.

4. <u>Wage Statement Violations</u>

As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiffs allege that MOT is liable for wage statement penalties. Haines Decl., ¶ 34. MOT argues any alleged wage statement violations were not "knowing and intentional," and Plaintiffs cannot show that they or other employees "suffer[ed] injury" due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. *Id*. MOT further contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received…The purpose of section 226 is to *document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages") (Italics in original). Haines Decl., ¶ 34.

5. <u>Waiting Time Penalties</u>

As a further result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiffs allege that MOT failed to comply with its final pay obligations set forth in Labor Code §§ 201-203. Haines Decl., ¶ 35. MOT argues that it possesses strong, good-faith defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. *Id*.; 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 . . . A 'good faith' dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee"). MOT further asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Haines Decl., ¶ 35.

6. PAGA Civil Penalties

As a result of the foregoing Labor Code violations, Plaintiffs allege that MOT is liable for civil penalties under the PAGA. Haines Decl., ¶ 36. Since Plaintiffs' PAGA claim is derivative of Plaintiffs' underlying wage claims, MOT asserts that the PAGA claim would fail with those claims. *Id.; See Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail"). MOT further maintains that given its good-faith defenses, the Court would substantially reduce any PAGA penalties if it were to find MOT liable for any of Plaintiffs' claims. Haines Decl., ¶ 36; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. DISCOVERY AND MEDIATION

As outlined above, prior to reaching the proposed Settlement, the Parties engaged in significant formal and informal discovery. The Parties propounded and responded to multiple sets of written discovery, and Plaintiffs were provided with a sampling of timekeeping and payroll records for Class Members, contact information for Class Members, as well as MOT's written wage and hour policies and procedures. Haines Decl., ¶¶ 19-27. As further outlined above, no less than twenty-five (25) depositions were taken in this matter, including the depositions of Plaintiffs, MOT's Persons Most Qualified, Plaintiffs' retained experts, as well as approximately 13 Class Members who submitted declarations in support of, and in opposition to, Plaintiffs' Motion for

Class Certification. *Id*. The Parties engaged in significant motion practice as well. *Id*. Plaintiffs successfully opposed MOT's Motions for Summary Judgment, and Plaintiffs' Motion for Class Certification was fully briefed when the Parties agreed to attend a second mediation with Monique Ngo-Bonnici, Esq. *Id*.

Prior to attending the second mediation session, Plaintiffs were provided with additional information, including the total number of putative class members employed during the Class Period, the total number of putative class members who signed *Pick-Up-Stix* release agreements as well as the amounts paid to them, and the total aggregate number of workweeks worked by putative class members during the Class Period. Haines Decl., ¶ 27. This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims, the chances of certification of Plaintiffs' claims, and MOT's potential defenses. *Id.*

On December 7, 2025, the Parties attended a second full-day mediation with Monique Ngo-Bonnici, Esq., an experienced wage and hour class action mediator. Haines Decl., ¶ 27. During mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiffs' claims, and the legal bases for the claims and defenses. *Id.* Following the conclusion of mediation, Ms. Ngo-Bonnici issued a mediator's proposal that was ultimately accepted by the Parties. *Id.* During the months that followed, the Parties negotiated and finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. *Id*.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, MOT will pay a non-reversionary Gross Settlement Amount ("GSA") of $8,375,328.22, which includes a credit of $875,328.22 in payments previously made to Class Members as a result of the filing of this litigation through the *Pick-Up-Stix* settlement process. *See* Settlement, ¶ 3.1. No Class Member will need to file a claim form as each Class Member will automatically receive an Individual Class Payment unless he or she affirmatively opts out. *Id*. The monetary terms of the Settlement are summarized below:

- Gross Settlement Amount ("GSA"): $8,375,328.22
- Minus prior *Pick-Up-Stix* payments: $875,328.22

- Minus Court-approved attorneys' fees: $2,931,364.87
- Minus Court-approved verified costs (up to): $400,000.00
- Minus Court-approved Service Payments: $20,000.00
- Minus amount set aside as PAGA penalties: $200,000.00
- Minus estimated Settlement Administration costs: $35,000.00

Net Settlement Amount ("NSA"): at least $3,913,635.13

1. The Settlement Provides for Reasonable Monetary Payments

After deducting previously-made *Pick-Up-Stix* payments, estimated settlement administration costs, the requested Service Payments to Plaintiffs, the amount set aside as PAGA civil penalties, and requested attorneys' fees and costs, MOT will pay a Net Settlement Amount ("NSA") of at least $3,913,635.13 to all Class Members who do not timely opt out. *See* Settlement, ¶¶ 1.27, 3.2. The NSA shall be distributed to all participating Class Members as follows: (i) each participating Class Member who did not accept MOT's settlement offer as part of the *Pick-Up-Stix* process that amounted in MOT paying a total of $875,328.22, shall be paid an amount equal to the amount that was or would have been offered to them by MOT as part of the *Pick-Up-Stix* process from the NSA; (ii) the remainder of the NSA shall be allocated to participating Class Members in proportion to the number of workweeks worked by each participating Class Member during the Class Period. *See* Settlement, ¶ 3.2.5. In addition to the NSA, each Class Member who was employed by MOT at any time during from June 9, 2019 through December 10, 2025 (the "PAGA Period") (including those who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a portion of the Fifty Thousand Dollars and Zero Cents ($50,000.00) of the GSA that has been designated as the 25% share of the "PAGA Penalties" proportionate to the number of PAGA Pay Periods worked during the PAGA Period. *Id*., at ¶¶ 1.29, 1.32, 3.2.6., 3.2.6.1.

According to MOT, there are approximately 3,917 Settlement Class members. Haines Decl., at ¶ 30. Thus, the average Individual Class Payment from the NSA is estimated to be approximately $1,222.07. *Id.* Further, there are approximately 3,912 Aggrieved Employees who worked during the PAGA Period. *Id*. Therefore, the average payment from the PAGA Amount is estimated to be approximately $12.78, representing 25% of the civil penalties payable to aggrieved employees. *Id.*

Class Members will have sixty (60) calendar days from the mailing to opt-out or object, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Settlement, ¶¶ 1.40, 7.5, 7.7. Class Members who do not opt out will be bound by the Settlement and will be bound by its terms and will release all claims against MOT included within the Settlement. *Id*., ¶¶ 5.2, 7.5.3.

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

Plaintiffs will apply for Class Representative Service Payments at final approval in the amount of $10,000.00 for each Plaintiff for their service to the Settlement Class. Haines Decl., ¶ 39; s*ee also* Settlement, ¶ 3.2.1. "[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 the time of final approval, Plaintiffs' requested Service Payments are intended to recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of their claims, preparing for and attending full-day depositions and responding to formal discovery requests, as well as the significant risks Plaintiffs undertook by agreeing to serve as named plaintiffs in this case, and the fact that Plaintiffs agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 1.14, 3.2.1, 5.1; Haines Decl., ¶ 39; *see also* Garcia Decl., ¶¶ 8-13, 23-24; Solis Decl., ¶¶ 8-9.

At final approval, Plaintiffs' counsel will request an attorneys' fees award of thirty-five percent (35%) of the GSA, and up to $400,000 in verified litigation costs. Haines Decl., ¶ 40; *see also* Settlement, ¶ 3.2.3. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiffs' counsel has expended significant time conducting pre-filing investigation, legal research, analyzing Plaintiffs' claims, analyzing employee timekeeping and payroll records and other data and documents, engaging in extensive formal discovery and motion practice including taking and defending approximately 25 depositions, developing a comprehensive damages model, preparing for and attending two mediations, defeating MOT's summary judgment motions, fully briefing Plaintiffs' motion for class certification, moving to invalidate MOT's *Pick-Up-Stix* releases, litigating this action at the appellate level through a published Court of Appeal decision, negotiating and preparing the Class Action and PAGA Settlement Agreement, preparing this Motion, and otherwise litigating this case. Haines Decl., ¶ 40. Counsel anticipates incurring additional fees in appearing at the hearing on this Motion, supervising the Notice process, and preparing the Final Approval motion and appearing at the Final Approval Hearing. *Id*.

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of 35% of the GSA is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Class Counsel submit their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the duration of this litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking final approval.

Additionally, the parties have agreed to designate $200,000 of the GSA as PAGA civil penalties, of which $150,000 (75%) will be paid to the LWDA, with the remaining $50,000 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3.2.6. Plaintiffs submit this allocation to the LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC* Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of $7,500 to

LWDA out of $1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards under Fed. R. Civ. Proc. Rule 23. *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule of Court 3.769 requires court to determine "the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The court's role in evaluating a settlement is limited to ensuring the agreement, as a whole, is fair and within the range of reasonableness. *Hanlon,* 150 F.3d at 1027. There is an initial presumption of fairness when, as here, a settlement was negotiated at arm's length by experienced class counsel, with the assistance of an experienced mediator. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

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

a. The Strength of Plaintiffs' Case

Although they steadfastly maintain their claims are meritorious, Plaintiffs acknowledge there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described above, MOT presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. While Plaintiffs were prepared to litigate their claims through class certification and ultimately trial, success was far from certain.

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

Although the parties engaged in significant discovery, they had not completed all formal discovery that would be required for trial, which would have required the expenditure of substantial time and resources by all Parties. Haines Decl., ¶ 38. Plaintiffs filed a Motion for Class Certification supported by extensive evidence, including expert reports, deposition testimony from MOT's PMQ witnesses, and declarations and deposition testimony of putative class members. *Id*. However, class certification had not yet been granted, and MOT vigorously opposed certification. *Id*. Even if Plaintiffs obtained certification, the parties would have incurred considerable attorneys' fees and costs through possible decertification motions, trial, and additional appeals. *Id*. The Settlement avoids those risks and the accompanying delay and expense, and thus, this factor supports preliminary approval. *Id.*

c. Risk of Maintaining Class Action Status

Plaintiffs have not yet obtained an order certifying the proposed classes, and as such, the extent to which Plaintiffs' proposed classes were certifiable was still speculative. Absent settlement, there was a risk there would not be a certified class at trial, or if there were, that it would consist of a significantly smaller group of employees than the proposed Settlement Class, and the expected recovery would be significantly reduced. MOT argued vigorously that individualized issues would predominate and that Plaintiffs' claims were not susceptible to class treatment. While Plaintiffs put forth strong evidence supporting certification – including PMQ testimony, expert analysis, and declarations from putative class members – certification was by no means guaranteed. Thus, this factor supports preliminary approval.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Settlement Class in the face of hotly disputed claims. Plaintiffs conducted an analysis of underpaid wages due to MOT's alleged unlawful timekeeping policies/practices, potential meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure analysis is discussed below:

<u>Meal Period Violations</u>: $3,569,696

Plaintiffs allege that MOT failed to provide all compliant first-meal periods to its non-exempt employees. Haines Decl., ¶ 31. Based on Plaintiffs' review of employee timekeeping records, approximately 23.5% of all meal period eligible shifts reflected a late first meal period, and approximately 56.2% of first meal periods were less than 30 minutes. *Id*. In total, Plaintiffs estimate there were approximately 1,019,913 non-compliant first meal periods during the Class Period. *Id*. Accordingly, Plaintiffs calculated MOT's maximum exposure for meal period violations at approximately $17,848,477 (1,019,913 non-compliant first meal periods * $17.50 average meal period premium). *Id*.

However, as noted above, MOT argues that they maintained compliant meal period policies throughout the Class Period and under *Brinker* it is only required to provide employees the opportunity to take meal periods, not ensure that they are taken. Haines Decl., ¶ 31; *see Brinker, supra*, 53 Cal.4th at 1034 (rejecting "ensure" standard). Furthermore, MOT argues that Plaintiffs' meal period claim is not suited for class treatment, as individual inquiries would be needed as to which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and why a particular employee did not a take compliant meal period on a particular shift. Haines Decl., ¶ 31. Additionally, many of the Class Members signed arbitration agreements, which could potentially bar them from any class recovery absent settlement. *Id*. Based on these defenses, Plaintiffs discounted the maximum amount recovery by 60% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 50% or risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $3,569,696. *Id*.

<u>Rest Period Violations</u>: $2,351,430

Based on Plaintiffs' analysis and extrapolation of employee timekeeping records, Plaintiffs estimated there were approximately 1,279,690 shifts with a rest period violation during the Class Period. Haines Decl., ¶ 32. As indicated above, Plaintiffs allege that MOT failed to provide for a "net rest" of 10 minutes for each and every shift during the Class Period. *Id*. Therefore, Plaintiffs estimated the maximum potential exposure for this claim at approximately $22,394,575 (1,279,690 rest period violations * $17.50 average premium). *Id*.

However, as discussed above, MOT argues that it always maintained and enforced lawful rest period policies and practices throughout the Class Period, and that it provided rest periods up to 15 minutes in length. Haines Decl., ¶ 32. MOT also maintains that any failure to take rest periods was the result of employee choice, and that they are not required to police rest periods. *Id*. MOT further argues that MOT allowed for additional walk time which exceeded the ten minutes for rest periods and contends that employees took rest periods at different places, some of which do not require any walk time from their workstations. *Id*. Finally, MOT argues that Plaintiffs' rest period claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id*. These considerations are particularly present with respect to rest periods, MOT argues, as rest periods are not, and need not be, recorded. *Id*. Additionally, many of the Class Members signed arbitration agreements, which could potentially bar them from any class recovery absent settlement. *Id*. In light of these defenses, Plaintiffs assessed a 70% risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and discounted an additional 65% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a projected exposure of approximately $2,351,430. *Id*.

<u>Unpaid Wages</u>: $280,358

Plaintiffs allege that MOT utilized a timekeeping system that systematically underpaid wages due its allegedly unlawful timekeeping policies/practices (i.e., rounding), and failed to compensate employees for time spent on mandatory security checks and COVID screenings. Haines Decl., ¶ 33. Based on Plaintiffs' analysis of MOT's records, Plaintiffs estimate that MOT underpaid Class Members by approximately 4,855 hours during the time period in which MOT was rounding employee time punches (June 8, 2019 - September 9, 2019). *Id*. Because most employees worked shifts of at least eight (8) hours, Plaintiffs contend these unpaid wages should be paid at an overtime rate of pay. *Id*. Accordingly, Plaintiffs calculated MOT's maximum exposure for this theory of liability at approximately $127,444 (4,855 unpaid hours * $26.25 average overtime rate). *Id.*

Plaintiffs also estimate that Class Members were underpaid for approximately 22,656 hours for undergoing COVID screenings while the practice was in effect between approximately May 2020 and July 2021 (approximately 271,880 shifts * 5 minutes unpaid time), and approximately 43,690 hours (approximately 524,280 shifts * 5 minutes unpaid time) for undergoing security checks. Haines Decl., ¶ 33. Therefore, Plaintiffs calculated MOT's maximum exposure for these two theories of liability at approximately $1,741,609 (66,347 unpaid hours * $26.25 average overtime rate of pay). *Id*. In total, Plaintiffs estimate MOT's maximum exposure for unpaid wages to be approximately $1,869,053. *Id*.

However, MOT contends that many of its employees during the Class Period signed valid arbitration agreements that could have potentially limited their damages only to the employees' share of PAGA civil penalties. Haines Decl., ¶ 33. MOT also argues that its timekeeping policies/practices complied with California law and that MOT compensated Class Members for all hours worked throughout the Class Period. *Id*. MOT contends that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. *Id*. MOT also argues that it changed its timekeeping policies/practices in September 2019, and began to compensate employees to the minute, thereby cutting off its potential liability for this claim. *Id*. MOT also argues that Plaintiffs did not actually offer any evidence that they were harmed by MOT's rounding practice and thus cannot represent the putative class on typicality grounds. *Id*. With respect to the security checks and COVID screenings, MOT argues that the time spent on these actions were minimal and that they occurred when employees were on the clock. *Id*. Finally, MOT argues that Plaintiffs would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid for each workday in question (including whether they were actually working when they were clocked in), whether and how long they waited for security checks and COVID screenings, and whether they were on the clock for them, resulting in an unmanageable series of mini-trials. *Id.* Based on these defenses, Plaintiffs discounted the maximum exposure by 70% to account for the risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 50% to account for MOT's defenses on the merits, to arrive at an estimated exposure of approximately $280,358. *Id.*

<u>Wage Statement Penalties</u>: $1,104,223

Plaintiffs allege that MOT is liable for wage statement penalties as a result of the unpaid wages and unpaid meal and rest period premiums. Haines Decl., ¶ 34. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. *Id.; see* Labor Code § 226(e). Plaintiffs' analysis reflected that there were approximately 3,917 unique employees and approximately 124,650 pay periods worked during the liability period applicable to Plaintiffs' wage statement claim. Haines Decl., ¶ 34. The maximum possible exposure for all Class Members is calculated at approximately $12,269,150 ([3,917 "initial" violations * $50] + [120,733 "subsequent" violations * $100]). *Id.*

In light of MOT's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiffs' underlying claims discussed above, Plaintiffs discounted the maximum exposure by 70% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 70% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $1,104,223. Haines Decl., ¶ 34.

<u>Waiting Time Penalties</u>: $1,276,695

Based on data produced by MOT, there are approximately 2,895 Class Members who separated their employment from MOT and are therefore eligible for waiting time penalties. Haines Decl., ¶ 35. Plaintiffs estimated an average waiting time penalty of approximately $4,200 ($17.50/hr. * 8 hrs. * 30 days), and calculated MOT's maximum waiting time penalty exposure at approximately $12,159,000 (2,895 former employees * $4,200 average waiting time penalty). *Id.*

However, MOT asserts that it has strong, good-faith defenses to Plaintiffs' underlying claims and thus, even if Plaintiffs were able to recover on their underlying claims, they would not be able to recover waiting time penalties. Haines Decl., ¶ 35. Moreover, Plaintiffs would need to overcome MOT's defenses, both as to class certification and as to the merits, to their underlying claims. *Id*. MOT also argues that Plaintiffs' waiting time exposure is grossly inflated as not every former employee experienced a Labor Code violation. *Id*. Based on these defenses, Plaintiffs discounted MOT's maximum exposure by 70% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and by an additional 65% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately $1,276,695. *Id*.

<u>PAGA Civil Penalties</u>: $560,925

Plaintiffs estimated a maximum PAGA exposure of $12,465,000 (approximately 124,650 pay periods during PAGA Period * $100 "initial" violation rate). Haines Decl., ¶ 36; *Amaral v. Cintas Corp.,* 163 Cal.App.4th 1157, 1209 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from Plaintiffs' underlying claims, each of which MOT vigorously disputes. Haines Decl., ¶ 36. The PAGA also grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and MOT argued the Court would reduce penalties significantly given its good-faith defenses. *Id*. Thus, Plaintiffs discounted the maximum figure by 70% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and by an additional 85% for risk of the Court reducing penalties, for an estimated exposure of approximately $560,925. *Id.*; *see also Fleming*, 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just $5 per pay period).

Using these figures, Plaintiffs estimated the realistic total recovery for the Settlement Class would be approximately $9,143,327. Haines Decl., ¶ 37. The proposed $8,375,328.22 Gross Settlement Amount represents approximately 91.6% of Plaintiffs' reasonably forecasted recovery. *Id.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiffs' counsel believes could have been recovered had the case proceeded through trial.

e. <u>The Experience and Views of Counsel.</u>

"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 Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by competent counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed class counsel in numerous cases with similar claims. *See* Haines Decl., ¶¶ 2-12; Declaration of Marcus J. Bradley ("Bradley Decl.") ¶¶ 3-11.

2. <u>The Preliminary Approval Standard Is Met</u>

The Court can grant preliminary approval of the settlement and direct that notice be given if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* 4 *Newberg on Class Actions*, § 11:24-25 (4th Ed. 2013).

a. <u>The Settlement Is Within the Range of Possible Approval</u>

The Settlement reflects approximately 91.6% of the estimated recovery the Settlement Class could realistically expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed wage claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Plaintiffs submit the Settlement is well within the range of possible approval, such that notice should be provided to the Settlement Class. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

b. <u>The Settlement Resulted from Serious, Informed Negotiations</u>

The Settlement is the result of over six years of heavily fought litigation, extensive formal discovery and motion practice, two full-day mediations, and months of negotiating the terms of long-form settlement agreement. Thus, it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiffs carefully vetted the claims at issue and conducted detailed data analyses with the help of retained experts to arrive at estimated potential damages. Haines Decl., ¶¶ 31-37. The Parties then worked collaboratively in the following months to finalize the Settlement. *Id.*, at ¶ 27. This factor thus supports preliminary approval.

c. <u>The Settlement Is Devoid of Obvious Deficiencies</u>

The Settlement contains no obvious deficiencies. The Settlement will provide tangible monetary relief to Class Members. The amounts proposed for attorneys' fees, costs, settlement administration costs, PAGA civil penalties, and Service Payments are all reasonable. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. <u>THE COURT SHOULD CERTIFY THE PROPOSED CLASS</u>

The Settlement Class satisfies the criteria for certification because: (1) it is sufficiently numerous; (2) common questions of law and fact predominate; (3) Plaintiffs' claims are typical; and (4) Plaintiffs and their counsel will adequately represent them. Cal. Code Civ. Proc. § 382.

1. <u>The Proposed Class Is Ascertainable and Numerous</u>

A class is "ascertainable" where members "may be readily identified without unreason-able expense or time by reference to…[business] records." *Sevidal v. Target*, 189 Cal.App.4th 905, 919 (2010). Here, the Settlement Class includes all non-exempt, hourly employees who worked for MOT in California during the Class Period. *See* Settlement, ¶¶ 1.5, 1.12. Therefore, Class Members can be identified from MOT's personnel and employment records. Based on information provided by MOT, the Settlement Class consists of approximately 3,917 current and former non-exempt, hourly employees. *See* Haines Decl., ¶ 30. It would therefore be impracticable to bring all Class Members before the Court, or for each Class Member to bring an individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate for Settlement Purposes

The focus on certification is what types of questions, "common or individual," are likely to arise. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated primarily on MOT's alleged unlawful timekeeping policies/practices and unlawful meal and rest period policies/practices. These claims are commonly held proper for class certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701 (2013) (certifying meal and rest period claims).

3. The Claims of the Named Plaintiffs Are Typical

Typicality is satisfied where a class representative's claims are typical of those of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.,* 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiffs' claims are typical of the Settlement Class. First, Plaintiffs worked in California for MOT as non-exempt, hourly employees during the Class Period, and Plaintiffs were subject to MOT's wage and hour policies/practices at issue in this case. *See* Garcia Decl., ¶ 3; Solis Decl., ¶ 2. Second, Plaintiffs were injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiffs assert that they were deprived of wages for all hours worked and contend that they were deprived of all legally-compliant meal and rest periods. Plaintiffs further assert that they did not receive accurate and compliant wage statements and did not receive all wages at the time of separation of employment. *See* Garcia Decl.; Solis Decl. Because Plaintiffs have suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

4. Plaintiffs and Their Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class, and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Haines Decl., ¶¶ 2-12; Bradley Decl., ¶¶ 3-11.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

The Court should order distribution of the proposed Notice by U.S. Mail, in English with a Spanish translation, using last known mailing addresses provided by MOT. *See* Settlement, ¶¶ 7.4.2, 1.11. This is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 173 (1974). Plaintiffs propose the settlement be administered by Apex Class Action LLC ("Apex"), an experienced settlement administrator. *See* Declaration of Sean Hartranft ("Hartranft Decl.") and attached exhibits. Class Members' addresses will be ascertainable through MOT's records, which MOT will provide to Apex within thirty (30) days after entry of an order preliminarily approving this Settlement. *See* Settlement, ¶ 7.4.1. Within fourteen (14) days of receipt of the Class Members' addresses, Apex will run the addresses through the National Change of Address ("NCOA") database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice to all Class Members. *See Id*., at ¶ 7.4.2. To the extent that any notices are returned as undeliverable, Apex will perform a Class Member Address Search, including a "skip trace," if necessary, to track any Class Member's current mailing address. *Id*., at ¶¶ 1.10, 7.4.2, 7.4.3.

The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Class Members of the basic contentions and denials of the parties, the key terms of the Settlement, the 60-day deadline to opt-out or object, the recovery formula, and advises they will be bound by the Settlement if they do not opt-out. *See* Haines Decl., Exh. 1 to Exh. A. The Notice also notifies Class Members of the final fairness hearing and provides Class Counsel's contact information. *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-effective method of reaching

Settlement Class members.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for Final Approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the proposed Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: March 4, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________
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