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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BELIA RAMIREZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RUBBERCRAFT CORPORATION OF
CALIFORNIA, LTD., a California Corporation;
and DOES 1 through 100,

Defendants.

Case No. 20STCV11935

*[Assigned for all Purposes to the Hon.
Kenneth R. Freeman, Dept. 14]*

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

Date: May 24, 2022
Time: 10:00am
Dept: 14

Action Filed: March 25, 2020
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 24, 2022, at 10:00 a.m. in Department 14 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Belia Ramirez (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

All current and former non-exempt employees who performed work for Defendant in the State of California during the time period of March 25, 2016 through April 1, 2021 (the “Class Period”).

3. Preliminary appointment of Plaintiff Belia Ramirez as Class Representative;
4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award amounts for the Class Representative Enhancement Payment, Settlement Administrator costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.*, as well as attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the Class Notice and entry of the Proposed Order instructing the Class Notice to be disseminated to Settlement Class members as provided in the Settlement.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Fletcher W. Schmidt, Paul K. Haines, Alexandra R. McIntosh, Belia Ramirez, Jodey Lawrence of Phoenix Settlement Administrators, the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

1 Given the multiplicity of issues addressed in this Motion, Plaintiff believes there is good
2 cause to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and
3 respectfully requests that the Court consider Plaintiff's Memorandum of Points and Authorities,
4 which is 23 pages in length.

5
6 Dated: April 26, 2022

Respectfully Submitted,
HAINES LAW GROUP, APC

7
8 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Belia Ramirez (“Plaintiff”), individually and on behalf of the proposed Settlement Class, respectfully requests that this Court preliminarily approve the proposed Stipulation of Settlement (“Settlement Agreement”),¹ entered into by Plaintiff and Defendant Rubbercraft Corporation of California, LTD (“Defendant”) (Plaintiff and Defendant are collectively referred to herein as the “Parties”). The operative Second Amended Class and Representative Action Complaint alleges Defendant: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to provide all meal periods; (iv) failed to authorize and permit all rest periods; (v) failed to issue accurate, itemized wage statements; (vi) engaged in unfair unlawful business practices; (vii) is liable for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”); and (viii) failed to pay all final wages upon separation.

Through this Motion, Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary class action settlement (“Settlement”), on behalf of the following Settlement Class:

All current and former non-exempt employees who performed work for Defendant in the State of California during the time period of March 25, 2016 through April 1, 2021 (the “Class Period”).

Based upon Defendant’s representations, there are approximately 359 potential Settlement Class Members. After Court-approved deductions for Plaintiff’s enhancement payment, settlement administrator costs, the PAGA payment to the Labor & Workforce Development Agency (“LWDA”),² and attorneys’ fees and costs to Class Counsel, the remaining Net Settlement Amount (“NSA”) is estimated to be no less than \$331,150.00. This results in average Settlement Awards of approximately \$922.42. Significantly, Settlement Class Members

¹ The Settlement Agreement and the proposed Notice Packet (which is comprised of the Notice of Class Action Settlement (“Class Notice”) and Notice of Settlement Award (“Dispute Form”) are attached as Exhibits A and B, respectively, to the Declaration of Fletcher W. Schmidt filed concurrently herewith.

² Because the proposed Settlement includes settlement of Plaintiff’s representative PAGA claim, notice of the Settlement has been submitted to the LWDA. *See* Schmidt Decl., Exhibit C; Proof of Service.

1 do not need to file a claim form in order to receive an Individual Settlement Share, and all
2 Settlement Class Members who do not opt-out will automatically receive their share of the
3 Settlement. This represents a fair and reasonable result for Settlement Class Members, who will
4 be agreeing to a release of only those claims that were actually asserted, or which could have
5 been asserted based on the facts alleged in the lawsuit.

6 Prior to reaching this proposed Settlement, Defendant provided Plaintiff with
7 timekeeping and payroll data for a 15% sample of putative class members, as well as key data
8 points and all relevant written policy documents in effect during the Class Period. Plaintiff then
9 retained an expert with a Ph.D. in economics to conduct a comprehensive, class-wide analysis of
10 the data to determine Defendant's maximum potential exposure on all claims at issue. After
11 extensive legal research and evaluation along with a comprehensive review of the data performed
12 by Plaintiff's expert, the Parties participated in a mediation session with Marc Feder, Esq. on
13 January 28, 2021. The Parties debated their respective legal theories and, with the help of Mr.
14 Feder at mediation, a classwide settlement was reached at the conclusion of mediation.

15 This proposed Settlement is well within the range of possible approval in light of the
16 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
17 and the tangible monetary benefits to the Settlement Class. Plaintiff therefore respectfully
18 requests that this Court grant preliminary approval of the Settlement.

18 **II. SUMMARY OF THE LITIGATION**

19 Defendant operates a manufacturing business that designs and manufactures custom
20 elastic parts, components, and systems for the aerospace industry. Declaration of Fletcher W.
21 Schmidt ("Schmidt Decl."), ¶ 8. Plaintiff worked for Defendant as a non-exempt "Lay-Up
22 Technician" from approximately May 2019 until approximately January 2021 when Plaintiff was
23 apparently terminated. *Id.* Like all Settlement Class Members, Plaintiff was subject to
24 Defendant's wage and hour policies and practices. *Id.*

25 On March 25, 2020, Plaintiff filed the initial Complaint in this action, alleging Defendant
26 failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii) provide all
27 meal periods; (iv) authorize and permit all rest periods; (v) issue accurate and itemized wage
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statements; and (vi) comply with California’s Unfair Competition laws. Schmidt Decl., ¶ 9. On June 15, 2020, after exhausting her administrative requirements, Plaintiff filed her First Amended Complaint (“FAC”), adding a cause of action for civil penalties under PAGA, premised on the underlying Labor Code violations. *Id.*

On November 15, 2021, the Court issued an Order granting Plaintiff leave to file the operative Second Amended Complaint (“SAC”) to include a cause of action for Defendant’s failure to pay all final wages owed upon employees’ separation from employment. Schmidt Decl., ¶ 10. Accordingly, on December 2, 2021, Plaintiff filed the operative SAC, alleging Defendant: (i) failed to pay all minimum wages owed; (ii) failed to pay all overtime wages owed; (iii) failed to provide all meal periods; (iv) failed to authorize and permit all rest periods; (v) failed to issue accurate and itemized wage statements; (vi) failed to comply with California’s Unfair Competition laws; (vii) is liable for civil penalties under PAGA; and (viii) failed to pay all final wages upon separation. *Id.*

A. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES

1. Rounding Claims

Plaintiff alleges that throughout the Class Period, Defendant implemented unfair rounding policies and practices that consistently favored Defendant, resulting in underpaid wages. Schmidt Decl., ¶ 14. Specifically, Plaintiff alleges that Defendant required its employees to be at their assigned workstation when the annunciator bell announced the start of their shift. *Id.* In order to comply with this policy, Plaintiff and other non-exempt employees regularly clocked in several minutes prior to the start of their shift to, among other things, don their work boots and walk the two plus minutes from the time-clock to their work stations. *Id.* However, due to Defendant’s written rounding policy and practice, which only rounded employee time punches at the beginning of their shift (i.e., when employee’s hours are most likely to be rounded against them), Plaintiff and other non-exempt employees were not paid for these hours worked.

Defendant contends it utilizes a neutral timekeeping system that, on balance, results in employees being paid for all hours actually worked. Schmidt Decl., ¶ 15; *See’s Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (holding rounding policies lawful if they are consistently

1 applied and, on average, favor neither overpayment nor underpayment of wages). Defendant
2 maintains its rounding practice is even-handed and results in employees being paid for all hours
3 worked and that just because an employee is clocked in does not mean the employee is performing
4 work. Defendant further asserts the amount of unpaid time per shift is *de minimis* and thus non-
5 compensable. *Id.* Defendant also contends this claim was not certifiable, since its rounding policy
6 is facially neutral and some employees were overpaid due to rounding, and individualized
7 inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each
8 workday in question (including whether they were actually working when they were clocked in),
9 resulting in an unmanageable series of mini-trials. *Id.*

10 **2. Meal Period Claims**

11 Plaintiff also alleges that Defendant failed to provide Plaintiff and other non-exempt
12 employees with timely first meal periods of at least 30 minutes. Schmidt Decl., ¶ 16. Plaintiff also
13 alleges she and other non-exempt employees were not provided second meal periods on shifts
14 over 10.0 hours. *Id.*

15 Defendant argues it has always maintained legally-compliant meal period policies and that
16 under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure”
17 meal periods are taken. Schmidt Decl., ¶ 17; *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004,
18 1038 (rejecting “ensure” standard). Defendant also further argues that employees begin and end
19 work when an annunciator bells rings to signal to the employees when they need to start and stop
20 working, therefore no employee begins working until the end of the scheduled 30-minute meal
21 period. Defendant further argues that non-exempt employees voluntarily signed a second meal
22 period waiver, as they are entitled to do under Labor Code § 512. Schmidt Decl., ¶ 17. Lastly,
23 Defendant argues this claim would not be suited for class certification because individualized
24 inquiries would be needed to determine whether individual employees did not take a compliant
25 meal period on each individual shift, why they did not take a compliant meal period, and (for
26 second meals) whether they waived the meal period. *Id.*

27 ///

1 **3. Rest Period Claims**

2 Plaintiff further alleges that Defendant maintained a facially unlawful rest period policy
3 that failed to authorize and permit Plaintiff and other non-exempt employees to take all duty-free
4 10-minute rest periods for every four hours worked, or major fraction thereof. Schmidt Decl., ¶
5 18. Specifically, Defendant’s employee handbook states, “[a]ll hourly (non-exempt) employees
6 are authorized and permitted to take a paid rest break for every 4 hours worked” and includes an
7 annunciator bell schedule that fails to reference and/or schedule third rest periods. *Id.* Consistent
8 with this policy, Plaintiff alleges Defendant failed to authorize and permit a third rest period
9 when employees worked shifts in excess of 10 hours but less than 12 hours. *Id.*

10 Defendant asserts it has always authorized and permitted all required rest periods. Schmidt
11 Decl., ¶ 19. As with meal periods, Defendant argues, it need not ensure rest periods are taken but
12 need only “authorize and permit” them, and it has always done so. *Id.* Defendant also argues this
13 claim is not amenable to class treatment, as individualized inquiries would be required to
14 determine whether each employee cut short their rest periods on each individual shift, and why
15 they did so. *Id.* These issues are especially present for rest periods, Defendant argues, as rest
16 periods are not recorded. *Id.*

17 **4. Regular Rate Claims**

18 Plaintiff also alleges that Defendant miscalculated the regular rate of pay by failing to
19 including non-discretionary quarterly bonuses in the regular rate of pay when calculating
20 overtime wages. Schmidt Decl., ¶ 20. Specifically, Plaintiff alleges that Defendant implemented
21 a Quarterly Bonus Program whereby its employees earn bonuses based on the overall profitability
22 of the business, but failed to include the value of these bonuses when calculating employees’
23 respective regular rates of pay, thereby causing Plaintiff and other non-exempt employees to be
24 underpaid for all required overtime wages. *Id.*; see *Huntington Memorial Hosp. v. Sup. Ct.* (2005)
25 131 Cal.App.4th 893, 902-03 (“[I]n determining what payments are to be included in or excluded
26 from the calculation of the regular rate of pay, California will adhere to the standards adopted by
27 the U.S. Department of Labor.”); see also 29 U.S.C. §§ 207(a)(1) and (e); 29 C.F.R. §778.211(c)

1 (“Bonuses which are announced to employees to induce them to work more steadily or more
2 rapidly ... are regarded as part of the regular rate of pay. Most attendance bonuses, individual or
3 group production bonuses, bonuses for quality and accuracy of work ... must be included in the
4 regular rate of pay.”).

5 In response, Defendant asserts that all bonuses paid were wholly discretionary and the
6 company maintained ultimate authority over whether or not to pay a bonus at all in a given quarter,
7 meaning the bonuses could properly be excluded from the regular rate. Schmidt Decl., ¶ 21.

8 **5. Seventh Day Overtime Claims**

9 Plaintiff further alleges that Defendant required its employees to work seven consecutive
10 days in a workweek but failed to pay it employees at a rate of one and one-half times their regular
11 rate of pay for the first 8.0 hours worked on the seventh day, or at a rate of double their regular
12 rate of pay for all hours worked thereafter on the seventh day, in violation of California law.
13 Schmidt Decl., ¶ 22; *See* Wage Order 1, § 3(a); *See* Labor Code § 510(a) (“...the first eight hours
14 worked on the seventh day of work in any one workweek shall be compensated at the rate of no
15 less than one and one-half times the regular rate of pay for an employee...[A]ny work in excess
16 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than
17 twice the regular rate of pay of an employee.”). Instead, Plaintiff alleges that Defendant treats
18 seventh day overtime in the same manner as it treats overtime earned in the first six days of the
19 workweek and will only pay overtime wages prior to the eighth hour worked on the seventh day
20 of the workweek once the employee surpasses 40.0 hours worked for the workweek as a whole.
Schmidt Decl., ¶ 22.

21 In response, Defendant argues that it was exceedingly rare for an employee to work seven
22 consecutive days within the same workweek, and that even if Plaintiff was correct, this claim
23 would likely not meet the numerosity requirement for class certification. Schmidt Decl., ¶ 23.

24 **6. Wage Statement, Waiting Time, and PAGA Civil Penalties**

25 As a result of Defendant’s failures to pay all minimum wages, overtime wages, and meal
26 period and rest period premiums, Plaintiff asserts that Defendant also failed to issue accurate and
27 itemized wage statements and failed to timely pay all final wages at the time of separation in
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violation of Labor Code §§ 203 and 226, respectively. Schmidt Decl., ¶ 24. Finally, Plaintiff seeks PAGA civil penalties based on the above claims. *Id.*

In response, Defendant argues that Plaintiff’s underlying claims will fail and, as a result, the wholly derivative wage statement, waiting time, and PAGA claims will also fail. Schmidt Decl., ¶ 25; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains that Plaintiff cannot show that the wage statement violations were “knowing and intentional,” or that the putative class members “suffer[ed] injury” as a result of the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement penalties. Schmidt Decl., ¶ 25; *see* Labor Code § 226(e)(1). Further, Defendant argues that the wage statements always accurately reflected hours worked and amounts actually paid to employees, and thus Defendant could not be found liable for wage statement penalties. Schmidt Decl., ¶ 25; *see also Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336-37 (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received.”) (citation omitted). Moreover, Defendant maintains that its good faith defenses to Plaintiff’s underlying claims would preclude the recovery of waiting time penalties, which are only available for the “willful” failure to pay wages, and that this Court would exercise its discretion to substantially reduce any PAGA penalties awarded. Schmidt Decl., ¶ 25; *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). Defendant maintains that not all former employees (if any) experienced an underpayment of wages, thus Plaintiff’s exposure analysis is overstated. Schmidt Decl., ¶ 25. Defendant contends that any alleged failure to pay rest period premiums cannot support a derivative claim for wage statement or waiting time penalties. *Id.*; *see Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, 474, *review granted Jan. 2, 2020* (S258966); *see also Ling v. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal.App.4th 1242, 1261

(meal and rest period premium pay compensates for the non-provision of meal and rest periods, not for the ‘nonpayment of wages’ as required by Labor Code § 203).

B. DISCOVERY AND MEDIATION

In connection with mediation, Defendant produced timekeeping and payroll records for approximately 15% of the putative class members, as well as additional key data points and all relevant written policy documents in effect during the relevant time period. Schmidt Decl., ¶ 11. Plaintiff retained an expert with a Ph.D. in economics to analyze the produced data and create a class-wide exposure model for all claims at issue. *Id.*

On January 28, 2021, the Parties attended mediation with Marc Feder, Esq., an experienced and well-respected wage and hour class action mediator. Schmidt Decl., ¶ 12. During mediation, the Parties exchanged divergent views on Defendant’s liability and exposure valuations, debated their legal positions, and shared their arguments regarding the likelihood of certification of Plaintiff’s claims. *Id.* As a result of a mediator’s proposal from Mr. Feder, the Parties were able to reach a classwide agreement. *Id.* During the months that followed, the Parties negotiated and formalized the remaining terms of the Settlement and executed the Settlement Agreement now before the Court for preliminary approval. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves this settlement, Defendant will pay a Gross Settlement Amount (“GSA”) of \$600,000. Schmidt Decl., ¶ 26; Settlement, ¶ 3. This Settlement is non-reversionary, and Settlement Class Members will automatically receive their Individual Settlement Shares unless they affirmatively opt-out. Settlement, ¶ 3.C. The monetary terms of the Settlement are as follows:

Gross Settlement Amount:	\$600,000.00
Minus Court-approved attorneys’ fees (1/3):	\$200,000.00
Minus Court-approved attorneys’ costs (up to):	\$25,000.00
Minus Court-approved Enhancement Payment:	\$5,000.00
Minus settlement administrator costs (up to):	\$8,850.00
Minus PAGA payment to the LWDA:	\$30,000.00
Net Settlement Amount:	\$331,150.00

1 **1. The Settlement Provides For Reasonable Monetary Payments**

2 After deducting amounts for Court-approved attorneys' fees and costs, Plaintiff's
3 Enhancement Payment, settlement administration costs, and the LWDA's share of PAGA
4 penalties, the Settlement provides for an estimated NSA of no less than \$331,150.00. *See*
5 Settlement, ¶¶ 3.C, 4.A. Individual Settlement Shares will be calculated based on the
6 proportionate number of workweeks worked by each participating Settlement Class Member
7 during the Class Period divided by the total number of workweeks worked by all participating
8 Settlement Class Members, as well as membership in various subclasses. *Id.*, ¶ 4.B.

9 Defendant represents that there are approximately 359 Settlement Class Members.
10 Schmidt Decl., ¶ 26; Settlement, ¶ 3.B. Based on the estimated NSA, average Individual
11 Settlement Shares are projected to be approximately \$922.42. Schmidt Decl., ¶ 26. Settlement
12 Class Members will have 60 calendar days from the date of the initial mailing of the Notice
13 Packet to opt-out or object to the Settlement, thereby providing ample time to review the Class
14 Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9.E-F. Those Settlement Class
15 Members who do not opt-out of the Settlement will be bound by its terms and will release all
16 claims against Defendant as detailed in the Settlement. *Id.*, ¶¶ 2.A, 9.E.

17 **2. Attorneys' Fees, Costs, Representative Enhancement Payment, and**
18 **PAGA Payment**

19 At the time of seeking final settlement approval, Plaintiff will apply for an enhancement
20 payment in the amount of \$5,000.00 for her services to the Settlement Class and her general
21 release of all claims. Schmidt Decl., ¶ 27. Plaintiff's requested enhancement payment is intended
22 to recognize the significant time and effort that she expended on behalf of the Settlement Class,
23 including searching through voluminous employment records and providing all potentially
24 relevant documents to her attorneys, assisting her attorneys in identifying other employees of
25 Defendant who could serve as witnesses, discussing the case and proposed settlement with her
26 attorneys on multiple occasions, the significant risks Plaintiff undertook by serving as the named
27 plaintiff, and the fact that she agreed to a general release of all claims subject to a waiver of Civil
28 Code § 1542. *Id.*; Ramirez Decl., ¶¶ 3-4; Settlement, ¶¶ 2.B-C, 6.

1 Class Counsel will also apply for an attorneys' fee award of up to one third of the GSA
2 (currently estimated at \$200,000.00), and up to \$25,000 in reimbursement for actual litigation
3 costs. *See* Settlement, ¶ 5; Schmidt Decl., ¶ 28. Plaintiff submits that the requested fee is fair
4 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
5 purely contingent fee basis. Schmidt Decl., ¶ 28. Class Counsel has incurred substantial
6 attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal
7 research and analysis, drafting and propounding multiple sets of formal written discovery,
8 reviewing class documents and data produced by Defendant, retaining an expert with a Ph.D. in
9 economics and extensively reviewing and evaluating the produced timekeeping and payroll
10 records to build a comprehensive damages model, preparing for and attending mediation,
11 negotiating and drafting the long-form Settlement Agreement, and Notice Packet documents,
12 preparing this motion for preliminary approval, and otherwise litigating the case. *Id.* Class
13 Counsel will also expend future attorney time attending the hearing on this Motion, overseeing
14 the Notice process, drafting the Final Approval Motion and supporting documents, attending the
15 Final Approval hearing, and completing other tasks, such as fielding questions from Settlement
16 Class Members. *Id.*

17 Both California and federal courts have recognized that an appropriate method for
18 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
19 as a result of the settlement. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506;
20 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. Historically, courts have
21 awarded percentage fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6
22 (4th Ed. 2013). Class Counsel submits that the request for attorneys' fees is reasonable when
23 viewed as an overall percentage of the Settlement in light of the risks and work undertaken, the
24 positive results obtained for the class, and the efficiency with which the Parties have conducted
25 the litigation. Class Counsel will seek an award of attorneys' fees when seeking final approval.

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1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions the settlement of a class action on court
4 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
5 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
6 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine “that the
7 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir.
8 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
9 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
10 preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor*
11 *ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed
12 settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product
13 of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027.
14 There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s
15 length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

16 **1. Standard For Preliminary Approval**

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

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

26 Class Counsel carefully vetted the claims at issue, reviewed a representative sampling of
27 Settlement Class Member data and all relevant policy documents, and created a comprehensive
28 damages model for Defendant’s liability. Schmidt Decl., ¶ 29. Although Plaintiff steadfastly

1 maintains that her claims are meritorious, Plaintiff acknowledges that there were substantial risks
2 and uncertainty in proceeding with class certification and trial. *Id.* As explained in detail in
3 Section II.A., *supra*, Defendant presented numerous defenses to Plaintiff's claims, both on the
4 merits and with respect to class certification. Although she was prepared to litigate these claims
5 through class certification and ultimately through trial, it was far from certain that Plaintiff would
6 be able to recover a greater amount should this matter proceed through trial. Thus, this factor
7 supports preliminary approval.

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

9 Absent settlement, the Parties will be required to expend substantial time and resources
10 conducting extensive formal written and deposition discovery. Schmidt Decl., ¶ 29. Moreover,
11 Plaintiff has not yet filed for class certification, and thus, absent settlement, the Parties would
12 face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse
13 summary judgment ruling. *Id.* Even if Plaintiff succeeded in certifying one or more classes, the
14 Parties would incur considerably more attorneys' fees and costs through a possible decertification
15 motion, trial, and possible appeal. *Id.* This Settlement avoids these considerable costs, risks, and
16 the accompanying burden of continued litigation on the Court. Thus, this factor supports
17 preliminary approval.

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

19 At the time of the proposed Settlement, Plaintiff had not filed her motion for class
20 certification. Schmidt Decl., ¶ 30. Had the Court certified any claims, Plaintiff anticipated that
21 Defendant would seek decertification. *Id.* There was also a risk that Defendant would engage in
22 a *Pick-up-Stix* campaign to significantly reduce the size of the putative class for a fraction of
23 what class members are receiving through this Settlement. *Id.*; see *Chindarah v. Pick Up Stix,*
24 *Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, there was a serious risk that
25 Plaintiff would be unable to move forward on a class-wide basis, or that a significantly smaller
26 class would exist than that which is currently before this Court for approval. Schmidt Decl., ¶ 30.
27 Thus, this factor supports preliminary approval.

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

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

5 **Unpaid Wages Due to Rounding: \$61,133.00**

6 As explained above, Plaintiff alleges that Defendant rounded employee timekeeping
7 entries to quarter-hour increments in a manner that consistently favored Defendant and that, as
8 a result, employees' wages were underpaid. Schmidt Decl., ¶ 31. Based on Plaintiff's expert's
9 analysis of Defendant's timekeeping records, Plaintiff estimates that Settlement Class members
10 were underpaid by approximately 8,292 hours during the Class Period as a result of its rounding
11 practice, when comparing on-the-clock time to paid time. *Id.* The average overtime wage in
12 California during the Class Period was approximately \$29.49. *Id.* Thus, Plaintiff estimates
13 Defendant's maximum exposure for this claim as: 8,292 unpaid hours x \$29.49 average overtime
14 rate = \$244,531. *Id.* But as noted above, Defendant maintains its rounding practice is even-
15 handed and results in employees being paid for all hours worked, that just because an employee
16 is clocked in does not mean that employee is performing work, that the amount of unpaid time
17 per shift is *de minimis* and thus non-compensable, and that this claim would not be certified,
18 since individualized inquiries would be necessary as to whether employees were in fact
19 underpaid or overpaid for each workday in question (including whether they were actually
20 working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.* In
21 light of these defenses, Plaintiff discounted the maximum exposure by 50% to account for the
22 risk of non-certification, and an additional 50% for risk of losing on the merits, to arrive at an
23 estimated exposure of approximately \$61,133.00. *Id.*

24 **Meal Period Violations: \$359,563.00**

25 Plaintiff alleges that Defendant routinely provided late and/or short meal periods to its
26 non-exempt employees. Schmidt Decl., ¶ 32. Plaintiff further alleges that Defendant failed to
27 provide second meal periods on shifts over 10.0 hours. *Id.* Based on Plaintiff's expert's review
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1 and extrapolation of employee timekeeping data, Plaintiff calculated approximately 102,037
2 shifts that reflected at least one potential meal period violation (late, short, or missed meal
3 period(s)). *Id.* Further, the data produced by Defendant reflected an average hourly rate of
4 approximately \$19.66 for Settlement Class members during the Class Period. *Id.* Defendant,
5 however, paid 431 meal period premiums for either late or missed meal periods. *Id.* Plaintiff
6 therefore estimated a maximum total exposure for this claim as: (102,037 shifts – 431 premiums)
7 * \$19.66 regular hourly rate of pay = \$1,997,574. *Id.* As aforementioned, Defendant presented
8 several defenses to this claim, including that it has always “provided” lawful meal periods and
9 that under *Brinker* it need not “ensure” meal periods are taken, that any missed, short, or late meal
10 periods reflected in the time records are the result of employee choice rather than Defendant’s
11 policy or practice, that employees voluntarily choose to waive their second meal periods, and that
12 this claim is not amenable to class certification, given the individual inquiries needed to assess
13 *why* an employee did not take a compliant meal period, and (for second meal periods) whether
14 the second meal period was waived. *Id.* Based on these defenses, Plaintiff discounted the maximal
15 amount by 60% for risk of non-certification, and by an additional 55% for risk of losing on the
16 merits or failure to recover the full amount sought, to arrive at a realistic exposure of \$359,563.00.
17 *Id.*

18 Rest Period Violations: \$80,636.00

19 As discussed above, Plaintiff alleges that Defendant failed to authorize and permit its non-
20 exempt employees to take a third rest period for shifts in excess of 10 hours but less than 12 hours.
21 Schmidt Decl., ¶ 33. Based on Plaintiff’s expert’s review and extrapolation of the timekeeping
22 data, there were approximately 60,763 shifts of over 10 hours but less than 12 hours during the
23 Class Period. *Id.* Thus, Plaintiff calculated Defendant’s maximum exposure for the third rest
24 period claim as: 60,763 shifts * \$19.66 regular hourly rate of pay = \$1,194,601.00. *Id.* But as
25 noted above, Defendant argues it has always authorized and permitted rest periods in accordance
26 with California law, including third rest periods on shifts over 10 hours, that any failure to take a
27 third rest period is a result of employee choice, and that this claim is not amenable to class
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1 certification given the individual inquiries required to determine whether and why each employee
2 missed a third rest period on each of 60,763 shifts, particularly given that rest periods need not be
3 recorded. *Id.* Plaintiff therefore discounted the potential maximum by 85% for risk of non-
4 certification, and an additional 55% for risk of losing on merits or failing to recover the full
5 amount sought, to arrive at a realistic exposure of \$80,636.00. *Id.*

6 **Regular Rate Claims: \$68,803.00**

7 As discussed above, Plaintiff alleges that Defendant miscalculated the regular rate of pay
8 by failing to including non-discretionary quarterly bonuses in the regular rate of pay when
9 calculating overtime wages. Schmidt Decl., ¶ 34. Based on Plaintiff's expert's review and
10 extrapolation of the timekeeping data, Defendant failed to pay approximately \$101,931.00 in
11 overtime wages, with each class member being underpaid \$283.93. *Id.* But as noted above,
12 Defendant maintains that its bonuses were always discretionary and therefore could properly be
13 excluded from the regular rate. *Id.* Plaintiff therefore discounted the potential maximum by 10%
14 for risk of non-certification, and an additional 25% for risk of losing on merits or failing to recover
15 the full amount sought, to arrive at a realistic exposure of \$68,803.00. *Id.*

16 **Seventh Day Overtime Claims: \$12,365.00**

17 As discussed above, Plaintiff alleges that Defendant failed to pay its employees at a rate
18 of one and one-half times their regular rate of pay for the first 8.0 hours worked on the seventh
19 day, or at a rate of double their regular rate of pay for all hours worked thereafter on the seventh
20 day, in violation of California law. Schmidt Decl., ¶ 35. Based on Plaintiff's expert's review and
21 extrapolation of the timekeeping data, Defendant failed to pay approximately \$14,547.00 in
22 overtime wages. *Id.* But as noted above, Defendant argues that this occurrence was so exceedingly
23 rare, that it would be denied class treatment for lack of numerosity. *Id.* Plaintiff therefore
24 discounted the potential maximum by 15% for risk of non-certification, to arrive at a realistic
25 exposure of \$12,365.00. *Id.*

26 **Wage Statement Penalties: \$136,178.00**

27 Plaintiff's expert's analysis reflected that there were approximately 9,194 bi-weekly pay
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1 periods within the one-year liability window under Labor Code § 226. Schmidt Decl., ¶ 36. In
2 calculating Defendant’s exposure, Plaintiff calculated Defendant’s maximum possible wage
3 statement exposure as approximately \$907,850.00 ((231 initial violations * \$50 per pay period)
4 + (8,963 subsequent pay periods * \$100 per pay period)). *Id.*; see also Lab. Code § 226(e)
5 (providing \$50 penalty for “initial” violations); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th
6 1157, 1207 (2008) (finding “initial” violation rate applies until employer has been notified it
7 violated the Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal.
8 2014) (citing *Amaral* and applying “initial” \$50 penalty to all pay periods in calculating amount-
9 in-controversy for wage statement claim). However, given Defendant’s arguments that no
10 violations occurred, that class members suffered no “injury,” that any alleged violations were not
11 “knowing and intentional,” that a meal or rest period claim cannot support wage statement
12 penalties, and that Plaintiff would not be able to show a penalty in every pay period, as well as
13 the risks associated with Plaintiff’s underlying claims, Plaintiff discounted the maximum
14 exposure by 40% for risk of non-certification, and by an additional 75% for risk of being
15 unsuccessful on the merits or failure to prove the violations were knowing and intentional and/or
16 caused injury, for an estimated realistic exposure of \$136,178.00. Schmidt Decl., ¶ 36.

17 **Waiting Time Penalties: \$72,185.00**

18 Based on data provided by Defendant, there are approximately 102 Settlement Class
19 members who have separated their employment with Defendant since March 25, 2016. Schmidt
20 Decl., ¶ 37. Using an estimated average waiting time penalty of \$4,718.00 (\$19.66 * 8 hours *
21 30 days), Plaintiff estimated Defendant’s maximum potential waiting time penalty exposure as
22 \$481,236.00 (102 * \$4,718.00). *Id.* As noted above, however, Defendant asserts it has strong,
23 good-faith defenses to Plaintiff’s underlying claims, and thus, even if Plaintiff were able to
24 recover on her underlying claims, she would not be able to recover derivative waiting time
25 penalties. *Id.* Defendant further contends Plaintiff’s meal and rest period claims cannot support a
26 claim for waiting time penalties, as multiple courts have held. *Id.* Moreover, because the waiting
27 time claim is derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome
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1 Defendant's defenses, both as to class certification and the merits, to her underlying claims. *Id.*
2 Defendant argues, not every former employee suffered every single alleged wrong, and therefore
3 if Plaintiff only certified or prevailed on some but not all of her claims, the size of any potential
4 waiting time claim would be reduced. *Id.* Based on these defenses, Plaintiff discounted
5 Defendant's maximum exposure by 40% for risk of non-certification and by an additional 75%
6 for risk of being unsuccessful on the merits or failure to establish willfulness, to arrive at an
7 estimated realistic exposure of \$72,185.00. *Id.*

8 **PAGA Civil Penalties: \$91,940.00**

9 Plaintiff estimated a maximum PAGA exposure of \$919,400.00, based on 9,194 pay
10 periods during the PAGA Period at the \$100 "initial" violation rate under Labor Code § 2699(f).
11 Schmidt Decl., ¶ 38; *Amaral*, 163 Cal.App.4th at 1209. However, these penalties derive from
12 Plaintiff's underlying claims, each of which Defendant vigorously disputes. Schmidt Decl., ¶ 38.
13 Defendant further argues Plaintiff would not be able to show a violation in *every* pay period, and
14 thus her damages estimate is inflated. *Id.* The PAGA also grants courts discretion to reduce
15 PAGA civil penalties (Lab. Code § 2699(e)(2)), and Defendant argues the Court would reduce
16 penalties significantly given its good-faith defenses. *Id.* Thus, Plaintiff discounted the maximum
17 figure by 90% for risk of the Court reducing penalties, to arrive at an estimated exposure of
18 \$91,940.00. *Id.*; *see also Thurman*, 203 Cal.App.4th at 1135-36 (affirming reduction of PAGA
19 penalties); *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL
20 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%); *Carrington*, 30
21 Cal.App.5th at 529 (affirming PAGA penalty of just \$5 per pay period).

22 Using these estimated figures, Plaintiff predicted the realistic total recovery for the
23 Settlement Class would be approximately \$882,803.00. Schmidt Decl., ¶ 39. The proposed
24 settlement of \$600,000 therefore represents over 67.97% of Plaintiff's reasonably forecasted
25 classwide recovery. *Id.* Preliminary approval is therefore appropriate as the Settlement will
26 provide significant monetary relief to the Settlement Class.

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

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
4 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented
5 by competent and experienced counsel who possesses extensive experience litigating wage and
6 hour class actions from both the plaintiff and defense side, and who have been appointed as class
7 counsel in numerous cases alleging similar claims. *See* Schmidt Decl., ¶¶ 2-6; Declaration of
8 Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of Alexandra R. McIntosh (“McIntosh
9 Decl.”), ¶¶ 2-4. Class Counsel conducted an extensive review and analysis of Defendant’s
10 produced timekeeping and payroll records with the assistance of a retained expert with a Ph.D.
11 in economics, and drew on their extensive experience in similar cases to assess the strengths and
12 weaknesses of Plaintiff’s case. *See* Schmidt Decl., ¶¶ 11, 28- 29. It was only after the completion
13 of this work that the Parties attended mediation and ultimately accepted the mediator’s proposal
14 for a class-wide settlement of all claims at issue. *Id.* Thus, this factor strongly supports
15 preliminary approval of the Settlement.

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

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

21 **a. The Settlement is Within the Range of Possible Approval**

22 The proposed Settlement reflects a fair and reasonable recovery for the class members in
23 light of the significant risks of litigation. The proposed Settlement will provide compensation for
24 contested claims, while only releasing the claims actually at issue in this litigation. Further, the
25 average payment of \$922.42 exceeds the average payments achieved in other wage and hour
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1 class action settlements that have been approved.³ Thus, the proposed Settlement is within the
2 range of possible approval such that notice should be provided to the class members to consider
3 the Settlement. The Court will have the opportunity to again assess the reasonableness of the
4 Settlement after the Settlement Class Members have had the opportunity to opt-out or object.

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

6 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
7 of the exchange of pertinent information, including all relevant policies, employee timekeeping
8 and payroll records, and key data points which were analyzed by Plaintiff and her expert; arm's-
9 length negotiations by counsel; mediation before an experienced wage and hour class action
10 mediator; a mediator's proposal; and additional negotiations until the terms of the long-form
11 Settlement were agreed upon and finalized. Schmidt Decl., ¶¶ 11, 28- 29; *see also Kullar, supra*,
12 168 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

13 **c. The Settlement is Devoid of Obvious Deficiencies**

14 The Settlement will provide tangible monetary relief to the Settlement Class Members.
15 Moreover, the amounts proposed for Plaintiff's enhancement payment, settlement administration
16 costs, attorneys' fees and costs to Class Counsel, and the LWDA's portion of PAGA civil
17 penalties are all reasonable and appropriate. Because the Settlement is devoid of obvious
18 deficiencies, this final factor supports preliminary approval.

19 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

20 The proposed Settlement Class satisfies the criteria for certification of a settlement class
21 under California law because: (1) the individuals in the Settlement Class are so numerous that
22 joinder would be impractical; (2) common questions of law and fact predominate over individual

23 ² See e.g., *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9,
24 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case
25 No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and
26 *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal.
27 June 11, 2012) ("Class Members will receive an average of approximately 198.70 . . . [T]his is a substantial
28 recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar
actions where the gross recoveries per class member were less than \$90 . . . [T]he Court finds that the
results achieved are good").

1 questions such that class certification is the most efficient and desirable way to maintain this
2 litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class Members;
3 and (4) Plaintiff and Plaintiff's counsel will fairly and adequately represent the interests of the
4 absent Settlement Class Members. *See* Cal. Code Civ. Proc. § 382.

5 **1. The Proposed Class Is Ascertainable And Numerous**

6 A class is "ascertainable" where the members "may be readily identified without
7 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
8 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
9 Class is defined as all current and former non-exempt employees have worked for Defendant in
10 California during the Class Period. *See* Settlement, ¶ 1. Class Members can be easily identified
11 using Defendant's employment and payroll records. Schmidt Decl., ¶ 26. Defendant represents
12 that the Settlement Class consists of approximately 359 individuals, rendering it impracticable to
13 bring all class members before the Court. *Id.* Thus, the proposed Settlement Class satisfies
14 numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

15 **2. Common Issues Of Law And Fact Predominate**

16 The focus in a certification dispute is not on the merits of the case, but rather on what
17 types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug*
18 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated
19 on Defendant's alleged unlawful rounding practices, alleged unlawful failure to pay all overtime
20 and minimum wages owed, alleged unlawful meal and rest periods practices, alleged unlawful
21 regular rate miscalculations, alleged unlawful seventh day overtime miscalculations, alleged
22 failure to furnish accurate and itemized wage statements, and alleged failure to pay all final wages
23 owed upon separation of employment. These types of claims are commonly held to be proper for
24 class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34 ("The theory of liability—that
25 Brinker has a uniform policy, and that that policy...allegedly violates the law—is by its nature a
26 common question eminently suited for class treatment."); *Faulkinbury v. Boyd & Assoc., Inc.*
27 (2013) 216 Cal.App.4th 220, 240 (certifying meal and rest period claims); *Bradley v. Networkers*
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1 *Int'l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying meal and rest period claims); *Lubin v.*
2 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 959 (certifying plaintiffs' wage statement claim).

3 **3. The Claims Of The Named Plaintiff Are Typical**

4 The typicality requirement is satisfied where class representatives have claims that are
5 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
6 Cal.App.3d 1341, 1347. Here, like other Settlement Class Members, Plaintiff was employed by
7 Defendant as a non-exempt employee in California, and was subject to Defendant's allegedly
8 unlawful wage and hour policies/practices during the Class Period. Ramirez Decl., ¶ 2-4. Plaintiff
9 was therefore impacted by the same challenged policies that allegedly injured the Settlement
10 Class as a whole, and was subject to the same defenses forwarded by Defendant as to the
11 Settlement Class, and is therefore typical.

12 **4. Plaintiff And Class Counsel Will Fairly And Adequately Represent**
13 **The Class**

14 The adequacy of representation requirement examines conflicts of interest between named
15 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
16 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel
17 will adequately represent the Settlement Class as there are no conflicts between the named
18 Plaintiff and the Settlement Class she seeks to represent, and Plaintiff possesses claims that are
19 in line with those of the class members. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d
20 442, 450 (finding adequacy satisfied where there was no indication that the plaintiff's counsel
21 were not qualified and the named plaintiff had no interests antagonistic to those of the proposed
22 class). Class Counsel also has extensive experience in wage and hour class action litigation. *See*
Schmidt Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8; McIntosh Decl., ¶¶ 2-4.

23 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

24 This Court should order distribution of the proposed Class Notice in both English and
25 Spanish to the Settlement Class Members by first class mail, postage prepaid, using the last
26 known mailing address information provided by Defendant. This manner of giving notice is the
27 "best notice practicable" under the circumstances because it provides "individual notice to all
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1 members who can be identified through reasonable effort.” *See Eisen v. Carlisle and Jacquelin*
2 (1974) 417 U.S. 156, 173. The Parties propose that the settlement be administered by Phoenix
3 Settlement Administrators (“Phoenix”), an experienced class action settlement administrator. *See*
4 Declaration of Jodey Lawrence. Class members’ addresses will be ascertainable through
5 Defendant’s personnel records, and Defendant will provide all class members’ names, last known
6 addresses, phone numbers, social security numbers, dates of employment, the status of the
7 Settlement Class Member (active or terminated), and the information necessary to calculate their
8 Individual Settlement Shares to Phoenix within ten (10) business days after Defendant’s receipt
9 of notice of the entry of an order preliminarily approving the Settlement. *See* Settlement, ¶ 9.B.
10 Phoenix will run the Settlement Class Members’ addresses through the National Change of
11 Address database and/or conduct skip traces to obtain current address information. *Id.*, ¶¶ 9.C-
12 D.

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

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

2 Finally, this Court should set a hearing for the final approval of this Settlement on a date
3 appropriately scheduled to follow the deadline for Settlement Class members to submit any opt-
4 outs or objections to the Settlement. *See* California Rule of Court 3.769.

5 **V. CONCLUSION**

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

9
10 Dated: April 26, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

11
12 By:



13 Fletcher W. Schmidt
14 Attorneys for Plaintiff
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