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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

CHRISTOPHER JOE BECERRA, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

LUXFER, INC., a Delaware Corporation; and
DOES 1-50, inclusive.

Defendants

CASE NO.: RIC2001892

*Assigned to Hon. David M. Chapman,
Dept. PS2*

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

Date: July 6, 2021

Time: 8:30 a.m.

Dept.: PS2

Reservation ID: RES247101

Complaint Filed: June 1, 2020

FAC Filed: November 12, 2020

SAC Filed: April 16, 2021

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

2 **PLEASE TAKE NOTICE** that, pursuant to Rule 3.769 of the California Rules of Court,
3 on July 6, 2021, at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable
4 David M. Chapman in Department PS2 of the Riverside County Superior Court, located at 4050
5 Main Street, Riverside, California 92501, Plaintiff Christopher Joe Becerra, individually and
6 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

7 • Granting preliminary approval of the proposed class action settlement reached and
8 described herein and in the Declaration of Mehrdad Bokhour in Support of Plaintiff's Motion for
9 Preliminary Approval of Class Action Settlement ("Declaration of Mehrdad Bokhour"),
10 including the means of allocation and distribution of the Gross Settlement Amount and the Net
11 Settlement Amount, and the allocations for the Class Counsel Fees Payment, Class Counsel
12 Litigation Expenses Payment, Class Representative Service Award, PAGA Payment, and
13 Settlement Administration Expenses;

14 • Certifying the proposed Class for settlement purposes only;
15 • Preliminarily appointing Plaintiff Christopher Joe Becerra as Class Representative;
16 • Preliminarily appointing Bokhour Law Group, P.C. and Falakassa Law P.C. as
17 Class Counsel;

18 • Approving the Notice of Proposed Settlement of Class Action ("Class Notice")
19 described herein and in the Declaration of Mehrdad Bokhour;

20 • Appointing ILYM Group ("ILYM") as the Settlement Administrator to handle the
21 notice and administration process for the Settlement and preliminarily approving Settlement
22 Administration Expenses;

23 • Directing ILYM to mail the Class Notice to the proposed Class;

24 • Approving the proposed deadlines for the notice and administration process as
25 reflected herein and in the Settlement Agreement; and

26 • Scheduling a hearing to consider final approval of the Settlement, at which time the
27 Court will also consider whether to grant final approval of the requests for the Class Counsel Fees
28 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and

1 Settlement Administration Expenses.

2 This motion is based upon the accompanying memorandum of points and authorities; the
3 Settlement Agreement; the Declarations of Class Counsel Mehrdad Bokhour and Joshua
4 Falakassa, the Declaration of George S. Howard, Declaration of Duncan Banks of Luxfer, Inc.,
5 the Declaration of Christopher Joe Becerra, and the Declaration of Jonathan Paul of ILYM
6 Group, in support thereof; as well as the pleadings and other records on file with the Court in this
7 matter, and such evidence and oral argument as may be presented at the hearing on this motion.
8 Defendant does not intend to oppose this Motion and given the multiplicity of issues addressed
9 in this Motion, Defendant has indicated its approval of Plaintiff's expressed need to exceed the
10 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiff respectfully
11 requests that the Court consider Plaintiff's entire memorandum of points and authorities.

12 Dated: June 11, 2021

BOKHOUR LAW GROUP, P.C.

13
14 By: _____
15 Mehrdad Bokhour
16 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff Christopher Joe Becerra (“Plaintiff”) respectfully requests that this Court grant
4 preliminary approval of the Settlement (also referred to as “Agreement,” or “Settlement Agreement”)
5 entered into by and between Plaintiff, individually and on behalf of the proposed Class, and
6 Defendant Luxfer, Inc. (“Defendant”).

7 Subject to Court approval, Plaintiff and Defendant have agreed to settle this lawsuit for a
8 Gross Settlement Amount of One Million One Hundred and Twenty-Five Thousand Dollars
9 (\$1,125,000) on a non-reversionary basis.¹ This amount is inclusive of all payments contemplated in
10 this Settlement, excluding any employer-side payroll taxes due on the portion of the Settlement
11 Shares allocated as wages, which amount shall be separately paid by Defendant to the Settlement
12 Administrator. All of the Gross Settlement Amount will be disbursed pursuant to the Settlement
13 Agreement without the need to submit a claim form and none of the Gross Settlement Amount will
14 revert to Defendant. Settlement Agreement ¶ III(A).

15 The parties reached the Settlement after engaging in extensive formal and informal
16 discovery, investigations, and arm’s-length negotiations. The Settlement resulted from a formal
17 mediation conducted by Mark Rudy, Esq., a well-respected mediator who is experienced in wage-
18 and-hour class actions. The Settlement satisfies the criteria for approval and falls within the range of
19 possible approval under California law.

20 Additionally, the contemplated Class Notice provides the best notice practicable under the
21 circumstances and will allow each Class Member a full and fair opportunity to evaluate the
22 Settlement and decide whether to participate in it. Accordingly, Plaintiff moves the Court to grant
23 preliminary approval of the Settlement and the allocations for the Class Counsel Fees Payment, Class
24 Counsel Litigation Expenses Payment, Class Representative Service Payment, and Settlement
25 Administration Expenses; certify the proposed Class for settlement purposes; direct distribution of
26 the Class Notice; and set a Final Approval Hearing.

27 ¹ The Class Action Settlement Agreement (“Agreement” or Settlement Agreement”) is attached to the Declaration
28 of Mehrdad Bokhour as Exhibit A. The proposed Notice Of Proposed Settlement of Class Action (i.e., Class Notice) is
attached as Exhibit 1 to the Settlement.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. Procedural History

Defendant Luxfer, Inc. manufactures high-pressure aluminum and composite gas cylinders, and operates two manufacturing facilities in the U.S.A., including a manufacturing plant in Riverside, California. *See* Declaration of Mehrdad Bokhour (“Bokhour Decl.”) ¶ 3.

This Settlement settles the following Action filed on or about June 1, 2020, entitled *Christopher Joe Becerra et al. v. Luxfer, Inc.*, filed in the Riverside County Superior Court and assigned case number RIC2001892. Bokhour Decl., ¶ 4. Plaintiff asserted claims for 1) Failure to pay overtime wages in violation of California Labor Code § 510; 2) Failure to provide meal breaks in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order; 3) Failure to provide rest breaks in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order; 4) Failure to provide accurate itemized wage statements in violation of California Labor Code § 226; 5) Failure to indemnify employees for all necessary business expenses in violation of California Labor Code § 2802; and 6) Violation of California Business and Professions Code § 17200 *et seq. Id.*

On or about November 12, 2020, Plaintiff filed his First Amended Complaint, to add a claim for failure to timely pay final wages upon separation of employment pursuant to Labor Code section 203 and claims for penalties under the PAGA. Bokhour Decl., ¶ 5.

On or about April 16, 2021, Plaintiff filed a Second Amended Complaint to add a claim for unpaid minimum and overtime wages based on Defendant’s alleged unlawful and uneven rounding practice. *Id.*

B. Plaintiff’s Claims and Defendant’s Defenses

Plaintiff’s core allegations are that Defendant violated the California Labor Code, *inter alia*, by failing to properly pay minimum and overtime wages, failing to provide compliant meal and rest periods or pay associated premiums, failing to provide compliant wage statements, failing to timely pay final wages upon separation of employment, and failing to reimburse necessary business-related expenses. Bokhour Decl., ¶ 6. Plaintiff contends that Defendant’s conduct constitutes unfair business practices and gives rise to penalties under PAGA. *Id.*

Specifically, Plaintiff alleges that Defendant's failure to properly pay all compensation due, arises from, *inter alia*, Defendant's practices and policies which consisted of a rounding policy that pays the Class Members in increments of 1/10th of an hour – while only rounding forward to the nearest 6-minute mark. *Id.* Further, Defendant paid Class Members on an hourly basis plus additional remuneration in the form of productivity, attendance, and other bonuses. *Id.* However, Defendant failed to include these earned bonuses in the calculations for the regular rate of pay, thus leading to unpaid overtime. *Id.* As a result, Plaintiff contends that he and the Class Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees. *Id.*

Moreover, Plaintiff alleges that Defendant uniformly failed to provide Class Members with second meal periods of at least thirty (30) minutes before the tenth (10th) hour of their shift and that Class Members were not relieved from control during rest periods because they were required to remain on the premises. *Id.*

Defendant denies any liability of any kind associated with the claims and allegations, and further denies that Plaintiff or the Class Members are entitled to any relief. Bokhour Decl., ¶ 7. Defendant also denies that the Action is appropriate for class or representative treatment for any purpose other than the Settlement. *Id.* Defendant maintains, among other things, that it has complied with California laws in all respects. *Id.*

C. Discovery and Mediation

Prior to mediation, the parties engaged in formal and informal discovery during which Defendant produced a sampling of timekeeping and payroll data, the relevant wage and hour policies in effect during the Class Period, as well as other documents and information. Bokhour Decl., ¶ 8. Class Counsel also conducted interviews of multiple Class Members regarding their work experiences with Defendant. *Id.* Class Counsel performed extensive damages and valuation analysis based on class data and a sampling of time and pay data provided by Defendant. *Id.*

On February 11, 2021, the parties participated in a private mediation before Mark Rudy, Esq., a well-respected mediator experience in handling complex wage-and-hour matters. Bokhour Decl., ¶ 9. During the mediation, the parties exchanged information and discussed various aspects

of the case, including and not limited to, Plaintiff's claims, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to Plaintiff's rounding theory, meal and rest periods, wage-and-hour enforcement, PAGA representative claims, the evidence produced and analyzed, and the possibility of appeals, among other things. *Id.*

After extensive negotiations and continued litigation, on March 30, 2021, the mediator issued a mediator's proposal that the Parties ultimately accepted. *Id.*

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Class for Settlement Purposes

For settlement purposes only, the parties agree to class action certification of the following Class (individually referred to as "Class Members"): "All individuals employed during June 1, 2016 through June 28, 2021 (the "Class Period") as non-exempt hourly employees working at Luxfer, Inc.'s Gas Cylinders facility located at 3016 Kansas Ave., Riverside, California." "PAGA Class" are a sub-group of the Class. The PAGA Class means "all individuals employed during March 29, 2019 through June 28, 2021 (the "PAGA Period") as non-exempt hourly employees working at Luxfer, Inc.'s Gas Cylinders facility located at 3016 Kansas Ave., Riverside, California." Settlement Agreement § I(B). As discussed in Section VI, *infra*, class certification is appropriate with respect to the Settlement.

B. Essential Terms of the Settlement

Defendant will pay a Gross Settlement Amount of One Million One Hundred and Twenty Five Thousand Dollars (\$1,125,000) on a non-reversionary basis. The Net Settlement Amount means the amount remaining after deducting the following from the Gross Settlement Amount: (1) The Class Counsel Fees Payment of up to Three Hundred Seventy-Five Thousand (\$375,000) and the Class Counsel Litigation Expenses Payment of up to Twenty Thousand Dollars (\$20,000) to Class Counsel; (2) the Class Representative Service Payment of up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff Christopher Joe Becerra; (3) the PAGA Payment² in the amount of Fifty

² The Parties will seek approval from the Court for a PAGA Payment in the amount of \$50,000.00 out of the Gross Settlement Amount, which shall be allocated as follows: \$37,500.00 as the LWDA's share for the settlement of civil penalties paid under this Agreement pursuant to the PAGA (the "LWDA Payment") and \$12,500.00 to the Net Settlement Amount to be available for distribution to the PAGA Class Members.

Thousand (\$50,000); and (4) Settlement Administration Expenses, which are currently estimated to be Seven Thousand Five Hundred Dollars (\$7,500). Settlement Agreement § I(S). Assuming the allocations towards these payments are awarded in full, the Net Settlement Amount that will be available to be allocated to Class Members who do not submit timely and valid Requests for Exclusion (“Participating Class Member(s)”) is currently estimated to be at least (\$677,500). The entire Net Settlement Amount will be distributed to Participating Class Members and PAGA Class Members, pursuant to the Settlement Agreement, and no portion shall revert to Defendant. Settlement Agreement § III (A).

C. Calculation of Individual Settlement Shares

The Settlement Administrator shall calculate each Class Member’s estimated individual Settlement Share as follows: The Settlement Share for each Participating Class Member will be calculated by (a) dividing the remaining Net Settlement Amount by the total number of workweeks worked for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member’s workweeks worked that occurred during the Class Period. In addition, each Participating Class Member who separated employment during the Class Period shall receive an additional ten (10) workweeks credit in determining that Class Member's Settlement Share; provided that such employee separated employment during the Class Period and worked a total of six (6) or more workweeks. Settlement Agreement § III (C)(2). The pro-rata shares for PAGA Class will be similarly determined by comparing the PAGA pay periods worked by each PAGA Class member to the total PAGA Pay Periods for all PAGA Class worked during the PAGA Period. *Id.*

Individual Settlement Shares shall be allocated as one-third as wages and two-thirds as interest and penalties. Settlement Agreement § III (C)(3)(a)-(b). The wage portion will be reported on an IRS Form W-2, and the portions allocated to interest and penalties will be reported on an IRS Form-1099. The individual Settlement Shares will be reduced by any required deductions for the employee and employer-side taxes and withholdings with respect to the wage portion of individual Settlement Shares. The PAGA Settlement Shares will be allocated entirely as penalties and will be included on an IRS Form 1099 to each PAGA Class Member.

1 Subject to the terms and conditions of the Settlement Agreement, the Settlement
2 Administrator shall first take \$12,500 (the “PAGA Allocation”) from the Net Settlement Amount
3 and pay each PAGA Class Member employed during the PAGA Period their respective pro-rata
4 share of the PAGA Allocation. The pro-rata shares for the PAGA Class Members will be
5 determined by comparing the PAGA pay periods worked by each PAGA Class Member to the
6 total PAGA pay periods for all PAGA Class Members worked during the PAGA Period. This
7 amount will be in addition to their Settlement Share. Settlement Agreement § III (C)(2). PAGA
8 Class Members will receive their pro-rate share of the PAGA Allocation regardless of whether
9 they submit a valid and timely Request for Exclusion and will still be bound by this Agreement
10 only with respect to the Release PAGA Claims.

11 According to Defendant, there are approximately 478 Class Members. Bokhour Decl., ¶
12 11. Therefore, the average individual Settlement Share is projected to be approximately
13 \$1,417.36. The highest individual Settlement Share is estimated to be \$3,400. *Id.*

14 **D. Request for Exclusion and Objection Procedures**

15 Class Members who wish to exclude themselves from the Settlement must mail to the
16 Settlement Administrator no later than forty-five (45) days after the Settlement Administrator
17 mails the Class Notice Packets, a signed Request for Exclusion. Settlement Agreement §
18 III(E)(3)(b). To be valid, a Request for Exclusion must be timely and must comply with the
19 instructions in the Class Notice. *Id.* If a question is raised about the authenticity of a signed
20 Request for Exclusion, the Settlement Administrator will have the right to demand additional
21 proof of the Class Member’s identity and will give the Class Member notice of the deficiency
22 and the opportunity to cure. *Id.* A Non-Participating Class Member will not participate in or be
23 bound by the Settlement and the Judgment. *Id.* A Class Member who does not complete and mail
24 a timely Request for Exclusion in the manner and by the deadline specified above will
25 automatically become a Participating Class Member and be bound by all terms and conditions of
26 the Settlement, including the Released Class Claims by the Participating Class Members, if the
27 Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has
28 objected to the Settlement. *Id.* Persons who submit a Request for Exclusion shall not be

permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement. *Id.*

All Participating Class Members who do not submit a valid and timely Request for Exclusion will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement. *Id.* PAGA Class Members will receive their respective share of the PAGA Allocation regardless of whether they submit a valid and timely Request for Exclusion.

The Class Notice will also provide that only Participating Class Members who wish to object to the Settlement may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Settlement Agreement § III(E)(3)(a). Objections in writing must be submitted to the Settlement Administrator no later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets and must set forth the grounds for the objection and comply with the instructions in the Class Notice. *Id.* A Participating Class Member who does not submit an oral and/or a written objection in the manner and by the deadline specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. *Id.* Non-Participating Class Members shall have no ability to comment on or object to the Settlement. *Id.*

Finally, each Class Member shall also have forty-five (45) days from the date of mailing the Class Notice Packet in which to dispute the number or workweeks which the Class Notice allocates to them during the Class Period. *Id.* Any Notice of Dispute shall be directed to the Settlement Administrator. *Id.* In the event of any such dispute, the employment, time and payroll records of Defendant shall be entitled to a presumption of accuracy and any Class Member asserting a dispute shall have the burden to prove the accuracy of his or her claim. *Id.* Any dispute as to this allocation shall be resolved by the Settlement Administrator. *Id.* In resolving any such dispute, the Settlement Administrator may request additional information from Defendant's Counsel and/or Class Counsel. *Id.*

1 **E. Scope of the Release**

2 The Settlement provides as follows: “As of the date the Judgment becomes Final, Defendant
3 and the other Released Parties shall be entitled to a release of any and all claims, debts, liabilities,
4 demands, actions or causes of action which are alleged, or reasonably could have been alleged based
5 on the facts and claims asserted in the Second Amended Complaint, including all claims for
6 restitution and other equitable relief, claims for unpaid minimum and overtime wages, liquidated
7 damages, meal and rest period premiums, unreimbursed business expenses, waiting time penalties,
8 unfair business practices, failure to provide accurate wage statements, and civil penalties brought
9 under the PAGA, (“Released Claims”), and all claims for civil or statutory penalties arising out of the
10 Participating Class Members’ Released Claims. The Released Claims expressly exclude all other
11 claims, including claims for vested benefits, wrongful termination, unemployment insurance,
12 disability, social security, workers’ compensation, and claims arising outside of the Class Period.”³
13 Settlement Agreement § III(F)(1).

14 Further, as of the date the Judgment becomes Final, “Plaintiff hereby fully and finally
15 releases Defendant and the other Released Parties from any and all claims, losses, debts, charges,
16 damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty,
17 misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties,
18 costs, and expenses of every nature and description whatsoever, known or unknown, asserted or
19 that might have been asserted, whether in tort, contract, or for violation of any local, state, or
20 federal statute, rule, regulation, ordinance or common law, including but not limited to those
21 claims raised in the Action and/or that could have been raised in the Action, and those arising
22 from or related to his work with Defendant (“Plaintiff’s Released Claims”) and the Released
23 Claims, as set forth above. This release excludes only the release of claims not permitted by
24 law.”⁴ Settlement Agreement § III(F)(2).

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27 ³ “Released Party” means Defendant, together with all of Defendant’s current and former officers, directors,
employees and agents.

28 ⁴ Plaintiff has also provided a general release of claims with a waiver of California Civil Code section 1542. Settlement
Agreement § III(F)(3).

1 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF THE CLASS ACTION**
2 **SETTLEMENT**

3 California Rule of Court 3.769 conditions settlement of a class action on court approval,
4 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
5 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322,
6 337 (Rule 3.769 requires the trial court to determine “that the settlement is fair, reasonable and
7 adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026
8 (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally
9 fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution,
10 particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516
11 F.3d 1095, 1101. The Court’s role in evaluating a proposed settlement is limited to ensuring that
12 the agreement taken as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an
13 initial presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by
14 Class Counsel and with the assistance of an experienced wage and hour class action mediator.
15 *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

16 To make a fairness determination, the Court should consider several factors, including:
17 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
18 litigation, the risk of maintaining class action status through trial, the amount offered in
19 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
20 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
21 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
22 the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*
23 (2001) 91 Cal.App.4th 224, 245. As discussed below, the proposed Settlement is fair, adequate,
24 and reasonable in light of the overall balance of factors in this case.

25 **V. ARGUMENT**

26 **A. The Settlement Should Be Preliminarily Approved**

27 **1. The Strength of Plaintiff’s Case**

28 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff

acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described in Section II.B., *supra*, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

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

Although the parties engaged in significant formal and informal discovery in advance of mediation, the parties still had significant discovery to complete in formal litigation had the matter not settled. Bokhour Decl., ¶ 12. This would have required expenditure of substantial time and resources by all parties that would have very likely spanned several years. *Id.* Plaintiff faced numerous risks in continued litigation, including and not limited to, the risk of receiving no recovery if a class is not certified and/or no liability is found and the Court determining that adjudication on a representative or class basis is unmanageable and not appropriate. *Id.* Plaintiff also faced the real possibility that the amount recovered against Defendant after years of litigation and a lengthy and costly trial would be less than the amount negotiated in this Settlement. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

3. Risk of Maintaining Class Action Status

Plaintiff had not yet filed their motion for class certification, and as such, the extent to which Plaintiff's proposed Class is certifiable is somewhat speculative. Absent Settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Defendant with individual class members by way of *Pick-Up-Stix* type settlement agreements⁵) and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-Up-Stix* process. Thus, this factor, too, supports preliminary approval of the Settlement.

⁵ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

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

2 The Settlement provides a fair and reasonable recovery for the Class in the face of
3 disputed claims. Plaintiff conducted an in-depth statistical analysis of underpaid wages and
4 penalties due to Defendant’s alleged unlawful timekeeping policies/practices, potential meal and
5 rest period violations, failure to reimburse all necessary business expenses, failure to pay wages
6 at the correct rate of pay, wage statement penalties, waiting time penalties, and PAGA civil
7 penalties. A summary of the results of Plaintiff’s exposure analysis is discussed below:

8 **Unpaid Minimum And Overtime Wages Due to Unlawful Rounding And Failure To**
9 **Correctly Calculate Regular Rate Of Pay:**

10 As described above, Plaintiff alleges that Defendant employed a policy and practice that
11 rounded all timekeeping entries forward to the nearest 10-minute interval. Bokhour Decl., ¶ 13.
12 This policy was not neutral on its face and in application resulted in an underpayment of
13 minimum and overtime wages to the Class Members during each shift. *Id.* Additionally,
14 Defendant also failed to include non-discretionary bonuses when calculating the regular rate of
15 pay used in overtime calculations, resulting in underpayment of overtime wages. *Id.*

16 Based on Plaintiff’s analysis, Plaintiff worked approximately 200 shifts for Defendant
17 and, on an overwhelming 89.4% of his shifts, Plaintiff was underpaid due to Defendant’s
18 rounding policy – compared to only a 7% occurrence of overpayment. *Id.* In total, Plaintiff was
19 underpaid for a net of 14.5 hours during his employment, and this breaks down to a net average
20 of 4.2 minutes of unpaid time per shift. *Id.* Therefore, Plaintiff calculates Defendant’s maximum
21 exposure for this claim at approximately \$549,813. *Id.* This represents 244,492 total class shifts,
22 4.2 minutes underpaid per shift and an average rate of pay of \$16.04. *Id.*

23 Defendant asserts that it maintained lawful timekeeping policies/practices during the
24 Class Period. *Id.* Specifically, Defendant contends that its policies were neutral on their face and
25 that employees were compensated for all hours worked. *Id.* Defendant argues that an
26 individualized inquiry as to whether each Class Member was underpaid is necessary and would
27 preclude class certification. *Id.*; see, e.g., *Brinker Restaurant Corp. v. Superior Court* (2012) 53
28 Cal.4th 1004, 1052 (affirming denial of off-the-clock subclass, “[p]roof of off-the-clock liability

would have had to continue in an employee-by-employee fashion, demonstrating who worked off the clock, how long they worked, and whether Brinker knew or should have known their work.”). In light of these arguments and defenses, Plaintiff discounted Defendant’s maximum exposure by 50% to account for the risk of non-certification, and by an additional 60% for a risk of being unsuccessful on the merits or having the amount of unpaid wages reduced, for a reasonably expected total of approximately \$109,962.60. *Id.*

Meal Period Violations:

Plaintiff alleges that Defendant failed to provide Plaintiff and other Class Members with all second meal periods of at least thirty (30) minutes before the tenth (10th) hour of their shift. Bokhour Decl., ¶ 14. Defendant’s payroll records demonstrate that Class members were consistently unable to take second meal periods at all for shifts in excess of 10 hours. *Id.* Of the 35,139 shifts that were greater than 10 hours, the payroll records reflect that there was only a small fraction (920 or 2.6%) of the recorded second meal periods at all. *Id.* On the same note, of the 13,648 shifts greater than 12 hours, there was a 98% violation rate. *Id.* There was a total of 34,219 shifts with no second meal period at all. *Id.* Based on the data produced by Defendant, Plaintiff estimates that there were approximately 39,429 unique meal period violation which constitutes a 98% violation rate. Therefore, Plaintiff calculated Defendant’s maximum exposure under this theory of liability at \$632,441.16 (39,429 non-compliant meal periods * \$16.04 meal period premium). *Id.* As such, the total Class/PAGA damages regarding meal period violations is estimated to be \$632,441.16. *Id.*

However, Defendant claims that it maintained legally-compliant meal period policies throughout the Class Period; such that it allowed non-exempt employees to take compliant and timely meal periods. *Id.* Defendant also claimed that all the hourly production workers had signed second meal period waivers. As such, Defendant vigorously contended that there were no violations for all of the shifts between 10 and 12 hours. Defendant also contends that this claim would not be certified due to the lack of any common evidence tying together the reason that Class Members experienced a meal period violation. *Id.* Lastly, Defendant asserts that the presence of these affirmative defenses as to the voluntariness of a particular meal period decision

would preclude class certification. *Id.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25. In light of these defenses and arguments, Plaintiff discounted Defendant's maximum exposure by 40% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits, to arrive at an estimated total of \$227,678.82. *Id.*

Rest Period Violations:

Plaintiff alleges that Defendant failed to authorize and permit all legally-compliant rest periods throughout the Class Period. Bokhour Decl., ¶ 15. More specifically, Defendant's rest period policy required Class members to remain on the company premises at the threat of being written up. *Id.* Plaintiff's analysis of Defendant's data demonstrates there were approximately 244,492 rest period eligible shifts. *Id.* Therefore, Plaintiff calculated Defendant's maximum exposure on this claim at \$3,890,293.48 (242,537 non-compliant rest periods * \$16.04 rest period premium). *Id.*

However, Defendant asserts that it maintained compliant rest period policies throughout the Class Period, and authorized and permitted all rest periods to Class Members. Bokhour Decl., ¶ 16. In addition, Defendant argued that, in practice, non-exempt employees were allowed to and did leave the premises during rest periods. Further, Defendant contends that this claim is not amenable to class treatment because 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.* As such, Plaintiff discounted Defendant's maximum exposure by 75% to account for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of approximately \$486,286.69. *Id.*

Wage Statement Violations:

Plaintiff contends that, because of the foregoing Labor Code violations, Defendant issued inaccurate wage statements. Bokhour Decl., ¶ 17. More specifically, the wage statements issued fail to reflect all net wages earned, gross wages earned, the appropriate overtime rate, and the appropriate rate of premium pay for non-compliant meal and rest periods. *Id.* Further, the wage statements issued by Defendant failed to indicate the applicable hourly rates in effect during the

1 pay period and the corresponding number of hours worked at each hourly rate. *Id.*

2 Plaintiff's data analysis reveals there were approximately 8,631 wage statements issued
3 during the one-year liability period. *Id.* Therefore, Plaintiff calculates Defendant's maximum
4 exposure for this claim at \$864,150. *Id.*

5 Based on Defendant's arguments that: (i) no violations occurred; (ii) any alleged
6 violations were not "knowing and intentional" as required by Labor Code § 226(e); (iii) no actual
7 injury was suffered; and (iv) that its wage statements always accurately reflected hours worked
8 and amounts paid to employees, *see Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th
9 1308, 1336-37 (agreeing with employer's "commonsense position that the pay stubs were
10 accurate in that they correctly reflected the hours worked and the pay received), Plaintiff
11 discounted the calculated maximum exposure by 50% for a risk of non-certification, and an
12 additional 50% for a risk of being unsuccessful on the merits, to arrive at an estimated total of
13 \$216,037.50. Bokhour Decl., ¶ 18.

14 **Waiting Time Penalties:**

15 Defendant's records reflected approximately 179 former Class Members who separated
16 from their employment with Defendant during the Class Period. Bokhour Decl., ¶ 19. Based on
17 an average hourly rate of \$16.04, Plaintiff estimated the average waiting time penalty per former
18 employee to be \$4,042.08 (\$16.04 * 8.4 hours per day * 30 days). *Id.* Therefore, Plaintiff
19 estimated Defendant's maximum exposure for potential waiting time penalties to be \$723,532.32
20 (179 former employees * \$4,042.08 average waiting time penalty). *Id.*

21 Defendant presented several defenses to this claim, most notably, the assertion that
22 because they possessed good-faith defenses to the underlying claims, any failure to pay wages
23 was not "willful" as a matter of law. *Id.* Defendant further contends that no waiting time
24 penalties are recoverable as a matter of law as to Plaintiff's claims predicated on a failure to
25 provide meal and/or rest periods as a Court of Appeal recently held in *Naranjo v. Spectrum*
26 *Security Servs., Inc.* (2019) 40 Cal.App.5th. 444, 473-75 (review granted Jan. 2, 2020). To
27 account for Defendant's defenses, Plaintiff discounted the maximum exposure by 30% for the
28 risk of non-certification, and an additional 40% for risk of losing on the merits, and/or not

1 receiving the maximum penalties sought, to arrive at an estimated exposure of \$303,883.57. *Id.*

2 **PAGA Penalties:**

3 Based on the data provided by Defendant, there are approximately 8,631 pay periods
4 during the relevant PAGA period (i.e., March 28, 2019 through the earlier of (a) 90 days from
5 March 30, 2021, or (b) the date on which the Court enters an Order granting preliminary
6 approval of this Settlement). Bokhour Decl., ¶ 20. Based on the violations addressed above,
7 Plaintiff contends that Defendant is liable for a PAGA civil penalty in the amount of \$100 for
8 each of the 8,631 pay periods worked during the PAGA period. *Id.* Accordingly, Plaintiff
9 estimated Defendant's maximum potential PAGA exposure at \$863,100 (8,631 violations * \$100
10 "initial" penalty). *Id.*; *Amaral v. Cintas Corp. No. 2* (2009) 163 Cal.App.4th 1157, 1207 (finding
11 "initial" violation rate applies until employer is notified that it is violating a Labor Code
12 provision). *Id.*

13 However, Defendant assert a host of credible defenses to Plaintiff's PAGA claims.
14 First, Defendant argues that these penalties derive from the underlying wage and hour
15 violations discussed above, which Defendant vigorously disputes. *Id.*; see e.g., *Green v.*
16 *Lawrence Service Co.* (C.D. Cal. 2013) Case No. LA CV12-06155 JAK (VBKx), 2013 WL
17 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its
18 underlying claims). Defendant further contends that the Court would drastically reduce any
19 award of PAGA penalties as "confiscatory." *Id.*; see also *Thurman v. Bayshore Transit Mgmt.,*
20 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v.*
21 *Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at
22 *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted
23 the maximum figure by 65% for risk of losing on the merits, and an additional 75% to account
24 for the possibility of this Court reducing penalties, to arrive at an estimated exposure of
25 \$148,076.25. *Id.*

26 However, considering Defendant's various defenses, difficulties of proof, and other risks
27 as described above, Plaintiff predicted that the potential likely recovery for the Class at trial
28 would be approximately \$1,491,925.41. *Id.* The proposed settlement of \$1,125,000 therefore

represents approximately 75.4% of the reasonably forecasted recovery for the Class, and therefore, represents a fair, reasonable, and adequate resolution of this lawsuit. *Id.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Class Members, which is consistent with what Plaintiff’s counsel believes could have been recovered had the case proceeded through trial.

1. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Bokhour Decl., ¶¶ 29-34; Class Counsel conducted an in-depth review of Defendant’s relevant policies and timekeeping and payroll records, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Bokhour Decl., ¶ 35. The Settlement was also reached with the assistance of an experienced wage and hour class action mediator. *Id.*, at ¶ 40. This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

B. The Preliminary Approval Standard Is Met

At this stage, 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* Manual for Complex Litigation § 30.41 (3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

1. The Settlement Is Within the Range of Possible Approval

The proposed settlement reflects approximately 75% of the estimated recovery the Class could reasonably expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. Bokhour

Decl., ¶ 25; *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (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 Class Members at trial”).

Further, the average individual Settlement Share of \$1,417.36 is greater than the average payments achieved in other wage and hour class action settlements.⁶ Thus, Plaintiff submits that the proposed Settlement is within the range of possible approval, such that notice should be provided to the Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class has had the opportunity to opt-out or object.

a. The allocation for the Class Representative Service Payment is reasonable.

Subject to Court approval, Plaintiff will receive a Class Representative Service Payment in the amounts of Seven Thousand Five Hundred Dollars (\$7,500). The Service Payment will be paid in addition to Plaintiff’s individual Settlement Share. Courts routinely approve incentive awards to class representatives for their time and efforts, and the risks they undertake on behalf of the class. *See, e.g., In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,

⁶ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an average of approximately \$198.70...[T]his is a substantial 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”); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 1393-94 (“[I]ncentive awards are fairly typical in class action cases . . . and are intended to
2 compensate class representatives for work done on behalf of the class [and] to make up for
3 financial or reputational risk undertaken in bringing the action.”).

4 Here, the contemplated Service Payment is fair and appropriate and is well within the
5 range of enhancement awards awarded by trial courts. *See Angell v. City of Oakland*, 13 cv-
6 00190 NC, 2015 WL 65501, at *8 (N.D. Cal. Jan. 5, 2015) (approving \$9,000 incentive awards);
7 *Covillo*, 2014 WL 954516, at *8 (approving an \$8,000 incentive award).

8 Moreover, Plaintiff spent considerable time and effort to produce relevant documents and
9 past employment records and provide the facts and evidence necessary to support the allegations.
10 Bokhour Decl., ¶ 26. Plaintiff was available whenever his counsel needed him and tried to obtain
11 documents and information that would benefit the Class. *Id.* Accordingly, it is appropriate and just
12 for Plaintiff to receive a reasonable Class Representative Service Payment for his services on behalf
13 of the Class.

14 *b. The Class Counsel Fees Payment and Class Counsel Litigation*
15 *Expenses Payment are reasonable.*

16 Class Counsel meets the requirements under California law. Class Counsel conducted
17 extensive research, investigation, and analysis of the potential value of the claims. Additionally,
18 Class Counsel are highly experienced in wage-and-hour litigation and class action cases. *See*
19 Bokhour Decl., ¶¶ 29-32; As such, appointment of Bokhour Law Group, P.C. and Falakssa Law,
20 P.C. as Class Counsel is appropriate.

21 The Settlement establishes a Gross Settlement Amount of One Million One Hundred and
22 Twenty Five Thousand Dollars (\$1,125,000) and provides for Class Counsel to apply for attorneys’
23 fees in an amount of Three Hundred Seventy-Five Thousand. Class Counsel will apply for attorneys’
24 fees at the time of seeking final approval of the proposed Settlement.

25 Under California precedent, it is appropriate to award attorneys’ fees as a percentage of the
26 “common fund” created by a class action settlement. *See Laffitte v. Robert Half Int’l, Inc.*, 1
27 Cal.5th 480 (2016) (holding “the percentage of fund method survives in California class action
28 cases”). The goal is to award “reasonable compensation for creating a common fund.” *Paul*,

1 *Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989). In reviewing a fee award
2 request, courts consider the following factors: (1) the results achieved; (2) whether there are benefits
3 to the class beyond the immediate generation of a cash fund; (3) the risks of litigation; (4) the skill
4 required of counsel and quality of the work performed; (5) the contingent nature of the fee and the
5 foregoing by counsel of other work; and (6) the reactions of the class. *Vizcaino v. Microsoft Corp.*
6 (9th Cir. 2002) 290 F.3d 1043, 1048-50; *In re Toyota Motor Corp.*, 2013 WL 3224585 (C.D. Cal.
7 June 17, 2013). Of these factors, the most significant factor is the “degree of success obtained.”
8 *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

9 Here, the Class Counsel Fees Payment provided for by the Settlement is reasonable,
10 particularly in light of the time and effort expended by Class Counsel. Class Counsel litigated this
11 case for over a year, with the possibility of an unsuccessful outcome and no fee recovery of any kind.
12 Bokhour Decl., ¶¶ 27-28. The ongoing work has been demanding and ultimately successful in
13 achieving a substantial Settlement. Given the strengths and weaknesses of the claims and the risk and
14 expense of further litigation, Plaintiff believes that his counsel achieved an excellent result on behalf
15 of the Class. Considering the amount of the fees to be requested, the work performed, and the risks
16 incurred, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment provided
17 for by the Settlement are reasonable and should be awarded. *See Vizcaino*, 290 F.3d at 1051.

18 Once the Court grants preliminary approval of the Settlement Agreement and Class
19 Notice is disseminated, Plaintiff’s counsel will submit a request for attorneys’ fees and costs
20 with its final approval motion.

21 **2. The Settlement Resulted from Serious, Informed Negotiations**

22 The Settlement resulted from an exchange of substantial information, arm’s-length
23 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator,
24 and additional months of negotiating the long-form settlement agreement. Thus, the Settlement
25 is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. Here,
26 the parties actively litigated this case since it was commenced on June 1, 2020. Class Counsel
27 conducted a thorough investigation into the facts of the case, including, *inter alia*, interviews with
28 Plaintiff and multiple Class Members, and diligently investigated the allegations in this lawsuit. Class
Counsel reviewed a large volume of pages of documents and data produced by Defendant and

1 obtained through other sources, including and not limited to, Plaintiff and other Class Members,
2 employment records (including, *inter alia*, time and payroll data, timecards, earning statements, and
3 personnel records), as well as excerpts of Defendant's employee handbook (such as excerpts
4 pertaining to Defendant's meal and rest break policies), class-wide data, various documents
5 regarding Defendant's wage-and-hour policies, various internal memoranda various agreements,
6 various training and on-boarding material, and various forms, among other information and
7 documents. The parties exchanged information and documents formally and informally. *Id.*, ¶ 40.
8 The parties also met and conferred on numerous occasions over issues relating to the pleadings,
9 jurisdiction, vigorous motion practice, and discovery. *Id.*

10 The parties reached the Settlement after reviewing all available evidence, arm's-length
11 bargaining, and participating in mediation conducted by Mark Rudy, Esq., a well-respected mediator
12 experienced in handling complex wage-and-hour matters. *Id.* During the mediation, the parties
13 exchanged information and discussed various aspects of the case, including and not limited to,
14 Plaintiff's claims, the risks and delays of further litigation and of proceeding with certification and/or
15 representative adjudication, the law relating to rounding theory, meal and rest periods, wage-and-
16 hour enforcement, and PAGA representative claims, the evidence produced and analyzed, and the
17 possibility of appeals, among other things. *Id.*

18 During all settlement discussions, the parties conducted their negotiations at arm's length
19 from an adversarial position. Bokhour Decl., ¶ 41. Arriving at a settlement that was acceptable to
20 both parties was not easy. The data and documents produced and obtained in this case enabled Class
21 Counsel to prepare damages/valuation models in preparation for the mediation, to determine the
22 value and strength of the claims. With the aid of the mediator's evaluations, the parties agreed that
23 the Action was well-suited for settlement given the legal issues relating to the claims, as well as the
24 costs and risks to both sides that would attend further litigation. *Id.* The Settlement takes into account
25 the strengths and weaknesses of each side's position and the uncertainty of how the case might have
26 concluded at certification, trial, and/or appeals. *Id.*

1
2 The Settlement is based on this large volume of facts, evidence, and investigation, and the
3 parties' negotiations during the mediation.⁷ While the parties disagree over the merits and
4 certifiability of Plaintiff's claims, Plaintiff and Class Counsel agree that the Settlement is fair,
5 reasonable, adequate, and in the best interest of the Class, in light of all known facts and
6 circumstances. *Id.*, ¶ 42.

7 **3. The Settlement Is Devoid of Obvious Deficiencies**

8 Preliminary approval of the Settlement is also warranted because there are no obvious
9 deficiencies. The Settlement will provide monetary relief to Class Members. The amounts
10 proposed for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment,
11 the Class Representative Service Payment, Settlement Administration Expenses and the PAGA
12 Payment are all reasonable and appropriate based on the facts of this case. Because the
13 Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

14 **VI. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE UNDER CAL.**
15 **CIV. PROC. SECTION 382**

16 Class certification under California law is appropriate where: (1) the Class is so numerous
17 that joinder would be impractical; (2) common questions of law and fact predominate over
18 individual questions such that class certification is the most efficient and desirable way to
19 maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Class members;
20 and (4) Plaintiff and their counsel will fairly and adequately represent Class members' interest.
21 *See* Cal. Civ. Proc. § 382. The proposed Class meets all of these requirements.

22 **A. Ascertainable and Numerous**

23 A class is "ascertainable" where the members "may be readily identified without
24 unreasonable expense or time by reference to official [or business] records." *See Sevidal v.*
25 *Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Class
26 is defined as all individuals employed during the Class Period as non-exempt hourly employees

27 ⁷ *See Hanlon*, 150 F.3d at 1027 (affirming approval of settlement after finding "no evidence to
28 suggest that the settlement was negotiated in haste or in the absence of information illuminating the
value of plaintiffs' claims").

1 working at Luxfer, Inc.'s Gas Cylinders facility located at 3016 Kansas Ave., Riverside, California.
2 "PAGA Class" are a sub-group of the Class. The PAGA Class means all individuals employed
3 during the PAGA Period as non-exempt hourly employees working at Luxfer, Inc.'s Gas Cylinders
4 facility located at 3016 Kansas Ave., Riverside, California." Settlement Agreement § I(B).

5 Further, the proposed Class consists of at least 478 Class Members. Bokhour Decl., ¶ 11.
6 The proposed Class is sufficiently numerous, and joinder of all Class Members would be impractical.
7 *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries
8 of a trust sufficiently numerous).

9 **B. Commonality**

10 A settlement class has sufficient commonality if there are predominant questions of law or
11 fact. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 326. Here,
12 the Class Members seek remedies under California's wage-and-hour laws for violations arising from
13 common, uniform, and systematic practices which applied to all Class Members during the time
14 period from June 1, 2016 through the earlier of (a) 90 days from March 30, 2021, or (b) the date on
15 which the Court enters an Order granting preliminary approval of this Settlement ("Class Period").
16 *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013)
17 (certifying meal and rest period claims); *Williams v. Superior Court* 221 Cal.App.4th 1353, 1371
18 (2013) (certifying class based on uncompensated work time). Accordingly, the commonality
19 requirement is satisfied for settlement purposes.

20 **C. Typicality**

21 The typicality requirement is satisfied where class representatives have claims that are
22 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
23 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
24 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of
25 those of the Class Members, though some factual differences may exist among them, as the claims
26 arise from the same events or course of conduct and are based upon the same legal theories. Given
27 the structure of the Settlement, the proposed Class satisfies the typicality requirement for settlement
28 purposes as Plaintiff's claims arise from the same factual basis and are based on the same legal

1 theories as those applicable to all other Class Members.

2 **D. Adequacy of Representation**

3 The adequacy requirement examines conflicts of interest between named parties and the
4 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental*
5 *Services* 155 Cal.App.4th 676, 697 (2007).

6 Plaintiff's interests align with those of other Class Members, as they were all employed by
7 Defendant within the State of California. Plaintiff's claims are typical of those of Class Members,
8 which are confined to a limited group of similarly-situated employees who worked for Defendant
9 during the Class Period. Class Counsel are highly experienced in employment class action and
10 complex wage-and-hour litigation, having handled many cases before and having been appointed
11 class counsel in many other cases. *See generally*, Bokhour and Falakassa Declarations. Plaintiff
12 contends that Class Counsels' experience in litigating similar matters was integral to obtaining the
13 Settlement.

14 **E. ADEQUACY OF THE METHOD OF NOTICE**

15 A class notice must give the "best notice practicable" under the circumstances by providing
16 "individual notice to all members who can be identified through reasonable effort." *See Eisen v.*
17 *Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). A class notice is adequate if it "generally describes
18 the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate
19 and to come forward and be heard." *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
20 2004). The notice must also be "neutral and objective in tone and should neither promote nor
21 discourage the assertion of claims." *Schaefer v. Overland Express Family of Funds*, 169 F.R.D. 124,
22 131 (S.D. Cal. 1996).

23 Here, the proposed Class Notice provides the best notice practicable and is adequate in light
24 of the fact that Defendant is in possession of the addresses for Class Members. While Class Counsel
25 considered alternative methods such as publication or notice via the web or social media, it ultimately
26 determined that first class mail was the best choice given that the identities of the Class Members are
27 known and readily identifiable from Defendant's records. Bokhour Decl. ¶ 44. The Class Notice
28 provides information on, *inter alia*, the nature of the lawsuit, the definition of the Class, the terms of

1 the Settlement, the scope of the Released Claims, the binding effect of the Settlement, and the
2 allocations for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class
3 Representative Service Award, and Settlement Administration Expenses. Each Class Member's
4 Class Notice will state his or her number of workweeks, estimated individual Settlement Share, and
5 estimated PAGA Settlement Share. The Class Notice summarizes the proceedings and provides the
6 date, time, and place of the Final Approval Hearing.

7 All Class Members and PAGA Class Members can and will be identified by Defendant
8 through a review of their business and employment records. After receiving the Class List from
9 Defendant, the Settlement Administrator will mail a Class Notice to each Class Member.
10 Accordingly, the proposed Class Notice is adequate and is the best notice practicable under
11 California law.

12 The Class Notice also fulfills the requirement of neutrality in class notices. The Class Notice
13 provides a brief, neutral explanation of the case from the perspective of both parties and recognizes
14 that the Court has not yet granted final approval of the Settlement.⁸ The Class Notice sets forth in an
15 accurate and informative manner the procedures and deadlines governing the submission of Requests
16 for Exclusion, objections, and workweek disputes. The proposed Class Notice satisfies all due
17 process requirements and complies with the standards of fairness, completeness, and neutrality.
18 Accordingly, the Court should approve the proposed Class Notice.

19 On information and belief, the Class Notice has been drafted in a manner that is likely to be
20 readily understood by the members of the Class. Class Members vary in age, education and
21 experience. All Class Members read and comprehend English. As such, the Class Notice has been
22 drafted in plain English and. Duncan Decl. ¶ 6.

23 **VII. APPOINTMENT OF ILYM GROUP AS THE ADMINISTRATOR**

24 The parties have selected ILYM Group as the Settlement Administrator to handle the notice
25 and administration of the Settlement. ILYM will mail a Class Notice to each Class Member; receive,
26 review, and process Requests for Exclusion, objections, and workweek disputes; calculate estimated

27
28 ⁸ See *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 174 (1989) (“[C]ourts must be scrupulous
to respect judicial neutrality” in overseeing the class action notice process and “avoid even the
appearance of judicial endorsement of the merits of the action[.]”).

individual Settlement Shares; withhold applicable taxes and withholdings; prepare and transmit necessary tax documentation and filings; and transmit all required payments. ILYM will also handle inquiries from Class Members regarding the Settlement and perform any other usual and customary duties for administering a class action settlement.

Settlement Administration Expenses are currently estimated to be Seven Thousand Five Hundred (\$7,500) and will be paid out of the Gross Settlement Amount subject to approval by the Court. Plaintiff respectfully requests that the Court appoint ILYM as the Settlement Administrator and direct distribution of the Class Notice in the manner and in accordance of the proposed scheduled, set forth in the Settlement Agreement and discussed in Section VIII, *infra*.

VIII. DEADLINES FOR NOTICE AND ADMINISTRATION

The Court is respectfully requested to approve the proposed deadlines for the notice and settlement administration process. Within seven (7) business days following preliminary approval of the Settlement, Defendant will provide ILYM with the Class Data.⁹ Within seven (7) business days of receiving the Class Data, ILYM will send a Class Notice to each Class Member. Prior to mailing the Class Notices, ILYM shall attempt to locate Class Members' updated addresses by a search of the National Change of Address Database. If a Class Notice is returned as undeliverable, ILYM will promptly re-mail it to a forwarding address, if provided, or to an updated address obtained from a skip-trace search. Settlement Agreement § III(E)(2)(a)-(b).

Requests for Exclusion, Objections, and Workweek Disputes must be mailed to ILYM and postmarked by the applicable Response Deadline.

All settlement checks issued to Class Members and/or PAGA Class Members will remain valid and negotiable for one hundred eighty (180) calendar days from the date it is mailed. Thereafter, the funds associated with any such checks that remain uncashed or are returned as undeliverable, if any, will be paid to the California State Controller's Unclaimed Property Fund in the name of the Participating Class Member, and the Participating Class Member will remain bound

⁹ "Class Data" means, for each Class Member, his or her name; last-known mailing address; Social Security Number; his or her employee identification number; his or her dates of employment and/or number of workweeks worked during the Class Period as a Class Member.

1 by the Settlement. Settlement Agreement § III(E)(10).

2 **IX. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminary approval
4 of the Settlement; certify the proposed Class for settlement purposes; appoint Bokhour Law Group,
5 P.C. and Falakassa Law, P.C. as Class Counsel; preliminarily approve the Class Counsel Fees
6 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment,
7 PAGA Payment, and Settlement Administration Expenses; appoint Plaintiff as Class
8 Representatives; appoint ILYM Group as Settlement Administrator; approve and direct the mailing
9 of the Class Notice to the Class; and schedule a Final Approval Hearing.

10 Dated: June 11, 2021

BOKHOUR LAW GROUP, P.C.

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13 By: _____
14 Mehrdad Bokhour
15 Attorneys for Plaintiff
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