

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
ROSALBA RAMIREZ

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
ROSALBA RAMIREZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

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

Plaintiff,

vs.

MOLDED DEVICES, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. RIC2001161

*[Assigned to the Honorable Craig G. Riemer in Dept.
I]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: May 19, 2021

Time: 8:30 a.m.

Dept.: 1

Confirmation No.: RES244965

Complaint Filed: March 11, 2020

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May
3 19, 2021 at 8:30 a.m. in Department 1 of the above-entitled Court, located at 4050 Main Street,
4 Riverside, California 92501, Plaintiff Rosalba Ramirez (“Plaintiff”), individually and on behalf of a
5 class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt, hourly, employees of Defendant Molded
10 Devices who worked in California at any time from March 11, 2016 through
11 February 13, 2021.

- 12 3. Preliminary appointment of Plaintiff Rosalba Ramirez as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, and Romina
14 Tamiry of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class
15 Counsel;
16 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
17 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
18 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
19 costs to Class Counsel;
20 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
21 Administrator for mailing notices; and
22 7. Approval of the proposed Notice Packet (which is comprised of: (i) the Notice of Pendency
23 of Class Action and Proposed Settlement; (ii) Dispute Regarding Notice of Settlement; (iii)
24 Request for Exclusion Form; and (iv) Objection Form), which are attached the Settlement
25 as Exhibits A-D, respectively, and an order that it be disseminated to the proposed Settlement
26 Class Members as provided in the Settlement Agreement.

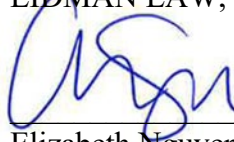
27 This Motion is based on this notice of motion, the memorandum of points and authorities, the
28 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Romina Tamiry, Paul K. Haines,

1 Plaintiff Rosalba Ramirez, James A. Bowles on behalf of Defendant Molded Devices, Inc., Elaine
2 Robles on behalf of Defendant Molded Devices, Inc., and Jodey Lawrence of Phoenix Settlement
3 Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and
4 on any further oral or documentary evidence or argument presented at the time of hearing.

5
6 Dated: April 26, 2021

Respectfully submitted,
LIDMAN LAW, APC

7
8 By:



Elizabeth Nguyen
Attorney for Plaintiff
ROSALBA RAMIREZ

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT	2
A.	SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND THE COURT'S CASE MANAGEMENT ORDER FOR PRELIMINARY APPROVAL.....	2
H.1.	SETTLEMENT AGREEMENT	3
H.3.	MEMORANDUM OF POINTS AND AUTHORITIES	3
H.3.a.i.	Estimate Of The Number of Individuals In The Class.....	3
H.3.a.ii.	Estimate Of The Total Amount Of Damages If Entirely Successful At Trial.....	3
H.3.a.iii.	Total Amount of Damages Taking Into Account Defendant's Defenses	6
H.3.a.iv.	Estimate Of The Recovery By The Average Class Member	9
H.3.a.v.	Formal And Informal Discovery Exchanged And Other Factual Investigation.....	10
H.3.a.vi.	Class Counsel's Awareness Of Any Other Class, Representative, Or Other Collective Actions.....	10
H.3.b.	Defense Counsel's Awareness Of Any Other Class, Representative, Or Other Collective Actions.....	11
H.3.c.	Uncashed Funds	11
H.3.d.	Settlement Administrator	11
H.3.e	Release of Claims.....	11
1.	Released Parties	11
2.	Scope.....	12
3.	Release Period.....	12
H.3.f.	Mailing Of Notice Packets to Class Members By First-Class Mail	13
H.3.g.	Submission of Claim Forms is Not Required	14
H.3.h.	Reversion Of Any Settlement Funds Back To Defendant	14
H.3.i.	Employer's Share Of Payroll Taxes	14
H.3.k.	Notice Packet Is Likely To Be Readily Understood By Settlement Class.....	14
H.3.l.	Compliance Chart	15
H.5.	THE PROPOSED NOTICE.....	15
H.5.a.	Likely Recovery	15
H.5.b.	Avoid Discouraging Any Dissenting Settlement Class Members	15
H.5.c.	Advisement to Settlement Class members	15
H.5.d.	Claims Administrator	16
H.5.e.	Release by the Settlement Class members	16
H.6.	THE PROPOSED CLAIM FORM	16
H.7.	THE PROPOSED OBJECTION FORM	16
H.7.a.	Instruction to Objecting Settlement Class Member	16
H.7.b.	Required Information	17
H.8.	THE PROPOSED EXCLUSION FORM	17
H.8.a.	Instruction to Settlement Class Member Seeking Exclusion	17
H.8.b.	Required Information	17
H.9.	PAGA PENALTIES	17

	H.9.a.	Terms of PAGA Settlement	17
	H.9.b.	Calculation of Penalties	18
	H.9.c.	PAGA Penalties is Less than the Statutory Maximum	18
III.		ADEQUACY, COMMONALITY, AND TYPICALITY ARE SATISFIED	19
IV.		CONCLUSION.....	20

TABLE OF AUTHORITIES

Federal Cases

Dunleavy v. Nadler

213 F.3d 454 (9th Cir. 2000)9

Eisen v. Carlisle & Jacquelin

417 U.S. 156 (1974).....13

Fleming v. Covidien Inc.

Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)8

Glass v. UBS Finan. Servs.

Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007).....9

Hanlon v. Chrysler Corp.

150 F.3d 1011 (9th Cir. 1998)2

Hopson v. Hanesbrands, Inc.

No. CV 08-0844 EDL, 2008 WL 3385452 (S.D. Cal. Apr. 13, 2009)18

In re M.L. Stern Overtime Litig.

No. CV 07-0118 BTM (JMAx), 2009 WL 995864 (S.D. Cal. Apr. 13, 2009).....18

In re Syncor ERISA Litig.

516 F.3d 1095 (9th Cir. 2008)2

Jones v. Spherion Staffing

No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-97

Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.

221 F.R.D. 523 (C.D. Cal. 2004).....9

State Cases

Amaral v. Cintas Corp. No. 2

163 Cal.App.4th 1157 (2008)6

B.W.I. Custom Kitchen v. Owens-Illinois, Inc.

191 Cal.App.3d 1341 (1987)19

Brinker Restaurant Corp. v. Superior Court

1	53 Cal. 4th 1004 (2012)	7
2	<i>Capital People First v. State Dept. of Developmental Services</i>	
3	155 Cal. App. 4th 676 (2007)	19, 20
4	<i>Dunk v. Ford Motor Co.</i>	
5	48 Cal.App.4th 1794 (1996)	2
6	<i>Kao v. Joy Holiday</i>	
7	12 Cal.App.5th 947 (2017)	8
8	<i>Kullar v. Foot Locker Retail, Inc.</i>	
9	168 Cal.App.4th 116 (2008)	2
10	<i>McGhee v. Bank of America</i>	
11	60 Cal.App.3d 442 (1976)	20
12	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
13	40 Cal. App. 5th 444 (2019)	7
14	<i>Nordstrom Comm’n Cases</i>	
15	186 Cal. App. 4th 576 (2010)	18
16	<i>Price v. Starbucks Corp.</i>	
17	192 Cal.App.4th 1136 (2011)	8
18	<i>Shine v. Williams Sonoma</i>	
19	23 Cal.App.5th 1070 (2018)	12
20	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
21	203 Cal.App.4th 1112 (2012)	8
22	<i>United Parcel Service, Inc. v. Superior Court</i>	
23	196 Cal. App. 4th 57 (2011)	7
24	<i>Wershba v. Apple Computer, Inc.</i>	
25	91 Cal.App.4th at 245 (2001)	2

1 **State Statutes and Rules**

2 Cal. Civ. Proc. § 382 1

3 Cal. Lab. Code § 203 5

4 Cal. Lab. Code § 226(e)..... 5, 8

5 Cal. Lab. Code § 2699(e)(2) 8

6 Cal. Lab. Code § 2802 18

7 C.R.C. Rule 3.764(c)(2)..... 1

8 C.R.C. Rule 3.766(d) 14

9 C.R.C. Rule 3.766(e)..... 15

10 **Regulations**

11 29 C.F.R. § 778.208 6

12 29 C.F.R. § 778.211 6

13 8 Cal. Code Regs. § 13520..... 8

14 DLSE Manual § 49.1.2.4(3)..... 6

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Rosalba Ramirez (“Plaintiff”) has reached a proposed wage and hour class and
4 representative action settlement with Defendant Molded Devices, Inc. (“MDI” or “Defendant”). In the
5 First Amended Complaint filed on June 1, 2020, Plaintiff alleged MDI: (1) failed to pay all minimum
6 wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal
7 periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate,
8 itemized wage statements; (6) failed to timely pay all wages upon termination; (7) engaged in unlawful
9 business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General
10 Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which MDI has agreed to pay \$350,000.00 to the following Settlement Class:
13 All current and former non-exempt, hourly, employees of Defendant Molded
14 Devices who worked in California at any time from March 11, 2016 through
February 13, 2021.

15 Significantly, all Settlement Class members will automatically receive a payment unless they
16 affirmatively opt-out. There are approximately 182 Settlement Class members and the Individual
17 Settlement Payments are between approximately \$4.30 and approximately \$2,765.32 depending on the
18 number of workweeks the individual worked, with an average of \$944.17.

19 The Settlement was reached only after the parties mediated the action with Jeffrey Krivis, Esq. a
20 well-respected wage and hour class action mediator. In connection with mediation, MDI produced a 20%
21 sampling of timekeeping and payroll records for the putative class, documents regarding its wage and hour
22 policies, and other information. After extensive research and analysis, including a detailed analysis of
23 MDI’s potential exposure, a full-day mediation was held on February 11, 2021. The Parties agreed on a
24 class-wide resolution, subject to approval by this Court, and memorialized the agreement in a
25 Memorandum of Understanding (“MOU”) at the mediation. Since mediation, the Parties finalized the
26 terms and executed the Settlement that is now being submitted for this Court’s preliminary approval.

27
28 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen (“Nguyen Decl.”) as Exhibit
1. All defined terms in this motion have the same definitions as used in the Settlement.

1 If the Settlement is approved, MDI will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$350,000.00. After deducting administration costs, Plaintiff’s service award, attorneys’ fees and costs, 2 and payment of PAGA penalties to the LWDA, the remaining Net Settlement Amount (“NSA”) of approximately \$171,838.34 will be distributed to all Settlement Class members who do not opt-out of the 3 Settlement, which includes 25% of the \$30,000.00 PAGA Amount (or \$7,500.00) designated as the PAGA 4 Amount to be distributed to certain Settlement Class members who worked during the PAGA period. 5

6 This proposed Settlement is well-within the range of possible approval in light of the significant 7 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible 8 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff 9 respectfully requests that the Court grant preliminary approval of the Settlement. 10

11 **II. ARGUMENT**

12 **A. SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND THE COURT’S CASE MANAGEMENT ORDER FOR PRELIMINARY APPROVAL**

13 Settlement is the preferred means of dispute resolution, particularly in complex class action 14 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in 15 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and for 16 the court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”. 17 *See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026-27. There is an initial presumption of 18 fairness where, as here, the Settlement agreement was negotiated at arm’s-length by class counsel and 19 with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker* 20 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

21 To make a fairness determination, the Court should consider several factors, including: “the 22 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk 23 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery 24 completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford* 25 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to 26 engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba* 27 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. As discussed below the proposed Settlement is 28 fair, adequate, and reasonable in light of the overall balance of factors in this case. The following

paragraph numbering coincides with the paragraph numbering set forth in the Court’s Case Management Order (“CMO”) entered on August 25, 2020 under Section H of the CMO entitled “Motions for Preliminary Approval”.

H.1. SETTLEMENT AGREEMENT²

The written Stipulation of Settlement (“Settlement”) has been signed by all necessary parties and filed as Exhibit 1 to the Declaration of Elizabeth Nguyen. Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 12, Exh. 1.

H.3. MEMORANDUM OF POINTS AND AUTHORITIES

H.3.a.i. Estimate Of The Number of Individuals In The Class

Here, the proposed Settlement Class is defined as: “All current and former non-exempt, hourly, employees of Defendant Molded Devices who worked in California at any time from March 11, 2016 through February 13, 2021.” Nguyen Decl., ¶ 14. There are approximately 182 class members. *Id.*

H.3.a.ii. Estimate Of The Total Amount Of Damages If Entirely Successful At Trial

Off-The-Clock: Plaintiff alleges that MDI failed to compensate its non-exempt employees for all time worked. Nguyen Decl., ¶ 16. Specifically, Plaintiff alleges that MDI failed to pay Plaintiff for all of the time she was under MDI’s direction or control. *Id.* As a result of MDI’s timekeeping policies and practices, Plaintiff was routinely underpaid for all her time worked. *Id.* Therefore, Plaintiff estimated five (5) minutes of off-the-clock work per shift, or an estimated .42 hours (25 minutes) of unpaid time per workweek. Accordingly, Plaintiff calculated Defendant’s maximum exposure at approximately \$92,886.00 (9,411 workweeks x .42 hours per workweek x \$11.75 average minimum wage³ + 46,443 liquidated damages). *Id.*

Miscalculation of Regular Rate (Incentive Pay): Plaintiff alleges that at times during her employment with MDI, she and other non-exempt employees were paid non-discretionary bonuses, (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Nguyen

² All declarations referenced herein are being submitted concurrently herewith in Plaintiff’s Compendium of Declarations Filed in Support of Motion for Preliminary Approval of Class Action Settlement.

³ Minimum wage was \$10.00/hour in 2016, \$10.50/hour in 2017, \$11.00/hour in 2018, \$12.00/hour in 2019, \$13.00/hour in 2020, and \$14.00/hour in 2021. As such, the average minimum wage rate during the relevant time period is \$11.75.

Decl., ¶ 18. Plaintiff alleges that MDI failed, however, to include the Incentive Pay when calculating the regular rate of pay for purposes of paying Plaintiff and the other non-exempt employees' overtime wages. *Id.* Accordingly, Plaintiff contends that MDI did not properly calculate the regular rate of pay for Plaintiff and the other non-exempt employees, thereby causing them to be underpaid for all their required overtime wages. *Id.* Therefore, Plaintiff's retained expert, who holds a Ph.D. in economics, estimated MDI's maximum exposure at approximately \$2,186.00. *Id.*

Meal Period Violations: Plaintiff alleges that she and Settlement Class members were not provided with all legally-required off-duty first meal periods beginning before the end of the fifth hour of work. Nguyen Decl., ¶ 20. Specifically, Plaintiff alleges that due to the work demands imposed by MDI, Plaintiff was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. *Id.* Indeed, based on the timekeeping records produced in connection with mediation, of the 42,505 meal-enabling shifts, 13,239 or approximately 31.15% were non-compliant. *Id.* Also, Plaintiff alleges that she and other non-exempt employees did not receive legally-compliant second meal periods when they worked in excess of 10.0 hours. Therefore, Plaintiff calculated MDI's maximum exposure for the alleged meal period violations at approximately \$190,649. *Id.* This valuation of the maximum exposure for the meal period violations is itemized as follows. For first meal period violations, Plaintiff determined the exposure as follows: (13,239 shifts over 6.0 hours with non-compliant meal periods x \$12.88 average hourly rate = \$170,518). *Id.* For second meal period violations, Plaintiff determined the exposure as follows: (1,563 shifts x \$12.88 average hourly rate = \$20,131). *Id.* The sum of these figures is \$190,649. *Id.*

Rest Period Violations: Plaintiff alleges that she and other Settlement Class members were not authorized and permitted to take all required rest periods due to MDI's unlawful rest period policies and practices that failed to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Nguyen Decl., ¶ 22. Specifically, Plaintiff alleges that during her employment, MDI maintained a facially unlawful rest period policy that required employees to remain on the premises for rest breaks. *Id.* Such alleged rest periods were unlawful, however, as Plaintiff was not relieved of all duties. As a result, Plaintiff estimated that she and other Settlement Class members experienced at least one rest period violation for every shift over 3.5 hours. *Id.* Therefore, Plaintiff calculated MDI's maximum exposure

1 for the alleged rest period violations at approximately \$556,223.00 (43,185 shifts over 3.5 hours x \$12.88
2 average hourly rate). *Id.*

3 Wage Statement Violations: Plaintiff further alleges that MDI issued inaccurate wage statements
4 in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium
5 wages described above. Nguyen Decl., ¶ 24. Specifically, Plaintiff contends that this conduct violated
6 Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all
7 hours worked and the rate at which they were being paid. *Id.* Additionally, Plaintiff alleges that MDI
8 faces independent liability for issuing wage statements with vague and ambiguous codes, including without
9 limitation, “Retro OT” as Defendants fail to state the time period covered by the code. Further, despite
10 the use of the “RETRO OT” pay code, Plaintiff’s retained expert confirmed that MDI did not include
11 bonuses in the regular rate at any point in time, which further suggests using this pay code is vague and
12 ambiguous code. Therefore, Plaintiff calculated MDI’s maximum exposure for wage statement violations
13 at approximately \$221,750 ((\$50.00 * 31 current employees) + (\$100.00 x 2,202 subsequent wage
14 statements)). *Id.*

15 Waiting Time Penalties: Plaintiff alleges that MDI is also liable for waiting time penalties under
16 Labor Code section 203 as a result of its failure to pay all wages. Nguyen Decl., ¶ 26. Based on the data
17 provided by MDI, there were approximately 88 Settlement Class members who have separated their
18 employment with MDI during the relevant time period who could be entitled to waiting time penalties.
19 Therefore, Plaintiff calculated MDI’s maximum exposure for waiting time penalties at approximately
20 \$272,026 (88 former employees x \$12.88 [average regular rate] x 30 days x 8 hours/day). *Id.*

21 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
22 foregoing alleged Labor Code violations. Nguyen Decl., ¶ 28. The specific statutory violations upon
23 which Plaintiff bases the claim under PAGA are: (i) Labor Code sections 204, 510, 558, 1194, and 1198
24 for failing to pay all overtime wages owed; (ii) Labor Code sections 1194 1194.2, 1197 for failing to pay
25 all minimum wages owed; (iii) Labor Code sections 226.7, 512, and 558 for meal period violations; (iv)
26 Labor Code sections 226.7, 516, and 558 for rest period violations; (v) Labor Code section 226(e) for
27 failing to provide accurate, itemized wage statements; (vi) Labor Code section 201 through 203 for failing
28 to pay all wages owed upon termination. *Id.* Based on the data provided by MDI in connection with

1 mediation, there are approximately 64 aggrieved employees and approximately 2,233 pay periods during
2 the relevant time period (i.e., March 11, 2019 through February 13, 2021). Based on the violations
3 addressed above, Plaintiff contends that MDI is liable for PAGA civil penalties for each of the 2,233 pay
4 periods worked during the PAGA period. Accordingly, Plaintiff calculated MDI's exposure at \$223,300
5 (2,233 pay periods x \$100 initial violation rate). *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163
6 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating
7 a Labor Code provision).

8 Therefore, if Plaintiff was successful on every claim at trial, Plaintiff estimates the collective total
9 on all claims to be approximately \$1,559,020.00. Nguyen Decl., ¶ 30.

10 **H.3.a.iii. Total Amount of Damages Taking Into Account Defendant's Defenses**

11 Off-the-Clock: MDI contends that it compensated non-exempt employees for all of their time
12 worked. Nguyen Decl., ¶ 17. MDI also contends that its timekeeping and payroll documents produced
13 in connection with mediation demonstrate that employees were minute to the minute. MDI contends its
14 timekeeping practices and policies were lawful and any unpaid time was *de minimis* and therefore non-
15 compensable. *Id.* MDI also asserts that Plaintiff would be unable to certify a rounding claim given the
16 individualized inquiries that would be required. *Id.* Accordingly, based on these risks, Plaintiff discounted
17 the maximum exposure of \$92,886 by 85% for the risk of non-certification, and an additional 80% to
18 account for Defendants' defenses on the merits to arrive at an estimated exposure of \$2,786.58. *Id.*

19 Miscalculation of Regular Rate (Incentive Pay): MDI contends that Settlement Class members
20 received all overtime wages to which they were entitled. Nguyen Decl., ¶ 19. MDI further counters that
21 any bonuses paid to putative class members during the relevant time period were discretionary and did
22 not to be included in the regular rate of pay for overtime purposes. See 29 C.F.R. §§778.208, 778.211
23 (excluding "discretionary" bonuses from the regular rate); see also DLSE Manual § 49.1.2.4(3) (bonuses
24 are discretionary, and therefore excludable, if "both the fact that payment is to be made and the amount
25 of the payment" are discretionary). *Id.* Accordingly, based on these risks, Plaintiff discounted the
26 maximum exposure of \$2,186 by 25% for the risk of non-certification, and an additional 30% to account
27 for MDI's defenses on the merits to arrive at an estimated exposure of \$1,147.65. *Id.*

28 Meal Period Violations: MDI counters that it has always provided non-exempt employees with an

1 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
2 employee timekeeping records were solely the result of employee choice, rather than any policy or practice
3 of MDI. Nguyen Decl., ¶ 21. There is also an argument that the above analysis potentially counts two
4 meal period violations for the same shift, but under *United Parcel Service, Inc. v. Superior Court* (2011)
5 196 Cal. App. 4th 57, only one meal period violation may be assessed per day. MDI points out that under
6 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the
7 opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done so.
8 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, MDI contends Plaintiff’s meal
9 period claim is not suited for class certification, since individual inquiries would be required to assess
10 which employees took non-compliant meal periods, how many meal periods were non-compliant or
11 missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
12 period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure of \$190,649
13 by 25% for the risk of non-certification, and an additional 35% to account for MDI’s defenses on the merits
14 to arrive at an estimated exposure of \$92,941.39. *Id.*

15 Rest Period Violations: MDI contends it has always maintained and enforced lawful rest period
16 policies and practices, and that Settlement Class Members were authorized and permitted to take all off-
17 duty rest periods in compliance with California law. Nguyen Decl., ¶ 23. Further, MDI argues that
18 Plaintiff’s rest period claims are inherently unsuited for class treatment as it requires an individualized
19 inquiry into whether each Settlement Class member was in fact authorized and permitted to take a
20 compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly,
21 Plaintiff discounted the maximum exposure of \$556,223 by 35% for the risk of non-certification, and an
22 additional 30% to account for MDI’s defenses on the merits to arrive at an estimated exposure of
23 \$253,081.47. *Id.*

24 Wage Statement Violations: MDI argues that meal and rest period claims cannot support a claim
25 for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc., review granted*, (2019) 40
26 Cal. App. 5th 444 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g., Jones v.*
27 *Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9).
28 Nguyen Decl., ¶ 25. MDI further argues that its alleged wage statement violations could not be shown to

1 be “knowing and intentional,” and that Plaintiff cannot show that she or any other employee “suffer[ed]
2 injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
3 imposition of penalties. Nguyen Decl., ¶ 25. As such, Plaintiff discounted the calculated exposure by 30%
4 for a risk of non-certification and an additional 25% for a risk of being unsuccessful on the merits to arrive
5 at an estimated total of \$116,418.75. *Id.*

6 Waiting Time Penalties: MDI asserts it has strong defenses to the waiting time claim because there
7 exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen
8 Decl., ¶ 27. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude
9 imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that
10 “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties
11 over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure of \$272,026 by
12 30% for the risk of non-certification, and an additional 40% to account for MDI’s defenses on the merits
13 to arrive at an estimated exposure of approximately \$114,250.92. *Id.*

14 PAGA Civil Penalties: MDI argues that Plaintiff’s PAGA claim will fail for the same reasons that
15 her underlying claims will fail. Nguyen Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
16 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
17 fail.”). MDI also maintains that, given its good faith defenses, this Court would exercise its discretion to
18 substantially reduce any PAGA penalties if it were to find MDI liable for any of Plaintiff’s claims. Nguyen
19 Decl., ¶ 33. MDI further alleges that none of the violations would be deemed knowing and intentional as
20 there is no evidence to suggest MDI intentionally violated the Labor Code and that MDI’s policies and
21 procedures demonstrate that MDI acted in good faith regard to paying the putative class members all wages
22 due. For these reasons, MDI asserts that the Court would drastically reduce any award of PAGA penalties
23 as “confiscatory.” *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
24 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
25 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
26 \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure of \$223,300
27 by 25% for a risk of being unsuccessful on the merits, and an additional 30% to account for the possibility
28 of this Court reducing penalties, to arrive at an estimated exposure of \$117,232.50. *Id.*

1 Using these estimated figures for each of the claims described above, Plaintiff predicted the
2 realistic total recovery for the Settlement Class would be approximately \$697,859.25. Nguyen Decl., ¶
3 30. The proposed settlement of \$350,000.00 therefore represents approximately 50.15% of the reasonably
4 forecasted recovery for the Settlement Class.

5 The proposed settlement reflects approximately 50.15% of the estimated recovery the Settlement
6 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
7 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
8 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
9 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
10 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
11 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop.*
12 *v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement
13 may be acceptable even though it amounts to only a fraction of the potential recovery that might be
14 available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed settlement
15 is within the range of possible approval, such that notice should be provided to the Settlement Class so
16 that they can consider the Settlement. The Court will have the opportunity to again assess the
17 reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

18 Class counsel has obtained 9 class certification orders following contested certification motions
19 concerning similar claims. *See* Declaration of Paul K. Haines in Support of Motion for Preliminary
20 Approval, ¶ 7. Class counsel has had a bench trial concerning individual wage and hour allegations in a
21 misclassification matter, in which judgment was entered in favor of Plaintiff and is currently on appeal.
22 Haines Decl., ¶ 9; Declaration of Scott M. Lidman in Support of Motion for Preliminary Approval, ¶ 9.

23 **H.3.a.iv. Estimate Of The Recovery By The Average Class Member**

24 After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award
25 to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the estimated Net
26 Settlement Amount (“NSA”) to be distributed to Settlement Class Members who do not opt out is expected
27 to be at least **\$171,838.34**. This amount includes the \$7,500.00 PAGA Amount to be paid to the Settlement
28 Class Members who worked during the PAGA period. Nguyen Decl., ¶ 12, Exh. 1.

With approximately 182 Settlement Class Members, the average Individual Settlement Awards is

1 projected to be approximately \$944.17, and range between approximately \$4.30 and approximately
2 \$2,765.32 depending on the number of workweeks the individual worked. *Id.*

3 **H.3.a.v. Formal And Informal Discovery Exchanged And Other Factual Investigation**

4 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
5 of a mediator. After agreeing to participate in early mediation, MDI informally produced a sampling of
6 time records and payroll data for the class members, wage and hour policies, and other relevant documents
7 and information relevant to the claims. *See* Nguyen Decl., ¶ 11. After the detailed review of the payroll
8 and time records and other documents and policies produced by MDI, Class Counsel drew on their
9 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This
10 discovery allowed the parties to assess the merits and value of Plaintiff's claims and MDI's defenses
11 thereto, if a settlement could not be reached.

12 On February 11, 2021 after extensive research and analysis, including a detailed analysis of MDI's
13 potential exposure, a full-day mediation was held with Jeffrey Krivis, Esq. a well-respected wage and hour
14 class action mediator. Nguyen Decl., ¶ 12. During mediation, the parties vigorously debated their
15 opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the
16 claims and defenses for the claims alleged in the operative complaint. *Id.*

17 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of:
18 factual investigation and data analysis; the exchange of substantial information and class data, including
19 timekeeping and payroll records; arm's length negotiations by counsel; and mediation before an
20 experienced wage and hour class action mediator. *See* Nguyen Decl., ¶¶ 11-12; *See Kullar, supra*, 168
21 Cal.App.4th at 130. In addition, the parties attended a full-day mediation, and worked collaboratively in
22 the following weeks to finalize the Settlement. *Id.* Thus, these factors support preliminary approval.

23 **H.3.a.vi. Class Counsel's Awareness Of Any Other Class, Representative, Or Other** 24 **Collective Actions**

25 As of the date of the filing of the instant Motion, counsel for Plaintiff are unaware of any class,
26 representative or other collective action in any other court in this or any other jurisdiction that asserts
27 claims similar to those asserted in this action on behalf of a class or group of individuals some or all
28 of whom would also be members of the defined class. *See* Nguyen Decl., ¶ 35; *See Bowles Decl.*, ¶ 2.

1 **H.3.b. Defense Counsel’s Awareness Of Any Other Class, Representative, Or Other**
2 **Collective Actions**

3 Counsel for MDI are also unaware of any class, representative or other collective action in any
4 other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on
5 behalf of a class or group of individuals some or all of whom would also be members of the defined
6 class. *See* Declaration of James A. Bowles, ¶ 2.

7 **H.3.c. Uncashed Funds**

8 The Settlement provides that Settlement Class members will have 180 days from the date the
9 Settlement Administrator mails the checks to negotiate them. The funds from any uncashed checks shall
10 be distributed to the Controller of the State of California - Unclaimed Property Fund in the name of the
11 Settlement Class member. Settlement ¶ 4.E. As such, there is no “unpaid residue” under California
12 Civil Procedure Code Section 384 and it is unnecessary to designate cy pres recipients. The NSA will
13 be paid out to Class Members, whether or not they all cash their settlement checks. *Nguyen Decl.*, ¶ 37.

14 **H.3.d. Settlement Administrator**

15 Phoenix Settlement Administrator (“PSA”) has extensive experience administering class action
16 matters. PSA has administered complex wage and hour, labor and employment, consumer/ product
17 liability, TCPA, FLSA, FACTA, ERISA and PAGA class action matters, though final approval and
18 distribution. PSA has developed a system of quality assurance measures, to ensure the highest quality
19 service is provided in our cases and to class members. Declaration of Jodey Lawrence in support of
20 Plaintiff’s Motion for Preliminary Approval filed concurrently herewith (“Lawrence Decl.”), ¶ 5.

21 PSA’s fees are a flat fee of \$3,995.00. *See* Lawrence Decl. This request is reasonable in light of
22 the proposed class size of approximately 182 Settlement Class members and the costs and expenses
23 associated with administering the Notice Packets and distributing the awards. This cost estimate also
24 includes the expenses associated with mailing the Notice Packets in both English and Spanish.

25 **H.3.e Release of Claims**

26 **1. Released Parties**

27 Plaintiff and every member of the Settlement Class (except those who timely and properly
28 submit a Request for Exclusion as set forth below) will fully, forever and completely release and

1 discharge Defendant, and all of its past and present officers, directors, employees, and agents.
2 Settlement, ¶ 2.

3 2. Scope

4 Settlement Class Members and Plaintiff will release all wage and hour claims for any and all
5 violations of California's Labor Code and Unfair Competition Law based on the factual allegations
6 alleged in the operative complaint with respect the following claims: Defendant's failure to pay for all
7 hours worked (including minimum wages, straight time wages, and overtime wages), failure to provide
8 meal periods, failure to authorize and permit rest periods, failure to timely pay all wages due at the time
9 of termination, failure to furnish accurate, itemized wage statements, failure to maintain accurate payroll
10 records, failure to timely pay wages during employment, civil penalties under California's Private
11 Attorneys General Act of 2004 ("PAGA") based on the alleged Labor Code violations, and all damages,
12 interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action
13 under California law, to the extent permissible, including but not limited to the California Labor Code
14 and the applicable Wage Orders. Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 2.A).

15 Further, Plaintiff and all Settlement Class Members who were employed by Defendant in
16 California at any time from March 11, 2019 through February 13, 2021 ("PAGA Period"), cannot opt
17 out of the PAGA portion of the Settlement. Any Settlement Class Member who opts out of the
18 settlement shall still be bound by the PAGA release. Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 2.B).

19 Therefore, the language expressly confirms that the scope of the release is limited to the claims
20 which could have been asserted based on the same allegations as set forth in the operative complaint.
21 This is type of release is permissible in wage and hour class action settlements such as this one. (*Shine v.*
22 *Williams Sonoma* (2018) 23 Cal.App.5th 1070, 1078 ["A] judgment pursuant to a class settlement can
23 bar [subsequent] claims based on the allegations underlying the claims in the settled class action. This is
24 true even though the precluded claim was not presented, and could not have been presented, in the class
25 action itself," citations omitted].)

26 3. Release Period

27 Except for the claim under the PAGA, the time period of the Settlement Class Members' Release
28 shall be the same time period as the Class Period. Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 2.A).

1 Additionally, the releases identified herein shall be effective upon Defendant fully funding the Gross
2 Settlement Amount. Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 2.E).

3 **H.3.f. Mailing Of Notice Packets to Class Members By First-Class Mail**

4 Before the final approval hearing, the Court requires adequate notice of the settlement be given
5 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
6 Packet (which is comprised of: (i) the Notice of Pendency of Class Action and Proposed Settlement; (ii)
7 Dispute Regarding Notice of Settlement; (iii) Request for Exclusion Form; and (iv) Objection Form)⁴ by
8 first-class regular U.S. Mail, postage prepaid, using last known mailing address information provided by
9 MDI. See Nguyen Decl., ¶ 12, Exh. 1 (Settlement, ¶ 9, Exhs. A through D).

10 This manner of giving notice is the “best notice practicable” under the circumstances because it
11 provides “individual notice to all members who can be identified through reasonable effort.” See *Eisen*
12 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. The Notice Packet will be mailed in Spanish and
13 English. See generally Lawrence Decl. and attached exhibits.

14 In this wage and hour class action, providing notice by U.S. Mail is the best notice practicable
15 under the circumstances because Settlement Class members’ addresses will be ascertainable through
16 MDI’s personnel and payroll records. See Nguyen Decl., ¶ 12, Exh. 1 (See Settlement ¶ 9.A). Plaintiff
17 contends this is the best method of giving notice because MDI currently employs some of these class
18 members, and therefore in possession of their current residential addresses. Further, MDI maintains the
19 last known addresses for its former employees as well. Therefore, because the residential addresses are
20 known for this small class of MDI’s former and current employees, mailing the Notice Packet directly to
21 their current address (for current employees) and last known address (for former employees) is most
22 likely to give actual notice to the greatest number of class members.

23 Further, within ten (10) business days of receipt of the Settlement Class members’ addresses,
24 Phoenix will run the addresses through the United States Postal Service Notice of Change of Address
25 database (which provides updated addresses for any individual who has moved in the previous four years
26 and has notified the U.S. Postal Service of a forwarding address) and mail the notices to Settlement Class

27
28 ⁴ All are also attached as Exhibits A – D, respectively, to the [Proposed] Order Granting Preliminary
Approval of Class Action Settlement submitted concurrently herewith.

1 members. *See See* Nguyen Decl., ¶ 12, Exh. 1 (Settlement ¶ 9.B). To the extent that any notices are
2 returned, Phoenix will perform a “skip trace” to track any Class Member’s current mailing address. *See*
3 *See* Nguyen Decl., ¶ 12, Exh. 1 (Settlement ¶ 9.F).

4 **H.3.g. Submission of Claim Forms is Not Required**

5 Each Settlement Class member will automatically receive a Settlement Award unless he or she
6 affirmatively opts out of the Settlement.⁵ *See* Nguyen Decl., ¶ 12, Exh. 1 (Settlement at ¶ 3.C).

7 **H.3.h. Reversion Of Any Settlement Funds Back To Defendant**

8 This Settlement is non-reversionary. As such, if an individual opts out of the Settlement, their
9 pro rata share of the Settlement shall be added to the NSA to be distributed to the Settlement Class
10 Members who do not opt out. Similarly, if the Court reduces the requested amounts for attorneys’ fees,
11 costs, settlement administration costs, and/or class representative enhancement award, these amounts will
12 be added to the NSA to be distributed to the Settlement Class Members who do not opt out.

13 **H.3.i. Employer’s Share Of Payroll Taxes**

14 The employer’s share of payroll taxes shall be paid separately from, and in addition to, and the
15 Gross Settlement Amount. *See* Nguyen Decl., ¶ 12, Exh. 1 (Settlement ¶ 3.D).

16 **H.3.k. Notice Packet Is Likely To Be Readily Understood By Settlement Class**

17 The Notice Packet will be mailed in Spanish and English. *See generally* Lawrence Decl. and
18 attached exhibits. Here, the vast majority of Settlement Class members attended school outside the
19 United States and can only read and/or write in Spanish. *See* Declaration of Elaine Robles (“Robles
20 Decl.”), ¶ 3. Further, approximately five (5%) of the Settlement Class members attended school in the
21 United States and can read and/or write English. *See* Robles Decl., ¶ 3. Therefore, mailing the Notice
22 Packet in Spanish and English will likely be understood by the Settlement Class.

23 Moreover, the content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
24 because it advises Settlement Class members of the nature of the claims, basic contentions and denials of
25 the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement
26

27
28 ⁵ Pursuant to the terms of the Settlement, class members do not need to submit a claim form. Also, MDI will have the
option of voiding the Settlement if 10% or more of the Settlement Class opts out of the Settlement. *See* Nguyen Decl., ¶
12, Exh. 1 (Settlement ¶ 9.C.ii).

1 and the procedures by which to do so, explains the recovery formula and expected recovery amount for
2 each Settlement Class member, provides them the opportunity to contest their total workweeks/total pay
3 periods included in the notice, and advises them that they will be bound by the terms of the Settlement if
4 they do not opt-out. *See* Nguyen Decl., Exh. 1 (Settlement, Exhs. A- D). The proposed Notice Packet
5 will also notify Settlement Class members of the final approval hearing date and provides Settlement
6 Class members the contact information for Class Counsel, and advises Settlement Class members that
7 they may enter an appearance through counsel if they wish to. The proposed Notice Packet shall also
8 include a toll free 800 number to contact PSA should they have any questions and PSA has representatives
9 who are fluent in both English and/or Spanish. This manner of giving notice satisfies California Rule of
10 Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

11 **H.3.I. Compliance Chart**

12 Plaintiff has filed a Compliance Chart in Support of Plaintiff’s Motion for Preliminary Approval
13 of Class Action Settlement concurrently herewith.

14 **H.5. THE PROPOSED NOTICE**

15 **H.5.a. Likely Recovery**

16 The proposed class notice includes an estimate of the average recovery by the individual
17 Settlement Class members and also includes an estimate of the range of possible recoveries. *See* Exhibit
18 A to the Proposed Order Granting Preliminary Approval of Class Action Settlement (“Proposed Order”),
19 at page 4.

20 **H.5.b. Avoid Discouraging Any Dissenting Settlement Class Members**

21 The proposed notice clearly indicates that the Court has determined only that there is sufficient
22 evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any
23 final determination of those issues will be made at the final hearing. *See* Exhibit A to the Proposed Order,
24 at page 2.

25 **H.5.c. Advisement to Settlement Class members**

26 The proposed notice advises the Settlement Class members of where they can find the settlement
27 agreement by describing where they can access the electronic case file online and specifically locating
28 “Compendium of Declarations Filed Concurrently with Plaintiff’s Motion for Preliminary Approval
Filed” and locating the Declaration of Elizabeth Nguyen. *See* Exhibit A to the Proposed Order, at page 7.

1 **H.5.d. Claims Administrator**

2 Neither the notice nor the documents enclosed with it describes the Settlement Administrator as
3 the “claims administrator” as the Settlement Class members are not required to submit claims. *See Exhibit*
4 *A to the Proposed Order.*

5 **H.5.e. Release by the Settlement Class members**

6 The Class Notice expressly states the following,

7 Release. If the Court approves the Settlement, the Settlement Class, and each
8 Settlement Class member who has not submitted a timely and valid Request for
9 Exclusion, will release Molded Devices and all of their past and present officers,
10 directors, employees, and agents (collectively the “Released Parties”), from release
11 all wage and hour claims for any and all violations of California’s Labor Code and
12 Unfair Competition Law based on the factual allegations alleged in the operative
13 complaint with respect the following claims: Defendant’s failure to pay for all hours
14 worked (including minimum wages, straight time wages, and overtime wages),
15 failure to provide meal periods, failure to authorize and permit rest periods, failure
16 to timely pay all wages due at the time of termination, failure to maintain accurate
17 payroll records, failure to furnish accurate, itemized wage statements, failure to
18 timely pay wages during employment, civil penalties under California’s Private
19 Attorneys General Act of 2004 (“PAGA”) based on the alleged Labor Code
20 violations, and all damages, interest, penalties, attorneys’ fees, costs, and other
21 amounts recoverable under said causes of action under California law, to the extent
22 permissible, including but not limited to the California Labor Code and the
23 applicable Wage Orders (collectively, the “Released Claims”). The time period of
24 the Settlement Class Members’ Release shall be the same time period as the Class
25 Period.

26 Release of PAGA. Plaintiff and all Settlement Class Members who were employed
27 by Molded Devices in California at any time from March 11, 2019 through February
28 13, 2021, will not have the opportunity to opt out or object to the PAGA Amount or
opt-out of the release of the PAGA claim, although the release of PAGA claim will
be subject to Court approval.

See Exhibit A to the Proposed Order at pages 4-5.

H.6. THE PROPOSED CLAIM FORM

The Settlement Class members do not have to submit any claim form to receive their individual
settlement payment from this settlement.

H.7. THE PROPOSED OBJECTION FORM

H.7.a. Instruction to Objecting Settlement Class Member

The objection form instructs objecting Settlement Class members to mail their objection to

Phoenix Settlement Administrator and will include the address and the date by which the objection must be mailed or otherwise delivered. *See* Exhibit D to the Proposed Order at page 1.

H.7.b. Required Information

The proposed objection form only requires sufficient information to: (i) identify the objector as a person entitled to object to the settlement, (ii) describe the nature of and basis for the objection, and (iii) contact information to clarify any uncertainties. *See* Exhibit D to the Proposed Order at page 1.

H.8. THE PROPOSED EXCLUSION FORM

H.8.a. Instruction to Settlement Class Member Seeking Exclusion

The proposed exclusion form instructs Settlement Class members seeking exclusion to mail their exclusion to Phoenix Settlement Administrator and will include the address and the date by which the exclusion must be mailed or otherwise delivered. *See* Exhibit C to the Proposed Order at page 1.

H.8.b. Required Information

The proposed exclusion form does not exceed the minimum information necessary to (i) identify the person as a Settlement Class member and (ii) contact information to clarify any uncertainties. *See* Exhibit C to the Proposed Order at page 1.

H.9. PAGA PENALTIES

H.9.a. Terms of PAGA Settlement

The parties have agreed to a PAGA award of \$30,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$22,500.00. Nguyen Decl., ¶ 12, Exh 1 (Settlement ¶ 3). The remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to certain Settlement Class members as the “PAGA Amount.”

The PAGA Amount will be allocated as follows: Each Settlement Class member who was employed by Molded Devices at any time from March 11, 2019 through February 13, 2021, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the period of March 11, 2019 through February 13, 2021, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class members’ number of workweeks worked during this time period, and the denominator of which is the total number of workweeks worked by all Settlement Class members during this time period.

1 Plaintiff and all Settlement Class Members who were employed by Molded Devices in California
2 at any time from March 11, 2019 through February 13, 2021, will not have the opportunity to opt out or
3 object to the PAGA Amount or opt-out of the release of the PAGA claim, although the release of PAGA
4 claim will be subject to Court approval.

5 **H.9.b. Calculation of Penalties**

6 In section H.3.a.ii of the instant motion, Plaintiff describes (i) the nature of the alleged violations;
7 (ii) the number of alleged individual violations, including both the length of the relevant employment
8 period and the number of employees allegedly employed during that period; and (iii) the total amount of
9 penalties for which MDI is potentially liable were those allegations to be proven.

10 **H.9.c. PAGA Penalties is Less than the Statutory Maximum**

11 The parties have agreed to a PAGA award of \$30,000.00 and in accordance with California Labor
12 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties –
13 or \$22,500.00. Nguyen Decl., ¶ 12, Exh. 1 (Settlement ¶ 3). This \$22,500 represents roughly 6.4% of
14 the \$350,000.00 Gross Settlement Amount and is in line with the zero to two percent range for PAGA
15 claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx),
16 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2
17 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1
18 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or
19 \$1,500); *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of
20 wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA
21 claims).

22 Further, neither the Court nor a jury has made a factual finding of a violation of any Labor Code
23 such that approving an amount that is less than the statutory maximum is appropriate. Nguyen Decl., ¶
24 29. As discussed above at Sections H.3.a.ii and H.3.a.iii (and without waiving the mediation privileges
25 and confidentiality agreements), the Parties specifically negotiated, like the other terms of the
26 settlement, and ultimately agreed to resolve the PAGA claim for \$30,000.00 at mediation. *Id.* at ¶ 29.

27 As discussed above, Plaintiff estimated a realistic exposure of \$117,232.50 for the PAGA claim.
28 As such, Plaintiff submits that settling the PAGA claim for \$30,000.00 represents about 26% of the
estimated exposure and is reasonable based on the associated risks discussed above, including that a court

1 ultimately has discretion to reduce the amount of PAGA penalties awarded at trial.

2 Approval of less than the statutory maximum is appropriate in this case because MDI expressly
3 denies and continues to deny any liability. Settlement, ¶ 11.

4 **III. ADEQUACY, COMMONALITY, AND TYPICALITY ARE SATISFIED**

5 Settlement Class Members' claims arise from MDI's common, uniform wage and hour policies
6 and practices that applied to Settlement Class members during the class period. Nguyen Decl., ¶ 15. The
7 typicality requirement is satisfied where class representatives have claims that are typical of those of the
8 rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding
9 typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer
10 class action). Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement
11 Class. First, Plaintiff was employed by MDI during the Class Period as a non-exempt employee and was
12 subject to MDI's wage and hour policies at issue in this case. See Ramirez Decl., ¶ 2. Second, Plaintiff
13 was injured by the same challenged policies that injured the Settlement Class as a whole. Given that
14 MDI's policies and practices applied to all non-exempt employees, Settlement Class members possess a
15 similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's
16 claims and those of the Settlement Class all arise from the same conduct, typicality and commonality are
17 satisfied.

18 The adequacy requirement examines conflicts of interest between named parties and the class(es)
19 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
20 Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the Settlement
21 Class she seeks to represent. Indeed, Plaintiff's interests are aligned with those of the Settlement Class
22 members, as they all seek monetary relief under the same facts and legal theories. Plaintiff, a former
23 employee, is an adequate class representative because she: (i) contends in the action that she has suffered
24 the same Labor Code violations as the class members, (ii) has been involved in prosecuting this case since
25 its inception, (iii) understands she took a risk on behalf of the other former and current employees by filing
26 a lawsuit that could result in her paying MDI's costs if she lost the case, (iv) accepted these risks because
27 she wanted MDI to compensate the current and former employees for all unpaid wages, (v) does not have
28 any conflicts with any of the class members, and (vi) her interests are aligned with those of the class

1 because she seeks to help both former and current employees of Casco recover their unpaid wages and
2 penalties. See Ramirez Decl., ¶¶ 2-12. Therefore, that Plaintiff is able to adequately represent the class
3 members and her interests do not conflict with the class members she seeks to represent. (*Capital People*
4 *First v. State Dept. of Developmental Services* (2007) 155 Cal. App. 4th 676, 697 [adequacy requirement
5 examines conflicts of interest between named parties and the class(es) they seek to represent; see also
6 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 [adequacy satisfied where there was no
7 indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to
8 those of the proposed class].)

9 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. See
10 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no
11 indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to
12 those of the proposed class). Further, Class Counsel also have extensive experience in wage and hour
13 class action litigation and have vigorously litigated this case.

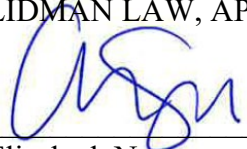
14 **IV. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the
16 proposed Settlement, provisionally certify the Settlement Class, set a hearing for final approval of the
17 Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class members
18 must file objections to the Settlement or opt-out, and enter the Proposed Order Granting Preliminary
19 Approval of Class Action Settlement submitted concurrently herewith.

20 Dated: April 26, 2021

Respectfully submitted,
LIDMAN LAW, APC

21
22 By:



Elizabeth Nguyen
Attorney for Plaintiff
ROSALBA RAMIREZ