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

ALVIN N. WILLIAMS III, as an individual
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

NO ORDINARY MOMENTS, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 30-2020-01140925-CU-OE-CXC

CLASS ACTION

*[Case assigned for all purposes to the Hon.
William Claster; Dept. CX104]*

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

Date: June 10, 2022
Time: 9:00 a.m.
Dept.: CX104

Reservation No.: 73757374

Complaint Filed: May 26, 2020
Trial Date: None

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on June 10, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department
3 CX-104 of the above-entitled Court, located at 751 W. Santa Ana Blvd., Santa Ana, California
4 92701, Plaintiff Alvin N. Williams III (“Plaintiff”), individually and on behalf of a class of
5 similarly-situated individuals, will, and hereby does, move this Court for:

6 1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement
7 Agreement”);

8 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
9 certification of the following Settlement Class:

10 All current and former non-exempt employees of Defendant No Ordinary
11 Moments, Inc. employed in the State of California from May 26, 2016,
12 through July 16, 2021.

13 3. Preliminary appointment of Plaintiff Alvin N. Williams III as Class Representative;

14 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R.
15 McIntosh of Haines Law Group, APC as Class Counsel;

16 5. Appointment of Phoenix Settlement Administrators as the third-party Settlement
17 Administrator;

18 6. Approval of the proposed Class Notice, Request for Exclusion Form, and Notice of
19 Settlement Award (collectively, the “Notice Packet”), and an order that the Notice
20 Packet be disseminated to the proposed Settlement Class as provided in the Settlement
21 Agreement; and

22 7. The scheduling of a hearing to consider whether the class settlement should be finally
23 approved and to award an Enhancement Award to the Class Representative,
24 settlement administration costs to the Settlement Administrator, and attorneys’ fees
25 and costs to Class Counsel.

26 ///

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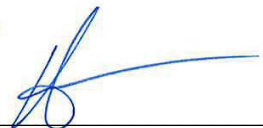
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1 This motion is based on this Notice of motion; the attached memorandum of points and
2 authorities; the declarations of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh and
3 the exhibits attached thereto; the declaration of Plaintiff Alvin N. Williams III; the declaration of
4 Jodey Lawrence and exhibits attached thereto; the Settlement Agreement; the pleadings and other
5 papers filed in this action; and on any further oral or documentary evidence or argument
6 presented at the time of hearing.

7
8 Respectfully Submitted,

9 Dated: May 10, 2022

HAINES LAW GROUP, APC

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12 By:  

13 Paul K. Haines
14 Sean M. Blakely
15 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alvin N. Williams III (“Plaintiff”) seeks preliminary approval of a class-wide
4 settlement reached with Defendant No Ordinary Moments, Inc. (“No Ordinary Moments” or
5 “Defendant”). The settlement resolves a class and representative action now pending before this
6 Court (the “Action”), in which Plaintiff alleges that Defendant: (a) failed to pay all overtime
7 wages; (b) failed to pay minimum wages for all hours worked; (c) failed to provide all legally
8 required meal periods; (d) failed to authorize and permit all legally compliant rest periods; (e)
9 failed to reimburse non-exempt employees for all necessary business expenditures; (f) failed to
10 timely pay all final wages; and (g) failed to issue accurate, compliant and itemized wage
11 statements. As a result of these violations, Plaintiff alleges that Defendant engaged in unfair
12 business practices and is liable for civil penalties under the Private Attorneys’ General Act
13 (“PAGA”).¹

14 Plaintiff respectfully requests that the Court preliminarily approve this non-reversionary,
15 common-fund class action settlement,² in which Defendant has agreed to pay \$775,000.00 on
16 behalf of the following Settlement Class, which consists of an estimated 1,680 current and former
17 employees:

18 All current and former non-exempt employees of Defendant No Ordinary
19 Moments, Inc. employed in the State of California from May 26, 2016,
through July 16, 2021 (the “Class Period”).

20 The Settlement was only reached after the parties engaged in mediation with Tripper
21 Ortman, Esq., an experienced wage and hour class action mediator. In connection with mediation,
22

23 ¹ Plaintiff’s operative First Amended Class and Representative Action Complaint (“FAC”) alleges
24 the following causes of action: (1) failure to pay all overtime wages; (2) minimum wage
25 violations; (3) meal period violations; (4) rest period violations; (5) failure to indemnify all
26 necessary business expenditures; (6) waiting time penalties; (7) wage statement penalties; (8)
unfair competition; and (9) civil penalties under the PAGA.

27 ² The Stipulation of Settlement (“Settlement” or “Settlement Agreement”) is attached as Exhibit
28 A to the Declaration of Paul K. Haines filed herewith. The proposed Class Notice, Request for
Exclusion Form, and Notice of Settlement Award are attached as Exhibits 1, 2, and 3,
respectively, to the Settlement.

1 Defendant produced extensive discovery and information, including a random sampling of
2 putative class members' timekeeping and payroll records, Defendant's relevant wage and hour
3 policies, as well as other relevant data points and information. After extensive research and
4 investigation, including a detailed analysis of Defendant's potential class-wide exposure, a full-
5 day mediation was held with Mr. Ortman on May 18, 2021. With Mr. Ortman's assistance, the
6 parties reached an agreement in principle, which ultimately resulted in the Settlement.

7 If the Settlement is approved, Defendant will pay a non-reversionary Total Settlement
8 Amount ("TSA") of \$775,000.00. After deducting administration costs, Plaintiff's requested
9 enhancement award, attorneys' fees and costs, and the amount designated as PAGA civil
10 penalties, the remaining Net Settlement Amount ("NSA") of approximately \$419,166.67 will be
11 distributed to all Settlement Class members who do not opt-out of the Settlement based on the
12 proportionate number of workweeks worked by each Settlement Class member during the Class
13 Period. Former employees with standing for waiting time penalties, and employees with standing
14 for wage statement and PAGA penalties (subject to a one-year statute of limitations) will also
15 receive additional consideration for their release of these penalty claims.

16 Significantly, Settlement Class members do not need to file a claim to reap the financial
17 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
18 unless they affirmatively opt-out. There are approximately 1,680 Settlement Class members, and
19 the average payment to participating Settlement Class members is projected to be approximately
20 \$256.94. This is a favorable result for Settlement Class members, who will be agreeing to a
21 release of only those claims that were asserted in this litigation, especially given that virtually
22 all the Settlement Class members signed enforceable arbitration agreements, which significantly
23 reduced the value of their claims given that it is highly unlikely that they would be able to pursue
24 their claims outside of individual arbitrations.

25 This proposed Settlement is well within the range of possible approval in light of the
26 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
27 and the significant monetary benefits to be received by Plaintiff and the Settlement Class. For
28 the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary

1 approval of the Settlement.

2 **II. SUMMARY OF THE LITIGATION**

3 **A. FACTUAL AND PROCEDURAL BACKGROUND**

4 Founded in 1996, Defendant provides long-term residential care as well as contracts with
5 a variety of Regional Centers to provide services to the developmentally disabled. *See*
6 Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10. Defendant provides 24-hour care to
7 individuals who suffer from severe behavioral challenges, psychiatric issues and/or medical
8 issues. *Id.* Plaintiff and Settlement Class members are current and former non-exempt employees
9 who worked for Defendant in California during the Class Period. *Id.*

10 On March 10, 2020, Plaintiff sent a letter by certified mail to Defendant, and online to
11 the LWDA, describing Defendant’s alleged Labor Code violations, as required by Labor Code §
12 2699.3. Haines Decl., ¶ 11 & Exhibit B (Plaintiff’s LWDA Letter). On May 26, 2020, after the
13 prescribed 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff filed the instant
14 representative action in this Court, alleging claims for civil penalties under the Private Attorneys
15 General Act, Labor Code § 2698, *et seq.* Haines Decl., ¶ 11. As part of the Settlement, the parties
16 stipulated to the filing of a First Amended Class and Representative Action Complaint (“FAC”),
17 which added class-wide causes of action for failure to pay all overtime wages, failure to pay
18 minimum wages, failure to provide all legally required meal periods, failure to authorize and
19 permit all legally required rest periods, failure to reimburse non-exempt employees for all
20 necessary business expenditures, failure to timely pay all wages, failure to issue accurate and
21 itemized wage statements, and unfair business practices. *Id.* On October 6, 2021, Plaintiff filed
22 the FAC in this Court. *Id.*

23 **B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

24 **1. Arbitration Agreements**

25 As an initial matter, Defendant asserts that nearly all Settlement Class members signed
26 valid and enforceable arbitration agreements. Haines Decl., ¶ 17. Setting aside any arguments as
27 to the merits of Plaintiff’s claims, Defendant contends that absent settlement, a class-wide
28 recovery was not possible and that only PAGA civil penalties could potentially be recovered on

1 behalf of a subset of the Settlement Class members. *Id.* As such, Defendant contends that absent
2 its agreement to not raise the arbitration agreements as an affirmative defense, any recovery to
3 the Settlement Class members through a representative action would be limited to only the
4 employees' potential 25% share of PAGA civil penalties. *Id.*

5 **2. Rest Period Claims**

6 Plaintiff alleges that due to the nature of caring for clients with intellectual and
7 developmental disabilities, Plaintiff and other non-exempt employees were not provided with
8 off-duty rest periods as required by law. Haines Decl., ¶ 18; *see Augustus v. ABM Security*
9 *Services, Inc.*, 2 Cal.5th 257, 273 (2016) (holding that “during rest periods employers must
10 relieve employees of all duties and relinquish control over how employees spend their time.”).
11 As part of its onboarding process, Plaintiff alleges that Defendant requires employees to sign on-
12 duty meal period agreements stating that “I understand and agree that the nature of my work as
13 a Personal Attendant at No Ordinary Moments may prevent me from being relieved of all duties
14 during meal periods.” *Id.* Plaintiff contends that by arguing that the nature of their work prevents
15 employees from being relieved of all duty during meal periods, Defendant concedes that this
16 necessarily means that it has not been possible to provide compliant off-duty rest periods as
17 required by California law. *Id.* Plaintiff further alleges that because Defendant's non-exempt
18 employees are required to maintain constant supervision of its clients, Plaintiff and other
19 Settlement Class members cannot be relieved of all work duties and are not provided off-duty
20 rest periods. *Id.*

21 As a threshold issue, Defendant contends that its non-exempt employees are “Personal
22 Attendants,” and therefore, need not be provided with off-duty rest periods. Haines Decl., ¶ 18;
23 *see Wage Order 15, § 2(J)* (defining “Personal Attendant” as “[a]ny person employed by a private
24 household or by any third party employer recognized in the health care industry to work in a
25 private household, to supervise, feed, or dress a child or person who by reason of advanced age,
26 physical disability, or mental deficiency needs supervision.”); *Wage Order 15, § 1(B)* (personal
27 attendants are exempt from meal and rest period requirements in *Wage Order 15*); *see also Labor*
28 *Code § 1451(d)*. Therefore, Plaintiff's rest and meal period claims were to a large extent a “zero-

1 sum game,” as an unfavorable ruling on the classification of Settlement Class members as
2 “Personal Attendants” would necessarily decimate Plaintiff’s rest and meal period claims.
3 Haines Decl., ¶ 18. Defendant also argues that Plaintiff’s rest period claim is inherently unsuited
4 for class treatment as it requires an inquiry into why each Settlement Class member failed to take
5 rest periods on each shift, which would devolve into an unmanageable series of mini-trials. *Id.*

6 **3. Meal Period Claims**

7 Because Settlement Class members care for intellectually and developmentally
8 challenged children and adults, the nature of their work prevents them from being fully relieved
9 of their duties during their shift. Haines Decl. ¶ 19. Plaintiff does not dispute these truths and
10 concedes that the nature of the work necessitates on-duty meal period agreements. *Id.*

11 Defendant contends that it has always maintained compliant written meal period policies
12 and contends that it utilized a lawful on-duty meal period agreement throughout the Class Period.
13 Haines Decl., ¶ 19. As with Plaintiff’s rest period claims, Defendant argues that Personal
14 Attendants are exempted from the Wage Order’s meal period requirements. *Id.*; *see* Wage Order
15 15, § 1(B).

16 **4. Failure to Reimburse for Use of Personal Cell Phones**

17 Plaintiff contends that Settlement Class members were required to use their personal cell
18 phone to clock-in and clock out for their shift after May 2019, and were required to utilize their
19 personal cell phones to report any special incidents with their clients and communicate with their
20 managers. Haines Decl., ¶ 20. Plaintiff contends that Defendant failed to reimburse Settlement
21 Class members for all cell phone expenses incurred, in violation of Labor Code §§ 2802 and
22 2804 (“An employer shall indemnify his or her employer for all necessary expenditures or losses
23 incurred by the employee in direct consequences of the discharge of his or her duties.”); *see also*,
24 *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

25 Defendant contends that it properly reimbursed employees for all necessary business
26 expenditures throughout the Class Period, including cell phone expenses. Haines Decl. ¶ 20. To
27 support this contention, Defendant points to its “Payment for Required Phone Use” policy which
28 provides for an \$8 per month reimbursement for cell phone usage. *Id.* Defendant further contends

1 that any expenses incurred by Settlement Class members were minimal, given the wide
2 availability of low-cost cellular phone plans. *Id.* Defendant further argues that this claim is not
3 suitable for class treatment, as it would require individualized determinations as to the
4 reasonableness of the expense incurred by the employee, whether each employee was properly
5 reimbursed for his or her expenses, and if they were under-reimbursed, by how much. *Id.*

6 **5. Unpaid Wages Due to Defendant's Timekeeping Policies/Practices**

7 Plaintiff contends that Defendant underpaid Settlement Class members due to its
8 allegedly unlawful timekeeping policies/practices. Haines Decl., ¶ 21. Specifically, for a portion
9 of the Class Period, Plaintiff alleges that Defendant required its non-exempt employees to record
10 their time in quarter-hour increments rather than the actual time they began and ended each
11 workday, and that as a result, Settlement Class members were not compensated for all hours
12 worked. *Id.*

13 Defendant argues that its timekeeping policies/practices were lawful and that it has
14 always compensated employees for all hours worked. Haines Decl., ¶ 21. Defendant further
15 argues that prior to May 2019, Settlement Class members recorded their own hours worked
16 through handwritten timesheets, and Defendant always paid employees for all time recorded by
17 Settlement Class members. *Id.* Defendant further argues that in approximately May 2019 it
18 implemented an electronic timekeeping system that recorded and paid employees to the minute,
19 thereby cutting off its liability for this claim for a significant portion of the Class Period. *Id.*
20 Defendant contends that Plaintiff's theory of liability amounts to an "off-the-clock" claim, which
21 Plaintiff would not be able to certify. *Id.*

22 **6. Claims Under Labor Code §§ 203, 226, and the PAGA**

23 As a result of the foregoing violations, Plaintiff asserts that Defendant failed to comply
24 with its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203
25 and 226, respectively, and that Defendant is liable for civil penalties under the PAGA. Haines
26 Decl., ¶¶ 22-24.

27 Defendant asserts it has strong, good-faith defenses to Plaintiff's underlying claims,
28 precluding the imposition of waiting time penalties. Haines Decl., ¶ 22; *see also* 8 Cal. Code

1 Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting
2 time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith
3 dispute” precluded imposition of waiting time penalties). Defendant further contends Plaintiff’s
4 meal and rest period claims cannot support a claim for waiting time or wage statement penalties,
5 as a Court of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th.
6 444 (2019) (*review granted* Jan. 2, 2020). Defendant further contends any alleged wage statement
7 violations could not be shown to be “knowing and intentional” given its good-faith defenses, and
8 that Plaintiff cannot show he or other employees “suffer[ed] injury,” as required by Lab. Code §
9 226(e). Haines Decl., ¶ 23. Defendant further argues wage statements always accurately reflected
10 hours worked and amounts paid to employees, and thus Defendant could not be found liable for
11 wage statement penalties per *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-
12 37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in
13 that they correctly reflected the hours worked and the pay received...The purpose of section
14 226 is to *document the paid wages* to ensure the employee is fully informed regarding the
15 calculation of those wages.”) (*italics in original; citation omitted*). Haines Decl., ¶ 23.

16 Finally, Defendant contends Plaintiff’s PAGA claim fails because the underlying claims
17 fail. Haines Decl., ¶ 24; *see, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011)
18 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
19 Defendant further maintains that given its good-faith defenses, the Court would substantially
20 reduce any PAGA civil penalties if it were to find Defendant liable for any of Plaintiff’s claims.
21 Haines Decl., ¶ 24; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in
22 court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012)
23 (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-
24 RGK(OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%);
25 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
26 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

27 C. DISCOVERY AND MEDIATION

28 In connection with mediation, the parties engaged in extensive informal discovery,

including Defendant’s production of a 14.25% random sampling of timekeeping and payroll data for putative class members; its relevant written wage and hour policies and employee handbooks, and other relevant documents; as well as the total number of class members, average hourly rate of pay, and additional relevant data points.³ Haines Decl., ¶ 12. Plaintiff analyzed and extrapolated the data produced by Defendant which allowed Plaintiff to develop a comprehensive class-wide exposure model. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff’s claims, as well as Defendant’s potential defenses. *Id.*

The parties attended a full-day mediation on May 18, 2021 with Tripper Ortman, Esq., a well-respected wage and hour class action mediator. Haines Decl., ¶ 13. During mediation, the parties vigorously debated their legal positions, including the likelihood of class certification and the legal bases for their respective claims and defenses. *Id.* At the conclusion of mediation, Mr. Ortman issued a mediator’s proposal for a classwide settlement, which was ultimately accepted by both sides. *Id.* During the months that followed, the parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before this Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court approves this settlement, Defendant will pay a non-reversionary Total Settlement Amount (“TSA”) of \$775,000.00. *See* Settlement, ¶ 3. No Settlement Class member will be required to file a claim in order to reap financial benefit from the Settlement. *Id.*, at ¶ 4. All Settlement Class members will automatically receive an “Individual Settlement Payment” unless they affirmatively opt-out. *Id.* The monetary terms of the settlement are summarized below:

- Total Settlement Amount (“TSA”): \$775,000.00
- Minus Court-approved attorneys’ fees (one-third): \$258,333.33
- Minus Court-approved verified costs (up to): \$25,000.00

³ The sampled employees were selected as follows: Defendant created a class list containing all putative class members, the list was sorted alphabetically, and then every 7th employee was selected for the sampling. Haines Decl., ¶ 12. This yielded a random sampling of approximately 14.25% of all putative class members and included both current and former non-exempt employees. *Id.*

- Minus Court-approved Enhancement Award: \$5,000.00
- Minus Amount Designated as PAGA penalties: \$50,000.00
- Minus estimated settlement administration costs: \$17,500.00
- Net Settlement Amount (“NSA”): \$419,166.67
- PLUS 25% of PAGA penalties to Settlement Class: \$12,500.00
- Total Amount Paid to Settlement Class members: \$431,666.67**

1. The Settlement Provides for Reasonable Monetary Payments

As shown above, after deducting amounts for a court-approved Enhancement Award to Plaintiff, settlement administration costs, attorneys’ fees and costs, and the amount designated as PAGA civil penalties, the settlement requires Defendant to pay a NSA of at least \$419,666.67 to all members of the Settlement Class who do not timely opt-out. *See* Settlement, ¶ 3(C). According to Defendant, there are approximately 1,680 total Settlement Class members. Haines Decl., ¶ 16. Thus, the average Individual Settlement Award is projected to be approximately \$256.94. *Id.* Settlement Class members will have forty-five (45) days from the mailing of the Class Notice to opt-out or object, thereby providing ample time to review the Notice without unduly delaying the settlement. *See* Settlement, ¶¶ 9(D)-(E).

Individual Settlement Payments will be calculated as follows: (i) 85% of the NSA shall be distributed to all participating Settlement Class members based on their proportionate number of workweeks worked during the Class Period; (ii) 10% of the NSA is designated the “Waiting Time Amount” and will be distributed equally to all Settlement Class members who separated their employment with Defendant between May 26, 2017 through the end of the Class Period; (iii) 5% of the NSA is designated the “Wage Statement Amount” and will be distributed to all Settlement Class members who worked for Defendant from May 26, 2019 to the end of the Class Period, based on the proportionate number of workweeks worked during that period; and (iv) in addition to the NSA, the \$12,500 “PAGA Amount” (i.e., 25% of total PAGA penalties) will be distributed to all Settlement Class members who worked for Defendant from March 10, 2019 through July 16, 2021 (the “PAGA Period”), based on the proportionate number of pay periods worked during that period. *See* Settlement, ¶ 4(C).

Settlement Class members who do not opt out of the Settlement will be bound by its terms, and will release all claims that are asserted in the First Amended Class and Representative

1 Action Complaint that arose during the Class Period. *See* Settlement, ¶ 2(A). Plaintiff has also
2 agreed to a general release of claims, subject to a waiver of California Civil Code § 1542. *Id.*, ¶
3 2(C).

4 **2. Attorneys' Fees and Costs, Enhancement Award and PAGA Payment**

5 Plaintiff will apply for an Enhancement Award at final approval in the amount of \$5,000
6 for his services to the Settlement Class. *See* Settlement, ¶¶ 3(C)(3); 6. “[I]ncentive awards are
7 fairly typical in class action cases...and are intended to compensate class representatives for work
8 done on behalf of the class [and] to make up for financial or reputational risk undertaken in
9 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
10 (2010). As will be fully briefed at final approval, Plaintiff’s requested Enhancement Award is
11 intended to recognize the time and effort he expended on behalf of the Settlement Class, including
12 providing information and documents to counsel, identifying potential witnesses, attending
13 telephonic meetings with counsel, and otherwise actively participating in the prosecution of this
14 case, and the risks Plaintiff took in bringing a class action against a former employer. *See*
15 Declaration of Alvin N. Williams III (“Williams Decl.”), ¶¶ 7-8; *see also* Haines Decl., ¶ 26.
16 Plaintiff respectfully submits that this requested payment, which is only 0.65% of the TSA, is
17 well within the range of permissible approval. *See, e.g., Bond v. Ferguson Enter., Inc.*, No. 1:09–
18 1662 OWW MJS, 2011 WL 3268879 at **2, 15 (E.D. Cal. Jun. 30, 2011) (approving \$11,250
19 enhancement award to each of two named plaintiffs out of \$2,250,000 settlement); *Ross v. U.S.*
20 *Bank Nat’l Ass’n*, No. 3:07-2951 SI, 2010 WL 3833922 at *3 (N.D. Cal. Sept. 29, 2010)
21 (approving enhancement award of \$20,000 to each of four named plaintiffs from \$1,050,000
22 settlement).

23 The parties have also agreed to designate \$50,000 of the TSA as PAGA civil penalties,
24 of which \$37,500 will be paid to the LWDA, with the remaining \$12,500 distributed to the
25 Settlement Class as described above, consistent with the PAGA’s requirement that 75% of such
26 penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved
27 employees (Labor Code § 2699(i)). *See* Settlement, ¶ 3(C)(5). Plaintiff submits this allocation
28 to the LWDA is appropriate in light of other settlements allocating penalties to the LWDA. *See,*

1 *e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 673265 (N.D. Cal. Feb. 16,
2 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million settlement).

3 In addition, at final approval Plaintiff's counsel will request attorneys' fees of one-third
4 of the TSA (i.e., \$258,333.33), and up to \$25,000 in cost reimbursement. *See* Settlement, ¶¶
5 3(C)(4); 5. Plaintiff submits the requested fee is fair compensation for undertaking complex,
6 expensive, risky, and time-consuming litigation on a contingent basis. Haines Decl., ¶ 27.
7 Counsel have incurred substantial attorneys' fees in, among other things, conducting pre-filing
8 investigation; conducting legal research; reviewing documents and data produced by Defendant;
9 analyzing employee timekeeping, payroll, and other data to create a comprehensive damages
10 model; preparing for and attending mediation; negotiating and preparing the Settlement
11 Agreement; preparing this Motion; and otherwise prosecuting this case. *Id.* Further, counsel
12 anticipate incurring significant future attorneys' fees in overseeing the Notice process, fielding
13 phone calls from Settlement Class members, preparing the Motion for Final Approval and
14 supporting documents, and appearing at the Final Approval Hearing. *Id.*

15 It is appropriate to award attorneys' fees as a percentage of the "common fund" created
16 as a result of a class action settlement. *See Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016)
17 (holding "the percentage of fund method survives in California class action cases"). Counsel's
18 request for fees of one-third of the TSA is well within the range of reasonableness and is typical
19 for common fund settlements. *Newberg on Class Actions* § 14.6 (4th Ed. 2013) (historically,
20 courts have awarded percentage fees in the range of 20% to 50%). Counsel submits their fee
21 request is reasonable in light of the substantial risks and significant work undertaken, the results
22 obtained, and the efficiency with which counsel conducted the litigation.

23 **III. ARGUMENT**

24 **A. PRELIMINARY APPROVAL IS WARRANTED**

25 Rule of Court 3.769 conditions the settlement of a class action on court approval, which
26 is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
27 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
28 "that the settlement is fair, reasonable and adequate"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,

1 1026 (9th Cir. 1998) (Rule 23(e) requires trial court to determine “whether a proposed settlement
2 is fundamentally fair, adequate, and reasonable”). The court’s role is to ensure the agreement as
3 a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a
4 presumption of fairness, as here, where the settlement was negotiated at arm’s length by
5 experienced class counsel, with the assistance of a well-respected mediator. *See, e.g., Kullar v.*
6 *Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

7 **1. Standard for Preliminary Approval**

8 To make a fairness determination, the Court should consider several factors, including:
9 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
10 litigation, the risk of maintaining class action status through trial, the amount offered in
11 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
12 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
13 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
14 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
15 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed settlement is fair, adequate,
16 and reasonable in light of the overall balance of factors in this case.

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

18 Although he maintains his claims are meritorious, Plaintiff acknowledges there were
19 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
20 merits. As described in section II.B., *supra*, Defendant presented multiple defenses to Plaintiff’s
21 claims, both on the merits and to class certification. While Plaintiff was prepared to litigate his
22 claims through class certification and ultimately trial, success was far from certain.

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

24 Although the parties engaged in significant informal discovery in advance of mediation,
25 they had not yet completed formal written and deposition discovery, which would have required
26 expenditure of substantial time and resources by all parties. Haines Decl., ¶ 28. Even if Plaintiff
27 were to certify the classes, the parties would incur considerably more attorneys’ fees and costs
28 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids

1 those risks and the accompanying expense. *Id.* Thus, this factor supports preliminary approval.

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

3 Due to the fact that Plaintiff and the overwhelming majority of Settlement Class members
4 were subject to arbitration agreements, it is very likely that absent this Settlement, there would
5 not be a certified class at the time of trial. Indeed, Defendant only agreed to waive their right to
6 assert the arbitration agreements as a defense in connection with this Settlement. Thus, this factor
7 supports preliminary approval.

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

9 The Settlement provides a positive recovery for the Settlement Class in the face of hotly
10 disputed claims. Plaintiff conducted an analysis of underpaid wages due to Defendant's alleged
11 unlawful timekeeping policies/practices, potential meal and rest period premium payments
12 owing, unreimbursed business expenditures, wage statement penalties, waiting time penalties,
13 and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed
14 below:

15 **Rest Period Violations: \$277,059**

16 Plaintiff alleges that Defendant failed to provide off-duty rest periods due to the nature of
17 its business, specifically providing care for individuals with serious mental disabilities. Haines
18 Decl., ¶ 18. Based on Plaintiff's analysis and extrapolation of the timekeeping records provided
19 by Defendant, there were approximately 520,297 rest period eligible shifts worked during the
20 Class Period. *Id.* Therefore, assuming a rest period violation on each shift during the Class
21 Period, Plaintiff calculated a maximum estimated exposure of approximately \$9,235,271
22 (520,297 non-compliant rest periods * \$17.75 average premium) for Plaintiff's rest period claim.
23 *Id.* As noted, however, Defendant contends that pursuant to Wage Order 15, Defendant need not
24 provide off-duty rest periods to its Personal Attendants. *Id.* Defendant also argues that Plaintiff's
25 rest period claim is inherently unsuited for class treatment as it requires an inquiry into why each
26 putative class member failed to take rest periods on each shift, which would devolve into an
27 unmanageable series of mini-trials. *Id.* Therefore, in light of these arguments, as well as the risk
28 that Plaintiff's class claims could be precluded by the arbitration agreements, Plaintiff discounted

1 this maximum amount by 80% for risk of non-certification based upon the arbitration agreements,
2 and an additional 85% for a risk of being unsuccessful on the merits or of failing to recover the
3 full amount sought, to arrive at an estimated realistic exposure of \$277,059. *Id.*

4 Meal Period Violations: \$230,737

5 Plaintiff's analysis showed there were approximately 433,308 shifts of over 6.0 hours
6 worked during the Class Period, and nearly all of these shifts reflected an on-duty meal period.
7 Haines Decl., ¶ 19. Assuming Defendant's on-duty meal period agreement was found to be
8 unlawful, Plaintiff calculated Defendant's maximum exposure for meal period violations at
9 approximately \$7,691,217 (433,308 non-compliant first meal periods * \$17.75 average premium).
10 *Id.*

11 However, as stated above, Defendant contends that it utilized a lawful on-duty meal
12 period agreement throughout the relevant time period. Haines Decl., ¶ 19. Plaintiff's counsel was
13 provided with on-duty meal period agreements utilized during the Class Period, and Plaintiff's
14 counsel believes the on-duty meal period agreements comport with the requirements of the
15 applicable Wage Order. *Id.* Defendant further argues that Personal Attendants need not be
16 provided with off-duty meal periods pursuant to Wage Order 15. *Id.* In light of these defenses,
17 Plaintiff discounted this maximum amount by 80% for risk of non-certification to account for the
18 risk of non-certification based upon the arbitration agreements, and an additional 85% for a risk
19 of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an
20 estimated realistic exposure of \$230,737. *Id.*

21 Unreimbursed Expenses: \$48,101

22 Plaintiff alleges that Defendant failed to adequately reimburse employees for cell phone
23 expenses. Haines Decl., ¶ 20. Plaintiff estimates that there were approximately 30,063 aggregate
24 months during the Class Period. *Id.* Plaintiff contends that \$20.00 per month is an adequate
25 reimbursement for cell phone expenses. *Id.* Therefore, Plaintiff calculates Defendant's maximum
26 exposure for this claim at \$601,260 (30,063 months * \$20.00 reimbursement) *Id.*

27 Defendant contends that it properly reimbursed employees for all necessary business
28 expenditures, including cell phone expenses, through its \$8 per month cell phone payment. Haines

Decl., ¶ 20. Defendant further contends that Plaintiff's claim for unreimbursed cell phone use is unfounded because Defendant provides employees with a method to seek reimbursement for work-related expenses. *Id.* Defendant also argues that this claim is not suitable for class treatment, as it would require individualized determinations as to the reasonableness of the expense incurred by the employee, whether each employee was properly reimbursed for his or her expenses, and if they were under-reimbursed, by how much. *Id.* Therefore, in light of these arguments, as well as the risk that Plaintiff's class claims could be precluded by the arbitration agreements, Plaintiff discounted this maximum amount by 80% for risk of non-certification to account for the risk of non-certification based upon the arbitration agreements, and an additional 60% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of \$48,101. *Id.*

Unpaid Wages: \$22,343

Plaintiff contends Defendant utilized a timekeeping system that resulted in a systematic underpayment of wages to Settlement Class members. Haines Decl., ¶ 21. Specifically, Plaintiff alleges that prior to May 2019, Settlement Class members were required to record their hours worked in quart-hour increments and could not record the actual start and end times each workday. *Id.* Plaintiff estimates that from the beginning of the Class Period through May 2019, Settlement Class members were underpaid by approximately five (5) minutes each shift as a result of Defendant's timekeeping policies/practices, for a total of approximately 25,175 unpaid hours. *Id.* Therefore, Plaintiff calculated exposure for unpaid wages at approximately \$446,856 (25,175 unpaid hours * \$17.75 average rate of pay). *Id.*

Defendant argues that its timekeeping policies/practices comply with California law and that it has always compensated Settlement Class members for all hours worked throughout the Class Period. Haines Decl., ¶ 21. Defendant further argues that prior to May 2019, Settlement Class members recorded their hours worked through handwritten timesheets, and Defendant always paid employees for all time recorded by Settlement Class members. *Id.* Defendant contends that Plaintiff's theory of liability amounts to an "off-the-clock" claim, which Plaintiff would not be able to certify. *Id.*; see *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th

1 1004, 1052 (2012) (affirming denial of off-the-clock subclass, “[p]roof of off-the-clock liability
2 would have had to continue in an employee-by-employee fashion, demonstrating who worked off
3 the clock, how long they worked, and whether Brinker knew or should have known of their
4 work.”). Defendant further argues that in approximately May 2019 it implemented an electronic
5 timekeeping system that recorded and paid employees to the minute, thereby cutting off its
6 liability for this claim for a significant portion of the Class Period. Haines Decl., ¶ 21. Therefore,
7 in light of these arguments, as well as the risk that Plaintiff’s class claims could be precluded by
8 the arbitration agreements, Plaintiff discounted this maximum amount by 80% for risk of non-
9 certification to account for the risk of non-certification based upon the arbitration agreements,
10 and an additional 75% for a risk of being unsuccessful on the merits or of failing to recover the
11 full amount sought, to arrive at an estimated realistic exposure of \$22,343. *Id.*

12 **Waiting Time Penalties: \$232,596**

13 Based on data provided by Defendant, there are approximately 1,092 Settlement Class
14 members who have separated their employment with Defendant since May 26, 2017. Haines
15 Decl., ¶ 22. Plaintiff estimates an average waiting time penalty of \$4,260 ($\$17.75 \times 8 \text{ hours} \times 30$
16 days), and therefore, calculated Defendant’s maximum waiting time penalty exposure at
17 approximately \$4,651,920 ($1,092 \text{ former employees} \times \$4,260 \text{ avg. waiting time penalty}$). *Id.* As
18 noted above, however, Defendant asserts it has strong, good-faith defenses to Plaintiff’s
19 underlying claims, most notably their assertion that because they possessed good-faith defenses
20 to the underlying claims, any failure to pay wages was not “willful” as a matter of law. *Id.*
21 Defendant further contends Plaintiff’s meal and rest period claims cannot support a claim for
22 waiting time penalties, as multiple courts have held. *Id.* Therefore, in light of these arguments,
23 as well as the risk that Plaintiff’s class claims could be precluded by the arbitration agreements,
24 Plaintiff discounted this maximum amount by 80% for risk of non-certification to account for the
25 arbitration agreements, and an additional 75% for a risk of being unsuccessful on the merits or
26 of failing to recover the full amount sought, to arrive at an estimated realistic exposure of
27 \$232,596. *Id.*

28 **Wage Statement Penalties: \$84,528**

1 Plaintiff alleges that Defendant has derivative liability for wage statement penalties as a
2 result of its failure to pay all wages, and for its failure to pay all meal and rest period premium
3 wages. Plaintiff's analysis reflected that there were approximately 28,176 pay periods worked by
4 Settlement Class members within the liability period applicable to Plaintiff's wage statement
5 claim. Haines Decl., ¶ 23. In calculating Defendant's exposure, Plaintiff gave Defendant the
6 benefit of assuming Plaintiff could only obtain the "initial" wage statement violation rate of \$50
7 per pay period, for a total of \$1,408,800 (28,176 pay periods * \$50 "initial" penalty) in potential
8 penalties. *Id.*; see also Lab. Code 226(e) (\$50 penalty for "initial" violations); *Amaral v. Cintas*
9 *Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (finding "initial" violation rate applies for civil
10 penalties until employer has been notified it is violating the Labor Code); *Patel v. Nike Retail*
11 *Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2014) (citing *Amaral* and applying "initial"
12 \$50 penalty to all pay periods in calculating amount-in-controversy for wage statement claim).
13 But given Defendant's arguments that no violations occurred, that employees suffered no
14 "injury," that any alleged violations were not "knowing and intentional," and that meal and rest
15 period claims cannot support wage statement penalties, the existence of the arbitration
16 agreements, as well as risks associated with Plaintiff's underlying claims discussed above,
17 Plaintiff discounted the maximum exposure by 80% for risk of non-certification, and by an
18 additional 70% for risk of being unsuccessful on the merits, for an estimated realistic exposure
19 of \$84,528. Haines Decl., ¶ 23.

20 **PAGA Penalties: \$140,880**

21 Plaintiff's analysis reflected there were approximately 28,176 pay periods worked in the
22 PAGA Period (i.e., March 10, 2019 through July 16, 2021). Therefore, Plaintiff estimated a
23 maximum PAGA exposure of \$2,817,600 (28,176 pay periods * \$100 "initial" violation rate).
24 Haines Decl., ¶ 24; *Amaral, supra*, 163 Cal.App.4th at 1207-09 (finding "initial" violation rate
25 applies until employer is notified that it is violating a Labor Code provision stating that "the
26 employer cannot be presumed to be aware that its continuing underpayment of employees is a
27 'violation' subject to penalties.")). However, these penalties derive from Plaintiff's underlying
28 claims, each of which Defendant vigorously disputes. *Green v. Lawrence Service Co.*, No. LA-

CV-12-6155-JAK (VBKx), 2013 WL 3907506 at fn. 5 (C.D. Cal. July 23, 2013) (PAGA claim’s success is determined by merits of underlying claims). The PAGA also specifically grants courts discretion to reduce penalties (Lab. Code § 2699(e)(2)), and Defendant argues the Court would reduce penalties significantly given its good-faith defenses. Haines Decl., ¶ 24. Thus, Plaintiff discounted the maximum figure by 75% for risk of losing on the merits and by an additional 80% for risk of the Court reducing penalties, to arrive at estimated exposure of \$140,880. *Id.*; *see also* *Thurman, supra*, 203 Cal.App.4th at 1135-36 (affirming PAGA penalty reduction); *Fleming, supra*, 2011 WL 7563047 at *4 (reducing PAGA penalties by over 82%); *Carrington, supra*, 30 Cal.App.5th at 529 (affirming PAGA penalty of just \$5 per pay period).

Using these estimated figures, Plaintiff estimated a realistic total recovery for the Settlement Class of approximately \$1,036,244. Haines Decl., ¶ 25. The proposed settlement of \$775,000.00 therefore represents about 74.8% of Plaintiff’s reasonably forecasted recovery. *Id.* Preliminary approval is appropriate as the Settlement will provide significant monetary relief to the Settlement Class.

e. 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 Pac. Enter. Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by competent counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side, and who have been appointed class counsel in numerous wage and hour class actions. *See* Haines Decl., ¶¶ 3-8; *see also* Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6; Declaration of Alexandra McIntosh, ¶¶ 2-4. Counsel conducted an in-depth review of Defendant’s policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiff’s claims and Defendant’s defenses. The settlement was also reached with the assistance of Tripper Ortman, Esq., a well-respected wage and hour class action mediator. Haines Decl., ¶ 13. This factor strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

///

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

2 The Court can grant preliminary approval of a proposed settlement and direct that notice
3 be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the
4 product of serious, informed negotiations; and (3) has no obvious deficiencies. *See Manual for*
5 *Complex Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013).

6 **a. The Settlement Is Within the Range of Possible Approval**

7 As explained above, the proposed Settlement reflects approximately 74.8% of the realistic
8 estimated recovery on Plaintiff's claims, and will provide tangible, monetary compensation for
9 hotly disputed wage claims on a classwide basis. Plaintiff submits the Settlement is within the
10 range of possible approval, such that notice should be provided to the Settlement Class so that
11 they can consider the settlement. The Court will again have the opportunity to assess the
12 reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or
13 object.

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

15 This proposed Settlement is the result of an exchange of substantial information, arm's-
16 length negotiations, a full-day mediation with an experienced mediator, and additional months
17 of negotiating the Settlement. Thus, the Settlement is entitled to a presumption of fairness. *Kullar*,
18 168 Cal.App.4th at 130. Plaintiff carefully vetted the claims at issue, reviewed extensive data and
19 information, and conducted a detailed analysis of the data. Haines Decl., ¶¶ 18-25. Thus, this
20 factor supports preliminary approval.

21 **c. The Settlement Is Devoid of Obvious Deficiencies**

22 Preliminary approval of the proposed Settlement is warranted because there are no
23 obvious deficiencies. The Settlement provides tangible monetary relief to the Settlement Class,
24 and the amounts proposed for attorneys' fees, costs, settlement administration costs, Plaintiff's
25 Enhancement Award, and PAGA civil penalties are all reasonable and appropriate based on the
26 particular facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor
27 supports preliminary approval.

28 ///

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

2 The proposed Settlement Class satisfies the criteria for certification of a settlement class
3 under California law because: (1) the individuals in the Settlement Class are ascertainable and
4 sufficiently numerous; (2) common questions of law and fact predominate; (3) Plaintiff's claims
5 are typical of the claims of the Settlement Class; and (4) Plaintiff and his counsel will fairly and
6 adequately represent the interests of the Settlement Class. Cal. Code Civ. Proc. § 382.

7 **1. The Proposed Class Is Ascertainable and Numerous**

8 A class is "ascertainable" where members "may be readily identified without unreason-
9 able expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189
10 Cal.App.4th 905, 919 (2010) (alterations in original). The Settlement Class is defined as non-
11 exempt employees who worked for Defendant in California during the Class Period. Thus,
12 Settlement Class members can be readily identified from Defendant's employment records. As
13 stated, Defendant represents there are approximately 1,680 Settlement Class members, rendering
14 it impracticable to bring all of them before the Court. Thus, the Settlement Class satisfies the
15 numerosity requirement.

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

17 The focus on certification is not on the merits of the case, but rather on what types of
18 questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v.*
19 *Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated primarily on Defendant's
20 allegedly unlawful meal and rest period policies and practices. These claims are commonly held
21 proper for class certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220
22 Cal.App.4th 701, 726 (2013) (reversing denial of certification of meal and rest period claims).

23 **3. The Named Plaintiff's Claims Are Typical**

24 The typicality requirement is satisfied where class representatives have claims that are
25 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191
26 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff's claims are typical of those held by Settlement
27 Class members. Plaintiff was employed by Defendant as a non-exempt employee in California
28 during the proposed Class Period and was subject to Defendant's wage and hour policies at issue

1 in this lawsuit. Plaintiff alleges he was injured by the same challenged policies that injured the
2 Settlement Class as a whole. Thus, typicality is satisfied.

3 **4. Plaintiff and Class Counsel Will Adequately Represent the Class**

4 The adequacy of representation requirement examines conflicts of interest between
5 named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of*
6 *Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately
7 represent the Settlement Class, as there are no known conflicts between Plaintiff and the
8 Settlement Class he seeks to represent. *See McGhee v. Bank of America*, 60 Cal.App.3d 442, 450
9 (1976) (finding adequacy satisfied where there was no indication that plaintiff’s counsel was not
10 qualified and the named plaintiff had no interests antagonistic to those of the proposed class).
11 Class Counsel also have extensive experience in wage and hour class action litigation. *See Haines*
12 *Decl.*, ¶¶ 3-8; *Blakely Decl.*, ¶¶ 2-6.

13 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
14 **CLASS NOTICE**

15 This Court should order distribution to the Settlement Class of the proposed Class Notice
16 by U.S. Mail, postage prepaid, using last known mailing address information provided by
17 Defendant. *See Settlement*, ¶ 9. This manner of giving notice is the “best notice practicable”
18 under the circumstances as it provides “individual notice to all members who can be identified
19 through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
20 proposes that the settlement be administered by Phoenix Settlement Administrators (“Phoenix”),
21 an experienced class action settlement administrator. *See Declaration of Jodey Lawrence*
22 *(“Lawrence Decl.”)* and attached exhibits. Settlement Class members’ addresses will be
23 ascertainable through Defendant’s employment records. To the extent the employees’ addresses
24 have changed, Phoenix will run all addresses through the U.S. Postal Service National Change
25 of Address database and/or perform “skip traces” to obtain current address information. *See*
26 *Settlement*, ¶¶ 9(B)-(C).

27 The content of the proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises
28 Settlement Class members of the nature of the claims, the basic contentions and denials of the

1 parties and the key terms of the Settlement, the 45-day deadline to opt-out or object to the
2 Settlement and the procedures by which to do so, explains the recovery formula and expected
3 recovery amount for each Settlement Class member, and advises that they will be bound by the
4 terms of the Settlement if they do not request exclusion. *See* Haines Decl., Exhs. 1, 2, 3, to Exh.
5 A. The proposed Class Notice will also notify Settlement Class members of the final approval
6 hearing date and time, provides contact information for Class Counsel, and advises Settlement
7 Class members that they may enter an appearance through counsel if they wish. This Notice
8 satisfies Cal. Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching
9 Settlement Class members.

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

11 Finally, the Court should set a hearing for final approval of the settlement on a date
12 appropriately scheduled to follow the deadline by which Settlement Class members must file
13 objections to the settlement or opt-out. *See* Cal. Rule of Court 3.769.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
16 approve the proposed settlement, provisionally certify the Settlement Class, and enter the
17 Proposed Order submitted concurrently herewith.

18
19 Dated: May 10, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

20
21 By:



22 Paul K. Haines
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