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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARIA RAZO VIVEROS and REYES
SEGURA, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

MISSION PRODUCE, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: 20STCV15737

CLASS ACTION

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

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

Date: May 17, 2022

Time: 11:00 a.m.

Dept.: SSC-14

Action Filed: April 23, 2020

FAC Filed: June 30, 2020

SAC Filed: January 6, 2022

Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on May 17, 2022 at 11:00 a.m., or as soon thereafter as the matter may be heard in Department
3 SSC-14 of the above-entitled Court, located at 312 N Spring St, Los Angeles, CA 90012,
4 Plaintiffs Maria Razo Viveros, Reyes Segura, and Melchor Manlalo Aguilar (“Plaintiffs”) will,
5 and hereby do, move this Court for:

- 6 1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement”)
7 between Plaintiffs and Defendant Mission Produce, Inc. (“Mission Produce”);
- 8 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
9 certification, for settlement purposes only, of the following Settlement Class:
10 All current and former non-exempt employees of Mission Produce
11 who worked for Mission Produce in California at any time from
12 April 23, 2016 to December 31, 2021.
- 13 3. Preliminary appointment of Plaintiffs as Class Representatives;
- 14 4. Preliminary appointment of Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen of
15 Haines Law Group, APC, and David D. Bibiyan and Diego Aviles of Bibiyan Law
16 Group P.C. as Class Counsel;
- 17 5. Appointment of Phoenix Settlement Administrators as the Settlement Administrator;
- 18 6. Approval of the proposed Class Notice and Notice of Estimated Settlement Award
19 (together, the “Notice Packet”), and an order that the Notice Packet be disseminated
20 to the Settlement Class as provided in the Settlement Agreement; and
- 21 7. The scheduling of a hearing to consider whether the Settlement should be finally
22 approved and to award Class Representative Enhancement Awards to Plaintiffs, and
23 attorneys’ fees and costs to Class Counsel.

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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, Tuvia Korobkin, Neil M. Larsen, and David D.
3 Bibyan and exhibits attached thereto; the declaration of Jodey Lawrence and exhibits attached
4 thereto; the declarations of Plaintiffs; the pleadings and other papers filed in this action; and any
5 further oral or documentary evidence or argument presented at the time of hearing.

6
7 Dated: April 18, 2022

Respectfully Submitted,
HAINES LAW GROUP, APC

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9 _____
Paul K. Haines
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Maria Razo Viveros, Reyes Segura, and Melchor Manlalo Aguilar (“Plaintiffs”)
4 seek preliminary approval of a class action settlement agreement (“Settlement”) with Defendant
5 Mission Produce, Inc. (“Mission Produce” or “Defendant”). The Settlement resolves a class and
6 representative action pending before this Court (the “Action”), in which Plaintiffs allege that
7 Mission Produce (i) failed to pay all earned wages due to its allegedly unlawful rounding practice,
8 (ii) failed to provide all meal periods, (iii) failed to authorize and permit all rest periods, and (iv)
9 failed to reimburse employees for certain expenses. Plaintiffs further allege that as a result of
10 these violations, Mission Produce failed to issue accurate itemized wage statements, failed to pay
11 all wages on termination of employment, engaged in unfair competition, and is liable for civil
12 penalties under the Private Attorneys General act (“PAGA”).

13 Plaintiffs now respectfully request that this Court preliminarily approve this non-
14 reversionary, common-fund class action Settlement,¹ in which Mission Produce has agreed to pay
15 \$800,000.00 to the following Settlement Class, which is estimated to consist of 480 individuals:

16 All current and former non-exempt employees of Mission Produce who worked for
17 Mission Produce in California at any time from April 23, 2016 to December 31,
2021 (the “Class Period”).

18 The Settlement was reached after mediation with Jeffrey A. Ross, Esq., an experienced
19 wage and hour class action mediator. In connection with mediation, Mission Produce provided
20 Plaintiffs’ counsel with extensive informal discovery, including timekeeping and payroll records
21 for a sampling of putative class members; a class list containing putative class members’ hire
22 dates, termination dates, rates of pay, and other information; Mission produce’s relevant wage
23 and hour policies; and other data and documents. After extensive research and investigation,
24 including a detailed analysis of Mission Produce’s potential exposure made with the assistance of
25 Plaintiffs’ expert economist who holds a Ph.D. in economics, a full-day mediation was held with
26 Mr. Ross on December 1, 2020. A resolution was not reached at mediation; however, over the
27 following months the parties continued their negotiations with the mediator’s assistance, and

28 ¹ The Settlement is attached as Exhibit 1 to the Haines Declaration. The Class Notice and Notice of
Estimated Settlement Award are attached as Exhibits A and B, respectively, to the Settlement.

1 eventually agreed to a mediator’s proposal to resolve the Action. Over the following months, the
2 parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement.

3 Notably, Settlement Class members are not required to submit a claim form to receive a
4 payment (“Settlement Award”) from the Settlement. After deductions for proposed settlement
5 administration costs, attorneys’ fees and costs, Plaintiffs’ incentive awards, and the LWDA’s
6 share of PAGA civil penalties, the average Settlement Award is estimated to be at least **\$885.07**.
7 For the reasons discussed herein, Plaintiffs respectfully request that the Court grant preliminary
8 approval of the Settlement.

9 **II. SUMMARY OF THE LITIGATION**

10 **A. FACTUAL AND PROCEDURAL BACKGROUND**

11 Mission Produce is an international avocado grower and distributor with operations
12 around the world, including in California. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶
13 10. Plaintiffs are former non-exempt Mission Produce employees who worked for Mission
14 Produce during the Class Period. *Id.* On April 23, 2020, Plaintiffs Viveros and Segura filed the
15 instant Action, alleging claims for failure to pay overtime and minimum wages, meal and rest
16 period violations, waiting time penalties, wage statement penalties, and unfair business practices.
17 *Id.*, ¶ 11. Plaintiffs Viveros and Segura subsequently filed a First Amended Complaint adding a
18 claim for PAGA civil penalties. *Id.* On June 10, 2020, Plaintiff Aguilar filed a class action against
19 Mission Produce in Ventura County Superior Court, alleging claims for failure to pay overtime
20 and minimum wages, meal and rest period violations, waiting time penalties, wage statement
21 penalties, failure to indemnify for business expenses, and unfair competition. *Id.*

22 As part of the Settlement, the parties agreed to stipulate to the filing of a Second Amended
23 Complaint, which added Plaintiff Aguilar as a named plaintiff in the Action and included all
24 claims alleged by Plaintiffs in the two actions. Haines Decl., 11. On January 6, 2022, pursuant to
25 the parties’ stipulation, Plaintiffs filed the operative Second Amended Complaint. *Id.*

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1 **B. PLAINTIFFS’ CLAIMS AND MISSION PRODUCE’S DEFENSES**

2 **1. Claim for Unpaid Wages Due to Time-Rounding**

3 Plaintiffs allege that, until approximately October 2017, Mission Produce rounded its
4 employees’ time entries in a manner that consistently favored Mission Produce and that, as a
5 result, resulted in an underpayment of wages. Haines Decl., ¶ 16.

6 Mission Produce contends that it utilized an even-handed timekeeping system that, on
7 balance, resulted in employees being paid for all hours actually worked. Haines Decl., ¶ 16; *See*’s
8 *Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (holding rounding policies lawful if they
9 are consistently applied and, on average, favor neither overpayment nor underpayment of wages).
10 Mission Produce further argues that most alleged unpaid time was *pre-shift* (i.e., employees
11 clocked in before the scheduled start of the shift), and that it was impossible for employees to
12 begin *working* before the start of their shift, since employees engaged in stretching exercises at
13 the scheduled start of the shift and did not perform any work prior to those stretching exercises.
14 Haines Decl., ¶ 16. Moreover, even assuming all time on-the-clock were otherwise compensable,
15 Mission Produce asserts the amount of unpaid time per shift is *de minimis* (less than 5 minutes,
16 on average) and thus non-compensable.² *Id.* While Plaintiffs point to *Troester v. Starbucks*, 5
17 Cal.5th 829 (2018), where the California Supreme Court held California’s labor laws generally
18 do not recognize a *de minimis* defense, Mission produce argues *Troester* should be limited to its
19 facts. (“[W]e decide only whether the *de minimis* rule is applicable to the facts of this case as
20 described by the Ninth Circuit.” *Troester*, 5 Cal.5th at 829.) Mission Produce also contends this
21 claim was not certifiable, since its rounding practice was facially neutral and individualized
22 inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each
23 workday in question (including whether they were actually working when they clocked in early),
24 resulting in an unmanageable series of hundreds of mini-trials. Haines Decl., ¶ 16.

25 **2. Meal Period Claim**

26 Plaintiffs allege that their meal periods were often short, because they were required to
27 use part of their meal period to walk to the time clock to clock out, and there were sometimes

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² Courts have held daily periods of up to 10 minutes to be *de minimis*. *Lindow v. U.S.*, 738 F.2d 1057, 1062 (9th Cir. 1984) (collecting cases).

1 long lines to clock out for meal periods. Haines Decl., ¶ 17. Plaintiffs further allege that Mission
2 Produce failed to provide second meal periods on all shifts over 10 hours, and that this allegation
3 is supported by the fact that many shifts over 10 hours do not reflect a compliant second meal
4 period in employee timekeeping records. *Id.*

5 Mission Produce argues that it maintained legally-compliant meal period practices
6 throughout the Class Period, and that under *Brinker* it is only required to “provide” the
7 opportunity to take meal periods, not “ensure” meal periods are taken. Haines Decl., ¶ 17; see
8 *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). Mission
9 Produce further argues that even if employees had to wait in line to punch out for lunch, their
10 time records generally show that they were nevertheless clocked out for at least 30 minutes, which
11 demonstrates that they still received a 30-minute meal period even if they clocked out a minute
12 or two after their scheduled lunch break. *Id.* As for second meal periods, Mission Produce argues
13 that many employees indeed take second meal periods on shifts over 10 hours, as reflected in
14 timekeeping records, and those who do not waive their second meal period as they are entitled to
15 do under Labor Code § 512. *Id.* Mission Produce further argues that individualized inquiries
16 would be required to determine whether individual employees received a short meal period and/or
17 did not take a second meal period on each individual shift, and why any meal period was short or
18 missed, thereby precluding certification of this claim. Haines Decl., ¶ 17.

19 **3. Rest Period Claim**

20 Plaintiffs allege that Mission Produce failed to authorize and permit third rest periods on
21 shifts over 10.0 hours or fourth rest periods on shifts over 14 hours. Haines Decl., ¶ 18; *Brinker*,
22 53 Cal.4th at 1028-30 (discussing rate at which rest periods must be authorized and permitted).
23 Mission Produce asserts that in practice it has always authorized and permitted all required rest
24 periods to non-exempt employees; that it informs employees of their rest periods, including third
25 and fourth rest periods on shifts over 10 hours and over 14 hours, respectively; and that any
26 failure to take a rest period is the result of employee choice rather than any practice of Mission
27 Produce. *Id.* Mission Produce further argues this claim is not amenable to class treatment as
28 individualized inquiries would be required to determine whether individual employees were in

fact authorized and permitted to take third and/or fourth rest periods on longer shifts, under various supervisors and time periods, thus precluding class certification. *Id.* These manageability concerns are particularly present with respect to rest periods, Mission Produce contends, given that rest periods are not (and need not) be recorded. *Id.*

4. Claim for Unreimbursed Expenses

Plaintiffs allege that Mission Produce failed to indemnify them for the cost of their personal cell phones as well as for the purchase of jumpsuits, cold-resistant socks, and water-resistant shoes. Haines Decl., ¶ 19. Mission Produce counters that employees did not need to use their personal cell phones in connection with their job duties, and that if they did, there are procedures in place for employees to request reimbursement of work-related expenses. *Id.* Mission Produce further contends that employees are provided with any safety equipment necessary to perform their job duties, and that to the extent employees purchase their own work-related attire, it is the type of attire that is generally useable in their occupation – not of a distinctive color or design – and therefore did not need to be reimbursed by Mission Produce. *Id.*; *see also* Wage Order 8, § 9(A) (defining a “uniform” that must be reimbursed as “apparel and accessories of distinctive design or color”); DLSE Op. Ltr. 1990.09.18 (opining that employer may require employees to provide their own clothing “which are usual and generally usable in the occupation”); *Lemus v. Denny’s, Inc.*, 617 Fed.Appx. 701 (9th Cir. 2015) (holding employer did not need to indemnify employees for cost of slip-resistant shoes).

5. Claims Under Lab. Code §§ 203, 226, and the PAGA

As a result of its alleged failure to pay all wages, Plaintiffs assert that Mission Produce failed to comply with its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 20-21. Finally, Plaintiffs seek civil penalties under the PAGA based on the aforementioned claims. Haines Decl., ¶ 22.

Mission Produce argues that Plaintiffs’ derivative claims fail for the same reasons their underlying claims fail. Mission Produce further asserts it has strong, good-faith defenses to Plaintiffs’ underlying claims, precluding imposition of waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting

time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting time penalties). Mission Produce further contends any alleged wage statement violations could not be shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiffs cannot show they or other employees “suffer[ed] injury” due to alleged wage statement violations, as required by Lab. Code § 226(e); and that employee wage statements always accurately reflect amounts *paid* to employees. Haines Decl., ¶ 20; *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to ‘document the *paid* wages to ensure the employee is fully informed regarding the calculation of those wages.’”) (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

Finally, Mission Produce contends Plaintiffs’ PAGA claim fails because the underlying claims fail. *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Mission Produce further maintains that given its good-faith defenses, the Court would substantially reduce PAGA civil penalties even if it were to find in favor of Plaintiffs on their underlying claims. Haines Decl., ¶ 22; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because “the evidence showed...defendants took their obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In preparation for mediation, the parties engaged in extensive informal discovery. Mission Produce produced a class list with putative class members’ hire dates, termination dates, rates of pay, and other information. Mission Produce also produced a sampling of timekeeping and payroll records for putative class members during the Class Period, including actual time punches and

1 rounded time, which allowed Plaintiffs’ retained expert to conduct a rounding analysis. Mission
2 Produce also produced its relevant wage and hour policies, and other relevant data and
3 information. Haines Decl., ¶ 12. Plaintiffs’ counsel hired a labor economist with a Ph.D. in
4 economics to analyze and extrapolate the data produced by Mission Produce. *Id.* This discovery
5 allowed the parties to assess the merits and value of Plaintiffs’ claims and Mission Produce’s
6 defenses, as well as the chances for class certification. *Id.*

7 The parties attended a full-day mediation on December 1, 2020 with Mr. Ross. Haines
8 Decl., ¶ 13. The parties vigorously debated their legal positions, the likelihood of certification of
9 Plaintiffs’ claims, and the legal bases for the claims and defenses. *Id.* The parties did not reach a
10 resolution at mediation. *Id.* However, over the following months and with Mr. Ross’ assistance,
11 the parties agreed to a settlement in principle. *Id.* Over the next few months, the parties negotiated
12 the finer terms of the settlement, ultimately resulting in the Settlement. *Id.*

13 **III. THE PROPOSED SETTLEMENT**

14 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

15 Under the Settlement, Mission Produce will pay a non-reversionary Gross Settlement
16 Amount (“GSA”) of \$800,000.00, with no claims process required for Settlement Class members
17 to receive payment. The monetary terms of the Settlement are summarized below:

18	• Gross Settlement Amount (“GSA”):	\$800,000.00
19	• Minus Court-approved attorneys’ fees (one-third):	\$266,666.67
20	• Minus Court-approved verified costs (up to):	\$30,000.00
21	• Minus Court-approved Incentive Awards (\$7,500 each):	\$22,500.00
22	• Minus Amount Paid to LWDA as PAGA penalties:	\$45,000.00
23	• <u>Minus estimated settlement administration costs:</u>	<u>\$11,000.00</u>
24	Net Settlement Amount (“NSA”):	\$424,833.33

25 **1. The Settlement Provides for Reasonable Monetary Payments**

26 After deducting amounts for court-approved incentive awards, administration costs,
27 attorneys’ fees and costs, and PAGA payment to the LWDA, Mission Produce will pay a Net
28 Settlement Amount (“NSA”) of at least \$424,833.33 to Settlement Class members. See
Settlement, § 3(D). Mission Produce represents there are approximately 480 Settlement Class
members. *Id.*, § 1; Haines Decl., ¶ 14. The average Settlement Award is therefore estimated to be
\$885.07. Haines Decl., ¶ 15.

1 The NSA shall be distributed as follows: first, \$15,000.00 (i.e., 25% of the amount set
2 aside as PAGA penalties) of the NSA is designated the “PAGA Amount,” and will be distributed
3 to all Settlement Class members (whether or not they opt out) who worked for Mission Produce
4 in California at any time from April 24, 2019 through December 31, 2021 (the “PAGA Period”),
5 based on each Settlement Class member’s proportionate number of pay periods (if any) worked
6 for Mission Produce in California during the PAGA Period. *See* Settlement, § 4(B). The
7 remainder of the NSA (the “NSA Remainder”) will be distributed to all participating Settlement
8 Class members based on each participating Settlement Class member’s proportionate number of
9 pay periods worked for Mission Produce in California during the Class Period. *Id.*, § 4(C).

10 Payments from the NSA Remainder will be treated as one-third wages reported on a Form
11 W-2, with the remaining two-thirds treated as interest and penalties and reported on a Form 1099.
12 *See* Settlement, § 4(F). Payments from the PAGA Amount will be treated as 100% penalties. *Id.*
13 Mission Produce will pay the employer’s share of payroll taxes on the amount designated as
14 “wages” separate from, and in addition to, the GSA. *Id.*, § 3(E). Settlement Class members will
15 have 60 days from the Notice mailing to object to the Settlement, request to opt-out, or submit
16 disputes, thereby providing ample time to review the Notice without unduly delaying the
17 Settlement. *See id.*, § 9(C)-(E).

18 Participating Settlement Class members will be bound by the Settlement, and shall release
19 all wage and hour claims pled in the *Viveros* and *Aguilar* Actions, or that could have been pled
20 based on the facts alleged in the Actions, during the Class Period (“Class Released Claims”). *See*
21 Settlement, § 2(A). In addition, all Settlement Class members (regardless whether they opt out)
22 who worked for Mission Produce in California during the PAGA Period, will release all claims
23 against Mission Produce for PAGA civil penalties based on the facts alleged in the operative
24 complaints in the Actions and in the PAGA letters submitted by Plaintiffs, that arose during the
25 PAGA Period (“PAGA Released Claims”). *Id.* Plaintiffs have also agreed to a general release of
26 claims, subject to a waiver of Civil Code § 1542. *Id.*, § 2(B).

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28 ///

1 **2. Attorneys’ Fees and Costs, Enhancement Awards, and PAGA Payment**

2 At final approval, Plaintiffs will separately apply for Class Representative Enhancement
3 Awards in the amount of \$7,500 each. *See* Settlement, § 3(D)(3). “[I]ncentive awards are fairly
4 typical in class action cases...and are intended to compensate class representatives for work done
5 on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing
6 the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As
7 will be fully briefed at final approval, Plaintiffs’ requested payments are in recognition of the time
8 and effort they expended on behalf of the Settlement Class, including providing factual
9 information and documents to counsel, identifying potential witnesses, attending in-person and
10 telephonic meetings with counsel to discuss the claims and theories at issue in the litigation, and
11 otherwise actively participating in the prosecution of this case. Haines Decl., ¶ 25. Plaintiffs
12 respectfully submit that these requested payments are well within the range of permissible
13 approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188
14 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 award to each of five named plaintiffs from
15 \$505,058.60 settlement).

16 The parties have also designated \$60,000 of the GSA as PAGA penalties, of which
17 \$45,000 (75%) will be paid to the LWDA, with the remaining \$15,000.00 (25%) distributed to
18 Settlement Class members (*see* Settlement, § 3(D)(5)), consistent with the PAGA’s requirement
19 that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to
20 aggrieved employees (Labor Code § 2699(i)). Plaintiffs submit this allocation to the LWDA is
21 appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells*
22 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving
23 PAGA payment of \$7,500 to LWDA from \$6.9 million settlement).

24 At final approval, Plaintiffs’ counsel will request attorneys’ fees of one-third of the GSA
25 (currently estimated at \$266,666.67), and up to \$30,000 in litigation costs. *See* Settlement, §
26 3(D)(4). Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky,
27 expensive, and time-consuming litigation on a contingent basis. Plaintiffs’ counsel have incurred
28 substantial attorneys’ fees conducting pre-filing investigation; analyzing Plaintiffs’ claims;

conducting legal research; analyzing timekeeping, payroll, and other data with Plaintiffs’ expert to create a comprehensive damages model; preparing for and attending mediation; negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Haines Decl., ¶ 24. Further, Plaintiffs’ counsel will incur significant future attorneys’ fees in overseeing the Notice process, fielding phone calls from Settlement Class members, preparing the Final Approval Motion and supporting documents, and appearing at the Final Approval Hearing. *Id.*

It is appropriate to award attorneys’ fees as a percentage of the “common fund” created by the settlement. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding “the percentage of fund method survives in California class action cases”). Counsel’s request for fees of one-third of the GSA is well within the range of reasonableness and is typical for common fund settlements. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008) (“regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery”). As will be fully briefed at final approval, counsel submit their request for fees is reasonable in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which counsel conducted the litigation.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

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

1 **1. Standard for Preliminary Approval**

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

11 **a. The Strength of Plaintiffs’ Case**

12 Although they maintain their claims are meritorious, Plaintiffs acknowledge there were
13 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
14 merits. As described in section II.B., *supra*, Mission Produce presented multiple defenses to
15 Plaintiffs’ claims, both on the merits and to class certification. While Plaintiffs were prepared to
16 litigate their claims through class certification and ultimately trial, success was far from certain.

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

18 Although the parties engaged in significant informal discovery, they had not completed
19 formal written and deposition discovery, which would have required expenditure of substantial
20 time and resources. Haines Decl., ¶ 26. Plaintiffs also still had to file for class certification. *Id.*
21 Even if Plaintiffs obtained certification, the parties would incur considerable attorneys’ fees and
22 costs through a possible decertification motion, motions for summary judgment, trial, and
23 potential appeals. *Id.* The Settlement avoids those risks and the accompanying expense. *Id.* Thus,
24 this factor supports preliminary approval.

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

26 Plaintiffs had not yet filed their class certification motion, and as such, the extent to which
27 Plaintiffs’ proposed classes were certifiable is somewhat speculative. Absent settlement, there
28 was a risk there would not be a certified class at trial, or if there were, that it would consist of a

significantly smaller group of employees than the proposed Settlement Class, and the expected recovery would be significantly reduced. Thus, this factor supports preliminary approval.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class for disputed claims. With the assistance of a retained economist, Plaintiffs' counsel conducted an analysis of potential damages due to Mission Produce's allegedly unlawful policies and practices. Plaintiffs' analyses of realistic expected recoveries for each theory of liability are set forth below:

Unpaid Wages Due to Rounding: \$10,609

Plaintiffs allege that until October 2017, Mission Produce failed to pay employees for all hours worked because of its unlawful rounding practice. Haines Decl., ¶ 16. Based on data provided by Mission Produce and Plaintiffs' expert's analysis and extrapolation of Mission Produce's timekeeping records, Plaintiffs estimate that as a result of Mission Produce's rounding practice, Settlement Class members were underpaid by approximately 517 hours during the Class Period. *Id.* The average minimum wage in California during the rounding period was approximately \$10.26. *Id.* Thus, Plaintiffs estimate Mission Produce's maximum exposure for this claim at \$10,609 (517 hours * \$10.26 min. wage * 2 [liquidated damages per Lab. Code § 1194.2]). *Id.* As noted *supra*, Mission Produce maintains its rounding practice was both facially neutral and resulted in employees being paid for all hours worked; that most rounding occurred prior to the beginning of the shift, when no work could be performed; and that any alleged unpaid time was *de minimis*. *Id.* Mission Produce also contends this claim would not be certified, since its rounding policy is facially neutral and individualized inquiries would thus be necessary as to whether employees were in fact underpaid or overpaid for each workday in question, resulting in an unmanageable series of hundreds of mini-trials. *Id.* Although these defenses warranted discounting of the maximum exposure for this claim, in light of the relatively small amount of underpayment, Plaintiffs did not discount this claim for purposes of their damages analysis.

Meal Period Violations: \$280,188

As discussed above, Plaintiffs allege that they often took short meal periods because they had to use part of their 30-minute meal period to line up to clock out. Haines Decl., ¶ 17. Based

1 on Plaintiffs' expert's review of employee timekeeping records, there were approximately
2 103,886 shifts of over 6.0 hours (where the first meal period may not be waived) during the Class
3 Period. *Id.* Plaintiffs further estimate, based on their experience and observations of employees,
4 that employees took non-compliant meal periods on approximately 40% of all such shifts as a
5 result of having to wait in line at the time clock. *Id.* Plaintiffs' expert further calculated that the
6 average rate of pay for putative class members during the Class Period was approximately \$12.53.
7 *Id.* Thus, Plaintiffs estimated Mission Produce's maximum exposure for first meal period
8 violations at \$520,677 (103,886 shifts * .4 * \$12.53). *Id.* With respect to second meal periods,
9 Plaintiffs allege that Mission Produce frequently failed to provide second meals on shifts over 10
10 hours, and that this is reflected in employee timekeeping records which show missing or non-
11 compliant second meal periods on approximately 20,995 such shifts, for an additional \$263,067
12 in liability for second meal periods, for a total maximum exposure of \$783,744. *Id.*

13 But as noted above, Mission Produce argues it has always maintained legally-compliant
14 meal period practices and provided compliant meal periods to Settlement Class members; that
15 employee timekeeping records demonstrate that even if employees clock out late for lunch, they
16 still punch back in at least 30 minutes later on the vast majority of shifts (indeed, Mission Produce
17 argues, employee timekeeping records reflect an extremely high compliance rate for first meal
18 periods); that it is only required to *provide* meal periods, not ensure they are taken; and any
19 instances of employees not taking second meal periods is a result of employee choice. *Id.* Mission
20 Produce also asserts Plaintiffs' meal period exposure calculation is inflated, since it allows for up
21 to two meal period premiums per shift whereas an employee may only recover up to one meal
22 period premium per shift. *Id.*; see also *United Parcel Service, Inc. v. Sup. Ct.*, 196 Cal.App.4th
23 57, 69 (2011) (construing Labor Code § 226.7 as permitting up to one meal period premium and
24 one rest period premium per workday). Mission Produce also contends this claim would not be
25 certified due to the individualized inquiries that would be required to determine whether
26 individual employees received a non-compliant meal period or missed a meal period on each
27 individual shift, and why any meal period was missed or deficient. *Id.* Given these defenses,
28 Plaintiffs discounted Mission Produce's maximum exposure by 35% to account for the risk of

1 non-certification, and an additional 45% for risk of losing on the merits or failing to recover the
2 full amount sought, to arrive at an estimated realistic exposure of \$280,188. *Id.*

3 **Rest Period Violations: \$95,362**

4 Plaintiffs allege Mission Produce failed to authorize and permit all required rest periods,
5 in that it did not authorize and permit third rest periods on shifts over 10 hours or fourth rest
6 periods on shifts over 14 hours. Haines Decl., ¶ 18. Plaintiffs' expert's analysis and extrapolation
7 of Mission Produce timekeeping data revealed approximately 25,369 shifts over 10 hours worked
8 by Settlement Class members during the Class Period. *Id.* Thus, and assuming a 100% violation
9 rate for such shifts, Plaintiffs estimated Mission Produce's maximum exposure on this claim at
10 \$317,874 (25,369 * \$12.53 rest period premium). *Id.* As noted above, however, Mission Produce
11 contends it has always maintained legally-compliant rest period practices and authorized and
12 permitted all rest periods to Settlement Class members, and that any failure to take a rest period
13 was a result of employee waiver rather than a policy or practice of Mission Produce. Haines Decl.,
14 ¶ 18. Further, Mission Produce argues this claim is not amenable to class treatment as
15 individualized inquiries would be required to determine whether employees were actually
16 provided the requisite number of rest periods on each particular shift, on tens of thousands of
17 eligible shifts spanning several years and several different supervisors. *Id.* Given that rest breaks
18 are not (and need not be) recorded, Mission Produce asserts these manageability concerns are
19 particularly present with respect to the rest period claim. *Id.* In light of these defenses, Plaintiffs
20 discounted Mission Produce's maximum exposure by 40% to account for the risk of non-
21 certification, and an additional 50% for risk of losing on the merits or failure to recover the full
22 amount sought, to arrive at an estimated exposure of approximately \$95,362. *Id.*

23 **Expense Reimbursement Claim: \$49,500**

24 Plaintiffs allege that Mission Produce failed to reimburse or indemnify employees for the
25 cost of their personal cell phones or for the purchase of jumpsuits, cold-resistant socks, and water-
26 resistant shoes. Haines Decl., ¶ 19. Plaintiffs estimate that the cost of the required attire was
27 approximately \$150 per employee, for a total of approximately \$72,000 (480 employees * \$150).
28 *Id.* Plaintiffs further estimate approximately \$20 per month in cell phone expenses incurred in

1 connection with their job duties, and based on Plaintiffs' expert's analysis and extrapolation of
2 employee timekeeping records, Settlement Class members worked approximately 6,400 months
3 during the Class Period, for an additional \$128,000 in maximum potential liability, for a total of
4 \$200,000 in potential exposure on this claim. *Id.* But as noted above, Mission Produce presented
5 several defenses to this claim, including that employees are not required to use their cell phones
6 for work purposes; that employees can request reimbursement if they indeed are required to incur
7 out of pocket expenses; that Mission Produce provides all necessary safety gear; and that the types
8 of clothing Plaintiffs allege to have purchased is attire that is generally usable in their occupation
9 and not of distinctive design or color, and therefore does not need to be reimbursed or provided
10 by the employer. *Id.* Mission produce further argues this claim is not suitable for class treatment,
11 since it would require hundreds of mini-trials to determine whether each employee incurred
12 expenses, whether their expenses were reasonable, and whether they were reimbursed. *Id.* In light
13 of these defenses, Plaintiffs discounted this claim by 45% for the risk of non-certification and by
14 an additional 55% for risk of losing on the merits or failing to recover the full amount sought, to
15 arrive at a realistic estimated exposure of approximately \$49,500. *Id.*

16 **Wage Statement Penalties: \$86,283**

17 Based on data provided by Mission Produce, there were approximately 4,827 pay periods
18 worked by Settlement Class members within the one-year liability window under Labor Code §
19 226. Haines Decl., ¶ 20. In calculating Mission Produce's exposure, Plaintiffs assumed they could
20 recover the "initial" wage statement penalty of \$50 for each violation, for a total of \$241,350
21 (4,827 pay periods * \$50) in potential penalties. *Id.*; see also Lab. Code § 226(e) (providing \$50
22 penalty for "initial" violations); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008)
23 (finding "initial" violation rate applies until employer has been notified it violated Labor Code);
24 *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2014) (citing *Amaral* and
25 applying "initial" \$50 penalty to all pay periods in calculating amount-in-controversy for wage
26 statement claim). However, given Mission Produce's arguments that no violations occurred, that
27 class members suffered no "injury," that any violations were not "knowing and intentional," that
28 wage statement claim cannot be based on meal or rest period claims, as well as risks associated

1 with Plaintiffs’ underlying claims discussed above, Plaintiffs discounted the maximum exposure
2 by 35% for risk of non-certification, and by an additional 45% for risk of being unsuccessful on
3 the merits, for an estimated realistic exposure of \$86,283. Haines Decl., ¶ 20.

4 Waiting Time Penalties: \$262,105

5 Based on Plaintiffs’ expert’s analysis of the data provided by Mission Produce, there were
6 approximately 298 employees who separated their employment with Mission Produce since April
7 3, 2017. Haines Decl., ¶ 21. Plaintiffs further estimated an average waiting time penalty of \$3,007
8 (\$12.53 * 8 hours * 30 days), and thus calculated Mission Produce’s maximum waiting time
9 penalty exposure as approximately \$896,086 (298 * \$3,007). *Id.* As noted above, however,
10 Mission Produce asserts it has strong, good-faith defenses to Plaintiffs’ underlying claims, and
11 that any failure to pay wages was therefore not “willful” as a matter of law. *Id.* Mission Produce
12 further contends Plaintiffs’ meal and rest period claims cannot support a claim for waiting time
13 penalties, as multiple courts have held (and which issue is going to be decided by the California
14 Supreme Court in *Naranjo v. Spectrum Security Services*, Case No. S258966 (review granted Jan.
15 2, 2020). *Id.* Moreover, because the waiting time claim is derivative of Plaintiffs’ underlying wage
16 claims, Plaintiffs would need to overcome Mission Produce’s defenses, both as to class
17 certification and as to the merits, to their underlying claims. Based on these defenses, Plaintiffs
18 discounted Mission Produce’s maximum exposure by 35% for risk of non-certification and by an
19 additional 55% for risk of being unsuccessful on the merits, to arrive at an estimated realistic
20 exposure of approximately \$262,105. *Id.*

21 PAGA Civil Penalties: \$120,675

22 Plaintiffs estimated a maximum PAGA exposure of \$482,700, based on the \$100 “initial”
23 violation rate under Lab. Code § 2699(f) for each of the 4,827 pay periods worked during the
24 PAGA Period. Haines Decl., ¶ 22; *Amaral*, 163 Cal.App.4th at 1209. However, these penalties
25 derive from Plaintiffs’ underlying claims, each of which Mission Produce vigorously disputes.
26 *Green v. Lawrence Service Co.*, No. LA-CV-12-6155-JAK (VBKx), 2013 WL 3907506 at *5, fn.
27 5 (C.D. Cal. July 23, 2013) (PAGA claim’s success is determined by merits of underlying claims).
28 In addition, Mission Produce argues that even if Plaintiffs were to prevail on some of their

underlying claims, they could not show a violation in each pay period. For example, the rounding practice stopped in October 2017, before the beginning of the PAGA Period, and thus there could be no PAGA liability for that claim; and Plaintiffs would not be able to show a meal period and/or rest period violation for every employee in every pay period in the PAGA Period. Mission Produce further argues that the PAGA grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and the Court would reduce penalties significantly given Mission Produce’s good-faith defenses. *Id.* Thus, Plaintiffs discounted the maximum figure by 50% for risk of losing on the merits and/or not recovering a PAGA penalty for each pay period, and by an additional 50% for risk of the Court reducing penalties, to arrive at an estimated exposure of \$120,675. *Id.*; see also, e.g., *Fleming*, 2011 WL 7563047 at *4 (reducing PAGA penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

Using these figures, Plaintiffs estimated the realistic total recovery for the Settlement Class would be approximately \$904,722. Haines Decl., ¶ 23. The proposed settlement of \$800,000 represents over 88.4% of Plaintiffs’ 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). Here, counsel have extensive experience litigating wage and hour class actions from both the plaintiff and defense side, and have been appointed class counsel in numerous cases alleging similar claims. See Haines Decl., ¶¶ 3-8; Declaration of Tuvia Korobkin, ¶¶ 2-6; Declaration of Neil M. Larsen, ¶¶ 2-5; Declaration of David Bibyan, ¶¶ 4-13. Counsel conducted an in-depth review of Mission Produce’s policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiffs’ claims. Haines Decl., ¶¶ 13, 16-22. The Settlement was also reached with the assistance of Mr. Ross, a respected wage and hour class action mediator. *Id.*, ¶ 13. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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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 noted, the Settlement reflects over 88% of the realistic estimated recovery on Plaintiffs’
8 claims, and will provide tangible, monetary compensation for hotly disputed wage claims.
9 Accordingly, Plaintiffs submit the Settlement is within the range of possible approval.

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

11 The Settlement resulted from an exchange of substantial information, arm’s-length
12 negotiations, a full-day mediation with an experienced mediator, and months of additional
13 negotiations. Plaintiffs carefully vetted the claims at issue, and conducted a detailed analysis of
14 the relevant data and information with the help of a retained expert. Haines Decl., ¶¶ 16-22. The
15 Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

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

17 The Settlement provides tangible monetary relief to the Settlement Class, and the amounts
18 proposed for attorneys’ fees, costs, Plaintiffs’ incentive awards, and PAGA penalties are all
19 reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
20 obvious deficiencies, this supports preliminary approval.

21 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

22 The proposed Settlement Class satisfies the criteria for certification because: 1) the
23 Settlement Class is ascertainable and numerous; 2) common questions of law and fact
24 predominate; 3) Plaintiffs’ claims are typical of the Settlement Class; and 4) Plaintiffs and their
25 counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

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

27 A class is “ascertainable” where members “may be readily identified without unreason-
28 able expense or time by reference to official [or business] records.” *Sevidal v. Target Corp.*, 189

Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked for Mission Produce in California during the Class Period, and thus can be readily identified from Mission Produce's records. Mission Produce represents there are about 480 Settlement Class members, rendering it impracticable to bring them all before the Court. Numerosity is satisfied.

2. Common Issues of Law and Fact Predominate

The focus on certification is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated primarily on Mission Produce's allegedly unlawful rounding practice and allegedly unlawful meal and rest period policies/practices. Such claims are commonly held proper for class certification. *See, e.g., Tapia v. Zale Delaware Inc.*, No. 13-CV-1565-BAS, WL 1385181 at **3-4 (S.D. Cal. Apr. 6, 2016) (certifying rounding claim); *Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Named Plaintiffs' Claims Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiffs' claims are typical of those held by Settlement Class members. Plaintiffs were employed by Mission Produce as a non-exempt employee in California during the Class Period, and were injured by the same challenged policies that allegedly injured the Settlement Class as a whole. *See* Declaration of Maria Razo Viveros, ¶¶ 2-6; Declaration of Reyes Segura, ¶¶ 2-5; Declaration of Melchor Aguilar, ¶¶ 3-9. Thus, typicality is satisfied.

4. Plaintiffs and Class Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiffs or their counsel and the Settlement Class. *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no

interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation, as noted above.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by Mission Produce. *See* Settlement, § 9. This is the “best notice practicable” under the circumstances as it provides “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiffs propose the Settlement be administered by Phoenix Settlement Administrators, an experienced class action settlement administrator. *See* Jodey Lawrence Declaration and exhibits. Settlement Class members’ addresses will be ascertainable through Mission Produce’s records. Phoenix will also run all addresses through the U.S. Postal Service National Change of Address database and/or perform “skip traces” to obtain current addresses. *See* Settlement, § 9(B) & (F).

The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims; the basic contentions and denials of the parties; the key terms of the Settlement; the 60-day deadline to opt out, object, or submit a dispute and how to do so; explains the recovery formula and expected recovery amount for each Settlement Class member; and explains the releases of claims included in the Settlement. *See* Haines Decl., Exh. A to Exh. 1. The proposed Notice also includes the final approval hearing date and time, and provides contact information for Class Counsel and the administrator in the event Settlement Class members have any questions about the Settlement. *Id.* This Notice satisfies Cal. Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching the Settlement Class.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, the Court should set a hearing for final approval on a date appropriately scheduled to follow Settlement Class members’ response deadline. *See* Cal. Rule of Court 3.769.

V. CONCLUSION

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

1 Dated: April 18, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

2
3 By:


Paul K. Haines
Attorneys for Plaintiffs