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Attorneys for Plaintiff

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

MARIA C. HERNANDEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

COLD STEEL, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No.: 56-2020-00545301-CU-OE-VTA

*[Assigned for all purposes to the Hon.
Vincent O'Neill, Dept. 41]*

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

Date: July 21, 2021

Time: 8:30 a.m.

Dept.: 41

Reservation No. 2571229

Action Filed: May 26, 2020

Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on July 21, 2021 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 41
3 of the above-entitled Court, located at 800 South Victoria Avenue, Ventura, California 93009,
4 Plaintiff Maria C. Hernandez ("Plaintiff") will, and hereby does, move this Court for:

5 1. Preliminary approval of the proposed Stipulation of Settlement ("Settlement
6 Agreement");

7 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
8 certification, for settlement purposes only, of the following Settlement Class:

9 All non-exempt employees who are or were employed by Cold Steel, Inc., in the
10 State of California during the time period of May 26, 2016 through the date of
preliminary approval of the settlement (the "Class Period").

11 3. Preliminary appointment of Plaintiff as Class Representative;

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

14 5. Appointment of ILYM Group, Inc. as the Settlement Administrator;

15 6. Approval of the proposed Class Notice, Notice of Estimated Settlement Award, and
16 Request for Exclusion Form (together, the "Notice Packet"), and an order that the
17 Notice Packet be disseminated to the Settlement Class as provided in the Settlement
18 Agreement;

19 7. Approval of Plaintiff's filing of the proposed Second Amended Class and
20 Representative Action Complaint, which adds a claim for waiting time penalties
21 pursuant to Labor Code §§ 201-203; and

22 8. The scheduling of a hearing to consider whether the class settlement should be finally
23 approved and to award an amount for a Class Representative Enhancement Payment
24 to Plaintiff, and attorneys' fees and costs to Class Counsel.

25 ///

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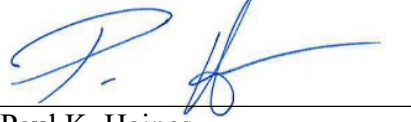
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1 This motion is based on this notice of motion; the attached memorandum of points and
2 authorities; the declarations of Paul K. Haines, Sean M. Blakely, Alexandra R. McIntosh, and
3 exhibits attached thereto; the declaration of Plaintiff Maria C. Hernandez; the declaration of Sean
4 Hartranft of ILYM Group, Inc., and exhibits attached thereto; the pleadings and other papers filed
5 in this action; and on any further oral or documentary evidence or argument presented at the time
6 of hearing.

7
8 Dated: June 25, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC

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Paul K. Haines
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria C. Hernandez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant Cold Steel, Inc. (“Cold Steel” or
5 “Defendant”). The Settlement resolves a class and a representative action pending before this
6 Court (the “Action”), in which Plaintiff alleges that Cold Steel (i) failed to pay all earned wages
7 due to its allegedly unlawful rounding practices; (ii) failed to provide all required meal periods;
8 and (iii) failed to authorize and permit all required rest periods. Plaintiff further alleges that as a
9 result of these violations, Cold Steel failed to issue accurate itemized wage statements, failed to
10 pay all wages at separation from employment, and is liable for civil penalties under the Labor
11 Code Private Attorneys General act (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action Settlement,¹ in which Cold Steel has agreed to pay a
14 Gross Settlement Amount (“GSA”) of \$170,000.00 to the following Settlement Class, which is
15 estimated to consist of approximately 35 individuals:

16 All non-exempt employees who are or were employed by Cold Steel, Inc., in the
17 State of California during the time period of May 26, 2016 through the date of
18 preliminary approval of the settlement (the “Class Period”).

19 The Settlement was only reached after the parties engaged in mediation with Jeffrey
20 Krivis, Esq., an experienced wage and hour class action mediator. In connection with mediation,
21 Cold Steel provided Plaintiff with extensive informal discovery, including a sampling of
22 timekeeping and payroll records for putative class members; Cold Steel’s relevant written wage
23 and hour policies; relevant data points regarding the number of class members and the number of
24 workweeks during the Class Period; and other documents and information. After extensive
25 research and investigation, including a detailed analysis of Cold Steel’s potential exposure, the
26 parties attended a full-day mediation with Mr. Krivis on January 19, 2021, and reached a
27

28 ¹ The Settlement is attached as Exhibit 1 to the Declaration of Paul K. Haines filed concurrently
herewith. The Class Notice, Notice of Estimated Settlement Award, and Request for Exclusion
Form are attached as Exhibits A, B, and C, respectively, to the Settlement.

1 settlement by way of a mediator's proposal. Over the following months, the parties negotiated the
2 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, as all Settlement Class members will
5 automatically receive a payment unless they affirmatively opt-out. After deductions for proposed
6 settlement administration costs, requested attorneys' fees and costs, Plaintiff's enhancement
7 payment, and the LWDA's share of PAGA civil penalties, the average Settlement Share is
8 estimated to be approximately **\$2,030.95** to each Settlement Class member. This is an excellent
9 result for Settlement Class members, who will agreeing to a release of only those claims that were
10 asserted in the litigation. For the reasons discussed herein, Plaintiff respectfully requests that the
11 Court grant preliminary approval of the Settlement.

12 **II. SUMMARY OF THE LITIGATION**

13 **A. FACTUAL AND PROCEDURAL BACKGROUND**

14 Cold Steel was in the business of designing and manufacturing knives, training weapons,
15 throwing stars, and other bladed tools for industries, such as, the military, law enforcement, and
16 emergency service personnel. *See* Declaration of Paul K. Haines ("Haines Decl."), ¶ 11. Plaintiff
17 has been informed that in 2020, Cold Steel was acquired by a private equity firm and is no longer
18 operating. *Id.* Plaintiff worked for Cold Steel as a non-exempt "Assembler" from April 15, 2015
19 to January 2021. *Id.*; *see also* Declaration of Maria Hernandez ("Hernandez Decl."), ¶ 2.

20 On May 26, 2020, Plaintiff filed the instant action, alleging claims for failure to pay
21 overtime and minimum wages, meal period violations, rest period violations, wage statement
22 penalties, and unfair business practices. Haines Decl., ¶ 12. On June 29, 2020, after exhausting
23 her administrative requirements, Plaintiff filed the First Amended Class and Representative
24 Action Complaint to add a cause of action for civil penalties under the Private Attorneys General
25 Act ("PAGA"). *Id.*, ¶ 13. As part of the Settlement, the Parties have agreed to file a Second
26 Amended Class and Representative Action Complaint in this action to include a claim for waiting
27 time penalties under Labor Code §§ 201-203. *Id.*, Exhibit 3.

28 ///

1 **B. PLAINTIFF’S CLAIMS AND COLD STEEL’S DEFENSES**

2 **1. Meal Period Claim**

3 Plaintiff alleges that Cold Steel failed to provide 30-minute meal periods before the end
4 of the fifth hour of work, and second meal periods when employees worked shifts in excess of
5 10.0 hours. Haines Decl., ¶ 18. Specifically, as a result of work demands, including Cold Steel’s
6 practice of requiring its non-exempt employees to prioritize customer orders, Plaintiff and other
7 non-exempt employees were often unable to take a timely 30-minute meal period commencing
8 before the end of the fifth hour of work and were never provided a second meal period. Haines
9 Decl., ¶ 18.

10 Cold Steel argues it has maintained legally-compliant meal period policies throughout the
11 Class Period (including first and second meal periods on shifts over 10 hours), that under *Brinker*
12 it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods
13 are taken, and that it has always done so. Haines Decl., ¶ 18; *Brinker Rest. Corp. v. Sup. Ct.*, 53
14 Cal.4th 1004, 1038 (rejecting “ensure” standard). Cold Steel further argues that many employees
15 voluntarily waived their second meal periods, as they are entitled to do under Labor Code § 512.
16 Haines Decl., ¶ 18. Cold Steel further contends that it pays meal period premium wages to
17 employees who are not provided full, uninterrupted meal periods, per Labor Code section 226.7.
18 Haines Decl., ¶ 18. Lastly, Cold Steel argues this claim would not be suited for class certification
19 because individualized inquiries would be needed to determine whether individual employees
20 received a late meal period on each individual shift, whether the employee chose to take their
21 meal period late, and (for second meals) whether they waived the meal period. Haines Decl., ¶
22 18.

23 **2. Rest Period Claim**

24 Plaintiff alleges that Cold Steel failed to authorize and permit her and other non-exempt
25 employees to take all duty-free 10-minute rest periods for every 4 hours worked, or major fraction
26 thereof. Haines Decl., ¶ 19. Specifically, Plaintiff alleges that Cold Steel failed to authorize her
27 and other non-exempt employees to take a third rest period when they worked a shift in excess of
28 10.0 hours. *Id.* Cold Steel asserts it has always authorized and permitted all required rest periods.

1 Haines Decl., ¶ 19. As with meal periods, Cold Steel argues, it need not *ensure* rest periods are
2 taken but need only “authorize and permit” them, and it has always done so. *Id.* Cold Steel also
3 argues that it maintains compliant rest period policies that authorize employees to take all legally
4 compliant rest periods, including third rest periods when employees work over ten hours. *Id.*
5 Finally, Cold Steel argues this claim is not amenable to class treatment, as individualized inquiries
6 would be required to determine which employees failed to take rest periods, how many of these
7 rest periods each individual failed to take, and the reasons why each individual did not take a rest
8 period on a particular shift. *Id.* These issues are especially present for rest periods, Cold Steel
9 argues, as rest periods are not recorded. *Id.*

10 **3. Claim for Unpaid Wages Due to Time-Rounding**

11 Plaintiff alleges that Cold Steel rounds its employees’ timekeeping entries to quarter-hour
12 increments in a manner that consistently favors Cold Steel and that, as a result, employees’ wages
13 have been underpaid. Haines Decl., ¶ 20.

14 Cold Steel contends it utilizes an even-handed timekeeping system that, on balance,
15 results in employees being paid for all hours actually worked. Haines Decl., ¶ 20; *See’s Candy*
16 *Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (holding rounding policies lawful if they
17 are consistently applied and, on average, favor neither overpayment nor underpayment of wages).
18 Cold Steel further argues that just because an employee is clocked in does not mean they are
19 *working*. For example, much of the alleged unpaid time was pre-shift (i.e., employees clocked in
20 before the scheduled start of the shift), and Cold Steel argues employees are engage in personal
21 activities during this time. Haines Decl., ¶ 20. Moreover, Cold Steel asserts the amount of unpaid
22 time per shift is *de minimis* and thus non-compensable. *Id.* Cold Steel also contends this claim
23 was not certifiable, since its rounding policy is facially neutral and some employees were *overpaid*
24 due to rounding, and individualized inquiries would be necessary as to whether employees were
25 in fact underpaid or overpaid for each workday in question (including whether they were actually
26 working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

27 **4. Claims Under Lab. Code §§ 203, 226, and the PAGA**

28 As a result of its alleged failure to pay all wages, and meal and rest period violations

described above, Plaintiff asserts Cold Steel failed to comply with its final payment and wage statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 21-22. Finally, Plaintiff seeks PAGA civil penalties based on the above claims. Haines Decl., ¶ 23.

Cold Steel argues Plaintiff’s derivative claims fail for the same reasons as her underlying claims. Haines Decl., ¶¶ 21-23. Cold Steel further contends Plaintiff’s meal and rest period claims cannot support claims for waiting time or wage statement penalties, as multiple courts have held (and which issue is going to be decided by the California Supreme Court in *Naranjo v. Spectrum Security Services*, Case No. S258966 (review granted Jan. 2, 2020)). Cold Steel further contends any alleged wage statement violations could not be shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show she or other employees “suffer[ed] injury” due to alleged wage statement violations, as required by Lab. Code § 226(e); and that wage statements always accurately reflected amounts *paid* to employees. Haines Decl., ¶ 21; *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.”). As to potential waiting time penalties, Cold Steel argues that it possesses strong, good faith defenses to Plaintiff’s underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Haines Decl., ¶ 21; *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting time penalties).

Finally, Cold Steel contends the 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.”). Cold Steel further maintains that given its good-faith defenses, the Court would substantially reduce PAGA penalties

1 even if it found in favor of Plaintiff on his underlying claims. Haines Decl., ¶ 23; *see also* Lab.
2 Code § 2699(e)(2) (authorizing reduction in PAGA penalties); *Thurman v. Bayshore Transit*
3 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because
4 “the evidence showed...defendants took their obligations...seriously and attempted to comply
5 with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047
6 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not
7 aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming
8 PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to
9 comply with the law).

10 C. DISCOVERY AND MEDIATION

11 In preparation for mediation, the parties engaged in extensive informal discovery. Cold
12 Steel produced timekeeping and payroll records for a sampling of putative class members,
13 including actual time punches and rounded time punches, which allowed Plaintiff to conduct a
14 rounding analysis. Haines Decl., ¶ 14. Cold Steel also produced its relevant written wage and
15 hour policies; data regarding the number of current and former employees, number of workweeks
16 worked, and other information; and other relevant data and information. *Id.* Thereafter, Plaintiff
17 analyzed and extrapolated the data produced by Cold Steel to create a comprehensive damages
18 analysis. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff’s claims,
19 as well as the chances for class certification. *Id.*

20 The parties attended a full-day mediation on January 19, 2021 with Mr. Krivis. Haines
21 Decl., ¶ 15. During mediation, the parties vigorously debated their legal positions, the likelihood
22 of certification of Plaintiff’s claims, the legal bases for the claims and defenses, and the potential
23 effects of Cold Steel’s recent acquisition. *Id.* With the help of Mr. Krivis, the Parties reached a
24 class-wide resolution at the conclusion of the mediation. *Id.* Over the next few months, the parties
25 negotiated the finer terms of the settlement, ultimately resulting in the Settlement now before the
26 Court. *Id.*

27 III. THE PROPOSED SETTLEMENT

28 A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Cold Steel will pay a non-reversionary Gross Settlement Amount

1 (“GSA”) of \$170,000.00, with no claims process required for Settlement Class members to
2 receive payment. The monetary terms of the Settlement are summarized below:

3	• Gross Settlement Amount (“GSA”):	\$170,000.00
4	• Minus Court-approved attorneys’ fees (33.33%):	\$56,666.67
5	• Minus Court-approved verified costs (up to):	\$20,000.00
6	• Minus Court-approved Enhancement Payment:	\$5,000.00
7	• Minus Amount Paid Set Aside as PAGA penalties:	\$15,000.00
8	• <u>Minus estimated settlement administration costs:</u>	<u>\$6,000.00</u>
	Net Settlement Amount (“NSA”):	\$67,333.33
	• PLUS 25% “PAGA Amount” to Settlement Class:	\$3,750.00
	Total Amount Paid to Settlement Class members:	\$71,083.33

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

10 After deducting amounts for a court-approved incentive award, administration costs,
11 attorneys’ fees and costs, and PAGA payment to the LWDA, Cold Steel will pay at least
12 \$71,083.33 to Settlement Class members. *See* Settlement, § 3(D). Cold Steel represents there are
13 approximately 35 Settlement Class members. Haines Decl., ¶ 17. Therefore, the average
14 Settlement Award is estimated to be approximately \$2,030.95. *Id.* Payments from the NSA will
15 be treated as 20% wages reported on a Form W-2; and as 40% penalties and 40% interest, reported
16 on a Form 1099. *See* Settlement, § 4(D). Cold Steel will pay the employer’s share of payroll taxes
17 on the amount designated as “wages” separate from, and in addition to, the GSA. *Id.*, § 3(F).
18 Settlement Class members will have 60 days from the Notice mailing to object, request to opt-
19 out, or submit disputes, thereby providing ample time to review the Notice without unduly
20 delaying the Settlement. *See id.*, § 9(D)-(F).

21 The NSA shall be distributed to all participating Settlement Class members as follows:
22 Eighty percent (85%) of the NSA will be distributed based on the proportional number of
23 Workweeks worked by each participating Settlement Class member during the Class Period; 10%
24 of the NSA will be designated the “Waiting Time Amount” and distributed in equal shares to all
25 participating Settlement Class members who separated their employment with Cold Steel from
26 May 26, 2017 through the end of the Class Period; and 5% of the NSA plus the \$3,750.00 payable
27 to Settlement Class members as the PAGA Amount will be designated the “Wage Statement
28 Amount/PAGA Amount” and paid proportionally to each participating Settlement Class member
based on their proportional number of workweeks worked from May 26, 2019 through the end of

1 the Class Period. *See* Settlement, § 4(B).

2 Participating Settlement Class members will be bound by the Settlement, and shall release
3 any and all claims that were pled in the Action, or that could have been pled in the Action based
4 on the factual allegations in the Action, that arose during the Class Period, including meal period
5 violations, rest period violations, unpaid wages, including minimum wages, overtime and double
6 time wages, wage statement violations, waiting time penalties, unfair business practices, and
7 claims under the PAGA (“Released Claims”). *See id.*, § 2(A). Plaintiff has also agreed to a general
8 release of claims, subject to a waiver of Civil Code § 1542. *Id.*, § 2(B).

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

10 At final approval, Plaintiff will separately apply for a Class Representative Enhancement
11 Payment in the amount of \$5,000. *See* Settlement, §§ 3(D)(3); 6. “[I]ncentive awards are fairly
12 typical in class action cases...and are intended to compensate class representatives for work done
13 on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing
14 the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As
15 will be fully briefed at final approval, Plaintiff’s requested payment is in recognition of the time
16 and effort she expended on behalf of the Settlement Class, including providing factual information
17 and documents to counsel, identifying potential witnesses, attending meetings with counsel to
18 discuss the claims and theories at issue in the litigation, and otherwise actively participating in
19 the prosecution of this case as well as the fact that Plaintiff agreed to a general release of all claims
20 subject to a waiver of California Civil Code section 1542. Haines Decl., ¶ 26; Hernandez Decl.,
21 ¶¶ 4-6.

22 The parties have also designated \$15,000 of the GSA as PAGA penalties, of which
23 \$11,250.00 (75%) will be paid to the LWDA, with the remaining \$3,750.00 (25%) distributed to
24 Settlement Class members (*see* Settlement, § 3(D)(5)), consistent with the requirements of Labor
25 Code § 2699(i). Plaintiff submits this allocation to the LWDA is appropriate in light of other
26 settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-
27 05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of \$7,500
28 to LWDA from \$6.9 million settlement).

At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA (currently estimated at \$56,666.67), and up to \$20,000 in litigation costs. Settlement, §§ 3(D)(4); 5. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel have incurred substantial attorneys' fees conducting pre-filing investigation; analyzing Plaintiff's claims; conducting legal research; analyzing timekeeping, payroll, and other data 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., ¶ 25. Further, Plaintiff's 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 Newberg on Class Actions* § 14.6 (4th Ed. 2013) (historically, courts have awarded percentage fees in the range of 20% to 50%). 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"). The Court's role is to ensure the settlement agreement taken as a whole is fair and within the range of reasonableness. *Id.* at 1027.

1 There is a presumption of fairness when a settlement is negotiated at arm's length by counsel.
2 *See, e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

3 **1. Standard for Preliminary Approval**

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

13 **a. The Strength of Plaintiff's Case**

14 Although she maintains her claims are meritorious, Plaintiff acknowledges there were
15 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
16 merits. As described in section II.B., *supra*, Cold Steel presented multiple defenses to Plaintiff's
17 claims, both on the merits and to class certification. While Plaintiff was prepared to litigate her
18 claims through class certification and ultimately trial, success was far from certain.

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

20 Although the parties engaged in significant informal discovery, they had not completed
21 formal written and deposition discovery, which would have required expenditure of substantial
22 time and resources. Haines Decl., ¶ 27. Plaintiff also still had to file for class certification. *Id.*
23 Even if Plaintiff obtained certification, the parties would incur considerable attorneys' fees and
24 costs through a possible decertification motion, motions for summary judgment, trial, and
25 potential appeals. *Id.* This settlement avoids those risks and the accompanying expense. *Id.* Thus,
26 this factor supports preliminary approval.

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

28 Plaintiff has not yet filed her class certification motion, and as such, the extent to which

1 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
2 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
3 significantly smaller group of employees than the proposed Settlement Class, and the expected
4 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

6 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
7 for disputed claims. As detailed in the concurrently-filed Haines Declaration, Plaintiff conducted
8 an analysis of potential damages due to Cold Steel's allegedly unlawful policies and practices.
9 After applying reasonable discounts for risks of not obtaining class certification and risks of losing
10 on the merits, Plaintiff estimated her claims had a realistic potential value of approximately
11 \$177,397. Haines Decl., ¶¶ 18-24. The proposed settlement of \$170,000 therefore represents
12 approximately 95.8% of Plaintiff's reasonably forecasted class-wide recovery. *Id.* As noted
13 above, average payments under the Settlement will average over \$2,000. Preliminary approval is
14 appropriate as the Settlement will provide significant monetary relief to the Settlement Class.

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

16 "Parties represented by competent counsel are better positioned than courts to produce a
17 settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter.*
18 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
19 litigating wage and hour class actions from both the plaintiff and defense side, and have been
20 appointed class counsel in numerous cases alleging similar claims. *See* Haines Decl., ¶¶ 2-8;
21 Declaration of Sean M. Blakely ("Blakely Decl."), ¶¶ 2-6; Declaration of Alexandra R. McIntosh
22 ("McIntosh Decl."), ¶¶ 2-4. Counsel conducted an in-depth review of Cold Steel's policies,
23 timekeeping and payroll records, and other relevant data, and drew on their extensive experience
24 to assess Plaintiff's claims. The Settlement was also reached with the assistance of Mr. Krivis, a
25 respected wage and hour class action mediator. Haines Decl., ¶ 15. This strongly supports
26 preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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

28 The Court can grant preliminary approval of a proposed settlement and direct that notice

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

a. The Settlement Is Within the Range of Possible Approval

As noted, the Settlement reflects over 95.8% of the realistic estimated recovery on Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm's-length negotiations, and a full-day mediation with an experienced mediator. Thus, the Settlement is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiff carefully vetted the claims at issue, and conducted a detailed analysis of the relevant data and information. Haines Decl., ¶¶ 18-24. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is warranted because there are no obvious deficiencies. The Settlement provides tangible monetary relief to the Settlement Class, and the amounts proposed for attorneys' fees, costs, Plaintiff's enhancement payment, and PAGA penalties are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

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

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members "may be readily identified without unreasonable 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 Cold Steel in California during the Class Period. Thus, they can be readily identified from Cold Steel's records. Cold Steel represents there are approximately 35 Settlement Class members, rendering it impracticable to bring them all before the Court. Haines Decl., ¶ 17. Thus, 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). Plaintiff's claims are predicated primarily on Cold Steel'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 Plaintiff's Claims Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. *See* Hernandez Decl., ¶¶ 2-4. Plaintiff was employed by Cold Steel as a non-exempt employee in California during the Class Period, and she was injured by the same challenged policies that allegedly injured the Settlement Class as a whole. *Id.* Plaintiff asserts she was deprived of wages due to Cold Steel's rounding practice, that Cold Steel failed to provide her with legally-compliant meal periods and failed to authorize and permit compliant rest periods, and that she received inaccurate wage statements and was not paid all final wages at termination as a result. *Id.* Thus, typicality is satisfied.

4. Plaintiff 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

1 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement
2 Class, as there are no known conflicts between Plaintiff or her counsel and the Settlement Class.
3 *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where
4 there was no indication that plaintiff’s counsel was not qualified and the named plaintiff had no
5 interests antagonistic to those of the proposed class). Plaintiff’s counsel also have extensive
6 experience in wage and hour class action litigation, as noted above.

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

8 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
9 mailing addresses provided by Cold Steel. *See Settlement*, § 9. This is the “best notice practicable”
10 under the circumstances as it provides “individual notice to all members who can be identified
11 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
12 proposes the Settlement be administered by ILYM Group, Inc. (“ILYM”), an experienced class
13 action settlement administrator. *See Declaration of Sean Hartranft and exhibits*. Settlement Class
14 members’ addresses will be ascertainable through Cold Steel’s records. ILYM will also run all
15 addresses through the U.S. Postal Service National Change of Address database and/or perform
16 “skip traces” to obtain current addresses. *See Settlement*, § 9(A) - (C).

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

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

28 Finally, the Court should set a hearing for final approval of the settlement on a date

1 appropriately scheduled to follow Settlement Class members' response deadline. *See* Cal. Rule
2 of Court 3.769.

3 **V. CONCLUSION**

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

7
8 Dated: June 25, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Attorneys for Plaintiff