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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

AMELIA SALAS GURROLA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

ELLIOTT AUTO SUPPLY CO., INC., a
Minnesota corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2020-00015368-CU-OE-CTL

*[Assigned for all purposes to Hon. Loren G.
Freestone, Dept. C-64]*

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

Date: August 11, 2023
Time: 10:30 a.m.
Dept.: C-64

Reservation Number: 2960950

Complaint Filed: May 26, 2020
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on August 11, 2023 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department C-64 of the above-entitled Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiff Amelia Salas Gurrola (“Plaintiff”) will, and hereby does, move this Court for an Order:

1. Granting preliminary approval of the proposed Stipulation of Settlement (“Settlement Agreement”) between Plaintiff and Defendant Elliott Auto Supply Co., Inc. (“Elliott Auto” or “Defendant”);

2. Pursuant to Section 382 of the California Code of Civil Procedure, granting provisional certification, for settlement purposes only, of the proposed Settlement Class, defined as follows:

All current and former non-exempt employees who worked for Defendant Elliott Auto Supply Co., Inc. in California at any time from April 6, 2016 through January 5, 2023 (the “Class Period”), excluding any former non-exempt employees who worked for Elliott Auto as delivery drivers from April 6, 2016 to but not beyond May 2, 2017.

3. Preliminary appointment of Plaintiff as Class Representative;

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

5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award an enhancement payment to the Class Representative, attorneys’ fees and costs to Class Counsel, settlement administration costs, and the payment to the Labor & Workforce Development Agency (“LWDA”) for its share of civil penalties under the Private Attorneys General Act (“PAGA”);

6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and

7. Approval of the proposed Notice Packet, and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

This motion is based on this notice of motion; the attached memorandum of points and

1 authorities; the declaration of Paul K. Haines and exhibits attached thereto; the declaration of
2 Sean M. Blakely; the declaration of Jodey Lawrence of Phoenix Settlement Administrators and
3 exhibits attached thereto; the declaration of Plaintiff; the Settlement Agreement; the pleadings
4 and other papers filed in this action; and any further oral or documentary evidence or argument
5 presented at the time of hearing.

6
7 Dated: April 13, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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Other Sources

DLSE Manual at § 49.1.2 3

4 *Newberg on Class Actions*, § 11:24-25 (4th Ed. 2013)..... 21

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Amelia Salas Gurrola (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) with Defendant Elliott Auto Supply Co., Inc. (“Elliott Auto” or
5 “Defendant”) (collectively with Plaintiff, the “Parties”). In this action, Plaintiff’s primary
6 allegations relate to Elliott Auto’s alleged failure to pay overtime and minimum wages, its failure
7 to authorize and permit all required rest periods, failure to provide all required meal periods, and
8 its failure to reimburse necessary business expenditures. Based on these alleged wage and hour
9 violations, Plaintiff also alleges derivative claims for Elliott Auto’s failure to timely pay all wages
10 at termination, failure to issue accurate itemized wage statements, and seeks civil penalties under
11 the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.*¹

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action settlement,² in which Elliott Auto has agreed to pay a
14 Gross Settlement Amount of \$2,550,000.00 to the following Settlement Class, which is estimated
15 to consist of 1,173 individuals:

16 All current and former non-exempt employees who worked for Defendant
17 Elliott Auto Supply Co., Inc. in California at any time from April 6, 2016
18 through January 5, 2023 (the “Class Period”), excluding any Causey Class
Participants³ who worked for Elliott Auto as delivery drivers from April 6,
2016 and to and not beyond May 2, 2017.

19 The Settlement was only reached after extensive formal and informal discovery, the
20

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

24 ² The Stipulation of Settlement (“Settlement”) is attached as **Exhibit 1** to the Declaration of Paul
25 K. Haines, filed concurrently with this Motion. The proposed Class Notice and Notice of
Estimated Settlement Award are attached as **Exhibits A** and **B**, respectively, to the Settlement.

26 ³ On September 27, 2017, the Orange County Superior Court approved the Class Action
27 Settlement in *Ernest Causey v. Elliott Auto Supply Co., Inc., et al.*, Case No. 30-2014-00762886-
28 CU-OE-CXC, a wage and hour class action and PAGA action on behalf of all California based
employees who worked for Elliott Auto as delivery drivers at any time in California from
December 22, 2010 until May 2, 2017 (“Causey Class Participants”).

1 completion a *Belair-West* opt out notice process, two full-day mediations, and dozens of
2 interviews with Settlement Class members. In connection with mediation, Elliott Auto provided
3 Plaintiff with payroll and timekeeping records for a 20% sampling of putative class members, as
4 well as applicable documents regarding Elliott Auto's wage and hour policies, and other
5 information. Elliott Auto also provided Plaintiff with a Class List which included putative class
6 members' hire date, termination date (if applicable), and work location, which enabled Plaintiff
7 to calculate the number of workweeks during the Class Period, as well as the total number of
8 aggregate pay periods worked during the PAGA Period. After extensive research and analysis,
9 including a detailed evaluation of Elliott Auto's potential exposure with the assistance of
10 Plaintiff's retained expert, the Parties attended a second, full-day mediation on September 14,
11 2023. The Parties ultimately accepted a mediator's proposal for a classwide settlement in the
12 weeks following the September 14, 2023 mediation.

13 Significantly, Settlement Class members do not need to file a claim to reap the financial
14 benefits of the Settlement, as all Settlement Class members will automatically receive a
15 Settlement Award unless they affirmatively opt-out. After deductions for proposed settlement
16 administration costs, requested attorneys' fees and costs, the amount set aside as PAGA civil
17 penalties, and the Class Representative Enhancement Payment, the Settlement requires Elliott
18 Auto to pay a Net Settlement Amount ("NSA") of at least \$1,534,500.00 to those Settlement Class
19 members who do not opt out. According to Elliott Auto, there are approximately 1,173 Settlement
20 Class members, and therefore, **the average Settlement Award from the NSA is estimated to**
21 **be at least \$1,308.18** ⁴ This is an excellent result for Settlement Class members, who will be
22 agreeing to a release of only those claims that were asserted this litigation. For the reasons stated
23 herein, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
24 Settlement.

25 ///

26 ⁴ In addition to the \$1,308.18 average Settlement Award from the Net Settlement Amount, the
27 approximately 692 Settlement Class members who worked during the time period from April 8,
28 2019 through January 5, 2023 ("PAGA Period") will also receive a portion of the \$20,000.00
PAGA Amount. Haines Decl., ¶ 16. The average share of the PAGA Amount is estimated to be
approximately \$28.90. *Id.*

1 **II. SUMMARY OF THE LITIGATION**

2 **A. FACTUAL AND PROCEDURAL BACKGROUND**

3 In operation since 1945, Elliott Auto sells and delivers automotive parts, garden parts,
4 marine parts, lawn and garden parts and all-purpose cleaning products throughout California. *See*
5 Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10. Plaintiff worked for Elliott Auto as a non-
6 exempt employee from approximately August 2016 to approximately March 31, 2020 in the
7 position of Delivery Driver. *See* Declaration of Amelia Salas Gurrola in Support of Approval of
8 Class Action Settlement (“Salas Decl.”), ¶ 2.

9 On May 26, 2020, Plaintiff filed the instant action against Elliott Auto, alleging claims for
10 failure to pay overtime and minimum wages, failure to authorize and permit rest periods, failure
11 to provide meal periods, failure to issue accurate itemized wage statements, failure to timely pay
12 all final wages, and unfair competition. Haines Decl., ¶ 11. On June 16, 2020, after waiting the
13 prescribed 65-day waiting period, Plaintiff filed a separate representative PAGA action against
14 Elliott Auto in the matter entitled *Amelia Salas Gurrola v. Elliot Auto Supply Co., Inc.*, San Diego
15 Superior Court Case No. 37-2020-00020439-CU-OE-CTL (the “PAGA Action”). As part of the
16 Settlement, the Parties stipulated to the filing of a consolidated First Amended Class and
17 Representative Action Complaint in this Action. *Id.* On January 27, 2023, Plaintiff filed the
18 operative First Amended Class and Representative Action Complaint (“FAC”) to add causes of
19 action for PAGA civil penalties and failure to reimburse necessary business expenses. *Id.*

20 **B. PLAINTIFF’S CLAIMS AND ELLIOTT AUTO’S DEFENSES**

21 **1. Unpaid Overtime – Failure to Include All Renumeration Into Regular**
22 **Rate of Pay**

23 Plaintiff alleges that Elliott Auto underpaid Settlement Class members’ overtime wages
24 due to its failure to include all remuneration in the regular rate of pay for overtime purposes.
25 Haines Decl., ¶ 17; *see also* 29 U.S.C. § 207(e) (requiring overtime to be paid at 1.5 times the
26 “regular rate” of pay, which includes “all remuneration for employment paid to, or on behalf of,
27 the employee”); DLSE Manual at § 49.1.2 (California has “adopt[ed] the definition of ‘regular
28 rate’ set out in the [FLSA]”). Specifically, Plaintiff alleges Elliott Auto paid Settlement Class

members non-discretionary bonuses, including bonuses for workplace safety, but did not include these payments into Settlement Class members' regular rate of pay for overtime purposes, and thereby miscalculated and underpaid Settlement Class members' overtime wages. Haines Decl., ¶ 17.

Elliott Auto contends that the vast majority of additional payments at issue are discretionary bonuses that do not need to be included in the regular rate for overtime purposes. Haines Decl., ¶ 17; *see also* 29 C.F.R. § 778.211 (discretionary bonuses need not be included in regular rate). Elliott Auto also contends that differences in the amount, type, and frequency of bonuses paid to different employees would require hundreds of mini-trials and render class certification of this claim inappropriate. Haines Decl., ¶ 17.

2. Meal Period Claims

Plaintiff alleges that Elliott Auto failed to provide her and other Settlement Class members with all legally-compliant meal periods. Haines Decl., ¶ 18. Specifically, Plaintiff alleges that due to Elliott Auto's written meal period policy which provides for a first meal period by the end of 5.5 hours of work, and due to work demands, first meal periods were regularly provided after the completion of five hours of work. *Id.* Plaintiff also maintains that Elliott Auto failed to provide second meal periods during shifts in excess of 10.0 hours. *Id.*, at ¶ 19.

Elliott Auto contends that it maintained compliant written meal period policies throughout the Class Period and provided meal periods in line with those policies. Haines Decl., ¶ 18. Elliott Auto also points to its "Attendance Policies," which are required to be signed by Settlement Class members, which instruct employees to "take their lunch within the 4th and 5th hour worked." *Id.* Elliott Auto further argues that under *Brinker*, it was only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. *Id.*; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting "ensure" standard). Elliott Auto also argues that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 18. With respect to second meal periods, Elliott Auto argues that second meal periods may lawfully be waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that employees regularly did so. *Id.*, at

¶ 19. Lastly, Elliott Auto argues individualized inquiries would be needed to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, making certification of the meal period claim unlikely. *Id.*, ¶¶ 18-19. Elliott Auto further argues that certification of a meal period claim is unlikely as Settlement Class members worked at a variety of locations throughout California, creating substantive differences among Settlement Class. *Id.*, at ¶ 18.

3. Rest Period Claims

Plaintiff alleges that Elliott Auto failed to authorize and permit all legally-compliant off-duty rest periods. Haines Decl., ¶ 20. Specifically, Plaintiff alleges that Elliott Auto’s written rest period policy fails to authorize and permit a third rest period during shifts in excess of 10.0 hours and fails to authorize a rest period on shifts of 3.50 – 3.99 hours, as Elliott Auto’s written rest period policy only provides for “[a] paid 10 minute break...for every 4 hours worked.” *Id.* Plaintiff further alleges that Elliott Auto failed to authorize and permit off-duty rest periods at its Fullerton location as a result of Elliott Auto’s policy and practice of requiring employees to remain on company premises during rest periods. *Id.*; *Augustus v. ABM Sec. Servs., Inc.*, 5 Cal.5th 257, 272 (2016) (during rest periods employers must “relieve their employees of all...employer control...”).

Elliott Auto counters that it has maintained compliant written rest period policies throughout the Class Period and has always authorized and permitted employees a 10-minute rest period for each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was a result of employee choice, rather than any Elliott Auto policy and/or practice. Haines Decl., ¶ 20. Further, Elliott Auto maintains that it never required employees to remain on-premises during their rest periods. *Id.* In fact, Elliott Auto asserts that many employees at the Fullerton location would testify that they did, in fact, leave the premises during rest periods. *Id.* Elliott Auto further contends that, even if it (or individual managers) had required employees to remain on premises, *Augustus* rejected Plaintiff’s “on premises” theory when it observed that “one would expect that employees will ordinarily have to remain onsite or nearby. This constraint, which is of course common to all rest periods, is not

sufficient to establish employer control.” *Augustus, supra*, 2 Cal.5th at 270. Finally, Elliott Auto argues that Plaintiff’s rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, the reasons why each employee failed to take rest period(s) on a particular shift, and whether each employee at the Fullerton location was in fact allowed to leave the premises during each rest period. Haines Decl., ¶ 20. These manageability concerns are especially present with respect to rest period claims, Elliott Auto argues, given that rest periods are not recorded. *Id.*

4. Unpaid Wages Due to Unlawful Rounding Policies/Practices

Plaintiff alleges that Elliott Auto maintained unlawful timekeeping policies/practices, which round all timekeeping entries to the nearest quarter of an hour, resulting in an underpayment of wages to Settlement Class members. Haines Decl., ¶ 21; *see also, See’s Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 901-902 (2012) (“an employer’s rounding policy violates the DOL rounding regulation if it ‘systematically undercompensate[s] employees,’ such as where the defendant’s rounding policy ‘encompasses only rounding down.’”) (citations omitted).

Elliott Auto counters that they have always paid Settlement Class members for all hours worked throughout the Class Period and that their timekeeping policies/practices are compliant with California law. Haines Decl., ¶ 21. Elliott Auto contends that they utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. *Id.* Additionally, Elliott Auto asserts Plaintiff would be unable to certify a rounding class given the individualized inquiries as to whether Settlement Class members performed compensable work prior to the scheduled start of shift, and whether Settlement Class members were in fact underpaid, or potentially overpaid for each workday in question. *Id.*

5. Failure to Reimburse for Necessary Business Expenses

Plaintiff alleges that Elliott Auto required Settlement Class members to use their personal cellular phones for work-related purposes, however, Elliott Auto failed to reimburse Settlement Class members for these necessary business expenses, in violation of Labor Code § 2802(a).

Haines Decl., ¶ 22; *see* Labor Code § 2802(a) (“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”); *see also Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding employer must reimburse use of personal cell phone, even where employee already has “unlimited” plan).

However, Elliott Auto maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Haines Decl., ¶ 22. Elliott Auto points to its “Factory Motor Parts Cell Phone Policy” and argues that it provides Settlement Class members with company cellular phones which they can use for business purposes, and which are paid for by Elliott Auto. *Id.* Elliot Auto further contends that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*; *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) (“In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee’s choices”).

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

As a result of these alleged wage and hour violations, Plaintiff asserts that Elliott Auto failed to comply with its final wage payment and wage statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 23-24. Finally, Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. Haines Decl., ¶ 25.

Elliott Auto asserts it has strong, good-faith defenses to Plaintiff’s underlying claims, precluding the imposition of waiting time penalties, which are only available for the “willful” failure to pay wages. Haines Decl., ¶ 23; *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). Moreover, because the waiting time claim is derivative of Plaintiff’s underlying

1 wage claims, Plaintiff would need to overcome Elliott Auto’s defenses, both as to class
2 certification and on the merits, as to his underlying claims. Haines Decl., ¶ 23. Elliott Auto further
3 asserts Plaintiff’s waiting time penalty exposure was grossly inflated as not every former
4 employee experienced the alleged Labor Code violations. *Id.*

5 Elliott Auto further contends that any alleged wage statement violations could not be
6 shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff
7 cannot show she or other employees “suffer[ed] injury” due to alleged wage statement violations,
8 as required by Lab. Code § 226(e); and that wage statements always accurately reflected amounts
9 *paid* to employees. Haines Decl., ¶ 24; *see Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
10 1308, 1337 (2018) (“The purpose of section 226 is to ‘document the paid wages to ensure the
11 employee is fully informed regarding the calculation of those wages’”).

12 Finally, Elliott Auto contends that since Plaintiff’s PAGA claim is derivative of her
13 underlying wage claims, Plaintiff’s PAGA claim would fail with those claims. Haines Decl., ¶
14 25; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
15 causes of action fail, the derivative UCL and PAGA claims also fail”). Elliott Auto further
16 maintains that given its good-faith defenses, the Court would substantially reduce any PAGA
17 penalties awarded. Haines Decl., ¶ 25; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA
18 penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112,
19 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-
20 1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over
21 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty
22 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

23 C. **DISCOVERY AND MEDIATION**

24 The Parties engaged in significant formal and informal discovery in this Action. Plaintiff
25 propounded written discovery seeking, among other items, contact information for the putative
26 class, timekeeping and payroll records for putative class members, and Elliott Auto’s written
27 wage and hour policies. Haines Decl., ¶ 12. On December 3, 2021, the Parties attended a
28 mediation with Hon. Peter D. Lichtman (Ret.), however, the Parties were unable to reach a

1 settlement and the Parties continued their class certification discovery. *Id.* Following the
2 December 3, 2021 mediation, the Parties completed a *Belaire-West* opt out notice process and
3 Plaintiff was provided with the contact information for those putative class members who did not
4 opt-out of the *Belaire-West* process. *Id.* Thereafter, Plaintiff interviewed dozens of Settlement
5 Class members regarding their work experiences with Elliott Auto. *Id.*

6 While conducting formal discovery, the Parties agreed to attend a second mediation
7 session. Haines Decl., ¶ 13. In connection with this second mediation, Elliott Auto produced
8 timekeeping and payroll data for 20% of putative class members during the Class Period, its
9 written policies in effect during the Class Period, as well as a “Class List” which included putative
10 class members’ hire date, termination date (if applicable), and their work location, which enabled
11 Plaintiff to calculate the number of workweeks during the Class Period, as well as the total number
12 of aggregate pay periods worked during the PAGA Period. *Id.* Plaintiff hired a labor economist
13 with a Ph.D in economics to assist Plaintiff in conducting a comprehensive analysis and
14 extrapolation of the timekeeping and payroll data to calculate Elliott Auto’s potential exposure
15 for each of Plaintiff’s claims. *Id.* This discovery allowed the Parties to assess the merits and value
16 of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Elliott Auto’s potential
17 defenses. *Id.*

18 On September 14, 2022, the Parties attended a second, full-day mediation with Jeffrey A.
19 Ross, Esq., an experienced wage and hour class action mediator. Haines Decl., ¶ 14. During
20 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
21 certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* In the weeks
22 following the second mediation, Mr. Ross issued a mediator’s proposal for a class-wide
23 settlement, which was ultimately accepted by the Parties. *Id.* During the months that followed,
24 the Parties negotiated and finalized the long-form Settlement now before the Court. *Id.*

25 **III. THE PROPOSED SETTLEMENT**

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

27 Under the Settlement, Elliott Auto will pay a non-reversionary Gross Settlement Amount
28 (“GSA”) of \$2,550,000.00. *See* Settlement, § 4. No Settlement Class member will need to file a

claim form as each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out. *Id.*, at § 5. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$2,550,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$850,000.00
• Minus Court-approved, verified costs (up to):	\$60,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus Amount designated as PAGA penalties:	\$80,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$18,000.00</u>
Net Settlement Amount (“NSA”):	\$1,534,500.00
<u>PLUS 25% of PAGA penalties (“PAGA Amount”)</u>	<u>\$20,000.00</u>
TOTAL Amount Paid to Settlement Class:	\$1,554,500.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting administration costs, the enhancement payment to Plaintiff, the amount set aside as PAGA civil penalties, and requested attorneys’ fees and costs, Elliott Auto will pay an NSA of at least \$1,534,500.00 to the Settlement Class. Haines Decl., ¶ 15; *see also* Settlement, § 5(A). According to Elliott Auto, there are approximately 1,173 Settlement Class members. Settlement, § 1; Haines Decl., ¶ 16. Thus, the average Settlement Award from the NSA is estimated to be \$1,308.18. *Id.* Further, Elliott Auto states that there are approximately 692 employees who fall within the PAGA Period. *Id.* Therefore, the average PAGA share is estimated to be \$28.90. *Id.*

The Net Settlement Amount (“NSA”) shall be distributed as follows: Eighty percent (80%) of the NSA will be distributed to all participating Settlement Class members based on each participating Settlement Class members’ proportionate workweeks worked during the Class Period. *See* Settlement, § 5(A)(i). Ten Percent (10%) of the NSA shall be designated as the “Waiting Time Amount” and shall be divided equally among all participating Settlement Class members whose employment with Elliott Auto ended at any time from April 6, 2017 to January 5, 2023. *Id.*, at § 5(A)(ii). Ten percent (10%) of the NSA shall be designated as the “Wage Statement Amount” and shall be distributed to each participating Settlement Class member who was employed by Elliott Auto at any time from April 6, 2019 to January 5, 2023 proportionate to the number of pay periods that he or she worked during the period from April 6, 2019 to January 5, 2023. *Id.*, at § 5(A)(iii). In addition to the NSA, each Settlement Class member who was

1 employed by Elliott Auto at any time from April 8, 2019 to January 5, 2023 (the “PAGA Period”)
2 (including those who submit a valid and timely Request for Exclusion from the class action
3 settlement) shall receive a portion of the Twenty Thousand Dollars and Zero Cents (\$20,000.00)
4 of the Gross Settlement Amount that has been designated as the “PAGA Amount” proportionate
5 to the number of pay periods that he or she worked during the PAGA Period. *Id.*, at § 5(A)(iv).
6 Elliott Auto will pay employer-side payroll taxes on any part of the Settlement Award amounts
7 designated as wages in addition to the GSA. *Id.*, § 4(E).

8 Settlement Class members will have sixty (60) days from the mailing of the Class Notice
9 to opt-out or object, thereby providing ample time to review the Settlement. Settlement, §§ 10(C)-
10 (D). Settlement Class members who do not opt out will be bound by the Settlement, and will
11 release and discharge Elliott Auto from any and all claims that were alleged in the Action. *Id.*, §
12 3(A). In addition, all Settlement Class members (regardless of whether they opt out) who worked
13 for Elliott Auto during the PAGA Period will release all claims for PAGA civil penalties based
14 on those alleged violations. *Id.*, § 3(C).

15 **2. Enhancement Payment, Attorneys’ Fees and Costs, and LWDA Payment**

16 Plaintiff will apply for a Class Representative Enhancement Payment at final approval in
17 the amount of \$7,500 for her services to the Settlement Class. Haines Decl., ¶ 29; *see also*
18 Settlement, § 7. “[I]ncentive awards are fairly typical in class action cases...and are intended to
19 compensate class representatives for work done on behalf of the class [and] to make up for
20 financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination*
21 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, the
22 requested Enhancement Payment is intended to recognize the substantial time and effort Plaintiff
23 expended on behalf of the Settlement Class, including providing factual information and
24 documents to counsel, identifying potential witnesses, attending meetings with counsel to discuss
25 the claims and theories at issue in the litigation, and otherwise actively participating in the
26 prosecution of her claims. Salas Decl., ¶¶ 4-5; Haines Decl., ¶ 29. Plaintiff respectfully submits
27 that this requested payment is well within the range of permissible approval. *See, e.g., Alvarado*
28 *v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17,

2011) (approving \$7,500 enhancement award to each of five named plaintiffs from \$505,058.60 settlement).

At final approval, Plaintiff's counsel will request an attorneys' fees award of one-third of the GSA, and up to \$60,000 in verified costs. Haines Decl., ¶ 28; *see also* Settlement, § 6. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent basis. Plaintiff's counsel has expended significant time conducting pre-filing investigation; legal research; analyzing Plaintiff's claims; analyzing employee timekeeping and payroll records and other data and documents; engaging in formal and informal discovery; going through the *Belaire-West* opt out notice process; interviewing Settlement Class members regarding their work experiences at Elliot Auto; working with its retained expert to develop a comprehensive damages analysis and mediation brief; preparing for and attending two mediation sessions; negotiating the Settlement; preparing this Motion; and otherwise prosecuting this case. Haines Decl., ¶ 28. Counsel anticipates incurring additional fees in appearing at the hearing on this Motion, supervising the Notice process, and preparing the Final Approval motion and appearing at the Final Approval Hearing. *Id.*

It is appropriate to award attorneys' fees in class actions as a percentage of the "common fund" created by a settlement. *See 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 fee request of one-third of the GSA is well within the range of reasonableness, and is typical for common fund settlements, and in fact was the percentage approved in *Laffitte*.

Additionally, the parties have agreed to designate \$80,000.00 of the GSA as PAGA civil penalties, of which \$60,000.00 (75%) will be paid to the LWDA, with the remaining \$20,000.00 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 4(C)(5). Plaintiff submits this allocation to the LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of

\$7,500 to LWDA out of \$1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards under Fed. R. Civ. Proc. Rule 23. *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule of Court 3.769 requires court to determine “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. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The court’s role in evaluating a settlement is limited to ensuring the agreement, as a whole, is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when, as here, a settlement was negotiated at arm’s length by experienced class counsel, with the assistance of an experienced mediator. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

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

a. The Strength of Plaintiff’s Case

Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual

1 trial on the merits. As described in section II.B., *supra*, Elliott Auto presented multiple defenses
2 to Plaintiff's claims, both on the merits and with respect to class certification. While Plaintiff was
3 prepared to litigate her claims through class certification and ultimately trial, success was far from
4 certain.

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

6 Although the Parties engaged in significant formal and informal discovery in advance of
7 mediation, the Parties still had substantial discovery to complete in formal litigation had the
8 matter not settled, which would have required the expenditure of substantial time and resources
9 by all Parties. Haines Decl., ¶ 27. Even if Plaintiff obtained class certification, the Parties would
10 incur considerable attorneys' fees and costs through a possible decertification motion, trial, and
11 possible appeal. *Id.* The Settlement avoids those risks and the accompanying delay and expense,
12 and thus, this factor supports preliminary approval. *Id.*

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

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

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

24 The Settlement provides a fair and reasonable monetary recovery for Settlement Class
25

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

members concerning heavily disputed claims where the law is in a state of frequent change. Based on a review of the data produced by Elliott Auto in connection with mediation, Plaintiff and her expert conducted the following exposure analyses for each of Plaintiff's claims:

Unpaid Overtime Wages - Miscalculation of Regular Rate: \$6,490

Plaintiff alleges that Elliott Auto failed to include the value of non-discretionary bonuses into the regular rate of pay, resulting in an underpayment of overtime wages to Settlement Class members. Haines Decl., ¶ 17. Based on Plaintiff's expert's analysis of employees' time and payroll records produced by Elliott Auto, Plaintiff estimates that Settlement Class members were underpaid by approximately \$9,544 in overtime wages as a result of the alleged miscalculation of the regular rate of pay. *Id.*

But as noted above, Elliott Auto argues that the bonuses in question were discretionary, and therefore did not need to be included in the regular rate of pay. Haines Decl., ¶ 17. Elliott Auto also argues that differences among employees in type, frequency, and amount of bonuses would create individualized issues that would make a class unmanageable. *Id.* Based on these defenses, Plaintiff discounted the maximum exposure by 15% for risk of non-certification, and by an additional 20% for risk of losing on the merits or failing to recover the full amount sought, to arrive at a realistic exposure of approximately \$6,490. *Id.*

First Meal Period Premium Wages: \$702,129

Plaintiff alleges that Elliott Auto failed to provide her and other Settlement Class members with legally-compliant first meal periods. Haines Decl., ¶ 18. Based on Plaintiff's expert's analysis of employee timekeeping records produced by Elliott Auto, there were approximately 91,630 shifts with a non-compliant first meal period reflected in the timekeeping data. *Id.* Plaintiff's expert's analysis also revealed a total of \$3,157 in meal period "premiums" paid during the Class Period. *Id.* Thus, Plaintiff estimated the maximum potential exposure for this claim at approximately \$1,337,390 ((91,630 non-compliant first meal periods * \$14.63 average premium) - \$3,157 in premiums paid). *Id.*

However, Elliott Auto contends that it maintained compliant written meal period policies throughout the Class Period, and provided legally-compliant meal periods in line with those

1 policies. Haines Decl., ¶ 18. Elliott Auto also argues that under *Brinker*, it was only required to
2 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id*; *see also*
3 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard and holding employers only have
4 to “provide” employees the opportunity to take meal periods). Elliott Auto also argues that any
5 short, missed, or late first meal periods were the result of lawful employee waiver or choice,
6 thereby precluding liability. *Id*. In light of these defenses, Plaintiff discounted the maximum
7 amount by 25% for risk of non-certification and an additional 30% for risk of being unsuccessful
8 on the merits or failure to recover the full amount sought, to arrive at an estimated realistic
9 exposure of approximately \$702,129. *Id*.

10 Second Meal Period Premium Wages: \$32,256

11 Based on Plaintiff’s analysis and extrapolation of employee timekeeping records produced
12 by Elliott Auto, there were approximately 6,784 instances of potential non-compliant second meal
13 periods reflected in the data. Haines Decl., ¶ 19. Thus, Plaintiff estimated the maximum potential
14 exposure for second meal period violations at approximately \$99,250 (6,784 non-compliant
15 second meal periods * \$14.63 average premium). *Id*.

16 With respect to second meal periods, Elliott Auto argues that second meal periods may
17 lawfully be waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code §
18 512, and that employees regularly did so. Haines Decl., ¶ 19. Elliott Auto also argues
19 individualized inquiries would be needed to determine why each meal period was taken late or
20 short or missed by each employee, and whether there was a valid waiver, making certification of
21 the meal period claim unlikely. *Id*. In light of these defenses, Plaintiff discounted the maximum
22 amount by 35% for risk of non-certification and an additional 50% for risk of being unsuccessful
23 on the merits or having exposure reduced in light of Elliott Auto’s waiver arguments, to arrive at
24 an estimated realistic exposure of approximately \$32,256. *Id*.

25 Rest Period Premium Wages: \$1,009,945

26 Plaintiff alleges that Elliott Auto failed to authorize and permit a third rest period when
27 Settlement Class members worked in excess of 10.0 hours and fails to authorize a rest period on
28 shifts of 3.50 – 3.99 hours, as Elliott Auto’s written rest period policy only provides for “[a] paid

1 10 minute break...for every 4 hours worked.” Haines Decl., ¶ 20. Plaintiff further alleges that
2 Elliott Auto failed to authorize and permit off-duty rest periods, because Elliott Auto required
3 employees to remain on company premises during rest periods at Elliott Auto’s Fullerton location.
4 *Id.*; *Augustus v. ABM Sec. Servs., Inc.*, 5 Cal.5th 257, 272 (2016) (during rest periods employers
5 must “relieve their employees of all...employer control...”). Based on Plaintiff’s expert’s
6 analysis of employee timekeeping records, there were approximately 156,002 shifts of 3.5 hours
7 or more worked by Settlement Class members at the Fullerton location, where Plaintiff contends
8 Settlement Class members were restricted to the company’s premises. Haines Decl., ¶ 20.
9 Assuming a rest period violation for each shift due to Elliott Auto’s unlawful on-premises rest
10 period policy, Plaintiff calculates Elliott Auto’s exposure for this theory of liability at
11 approximately \$2,282,309 (156,002 total “on-premises” shifts * \$14.63 average premium). *Id.*
12 Plaintiff’s analysis further revealed that there were approximately 6,784 shifts worked in excess
13 of 10.0 hours in which Settlement Class members were not authorized and permitted a third rest
14 period, and approximately 1,577 shifts worked between 3.50 – 3.99 hours. *Id.* Accordingly,
15 Plaintiff calculates Elliott Auto’s maximum exposure for this theory of liability at approximately
16 \$122,322 ((6,784 shifts * \$14.63 average premium) + 1,577 shifts * \$14.63 average premium)).
17 *Id.* Thus, Plaintiff estimated the maximum potential exposure for rest period violations at
18 approximately \$2,404,631 (\$2,282,309 + \$122,322). *Id.*

19 However, as discussed above, Elliott Auto argues that it always maintained and enforced
20 lawful rest period policies and practices during the Class Period, and never required employees
21 to remain on premises during rest periods at its Fullerton location. Haines Decl., ¶ 20. In fact,
22 Elliott Auto asserts that many employees would testify that they did, in fact, leave the premises
23 during rest periods. *Id.* Finally, Elliott Auto argues that individual inquiries would be required to
24 determine whether each employee was in fact allowed to leave the premises during each rest
25 period on each shift and/or whether they were denied a legally compliant rest period, precluding
26 class certification. *Id.* In light of these defenses, Plaintiff discounted the maximum amount by
27 30% to account for the risk of non-certification, and an additional 40% for risk of being
28 unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated

1 realistic exposure of approximately \$1,009,945. *Id.*

2 **Unpaid Wages Due to Unlawful Rounding: \$8,393**

3 Based on Plaintiff's review of employee timekeeping records, Plaintiff contends that
4 Elliott Auto's rounding practice resulted in approximately 2,049 net hours of unpaid wages.
5 Haines Decl., ¶ 21. Thus, and based upon the average rate of pay during the Class Period, Plaintiff
6 estimates that Elliott Auto's maximum exposure for this claim is approximately \$59,953 (2,049
7 hrs. * \$14.63 * 2 (liq. Damages per Labor Code § 1194.2)). *Id.*

8 As noted above, Elliott Auto raised several defenses to this claim, including its argument
9 that it utilized an even-handed timekeeping system that, on balance, resulted in employees being
10 paid for all hours actually worked; that some employees were overpaid as a result its rounding
11 practice; that employees did not perform any work before the scheduled start of their shifts; and
12 that Plaintiff would be unable to certify this claim given the individualized inquiries as to whether
13 employees were in fact underpaid, or overpaid for each workday in question. Haines Decl., ¶ 21.
14 Specifically, Plaintiff's analysis revealed that, at most, employees were underpaid due to rounding
15 on a minority of shifts (approximately 47.8%) and that overall, approximately 52.2% of shifts
16 were either neutral or rounded in favor of employees. *Id.* Based on these defenses, Plaintiff
17 discounted the maximum exposure by 60% to account for the risk of non-certification, and an
18 additional 65% to account for Elliott Auto's defenses on the merits, to arrive at an estimated
19 exposure of approximately \$8,393. *Id.*

20 **Failure to Reimburse Business Expenses: \$136,550**

21 Plaintiff alleges that Elliott Auto failed to reimburse Plaintiff and other Settlement Class
22 members for the use of their personal cellular phones for work activities, as required under Labor
23 Code § 2802(a). Haines Decl., ¶ 22. Based on Plaintiff's analysis and extrapolation of Elliot
24 Auto's records, Plaintiff estimates that Settlement Class members have worked a total of
25 approximately 21,848 months during the Class Period. *Id.* Using a conservative estimate of \$25
26 per month in reasonable work-related personal cellular phone use, Plaintiff calculates Elliott
27 Auto's maximum exposure for this claim at approximately \$546,200 (\$25/month * 21,848
28 months). *Id.*

1 As noted above, Elliott Auto maintains that Settlement Class members were not required
2 to use their personal cellular phones as part of their job. Haines Decl., ¶ 22. Elliott Auto points to
3 its “Factory Motor Parts Cell Phone Policy” and argues that it provides Settlement Class members
4 with company cellular phones which they can use for business purposes, and which are paid for
5 by Elliott Auto. *Id.* Elliott Auto further argues that any expenses incurred by Settlement Class
6 members were minimal, given the wide availability of low-cost cellular phone plans. *Id.* Elliott
7 Auto further argues that this claim would require individual inquiries into whether Settlement
8 Class members actually used their personal cellular phones for work purposes, how much expense
9 they incurred, whether they submitted a request for reimbursement, and the reasonableness of that
10 expense, thus precluding class certification. *Id.* Based on these defenses, Plaintiff discounted the
11 estimated maximum amount by 50% for risk of non-certification, and by an additional 50% to
12 account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive
13 at an estimated exposure of approximately \$136,550. *Id.*

14 Wage Statement Penalties: \$335,363

15 Plaintiff’s analysis reflected that there were approximately 26,829 wage statements issued
16 and 692 unique employees within the one-year liability window under Labor Code § 226. Haines
17 Decl., ¶ 24. In calculating Elliott Auto’s exposure, Plaintiff gave Elliott Auto the benefit of
18 assuming that Plaintiff could only obtain the “initial” wage statement violation rate of \$50 per
19 pay period, for a total of approximately \$1,341,450 (26,829 pay periods * \$50 “initial” penalty)
20 in potential penalties. *Id.*; *see also* Labor Code § 226(e) (providing for \$50 penalty for “initial”
21 violations); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (finding “initial”
22 violation rate applies for civil penalties until employer has been notified it is violating the Labor
23 Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2004) (citing
24 *Amaral* and applying “initial” \$50 penalty to all pay periods in calculating amount-in-controversy
25 for wage statement claim). However, in light of Elliott Auto’s argument that Settlement Class
26 members suffered no “injury,” that any violations were not “knowing and intentional,” and that
27 the wage statements always accurately reflected amounts paid to employees, Plaintiff discounted
28 the maximum exposure by 50% for risk of non-certification, and by an additional 50% for risks

on the merits, for an estimated realistic exposure of approximately \$335,363. Haines Decl., ¶ 24.

Waiting Time Penalties: \$327,225

Based on data produced by Elliott Auto, there are approximately 466 Settlement Class members who separated their employment from Elliott Auto at any time after April 6, 2017 and are therefore eligible for waiting time penalties. Haines Decl., ¶ 23. Plaintiff estimated an average waiting time penalty of approximately \$3,511 (\$14.63/hr * 8 hrs * 30 days), and calculated Elliott Auto's maximum waiting time penalty exposure at approximately \$1,636,126 (466 former employees * \$3,511 average waiting time penalty). *Id.*

However, Elliott Auto asserts it has strong, good-faith defenses to Plaintiff's underlying claims and thus, even if Plaintiff were able to recover on her underlying claims, she would not be able to recover waiting time penalties. Haines Decl., ¶ 23. Moreover, Plaintiff would need to overcome Elliott Auto's defenses, both as to class certification and as to the merits, to her underlying claims. *Id.* Based on these defenses, Plaintiff discounted Elliott Auto's maximum exposure by 50% for risk of non-certification, and by an additional 60% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately \$327,225. *Id.*

PAGA Civil Penalties: \$167,681

Plaintiff estimated a maximum PAGA exposure of \$2,682,900 (26,829 pay periods during PAGA Period * \$100 "initial" violation rate). Haines Decl., ¶ 25; *Amaral*, 163 Cal.App.4th at 1209 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from Plaintiff's underlying claims, each of which Elliott Auto vigorously disputes. Haines Decl., ¶ 25. The PAGA also grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Elliott Auto argued the Court would reduce penalties significantly given its good-faith defenses. *Id.* Thus, Plaintiff discounted the maximum figure by 75% for risk of losing on the merits or manageability issues and/or not recovering a PAGA penalty for each and every pay period, and by an additional 75% for risk of the Court reducing penalties, for an estimated exposure of approximately \$167,681. *Id.*; see also *Fleming*, 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%);

1 *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

2 Using these figures, Plaintiff estimated the realistic total recovery for the Settlement Class
3 would be approximately \$2,726,032. Haines Decl., ¶ 26. Thus, the proposed \$2,550,000 GSA
4 represents approximately 93.5% of Plaintiff’s reasonably forecasted recovery. *Id.* Preliminary
5 approval is appropriate since the Settlement will provide significant monetary relief to the
6 Settlement Class, which is consistent with what Plaintiff’s counsel believes could have been
7 recovered had the case proceeded through trial.

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

9 “Parties represented by competent counsel are better positioned than courts to produce a
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
11 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent counsel with
12 extensive experience litigating wage and hour class actions from both the plaintiff and defense
13 side and have been appointed class counsel in numerous cases with similar claims. Haines Decl.,
14 ¶¶ 3-8; Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6.

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

16 The Court can grant preliminary approval of the settlement and direct that notice be given
17 if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the
18 product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies.
19 *See 4 Newberg on Class Actions*, § 11:24-25 (4th Ed. 2013).

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

21 The Settlement reflects approximately 93.5% of the estimated recovery the Settlement
22 Class could realistically expect in light of the significant litigation risks, and will provide tangible,
23 monetary compensation for hotly disputed wage claims. Indeed, the percentage of the liability
24 exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g.,*
25 *Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007)
26 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th
27 Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
28 recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527

1 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to
2 only a fraction of the potential recovery that might be available to the Settlement Class members
3 at trial”). Plaintiff submits the Settlement is well within the range of possible approval, such that
4 notice should be provided to the Settlement Class. The Court will have the opportunity to again
5 assess the reasonableness of the Settlement after the Settlement Class members have had the
6 opportunity to opt-out or object.

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

8 The Settlement is a result of extensive discovery, two full-day mediations, and months of
9 negotiations. Thus, it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.
10 Plaintiff carefully vetted the claims at issue, and conducted detailed data analyses to arrive at
11 estimated potential damages. Haines Decl., ¶¶ 17-26. The Parties then worked collaboratively in
12 the following months to finalize the Settlement. *Id.*, at ¶ 14. This factor thus supports preliminary
13 approval.

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

15 The Settlement contains no obvious deficiencies. The Settlement will provide tangible
16 monetary relief to Settlement Class members. The amounts proposed for attorneys’ fees, costs,
17 settlement administration costs, LWDA payment, and enhancement payment are all reasonable.
18 Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary
19 approval.

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

21 The Settlement Class satisfies the criteria for certification because: 1) it is sufficiently
22 numerous; 2) common questions of law and fact predominate; 3) Plaintiff’s claims are typical;
23 and 4) Plaintiff and her counsel will adequately represent the Settlement Class. Cal. Code Civ.
24 Proc. § 382.

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

26 A class is “ascertainable” where members “may be readily identified without unreason-
27 able expense or time by reference to...[business] records.” *Sevidal v. Target*, 189 Cal.App.4th
28 905, 919 (2010). Here, the Settlement Class includes all current and former non-exempt

employees who worked for Elliott Auto in California during the Class Period. *See* Settlement, § 1. The Settlement Class can therefore be identified from Elliott Auto’s personnel and employment records. Elliott Auto represents that there are approximately 1,173 Settlement Class members (*see* Haines Decl., ¶ 16), making it impracticable to bring them all before the Court. Thus, numerosity is satisfied.

2. Common Issues of Law and Fact Predominate for Settlement Purposes

The focus on certification is what types of questions, “common or individual,” are likely to arise. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated primarily on, among other things, Elliott Auto’s uniform meal and rest period policies. These claims are commonly held proper for class certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701 (2013) (certifying meal & rest period claims).

3. The Claims of the Named Plaintiff Are Typical

Typicality is satisfied where a class representative’s claims are typical of those of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Plaintiff’s claims are typical of the Settlement Class. Plaintiff worked in California for Elliott Auto as a non-exempt employee during the Class Period, was subject to Elliott Auto’s wage and hour policies/practices, and was injured in the same manner as Settlement Class members. *See* Salas Decl., ¶¶ 2-3. Typicality is thus satisfied.

4. Plaintiff and Her Counsel Will Adequately Represent the Class

The adequacy inquiry examines conflicts of interest between a named plaintiff and the class she seeks to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement Class as there are no known conflicts between Plaintiff and Settlement Class members, and Plaintiff’s counsel have extensive relevant experience. *See* Haines Decl., ¶¶ 3-8.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

This Court should order distribution of the Class Notice by First Class U.S. Mail, using last known mailing addresses provided by Elliott Auto. *See* Settlement, § 10. This is the “best

1 notice practicable” under the circumstances because it provides “individual notice to all members
2 who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156,
3 173 (1974). Plaintiff proposes the settlement be administered by Phoenix Settlement
4 Administrators (“Phoenix”), an experienced settlement administrator. *See* Declaration of Jodey
5 Lawrence and exhibits. Settlement Class members’ addresses will be ascertainable through Elliott
6 Auto’s records, which Elliott Auto will provide to Phoenix within ten (10) business days after
7 entry of an order preliminarily approving this Settlement. *See* Settlement, § 10(A). Within ten
8 (10) business days of receipt of the Settlement Class members’ addresses, Phoenix will run the
9 addresses through the National Change of Address (“NCOA”) database (which provides updated
10 addresses for any individual who has moved in the previous four years and has notified the U.S.
11 Postal Service of a forwarding address) and mail the Class Notice to all Settlement Class
12 members. *See* Settlement, § 10(B). To the extent that any notices are returned as undeliverable,
13 Phoenix will perform a “skip trace” to track any Settlement Class member’s current mailing
14 address. *Id.*, at § 10(F).

15 The proposed Class Notice satisfies Cal. Rule of Court 3.766(d) because it advises
16 Settlement Class members of the basic contentions and denials of the parties, the key terms of the
17 Settlement, the 60-day deadline to opt-out or object, the recovery formula, and advises they will
18 be bound by the Settlement if they do not opt-out. *See* Haines Decl., Exhs. A-B to Exh. 1. The
19 Notice also notifies Settlement Class members of the final fairness hearing and provides Class
20 Counsel’s contact information. *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-
21 effective method of reaching Settlement Class members.

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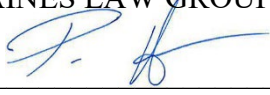
1 **V. CONCLUSION**

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

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6 Dated: April 13, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

7 By:



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