

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

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

EDITH GUTIERREZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

DELTRONIC CORPORATION, a
California corporation; and DOES 1 through
100,

Defendants.

CASE NO. 30-2020-01139890-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Glenda Sanders, Dept. CX101]*

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

Date: April 16, 2021
Time: 1:30 p.m.
Dept.: CX101

Action Filed: April 1, 2020
Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on April 16, 2021, at 1:30 p.m. in Department CX101 of the above-entitled Court, located at 751
3 W Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Edith Gutierrez ("Plaintiff"),
4 individually and on behalf of a class of similarly situated individuals, will and hereby does move
5 this Court for:

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

9 **Settlement Class** – all current and former non-exempt employees who
10 worked for Defendant Deltronic Corporation ("Deltronic") in
11 California from April 1, 2016 to February 15, 2021 (the "Class
12 Period").

- 13 3. Preliminary appointment of Plaintiff Edith Gutierrez as Class Representative;
- 14 4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, and Alexandra R.
15 McIntosh of Haines Law Group, APC as Class Counsel;
- 16 5. The scheduling of a hearing to consider whether the Settlement should be finally
17 approved and to award amounts for the Class Representative enhancement payment,
18 Settlement Administrator costs, the PAGA payment to the Labor and Workforce
19 Development Agency, as well as attorneys' fees and costs to Class Counsel;
- 20 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
21 Administrator for mailing notices; and
- 22 7. Approval of the proposed Class Notice and entry of the proposed Order instructing the
23 Class Notice to be disseminated to the proposed Settlement Class as provided in the
24 Settlement.

25 ///

26 ///

27 ///

1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the declarations of Fletcher W. Schmidt, Paul K. Haines, Alexandra R. McIntosh,
3 Edith Gutierrez, Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached
4 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
5 evidence or argument presented at the time of hearing.

6
7 Dated: March 16, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC

8
9 By: _____


Fletcher W. Schmidt
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Edith Gutierrez (“Plaintiff”) filed this putative class action (the “Lawsuit”) on
4 behalf of all current and former non-exempt employees who worked for Defendant Deltronic
5 Corporation (“Deltronic”) in California from April 1, 2016 to February 15, 2021 (the “Class
6 Period”) (hereinafter Plaintiff and Deltronic will be referred to collectively as the “Parties”).
7 Plaintiff alleges that Deltronic: (1) failed to provide all legally-compliant meal periods; (2) failed
8 to authorize and permit all legally-required rest periods; (3) failed to issue accurate and itemized
9 wage statements; (4) failed to pay all final wages to employees upon separation of employment;
10 (5) engaged in unfair, unlawful business practices; and (6) is liable for civil penalties under the
11 Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”).

12 Through this Motion, Plaintiff respectfully requests that this Court preliminarily approve
13 this non-reversionary class action settlement (“Settlement”),¹ on behalf of the following
14 Settlement Class:

15 **Settlement Class** – all current and former non-exempt employees who worked
16 for Deltronic in California from April 1, 2016 to February 15, 2021.

17 Based upon the data received from Deltronic, there are approximately 117 potential
18 Settlement Class members who worked approximately 21,636 combined workweeks during the
19 Class Period. The Settlement calls for Deltronic to pay a Maximum Settlement Amount (“MSA”) of \$900,000.00. This represents a significant result for Settlement Class members who will be
20 agreeing to a release of only those claims that were actually asserted, or which could have been
21 asserted based on the same set of operative facts alleged in the Lawsuit. After deductions for
22 Plaintiff’s enhancement payment, settlement administrator costs, the PAGA payment to the Labor
23 & Workforce Development Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel,
24

25
26
27 ¹ The Stipulation of Settlement (“Settlement Agreement”) and the proposed Notice Packet (which is
28 comprised of the Notice of Class Action Settlement (“Class Notice”) and Notice of Settlement Award (“Dispute Form”)) are attached as Exhibits 1 and 2, respectively, to the Declaration of Fletcher W. Schmidt filed concurrently herewith.

1 the remaining amount (the “Net Settlement Amount”) of approximately \$522,500.00 will be
2 distributed to the Settlement Class. Significantly, Settlement Class members do not need to file a
3 claim form in order to receive a Settlement Award, and all Settlement Class members who do not
4 opt-out will automatically receive average payments of approximately **\$4,465.81**.

5 Prior to reaching this proposed Settlement, Deltronic provided Plaintiff with timekeeping
6 and payroll data for the entire putative class, which Plaintiff’s counsel and a retained expert used
7 to construct a comprehensive damages model. Deltronic also produced relevant policies in effect
8 during the Class Period. After extensive legal research and analysis along with a comprehensive
9 review of the data performed by Plaintiff and her expert, the Parties participated in a mediation
10 session with Steve G. Mehta, Esq., a respected wage and hour class action mediator, which
11 resulted in a settlement. The long-form Settlement Agreement was drafted and executed over the
12 following months and is now submitted to this Court for approval.

13 This proposed Settlement is well within the range of possible approval in light of the
14 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
15 and the substantial monetary benefits to the Settlement Class. For the reasons discussed herein,
16 Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

17 **II. SUMMARY OF THE LITIGATION**

18 Deltronic operates a manufacturing business that designs and manufactures measuring
19 instruments for the aerospace, aviation, and medical industries, among others. Declaration of
20 Fletcher W. Schmidt (“Schmidt Decl.”), ¶ 8. Plaintiff, like all other members of the Settlement
21 Class, worked for Deltronic as a non-exempt employee during the Class Period. *Id.* Plaintiff’s
22 theories of liability, and Deltronic’s defenses to each are discussed below.

23 **A. PLAINTIFF’S CLAIMS AND DELTRONIC’S DEFENSES**

24 Plaintiff alleges that Deltronic failed to provide employees with full, uninterrupted 30-
25 minute meal periods before the end of the fifth hour of work and failed to provide second meal
26 periods when employees worked in excess of 10.0 hours. *See Brinker Restaurant Corp. v.*
27 *Superior Court* (2012) 53 Cal.4th 1004, 1049 (holding that the applicable wage orders and the
28 California Labor Code require employers to provide a first meal period before the end of the fifth

hour of work and a second meal period “after no more than 10 hours of work”); Schmidt Decl., ¶ 9. Additionally, unless an employee leaves the premises, Deltronic does not require employees to clock out for meal periods and instead relies on an automatic deduction of 30-minutes from hours worked to account for purported meal periods. Schmidt Decl., ¶ 9. Plaintiff alleges that this practice is unlawful as it deducts time worked in instances when employees are not provided with a full, uninterrupted 30-minute meal period. *Id.* In response, Deltronic contends that it has always provided employees with legally-compliant first and second meal periods and that any meal periods that did not meet that standard were solely the result of employee choice (not Deltronic’s policy/practice). *Id.* Deltronic further argues that under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, which Deltronic contends it has always done. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard); Schmidt Decl., ¶ 10. Deltronic maintains that employees voluntarily waived their second meal period when they worked shifts in excess of 10.0 hours (but less than 12.0 hours). Schmidt Decl., ¶ 10. Finally, Deltronic contends that Plaintiff’s meal period claim is not suited for class certification as individual inquiries would be required to assess which employees received non-compliant meal periods or missed second meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular individual recorded a non-compliant meal period or missed a meal period on a particular shift. *Id.*

Plaintiff alleges that Deltronic failed to authorize and permit rest periods for every four hours worked, or major fraction thereof, as a result of a policy that only authorized a single 20-minute rest period per shift, regardless of shift length. *See Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1040 (holding that departure from the preferred rest period schedule of one 10-minute rest break before the meal period and another 10-minute break after the meal period is permissible only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a material burden on the employer); Schmidt Decl., ¶ 11. Deltronic argues that its rest period policies are legally-compliant and meet the standard set in *Rodriguez v. E.M.E., Inc.* Schmidt Decl., ¶ 11. Specifically, Deltronic maintains that the combined rest period practice was implemented due to employee preference and it operates to alleviate the burden of shutting

1 down Deltronic’s production multiple times in the day for multiple rest periods. *Id.*

2 As a result of these alleged substantive violations, Plaintiff contends that Deltronic is
3 liable for derivate wage statement violations, waiting time liability for its failure to pay
4 employees all final wages upon their separation of employment, and civil penalties under PAGA,
5 Labor Code section 2698 *et seq.* Schmidt Decl., ¶ 12. Plaintiff further alleges that Deltronic
6 issued facially deficient wage statements that failed to include the rates of pay for overtime
7 compensation and combined regular and overtime wages into a single lump sum. *Id.*

8 In response, Deltronic argues that the alleged wage statement violations were not
9 “knowing and intentional,” and that Plaintiff could not show she “suffer[ed] injury,” as required
10 by Labor Code section 226(e) for imposition of penalties. Deltronic also contends that it
11 possesses strong, good faith defense to Plaintiff’s underlying claims, thus precluding recovery
12 of waiting time penalties (which are only available for the “willful” failure to pay wages). *See*
13 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude
14 imposition of waiting time penalties under Section 203...A good-faith dispute that any wages
15 are due occurs when an employer presents a defense, based in law or fact which, if successful,
16 would preclude any recovery on the part of the employee.”); Schmidt Decl., ¶ 16. Deltronic
17 maintains that not all former employees (if any) experienced an underpayment of wages, thus
18 Plaintiff’s exposure analysis is overstated. *Id.* Deltronic also contends that Plaintiff cannot meet
19 the numerosity requirement for any waiting time penalty claim as only 14 employees separated
20 their employment during the Class Period. *Id.* Deltronic also contends that Plaintiff’s meal and
21 rest period claims cannot support a claim for waiting time penalties. *See Ling v. P.F. Chang's*
22 *China Bistro, Inc.* (2016) 245 Cal.App.4th 1242, 1261 (meal and rest period premium pay
23 compensates for the non-provision of meal and rest periods, not for the ‘nonpayment of wages’
24 as required by Labor Code § 203); Schmidt Decl., ¶ 16. Additionally, since Plaintiff’s PAGA
25 claim is derivative of the underlying wage claims, Deltronic asserts that the PAGA claim will
26 fail with those claims. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
27 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”);
28 Schmidt Decl., ¶ 26. Deltronic also maintains that given its good faith defenses, this Court would

1 exercise its discretion to substantially reduce any PAGA penalties if it were to find Deltronic
2 liable for any of Plaintiff's claims. Schmidt Decl., ¶ 16.

3 **B. DISCOVERY AND MEDIATION**

4 In connection with mediation, Deltronic provided Plaintiff with timekeeping and payroll
5 data for the entire putative class. Schmidt Decl., ¶ 18. Deltronic also provided relevant policies
6 and procedures in effect during the Class Period along with other relevant data necessary to
7 perform a class-wide exposure analysis. *Id.* Plaintiff, with the help of her retained expert,
8 conducted an analysis of this data and created a comprehensive damages model to calculate the
9 likely exposure that Deltronic faced on each claim. *Id.* Deltronic also produced multiple years-
10 worth of financial records, which revealed, *inter alia*, a dramatic drop in revenue as a result of
11 COVID-19. *Id.*

12 On November 13, 2020, the Parties participated in a mediation with Steve G. Mehta, Esq.,
13 a highly respected wage and hour class action mediator. Schmidt Decl., ¶ 19. During mediation,
14 the Parties exchanged divergent views on Deltronic's liability and exposure valuations, their legal
15 positions, and the likelihood of certification of Plaintiff's claims. *Id.* With the help of Mr. Mehta,
16 the Parties reached a class-wide resolution at the conclusion of the mediation. *Id.*

17 **III. THE PROPOSED SETTLEMENT**

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

19 If the Court preliminarily approves this settlement, Deltronic will pay a Maximum
20 Settlement Amount ("MSA") of \$900,000.00. Settlement § 3. This Settlement is non-reversionary
21 and Settlement Class members will automatically receive their Individual Settlement Payment
22 unless they affirmatively opt-out of the Settlement. *Id.*, § 4.

23 Deltronic will fund the MSA within 30 calendar days after the Court signs an order
24 granting final approval of the Settlement. Settlement § 3B.

25 The monetary terms of the Settlement are as follows:

26	Maximum Settlement Amount:	\$900,000.00
27	Minus Court-approved attorneys' fees (1/3):	\$300,000.00
	Minus Court-approved attorneys' costs (up to):	\$25,000.00
28	Minus Court-approved enhancement payment (up to):	\$5,000.00

Minus Settlement Administrator costs (up to):	\$10,000.00
Minus PAGA payment to the LWDA:	\$37,500.00

Net Settlement Amount: \$522,500.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, enhancement payment, costs of settlement administration, and the PAGA payment to the LWDA, the Settlement requires Deltronic to pay a Net Settlement Amount of approximately \$522,500.00 to the Settlement Class. *See* Settlement § 4A.

Deltronic's records indicate that there are approximately 117 total Settlement Class members who worked a combined 21,636 workweeks during the Class Period. Schmidt Decl., ¶ 20; Settlement § 3E. Based on the allocations of the Net Settlement Amount, participating employees will receive, on average, a payment of approximately \$4,465.81. Schmidt Decl., ¶ 20. Settlement Class members will have 60 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement § 9D. Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Deltronic that were asserted or could have been asserted based on the operative facts alleged in the Lawsuit during the time period between April 1, 2016 and February 15, 2021. *Id.*, § 2.

2. Attorneys' Fees, Costs, and Representative Enhancement Payment

As part of the Settlement, Plaintiff will apply for an enhancement payment at the time of seeking final approval of the Settlement in the total amount of \$5,000.00 for her service to the Settlement Class and her general release of all claims (known or unknown) against Deltronic. *See* Settlement §§ 2B, 6; Schmidt Decl., ¶ 21. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested enhancement payment is intended to recognize the significant benefits conferred upon the Settlement Class due to the time and effort that Plaintiff expended on behalf of the Settlement Class, including providing factual information and documents to her attorneys, identifying

1 potential witnesses, and participating in in-person and telephonic meetings with her attorneys to
2 discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff
3 undertook by agreeing to serve as the named plaintiff in this case, as well as the fact that Plaintiff
4 agreed to a general release of all claims subject to a waiver of California Civil Code section 1542.
5 Settlement § 2B; Schmidt Decl., ¶ 21.

6 Class Counsel will also apply for an attorneys' fee award of \$300,000.00 (one-third of the
7 MSA), and up to \$25,000.00 in verified costs. *See* Settlement, §§ 3C(3), 5; Schmidt Decl., ¶ 22.
8 Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky,
9 expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel incurred
10 substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims,
11 conducting legal research and analysis, reviewing documents and data produced by Deltronic,
12 building a comprehensive damages model, preparing for and attending mediation, negotiating and
13 preparing the long-form Settlement Agreement, preparing this motion for preliminary approval,
14 and otherwise litigating the case. Schmidt Decl., ¶ 22. Class Counsel will also expend future
15 attorney time in attending the hearing on this Motion, overseeing the Notice process, drafting the
16 Final Approval Motion and supporting documents, and attending the Final Approval hearing,
17 among other tasks, such as fielding questions from Settlement Class members. *Id.*

18 Both California and federal courts have recognized that an appropriate method for
19 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
20 as a result of the settlement. *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506 ("the
21 percentage of fund method survives in California class action cases..."); *Wershba v. Apple*
22 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery"
23 and "lodestar/multiplier" methods). Historically, courts have awarded percentage fees in the range
24 of 20% to 50%, depending on the circumstances of the case. *See 4 Newberg on Class Actions* §
25 14.6 (4th Ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of a
26 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
27 common fund in order to assure that the fees do not consume a disproportionate part of the
28 recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

1 Class Counsel submits that the request for attorneys’ fees is reasonable when viewed as
2 an overall percentage of the settlement (one-third) in light of the substantial risks, including the
3 possibility that the Lawsuit could not move forward as a class action, as well as the significant
4 work undertaken, the extremely positive results obtained for the class, and the efficiency with
5 which the Parties conducted the litigation. Should the Court grant preliminary approval, Class
6 Counsel will seek an award of attorneys’ fees and verified litigation costs at the time of seeking
7 final approval of the Settlement.

8 **IV. ARGUMENT**

9 **A. PRELIMINARY APPROVAL IS WARRANTED**

10 California Rule of Court 3.769 conditions the settlement of a class action on court
11 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
12 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
13 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine “that the
14 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir.
15 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
16 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
17 preferred means of dispute resolution, particularly in complex class action litigation. *See In re*
18 *Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a
19 proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not
20 the product of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150
21 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was
22 negotiated at arm’s length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168
23 Cal.App.4th 116, 130.

24 **1. Standard for Preliminary Approval**

25 To make a fairness determination, the Court should consider several factors, including
26 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
27 litigation, the risk of maintaining class action status through trial, the amount offered in
28 settlement, the extent of discovery completed and the stage of the proceedings, [and] the

1 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
2 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
3 factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245.
4 As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the
5 overall balance of factors in this case.

6 **i. The Strength of Plaintiff’s Case**

7 Class Counsel carefully vetted the claims at issue, reviewed timekeeping and payroll
8 records as well as relevant policy documents, and conducted a detailed analysis of that data to
9 create a comprehensive damages model for Deltronic’s liability. *See* Schmidt Decl., ¶¶ 9-18.
10 Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges
11 that there were substantial risks and uncertainty in proceeding with class certification and trial.
12 As explained in detail in section II.B., *supra*, Deltronic presented numerous defenses to Plaintiff’s
13 claims, both on the merits and with respect to class certification. Although Plaintiff was prepared
14 to litigate these claims through class certification and, ultimately, through trial, given the amount
15 offered in settlement, Plaintiff predicted that it was unlikely that further litigation would result in
16 a substantially more beneficial result for the Settlement Class. Thus, this factor supports
17 preliminary approval of the Settlement.

18 **ii. Risk, Expense, Complexity, and Duration of Further Litigation**

19 Although the Parties engaged in substantial informal discovery and information exchange
20 prior to mediation, the Parties had agreed to refrain from engaging in formal written and
21 deposition discovery until after exhausting their settlement efforts at mediation. *See* Schmidt
22 Decl., ¶¶ 17-18. Therefore, absent settlement, the Parties would need to expend substantial time
23 and resources to complete formal written and deposition discovery and prepare the case for class
24 certification and trial. *Id.* There was also a risk that Deltronic would engage in a *Pick-up-Stix*
25 campaign to significantly reduce the size of the putative class for a fraction of what Class
26 Members are receiving through this Settlement. *Id.*; *see Chindarah v. Pick Up Stix, Inc.* (2009)
27 171 Cal.App.4th 796. According to Deltronic’s data, approximately 88% of the putative Class
28 Members are still employed by Deltronic. Schmidt Decl., ¶ 17. Therefore, absent the Settlement,

1 there was a serious risk that Plaintiff would be unable to move forward on a class-wide basis, or
2 that a significantly smaller class would exist than that which is currently before this Court for
3 approval. *Id.* Thus, this factor supports preliminary approval.

4 **iii. Risk of Maintaining Class Action Status**

5 At the time of the Parties' proposed Settlement, Plaintiff had not yet filed a motion for
6 class certification. Given Deltronic's numerous arguments that individualized issues would
7 predominate Plaintiff's claims (thereby precluding class certification), there was a risk that there
8 would not be a certified class at the time of trial. Thus, this factor supports preliminary approval
9 of the Settlement.

10 **iv. Amount Offered in Settlement Given Realistic Value of Claims**

11 This proposed Settlement provides a fair and reasonable monetary recovery for the
12 Settlement Class in the face of disputed claims. After analyzing the data provided by Deltronic
13 prior to mediation, Plaintiff prepared a class-wide exposure analysis and forecasted the Settlement
14 Class' expected recovery for each claim as follows:

15 **Meal Period Violations: \$428,707**

16 Plaintiff alleges that Deltronic failed to provide full, 30-minute first meal periods
17 commencing before the end of the fifth hour of work as well as second meal periods to employees
18 who worked shifts in excess of 10.0 hours. *See* Schmidt Decl., ¶ 9. Looking solely at shifts with
19 a recorded meal period (ie. shifts where employees left the premises), Plaintiff's expert
20 determined that approximately 73% of those shifts reflected a first meal period violation (due to
21 a short or untimely first meal period). *Id.* Applying the 73% violation rate across all auto-deducted
22 shifts, Plaintiff estimated that employees experienced 100,923 first meal period violations during
23 the relevant time period. *Id.* Additionally, Plaintiff's expert determined that at least 18,391 shifts
24 in excess of 10.0 hours were not provided with a second meal period at all. *Id.* Plaintiff therefore
25 estimated the potential damages on this claim at \$2,041,463 (calculated as follows: 100,923 first
26 meal violations + 18,391 second meal violations x \$17.11 average meal premium). *Id.* Deltronic
27 argues that there are significant issues with Plaintiff's meal period claim, both as to the merits
28 and as to certification. As to the merits, Deltronic maintains that employees voluntarily waived

1 their second meal period when they worked a shift in excess of 10.0 hours but less than 12.0
2 hours. *Id.*, ¶ 10. Deltronic also argues that it provides all required meal periods to employees. *Id.*
3 Moreover, Deltronic argues that Plaintiff would be unable to collect more than one meal period
4 penalty per shift, meaning that many of the second meal period violations were redundant and
5 Plaintiff's exposure was overstated. *Id.* Deltronic also contends Plaintiff's meal period claim is
6 not suited for class certification, since individual inquiries would be required to assess which
7 employees were provided non-compliant meal periods or missed meal periods, whether second
8 meal periods were waived, and the reasons why a particular employee recorded a non-compliant
9 meal period or missed a meal period on a particular shift. *Id.* The fact that Deltronic did not record
10 meal periods for a majority of this time period posed further manageability obstacles. *Id.* Given
11 these potential defenses, Plaintiff discounted Deltronic maximum exposure by 40% for the risk
12 of non-certification and 65% for the risk of being unsuccessful on the merits or obtaining reduced
13 damages, to arrive at an estimated exposure of \$428,707. *Id.*, ¶ 9.

14 **Rest Period Violations: \$496,746**

15 Plaintiff alleges that Deltronic maintains an unlawful combined rest period policy which
16 resulted in employees not being authorized and permitted to take rest periods for every four hours
17 worked, or major fraction thereof. *See* Schmidt Decl., ¶ 11. Additionally, Plaintiff contends that
18 Deltronic failed to authorize and permit third rest periods for any shift in excess of 10.0 hours. *Id.*
19 Plaintiff's expert determined that there were approximately 138,250 shifts in excess of 6.0 hours
20 worked during the relevant time period. *Id.* Plaintiff therefore calculates Deltronic's maximum
21 exposure for rest period violations at \$2,365,458 (calculated as follows: 138,250 shifts in excess
22 of 6.0 hours x \$17.11 average rest premium). *Id.* Deltronic contends it authorized employees to
23 take all required rest periods and argues that it did not discourage or impede employees from
24 taking rest periods in practice. *Id.* Deltronic also contends that employees prefer the combined
25 rest period policy as it allows employees to make the most use of their break time during the
26 workday and it alleviates the burden of shutting down or finding coverage for machines multiple
27 times a day. *Id.* Deltronic further argues that Plaintiff's rest period claim is inherently unsuited
28 for class treatment as it would require individualized inquiries to determine whether a certain rest

period was denied on a given shift, and whether a missed rest period was the result of individual employee choice, which would devolve into an unmanageable series of mini-trials, particularly since rest periods were not recorded and there was no other common evidence of when rest periods were taken. *Id.* Plaintiff discounted Deltronic's maximum exposure by 40% for risk of non-certification and 65% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$496,746. *Id.*

Waiting Time Penalties: Nominal Value

According to the data produced by Deltronic, there were only 8 putative class members who separated their employment with Deltronic during the relevant time period. Schmidt Decl., ¶ 13. Plaintiff therefore calculated Deltronic's maximum waiting time penalty exposure at \$32,851 (8 former employees x \$17.11 average hourly rate x 8 hours per day x 30 days). *Id.* Deltronic maintains that waiting time penalties are not appropriate to the extent they are derivative of meal and rest period claims as these claims cannot support such penalties. *See Ling, supra*, 245 Cal.App.4th at 1261 (holding that meal and rest period premium pay compensates for the non-provision of meal and rest periods, not for the 'nonpayment of wages' as required by Labor Code section 203); Schmidt Decl., ¶¶ 13, 16. Deltronic also argues it attempted to pay its employees all final wages owed in good faith upon their separation, therefore precluding a finding of wilfulness which is necessary to obtain waiting time penalties under 8 Cal. Code Regs. section 13520. Schmidt Decl., ¶¶ 13, 16. Furthermore, given that there were only 8 individuals with waiting time standing, there was a risk of non-certification due to lack of numerosity. *Id.* Given these strong defenses as well as the limited number of former employees, Plaintiff attributed only nominal value to this claim. *Id.*

Wage Statement Violations: \$144,200

According to the data produced by Deltronic, there were 8,549 wage statements issued to approximately 103 putative class members during the relevant time period. Schmidt Decl., ¶ 14. As Labor Code § 226(e)(1) sets a ceiling on wage statement exposure at \$4,000 per employee, Plaintiff calculated Deltronic's maximum wage statement exposure at \$412,000 (103 employees x \$4,000 wage statement penalty cap). *Id.* Deltronic argues that meal and rest period violations

cannot support derivative wage statement penalties. *Naranjo v. Spectrum Security Services, Inc.* (Cal. Ct. App., Oct. 10, 2019, No. B256232) 2019 WL 5078721, at *16. Deltronic also argues that employees could not show they “suffer[ed] injury” as a result of these violations, as required by Labor Code § 226(e). Schmidt Decl., ¶¶ 14,16. In light of all of these arguments, as well as the potential failure to prove that the violations were “knowing and intentional” as required by Labor Code § 226(e), Plaintiff discounted the value of this claim by 30% for the risk of non-certification of the underlying claims and discounted 50% for a risk of being unsuccessful on the merits, for an estimated exposure of \$144,200. *Id.*, ¶ 14.

PAGA Penalties: \$106,863

The success of Plaintiff’s PAGA claim is wholly dependent upon the success of his underlying claims occurring within the one-year statute of limitations applicable to the PAGA. Schmidt Decl., ¶ 15. Assuming that Plaintiff could prove at least one underlying Labor Code violation in each pay period within the PAGA period, Plaintiff estimates Deltronic’s maximum PAGA exposure at \$854,900 (calculated from 8,549 pay periods at \$100 per violation). Schmidt Decl., ¶ 15; *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derived from the underlying wage and hour violations discussed above, which Deltronic disputes. *See e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. Schmidt Decl., ¶ 15; *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to \$5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Plaintiff therefore discounted the maximum figure by 50% for the risk of being unable to proceed on a representative basis and an additional 75% to account for the likelihood of this Court reducing penalties, to arrive at an

1 estimated exposure of \$106,863. Schmidt Decl., ¶ 15.

2 Using these estimated figures for each of the claims described above, Plaintiff predicts
3 that a possible recovery for the Settlement Class would be approximately \$1,176,516. Schmidt
4 Decl., ¶ 17. The proposed recovery to the Settlement Class of \$900,000 represents approximately
5 76.5% of Plaintiff’s projected potential recovery, while avoiding the further expense and serious
6 risk of proceeding towards class certification and trial. *Id.* Taking into account the risk of non-
7 certification, including the risk that Deltronic would engage in a *Pick-Up Stix* campaign to destroy
8 numerosity, the risk of a failure to prevail on the merits, and the Court’s power to reduce the civil
9 penalties, the proposed Settlement falls well within the realm of being fair, reasonable, and
10 adequate. *See e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at
11 *9 (preliminarily approving wage and hour class action settlement, stating, “[a]lthough 15%
12 represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that
13 figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s
14 claims.”). Preliminary approval is appropriate since the Settlement will provide significant
15 monetary relief to Settlement Class members without the uncertainty, delay, and additional
16 expense of further litigation.

17 **v. The Experience and Views of Counsel**

18 “Parties represented by competent counsel are better positioned than courts to produce a
19 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
20 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented
21 by competent and experienced counsel who possess extensive experience litigating wage and hour
22 class actions from both the plaintiff and defense side and have been appointed as class counsel in
23 numerous cases alleging similar claims. *See* Schmidt Decl., ¶¶ 2-6; Declaration of Paul K. Haines
24 (“Haines Decl.”), ¶¶ 2-8. Class Counsel, with the help of their expert, conducted an extensive
25 review of Deltronic’s records produced for mediation as well as relevant policies in effect during
26 the Class Period and drew on their extensive experience in similar cases to assess the strengths
27 and weaknesses of Plaintiff’s case. *See* Schmidt Decl., ¶ 18. The Settlement was also reached
28 with the input and assistance of Steven G. Mehta, Esq., an experienced and highly respected

1 neutral wage and hour class action mediator. *Id.*, ¶ 19. This factor strongly supports preliminary
2 approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

3 **2. The Preliminary Approval Standard is Met**

4 At this stage, the Court can grant preliminary approval of the Settlement and direct that
5 the Class Notice be given if the proposed Settlement: (1) falls within the range of possible
6 approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and
7 (3) has no obvious deficiencies. *See Manual for Complex Litigation* § 30.41(3rd Ed. 1995); 4
8 *Newberg on Class Actions* § 11:24-25 (4th Ed. 2013).

9 **a. The Settlement is Within the Range of Possible Approval**

10 The proposed Settlement reflects an excellent recovery for the Settlement Class members
11 in light of the significant risks of litigation. The proposed Settlement will provide substantial
12 compensation for contested claims and derivative penalties, and the overall average payment of
13 \$4,465.81 greatly exceeds the average payment achieved in other wage and hour class action
14 settlements.² Thus, Plaintiff submits that the proposed Settlement is within the range of possible
15 approval, such that notice should be provided to the Settlement Class members so they can
16 consider the Settlement. The Court will have the opportunity to again assess the reasonableness
17 of the Settlement after the Settlement Class members have had the opportunity to opt-out or
18 object.

19 **b. The Settlement Resulted from Serious, Informed, and Non-Collusive**
20 **Negotiations**

21 This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar,*
22 *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial information,
23 including timekeeping and payroll data which was analyzed by Plaintiff's counsel and an expert

24
25 ² *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9,
26 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case
27 No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and
28 *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal.
June 11, 2012) ("Class Members will receive an average of approximately 198.70 . . . [T]his is a substantial
recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar
actions where the gross recoveries per class member were less than \$90 . . . [T]he Court finds that the
results achieved are good").

1 with a Ph.D. in economics, arm's length negotiations by counsel; mediation before an experienced
2 wage and hour class action mediator; and additional months of finalizing the terms of the long-
3 form Settlement Agreement. *See* Schmidt Decl., ¶¶ 18-19. Thus, the proposed settlement is
4 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130.

5 **c. The Settlement is Devoid of Obvious Deficiencies**

6 The Settlement will provide substantial tangible monetary relief to Settlement Class
7 members. Moreover, the amounts proposed for Plaintiff's enhancement payment, settlement
8 administration costs, attorneys' fees and costs to Class Counsel, and the PAGA payment to the
9 LWDA are all reasonable and appropriate. Because the Settlement is devoid of obvious
10 deficiencies, this final factor supports preliminary approval.

11 **B. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT**
12 **CLASS**

13 The proposed Settlement Class satisfies the criteria for certification of a settlement class
14 under California law because: (1) the individuals in the Settlement Class are so numerous that
15 joinder would be impractical; (2) common questions of law and fact predominate over individual
16 questions such that class certification is the most efficient and desirable way to maintain this
17 litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class members;
18 and (4) Plaintiff and his counsel will fairly and adequately represent the interests of the absent
19 Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

20 **1. The Proposed Class is Ascertainable and Numerous**

21 A class is "ascertainable" where the members "may be readily identified without
22 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
23 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
24 Class is defined as all current and former non-exempt employees who worked for Deltronic in
25 California from April 1, 2016 to February 15, 2021. According to Deltronic's records, the
26 Settlement Class consists of approximately 117 individuals, rendering it impracticable to gather
27 all the Settlement Class members and bring them before the Court. *See* Schmidt Decl., ¶ 20. Thus,
28 the proposed Settlement Class satisfies the numerosity requirement.

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

2 The focus in a certification dispute is not on the merits of the case, but rather on what
3 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*
4 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff’s claims are predicated
5 on uniform company policies, principally revolving around Deltronic’s failure to provide all meal
6 periods and failure to authorize and permit all rest periods. These types of claims are commonly
7 held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34 (“The
8 theory of liability—that Brinker has a uniform policy, and that that policy...allegedly violates the
9 law—is by its nature a common question eminently suited for class treatment.”); *Faulkinbury v.*
10 *Boyd & Assoc., Inc.* (2013) 216 Cal.App.4th 220, 240 (certifying meal and rest period claims);
11 *Bradley v. Networkers Int’l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying meal and rest
12 period claims); *Bluford, supra*, 216 Cal.App.4th at 871 (reversing denial for certification of rest
13 period claim).

14 **3. The Claims of the Named Plaintiff Are Typical**

15 The typicality requirement is satisfied where class representatives have claims that are
16 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
17 Cal.App.3d 1341, 1347. Here, Plaintiff’s claims are typical of those held by the members of the
18 proposed Settlement Class. Like other Settlement Class members, Plaintiff was employed by
19 Deltronic in California during the Class Period. *See* Schmidt Decl., ¶ 8; Declaration of Edith
20 Gutierrez (“Gutierrez Decl.”), ¶ 2. Plaintiff was not provided all meal periods and was not
21 authorized and permitted to take all rest periods. Gutierrez Decl., ¶ 2. Plaintiff was therefore
22 impacted by the same challenged policies that allegedly injured the Settlement Class as a whole
23 and were subject to the same defenses forwarded by Deltronic as to the Settlement Class and is
24 therefore typical.

25 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
26 **Class**

27 The adequacy of representation requirement examines conflicts of interest between named
28 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
Developmental Services (2007)155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will

adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the Settlement Class he seeks to represent, and Plaintiff possesses claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Schmidt Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8; Declaration of Alexandra R. McIntosh ("McIntosh Decl."), ¶¶ 2-4.

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

This Court should order distribution of the proposed Class Notice to the Settlement Class by first class mail, postage prepaid, using the last known mailing address information provided by Deltronic. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the settlement be administered by Phoenix Settlement Administrators, an experienced class action settlement administrator. *See* Declaration of Jodey Lawrence and attached exhibits. Settlement Class members' addresses will be ascertainable through Deltronic's personnel and payroll records, which Deltronic will provide to Phoenix within 10 business days after preliminary approval of the Settlement. *See* Settlement § 9A. To the extent that any notices are returned, Phoenix will conduct a skip traces to obtain current address information. *Id.* § 9B. The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises putative Settlement Class members of the nature of the claims, basic contentions and denials of the parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class Member, and advises them that they will be bound by the terms of the Settlement if they do not request exclusion. *See* Schmidt Decl., Ex. 2 (Notice Packet). The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provide the Settlement Class contact information for Class Counsel and advise Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*

1 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
2 cost-effective method of reaching Settlement Class members.

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

4 Finally, this Court should set a hearing for final approval of the Settlement on a date
5 appropriately scheduled to follow the deadline by which Settlement Class members must file
6 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

7 **V. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
9 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
10 proposed order submitted concurrently herewith.

11
12 Dated: March 16, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

13
14 By:



Fletcher W. Schmidt
Attorneys for Plaintiff