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

ULISSES LOPEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

GOOD-WEST RUBBER CORP., a California
corporation; GOODWEST RUBBER
LININGS INCORPORATED, a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: CIVDS2011219

CLASS ACTION

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

Date: August 9, 2021

Time: 10:00 a.m.

Dept.: S-26

Action Filed: June 23, 2020

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on August 9, 2021 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department S-26 of the above-entitled Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Ulisses Lopez (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement;
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:

All current and former non-exempt employees hired directly by Defendant Good-West Rubber Corp. (i.e., not through a staffing company) and who worked for Good-West in California at any time from April 1, 2016 through June 11, 2021 (the “Class Period”).

3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
5. Appointment of Phoenix Settlement Administrators as the Settlement Administrator;
6. Approval of the proposed Class Notice and Notice of Estimated Settlement Award (together, the “Notice Packet”), and an order that the Notice Packet be disseminated to the Settlement Class as provided in the Settlement Agreement;
7. Approval of Plaintiff’s filing of the proposed First Amended Complaint, which adds a claim for waiting time penalties; and
8. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award an amount for a Class Representative Incentive Award to Plaintiff, and attorneys’ fees and costs to Class Counsel.

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1 This motion is based on this notice of motion; the attached memorandum of points and
2 authorities; the declarations of Paul K. Haines, Tuvia Korobkin, Alexandra R. McIntosh, and
3 exhibits attached thereto; the declaration of Jodey Lawrence and exhibits attached thereto; the
4 declaration of Plaintiff; the pleadings and other papers filed in this action; and on any further oral
5 or documentary evidence or argument presented at the time of hearing.

6
7 Dated: July 26, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC



Paul K. Haines
Attorneys for Plaintiff

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TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. FACTUAL AND PROCEDURAL BACKGROUND.....	2
B. PLAINTIFF’S CLAIMS AND GOOD-WEST’S DEFENSES	3
1. Claim for Unpaid Wages Due to Time-Rounding	3
2. Claim for Unpaid Wages Due to Auto-Deduct for Meals	3
3. Meal Period Claim	4
4. Rest Period Claims.....	5
5. Claims Under Lab. Code §§ 203, 226, and the PAGA	5
C. DISCOVERY AND MEDIATION.....	6
III. THE PROPOSED SETTLEMENT.....	7
A. ESSENTIAL TERMS OF THE SETTLEMENT	7
1. The Settlement Provides for Reasonable Monetary Payments	7
2. Attorneys’ Fees, and Costs, Incentive Award, and PAGA Payment	8
IV. ARGUMENT.....	10
A. PRELIMINARY APPROVAL IS WARRANTED	10
1. Standard for Preliminary Approval.....	10
a. The Strength of Plaintiff’s Case	10
b. Risk, Expense, Complexity, and Duration of Further Litigation	11
c. Risk of Maintaining Class Action Status.....	11
d. Amount Offered in Settlement Given Realistic Value of Claims	11
e. The Experience and Views of Counsel.....	16
2. The Preliminary Approval Standard Is Met	16
a. The Settlement Is Within the Range of Possible Approval	17
b. The Settlement Resulted from Serious, Informed Negotiations.....	17
c. The Settlement Is Devoid of Obvious Deficiencies	17
B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS	17

1
2
3
4
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6
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10
11
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14
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18
19
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21
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23
24
25
26
27
28

1. The Proposed Class Is Ascertainable and Numerous 17

2. Common Issues of Law and Fact Predominate 18

3. The Named Plaintiff’s Claims Are Typical..... 18

4. Plaintiff and Class Counsel Will Adequately Represent the Class 18

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE 19

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING 19

V. CONCLUSION 19

TABLE OF AUTHORITIES

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	14, 15
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	18
<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013)	18
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012)	4, 5, 13
<i>Capital People First v. State Dept. of Develop. Svcs.</i> , 155 Cal.App.4th 676 (2007)	18
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	6, 16
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	10
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010)	8
<i>Kao v. Joy Holiday</i> , 12 Cal.App.5th 947 (2017)	5
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008)	10, 16, 17
<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016)	9
<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308 (2018)	6
<i>McGhee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	18
<i>Naranjo v. Spectrum Security Svcs., Inc.</i> , 40 Cal.App.5th 444 (2019)	5
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011)	6
<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012)	10
<i>Sav-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004)	18
<i>See’s Candy Shops, Inc. v. Sup. Ct.</i> , 210 Cal.App.4th 889 (2012)	3
<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010)	17
<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012)	6, 16
<i>Wershba v. Apple Computer</i> , 91 Cal.App.4th 224 (2001)	10

Federal Cases

<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974)	19
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	10
<i>In re Pacific Enterprises Securities Litigation</i> , 47 F.3d 373 (9th Cir. 1995).	16
<i>Patel v. Nike Retail Svcs., Inc.</i> , 58 F.Supp.3d 1032 (N.D. Cal. 2014)	14

1	State Statutes and Rules	
2	8 Cal. Code Regs. § 13520.....	5
3	Cal. Rule of Court 3.769.....	10, 19
4	Cal. Rule of Court 3.766.....	19
5	Labor Code § 512.....	4
6	Federal Statutes and Rules	
7	Rule 23(e).....	10
8	Other Citations	
9	<i>Manual for Complex Litigation</i> , § 30.41 (3rd Ed. 1995).....	16
10	<i>Newberg on Class Actions</i> § 14.6 (4th Ed. 2013)	9, 16
11	Unpublished Cases	
12	<i>Alvarado v. Nederend</i> ,	
13	Case No. 1:08-cv-01099-OWW-DLB, 2011 WL 90228 (E.D. Cal. Jan. 11, 2011)	8
14	<i>Chu v. Wells Fargo Investments, LLC</i> ,	
15	Case No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. 2011)	9
16	<i>Fleming v. Covidien, Inc.</i> ,	
17	Case No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	6, 16
18	<i>Tapia v. Zale Delaware Inc.</i> ,	
19	No. 13-CV-1565-BAS, WL 1385181 (S.D. Cal. Apr. 6, 2016))	18
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ulisses Lopez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant Good-West Rubber Corp. (“Good-West” or
5 “Defendant”). The Settlement resolves a class and representative action pending before this Court
6 (the “Action”), in which Plaintiff alleges that Good-West (i) failed to pay all earned wages due to
7 its allegedly unlawful practices of rounding employee time entries and auto-deducting meal
8 periods, (ii) failed to provide all required meal periods, and (iii) failed to authorize and permit all
9 required rest periods. Plaintiff further alleges that as a result of these violations, Good-West failed
10 to issue accurate itemized wage statements, failed to timely pay all final wages, and is liable for
11 civil penalties under the Labor Code Private Attorneys General act (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action Settlement,¹ in which Good-West has agreed to pay
14 \$800,000.00 to the following Settlement Class, which is estimated to consist of 242 individuals:

15 All current and former non-exempt employees hired directly by Good-West (i.e.,
16 not through a staffing company) and who worked for Good-West in California at
any time from April 1, 2016 through June 11, 2021 (the “Class Period”).

17 The Settlement was reached after the parties engaged in mediation with Steve Serratore,
18 Esq., an experienced wage and hour class action mediator. In connection with mediation, Good-
19 West provided Plaintiff with extensive informal discovery, including a class list with all putative
20 class members’ hire dates, termination dates, rates of pay, and other information; a significant
21 sampling of timekeeping records for putative class members (including actual time punches and
22 rounded time entries, so that Plaintiff’s expert could perform a rounding analysis); and Good-
23 West’s relevant wage and hour policies. After extensive research and investigation, including a
24 detailed analysis of Good-West’s potential exposure made with the assistance of Plaintiff’s expert
25 economist who holds a Ph.D. in economics, the parties attended a full-day mediation with Mr.
26 Serratore on April 12, 2021. The parties did not reach a resolution at mediation, but Mr. Serratore
27 subsequently made a mediator’s proposal, which the parties eventually accepted. Over the

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

1 following months, the parties negotiated the finer terms of the settlement, ultimately resulting in
2 the Settlement.

3 Notably, Settlement Class members are not required to submit a claim to receive a
4 payment (“Settlement Award”) from the Settlement. After deductions for proposed settlement
5 administration costs, attorneys’ fees and costs, Plaintiff’s incentive award, and the LWDA’s share
6 of PAGA civil penalties, the average Settlement Award is estimated to be at least **\$1,817.49**, an
7 excellent result. For the reasons discussed herein, Plaintiff respectfully requests that the Court
8 grant preliminary approval of the Settlement.

9 **II. SUMMARY OF THE LITIGATION**

10 **A. FACTUAL AND PROCEDURAL BACKGROUND**

11 Headquartered in Rancho Cucamonga, Good-West manufactures rubber products for the
12 aerospace, military, sporting goods, automotive, and other industries. *See* Declaration of Paul K.
13 Haines (“Haines Decl.”), ¶ 11. Plaintiff and Settlement Class members are non-exempt employees
14 who worked for Good-West in California location during the Class Period. *Id.*

15 On April 2, 2020, Plaintiff filed a class action in this Court (Case No. CIVDS2010044),
16 alleging claims against Good-West for failure to pay overtime and minimum wages, meal period
17 violations, rest period violations, wage statement penalties, and unfair business practices. Haines
18 Decl., ¶ 12. On June 9, 2020, after exhausting his administrative requirements, Plaintiff filed a
19 PAGA action in this Court against Good-West (Case No. CIVDS2011248), alleging a single
20 cause of action under the PAGA based on these alleged Labor Code violations. *Id.* Plaintiff filed
21 the PAGA action separately because he had not yet received a conformed copy of his original
22 class action complaint, due to delays related to the Court’s COVID-19 closure. *Id.*

23 On June 23, 2020, after the Court re-opened and Plaintiff had still not received a
24 conformed copy of either complaint, Plaintiff filed the instant action, which alleged both his class
25 claims and his PAGA claim. Haines Decl., ¶ 13. On November 24, 2020 and December 1, 2020,
26 respectively, the Court granted the parties’ requests to dismiss the original PAGA action and class
27 action. *Id.* As part of the Settlement, the parties have stipulated to Plaintiff’s filing of a First
28 Amended Complaint in this action, adding a cause of action for waiting time penalties. *Id.*

1 **B. PLAINTIFF’S CLAIMS AND GOOD-WEST’S DEFENSES**

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

3 Plaintiff alleges that until late April 2020,² Good-West rounded its employees’
4 timekeeping entries to quarter-hour increments in a manner that consistently favored Good-West
5 and that, as a result, employees’ wages were underpaid. Haines Decl., ¶ 18.

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

21 **2. Claim for Unpaid Wages Due to Auto-Deduct for Meals**

22 Plaintiff alleges that until late April 2020, Good-West generally auto-deducted 30
23 minutes from employees’ time for meal periods (unless the employee left the premises, in which
24 case they were required to clock out), regardless whether the employee actually took a full 30-
25 minute meal period. Haines Decl., ¶ 19. Plaintiff alleges this resulted in additional unpaid wages,
26 on those occasions employees took less than 30-minute meal periods but had a full 30 minutes
27 auto-deducted. *Id.*

28 ² Based on Plaintiff’s counsel’s review of Good-West’s timekeeping records, Good-West appears to have largely rectified its policies and practices in late April 2020, after receiving Plaintiff’s PAGA letter. As a result, for most of Plaintiff’s underlying claims, Plaintiff focused on the period prior to April 30, 2020.

Good-West contends that it has always provided employees with 30-minute meal periods, and employees were not underpaid at all as a result of its prior auto-deduct practice. Haines Decl., ¶ 19. Good-West further argues that the auto-deduct practice was instituted for employee convenience, as it allowed employees to take their meal periods without having to worry about clocking out and clocking back in. *Id.* Good-West also argues it did not know, and reasonably could not have known, employees were working during meal periods, since Good-West relieves employees of all duty for 30 minutes. *Id.* Finally, Good-West contends this claim would not be amenable to class certification since it would require an employee-by-employee, shift-by-shift analysis as to whether each employee in fact took a full 30-minute meal period on each shift. *Id.*

3. Meal Period Claim

Plaintiff alleges that he and other employees often received late meal periods, and sometimes were unable to take a full 30-minute meal period (as mentioned above). Haines Decl., ¶ 20.³ Plaintiff also alleges he and other employees generally were not provided second meal periods on shifts over 10.0 hours. *Id.*

Good-West argues it has always maintained legally-compliant meal period policies (including first and second meal periods on shifts over 10 hours) and communicated those policies to its employees, that under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that it has always done so. Haines Decl., ¶ 20; *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). Because employees are provided timely, 30-minute meal periods, any short, late, or missed meal periods reflected in time records are the result of employee choice, rather than a company policy or practice. Haines Decl., ¶ 20. Good-West further argues that the vast majority of shifts over 10 hours were less than 12 hours, and that employees voluntarily waive their second meal periods on such shifts, as they are entitled to do under Labor Code § 512. *Id.* Lastly, Good-West argues this claim would not be suited for class certification because individualized inquiries would be needed to determine whether individual employees did not take a compliant meal period on each

³As with the auto-deduct and rounding claims, the timekeeping data reflected that Good-West largely corrected its first meal period practices after April 2020, in that the potential violation rates for first meal periods in timekeeping records dropped dramatically after April 2020.

individual shift, why they did not take a compliant meal period, and (for second meals) whether they waived the meal period. *Id.*

4. Rest Period Claim

Plaintiff alleges that Good-West failed to authorize and permit third rest periods on shifts over 10 hours for him and other non-exempt employees. Haines Decl., ¶ 21; *see also Brinker*, 53 Cal.4th at 1028-31 (discussing rate at which rest periods must be provided).

Good-West asserts it has always maintained lawful rest period policies and has always authorized and permitted all required rest periods, including third rest periods on shifts over 10 hours. Haines Decl., ¶ 21. As with meal periods, Good-West argues, it need not *ensure* rest periods are taken but need only “authorize and permit” them, and it has always done so. *Id.* Finally, Good-West argues this claim is not amenable to class treatment, as individualized inquiries would be required to determine whether each employee failed to a third rest periods on each 10+ hour shift, and why they did so. *Id.* These issues are especially present for rest periods, Good-West argues, as rest periods need not be recorded. *Id.*

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

As a result of its alleged failure to pay all wages, Plaintiff asserts Good-West failed to comply with its final payment and wage statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 22-23. Finally, Plaintiff seeks PAGA civil penalties based on the above claims. Haines Decl., ¶ 24.

Good-West argues Plaintiff’s derivative claims fail for the same reasons as his underlying claims. Good-West further asserts it has strong, good-faith defenses to Plaintiff’s underlying claims, precluding waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposing waiting time penalties). Good-West further contends Plaintiff’s meal and rest period claims cannot support claims for waiting time or wage statement penalties, as multiple courts have held (and which issue is going to be decided by the California Supreme Court in *Naranjo v. Spectrum Security Services*, Case No. S258966 (review granted Jan. 2, 2020)). Good-West also argues any alleged wage

1 statement violations could not be shown to be “knowing and intentional,” particularly given its
2 good-faith defenses; that Plaintiff cannot show he or other employees “suffer[ed] injury” due to
3 alleged violations, as required by Lab. Code § 226(e); and that wage statements always accurately
4 reflected amounts *paid* to employees. Haines Decl., ¶ 22; *Maldonado v. Epsilon Plastics, Inc.*, 22
5 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to *document* the *paid wages* to
6 ensure the employee is fully informed regarding the calculation of those wages.”).

7 Finally, Good-West contends the PAGA claim fails because the underlying claims fail.
8 *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
9 causes of action fail, the derivative UCL and PAGA claims also fail.”). Good-West further
10 maintains that given its good-faith defenses and its good-faith efforts to correct its practices after
11 receiving Plaintiff’s PAGA letter, the Court would substantially reduce PAGA penalties even if
12 Plaintiff prevailed on his underlying claims. Haines Decl., ¶ 24; *see also* Lab. Code § 2699(e)(2)
13 (authorizing reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
14 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because “the evidence
15 showed...defendants took their obligations...seriously and attempted to comply with the law”);
16 *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal.
17 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations);
18 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of
19 just \$5 per pay period where employer made “good faith attempts” to comply with the law).

20 **C. DISCOVERY AND MEDIATION**

21 In preparation for mediation, the parties engaged in extensive informal discovery. Good-
22 West produced timekeeping records for a randomly selected sample of approximately 50% of
23 putative class members, including actual time punches and rounded time punches, which allowed
24 Plaintiff to conduct a rounding analysis and meal period analyses. Haines Decl., ¶ 14. Good-West
25 also produced its relevant wage and hour policies, and a class list with all putative class members’
26 hire dates, termination dates, rates of pay, and other information. *Id.* This allowed Plaintiff to
27 calculate the putative class size, average rate of pay, total workweeks, and other data points. *Id.*
28 Plaintiff hired a labor economist with a Ph.D. in economics to analyze and extrapolate the data

1 produced by Good-West. *Id.* This discovery allowed the parties to assess the merits and value of
2 Plaintiff's claims, as well as the chances for certification. *Id.*

3 The parties attended a full-day mediation on April 12, 2021 with Mr. Serratore. Haines
4 Decl., ¶ 15. The parties vigorously debated their legal positions, the likelihood of certification of
5 Plaintiff's claims, and the legal bases for the claims and defenses. *Id.* The parties did not reach a
6 resolution at mediation. *Id.* However, Mr. Serratore subsequently made a mediator's proposal, to
7 which the parties eventually agreed in principle. *Id.* Over the next few months, the parties
8 negotiated the finer terms of the settlement, ultimately resulting in the Settlement. *Id.*

9 **III. THE PROPOSED SETTLEMENT**

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

11 Under the Settlement, Good-West will pay a non-reversionary Gross Settlement Amount
12 ("GSA") of \$800,000.00, with no claims process required for Settlement Class members to
13 receive payment. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	\$800,000.00
• Minus Court-approved attorneys' fees (one-third):	\$266,666.67
• Minus Court-approved verified costs (up to):	\$35,000.00
• Minus Court-approved Incentive Award:	\$5,000.00
• Minus Amount Set Aside as PAGA penalties:	\$60,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$8,500.00</u>
Net Settlement Amount ("NSA"):	\$424,833.33
• PLUS 25% "PAGA Amount" to Settlement Class:	\$15,000.00
Total Amount Paid to Settlement Class members:	\$439,833.33

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

20 After deducting amounts for a court-approved incentive award, attorneys' fees and costs,
21 administration costs, and PAGA payment to the LWDA, Good-West will pay at least \$439,833.33
22 to the Settlement Class. *See* Settlement, § 3(C). Good-West represents there are approximately
23 242 Settlement Class members. *Id.*, § 1. The average Settlement Award is therefore estimated to
24 be at least \$1,817.49. Haines Decl., ¶ 17. Payments from the NSA will be treated as one-third
25 wages reported on a Form W-2; and as one-third penalties and one-third interest, reported on a
26 Form 1099. *See* Settlement, § 4(E). Payments from the PAGA Amount will be treated as 100%
27 penalties. *Id.* Good-West will pay its share of payroll taxes on the amount designated as "wages"
28 separate from, and in addition to, the GSA. *Id.*, § 3(D). Settlement Class members will have 60

1 days from the Notice mailing to object, request to opt-out, or submit disputes, thereby providing
2 ample time to review the Notice without unduly delaying the Settlement. *See id.*, § 9(C)-(E).

3 The NSA shall be distributed to all participating Settlement Class members based on the
4 proportional number of workweeks worked by each participating Settlement Class member for
5 Good-West during the Class Period. *See* Settlement, § 4(B). In addition, the \$15,000 “PAGA
6 Amount” will be distributed to all Settlement Class members (regardless whether they opt out)
7 who worked for Good-West at any time from April 3, 2019 to June 11, 2021 (“PAGA Period”),
8 based on the number of pay periods worked for Good-West during that time. *Id.*, § 4(C).

9 Participating Settlement Class members will be bound by the Settlement, and will release
10 all wage and hour claims pled in the operative Complaint, or that could have been pled based on
11 the facts alleged in the Complaint, during the Class Period (“Released Claims”). *See* Settlement,
12 § 2(A). In addition, all Settlement Class members (whether or not they opt out) who worked for
13 Good-West during the PAGA Period will release all related PAGA claims against Good-West
14 during the PAGA Period. *Id.* Plaintiff has also agreed to a general release of claims. *Id.*, § 2(B).

15 Settlement Award checks will be valid for 180 days after issuance. *See* Settlement, § 4(F).
16 After 180 days, funds from uncashed checks will be deposited with the Unclaimed Property Fund
17 in the name of the Settlement Class member. *Id.*

18 **2. Attorneys’ Fees and Costs, Incentive Award, and PAGA Payment**

19 At final approval, Plaintiff will apply for a Class Representative Incentive Award in the
20 amount of \$5,000. *See* Settlement, § 3(C)(3). “[I]ncentive awards are fairly typical in class action
21 cases...and are intended to compensate class representatives for work done on behalf of the class
22 [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re*
23 *Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully
24 briefed at final approval, Plaintiff’s requested payment is in recognition of the time and effort he
25 expended on behalf of the Settlement Class, including providing factual information and
26 documents to counsel, identifying potential witnesses, attending in-person and telephonic
27 meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise
28 actively participating in the prosecution of this case. Haines Decl., ¶ 27. Plaintiff respectfully

1 submits that this requested payment is well within the range of permissible approval. *See, e.g.,*
2 *Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May
3 17, 2011) (approving \$7,500 award to each of five named plaintiffs from \$505,058.60 settlement).

4 The parties have also designated \$60,000 of the GSA as PAGA penalties, of which
5 \$45,000 (75%) will be paid to the LWDA (*see* Settlement, § 3(C)(5)), consistent with the
6 requirements of Labor Code § 2699(i). Plaintiff submits this allocation to the LWDA is
7 appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells*
8 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving
9 PAGA payment of \$7,500 to LWDA from \$6.9 million settlement).

10 At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA
11 (estimated at \$266,666.67), and up to \$35,000 in litigation costs. Settlement, § 3(C)(4). The
12 requested fee is fair compensation for undertaking complex, risky, time-consuming, and
13 expensive litigation on a contingent basis. Counsel have incurred substantial attorneys' fees
14 conducting pre-filing investigation; analyzing Plaintiff's claims; conducting legal research;
15 analyzing timekeeping and other data with Plaintiff's expert to create a comprehensive damages
16 model; preparing for and attending mediation; negotiating and preparing the Settlement;
17 preparing this Motion; and otherwise prosecuting this case. Haines Decl., ¶ 26. Further, Counsel
18 will incur significant future fees in overseeing the Notice process, preparing the Final Approval
19 Motion and supporting documents, and appearing at the Final Approval Hearing. *Id.*

20 It is appropriate to award attorneys' fees as a percentage of the "common fund" created
21 by the settlement. *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding "the percentage
22 of fund method survives in California class action cases"). Counsel's request for fees of one-third
23 of the GSA (the same percentage approved in *Laffitte*) is well within the range of reasonableness
24 and is typical for common fund settlements. *See Newberg on Class Actions* § 14.6 (4th Ed. 2013)
25 (historically, courts have awarded percentage fees in the range of 20% to 50%). As will be fully
26 briefed at final approval, counsel submit their request for fees is reasonable in light of the
27 substantial risks and significant work undertaken, the results obtained, and the efficiency with
28 which counsel conducted the litigation.

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions class action settlements on court approval,
4 which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
5 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
6 “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*,
7 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed
8 settlement is fundamentally fair, adequate, and reasonable”). The Court’s role is to ensure the
9 settlement agreement taken as a whole is fair and within the range of reasonableness. *Id.* at 1027.
10 There is a presumption of fairness when a settlement is negotiated at arm’s length by counsel.
11 *See, e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

12 **1. Standard for Preliminary Approval**

13 To make a fairness determination, the Court should consider several factors, including:
14 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
15 litigation, the risk of maintaining class action status through trial, the amount offered in
16 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
17 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
18 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
19 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
20 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
21 and reasonable in light of the overall balance of factors in this case.

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

23 Although he maintains his claims are meritorious, Plaintiff acknowledges there were
24 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
25 merits. As described in section II.B., *supra*, Good-West presented multiple defenses to Plaintiff’s
26 claims, both on the merits and to class certification. While Plaintiff was prepared to litigate his
27 claims through class certification and ultimately trial, success was far from certain.

28 ///

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

2 Although the parties engaged in significant informal discovery, they had not completed
3 formal written and deposition discovery, which would have required expenditure of substantial
4 time and resources. Haines Decl., ¶ 28. Plaintiff also still had to file for class certification. *Id.*
5 Even if Plaintiff obtained certification, the parties would incur considerable attorneys' fees and
6 costs through a possible decertification motion, motions for summary judgment, trial, and
7 potential appeals. *Id.* This settlement avoids those risks and the accompanying expense. Thus,
8 this factor supports preliminary approval.

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

10 Plaintiff had not yet filed his class certification motion, and as such, the extent to which
11 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
12 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
13 significantly smaller group of employees than the proposed Settlement Class, and the expected
14 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

16 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
17 for disputed claims. With the assistance of a retained economist with a Ph.D., Plaintiff conducted
18 an analysis of potential damages due to Good-West's allegedly unlawful policies and practices.
19 Plaintiff's analyses of realistic expected recoveries for each theory of liability are set forth below:

20 Unpaid Wages Due to Rounding: \$148,040

21 As explained above, Plaintiff alleges that until April 2020, Good-West rounded employee
22 timekeeping entries to quarter-hour increments in a manner that consistently favored Good-West
23 and that, as a result, employees' wages were underpaid. Haines Decl., ¶ 18. Based on Plaintiff's
24 expert's analysis of Good-West's timekeeping records, Plaintiff estimates that Settlement Class
25 members were underpaid by approximately 12,260 hours during the Class Period as a result of its
26 former rounding practice, when comparing on-the-clock time to paid time. *Id.* The average
27 minimum wage in California during the Class Period was approximately \$11.50. *Id.* Thus,
28 Plaintiff estimates Good-West's maximum exposure for this claim as: 12,260 hours * \$11.50 min.

1 wage * 2 (liquidated damages per Lab. Code § 1194.2) = \$281,980. *Id.* But as noted above, Good-
2 West maintains its rounding practice is even-handed and results in employees being paid for all
3 hours worked; that just because an employee is clocked in does not mean they are *working*; that
4 employees work as a group and that they do not (and cannot) begin performing work before the
5 start of their shift, and instead engage in personal activities before their shift; that the amount of
6 unpaid time per shift is *de minimis* and thus non-compensable; and that this claim would not be
7 certified, since individualized inquiries would be necessary as to whether employees were in fact
8 underpaid or overpaid for each workday in question (including whether they were actually
9 working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.* In
10 light of these defenses, Plaintiff discounted the maximum exposure by 25% to account for the
11 risk of non-certification, and an additional 30% for risk of losing on the merits, to arrive at an
12 estimated exposure of approximately \$148,040. *Id.*

13 Unpaid Wages Due to Meal Period Auto-Deduct: \$11,405

14 Plaintiff alleges that until April 2020, Good-West generally auto-deducted 30 minutes
15 from employee time entries for meal periods, even if employees did not take a full 30 minutes for
16 their meal period. Haines Decl., ¶ 19. However, Good-West would require employees to clock-
17 out if they left the premises; thus, Plaintiff's expert was able to examine those time records where
18 employees clocked out for meal periods and extrapolated those violation rates to the auto-
19 deducted shifts. *Id.* Based on Plaintiff's expert's analysis of those time records, Plaintiff estimated
20 approximately 32% of recorded meal periods were less than 30 minutes, and that those meal
21 periods were short by an average of approximately 3 minutes. *Id.* Plaintiff's expert's analysis of
22 the data further revealed approximately 95,361 total meal period-eligible shifts prior to April 30,
23 2020. *Id.* Thus, Plaintiff estimated Good-West's total maximum exposure on this claim as
24 follows: $95,361 * 32\% * 3/60 * 11.50 \text{ min. wage} * 2 \text{ (liquidated damages)} = \$35,093$. *Id.* But as
25 noted above, Good-West argues that it has always provided employees with full, 30-minute meal
26 periods, and therefore no one was ever underpaid as a result of its former auto-deduct practice;
27 that its auto-deduct practice was implemented for employees' conveniences; that it never had
28 reason to believe that employees were working during meal periods, since they were relieved of

1 all duty; and that this claim would not be amenable to class certification given that individual
2 inquiries would be necessary to determine whether each employee took a full 30-minute meal
3 period on each shift, and if not, how many minutes short the meal period was, and whether Good-
4 West reasonably should have known the employee came back early from lunch. *Id.* In light of
5 these defenses, Plaintiff discounted the maximum exposure by 35% for risk of non-certification,
6 and by an additional 50% for risk of losing on the merits, for a realistic estimated exposure of
7 \$11,405.

8 Meal Period Violations: \$309,122

9 Plaintiff alleges that until late April 2020, Good-West routinely provided late and/or short
10 meal periods to its non-exempt employees. Haines Decl., ¶ 20. Plaintiff further alleges that Good-
11 West failed to provide second meal periods on shifts over 10.0 hours. *Id.* Based on Plaintiff's
12 expert's review and extrapolation of employee timekeeping data, Plaintiff estimated
13 approximately 77,011 shifts reflected at least one potential meal period violation (late, short, or
14 missed meal period(s)). *Id.* Further, the data produced by Good-West reflected an average hourly
15 rate of approximately \$13.38 for Settlement Class members during the Class Period. *Id.* Plaintiff
16 therefore estimated a maximum total exposure for this claim as: $77,011 * \$13.38 = \$1,030,407$.
17 *Id.* But as discussed *supra*, Good-West presented several defenses to this claim, including that it
18 has always "provided" lawful meal periods and communicated to employees their right to take
19 lawful meal periods; that under *Brinker* it need not "ensure" meal periods are taken; that any
20 missed, short, or late meal periods reflected in the time records are the result of employee choice
21 rather than any Good-West policy or practice; that employees voluntarily choose to waive their
22 second meal periods; and that this claim is not amenable to class certification, given the individual
23 inquiries needed to assess whether each employee did not take a compliant meal period on each
24 shift, why they didn't, and (for second meal periods) whether the second meal period was waived.
25 *Id.* Based on these defenses, Plaintiff discounted the maximal amount by 40% for risk of non-
26 certification, and by an additional 50% for risk of losing on the merits or failure to recover the
27 full amount sought, to arrive at a realistic exposure of \$309,122.

28 ///

1 Rest Period Violations: \$115,627

2 As discussed above, Plaintiff alleges that Good-West failed to authorize and permit third
3 rest periods on shifts over 10 hours. Haines Decl., ¶ 21. Based on Plaintiff's expert's review and
4 extrapolation of the timekeeping data, there were approximately 34,567 shifts of over 10 hours
5 during the Class Period. *Id.* Thus, Plaintiff calculated Good-West maximum exposure for the
6 third rest period claim as: 34,567 shifts * \$13.38 premium = \$462,506. *Id.* But as noted above,
7 Good-West argues it has always authorized and permitted rest periods in accordance with
8 California law, including third rest periods on shifts over 10 hours; that its written rest period
9 policy reflects its lawful policy; that any failure to take a third rest period is a result of employee
10 choice; and that this claim is not amenable to class certification given the individual inquiries
11 required to determine whether and why each employee missed a third rest period on each of
12 34,567 shifts, particularly given that rest periods need not be recorded. *Id.* Plaintiff therefore
13 discounted the potential maximum by 50% for risk of non-certification, and an additional 50%
14 for risk of losing on merits or failing to recover the full amount sought, to arrive at a realistic
15 exposure of \$115,627.

16 Wage Statement Penalties: \$63,824

17 Plaintiff's expert's analysis reflected that there were approximately 4,364 bi-weekly pay
18 periods within the one-year liability window under Labor Code § 226. Haines Decl., ¶ 22. In
19 calculating Goo-West's exposure, Plaintiff assumed he could recover the "initial" wage statement
20 penalty of \$50 for each violation, for a total of \$218,200 in potential penalties. *Id.*; *see also* Lab.
21 Code § 226(e) (providing \$50 penalty for "initial" violations); *Amaral v. Cintas Corp. No. 2*, 163
22 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer has been
23 notified it violated the Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43
24 (N.D. Cal. 2014) (citing *Amaral* and applying "initial" \$50 penalty to all pay periods in calculating
25 amount-in-controversy for wage statement claim). However, given Good-West's arguments that
26 no violations occurred, that class members suffered no "injury," that any alleged violations were
27 not "knowing and intentional," that a meal or rest period claim cannot support wage statement
28 penalties, and that Plaintiff would not be able to show a penalty in every pay period, as well as

1 the risks associated with Plaintiff's underlying claims, Plaintiff discounted the maximum
2 exposure by 35% for risk of non-certification, and by an additional 55% for risk of being
3 unsuccessful on the merits or failure to recover the full amount sought, for an estimated realistic
4 exposure of \$63,824. *Id.*

5 Waiting Time Penalties: \$128,360

6 Based on data provided by Good-West, there are approximately 123 Settlement Class
7 members who have separated their employment with Good-West since April 1, 2017. Haines
8 Decl., ¶ 23. Using an estimated average waiting time penalty of \$3,211 ($\$13.38 \times 8 \text{ hours} \times 30$
9 days), Plaintiff estimated Good-West's maximum potential waiting time penalty exposure as
10 \$394,953 ($123 \times \$3,211$). *Id.* As noted above, however, Good-West asserts it has strong, good-
11 faith defenses to Plaintiff's underlying claims, and thus, even if Plaintiff were able to recover on
12 his underlying claims, he would not be able to recover derivative waiting time penalties. *Id.* Good-
13 West further contends Plaintiff's meal and rest period claims cannot support a claim for waiting
14 time penalties, as multiple courts have held. *Id.* Moreover, because the waiting time claim is
15 derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Good-West's
16 defenses, both as to class certification and the merits, to his underlying claims. And, Good-West
17 argues, not every former employee suffered every single alleged wrong, and therefore if Plaintiff
18 only certified or prevailed on some but not all of his claims, the size of any potential waiting time
19 claim would be reduced. Based on these defenses, Plaintiff discounted Good-West's maximum
20 exposure by 35% for risk of non-certification and by an additional 50% for risk of being
21 unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated
22 realistic exposure of \$128,360. *Id.*

23 PAGA Civil Penalties: \$120,010

24 Plaintiff estimated a maximum PAGA exposure of \$436,400, based on 4,364 pay periods
25 during the PAGA Period at the \$100 "initial" violation rate under Lab. Code § 2699(f). Haines
26 Decl., ¶ 24; *Amaral*, 163 Cal.App.4th at 1209. However, these penalties derive from Plaintiff's
27 underlying claims, each of which Good-West vigorously disputes. Good-West further argues
28 Plaintiff would not be able to show a violation in every pay period, and thus his damages estimate

1 is inflated. *Id.* The PAGA also grants courts discretion to reduce PAGA civil penalties (Lab. Code
2 § 2699(e)(2)), and Good-West argues the Court would reduce penalties significantly given its
3 good-faith defenses, as well as its financial condition. *Id.* Thus, Plaintiff discounted the maximum
4 figure by 45% for risk of losing on the merits, and by an additional 50% for risk of the Court
5 reducing penalties, to arrive at an estimated exposure of \$120,010. *Id.*; see also *Thurman*, 203
6 Cal.App.4th at 1135-36 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at
7 *4 (reducing PAGA penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA
8 penalty of just \$5 per pay period).

9 Using these estimated figures, Plaintiff predicted the realistic total recovery for the
10 Settlement Class would be approximately \$896,388. Haines Decl., ¶ 25. The proposed settlement
11 of \$800,000 therefore represents over 89% of Plaintiff's reasonably forecasted classwide
12 recovery. *Id.* Preliminary approval is therefore appropriate as the Settlement will provide
13 significant monetary relief to the Settlement Class.

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

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

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

27 The Court can grant preliminary approval of a proposed settlement and direct that notice
28 be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the

product of serious, informed negotiations; and (3) has no obvious deficiencies. *See Manual for Complex Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within the Range of Possible Approval

As noted, the Settlement reflects over 89% of the realistic estimated recovery on Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

b. The Settlement Resulted from Serious, Informed Negotiations

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

c. The Settlement Is Devoid of Obvious Deficiencies

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

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

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

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked for Good-West in California during the Class Period. Thus, they can be readily identified from

Good-West's records. Good-West represents there are 242 Settlement Class members, rendering it impracticable to bring them all before the Court. Settlement, § 1. Numerosity is thus satisfied.

2. Common Issues of Law and Fact Predominate

The focus on certification is on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated primarily on allegedly unlawful rounding practices and allegedly unlawful meal and rest period practices. Such claims are commonly held proper for class certification. *See, e.g., Tapia v. Zale Delaware Inc.*, No. 13-CV-1565-BAS, WL 1385181 at **3-4 (S.D. Cal. Apr. 6, 2016) (certifying rounding claim); *Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Named Plaintiff's Claims Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff was employed by Good-West as a non-exempt employee in California during the Class Period, and he was injured by the same challenged policies that allegedly injured the Settlement Class. *See* Declaration of Ulisses Lopez, ¶¶ 2-5. Typicality is thus satisfied.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiff or his counsel and the Settlement Class. *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Plaintiff's counsel also have extensive experience in wage and hour class action litigation, as noted above.

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

2 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
3 mailing addresses provided by Good-West. *See* Settlement, § 9. This is the “best notice
4 practicable” under the circumstances as it provides “individual notice to all members who can be
5 identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974).
6 Plaintiff proposes the Settlement be administered by Phoenix, an experienced class action
7 settlement administrator. *See* Jodey Lawrence Declaration and exhibits. Phoenix will run all
8 addresses through the U.S. Postal Service National Change of Address database and/or perform
9 “skip traces” to obtain current addresses. *See* Settlement, § 9(B) & (F).

10 The Notice satisfies Cal. Rule of Court 3.766(d) because it advises the Settlement Class
11 of the nature of the claims; the parties’ basic contentions; the key terms of the Settlement; the 60-
12 day deadline to opt out, object, or submit a dispute and procedures by which to do so; the recovery
13 formula and expected recovery amount for each Settlement Class member; and the release of
14 claims. *See* Haines Decl., Exh. A to Exh. 1. The Notice also includes the final approval hearing
15 date and time, and provides contact information for Class Counsel and the administrator if
16 Settlement Class members have any questions. *Id.* This satisfies Cal. Rule of Court 3.766(e) as
17 the most reliable and cost-effective method of reaching Settlement Class members.

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

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

22 **V. CONCLUSION**

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

26 Dated: July 26, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

27 By: 
28 Paul K. Haines
Attorneys for Plaintiff