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

LUIS SALINAS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MITSUBISHI MATERIALS U.S.A.
CORPORATION, a California Corporation;
and DOES 1 through 100,

Defendants.

Case No. 30-2020-01139886-CU-OE-CXC

*[Assigned for all purposes to Hon. James J.
Di Cesare, Dept. C16]*

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

Date: January 14, 2022

Time: 9:30 a.m.

Dept.: C-16

Reservation ID: 73624654

Complaint Filed: April 1, 2020

FAC Filed: June 8, 2020

Trial Date: None set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
3 on January 14, 2022 at 9:30 a.m., or as soon thereafter as the matter may be heard in Department
4 C-16 of the above-entitled Court, located at 751 West Santa Ana Boulevard, Santa Ana,
5 California 92701, Plaintiff Luis Salinas (“Plaintiff”) will, and hereby does, move this Court for:

- 6 1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement
7 Agreement” or “Settlement”);
8 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
9 certification, for settlement purposes only, of the proposed Settlement Class, defined
10 as follows:

11 All current and former non-exempt employees employed by Defendant
12 Mitsubishi Materials U.S.A. Corporation (“Defendant”) at any time in the State
13 of California from April 1, 2017 to the date of preliminary approval (the “Class
Period”).

- 14 3. Preliminary appointment of Plaintiff Luis Salinas as Class Representative;
15 4. Preliminary appointment of Paul K. Haines, Tuvia Korobkin, and Alexandra R.
16 McIntosh of Haines Law Group, APC as Class Counsel;
17 5. The scheduling of a hearing to consider whether the Settlement Agreement should be
18 finally approved and to award an enhancement payment to the Class Representative,
19 administration costs to the Settlement Administrator, and attorneys’ fees and costs to
20 Class Counsel;
21 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
22 Administrator for mailing notices; and
23 7. Approval of the proposed Notice, and an order that it be disseminated to the proposed
24 Settlement Class as provided in the Settlement Agreement.

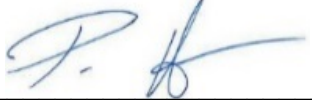
25 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
26 Authorities; the declarations of Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh and
27 exhibits attached thereto; the declaration of Jodey Lawrence of Phoenix Settlement
28 Administrators and exhibits attached thereto; the declaration of Plaintiff Luis Salinas; the

1 pleadings and other papers filed in this action; and any further oral or documentary evidence or
2 argument presented at the time of hearing.

3
4
5 Dated: October 11, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

6
7 By:



Paul K. Haines
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Luis Salinas (“Plaintiff”) seeks preliminary approval of a class action settlement
4 (“Settlement”) with Defendant Mitsubishi Materials U.S.A. Corporation (“Mitsubishi” or
5 “Defendant”) (collectively with Plaintiff, the “Parties”). The Settlement resolves a class and
6 representative action pending before this Court (the “Action”), in which Plaintiff alleges that
7 Mitsubishi: (i) failed to pay all minimum wages due, (ii) failed to pay all overtime wages, (iii)
8 failed to pay all wages, and (iv) failed to issue accurate itemized wage statements. As a result of
9 these alleged violations, Plaintiff alleges that Mitsubishi failed to comply with their final pay
10 obligations, and is liable for civil penalties under the Private Attorneys General Act (“PAGA”),
11 Labor Code § 2698, *et seq.*

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action settlement¹, on behalf of the following Settlement Class,
14 which is estimated to consist of 43 Settlement Class members:

15 All current and former non-exempt hourly employees employed by Defendant at any
16 time in the State of California from April 1, 2017 to the date of preliminary approval
(the “Class Period”).

17 The Settlement calls for Mitsubishi to pay a Maximum Settlement Amount (“MSA”) of
18 \$300,000.00. This represents a significant result for Settlement Class members, who will be
19 agreeing to a release of only those claims that were actually asserted, or which could have been
20 asserted based on the facts alleged, in the Action. After deductions for Plaintiff’s enhancement
21 payment, settlement administrator costs, the PAGA payment to the Labor & Workforce
22 Development Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the remaining
23 amount (the “Net Settlement Amount” or “NSA”) will be distributed to the Settlement Class, who
24 will received average Individual Settlement Payments of approximately \$3,383.72.

25
26
27 ¹ The Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is attached as Exhibit
28 1 to the Declaration of Paul K. Haines filed concurrently herewith. The proposed Class Notice,
Notice of Estimated Settlement Award, and Request for Exclusion Form are attached as Exhibits
A, B, and C, respectively, to the Settlement Agreement.

1 Significantly, Settlement Class members do not need to file a claim form in order to
2 receive an Individual Settlement Payment; instead, all Settlement Class members who do not opt-
3 out will automatically receive a payment.

4 Prior to reaching this proposed Settlement, Mitsubishi provided Plaintiff with timekeeping
5 and payroll records for *all* California non-exempt employees during the Class Period, its relevant
6 wage and hour policies, and other relevant data and information. After extensive legal research
7 and analysis along with a comprehensive review of the data performed by Plaintiff and his expert,
8 the Parties attended a full day mediation with E. William Klatte, Esq., a respected mediator, on
9 December 3, 2020, which resulted in a class-wide resolution of Plaintiff's claims. The long-form
10 Settlement Agreement was drafted and executed over the following months and is now submitted
11 to this Court for approval.

12 The proposed Settlement is well within the range of possible approval in light of the
13 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
14 and the tangible monetary benefits to be received by Plaintiff and the Settlement Class. For the
15 reasons discussed herein, Plaintiff respectfully requests that the Court preliminarily approve the
16 Settlement.

17 **II. SUMMARY OF THE LITIGATION**

18 **A. FACTUAL AND PROCEDURAL BACKGROUND**

19 Mitsubishi manufactures cutting tools and other technology solutions for the
20 manufacturing industry, with a facility in Costa Mesa, California. Declaration of Paul K. Haines
21 ("Haines Decl."), ¶ 11. Plaintiff and Settlement Class members are current and former non-
22 exempt hourly employees employed by Mitsubishi at any time in the State of California during
23 the Class Period. *Id.*; see Settlement, § 1. Plaintiff worked for Mitsubishi as a non-exempt
24 customer service representative from approximately July 2018 to February 19, 2020. *Id.*

25 On April 1, 2020, Plaintiff filed a Class Action Complaint against Mitsubishi alleging the
26 following causes of action: (i) minimum wage violations, (ii) failure to pay all overtime wages,
27 (iii) failure to pay wages, (iv) wage statement violations, (v) waiting time penalties, and (vi)
28 unfair competition. Haines Decl., ¶ 12. On June 9, 2020, Plaintiff filed a First Amended Class

1 Action and Representative Complaint, adding a cause of action for civil penalties under the
2 Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq. Id.* Plaintiff’s theories of
3 liability, and Mitsubishi’s defenses to each, are discussed below.

4 **B. PLAINTIFF’S CLAIMS AND MITSUBISHI’S DEFENSES**

5 **1. Failure to Issue Accurate Itemized Wage Statements**

6 Plaintiff alleges a direct claim for wage statement violations premised on Mitsubishi’s
7 policy and practice of reporting the wrong hours worked on employee wage statements and
8 attributing them to the wrong pay period. Haines Decl., ¶ 17. Specifically, Plaintiff alleges that
9 as a result of Mitsubishi’s practice of paying employees one week in arrears, Mitsubishi lists the
10 incorrect dates of the pay period, hours worked, and wages earned on employee wage statements
11 in violation of Labor Code § 226(a) (“An employer, semimonthly or at the time of each payment
12 of wages, shall furnish to his or her employee...an accurate itemized statement in writing
13 showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned,
14 (6) the inclusive dates of the period for which the employee is paid. . .”)

15 In response, Mitsubishi argues that the wage statements always accurately reflected the
16 amounts actually *paid* to employees, and thus Defendant could not be found liable for wage
17 statement penalties. Haines Decl., ¶ 17; *see, e.g., Maldonado v. Epsilon Plastics, Inc.* (2018) 22
18 Cal.App.5th 1308, 1337 (“The purpose of section 226 is to ‘document the paid wages to ensure
19 the employee is fully informed regarding the calculation of those wages’”) (quoting *Soto v. Motel*
20 *6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)). Moreover, to the extent that wage statements
21 were inaccurate, Mitsubishi argues the violations could not be shown to be “knowing and
22 intentional,” since Mitsubishi maintained a good-faith belief that it was providing accurate wage
23 statements. Mitsubishi further argues that Plaintiff cannot show he or other employees “suffer[ed]
24 injury” as a result of the alleged wage statement violations, as required by Labor Code § 226(e)
25 for the imposition of penalties, since employees were not underpaid. Haines Decl., ¶ 17.
26 Mitsubishi further contends that it started to list the correct information on its wage statements
27 beginning on April 24, 2020 by attaching employee punch records to their wage statements,
28 which showed the employees hours worked and the dates of the pay period. *Id.* Finally,

Mitsubishi argued this claim would not be suited for class certification, since it would require individualized inquiries into whether each individual employee was “injured” on each individual pay period, which would devolve into an unmanageable series of mini-trials. *Id.*

2. Unpaid Overtime Based on Miscalculation of “Regular Rate”

Plaintiff alleges that Mitsubishi failed to pay all overtime wages to Plaintiff and other Settlement Class members by failing to include the value of all non-discretionary remuneration, including end-of-year bonuses, into the “regular rate” of pay. Haines Decl., ¶ 18; 29 U.S.C. 207(e) (“regular rate” includes “all remuneration for employment”); *Huntington Mem’l Hosp. v. Superior Court*, 131 Cal.App.4th 893, 902-903 (2005) (payments included in calculation of regular rate are generally consistent under state and federal law).

In response, Mitsubishi contends that the additional payments at the end of the year are discretionary holiday bonuses and thus do not need to be included in the regular rate of pay for overtime purposes. 29 C.F.R. § 778.200(a)(1) (defining the regular rate of pay to include all remuneration for employment paid to the employee while excluding “sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.”) Mitsubishi further contends that the discretionary-holiday bonuses were not tied to employees’ hours worked and therefore do not need to be included in the regular rate. Haines Decl., ¶ 18; *see also* 29 U.S.C. § 207(e)(2) (payments made to employee which are not compensation for hours of employment need not be included in regular rate of pay); 29 C.F.R. § 778.208 (discretionary bonuses excludable from regular rate). Haines Decl., ¶ 18.

3. Claim for Unpaid Wages Due to Rounding

Plaintiff alleges that Mitsubishi rounded its employees’ time entries in quarter-hour increments in a manner that consistently favored Mitsubishi, and that, as a result, its prior time-rounding practice resulted in an underpayment of wages. Haines Decl., ¶ 19. Mitsubishi counters that its rounding practice was lawful, since it was both neutral on its face and resulted, over time, in employees being paid for all hours worked. Haines Decl., ¶ 19; *see also See’s Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer “applies a

consistent rounding policy that, on average, favors neither overpayment nor underpayment.”). Mitsubishi further argues that, at most, employees were under-paid due to rounding on a minority of shifts (roughly 36%), and that overall, approximately 64% of time entries were either neutral or rounded in favor of *employees*. Haines Decl., ¶ 19. Mitsubishi contends that multiple Courts of Appeal have found rounding mechanisms to be lawful under similar circumstances. *See, e.g., Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal.App.5th 1239, 1254 (2019) (review granted on other grounds) (affirming summary judgment for employer on rounding claim where employees were underpaid on 54.6% of shifts, finding that such facts do not establish that employees were “systematically undercompensate[d]”); *AHMC Healthcare, Inc. v. Sup. Ct.*, 24 Cal.App.5th 1014, 1028 (2018) (affirming summary judgment for employer where “bare majority” of employees were underpaid due to rounding). Because Plaintiff’s expert’s review of employee timekeeping records revealed that Mitsubishi’s rounding practice appeared to be neutral, Plaintiff did not anticipate a realistic recovery on this claim.

4. Derivative Claims for Waiting Time Penalties and PAGA Penalties

As a result of these substantive violations, Plaintiff asserts that Mitsubishi is liable for derivative waiting time penalties for its failure to pay employees all final wages upon their separation of employment, and civil penalties under PAGA. Haines Decl., ¶¶ 20-21.

Mitsubishi contends it possesses strong, good faith defense to Plaintiff’s underlying wage claims, thus precluding recovery of waiting time penalties (which are only available for the “willful” failure to pay wages). *See* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203...A good-faith dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.”). Haines Decl., ¶ 20. Mitsubishi further maintains that, even assuming Plaintiff would prevail on his “regular rate” claim, not all former employees experienced an underpayment of wages since not all former employees received the bonuses at issue. Haines Decl., ¶ 20. Additionally, since Plaintiff’s PAGA claim is derivative of the underlying claims, Mitsubishi asserts that the PAGA claim will fail with those claims. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136,

1 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
2 fail.”); Haines Decl., ¶ 21. Mitsubishi also maintains that given its good faith defenses, this Court
3 would exercise its discretion to substantially reduce any PAGA penalties if it were to find
4 Mitsubishi liable for any of Plaintiff’s claims. Haines Decl., ¶ 21; *see also* Lab. Code § 2699(e)(2)
5 (authorizing reduction in PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit*
6 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties);
7 *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal.
8 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th
9 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good
10 faith attempts” to comply with the law).

11 **C. DISCOVERY AND MEDIATION**

12 In connection with mediation, the parties engaged in extensive informal discovery,
13 including Mitsubishi’s production of timekeeping and payroll records for all California non-
14 exempt employees during the entire Class Period, its relevant wage and hour policies, and other
15 relevant data and information. Haines Decl., ¶ 13. Plaintiff, with the help of his expert economist
16 who holds a Ph.D. in economics, conducted a comprehensive analysis and extrapolation of the
17 data to create a damages model for mediation. *Id.* This discovery allowed the parties to assess
18 the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and
19 Mitsubishi’s potential defenses. *Id.*

20 On December 3, 2020, the parties attended a full day mediation with E. William Klatte, Esq., a
21 respected mediator. Haines Decl., ¶ 14. During mediation, the parties vigorously debated their
22 opposing positions, the chances of class certification, and the legal and factual bases of Plaintiff’s
23 claims and Mitsubishi’s defenses. *Id.* With the help of Mr. Klatte, the Parties reached a class-wide
24 resolution at the conclusion of the mediation. *Id.* The parties memorialized their agreement in a
25 Memorandum of Understanding, and over the following months negotiated and finalized the
26 Settlement Agreement now before this Court.

27 ///

28 ///

1 **III. THE PROPOSED SETTLEMENT**

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

3 Under the Settlement, Mitsubishi will pay a non-reversionary Maximum Settlement
4 Amount (“MSA”) of \$300,000.00. *See* Settlement, § 3. This Settlement is non-reversionary and
5 Settlement Class members will automatically receive their Individual Settlement Payment unless
6 they affirmatively opt-out of the Settlement. *Id.*; § 4. The Settlement’s monetary terms are
7 summarized below:

8 •	Maximum Settlement Amount (“MSA”):	\$300,000.00
9 •	Minus Court-approved attorneys’ fees (one-third):	\$100,000.00
10 •	Minus Court-approved, verified costs (up to):	\$17,500.00
11 •	Minus Court-approved enhancement payment:	\$7,500.00
12 •	Minus Amount Paid to LWDA:	\$30,000.00
13 •	<u>Minus estimated settlement administration costs:</u>	<u>\$7,000.00</u>
14 •	Net Settlement Amount (“NSA”):	\$145,500.00

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

16 After deducting amounts for a Court-approved enhancement payment, administration
17 costs, attorneys’ fees and costs, and PAGA payment to the LWDA, Mitsubishi will pay at least
18 \$145,500.00 to the Settlement Class. Haines Decl., ¶ 15; Settlement, § 4(A). Mitsubishi represents
19 there are approximately 43 Class members. *See* Settlement, § 1. Thus, the average payment is
20 projected to be approximately \$3,383.72. Haines Decl., ¶ 16. Settlement Class members will have
21 sixty (60) days to opt-out or object, providing ample time to review the Notice. Settlement, §
22 9(C). Settlement Class members who do not opt-out will release all claims pled in the operative
23 Complaint, or which could have been pled based on the factual allegations therein, that arose
24 during the Class Period. *Id.*, § 2(A). Additionally, all Settlement Class members who cash their
25 Settlement checks will release any claims under the Fair Labor Standards Act that could have
26 been pled based on the facts alleged in the Action. *Id.*

27 The NSA will be distributed as follows: (i) first, \$10,000 of the NSA, designated the
28 “PAGA Amount” (i.e., 25% of the amount set aside as PAGA penalties), will be paid to all
Settlement Class members who worked for Mitsubishi at any time from April 3, 2019 to the end
of the Class Period (the “PAGA Period”), proportionally based on each Settlement Class
member’s number of pay periods worked during the PAGA Period; (ii) next, 45% of the

1 remainder of the NSA will be distributed proportionally to all participating Settlement Class
2 members who worked for Mitsubishi at any time from April 1, 2019 to the end of the Class Period
3 (“Wage Statement Period”), proportionally based on the number of pay periods worked during
4 the Wage Statement Period; (iii) an additional 45% of the remainder of the NSA will be
5 designated the “Waiting Time Amount” and distributed equally to all participating Settlement
6 Class members whose employment with Mitsubishi ended during the Class Period; and (iv) the
7 final 10% of the NSA remainder will be distributed proportionally among participating
8 Settlement Class members based on the number of workweeks worked by each participating
9 Settlement Class member during the Class Period. *See* Settlement, § 4(B).

10 For tax purposes, Individual Settlement Payments will be designated as follows: for all
11 payments from the PAGA Amount, 100% penalties; and from all payments from the remainder
12 of the NSA, 5% wages and 95% penalties and interest.² *See* Settlement, § 4(D). Mitsubishi will
13 pay employer-side payroll taxes on the wage portion of each payment, in addition to the MSA.
14 *See id.*, § 3(D). Mitsubishi shall fund the MSA within sixty (60) days after the entry of a final
15 judgment, and when all appeals or other collateral attacks have lapsed or have been favorably
16 resolved in favor of the Settlement Agreement. *Id.*, § 3(B).

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

18 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third the MSA
19 (estimated at \$100,000), and up to \$17,500 in verified costs. *See* Settlement, § 5. Plaintiff submits
20 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
21 consuming litigation on a contingent basis. Counsel have incurred substantial attorney fees
22 conducting pre-filing investigation; analyzing Plaintiff’s claims; conducting legal research;
23 analyzing timekeeping and other data; preparing for and attending mediation; negotiating and
24 preparing the Settlement; preparing this Motion; and otherwise litigating this case. Haines Decl.,
25 § 22. Counsel anticipate incurring additional fees in overseeing the Notice process, preparing the
26 Final Approval Motion, and appearing at the Final Approval hearing. *Id.*

27
28 ² Plaintiff submits this allocation is reasonable given that the value of Plaintiff’s underlying wage claim
(the “regular rate” claim) comprises a very small portion of total damages, as described *infra*.

1 It is appropriate to award attorney fees as a percentage of the “common fund” created by
2 the settlement. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding “the percentage of
3 fund method survives in California class action cases”). Counsel’s fee request of one-third of the
4 GSA is well within the range of reasonableness and is typical for common fund settlements.
5 *Newberg on Class Actions* § 14.6 (4th Ed. 2013) (historically, courts have awarded percentage
6 fees in the range of 20% to 50%). Counsel submit their request for fees is reasonable in light of
7 the substantial risks and significant work undertaken, the results obtained, and the efficiency with
8 which counsel conducted the litigation.

9 At final approval, Plaintiff will apply for a Class Representative Enhancement Payment
10 of \$7,500 for his services to the Settlement Class. Haines Decl., ¶ 24; *see also* Settlement, § 6.
11 “[I]ncentive awards are fairly typical in class action cases...and are intended to compensate class
12 representatives for work done on behalf of the class [and] to make up for financial or reputational
13 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th
14 1380, 1393-94 (2010). As will be fully briefed at final approval, Plaintiff’s requested
15 Enhancement Payment is in recognition of the time and effort he expended on behalf of the
16 Settlement Class, including providing factual information and documents to counsel, identifying
17 potential witnesses, numerous discussions with counsel to discuss the claims and theories at issue
18 in the litigation, and otherwise actively participating in the prosecution of this case. Haines Decl.,
19 ¶ 23. Plaintiff respectfully submits that this requested payment is well within the range of
20 approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW, 2011 WL 1883188 at *10
21 (E.D. Cal. May 17, 2011) (approving \$7,500 enhancement award to each of five plaintiffs from
22 \$505,058.60 settlement).

23 The Settlement also designates \$40,000 as PAGA penalties, of which \$30,000 (75%) will
24 be paid to the LWDA, with the remaining \$10,000 distributed to the Settlement Class as described
25 above, consistent with the requirements of Labor Code § 2699(i). *See* Settlement, § 3(C)(5).
26 Plaintiff submits this allocation is appropriate in light of other settlements allocating penalties to
27 the LWDA. *See, e.g., Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011)
28 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement).

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 Cal. Rule of Court 3.769 conditions class action settlements on court approval, which is
4 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”). Settlement is the preferred means
9 of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA*
10 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role is to ensure the agreement taken as
11 a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a
12 presumption of fairness when a settlement is negotiated at arm’s length by counsel. *See, e.g.*,
13 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

14 **1. Standard For Preliminary Approval**

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

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

24 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff
25 acknowledges that there were substantial risks and uncertainty in proceeding with class
26 certification and trial. As explained in detail in section II.B., *supra*, Mitsubishi presented
27 numerous defenses to Plaintiff’s claims, both on the merits and with respect to class certification.
28 Although Plaintiff was prepared to litigate these claims through class certification and, ultimately,

1 through trial, given the amount offered in settlement, Plaintiff predicted that it was unlikely that
2 further litigation would result in a substantially more beneficial result for the Settlement Class.
3 Thus, this factor supports preliminary approval of the Settlement.

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

5 Although the parties engaged in informal discovery prior to reaching the proposed
6 Settlement, the parties had not yet begun formal written and deposition discovery. Haines Decl.,
7 ¶ 25. Therefore, absent settlement, the Parties would need to expend substantial time and
8 resources to complete formal written and deposition discovery and prepare the case for class
9 certification and trial. *Id.* This Settlement avoids the considerable attorneys' fees and costs
10 associated with conducting formal discovery, moving for class certification and potentially
11 summary judgment or adjudication, and ultimately, trial, as well as the risks and the
12 accompanying burden of continued litigation on the Court.

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

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

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

20 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
21 for disputed claims. With the assistance of a retained economist with a Ph.D., Plaintiff analyzed
22 potential damages due to Mitsubishi's allegedly unlawful policies and practices. Plaintiff's
23 analyses of potential maximum exposure for each theory of liability are set forth below:

24 **Failure to Issue Accurate Itemized Wage Statements: \$119,000**

25 Plaintiff contends that as a result of Mitsubishi's practice of paying employee wages one
26 week in arrears, Mitsubishi's wage statements failed to accurately list the inclusive dates of the
27 pay period, the employee's hours worked, as well as the wages earned during the pay period in
28 violation of Labor Code § 226(a) ("An employer, semimonthly or at the time of each payment of

1 wages, shall furnish to his or her employee...an accurate itemized statement in writing showing
2 (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the
3 inclusive dates of the period for which the employee is paid. . .”). Haines Decl., ¶ 17. Based on
4 Plaintiff’s expert’s analysis and extrapolation of the payroll records produced by Mitsubishi, there
5 have been 1,208 wage statements issued to 36 Settlement Class members between April 1, 2019
6 and the present. *Id.* Therefore, and pursuant to Labor Code § 226(e) provision of a \$50 penalty
7 for “initial” violations and \$100 for “subsequent” violations, Plaintiff calculates Mitsubishi’s
8 potential exposure for wage statement penalties as \$119,000 (36 “initial” violations * \$50) +
9 (1,172 “subsequent” violations * \$100). *Id.*

10 Unpaid Overtime Based on Miscalculation of Regular Rate: \$2,276

11 As discussed above, Plaintiff alleges that Mitsubishi paid end-of-year bonuses but failed
12 to include these payments in employees’ “regular rate” of pay when calculating overtime wages,
13 resulting in under-payment of overtime. Haines Decl., ¶ 18. Based on Plaintiff’s expert’s analysis
14 and extrapolation of data provided by Mitsubishi, Plaintiff calculates a total underpayment of
15 approximately \$2,276 in overtime wages during the Class Period as a result of Mitsubishi’s failure
16 to include the bonuses discussed above into employees’ “regular rate” of pay. *Id.*

17 Unpaid Wages Due to Rounding: No Recovery

18 Plaintiff alleged that Mitsubishi rounded its employees’ time entries in quarter-hour
19 increments, and that employees were underpaid as a result, resulting in unpaid minimum and
20 overtime wages. Haines Decl., ¶ 19. However, Plaintiff’s expert analyzed employee timekeeping
21 records and his analysis revealed that that Mitsubishi’s time-rounding practice appeared to be
22 neutral and actually resulted in many employees being *overpaid* during the Class Period. *Id.*
23 Accordingly, and based on the case law cited *supra* finding similar rounding practices to be
24 lawful, Plaintiff did not anticipate a realistic recovery on this claim.

25 Waiting Time Penalties: \$101,065

26 As a result of the unpaid overtime wages described above, Plaintiff alleges that Mitsubishi
27 failed to comply with their final pay obligations as set forth in Labor Code §§ 201-203. Haines
28 Decl., ¶ 20. Mitsubishi’s records reflect approximately 17 Class Members who separated from

1 their employment with Mitsubishi within the three-year statute of limitations period applicable to
2 Labor Code § 203. Based on an average hourly rate of \$24.77 (computed based on pay records
3 produced by Mitsubishi), Plaintiff estimated the average waiting penalty per former employee to
4 be \$5,495 ($\$24.77 \times 8 \text{ hours} \times 30 \text{ days}$). *Id.* Therefore, Plaintiff estimates that Mitsubishi's
5 maximum exposure for waiting time penalties at \$101,065 ($17 \times \$5,495$).

6 PAGA Civil Penalties: \$120,800

7 As a further result of the alleged violations described above, Plaintiff alleges that
8 Mitsubishi is liable for civil penalties under the PAGA. Haines Decl., ¶ 21. Based on the data
9 provided by Mitsubishi, there are approximately 1,208 pay periods during the PAGA Period (i.e.,
10 April 3, 2019 through the present). *Id.* Based on the violations addressed above, Plaintiff contends
11 that Mitsubishi is liable for a PAGA civil penalty for each of the 1,208 pay periods worked during
12 the PAGA period. *Id.* Accordingly, Plaintiff estimates Mitsubishi's maximum potential PAGA
13 exposure at \$120,800 ($1,208 \text{ violations} \times \$100 \text{ "initial" penalty under Labor Code § 2699(f)}$).
14 *Id.*; see also *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial"
15 violation rate applies for PAGA penalties until employer has been notified it violated the Labor
16 Code); *Bernstein v. Virgin America, Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (citing *Amaral* and
17 reversing district court's award of "subsequent" PAGA penalty rate for violations occurring prior
18 to the district court's order granting partial summary judgment, because "Virgin was not notified
19 by the Labor Commissioner or any court that it was subject to the California Labor Code until
20 the district court partially granted Plaintiffs' motion for summary judgment.").

21 Using these estimated maximum figures for each of the claims described above, Plaintiff
22 calculates a **maximum** potential recovery for the Settlement Class (assuming victory on all
23 claims, without any discounts for risks of non-certification or losing on the merits) to be
24 approximately \$343,141. Haines Decl., ¶ 22. The proposed Settlement of \$300,000 therefore
25 represents approximately 87% of the Settlement Class's maximum potential recovery, while
26 avoiding the further expense and serious risk of proceeding to class certification and trial. *Id.*

27 Taking into account the risks of non-certification, failure to prevail on the merits, and the
28 Court's discretion to reduce PAGA penalties, the proposed Settlement falls well within the realm

of being fair, reasonable, and adequate. *See, e.g., Altamirano v. Shaw Industries, Inc.*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action settlement that recovered only about 15% of the hypothetical maximum recovery estimated by Plaintiff). Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class without the uncertainty, delay, and additional expense of further litigation.

e. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Secs. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by competent counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side, and who have been appointed class counsel in numerous similar cases. *See* Haines Decl., ¶¶ 2-8; Declaration of Tuvia Korobkin, ¶¶ 2-6; Declaration of Alexandra McIntosh, ¶¶ 2-4. The Settlement was also reached with the assistance of a respected wage and hour class action mediator. Thus, this factor strongly supports preliminary approval.

2. The Preliminary Approval Standard Is Met

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

a. The Settlement is Within the Range of Possible Approval

The Settlement reflects an excellent recovery for Settlement Class members in light of the significant risks of litigation. As explained above, the Settlement reflects about 87% of the *maximum* recovery the Settlement Class could possibly expect to recover on Plaintiff’s claims. Moreover, the Settlement will provide substantial compensation for contested claims and derivative penalties, and the overall average payment of \$3,383.72 greatly exceeds average payments achieved in other wage and hour class action settlements.³ Thus, Plaintiff submits that

³ *See e.g., Bercea v. AE Retail West*, No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average recovery of about \$105); *Ressler v. Federated Department Stores, Inc.*, No. BC335018 (L.A.

the proposed Settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm's-length negotiations, a full-day mediation, and months of additional negotiations. 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 worked with an expert to conduct a detailed data analysis to arrive at estimated damages. Haines Decl., ¶¶ 17-21. This factor supports preliminary approval.

c. The Settlement is Devoid of Obvious Deficiencies

The Settlement contains no obvious deficiencies. The Settlement will provide tangible, significant monetary relief to the Settlement Class. The amounts proposed for attorney fees, costs, and enhancement payment are reasonable. Thus, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

The Settlement class satisfies the criteria for certification under C.C.P. § 382 because: (1) it is ascertainable and numerous; (2) common question of fact and law predominate; (3) Plaintiff's claims are typical; and (4) Plaintiff and his counsel will adequately represent the Settlement Class.

1. The Proposed Settlement Class Is Ascertainable And Numerous

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to...[business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes current and former non-exempt hourly employees employed by Mitsubishi in the State of California during the Class Period. Thus, they can be identified from Mitsubishi's records. As noted, there are approximately 43 Settlement Class members, making it impracticable to bring them all before the Court.

County Super. Ct. Jan. 2, 2009) (average recovery of about \$90); and *Schiller v. David's Bridal, Inc.*, 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; . . . [T]he Court finds that the results achieved are good").

1 **2. Common Issues Of Law And Fact Predominate For Settlement Purposes**

2 The focus on certification is not on the merits, but rather on what types of questions,
3 “common or individual,” are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34
4 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on Mitsubishi’s alleged facially
5 deficient wage statements and failure to include end-of-year bonuses in employee’s “regular rate”
6 of pay. These claims are commonly certified. *See, e.g., Leyva v. Medline Industries, Inc.*, 716 F.
7 3d 510, 514 (9th Cir. 2013) (directing district court to certify regular rate claim); *Mejia v. DHL*
8 *Express (USA), Inc.*, No. CV 15-890-GHK JCx), 2016 WL 9450680 (C.D. Cal. Feb. 25, 2016)
9 (certifying facially deficient wage statement claim).

10 **3. The Claims Of The Named Plaintiff Are Typical**

11 Typicality is satisfied where a class representative’s claims are typical of those of the
12 class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here,
13 Plaintiff worked for Mitusbishi as a non-exempt employee in California during the proposed Class
14 Period and was subject to the wage and hour policies and practices at issue in this lawsuit and
15 alleges he was injured by the same alleged violations as the Settlement Class. *See* Declaration of
16 Luis Salinas, ¶¶ 2-4. Thus, typicality is satisfied.

17 **4. Plaintiff And His Counsel Will Adequately Represent The Class**

18 The adequacy requirement examines conflicts of interest between named parties and the
19 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155
20 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement
21 Class, as there are no known conflicts between Plaintiff and the Settlement Class, and as noted
22 above, Plaintiff’s Counsel has significant relevant experience.

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

24 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
25 mailing addresses provided by Mitsubishi. *See* Settlement, § 9(A)-(B). This is the “best notice
26 practicable” as it provides “individual notice to all members who can be identified through
27 reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes
28 the Settlement be administered by Phoenix Settlement Administrators, an experienced class action

1 settlement administrator. *See* Declaration of Jodey Lawrence and exhibits. Settlement Class
2 members' addresses will be ascertainable through Mitsubishi's employment records. Phoenix will
3 also run all addresses through the USPS National Change of Address database and/or perform
4 "skip traces" to obtain current addresses. *See* Settlement, § 9(B) and (F).

5 The Notice's content satisfies Cal. Rule of Court 3.766(d) because it advises Settlement
6 Class members of the nature of the claims, the basic contentions and denials of the parties and the
7 key terms of the Settlement, the 60-day deadline to opt-out or object to the settlement and the
8 procedures by which to do so, explains the recovery formula and expected recovery amount for
9 each Settlement Class member, and advises that they will be bound by the terms of the settlement
10 if they do not request exclusion. *See* Haines Decl., Exh. A to Exh. 1. The Notice also notifies
11 Settlement Class members of the final approval hearing and provides Class Counsel's contact
12 information. *Id.*

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

14 Finally, the Court should set a hearing for final approval of the settlement on a date
15 appropriately scheduled to follow the deadline by which Settlement Class members must file
16 objections to the settlement or opt-out. *See* Cal. Rule of Court 3.769.

17 **V. CONCLUSION**

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

21 Dated: October 11, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

22
23 By:



Paul K. Haines
Attorneys for Plaintiff