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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

VICENTE REYES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RUSKIN COMPANY, a Delaware corporation;
JOHNSON CONTROLS, INC., a Wisconsin
corporation; and DOES 1 through 100,

Defendants.

Case No. RIC1902599

*[Assigned for all purposes to Hon. Harold W.
Hopp; Dept. 10]*

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

Date: June 20, 2022

Time: 8:30 a.m.

Dept.: 10

Reservation ID: 334388961178

Action Filed: April 22, 2019

Trial Date: No Date Set

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1 **PLEASE TAKE NOTICE** that pursuant to Rule 3.769 of the California Rules of Court, on
2 June 20, 2022, at 8:30 a.m. in Department 10 of the above-entitled Court, located at 4050 Main
3 Street, Riverside, California 92501, Plaintiffs Vicente Reyes and Leticia Yanez (“Plaintiffs”),
4 individually and on behalf of a class of similarly situated individuals, will and hereby do move this
5 Court for:

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

9 All current and former non-exempt employees who worked for Defendants
10 Ruskin Company and Johnson Controls, Inc. at the Mira Loma facility in
11 California at any time from April 22, 2015 through May 10, 2022 (the
12 “Class Period”).

- 13 3. Preliminary appointment of Plaintiffs Vicente Reyes and Leticia Yanez as Class
14 Representatives;
- 15 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Neil Larsen of Haines
16 Law Group, APC, and Joseph Lavi and Melissa A. Huether of Lavi & Ebrahimian, LLP,
17 as Class Counsel;
- 18 5. The scheduling of a hearing to consider whether the Settlement should be finally
19 approved and to permit enhancement payments to Plaintiffs, Settlement Administrator
20 costs, civil penalties payable to the Labor & Workforce Development Agency
21 (“LWDA”), and attorneys’ fees and costs to Class Counsel;
- 22 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
23 Administrator for mailing notices; and
- 24 7. Approval of the proposed Class Notice and an order that it be disseminated to the
25 proposed Settlement Class as provided in the Settlement Agreement.

26 ///

27 ///

28 ///

1 This Motion is based on this notice of motion, the attached memorandum of points and
2 authorities, the declarations of Paul K. Haines, Sean M. Blakely, Neil Larsen, Melissa A. Huether,
3 Plaintiffs Vicente Reyes and Leticia Yanez, and Jodey Lawrence of Phoenix Settlement
4 Administrators and the exhibits attached thereto; the Settlement Agreement; the pleadings and other
5 papers filed in this action; and on any further oral or documentary evidence or argument presented
6 at the time of hearing.

7
8 Dated: May 26, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Vicente Reyes and Leticia Yanez (“Plaintiffs”) seek preliminary approval of a
4 class action settlement with Defendants Ruskin Company and Johnson Controls, Inc. (hereinafter
5 “Defendants”). Plaintiffs brought this class and representative action for various wage and hour
6 violations on behalf of current and former non-exempt employees of Defendants who worked at the
7 Mira Loma facility in California during the time period of April 22, 2015 through May 10, 2022
8 (the “Class Period”). Plaintiffs’ primary allegations are that Defendants: (1) failed to pay all wages
9 due to Defendants’ unlawful timekeeping policies/practices: (2) failed to provide all legally
10 compliant meal periods; and (3) failed to authorize and permit all required rest periods. As a result
11 of these violations, Plaintiffs also allege that Defendants failed to issue accurate and compliant
12 itemized wage statements, failed to pay all wages to Defendants’ former employees, and are liable
13 for civil penalties under the Private Attorneys General Act (“PAGA”).¹

14 Plaintiffs now respectfully request that this Court preliminarily approve this non-
15 reversionary, common-fund class action settlement², in which Defendants have agreed to pay a
16 Gross Settlement Amount (“GSA”) of One Million Nine Hundred Fifty Thousand Dollars and Zero
17 Cents (\$1,950,000.00) on behalf of the following Settlement Class:

18 All current and former non-exempt employees who worked for Defendants
19 Ruskin Company and Johnson Controls, Inc. at the Mira Loma facility in
20 California at any time from April 22, 2015 through May 10, 2022 (the
“Class Period”).

21 The \$1,950,000 GSA represents a substantial benefit to Class Members who will be agreeing
22 to a release of only those claims that were asserted in this litigation. After deductions for Plaintiffs’

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

26 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Paul K. Haines as
27 Exhibit A. The proposed Class Notice, Request for Exclusion Form, and Objection Form are
28 attached to the Settlement as Exhibits 1, 2, and 3, respectively, and are also attached to the
[Proposed] Order Granting Preliminary Approval of Class Action Settlement submitted with this
motion. All defined terms in this motion have the same definition as that in the Settlement.

1 requested enhancement payments, settlement administrator costs, the amount set aside as PAGA
2 civil penalties, and attorneys' fees and costs to Class Counsel, the remaining amount (the "Net
3 Settlement Amount") of approximately \$1,130,150 will be distributed to all Class Members who do
4 not opt-out of the Settlement based on the proportionate number of workweeks worked by each
5 Class Member. Former employees with standing for waiting time penalties and employees with
6 standing for wage statement penalties and PAGA penalties will also receive additional consideration
7 for their release of these penalty claims. Significantly, Class Members do not need to file a claim
8 form in order to receive a Settlement Award, as all Class Members will automatically receive a
9 Settlement Award unless they affirmatively opt-out. There are approximately 380 Class Members,
10 and **the average Settlement Award is projected to be approximately \$3,013.73**, which is an
11 excellent result for Class Members.

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

17 **II. SUMMARY OF THE LITIGATION**

18 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

19 Defendants tout themselves as "leaders in the air control industry" and are a manufacturer of
20 heating, ventilation and air conditioning ("HVAC") products for industrial customers, including
21 ventilators, dampers, access doors and zone control systems. *See* Declaration of Paul K. Haines
22 ("Haines Decl."), ¶ 11. Plaintiffs and Class Members worked for Defendants at the Mira Loma
23 Facility in California as non-exempt employees during the Class Period. *Id.*

24 On April 22, 2019, Plaintiff Reyes filed this instant wage and hour class action alleging
25 causes of action for: (1) minimum wage violations; (2) rest period violations; (3) waiting time
26 penalties; and (4) unfair competition. Haines Decl., ¶ 12. The *Reyes* Action was subsequently
27 removed to the Central District of California, United States District Court. *Id.* While the *Reyes*
28 Action was pending in District Court, Plaintiff Reyes conducted extensive formal discovery. *Id.* The

1 Parties in the *Reyes* Action agreed to attend a private mediation, and in connection with mediation,
2 Defendants produced a sampling of timekeeping and payroll records as well as Defendants' relevant
3 wage and hour policies. *Id.* On February 13, 2020, the Parties attended private mediation with the
4 Hon. Peter D. Lichtman (Ret.) but were not able to reach a settlement. *Id.*

5 On June 12, 2020, Plaintiff Leticia Yanez filed a wage and hour class action against
6 Defendants in the Riverside Superior Court in the matter entitled *Leticia Yanez v. Ruskin Company,*
7 *et al.*, Riverside Superior Court Case No. RIC2001667 (the "*Yanez* Class Action"). Haines Decl., ¶
8 13. On August 24, 2020, Plaintiff Yanez filed a separate representative action against Defendants
9 asserting a sole cause of action for civil penalties under the PAGA in the matter entitled *Leticia*
10 *Yanez v. Ruskin Company, et al.*, Riverside Superior Court Case No. RIC2003341 (the "*Yanez*
11 *PAGA* Action"). *Id.*

12 On October 1, 2020, the Parties in the *Reyes* Action stipulated to remand this action back to
13 the Superior Court of California, County of Riverside, and on October 6, 2020, the District Court
14 remanded the *Reyes* Action back to the Superior Court of California, County of Riverside. Haines
15 Decl., ¶ 14.

16 The Parties in this action and the Parties in the *Yanez* Class Action and the *Yanez* PAGA
17 Action agreed to attend a global private mediation on December 10, 2021 with Steven G. Mehta,
18 Esq., and the Parties were able to reach a global class-wide settlement in the days following this
19 second mediation. Haines Decl., ¶ 16. As part of the Settlement, the Parties agreed to file a Second
20 Amended Class and Representative Action Complaint ("SAC") in this Action to add Plaintiff Leticia
21 Yanez as a named plaintiff and class representative and add all claims alleged in the *Yanez* Class
22 Action and *Yanez* PAGA Action. *Id.*, at ¶ 17. On or about April 27, 2022, Plaintiffs filed the SAC.
23 *Id.*

24 **B. PLAINTIFFS' CLAIMS AND DEFENDANTS' DEFENSES**

25 **1. Unpaid Wages Based on Unlawful Timekeeping Policies/Practices**

26 Plaintiffs allege that Defendants maintained unlawful timekeeping policies/practices, which
27 failed to compensate Class Members for all hours worked. Haines Decl., ¶ 19. Specifically, Plaintiffs
28 allege that Class Members consistently clocked in and began performing compensable work prior

1 to the scheduled start of their shifts, and continued performing compensable work past the scheduled
2 end of their shifts. *Id.* However, due to Defendants’ “Grace Period” policies/practices, Plaintiffs
3 allege that Defendants only compensated Class Members based on their scheduled start time, and
4 did not compensate Class Members for the fifteen (15) minutes prior to the scheduled start of shift,
5 nor did Defendants compensate Class Members for up to fifteen (15) minutes worked after their
6 scheduled shift ends. *Id.* Plaintiffs allege that Defendants’ timekeeping policies/practices of only
7 compensating for scheduled hours, as opposed to all hours actually worked, resulted in a systematic
8 underpayment to Class Members. *Id.*

9 Defendants counter that they have always paid Class Members for all hours worked
10 throughout the Class Period and that their timekeeping policies/practices are compliant with
11 California law. Haines Decl., ¶ 19. Defendants further argue that it simply allowed employees to
12 clock-in prior to their scheduled start of shift, however, it was not possible for employees to begin
13 working prior to the scheduled start of shift, and therefore, employees could not perform
14 compensable work prior to the start of their scheduled shift. *Id.* Similarly, Defendants argue that it
15 is not possible for Class Members to perform compensable work after the end of their scheduled
16 shift. *Id.* Additionally, Defendants assert Plaintiffs would be unable to certify this claim given the
17 individualized inquiries as to whether Class Members performed compensable work outside of their
18 scheduled shift, and whether Class Members were in fact underpaid, or potentially overpaid for each
19 workday in question. *Id.*

20 **2. Meal Period Claims**

21 Plaintiffs alleges that Defendants failed to provide legally-compliant first meal periods and
22 second meal periods when Class Members worked in excess of 10.0 hours. Haines Decl., ¶¶ 20-21.
23 Specifically, Plaintiffs allege that Defendants relied on a bell system to signal the beginning and end
24 of first meal periods. *Id.*, at ¶ 20. Plaintiffs allege that prior to the ringing of the bell signaling the
25 start of the first meal period, Defendants prohibited Class Members from leaving their work stations.
26 *Id.* Plaintiffs allege that Defendants also required Class Members to be back at their respective
27 workstations at or prior to the conclusion of the 30-minute meal periods, which is evidenced by the
28 fact that Defendants ring a bell one minute before the conclusion of the meal period to alert Class

1 Members to begin walking back to their workstations. *Id.* As a result of this bell system, Plaintiffs
2 allege that Defendants have failed to provide full 30-minute first meal periods. *Id.* Additionally,
3 Plaintiffs allege that following the outbreak of COVID-19, Defendants maintained a policy whereby
4 Class Members were required to go through off-the-clock temperature checks prior to clocking back
5 into their shifts from meal periods. *Id.* Plaintiffs allege that these required temperature checks prior
6 to clocking in from their meal periods further truncated Class Members' meal periods. *Id.* Lastly,
7 Plaintiffs allege that Defendants failed to provide legally-compliant second meal periods when Class
8 Members worked shifts in excess of 10.0 hours. *Id.*, at ¶ 21.

9 Defendants counter that they have maintained compliant written meal period policies
10 throughout the Class Period and have always provided employees the *opportunity* to take legally
11 compliant meal periods, and that they are not required to "ensure" meal periods are taken. Haines
12 Decl., ¶ 20; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting
13 "ensure" standard and holding employers only have to "provide" employees the opportunity to take
14 meal periods). Defendants further assert that based on Plaintiffs' allegations, many of the meal
15 period violations were merely *de minimis* as Defendants' bell system provided for meal periods of
16 at least 29 minutes. Haines Decl., ¶ 20. Additionally, with respect to second meal periods,
17 Defendants maintain that employees voluntarily waived their second meal period when they worked
18 shifts in excess of 10.0 hours (but less than 12.0 hours), as they are entitled to do under Labor Code
19 § 512. *Id.*, at ¶ 21. Finally, Defendants argue that these claims are not suited for class treatment, as
20 individual inquiries would be needed to assess which employees took non-compliant meal periods
21 or missed meal periods, how many meal periods were non-compliant or missed, the reasons why a
22 particular employee did not take a compliant meal period on a particular shift, and for second meal
23 periods, whether there was a valid waiver. *Id.*, at ¶¶ 20-21.

24 **3. Rest Period Claims**

25 Plaintiffs allege that Defendants' strict production requirements resulted in the failure to
26 authorize and permit all legally required rest periods for every four hours of work, or major fraction
27 thereof. Haines Decl., ¶ 22. Specifically, Plaintiffs allege that employees were often required to
28 work through their rest periods and were not relieved of all duties and/or were not relinquished from

1 Defendants' control during rest periods. *Id.* Defendants counter that it has maintained compliant
2 written rest period policies and have always authorized and permitted employees a 10-minute rest
3 period for each 4 hours worked, or major fraction thereof, as required under the Wage Order, and
4 that any failure to take rest periods was as a result of employee choice, rather than Defendants'
5 policy or practice. *Id.* Defendants further argue that Plaintiffs' rest period claim is not amenable to
6 class treatment, since individual inquiries would be required to determine which employees failed
7 to take rest periods, how many rest periods they failed to take, and the reasons why each employee
8 failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially
9 present with respect to rest period claims, Defendants argue, given that rest periods are not recorded.
10 *Id.*

11 **4. Failure to Reimburse Claims**

12 Plaintiffs allege that following the COVID-19 outbreak, Defendants required Class
13 Members to purchase facemasks to use during their employment with Defendants and failed to
14 reimburse Class Members for these expenditures in violation of Labor Code §§ 2802, 2804. Haines
15 Decl., ¶ 23. Defendants contend that at all times it has provided facemasks and other personal
16 protective equipment ("PPE") to Class Members at no charge and continues to do so. *Id.* Defendants
17 further argue this claim is not suitable for class treatment, as it would require individualized
18 determinations as to whether each Class Member purchased facemasks to use at Defendants'
19 workplace. *Id.*

20 **5. Derivative Claims Under Labor Code §§ 203, 226 and the PAGA**

21 As a result of the unpaid wages and meal and rest period violations described above,
22 Plaintiffs allege that Defendants failed to comply with their final pay obligations set forth in Labor
23 Code §§ 201-203, failed to issue accurate and compliant wage statements in violation of Labor Code
24 § 226, and are liable for civil penalties under the PAGA. Haines Decl., ¶¶ 24-26.

25 As to waiting time penalties, Defendants maintain that they possess strong, good faith
26 defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties, which
27 are only available for the "willful" failure to pay wages. Haines Decl., ¶ 24; *see also* 8 Cal. Code
28 Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting

1 time penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an
2 employer presents a defense, based in law or fact which, if successful, would preclude any recovery
3 on the part of the employee.”). Defendants further argue that waiting time penalties are not
4 recoverable at all for alleged meal and rest period violations. Haines Decl., ¶ 24.

5 Defendants further contend any alleged wage statement violations could not be shown to be
6 “knowing and intentional” given its good-faith defenses, and that Plaintiffs cannot show they or other
7 employees “suffer[ed] injury,” as required by Labor Code § 226(e). Haines Decl., ¶ 25. Defendants
8 further argue that wage statements always accurately reflected hours worked and amounts paid to
9 employees. *Id.*; see *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018)
10 (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they
11 correctly reflected the hours worked and the pay received). Lastly, Defendants argue that wage
12 statement penalties are not recoverable at all for meal and rest period violations. Haines Decl., ¶ 25.

13 Additionally, since Plaintiffs’ PAGA claim is derivative of their underlying claims,
14 Defendants assert the PAGA claim would fail with those claims. Haines Decl., ¶ 26; see *Price v.*
15 *Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail,
16 the derivative UCL and PAGA claims also fail.”). Defendants also maintain that given their good
17 faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties
18 if it were to find Defendants liable for any of Plaintiffs’ claims. Haines Decl., ¶ 26; see Lab. Code
19 § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012)
20 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK
21 (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties from \$2.8 million to
22 \$500,000); *Aguirre v. Genesis Logistics*, Case No. SACV 12-00687 JVS (ANx), 2013 WL
23 10936035, at * 2-3 (C.D. Cal. 2013) (reducing PAGA penalties from \$1.8 million to \$500,000).

24 C. DISCOVERY AND MEDIATION

25 After Defendants removed this action to District Court, Plaintiff Reyes commenced formal
26 discovery, seeking contact information for putative class members, Defendants’ written wage and
27 hour policies, and timekeeping and payroll records for the putative class. Haines Decl., ¶ 12. The
28 Parties in the *Reyes* Action agreed to attend a mediation with Hon. Peter D. Lichtman (Ret.) in

1 February 2020. *Id.* Prior to the February 2020 mediation, the Parties in the *Reyes* Action engaged
2 in significant informal discovery, including Defendants’ production of a 20% random sampling of
3 timekeeping and payroll data for the putative class, Defendants’ relevant wage and hour policies,
4 and other relevant data and information. *Id.* Defendants also produced a complete class list with
5 putative class members’ hire and termination dates (if applicable), and hourly rate of pay. *Id.*

6 On February 13, 2020, the Parties in the *Reyes* Action attended private mediation with the
7 Hon. Peter D. Lichtman (Ret.) but were not able to reach a settlement. Haines Decl., ¶ 12.
8 Thereafter, Plaintiff Reyes continued his formal class certification discovery and Plaintiff Reyes
9 was provided with the contact information for putative class members, and Plaintiffs’ Counsel
10 interviewed dozens of putative class members regarding their work experiences with Defendants.
11 *Id.*

12 After the *Yanez* Class Action and the *Yanez* PAGA Action were filed, the Parties in all three
13 actions agreed to attend a global mediation with Steven G. Mehta, Esq. Haines Decl., ¶ 15. In
14 connection with this second mediation, Defendants produced further informal discovery, including
15 an updated class list with hire and termination dates (if applicable), and produced timekeeping and
16 payroll records for all putative class members. *Id.* Plaintiffs hired a labor economist with a Ph.D. in
17 economics to conduct a comprehensive analysis and extrapolation of the data produced by
18 Defendants, including the total number of shifts, workweeks, and pay periods worked, to calculate
19 Defendants’ potential exposure for each of Plaintiffs’ claims. *Id.* This discovery allowed the Parties
20 to assess the merits and value of Plaintiffs’ claims, the chances of certification of Plaintiffs’ claims,
21 and Defendants’ potential defenses. *Id.*

22 On December 10, 2021, the Parties in all three actions attended a full-day mediation with
23 Steven G. Mehta, Esq., a well-respected wage and hour class action mediator. Haines Decl., ¶ 16.
24 During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
25 certification of Plaintiffs’ claims, and the legal bases for Plaintiffs’ claims and Defendants’ defenses.
26 *Id.* At the conclusion of mediation, Mr. Mehta issued a mediator’s proposal for a class-wide
27 settlement, which was ultimately accepted by all Parties in the days following mediation. *Id.* During
28 the months that followed, the Parties negotiated and finalized the long-form Settlement Agreement

1 now before this Court. *Id.* As part of the Settlement, the Parties agreed to file a Second Amended
2 Class and Representative Action Complaint (“SAC”) in this Action to add Plaintiff Leticia Yanez
3 as a named plaintiff and class representative and add all claims alleged in the *Yanez* Class Action
4 and *Yanez* PAGA Action. *Id.*, at ¶ 17. On or about April 27, 2022, Plaintiffs filed the SAC. *Id.*

5 **III. THE PROPOSED SETTLEMENT**

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

7 If the Court preliminarily approves this Settlement, Defendants will pay a Gross Settlement
8 Amount (“GSA”) of \$1,950,000.00. *See* Settlement, § 4. Significantly, this Settlement is non-
9 reversionary, and no Class Member will have to submit a claim form to receive a Settlement Award.
10 *Id.*, at §§ 4(C), 5. Each Class Member will automatically receive a Settlement Award unless they
11 affirmatively opt out of the Settlement. *See Id.*, at § 5.

12 The monetary terms of the Settlement are summarized below:

13	• Gross Settlement Amount (“GSA”):	\$1,950,000.00
14	• Minus Court-approved attorneys’ fees (1/3):	\$650,000.00
15	• Minus Court-approved verified costs (up to):	\$45,000.00
16	• Minus Court-approved Enhancement Payments:	\$15,000.00
17	• Minus Amount Set Aside as PAGA penalties:	\$100,000.00
18	• <u>Minus estimated settlement administration costs:</u>	<u>\$9,850.00</u>
19	Net Settlement Amount (“NSA”):	\$1,130,150.00
20	• PLUS 25% “PAGA Amount” to Settlement Class:	\$25,000.00
21	Total Amount Paid to Class members:	\$1,155,150.00

22 **1. The Settlement Provides For Reasonable Monetary Payments**

23 After deducting amounts for the Court-approved attorneys’ fees and verified costs,
24 Plaintiff’s Class Representative Enhancement Payments, Settlement Administrator costs, and the
25 amount designated as PAGA civil penalties, the Settlement requires Defendants to pay a Net
26 Settlement Amount (“NSA”) of approximately \$1,130,150.00 to all Class Members who do not
27 timely opt out. *See* Settlement, § 5(A). Ninety percent (90%) of the Net Settlement Amount shall be
28 distributed to all participating Class Members based on the participating Class Member’s
proportionate number of workweeks worked during the Class Period. *See* Settlement, § 5(B)(i). Five
percent (5%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount” and
will be distributed in equal, pro-rata shares to each participating Class Member who separated their

1 employment with Defendants between April 22, 2016 and May 10, 2022. Settlement, § 5(B)(ii).
2 Five percent (5%) of the Net Settlement Amount shall be designated as the “Wage Statement
3 Amount,” and will be distributed to participating Class Members who were employed by Defendants
4 from April 22, 2018 through May 10, 2022 based on the proportionate number of workweeks
5 worked during that time period. Settlement, § 5(B)(iii). Lastly, Twenty-Five Thousand Dollars and
6 Zero Cents (\$25,000.00) has been designated the “PAGA Amount,” and shall be distributed to Class
7 Members proportionally based on the number of workweeks worked from June 15, 2019 through
8 May 10, 2022 (the “PAGA Period”). Settlement, § 5(B)(iv).

9 Defendants’ share of employer-side payroll taxes will be paid by Defendants separately, and
10 in addition to, the GSA. *See* Settlement, § 4(D). The Parties propose that any uncashed checks shall
11 be redistributed to those Class Members who have cashed their settlement checks. Settlement, §
12 5(E).

13 According to Defendants’ records, there are approximately 380 total Class Members. Haines
14 Decl., ¶ 18. The average Settlement Award is projected to be approximately \$3,013.73. *Id.* The
15 lowest potential Settlement Award is estimated to be approximately \$2.94. *Id.* The highest potential
16 Settlement Award is estimated to be approximately \$8,329.87 *Id.*

17 Class Members will have sixty (60) days to opt-out or object to the Settlement, thereby
18 providing ample time to review the Class Notice without unduly delaying the Settlement. *See*
19 Settlement, §§ 10(C)-(D). Those Class Members who do not opt-out of the Settlement will be bound
20 by its terms and will release all claims against Defendants included within the Settlement, for the
21 period of April 22, 2015 through May 10, 2022. *See* Settlement, § 2(A).

22 **2. Attorneys’ Fees, Costs, And Enhancement Payments**

23 Plaintiffs will separately apply for an enhancement payment at the time of seeking final
24 approval of the proposed Settlement in the amount of \$7,500 each, for a total of \$15,000, for their
25 services to the Settlement Class. *See* Settlement, § 7. “[I]ncentive awards are fairly typical in class
26 action cases . . . and are intended to compensate class representatives for work done on behalf of the
27 class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re*
28 *Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed

1 at the time of final approval, Plaintiffs’ requested enhancement payments are intended to recognize
2 the time and effort Plaintiffs expended on behalf of the Settlement Class, including providing
3 substantial factual information and documents to Class Counsel, attending multiple meetings with
4 Class Counsel to discuss the claims and theories at issue in the litigation, actively participating in
5 the prosecution of his claims, as well as the significant risks Plaintiffs undertook by agreeing to
6 serve as named Plaintiffs in this case and the fact that Plaintiffs agreed to a general release of all
7 claims subject to a waiver of California Civil Code § 1542. Haines Decl., ¶ 29.

8 Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which is
9 currently estimated to be \$650,000, and up to \$45,000 in verified costs reimbursement. *See*
10 Settlement, § 6; *see also* Haines Decl., ¶ 28. Plaintiffs submit the requested fee is fair compensation
11 for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent
12 fee basis. Class Counsel has incurred substantial attorneys’ fees conducting pre-filing investigation,
13 analyzing Plaintiffs’ claims, conducting legal research, engaging in formal and informal discovery,
14 reviewing Defendants’ documents and policies, interviewing Class Members regarding their work
15 experiences with Defendants, analyzing Class Members’ relevant records, working with a retained
16 expert to create a comprehensive damages model, preparing for and attending two mediations,
17 negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and
18 otherwise litigating the case. Haines Decl., ¶ 28. Class Counsel expect to expend additional attorney
19 time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
20 from Class Members, preparing the final approval papers, and attending the Final Approval hearing.
21 *Id.*

22 California courts recognize an appropriate method for awarding attorneys’ fees in class
23 actions is to award a percentage of the “common fund” created as a result of a settlement. *See e.g.,*
24 *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of fund method
25 survives in California class action cases”). Class Counsel’s request for fees of one-third of the GSA
26 is well within the range of reasonableness, and indeed is considered the typical rate for common
27 fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%,
28 depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

1 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
2 overall percentage of the Settlement and in light of the substantial risks and significant work
3 undertaken, the excellent results obtained, and the efficiency with which the litigation has been
4 conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of
5 attorneys' fees and verified litigation costs when seeking final approval.

6 **III. ARGUMENT**

7 **A. PRELIMINARY APPROVAL IS WARRANTED**

8 California Rule of Court 3.769 conditions settlement of a class action on court approval,
9 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
10 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
11 (2012) (Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and
12 adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
13 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair,
14 adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in
15 complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008).
16 The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken
17 as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of
18 fairness where, as here, the Settlement was negotiated at arm's-length by experienced Class Counsel
19 and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v.*
20 *Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

21 **1. Standard For Preliminary Approval**

22 To make a fairness determination, the Court should consider several factors, including: "the
23 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the
24 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
25 discovery completed and the stage of the proceedings, [and] the experience and views of counsel."
26 *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive
27 and the court is free to engage in a balancing and weighing of the factors depending on the
28 circumstances of each case." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001).

1 As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall
2 balance of factors in this case.

3 **a. The Strength of Plaintiffs' Case**

4 Class Counsel and its expert carefully vetted the claims at issue, reviewed extensive
5 timekeeping and payroll data and conducted a detailed analysis of the data to create a comprehensive
6 damages model for Defendants' potential class-wide liability. *See* Haines Decl., ¶¶ 19-27. Although
7 Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there
8 were substantial risks and uncertainty in proceeding with litigation. As described in section II.B.,
9 *supra*, Defendants presented multiple defenses to Plaintiffs' claims, both on the merits and with
10 respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through
11 class certification, and ultimately trial, success was far from certain.

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

13 Although the parties engaged in significant discovery in advance of mediation, the Parties
14 still had significant discovery to complete in formal litigation had the matter not settled. Haines
15 Decl., ¶ 31. This would have required expenditure of substantial time and resources by both Parties
16 that would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the classes,
17 the parties would incur considerably more attorney fees and costs through a possible decertification
18 motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying
19 expense. *Id.*

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

21 Plaintiffs have not yet filed his class certification motion, and as such, the extent to which
22 Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there was
23 a risk that there would not be a certified class at the time of trial, or if there were, it would consist
24 of a significantly smaller group of employees than the proposed Settlement Class, and the expected
25 class-wide recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

27 The Settlement provides a fair and reasonable monetary recovery for Class Members for
28 hotly disputed claims. After analyzing the data provided by Defendants prior to mediation, Plaintiffs

1 prepared a class-wide exposure model and forecasted the expected recovery for each claim as
2 follows:

3 Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$374,248

4 Plaintiffs allege that Defendants failed to compensate Class Members for all hours worked
5 because of their unlawful timekeeping policies and/or practices. Haines Decl., ¶ 19. Based on an
6 analysis and extrapolation of payroll and timekeeping data produced by Defendants, Plaintiffs
7 estimate that employees were underpaid by approximately 37,496 hours during the Class Period. *Id.*
8 Therefore, Plaintiffs calculated a maximum exposure for unpaid wages at approximately \$831,661
9 (37,496 unpaid hours * \$11.09/hour weighted average minimum wage * 2 (liquidated damages
10 under Labor Code § 1194.2). *Id.*

11 However, as stated above, Defendants argue that employees clocked in a few minutes prior
12 to the start of their shifts but did not perform work until the scheduled start of the shift, and thus,
13 any time prior to the beginning of the shift is not compensable. Haines Decl., ¶ 19. Moreover,
14 Defendants assert Plaintiffs would be unable to certify this claim given the individualized inquiries
15 as to whether Class Members performed compensable work outside of their scheduled shift, and
16 whether Class Members were in fact underpaid, or potentially overpaid for each workday in
17 question. *Id.* Based on these defenses, Plaintiffs discounted the estimated maximum exposure by
18 25% for risk of non-certification, and by an additional 40% to account for risk of losing on the merits
19 or failure to recover the maximal amount sought, to arrive at an estimated exposure of \$374,248. *Id.*

20 First Meal Period Violations: \$820,882

21 Based on Plaintiffs' expert's review and extrapolation of Defendants' timekeeping records,
22 there are approximately 227,754 shifts that reflect a potential first meal period violation. Haines
23 Decl., ¶ 20. Thus, based on an average hourly rate of \$11.09, Plaintiffs estimate Defendants' total
24 maximum exposure for first meal period violations at approximately \$2,525,791 (227,754 non-
25 compliant first meal periods * \$11.09 meal period premium). *Id.*

26 However, Defendants contend that they have maintained compliant written meal period
27 policies throughout the Class Period and have always provided its employees the *opportunity* to take
28 legally compliant meal periods, and that it is not required to "ensure" meal periods are taken. Haines

1 Decl., ¶ 20. Defendants also argue this claim is not suited for class treatment, as individual inquiries
2 would be needed to assess which employees took non-compliant meal periods or missed meal
3 periods, how many meal periods were non-compliant or missed, and the reasons why a particular
4 employee did not take a compliant meal period on a particular shift. *Id.* Based on these defenses,
5 Plaintiffs discounted the maximum amount by 35% for risk of non-certification, and an additional
6 50% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an
7 estimated exposure of \$820,882. *Id.*

8 Second Meal Period Violations: \$189,457

9 Plaintiffs' analysis of the timekeeping data showed that during the Class Period, there were
10 approximately 85,418 shifts worked in excess of 10.0 hours where a second meal period violation
11 occurred. Haines Decl., ¶ 21. Therefore, Plaintiffs calculate Defendants' maximum exposure for
12 second meal period violations at approximately \$947,285 (85,418 second meal period violations *
13 \$11.09 meal period premium). *Id.*

14 However, Plaintiffs' theory of liability carried significant risks of both non-certification and
15 on the merits if Plaintiffs were able to certify this claim, based on, *inter alia*, Defendants' argument
16 that it has maintained compliant written meal period policies throughout the Class Period, and Class
17 Members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than
18 12.0 hours per Labor Code § 512. Haines Decl., ¶ 21. In light of these risks, Plaintiffs discounted
19 the maximum amount that the class could potentially recover by 50% for a risk of non-certification,
20 and an additional 60% for a risk of losing on the merits, or having exposure reduced due to
21 Defendants' waiver arguments, to arrive at estimated exposure of \$189,457. *Id.*

22 Rest Period Violations: \$214,089

23 Plaintiffs allege that Defendants failed to authorize and permit rest periods for every four
24 hours of work, or major fraction thereof, as required under California law. Haines Decl., ¶ 22. Based
25 on Plaintiffs' expert's analysis and extrapolation of the timekeeping records, Plaintiffs estimated
26 there were approximately 241,308 total shifts over 3.5 hours during the Class Period. *Id.* Based on
27 interviews with Class Members, Plaintiffs estimate that approximately 40% of shifts contained a
28 rest period violation, and thus a potential maximum exposure of \$1,070,442 on Plaintiffs' rest period

1 claim (\$11.09 rest period premium * 241,308 shifts * 40% violation rate). *Id.*

2 Defendants argue that that they have always maintained and enforced lawful rest period
3 policies/practices during the Class Period, and have, in fact, authorized and permitted all required
4 rest periods to Class Members. Haines Decl., ¶ 22. Furthermore, Defendants argue that Plaintiffs’
5 rest period claim is not amenable to class treatment as individualized inquiries would be required to
6 determine which employees failed to take rest periods, and the reasons why each employee failed
7 to take a rest period on a particular shift as there are no records of whether or not a rest period was
8 authorized and permitted. *Id.* Therefore, Plaintiffs discounted Defendants’ maximum exposure by
9 50% to account for the risk of non-certification, and an additional 60% to account for Defendants’
10 defenses on the merits, to arrive at an estimated exposure of approximately \$214,089. *Id.*

11 Unreimbursed Expenses: \$7,764

12 Plaintiffs allege that following the COVID-19 outbreak, Class Members were required to
13 purchase facemasks to wear during their employment with Defendants. Haines Decl., ¶ 23.
14 Plaintiffs estimate that Class Members spent approximately \$5.00 per week on facemasks following
15 the outbreak of the COVID-19 outbreak, and therefore, calculate Defendants’ maximum exposure
16 on this claim at \$77,640.00 (\$5.00 per week * 15,528 aggregate weeks). *Id.* Defendants contend that
17 at all times it has provided facemasks and other personal protective equipment (“PPE”) to Class
18 Members at no charge and continues to do so. *Id.* Defendants further argue this claim is not suitable
19 for class treatment, as it would require individualized determinations as to whether each Class
20 Member purchased facemasks to use at Defendants’ workplace. *Id.* In light of these defenses,
21 Plaintiffs discounted Defendants’ maximum exposure by 60% to account for the risk of non-
22 certification, and an additional 75% to account for Defendants’ defenses on the merits, to arrive at
23 an estimated exposure of approximately \$7,764. *Id.*

24 Waiting Time Penalties: \$166,845

25 Defendants’ records reflect approximately 209 former Class Members who separated from
26 their employment with Defendants within the three-year statute of limitations period applicable to
27 Labor Code § 203. Haines Decl., ¶ 24. Based on an hourly rate of \$11.09, Plaintiffs estimated the
28 average waiting penalty per former employee to be \$2,661 (\$11.09 * 8 hours * 30 days). *Id.*

1 Therefore, Plaintiffs estimate Defendants' maximum exposure for waiting time penalties at
2 approximately \$556,149 (209 waiting time penalty class members * \$2,661 avg. penalty). *Id.*

3 Defendants maintain that they possess strong, good faith defenses to Plaintiffs' underlying
4 claims, thus precluding recovery of waiting time penalties, which are only available for the "willful"
5 failure to pay wages. Haines Decl., ¶ 24. Defendants further argue that waiting time penalties are
6 not recoverable at all for alleged meal and rest period violations and that not every Class Member
7 experienced an underpayment of wages due to their timekeeping policy. *Id.* Defendants therefore
8 argue that Plaintiffs' damages analysis for waiting time penalties is grossly overstated. *Id.* To
9 account for Defendants' defenses, Plaintiffs discounted the maximum exposure by 40% for the risk
10 of non-certification, and an additional 50% for risk of losing on the merits, and/or not receiving the
11 maximum penalties sought, to arrive at an estimated exposure of \$166,845. *Id.*

12 **Wage Statement Penalties: \$223,440**

13 Plaintiffs' expert's analysis reflected that there were approximately 16,337 pay periods and
14 266 unique employees within the one-year liability window under Labor Code § 226. Haines Decl.,
15 ¶ 25. In calculating potential exposure for this claim, utilizing the "initial" and "subsequent"
16 violation rates resulted in a number greater than the \$4,000 cap per employee. *Id.* Therefore,
17 Plaintiffs calculated Defendants' potential wage statement exposure under Labor Code § 226(e) by
18 using the \$4,000 cap for each employee, for a total maximum exposure of \$1,064,000 (266
19 employees * \$4,000 max. penalty). *Id.*

20 However, given Defendants' arguments that no violations occurred, that Class Members
21 suffered no "injury," that any alleged violations were not "knowing and intentional," and that meal
22 and rest period claims cannot support wage statement penalties, as well as risks associated with
23 Plaintiffs' underlying claims discussed above, Plaintiffs discounted the maximum exposure by 40%
24 for risk of non-certification, and by an additional 65% for risk of being unsuccessful on the merits,
25 for an estimated realistic exposure of \$223,440. *Id.*

26 **PAGA Civil Penalties: \$165,802**

27 The success of Plaintiffs' PAGA claim is wholly dependent upon the success of their
28 underlying claims occurring within the one-year statute of limitations applicable to the PAGA,

1 which is June 15, 2019 through May 10, 2022 (“PAGA Period”). Haines Decl., ¶ 26. Assuming that
2 Plaintiffs could prove at least one underlying Labor Code violation in each pay period within the
3 PAGA Period, Plaintiffs estimate Defendants’ maximum PAGA exposure at \$1,184,300 (calculated
4 from 11,843 pay periods at \$100 per violation). Haines Decl., ¶ 26; *see also Amaral v. Cintas Corp.*
5 *No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is
6 notified that it is violating a Labor Code provision). However, these penalties derived from the
7 underlying wage and hour violations discussed above, which Defendants vigorously dispute. *See*
8 *e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a
9 PAGA claim’s success was determined by the merits of its underlying claims). Defendants also
10 assert that the Court would drastically reduce any award of PAGA penalties as “confiscatory.”
11 Haines Decl., ¶ 26; *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112,
12 1135 (2012) (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.*, 30
13 Cal.App.5th 504, 529 (2018) (affirming reduction of PAGA penalties to \$5 per initial violation);
14 *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011
15 WL 7563047 at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Plaintiffs therefore
16 discounted the maximum figure by 60% for the risk of being unable to proceed on a representative
17 basis and risk of losing of the merits, and an additional 65% to account for the possibility of this
18 Court reducing penalties, to arrive at an estimated exposure of approximately \$165,802. Haines
19 Decl., ¶ 26.

20 Therefore, if Plaintiffs were entirely successful at trial on all claims described above,
21 Plaintiffs estimate the maximum total exposure to be approximately \$8,257,268. Haines Decl., ¶ 27.
22 However, taking into account Defendants’ various defenses, both as to certification and merits
23 issues, difficulties of proof, and other risks described above, Plaintiffs predicted that the potential
24 likely recovery for the Settlement Class at trial would be approximately \$2,162,527. *Id.* The
25 proposed settlement of \$1,950,000 therefore represents approximately 90.1% of the reasonably
26 forecasted recovery for the Settlement Class, while avoiding the further expense and serious risk of
27 proceeding towards class certification and trial. *Id.* Taking into account the risk of non-certification,
28 failure to prevail on the merits, and the Court’s power to reduce the civil penalties, the proposed

1 Settlement falls well within the realm of being fair, reasonable, and adequate. *See e.g., Altamirano*
2 *v. Shaw Industries, Inc.*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage
3 and hour class action settlement, stating, “[a]lthough 15% represents a modest fraction of the
4 hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant
5 preliminary approval given the merits of Plaintiff’s claims.”). Preliminary approval is appropriate
6 since the Settlement will provide significant monetary relief to Class Members without the
7 uncertainty, delay, and additional expense of further litigation.

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

9 “Parties represented by competent counsel are better positioned than courts to produce a
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
11 *Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by
12 competent, experienced counsel who possess extensive experience prosecuting and defending wage-
13 and-hour class actions, and who have been appointed as class counsel in numerous cases alleging
14 similar claims. *See* Haines Decl., ¶¶ 2-7; Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6;
15 Declaration of Melissa A. Huether (“Huether Decl.”), ¶¶ 3-7. Class Counsel, with the help of their
16 expert, conducted an in-depth review of Defendants’ relevant policies and timekeeping and payroll
17 records, and drew on their extensive experience in similar cases to assess the strengths and
18 weaknesses of Plaintiffs’ case. The Settlement was also reached with the assistance of an
19 experienced wage and hour class action mediator. *Id.*, at ¶ 16. This factor strongly supports
20 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

28 The proposed settlement reflects approximately 90.1% of the estimated recovery the

1 Settlement Class could reasonably expect in light of the significant litigation risks, and will provide
2 tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability
3 exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass*
4 *v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving
5 settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459
6 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l*
7 *Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled
8 law that a proposed settlement may be acceptable even though it amounts to only a fraction of the
9 potential recovery that might be available to the Class Members at trial”). Further, the average
10 Settlement Award of \$3,013.73 is greater than the average payment achieved in other wage and hour
11 class action settlements.³ Thus, Plaintiffs submit that the proposed settlement is within the range of
12 possible approval, such that notice should be provided to the Settlement Class so that they can
13 consider the Settlement. The Court will have the opportunity to again assess the reasonableness of
14 the Settlement after the Settlement Class has had the opportunity to opt-out or object.

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

16 The Settlement resulted from an exchange of substantial information, arm’s-length
17 negotiations by counsel, and two full-day mediations before experienced wage and hour mediators.
18 Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168

19 _____
20 ³ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
21 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
22 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
23 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
24 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
25 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of
26 approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County
27 Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon,*
28 *Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of
approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.
Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was
approximately \$60); *Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL
2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an average of approximately
\$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to
liability; Plaintiff also notes several similar actions where the gross recoveries per class member
were less than \$90...[T]he Court finds that the results achieved are good”); and *Williams v.*
Centerplate, Inc., Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D.
Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims at issue, reviewed
2 extensive payroll and timekeeping data, and conducted a detailed statistical analysis of the data to
3 arrive at the estimated class-wide damages figures. *See* Haines Decl., ¶¶ 19-27. The parties attended
4 two full day mediations, and worked collaboratively in the following months to finalize the
5 Settlement. *Id.*, at ¶¶ 12, 16. Thus, this factor supports preliminary approval.

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

7 Preliminary approval of the Settlement is also warranted because there are no obvious
8 deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed
9 for Class Counsel’s attorneys’ fees and costs, the enhancement payments, and the PAGA allocation
10 are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid
11 of obvious deficiencies, this factor supports preliminary approval.

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

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

19 **1. The Proposed Class Is Ascertainable And Numerous**

20 A class is “ascertainable” where the members “may be readily identified without
21 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
22 *Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined
23 as all of Defendants’ current and former non-exempt employees who worked at the Mira Loma
24 facility in California at any time during the Class Period. *See* Settlement, § 1. Therefore, Class
25 Members can be identified from Defendants’ personnel and employment records. Defense counsel
26 represents that the Settlement Class consists of approximately 380 current and former non-exempt
27 employees. *See* Haines Decl., ¶ 18. It would therefore be impracticable to bring all Class Members
28 before the Court, or for each Class Member to bring an individual lawsuit. The proposed Settlement

1 Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a
2 class representing 10 beneficiaries of a trust sufficiently numerous).

3 **2. Common Issues Of Law And Fact Predominate**

4 The focus in a certification dispute is not the merits, but rather on what types of questions,
5 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
6 *Court (Rocher)*, 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated on, among other issues,
7 Defendants’ allegedly unlawful timekeeping policies/practices, and allegedly unlawful meal and
8 rest period policies/practices. These types of claims are commonly held to be proper for class
9 certification. *See e.g., Williams v. Superior Court* 221 Cal.App.4th 1353, 1371 (2013) (certifying
10 class based on uncompensated work time); *Benton v. Telecom Network Specialists, Inc.*, 220
11 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

12 **3. The Claims Of The Named Plaintiffs Are Typical**

13 The typicality requirement is satisfied where class representatives have claims that are
14 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191
15 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named plaintiff purchased the
16 same goods as the putative class in a consumer class action). Here, Plaintiffs’ claims are typical of
17 those held by the members of the proposed Settlement Class. First, Plaintiffs were employed by
18 Defendants during the Class Period as a non-exempt employee and were subject to Defendants’
19 wage and hour policies at issue in this case. *See* Declaration of Vicente Reyes (“Reyes Decl.”), ¶ 2;
20 Declaration of Leticia Yanez (“Yanez Decl.”), ¶ 3. Second, Plaintiffs were injured by the same
21 challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiffs
22 assert that they were deprived of all minimum and overtime wages due to Defendants’ unlawful
23 timekeeping policies/practices, and also contend that Defendants failed to provide them with legally-
24 compliant meal periods, and failed to authorize and permit all rest periods. Reyes Decl., ¶¶ 2-3;
25 Yanez Decl., ¶ 5. Because Plaintiffs have suffered the same injuries as the other members of the
26 Settlement Class, the typicality requirement is satisfied.

27 ///

28 ///

1 **4. Plaintiffs And Class Counsel Will Fairly And Adequately Represent**

2 **The Class**

3 The adequacy requirement examines conflicts of interest between named parties and the
4 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental*
5 *Services*, 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the
6 Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class, and
7 Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v. Bank of*
8 *America*, 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that
9 Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of
10 the proposed class). Class Counsel also have extensive experience in wage and hour class action
11 litigation. *See Haines Decl.*, ¶¶ 2-7; *Blakely Decl.*, ¶¶ 2-6; *Huether Decl.*, ¶¶ 3-7.

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

13 This Court should order distribution to the Settlement Class of the proposed Class Notice by
14 U.S. Mail, postage prepaid, using last known mailing address information provided by Defendants.
15 *See Settlement*, § 10. This manner of giving notice is the “best notice practicable” under the
16 circumstances because it provides “individual notice to all members who can be identified through
17 reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Here, Plaintiffs
18 proposes that the Settlement be administered by Phoenix Settlement Administrators (“PSA”), an
19 experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence
20 (“Lawrence Decl.”) and attached exhibits.⁴ Class Members’ addresses will be ascertainable through
21 Defendants’ personnel and payroll records, which Defendants will provide to PSA within ten (10)
22 business days of preliminary approval of the Settlement. *See Settlement*, § 10(A). Within ten (10)
23 business days of receipt of the Class Members’ addresses, PSA will run the addresses through the
24 National Change of Address (“NCOA”) database (which provides updated addresses for any
25 individual who has moved in the previous four years and has notified the U.S. Postal Service of a
26

27 _____
28 ⁴ PSA’s proposed capped fee to administer this settlement is \$9,850.00. *See* Exh. B to Lawrence
Decl.

1 forwarding address) and mail the Class Notice in both English and Spanish to all Class Members.
2 *See* Settlement, § 10(B). To the extent that any notices are returned, PSA will perform a “skip trace”
3 to track any Class Member’s current mailing address. *Id.*, at § 10(F).

4 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because
5 it advises Class Members of the nature of the claims, basic contentions and denials of the parties
6 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and
7 the procedures by which to do so, explains the recovery formula and expected recovery amount for
8 each Class Member, and advises them that they will be bound by the terms of the Settlement if they
9 do not opt-out. *See* Haines Decl., Exhs. 1, 2 and 3 to Exh. A. The proposed Class Notice will also
10 notify Class Members of the final approval hearing date, provide the Settlement Class contact
11 information for Class Counsel, and advise Class Members that they may enter an appearance
12 through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court
13 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

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

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

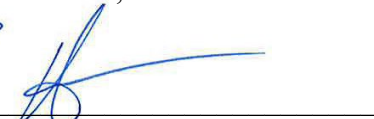
18 **IV. CONCLUSION**

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

22
23 Dated: May 26, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

24
25 By:



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