

**HAINES LAW GROUP, APC**  
Paul K. Haines (SBN 248226)  
phaines@haineslawgroup.com  
Tuvia Korobkin (SBN 268066)  
tkorobkin@haineslawgroup.com  
Alexandra R. McIntosh (SBN 320904)  
amcintosh@haineslawgroup.com  
2155 Campus Drive, Suite 180  
El Segundo, California 90245  
Tel: (424) 292-2350  
Fax: (424) 292-2355  
*Attorneys for Plaintiff*

**PAUL HASTINGS LLP**  
Zachary P. Hutton (SBN 234737)  
zachhutton@paulhastings.com  
Anna M. Skaggs (SBN 319179)  
annaskaggs@paulhastings.com  
101 California Street, 48th Floor  
San Francisco, California 94111  
Tel: (415) 856-7000  
Fax: (415) 856-7136  
*Attorneys for Defendant*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

MICHAEL IBARRA, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

vs.

TOYOTA LOGISTICS SERVICES, INC., a  
California corporation; and DOES 1 through  
100,

Defendants.

Case No. 20STCV29023

*[Assigned for all purposes to the Honorable  
Ann I. Jones, Dept. SSC-11]*

**JOINT NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: TBD  
Time: TBD  
Dept.: SSC-11

Complaint Filed: July 30, 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 a date and time to be determined by the Court, in Department SSC-11 of the above-entitled  
4 Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Michael Ibarra  
5 (“Plaintiff”) and Defendant Toyota Logistics Services, Inc. (“TLS” or “Defendant”)  
6 (collectively, the “Parties”) will, and hereby do, move this Court for:

7                   1. Preliminary approval of the Settlement Agreement (“Settlement Agreement” or  
8                   “Settlement”);

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

12                         All current and former employees who worked for TLS in a non-  
13 exempt production position at the Long Beach facility at any time  
14 from April 6, 2016 through the date on which the Court grants  
15 preliminary approval of the Settlement (the “Covered Period”). Non-  
16 exempt production positions consist of the following non-exempt job  
17 titles: PDS Worker, Expediter (BG), FQA (BG), Janitor (BG), Kaizen  
Associate (BG), Parts Associate (BG), Production Associate (BG),  
Quality Assurance Associate (BG), Rail Car Associate (BG), Shuttle  
Associate (BG), Surveyor (BG), Team Lead (BG).

18                   3. Preliminary appointment of Plaintiff Michael Ibarra as Class Representative;

19                   4. Preliminary appointment of Paul K. Haines, Tuvia Korobkin, and Alexandra R.  
20 McIntosh of Haines Law Group, APC as Class Counsel;

21                   5. The scheduling of a hearing to consider whether the Settlement Agreement should  
22 be finally approved and to award an amount for enhancement payment to the Class  
23 Representative, and attorneys’ fees and costs to Class Counsel;

24                   6. Appointment of Phoenix Settlement Administrators as the third-party Settlement  
25 Administrator; and

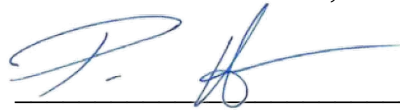
26                   7. Approval of the proposed Class Notice and Notice of Estimated Settlement Award  
27 (collectively, the “Class Notice Packet”), and an order that it be disseminated to the  
28 proposed Class as provided in the Settlement Agreement.

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

7  
8 Dated: June 25, 2021

Respectfully Submitted,  
HAINES LAW GROUP, APC

9  
10 By:

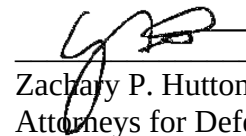


Paul K. Haines  
Attorneys for Plaintiff

11  
12  
13 Dated: June 24, 2021

PAUL HASTINGS LLP

14 By:



Zachary P. Hutton  
Attorneys for Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. SUMMARY OF THE LITIGATION ..... 2

    A. FACTUAL AND PROCEDURAL BACKGROUND..... 2

    B. PLAINTIFF’S CLAIMS AND TLS’S DEFENSES ..... 3

        1. Unpaid Wages Based on Alleged Time-Shaving.....3

        2. Meal Period Claim .....3

        3. Rest Period Claim ..... 4

        4. Claims Under Cal. Labor Code § 226 and the PAGA ..... 5

    C. DISCOVERY AND MEDIATION..... 6

III. THE PROPOSED SETTLEMENT..... 7

    A. ESSENTIAL TERMS OF THE SETTLEMENT ..... 7

        1. The Settlement Provides for Reasonable Monetary Payments ..... 7

        2. Representative Payment, PAGA Payment, and Attorney’s Fees & Costs..... 8

IV. ARGUMENT..... 9

    A. PRELIMINARY APPROVAL IS WARRANTED ..... 9

        1. Standard for Preliminary Approval..... 10

            a. The Strength of Plaintiff’s Case ..... 10

            b. Risk, Expense, Complexity, and Duration of Further Litigation ..... 10

            c. Risk of Maintaining Class Action Status..... 10

            d. Amount Offered in Settlement Given Realistic Value of Claims ..... 11

            e. The Experience and Views of Counsel..... 15

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

            a. The Settlement Is Within the Range of Possible Approval ..... 15

            b. The Settlement Resulted from Serious, Informed Negotiations..... 16

            c. The Settlement Is Devoid of Obvious Deficiencies ..... 16

    B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS FOR  
        SETTLEMENT PURPOSES ..... 16

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. The Proposed Class Is Ascertainable and Numerous ..... 16

2. Common Issues of Law and Fact Predominate for Settlement Purposes ..... 17

3. The Claims of the Named Plaintiff Are Typical ..... 17

4. Plaintiff and His Counsel Will Adequately Represent the Class ..... 17

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE..... 17

V. CONCLUSION ..... 18

**TABLE OF AUTHORITIES**

**State Cases**

|                                                                                                 |        |
|-------------------------------------------------------------------------------------------------|--------|
| <i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008) .....                         | 14     |
| <i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987) .....         | 17     |
| <i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013).....            | 17     |
| <i>Capital People First v. State Dept. of Develop. Svcs.</i> , 155 Cal.App.4th 676 (2007) ..... | 17     |
| <i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018).....                           | 6      |
| <i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695, 704 (1967).....                                 | 16     |
| <i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996) .....                                | 10     |
| <i>Ehret v. WinCo Foods, LLC</i> , 26 Cal. App. 5th 1 (2018) .....                              | 4      |
| <i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....                 | 8      |
| <i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....                     | 10, 16 |
| <i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016) .....                         | 9      |
| <i>Naranjo v. Spectrum Security Services</i> , 40 Cal.App.5th 444 (2019) .....                  | 5      |
| <i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....                              | 5      |
| <i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....                    | 9      |
| <i>Sav-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004).....                         | 17     |
| <i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010).....                                | 16     |
| <i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012).....               | 6      |
| <i>Wershba v. Apple Computer</i> , 91 Cal.App.4th 224 (2001) .....                              | 10     |
| <i>ZB, N.A. v. Superior Court</i> , 8 Cal.5th 175 (2019).....                                   | 6      |

**Federal Cases**

|                                                                         |       |
|-------------------------------------------------------------------------|-------|
| <i>Amchen Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1977).....        | 16    |
| <i>Eisen v. Carlisle &amp; Jacquelin</i> , 417 U.S. 156 (1974).....     | 18    |
| <i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998) .....   | 9, 10 |
| <i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995)..... | 15    |
| <i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008) .....  | 9     |

///

|    |                                                                               |              |
|----|-------------------------------------------------------------------------------|--------------|
| 1  | <b>State Statutes and Rules</b>                                               |              |
| 2  | California Rule of Court 3.766(d).....                                        | 18           |
| 3  | California Rule of Court 3.769 .....                                          | 9            |
| 4  | Lab. Code § 2699.....                                                         | 6, 8, 14, 15 |
| 5  | Lab. Code §§ 226.....                                                         | 5, 14        |
| 6  | Labor Code § 512.....                                                         | 4            |
| 7  | <b>Unpublished Cases</b>                                                      |              |
| 8  | <i>Alvarado v. Nederend,</i>                                                  |              |
| 9  | Case No. 1:08-cv-01099-OWW-DLB, 2011 WL 90228 (E.D. Cal. Jan. 11, 2011) ..... | 8            |
| 10 | <i>Chu v. Wells Fargo Investments, LLC,</i>                                   |              |
| 11 | 2011 WL 672645 (N.D. Cal. 2011) .....                                         | 8            |
| 12 | <i>Fleming v. Covidien, Inc.,</i>                                             |              |
| 13 | Case No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011) .....      | 6            |
| 14 | <b>Other Citations</b>                                                        |              |
| 15 | 4 <i>Newberg on Class Actions</i> , § 11:24-25 (4th Ed. 2013).....            | 15           |
| 16 | <i>Newberg on Class Actions</i> § 14.6 (4th Ed. 2013) .....                   | 9            |
| 17 |                                                                               |              |
| 18 |                                                                               |              |
| 19 |                                                                               |              |
| 20 |                                                                               |              |
| 21 |                                                                               |              |
| 22 |                                                                               |              |
| 23 |                                                                               |              |
| 24 |                                                                               |              |
| 25 |                                                                               |              |
| 26 |                                                                               |              |
| 27 |                                                                               |              |
| 28 |                                                                               |              |

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Michael Ibarra (“Plaintiff”) and Defendant Toyota Logistics Services, Inc.  
4 (“TLS” or “Defendant”) (collectively, the “Parties”) seek preliminary approval of a class action  
5 settlement. In his lawsuit, Plaintiff alleges that TLS committed various wage and hour violations,  
6 including that TLS failed to pay for all hours worked, and that TLS failed to provide all required  
7 meal and rest periods. Based on these alleged violations, Plaintiff also brings derivative claims  
8 for TLS’s alleged failure to furnish compliant wage statements, for unfair competition, and for  
9 civil penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698 *et*  
10 *seq.* (“PAGA”). TLS denies the allegations, and contends that its practices at all times complied  
11 with, and in some cases exceeded, legal requirements.

12 The Parties now respectfully request that the Court preliminarily approve this non-  
13 reversionary, common-fund class action settlement,<sup>1</sup> in which TLS has agreed to pay \$650,000.00  
14 to the following Class, estimated to consist of approximately 226 individuals:

15 All current and former employees who worked for TLS in a non-exempt  
16 production position at the Long Beach facility at any time from April 6, 2016  
17 through the date on which the Court grants preliminary approval of the  
18 Settlement (the “Covered Period”). Non-exempt production positions consist  
19 of the following non-exempt job titles: PDS Worker, Expediter (BG), FQA  
20 (BG), Janitor (BG), Kaizen Associate (BG), Parts Associate (BG), Production  
21 Associate (BG), Quality Assurance Associate (BG), Rail Car Associate (BG),  
22 Shuttle Associate (BG), Surveyor (BG), Team Lead (BG).

23 This is an excellent result for Class Members, with the average individual Settlement  
24 Share estimated to be approximately \$1,501.47. The Settlement was reached after the Parties  
25 engaged in mediation with David A. Rotman, Esq., a respected wage and hour class action  
26 mediator. In connection with mediation, TLS provided Plaintiff with significant informal  
27 discovery, including relevant classwide timekeeping and payroll data, TLS’s relevant wage and  
28 hour policies, and other relevant documents and information. After extensive research and  
analysis, including a detailed analysis of TLS’s potential exposure made with the assistance of

---

<sup>1</sup> The Settlement Agreement (“Settlement Agreement” or “Settlement”) is attached as Exhibit 1  
to the Declaration of Paul K. Haines (“Haines Decl.”). The proposed Class Notice and Notice of  
Estimated Settlement Award are attached as Exhibits A and B, respectively, to the Settlement.

1 Plaintiff's retained expert who holds a Ph.D. in economics, the Parties attended a full-day  
2 mediation on February 10, 2021. Ultimately Mr. Rotman made a mediator's proposal for a  
3 classwide resolution of Plaintiff's claims, which the Parties accepted and memorialized in a short-  
4 form Memorandum of Agreement. Over the following months the Parties negotiated the finer  
5 points of the settlement, ultimately resulting in the Settlement.

6 Notably, Class Members do not need to file a claim to reap financial benefit from the  
7 Settlement. Settlement Shares will be distributed to all Class Members who do not affirmatively  
8 opt out. As stated, the settlement is non-reversionary and the average individual Settlement Share  
9 is estimated to be approximately \$1,501.47. For the reasons stated herein, the Parties respectfully  
10 request that the Court grant preliminary approval of the Settlement.

## 11 **II. SUMMARY OF THE LITIGATION**

### 12 **A. FACTUAL AND PROCEDURAL BACKGROUND**

13 TLS is responsible for managing vehicle logistics operations, planning, and administration  
14 for Toyota, Lexus, and Scion vehicles. *See* Declaration of Paul K. Haines ("Haines Decl."), ¶ 10.  
15 Plaintiff has worked for TLS as a non-exempt employee at its Long Beach, California facility  
16 since approximately 1996. *Id.*

17 On July 30, 2020, Plaintiff filed the instant action in Los Angeles County Superior Court  
18 alleging classwide claims based on TLS's alleged failure to pay all wages due, alleged failure to  
19 provide all compliant meal periods, and alleged failure to furnish accurate itemized wage  
20 statements. On October 6, 2020, after exhausting his administrative requirements with the Labor  
21 & Workforce Development Agency (LWDA), Plaintiff filed a First Amended Complaint adding  
22 a claim for PAGA civil penalties. In connection with mediation, Plaintiff investigated and the  
23 Parties negotiated additional claims, including a rest period claim, and the Parties agreed that, to  
24 effectuate the Settlement, Plaintiff would file a Second Amended Complaint conforming the  
25 claims in the action to those covered by the Settlement. Accordingly, and pursuant to the Parties'  
26 Court-approved stipulation, Plaintiff filed the operative Second Amended Complaint on June 3,  
27 2021. Haines Decl., ¶ 11.

28 ///

1           **B. PLAINTIFF’S CLAIMS AND TLS’S DEFENSES**

2                   **1. Unpaid Wages Based on Alleged Time-Shaving**

3           Plaintiff alleges that, until August 2020, TLS would sound a “bugle call” bell at 6:58 a.m.,  
4 two minutes prior to the beginning of employees’ 7:00 a.m. shift start time. Haines Decl., ¶ 16.  
5 Plaintiff alleges this was meant to alert employees that they should begin walking to their work  
6 stations so that they would be at their work stations, ready to work, by 7:00 a.m. *Id.* However,  
7 prior to August 2020, Plaintiff alleges that TLS would only begin paying employees at 7:00 a.m.,  
8 even though Plaintiff alleges employees were subject to TLS’s control two minutes prior, and that  
9 this resulted in unpaid wages, including minimum wages and overtime wages. *Id.*

10           TLS contends it pays its employees for all hours worked, the two-minute bell simply is a  
11 signal that the shift will begin two minutes later, and it is followed by a bell that rings when the  
12 shift actually commences. Haines Decl., ¶ 16. TLS further contends that work at the Long Beach  
13 facility is extremely regimented, and there is simply no work to perform prior to the beginning of  
14 the shift. *Id.* Instead, employees engage in personal activities such as eating, talking to co-  
15 workers, or storing personal items in the minutes prior to their shift, rather than any work-related  
16 tasks. *Id.* Thus, TLS asserts, any pre-shift time at the facility is not compensable as hours worked.  
17 *Id.* Finally, TLS contends this claim would require individualized inquiries, including whether  
18 each individual employee actually worked prior to the beginning of the shift, and whether TLS  
19 knew they were working, and therefore is not amenable to class treatment. *Id.*

20                   **2. Meal Period Claim**

21           Plaintiff asserts that, prior to August 2020, TLS consistently provided employees with  
22 “short” (*i.e.*, less than 30 minutes) meal periods. Specifically, Plaintiff alleges that, similar to the  
23 bell system at beginning of the shift, TLS rang a bell 2 minutes before the end of the meal period,  
24 signaling employees to begin walking back to their work stations and thus cutting their meal  
25 periods short by 2 minutes. Haines Decl., ¶ 17. In addition, Plaintiff contends that TLS failed to  
26 provide second meal periods on shifts of over 10.0 hours. *Id.*

27           TLS maintains its meal period policies and practices comply with California law. Haines  
28 Decl., ¶ 17. Indeed, TLS argues, it provides employees with 32-minute meal periods, from 11:30

1 a.m. to 12:02 p.m., and thus its meal period practices exceed what is required under California  
2 law. *Id.* Moreover, as with the unpaid wage claim, TLS contends employees’ work is highly  
3 regimented, employees all stop working at the same time for their meal periods, and they all begin  
4 work after the end of their 32-minute meal periods, pursuant to TLS’s bell system. *Id.* The  
5 warning bell (like the two-minute bell at the beginning of the shift) simply is a signal to let  
6 employees know that their meal period is ending soon; employees are all made aware that their  
7 meal periods do not actually end until the ringing of the following bell, at the 32-minute mark.  
8 *Id.* Moreover, because employees take meal periods *en masse* and the entire facility shuts down,  
9 TLS contends employees could not possibly perform work before the end of the meal period. *Id.*  
10 As for second meal periods, TLS contends employees were not eligible for second meal periods  
11 on the vast majority of shifts, as only a tiny fraction of shifts during the Covered Period exceeded  
12 10.0 hours. *Id.* To the extent employees worked 10.0+ hour shifts, TLS maintains employees  
13 voluntarily waived their second meal period, as they may do under Labor Code § 512. *Id.*  
14 Moreover, TLS produced a “Letter of Understanding” between TLS and the Teamsters Union  
15 waiving second meal periods on shifts over 10.0 hours. *Id.*; *see also Ehret v. WinCo Foods, LLC*,  
16 26 Cal. App. 5th 1 (2018) (holding union can agree on behalf of bargaining unit to waive meal  
17 periods pursuant to Labor Code § 512(a)). Finally, TLS contends this claim is not suitable for  
18 class treatment, as individual inquiries would be needed to determine how many meal periods  
19 each employee failed to take, and the reasons why each employee failed to take a meal period on  
20 each shift. *Id.*

### 21 **3. Rest Period Claim**

22 Plaintiff asserts that for first and second rest periods, TLS sounds one bell at the beginning  
23 of the rest period, another bell 13 minutes later, and a third bell at the 15-minute mark, signaling  
24 the end of the rest period. Haines Decl., ¶ 18. On third rest periods, however, TLS provides a 10-  
25 minute rest period and rings a bell at the 8-minute mark, requiring employees to cut short their  
26 rest periods by 2 minutes. *Id.*

27 TLS contends it has always authorized and permitted employees to take rest periods as  
28 required under California law. Haines Decl., ¶ 18. Indeed, as noted, TLS provides 15-minute rest

periods for first and second rest periods, which exceeds the 10 minutes required under California law, demonstrating TLS's serious commitment to providing lawful rest periods. *Id.* TLS further contends that, as with meal periods, the warning bell does not signal the end of the rest period, and employees are aware the rest period does not end until after the 10-minute bell. *Id.* TLS further contends that, as with meal periods, many putative class members would testify that they regularly received all required rest periods. *Id.* Combined with TLS's compliant written policies, TLS argues, this would present a significant hurdle to maintaining a class or representative action. *Id.* Finally, TLS argues that, as with meal periods, individual inquiries would be required to determine how many rest periods each employee failed to take, and the reasons why each employee failed to take a rest period on a particular shift. *Id.*

#### **4. Claims Under Cal. Labor Code § 226 and the PAGA**

As a result of these alleged wage and hour violations, Plaintiff asserts TLS failed to comply with its wage statement obligations under Labor Code § 226. Plaintiff further alleges that TLS failed to include its full address on wage statements, in violation of Labor Code § 226(a)(8). Finally, Plaintiff asserts TLS is liable for PAGA civil penalties. Haines Decl., ¶¶ 19-20.

TLS contends that Plaintiff's meal and rest period claims cannot support a claim for wage statement penalties, as a Court of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th 444 (2019) (review granted Jan. 2, 2020). As for Plaintiff's "direct" wage statement claim, TLS counters that the address on its wage statements is complete, and that mail directed to the address on the wage statement is in fact delivered to TLS. Haines Decl., ¶ 19. TLS further contends its alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses, and that Plaintiff cannot show he or other employees "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties.

Finally, TLS asserts the PAGA claim fails because Plaintiff's underlying claims fail. See *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Additionally, TLS maintains that, given its good-faith defenses, the Court would substantially reduce any PAGA civil

penalties. *See* Labor Code § 2699(e)(2) (authorizing reduction of PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1135 (2012) (*disapproved on other grounds in ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175 at FN8 (2019)) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, 2011 WL 7563047 at \*4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

**C. DISCOVERY AND MEDIATION**

In connection with mediation, the Parties engaged in significant informal discovery, including TLS’s production of extensive data that contained, among other things, employment start and end dates, pay rates, effective dates of each pay rate, and numbers of shifts worked in excess of 3.5 hours, 5 hours, and 10 hours, for all putative class members. TLS also provided Plaintiff with its relevant wage and hour policies and other relevant data. Haines Decl., ¶ 12. In total, TLS produced hundreds of pages of documents and tens of thousands of lines of relevant data. *Id.* Plaintiff hired an expert with a Ph.D. in economics to conduct a comprehensive analysis of the data including calculating the total number of shifts, workweeks, pay periods, average rates of pay, and other analyses. *Id.* This discovery allowed the Parties to assess the merits and potential value of Plaintiff’s claims as well as TLS’s potential defenses. *Id.*

The Parties attended a full-day mediation on February 10, 2021 with David A. Rotman, Esq. Haines Decl., ¶ 13. At mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff’s claims, and the legal bases for the claims and defenses. *Id.* Ultimately, the Parties agreed in principle to a mediator’s proposal for classwide resolution. *Id.* The Parties memorialized their agreement in a Memorandum of Agreement, and over the following months negotiated and finalized the long-form Settlement Agreement now before this Court. *Id.*

///

///

///

### III. THE PROPOSED SETTLEMENT

#### A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court approves this settlement, TLS will pay a non-reversionary Total Settlement Amount of \$650,000.00. No Class Member will need to file a claim to reap financial benefit from the Settlement. All Class Members will automatically receive an individual Settlement Share unless they affirmatively opt out. The Settlement's monetary terms are summarized below:

|                                                           |                     |
|-----------------------------------------------------------|---------------------|
| • Total Settlement Amount ("TSA"):                        | \$650,000.00        |
| • Minus Court-approved attorneys' fees (one-third):       | \$216,666.67        |
| • Minus Court-approved, verified costs (up to):           | \$40,000.00         |
| • Minus Court-approved representative payment:            | \$7,500.00          |
| • Minus amount set aside as PAGA penalties:               | \$50,000.00         |
| • <u>Minus estimated settlement administration costs:</u> | <u>\$9,000.00</u>   |
| Net Settlement Amount:                                    | \$326,833.33        |
| • PLUS 25% of PAGA penalties to the Class:                | \$12,500.00         |
| <b>Total Amount Paid to Class Members:</b>                | <b>\$339,333.33</b> |

#### 1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for a Court-approved Class Representative Payment to Plaintiff, costs of settlement administration, attorneys' fees and verified costs, and the amount paid to the LWDA as PAGA penalties, the Settlement requires TLS to pay at least \$339,333.33 to all Class Members who do not timely opt out. Haines Decl., ¶ 14; *see also* Settlement, § III.E. According to TLS, the Class consists of approximately 226 current and former employees. *Id.*, § III.K. Thus, the average individual Settlement Share is projected to be approximately \$1,501.47. Haines Decl., ¶ 15. Class Members will have 60 days from the mailing of the Notice to opt out of or object to the Settlement. *See* Settlement, § III.G.3.

Individual Settlement Shares will be calculated as follows: (i) the Net Settlement Amount ("NSA") will be distributed to all participating Class Members based on their proportionate number of workweeks worked for TLS in a covered position during the Covered Period; and (ii) in addition to the NSA, the \$12,500 "PAGA Amount" (*i.e.*, 25% of the amount designated as PAGA civil penalties) will be allocated to all Class Members based on the proportionate number of pay periods worked for TLS in a covered position at any time from April 6, 2019 through the end of the Covered Period. *See* Settlement, § III.D.1. Class Members who do not opt out of the Settlement will be bound by its terms, and will release all claims against TLS that were alleged

in Plaintiff's Complaint or could have been alleged based on the facts alleged in the Complaint. *Id.*, § III.H.2. In addition, all Class Members who worked for TLS during the PAGA period, regardless whether they opt out, will release the PAGA claims released under the Settlement (and will receive a portion of the PAGA Amount, as noted above). *Id.*

## **2. Representative Payment, PAGA Payment, and Attorneys' Fees & Costs**

In connection with the Parties' motion for final approval of the Settlement, Plaintiff will apply for a Class Representative Payment in the amount of \$7,500 for his services to the Class. Haines Decl., ¶ 24; *see also* Settlement, § III.E.1 "[I]ncentive awards are fairly typical in class action cases...and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393-94 (2010). As will be fully briefed at final approval, Plaintiff's requested enhancement payment is intended to recognize the substantial time and effort Plaintiff expended on behalf of the Class, including providing substantial factual information and documents to Plaintiff's counsel, identifying potential witnesses, discussing the claims and theories at issue in the litigation with Plaintiff's counsel, and otherwise actively participating in the prosecution of his claims. Plaintiff respectfully submits that his requested representative payment is well within the range of approval and is in line with service awards approved in similar class action settlements. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 90228 (E.D. Cal. Jan. 11, 2011) (approving \$7,500 incentive award to each of five named plaintiffs out of \$505,058.60 settlement).

The Parties have also agreed to designate \$50,000 of the TSA as PAGA penalties, of which \$37,500 will be paid to the LWDA and \$12,500 will be distributed to the Class, consistent with the PAGA's requirement that 75% of such penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved employees (Labor Code § 2699(i)). *See* Settlement, § III.B. Plaintiff submits this allocation for PAGA civil penalties is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million settlement).

1 In connection with final approval, Plaintiff’s counsel will request an attorneys’ fees award  
2 of one-third of the TSA, and up to \$40,000 in verified costs. *See* Settlement, § III.E.2. Plaintiff  
3 submits that the requested fee is fair compensation for undertaking complex, risky, expensive,  
4 and time-consuming litigation on a pure contingent basis. Plaintiff’s counsel have incurred  
5 substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims,  
6 conducting legal research, reviewing documents and data produced by TLS, preparing for and  
7 attending mediation, negotiating and preparing the Settlement, preparing this Motion, and  
8 otherwise prosecuting the case. Haines Decl., ¶ 23. Counsel anticipate incurring additional fees  
9 in preparing for and appearing at the hearing on this Motion, supervising the Notice process, and  
10 preparing the Final Approval motion and appearing at the Final Approval Hearing. *Id.*

11 It is appropriate to award attorneys’ fees in class actions is as a percentage of the “common  
12 fund” created as a result of a settlement. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal. 5th 480  
13 (2016) (holding “the percentage of fund method survives in California class action cases”).  
14 Counsel’s request for fees of one-third of the TSA is well within the range of reasonableness, and  
15 is typical for common fund settlements. *Newberg on Class Actions*, § 14.6 (4th Ed. 2013)  
16 (historically, courts have awarded percentage fees in the range of 20% to 50%).

#### 17 **IV. ARGUMENT**

##### 18 **A. PRELIMINARY APPROVAL IS WARRANTED**

19 California Rule of Court 3.769 conditions the settlement of a class action on court  
20 approval, which is generally evaluated under the federal standards applicable under Rule 23 of  
21 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal. App.  
22 4th 322, 337 (2012) (stating that Rule 3.769 requires the trial court to determine “that the  
23 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d  
24 1011, 1026 (9th Cir. 1998) (stating that Rule 23(e) requires the trial court to determine “whether  
25 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the  
26 preferred means of dispute resolution, particularly in complex class action litigation. *See In re*  
27 *Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The court’s role in evaluating a  
28 proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is within

the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by class counsel. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008).

**1. Standard for Preliminary Approval**

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

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

Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, TLS presented multiple defenses to Plaintiff’s claims, both on the merits and to class certification. Thus, while Plaintiff was prepared to litigate his claims through class certification and ultimately trial, success was far from certain.

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

Although the Parties engaged in significant informal discovery prior to mediation, they had not yet completed formal written and deposition discovery, which would have required the expenditure of substantial time and resources by all parties. Haines Decl., ¶ 22. Even if Plaintiff obtained class certification, the Parties would incur considerable attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* The Settlement avoids those risks and the accompanying delay and expense, and thus this factor supports preliminary approval.

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

Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the

proposed Class and the expected recovery would be significantly reduced. Particularly given the relatively small size of the Class, TLS could have potentially entered into individual pre-certification settlement agreements with all or nearly all of the putative class members by way of *Pick Up Stix*-style settlement agreements,<sup>2</sup> for less than what Class Members will recover through this Settlement. Thus, this factor supports preliminary approval.

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

The Settlement provides fair and reasonable monetary recovery for Class Members on hotly disputed claims. With the assistance of a retained economist with a Ph.D., Plaintiff conducted the following exposure analyses of those claims:

**Alleged Unpaid Wages for Pre-Shift Time: \$55,157**

Plaintiff's expert's analysis of the data produced by TLS revealed that putative class members worked approximately 179,000 shifts through August 2020 (when TLS changed its policy). Haines Decl., ¶ 16. Assuming a full 2 minutes of unpaid time per shift as a result of the warning bell at 6:58 a.m., this results in approximately 5,967 unpaid hours. *Id.* If all of these hours are treated as minimum wage violations, and based on an average minimum wage of about \$11.30 during the Covered Period, then TLS underpaid employees by approximately \$134,854 (5,967 hrs \* \$11.30 \* 2 (liquidated damages per Lab. Code § 1194.2). If all of these hours are treated as unpaid overtime, and based on employees' average rate of pay of \$27.07, then TLS underpaid employees by approximately \$242,290 (5,967 hrs \* \$27.07 \* 1.5). *Id.* In evaluating this claim, Plaintiff assumed the maximal damages would fall somewhere between these two figures, and therefore estimated a maximum total exposure for this claim of \$188,572. *Id.*

As explained above, TLS vigorously disputes that it owes any compensation for pre-shift time. Haines Decl., ¶ 16. TLS asserts that employees do not and *cannot* perform any work prior to the start of their shifts, and that if they do arrive early, they engage in personal activities before the start of the shift. *Id.* The 6:58 bell did not require employees to begin any work, TLS asserts, but was rather a signal that the shift would begin in two minutes. *Id.* TLS further argues this

---

<sup>2</sup> *Chindarah v. Pick Up Stix, Inc.*, 171 Cal. App. 4th 796 (2009) holds that an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties.

claim is not suitable for class certification, given differences among employees with respect to whether they arrived early for work, whether they claimed to have engaged in any actual work prior to the beginning of the shift, whether TLS had reason to believe each employee was working prior to the beginning of the shift, and the amount of time (if any) actually worked pre-shift for each and every shift during the Covered Period. *Id.* Based on these risks, Plaintiff discounted the maximum exposure he calculated by 35% for risk of non-certification, and an additional 55% to account for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated exposure of \$55,157. *Id.*

**Premiums for Alleged Meal Period Violations: \$383,311**

As noted above, Plaintiff alleges that until August 2020, TLS maintained a practice of sounding a bell 2 minutes before the end of the meal period, which had the effect of cutting short employee meal periods. Haines Decl., ¶ 17. Based on Plaintiff's expert's analysis of the data produced by TLS, Class Members worked approximately 177,000 shifts over 5.0 hours during the Covered Period, which Plaintiff alleges would have resulted in one or more meal period violations.<sup>3</sup> *Id.* Assuming a 100% violation rate, and based on employees' average rates of pay of \$27.07, Plaintiff estimated maximum potential damages on this claim as:  $177,000 * \$27.07 = \$4,791,390$ . *Id.* TLS, however, contends that it has always provided meal periods in accordance with California law, and that it actually exceeds California law in that it provides 32-minute meal periods, which are 2 minutes longer than required by law. *Id.* Moreover, TLS asserts, the warning bell is not meant to have employees return to work but rather to give them a courtesy reminder that the meal period is nearly over. *Id.* In addition, employees' work at the Long beach facility is so regimented and synchronized that employees *cannot* perform any work during their meal periods, even if they wanted to, since all operations cease for the full 32-minute meal period. *Id.* In short, Plaintiff's meal period claim will fail because the evidence demonstrates employees are provided with more than what the law requires, and no work is able to or allowed to be performed

<sup>3</sup> Per *United Parcel Service, Inc. v. Sup. Ct.*, 196 Cal. App. 4th 57 (2011), Plaintiff can recover up to one meal period premium per workday regardless of the number of meal period violations per workday. *Id.* at 69 (construing § 226.7 "as permitting up to two premium payments per workday—one for failure to provide one or more meal periods, and another for failure to provide one or more rest periods"). Thus, although Plaintiff also alleged a second meal period claim, Plaintiff calculated potential damages based on the number of workdays with at least one potential meal period violation.

1 during meal periods. *Id.* Finally, TLS, contends, this claim is not amenable to class certification  
2 given the individual inquiries that would be required to determine which employees allegedly had  
3 their meal periods cut short on which shifts, the reasons why, and whether TLS was aware that  
4 employees did not receive full meal periods on each alleged shift. In light of these defenses,  
5 Plaintiff discounted the maximal amount by 60% for risk of non-certification, and by an additional  
6 80% for risk of losing on the merits or failure to recover the full amount sought, to arrive at an  
7 estimated realistic exposure of \$383,311.

8 Premiums for Alleged Rest Period Violations: \$48,222

9 As noted above, Plaintiff alleges that for third rest periods on shifts of over 10.0 hours,  
10 TLS sounds a bell 2 minutes before the end of the 10-minute rest period, resulting in rest periods  
11 being cut short. Haines Decl., ¶ 19. Plaintiff's expert's analysis of the data produced by TLS  
12 revealed a total of approximately 8,907 shifts of over 10.0 hours during the Covered Period. *Id.*  
13 Plaintiff therefore calculated maximum potential exposure on his rest period claim as: 8,907 \*  
14 \$27.07 = \$241,112. But as explained above, TLS asserts multiple defenses to this claim, including  
15 that its rest period policies and practices fully comply with California law (including expressly  
16 providing for a third rest period on shifts of over 10.0 hours); that the 2-minute warning bell is  
17 simply a courtesy to alert employees that the rest period is nearly over, rather than an admonition  
18 to return to work; and that many putative class members would testify that they regularly received  
19 their full, 10-minute rest periods. Coupled with TLS's compliant written policies, these defenses  
20 would have presented significant difficulty in certifying a class and prevailing on the merits.  
21 Finally, TLS maintains this claim is not amenable to class treatment, as individualized inquiries  
22 would be required to determine how many rest periods each employee failed to take, if any; the  
23 reason(s) why an employee failed to take a rest period on a particular shift; and whether TLS  
24 knew or should have known that particular employees' rest periods were cut short on particular  
25 shifts. Based on these defenses, Plaintiff discounted the maximum amount by 50% for risk of  
26 non-certification, and by an additional 60% for risk of being unsuccessful on the merits or failure  
27 to recover the full amount sought, to arrive at an estimated exposure of \$48,222. *Id.*

28 ///

1            Wage Statement Penalties: \$103,500

2            Based on data provided by TLS, there were 207 unique employees, and about 26,000 wage  
3 statements, issued to Class Members during the statutory period corresponding with Lab. Code §  
4 226(a). Haines Decl., ¶ 19. Under Labor Code § 226, employees may recover \$50 per “initial”  
5 violation and \$100 per “subsequent” violation, up to a maximum of \$4,000 per employee.  
6 Applying \$50/pay period “initial” violation rate, however, resulted in more than \$4,000 on  
7 average per Class Member. Therefore, Plaintiff utilized the \$4,000 maximum penalty for each of  
8 the 207 employees, to arrive at \$828,000 in maximum wage statement penalties. *Id.* However,  
9 TLS vigorously disputes that any violation of the Labor Code has occurred, that any alleged  
10 violation was “knowing and intentional,” and that Plaintiff or any other person has suffered  
11 “injury” from any alleged violation, and maintains its defenses to Plaintiff’s underlying claims  
12 both on the merits and to class certification. TLS also maintains that, even if Plaintiff were  
13 successful in prevailing on this claim, Plaintiff would not be able to recover the maximum \$4,000  
14 per employee, since not all employees had worked enough pay periods to recover the maximum  
15 penalty. *Id.* Plaintiff therefore discounted the maximum exposure by 50% for risk of non-  
16 certification, and by an additional 75% for risk of being unsuccessful on the merits or failure to  
17 recover the full amount sought, to arrive at an estimated total of \$103,500. *Id.*

18            PAGA Civil Penalties: \$156,000

19            Plaintiff estimated a maximum potential PAGA exposure of \$2,600,000 (calculated from  
20 26,000 alleged “initial” violations at \$100 each under Labor Code § 2699(f)). Haines Decl., ¶ 20;  
21 *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate  
22 applies until employer has been notified it violated the Labor Code). Of course, these penalties  
23 derived from the underlying violations discussed herein, each of which TLS vigorously disputes.  
24 TLS also contends that the proper PAGA civil penalty for Plaintiff’s claims is found in Labor  
25 Code § 558, which provides for a \$50 “initial” civil penalty, rather than the \$100 civil penalty in  
26 Labor Code § 2699(f). *Id.* TLS further argues that even if Plaintiff were to prevail on some or  
27 even all his underlying claims, he would not be able to show a violation in *each and every* pay  
28 period, and therefore his projected PAGA damages are grossly overstated. *Id.* Moreover, the

PAGA grants courts discretion to reduce penalties (Labor Code § 2699(e)(2)), and TLS argues the Court would significantly reduce any penalties based on its good-faith defenses to Plaintiff's claims. *Id.* Based on these risks, Plaintiff discounted the maximal figure he calculated by 70% for a risk of losing on the merits, and by an additional 80% for the risk of this Court reducing penalties and/or awarding damages at a lower penalty, to arrive at an estimated total of \$156,000. *Id.*

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Class would be approximately \$746,190. Haines Decl., ¶ 21. The proposed settlement of \$650,000 (the TSA) therefore represents over 87% of realistic recovery as forecasted by Plaintiff. *Id.* Preliminary approval is appropriate as the Settlement will provide significant monetary relief to the Class.

**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. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by competent, experienced counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed class counsel in numerous cases with similar claims. See Haines Decl., ¶¶ 3-8; Declaration of Tuvia Korobkin, ¶¶ 2-6; Declaration of Alexandra R. McIntosh, ¶¶ 2-4. Thus, this factor strongly supports preliminary approval.

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

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

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

The Settlement reflects over 87% of the estimated recovery Plaintiff believes the Class could reasonably expect in light of significant litigation risks, and will provide tangible, monetary compensation for hotly disputed claims. Plaintiff submits the Settlement is within the range of possible approval, such that notice should be given to the Class so they can consider the Settlement.

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

2           The Settlement is the result of an exchange of extensive information, a full-day mediation,  
3 and months of arm’s-length negotiations. Thus, the Settlement is entitled to an initial presumption  
4 of fairness. *Kullar, supra*, 168 Cal. App. 4th at 130. Plaintiff carefully vetted the claims at issue,  
5 carefully reviewed timekeeping and other data, and conducted detailed analyses of the data to  
6 arrive at estimated classwide damages. *See* Haines Decl., ¶¶ 16-21. The Parties then worked for  
7 months to finalize the Settlement. *Id.*, ¶ 13. This factor thus supports preliminary approval.

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

9           Preliminary approval is also warranted because there are no obvious deficiencies. The  
10 Settlement will provide tangible monetary relief to Class Members The amounts proposed for  
11 attorneys’ fees, costs, and the representative payment are also reasonable. Thus, this factor  
12 supports preliminary approval.

13                   **B.     THE COURT SHOULD CERTIFY THE PROPOSED CLASS FOR**  
14                   **SETTLEMENT PURPOSES**

15           In California, there are two certification prerequisites: (i) the existence of an  
16 “ascertainable class,” and (ii) “a well defined community of interest in the questions of law and  
17 fact involved affecting the parties to be represented.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695,  
18 704 (1967) (citation omitted). Because the Court is certifying this action for settlement purposes  
19 only, it need not determine whether the class would be manageable. *Amchen Prods., Inc. v.*  
20 *Windsor*, 521 U.S. 591, 620 (1977).

21           Plaintiff asserts the Class satisfies the criteria for certification of a settlement class  
22 because: 1) the Class is sufficiently numerous; 2) common questions of law and fact predominate;  
23 3) Plaintiff’s claims are typical of the Class; and 4) Plaintiff and his counsel will adequately  
24 represent the Class. Code Civ. Proc. § 382. TLS maintains that a class cannot properly be certified  
25 in the litigation context, but will not oppose certification for settlement purposes only.

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

27           A class is “ascertainable” where members “may be readily identified without unreason-  
28 able expense or time by reference to official [or business] records.” *Sevidal v. Target Corp.*, 189

Cal. App. 4th 905, 919 (2010). The proposed Class includes all current and former non-exempt production employees who worked for TLS at its Long beach facility during the Covered Period. The Class consists of approximately 226 employees who can be identified from TLS's records. Thus, Plaintiff asserts that numerosity is satisfied.

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

The focus on certification is what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal. 4th 319, 327 (2004). Plaintiff's claims are predicated on TLS's allegedly unlawful meal and rest period practices and policies for payment of wages. Plaintiff asserts these claims are commonly held proper for class treatment. *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701 (2013) (certifying meal and rest period claims).

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

Typicality is satisfied where class representatives' claims are typical of those of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Plaintiff asserts his claims are typical because he was employed by TLS during the Covered Period, was subject to TLS's relevant wage and hour policies, and was injured in the same manner as the Class. *See* Declaration of Michal Ibarra, ¶¶ 2-5. Plaintiff asserts that typicality is thus satisfied.

## **4. Plaintiff and His Counsel Will Adequately Represent the Class**

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal. App. 4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Class, as there are no conflicts between Plaintiff and the Class that he seeks to represent, and Plaintiff's claims are in line with those of the Class. And as noted above, Plaintiff's counsel have extensive experience in wage and hour class action litigation.

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

The Court should order mailing of the Class Notice, using last-known addresses provided by TLS. *See* Settlement, § III.G.2. This is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable

1 effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The Parties propose the  
2 Settlement be administered by Phoenix Settlement Administrators, an experienced class action  
3 settlement administrator. *See* Declaration of Jodey Lawrence and exhibits. To the extent employee  
4 addresses have changed, Phoenix will run all addresses through the U.S. Postal Service National  
5 Change of Address database to obtain current address information. *See* Settlement, § III.G.2.b.

6 The Notice also satisfies Rule of Court 3.766(d) as the most reliable and cost-effective  
7 method of reaching Class Members. It advises Class Members of the Parties’ basic contentions  
8 and denials, the key terms of the Settlement, the 60-day deadline to opt-out or object, the recovery  
9 formula, and advises they will be bound by the Settlement if they do not opt out. *See* Haines Decl.,  
10 Exh. A to Exh. 1. The Notice also notifies Class Members of the final fairness hearing and  
11 provides Class Counsel’s contact information. *Id.*

12 **V. CONCLUSION**

13 For the foregoing reasons, the Parties respectfully request that the Court preliminarily  
14 approve the proposed Settlement, provisionally certify the proposed Class, and enter the  
15 Proposed Order submitted concurrently herewith.

16  
17 Dated: June 25, 2021

Respectfully submitted,  
HAINES LAW GROUP, APC

18 By: \_\_\_\_\_

Paul K. Haines  
Attorneys for Plaintiff

19  
20  
21 Dated: June 24, 2021

PAUL HASTINGS LLP

22 By: \_\_\_\_\_

Zachary P. Hutton  
Attorneys for Defendant