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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ADRIAN VIDES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CELOSEAL ROOFING, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. 30-2020-01162478-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Randall J. Sherman]*

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

Date: October 15, 2021
Time: 10:00 a.m.
Dept.: CX105
Reservation: 73603939

Action Filed: September 28, 2020
Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on October 15, 2021, at 10:00 a.m. in Department CX105 of the above-entitled Court, located at
3 751 W Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Adrian Vides (“Plaintiff”),
4 individually and on behalf of a class of similarly situated individuals, will and hereby does move
5 this Court for:

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

9 **Settlement Class** – All current and former non-exempt employees who
10 have worked for Celoseal Roofing, Inc. in California at any time
11 between April 6, 2016 and the date of preliminary approval of the
12 Settlement, and who have not signed a general release.

- 13 3. Preliminary appointment of Plaintiff Adrian Vides as Class Representative;
- 14 4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, Andrew J.
15 Rowbotham, and Alma V. Montenegro of Haines Law Group, APC as Class Counsel;
- 16 5. The scheduling of a hearing to consider whether the Settlement should be finally
17 approved and to award amounts for the Class Representative Enhancement Payment,
18 Settlement Administrator costs, the Private Attorneys General Act (“PAGA”)
19 payment to the Labor and Workforce Development Agency, as well as attorneys’ fees
20 and costs to Class Counsel;
- 21 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
22 Administrator for mailing notices; and
- 23 7. Approval of the Class Notice and entry of the Proposed Order instructing the Class
24 Notice to be disseminated to Settlement Class Members as provided in the Settlement.

25 ///

26 ///

27 ///

1 This motion is based on this notice of motion, the attached memorandum of points and
2 authorities, the declarations of Fletcher W. Schmidt, Paul K. Haines, Andrew J. Rowbotham,
3 Alma V. Montenegro, Adrian Vides, Jodey Lawrence of Phoenix Settlement Administrators, the
4 exhibits attached thereto, the pleadings and other papers filed in this action, and on any further
5 oral or documentary evidence or argument presented at the time of hearing.

6 Given the multiplicity of issues addressed herein, Plaintiff's memorandum of points and
7 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
8 3.764(c)(2). As this Motion is unopposed, Plaintiff respectfully requests that the Court consider
9 the entire Motion, which is 22 pages in length

10
11 Dated: September 9, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC

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13 By:



14 Fletcher W. Schmidt
15 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Adrian Vides (“Plaintiff”) pursues this putative class action (the “Lawsuit”) on
4 behalf of all current and former non-exempt employees who have worked for Celoseal Roofing,
5 Inc. (“Defendant”) in California at any time between April 6, 2016 and the date of preliminary
6 approval of the Settlement (the “Class Period”), and who have not signed a general release.
7 Plaintiff and Defendant are referred to collectively as the Parties.

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

11 **Settlement Class** – All current and former non-exempt employees who have
12 worked for Celoseal Roofing, Inc. in California at any time between April 6,
13 2016 and the date of preliminary approval of the Settlement, and who have not
14 signed a general release.

15 Based upon the data received from Defendant, there are approximately 81 individuals who
16 meet the Settlement Class definition, and after including all PAGA Aggrieved Employees,² there
17 are a total of 165 individuals who will take part in this Settlement. The \$265,000.00 Maximum
18 Settlement Amount (“MSA”) represents a sizeable benefit to Settlement Class Members, who
19 will only be agreeing to a release of claims that were actually pled in the Lawsuit, or which could
20 have been pled based on the operative facts alleged in the Lawsuit. After deductions for Plaintiff’s
21

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

24 ² The Settlement also includes a release of PAGA civil penalties for all individuals who were employed by Defendant
25 in California at any time between April 6, 2019 and the date of preliminary approval of the Settlement (the “PAGA
26 Period”), regardless of whether they have signed a general release. *See* Settlement § 2; *see also Magadia v. Wal-Mart*
27 *Associates, Inc.* (2019) 384 F. Supp.3d 1058, 1108 (holding that PAGA penalties are not limited to past violations of
28 the California Labor Code for which the LWDA has been provided notice). These individuals are referred to in the
Settlement as “PAGA Aggrieved Employees.” The PAGA release covers all PAGA claims that are based on the
Labor Code violations pled in Lawsuit or Plaintiff’s letter to the LWDA dated July 22, 2020, or which could have
been pled in the operative complaint in the Lawsuit based on the factual allegations therein, that arose during the
PAGA Period. A copy of Plaintiff’s pre-filing LWDA letter is attached as Exhibit 3 to the Declaration of Fletcher
W. Schmidt.

1 requested enhancement payment, settlement administrator costs, the Private Attorneys General
2 Act (“PAGA”) payment to the Labor & Workforce Development Agency (“LWDA”), and Class
3 Counsel’s attorneys’ fees and costs, the remaining amount (the “Net Settlement Amount”) of
4 approximately \$111,666.67 will be distributed to the Settlement Class Members and PAGA
5 Aggrieved Employees.³ Employer-side payroll taxes on amounts paid as wages will be paid
6 separate and apart from, and in addition to, the Maximum Settlement Amount. Significantly,
7 Settlement Class Members do not need to file a claim form in order to receive an Individual
8 Settlement Payment, and all Settlement Class Members who do not opt-out will automatically
9 receive Individual Settlement Payments which average approximately \$1,224.28 on a per capita
10 basis.⁴ PAGA Aggrieved Employees will not have the option to opt-out of the PAGA settlement,
11 and the approximately 105 PAGA Aggrieved Employees will each automatically receive
12 payments of approximately \$119.00. Individuals who meet both the definition of a Settlement
13 Class Member and a PAGA Aggrieved Employee will receive both payments.

14 Prior to reaching this proposed Settlement, Defendant provided Plaintiff with timekeeping
15 and payroll records for a representative sample of putative class members, along with other
16 relevant policy documents, to enable Plaintiff to complete a classwide exposure analysis for the
17 claims at issue. After extensive legal research and evaluation along with a comprehensive review
18 of the records performed by Plaintiff, the Parties participated in a mediation session with Will
19 Klatte, Esq. on April 7, 2021. The Parties debated their respective legal theories and, with the
20 help of Mr. Klatte, were able to reach a classwide settlement of all claims.

21 This proposed Settlement is well within the range of possible approval in light of the
22 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
23
24

25
26 ³ Concurrently with the filing of this motion, Plaintiff provided notice of the proposed Settlement, as well as copies
of this motion and all papers filed in support hereof, to the LWDA. Schmidt Decl., ¶ 29; Exhibit 4.

27 ⁴ To ensure that individuals who experienced more Labor Code violations will receive a greater share of the Net
28 Settlement Amount, the Settlement utilizes workweeks worked (as opposed to time employed) to calculate
Individual Settlement Payments. Schmidt Decl. ¶ 25; Settlement, § 5.B.

1 and the tangible monetary benefits to the Settlement Class. Plaintiff therefore respectfully
2 requests that this Court grant preliminary approval of the Settlement.

3 **II. SUMMARY OF THE LITIGATION**

4 Defendant operates a construction company specializing in commercial and residential
5 decking, roofing, and waterproofing services. Declaration of Fletcher W. Schmidt (“Schmidt
6 Decl.”), ¶ 8. Plaintiff worked for Defendant as a non-exempt employee from approximately 1999
7 to April 3, 2020. Declaration of Adrian Vides (“Vides Decl.”), ¶ 2. Plaintiff, like all other
8 Settlement Class Members, worked for Defendant in California during the Class Period. Schmidt
9 Decl., ¶ 8.

10 **A. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

11 Throughout the Class Period, Plaintiff contends that Defendant did not record employees’
12 meal periods but instead deducted 45 minutes (0.75 hours) from daily hours worked unless an
13 employee affirmatively noted that they did not receive a meal period on a particular shift. Schmidt
14 Decl., ¶ 9. Even on occasions where an employee was provided a full-30 minute meal period as
15 required by California law, Plaintiff contends that Defendant deducted an additional 15 minutes
16 from their daily hours worked, regardless of whether the employee was provided a total of 45
17 minutes for the meal period. *Id.* Plaintiff argues that Defendant is not entitled to “presume” that
18 an employee took a meal period where none was recorded, but rather has an affirmative obligation
19 under the Labor Code to accurately record all employee work periods, including meal periods.
20 *See* Labor Code § 1174 and Wage Order 16 § 6 (“Every employer ... shall keep accurate
21 information with respect to each employee, including the following... Time records showing
22 when the employee begins and ends each work period. Meal periods, split shift intervals, and total
23 daily hours worked shall also be recorded...”)⁵

24
25 ⁵ Plaintiff’s operative complaint also includes a claim for unpaid overtime and minimum wages as a result of
26 Defendant’s alleged unlawful rounding policy. Schmidt Decl., ¶ 11. In association with mediation, Defendant
27 produced relevant timekeeping policies and employee timesheets which specifically instruct employees to record
28 their daily time to the nearest five minutes. Plaintiff’s counsel reviewed these documents and determined that there
are significant obstacles proving commonality because putative class members personally recorded their daily hours
using multiple methods (such as paper timecard, phone app) and there was no uniform policy or practice enforced
by Defendant. Even if successful in certifying the claim, Plaintiff’s counsel concluded that Plaintiff would be unlikely

1 With respect to first meal periods, Plaintiff contends that meal periods were regularly
2 provided after the fifth hour of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53
3 Cal.4th 1004, 1049 (holding that employers must provide a 30-minute uninterrupted meal period
4 prior to the end of the fifth hour of work to employees who work a shift in excess of 5.0 hours).
5 With respect to second meal periods, putative class member timekeeping and payroll records
6 reflect that shifts in excess of 10.0 hours only received a single 45-minute deduction, confirming
7 that only a single meal period was provided in practice. Schmidt Decl., ¶ 12. As a result of
8 Defendant's meal period practices, Plaintiff contends employees were deprived of wages for each
9 shift that they were not provided a 45-minute meal period. *Id.* Additionally, Plaintiff alleges that
10 Defendant failed to pay any meal period premiums for missed or non-compliant meal periods.
11 *See Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 788, 799 ("The right to
12 be free from employer control for a 30-minute meal period, and the right to be paid for time
13 worked during that meal period, are distinct rights with distinct remedies. The remedy for an
14 employer violation of the former right is the hour of premium pay provided under section 226.7.
15 The remedy for the latter is payment of wages for time worked (see § 1194), along with any
16 applicable penalties for the failure to pay for time worked when the wages were due.")

17 Defendant maintains that employees were provided all legally compliant meal periods and
18 that any missed or non-compliant meal periods were the result of employee choice, not
19 Defendant's policy. *See Brinker, supra*, 53 Cal.4th at 1040 (holding that where employees were
20 "provided" the opportunity to take compliant breaks, whether they took a break or not was
21 immaterial). Defendant also contend that employees waived their second meal periods on shifts
22 in excess of 10.0 hours (but less than 12.0 hours). Schmidt Decl., ¶ 13. Defendant further argues
23 that Plaintiff's meal period claims is unmanageable, since individual inquiries would be required
24 to assess whether meal periods were waived, and the reasons why a particular employee recorded
25 a non-compliant meal period or missed a meal period on a particular shift. *Id.*

26
27 to prevail on the merits of the rounding claim given that Defendant rounded employee hours to the nearest 5 minutes
28 (as opposed to 10 or 15 minutes). *See See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889
(holding nearest 10 minute rounding policy lawful so long as it is neutral on its face and does not, over time, deprive
employees of compensation for hours worked). Plaintiff therefore attributed nominal value to this claim at mediation.

1 Plaintiff alleges that Defendant required employees to use their personal cell phones for
2 business purposes but did not reimburse them for that use. Schmidt Decl., ¶ 14. Some of these
3 uses included communicating with their supervisor throughout the workday, using their wireless
4 internet to navigate while driving company vehicles, and downloading and using a phone
5 application to record their daily hours worked. *Id.* In *Cochran v. Schwan's Home Service, Inc.*
6 (2014) 228 Cal.App.4th 1137, 1140, the court held that Section 2802 requires employers to always
7 reimburse employees who are required to use personal cell phones for work-related purposes for
8 a reasonable percentage of their cell phone bills. Under Labor Code § 2802, the employer must
9 “indemnify its employees for expenses they necessarily incur in the discharge of their duties...”
10 *Gattuso v. Harte-Hanks Shoppers, Inc.* (2015) 169 P.3d 889. Defendant argues that it maintains
11 a policy to reimburse all reasonable and necessary business expenditures and that, to the extent
12 that any expenses were not reimbursed, they were not reasonably incurred. Schmidt Decl., ¶ 14.

13 Plaintiff also contends that Defendant issued facially non-compliant wage statements
14 which fail to include “the address of the legal entity that is the employer,” because the wage
15 statements Defendant provided to its employees list only the city, state, and zip code, with no
16 street address whatsoever. *See* Labor Code § 226(a)(8) (requiring wage statements to list “the
17 name and address of the legal entity that is the employer...”) Defendant contends that this
18 omission was unintentional (resulting from the inadvertent failure to check a specific box on the
19 payroll software) and only affected a handful of putative class members. Schmidt Decl., ¶ 15.
20 Defendant also contends that wage statements have been legally-complaint since February 2020
21 when Defendant changed payroll processors. *Id.*

22 As a result of the alleged substantive violations, Plaintiff contends that Defendant also
23 failed to issue accurate and itemized wage statements and failed to pay all wages owed at
24 separation of employment. *See* Labor Code §§ 226(a), 201-203. Additionally, Plaintiff contends
25 that Defendant faces liability for civil penalties under PAGA. Schmidt Decl., ¶ 16. Since these
26 claims are derivative of the underlying meal period claims, Defendant asserts that those claims
27 will fail with the underlying claims. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136,
28 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also

fail.”) Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff’s underlying claims. *See Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming trial court’s reduction of PAGA penalties to 10% of calculated exposure after bench trial).

B. DEFENDANT’S PICK UP STIX CAMPAIGN

Shortly after Plaintiff filed the Lawsuit, Defendant engaged in a campaign to obtain general releases from putative class members. Schmidt Decl., ¶ 20. Defendant’s counsel provided Plaintiff with samples of the general release as well as the accompanying materials provided to putative class members. *Id.* Defendant’s counsel represented that 128 of the approximately 209 putative class members signed “Pick Up Stix” releases as a result of these efforts. *See Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, 803 (allowing employer to enter into individual releases with employees during pendency of putative class action litigating same claims).

C. DISCOVERY AND MEDIATION

Following Defendant’s *Pick Up Stix* campaign, the parties reached an agreement to attend mediation on behalf of the individuals with PAGA standing as well as the individuals who did not sign general releases. Schmidt Decl., ¶ 21. In connection with mediation, Defendant provided Plaintiff with timekeeping and payroll records for approximately 20% of putative class members who worked during the relevant time periods. *Id.* Defendant also produced the employee handbook, relevant policy documents, and a list of data points necessary to complete a classwide exposure analysis for the claims at issue. *Id.* Plaintiff then conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim. *Id.*

On April 7, 2021, the Parties participated in a mediation with Will Klatte, Esq., a respected wage and hour class action mediator in California. Schmidt Decl., ¶ 22. During mediation, the Parties exchanged divergent views on Defendant’s liability and Plaintiff’s exposure valuations, debated their legal positions, and shared their arguments regarding the likelihood of certification

1 of Plaintiff's claims. *Id.* As a result of a mediator's proposal from Mr. Klatte, the Parties were
2 able to reach a classwide resolution of all claims. *Id.* During the months that followed, the Parties
3 memorialized the terms into the Settlement Agreement. *Id.*

4 **III. THE PROPOSED SETTLEMENT**

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

6 Should the Court preliminarily approve this settlement, Defendant will pay a Maximum
7 Settlement Amount of \$265,000.00. Settlement § 4. This Settlement is non-reversionary and
8 Settlement Class Members will automatically receive their Individual Settlement Payment unless
9 they affirmatively opt-out of the Settlement. *Id.*, § 4.C. PAGA Aggrieved Employees will
10 automatically receive their share of the PAGA allocation, and will not have the ability to opt-out.
11 *Id.*, §10.D.ii. Defendant will fund the entire Maximum Settlement Amount within 30 days of the
12 date of the Court's signing an order granting final approval of the Settlement (the "Effective
13 Date"). *Id.*, § 4.B.

14 The proposed deductions from the Maximum Settlement Amount are itemized within the
15 table on the following page:

Maximum Settlement Amount:	\$265,000.00
Minus Court-approved attorneys' fees (1/3 of MSA):	\$88,333.33
Minus Court-approved attorneys' costs (up to):	\$15,000.00
Minus Court-approved enhancement payment:	\$5,000.00
Minus Court-approved administration costs (up to):	\$7,500.00
Minus PAGA payment to the LWDA: ⁶	\$37,500.00
Net Settlement Amount:	\$111,666.67

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

22 After deducting amounts for court-approved attorneys' fees and costs, Plaintiff's
23 enhancement payment, costs of settlement administration, the amount paid previous through the
24
25

26 ⁶ The total PAGA allocation represents approximately 56.7% of Defendant's estimated PAGA exposure. *See* Section
27 IV.A.d., *infra*. Defendant denies the underlying allegations that Plaintiff uses to support the PAGA civil penalties.
28 The Parties therefore mutually agreed to allocate \$50,000.00 (\$37,500.00 to the LWDA and \$12,500.00 to the
aggrieved employees) as part of the Settlement. Given the Court's ability to significantly reduce PAGA civil penalties
and the fact that the LWDA was provided notice of this Settlement concurrently with the filing of this Motion,

1 *Pick Up Stix* release process, the PAGA payment to the LWDA, the Settlement requires
2 Defendant to pay a Net Settlement Amount of approximately \$111,666.67 to Settlement Class
3 Members and PAGA Aggrieved Employees. *See* Settlement § 4.C. Employer-side payroll taxes
4 on amounts paid as wages will be paid separate and apart from, and in addition to, the Maximum
5 Settlement Amount. *Id.*, § 4.F.

6 Defendant's records as of the date of mediation indicate that there are approximately 165
7 potential individuals who will take part in this Settlement (81 Settlement Class members and 105
8 PAGA Aggrieved Employees, with 21 individuals meeting both definitions). The Settlement
9 Class members worked a total of approximately 1,560 workweeks in the Settlement Class Period,
10 and the PAGA Aggrieve Employees worked a total of approximately 4,703 pay periods during
11 the PAGA Period. Schmidt Decl., ¶ 25. Based on the proposed allocations of the Net Settlement
12 Amount, Settlement Class Members will receive average payments of approximately \$1,224.28
13 on a per capita basis. *Id.* The PAGA Aggrieved Employees will each automatically receive
14 payments of approximately \$119.00. *Id.* Individuals who meet both the definition of a Settlement
15 Class Member and a PAGA Aggrieved Employee will receive both payments. *Id.*

16 Settlement Class Members will have 60 calendar days from the mailing of the Class Notice
17 to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice
18 without unduly delaying the Settlement. *See* Settlement § 10.D. Those Settlement Class Members
19 who do not opt-out of the Settlement will be bound by its terms and will release all claims against
20 Defendant that were asserted, or could have been asserted based on the operative facts in the
21 Lawsuit during the Class Period. *Id.*, § 3.A.⁷

22
23 Plaintiff contends that these negotiated amounts for PAGA are fair, just, and reasonable and should be approved by
24 the Court.

25 ⁷ The Parties propose that any uncashed settlement checks shall be distributed to the cy pres, Legal Aid SoCal, a
26 501(c)(3) organization dedicated to providing legal assistance to the indigent. *See* Settlement, § 5.E. Within thirty
27 (30) days of the check-cashing deadline, the Settlement Administrator will mail a reminder postcard to any
28 Settlement Class Member who has not yet cashed their Individual Settlement Award. Pursuant to California Code
of Civil Procedure § 384(b), the Parties will request that the Court set a deadline to submit a final distribution report
after the check-cashing deadline which shall include the total amount that was paid to Settlement Class Members
and the number and amount of any uncashed checks. After the report is received, the Parties will request that the
Court amend the judgment to direct the Settlement Administrator to submit the funds from any uncashed checks to
Legal Aid SoCal, including any interest accrued on said uncashed funds.

1 **2. Attorneys’ Fees, Costs, and Representative Enhancement Payment**

2 Should the Court grant preliminary approval of this Settlement, Plaintiff will apply for an
3 enhancement payment in the total amount of \$5,000.00. *See* Settlement §§ 4.C.3, 7; Schmidt
4 Decl., ¶ 26. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to
5 compensate class representatives for work done on behalf of the class [and] to make up for
6 financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination*
7 *Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff’s Enhancement Payment is intended to
8 recognize the significant benefits conferred upon the Settlement Class due to the time and effort
9 that Plaintiff expended on their behalf, including providing factual information and documents to
10 his attorneys, identifying potential witnesses who also worked for Defendant and experienced the
11 same alleged Labor Code violations, and participating in meetings with his attorneys to discuss
12 the claims and theories at issue in the litigation. Schmidt Decl., ¶ 26. Plaintiff’s Enhancement
13 Payment is also requested due to the significant risks that Plaintiff undertook by agreeing to serve
14 as the named Plaintiff in this case, as well as the fact that Plaintiff agreed to a general release of
15 all claims subject to a waiver of California Civil Code § 1542. *Id.*; Settlement § 3.C.

16 Class Counsel will also apply for an attorneys’ fee award of \$88,333.33 (one-third of the
17 Maximum Settlement Amount) and up to \$15,000.00 in verified costs. *See* Settlement §§ 4.C.4,
18 6; Schmidt Decl., ¶ 27. Plaintiff submits that the requested fee is fair compensation for the
19 undertaking of complex, risky, expensive, and time-consuming litigation on a purely contingent
20 fee basis. Class Counsel incurred substantial attorneys’ fees conducting the pre-filing
21 investigation, analyzing Plaintiff’s claims, conducting legal research and analysis into those
22 claims, reviewing data and documents produced by Defendant, building a comprehensive
23 damages model, preparing for and attending mediation, preparing and revising the long-form
24 Settlement Agreement, preparing this Motion for Preliminary Approval, and otherwise litigating
25 the case. Schmidt Decl., ¶ 27. Class Counsel will also expend future attorney time in attending
26 the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement
27 Class Members, drafting the Final Approval Motion along with supporting documents, and
28 attending the final approval hearing, among other tasks. *Id.* Should the Court grant preliminary

1 approval of this Settlement, Class Counsel will seek an award of attorneys' fees and verified
2 litigation costs at the time of seeking final approval of the Settlement.

3 Both California and federal courts have recognized that an appropriate method for
4 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
5 as a result of the settlement. *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506 ("the
6 percentage of fund method survives in California class action cases..."); *Wershba v. Apple*
7 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery"
8 and "lodestar/multiplier" methods). Historically, courts have awarded percentage fees in the range
9 of 20% to 50%, depending on the circumstances of the case. *See 4 Newberg on Class Actions*
10 § 14.6 (4th Ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of
11 a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
12 common fund in order to assure that the fees do not consume a disproportionate part of the
13 recovery obtained for the class, although somewhat larger percentages are not unprecedented.")

14 **IV. ARGUMENT**

15 **A. PRELIMINARY APPROVAL IS WARRANTED**

16 California Rule of Court 3.769 conditions the settlement of a class action on court
17 approval. This approval is generally evaluated under the federal standards applicable under Rule
18 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
19 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the
20 settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir.
21 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether
22 a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the
23 preferred means of dispute resolution, particularly in complex class action litigation. *See In re*
24 *Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a
25 proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not
26 the product of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150
27 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was
28

1 negotiated at arm's length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168
2 Cal.App.4th 116, 130.

3 **1. Standard for Preliminary Approval**

4 To make a fairness determination, the Court should consider several factors, including
5 "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further
6 litigation, the risk of maintaining class action status through trial, the amount offered in
7 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
8 experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
9 "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
10 factors depending on the circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245.
11 As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the
12 overall balance of factors in this case.

13 **a. The Strength of Plaintiff's Case**

14 Class Counsel carefully vetted the claims at issue, conducted a detailed analysis of
15 Defendant's pre-mediation production to create a comprehensive damages model for Defendant's
16 classwide liability. *See Schmidt Decl.*, ¶¶ 21-22. Although Plaintiff steadfastly maintains that his
17 claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in
18 proceeding with class certification and trial. As explained in detail in Section II.B., *supra*,
19 Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect
20 to class certification. Although Plaintiff was prepared to litigate these claims through class
21 certification and trial, given the amount offered in the Settlement, Plaintiff predicted that it was
22 unlikely that further litigation would result in a more beneficial result for the Settlement Class
23 Members.

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

25 Given the robust informal exchange of documents and data prior to mediation, the Parties
26 did not see any additional benefit engaging in formal written or deposition discovery prior to
27 mediation. *See Schmidt Decl.*, ¶ 21. Absent the Settlement, the Parties would need to expend
28 substantial time and resources to begin formal written and deposition discovery and prepare this

1 case for class certification and trial. This Settlement avoids the considerable attorneys' fees and
2 costs associated with conducting formal discovery, moving for class certification as to the putative
3 class members who did not sign general releases, filing for summary judgment or adjudication,
4 and ultimately, participating in trial. The Settlement also limits the risks and the accompanying
5 burden of continued litigation on the Court.

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

7 At the time of the Parties' proposed Settlement, Plaintiff had not yet filed a motion for
8 class certification. Given Defendant's arguments that individualized issues would predominate
9 Plaintiff's claims, there was a legitimate risk that there would not be a certified class at the time
10 of trial.

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

12 This proposed Settlement provides a fair and reasonable monetary recovery for the
13 Settlement Class Members notwithstanding the disputed claims. After analyzing the data
14 provided by Defendant prior to mediation for individuals who did not sign general releases,
15 Plaintiff prepared a classwide exposure model and forecasted the expected recovery for each
16 claim as follows:

17 **Unpaid Wages Due to Deducted Meals: \$21,323**

18 Throughout the Class Period, Defendant required putative class members to record their
19 start and end times for each workday but did not track the start and end times for meal periods.
20 *See Schmidt Decl.*, ¶ 9. Plaintiff contends that Defendant deducted 45 minutes from the daily total
21 to account for a meal period, whether a 45 minute meal period was provided or not. *Id.* Plaintiff's
22 review of putative class member timekeeping records reflect there were 1,560 total workweeks
23 worked by individuals who did not sign *Pick Up Stix* releases. *Id.* Given that the vast majority of
24 shifts worked by putative class members exceed 8.0 hours, Plaintiff assumed that all unpaid wages
25 would be paid at the average overtime rate (\$24.30). *Id.* Based on discussions with Plaintiff and
26 other putative class members, Plaintiff determined that putative class members were not
27 compensated for 1 hour of work each week, on average, due to improper meal period deductions.
28 *Id.* Plaintiff therefore calculates Defendant's exposure for unpaid wages due to improper meal

deductions as follows: 1,560 workweeks worked x 1 hour of unpaid overtime per week x \$24.30 average overtime rate = \$37,908. *Id.*

Defendant contends that employees were always expected to take a full 45-minute, uninterrupted meal period each day and to report to their supervisors whenever a meal period was not taken or was shorter than 45 minutes. Schmidt Decl., ¶ 10. Defendant argues that employee working time was deducted for meal periods only when the employee was actually provided the meal period. *Id.* In addition to these defenses, Defendant contends individualized inquiries would be required to determine whether an employee was not provided a 45 minute meal period on each occasion that time was deducted from hours worked, thus posing an obstacle to certification. *Id.* Plaintiff accordingly discounted Defendant's potential liability by 25% for a risk of non-certification, and by an additional 25% for the risk that Defendant could prevail on the merits outright, or at least succeed in establishing a lower damages measure, for a projected total of \$21,323. *Id.*, ¶ 9.

Meal Period Violations: \$7,108

Plaintiff alleges that Defendant regularly failed to provide 30-minute meal periods commencing before the end of the fifth hour of work due to its auto-deduct meal period practice. *See* Schmidt Decl., ¶ 12. Plaintiff reviewed the timekeeping records produced for mediation and determined that 390 shifts reflect a start time before 7:00 a.m. (approximately 5% of all shifts). *Id.* Because Defendant designated lunch from 12:00 p.m. to 12:45 p.m. each day, Plaintiff contends that employees who worked these "early" shifts were not provided with a timely meal period commencing before the fifth hour of work. *Id.* Plaintiff therefore calculates Defendant's first meal period exposure as follows: 390 shifts with a first meal period violation x \$16.20 average meal premium = \$6,318. *Id.*

Plaintiff's review of the timekeeping records also reveal that 390 shifts exceeded 10 hours in length and were entitled to a second meal period. Schmidt Decl., ¶ 12. However, Defendant only deducted a single 45 minute block from the daily hours worked, no matter how long the shift actually was. *Id.* Plaintiff argues that this practice highlights that Defendant never provided a second meal period in the first place, despite its facially-compliant second meal period policy. *Id.*

1 Plaintiff therefore calculates Defendant's second meal period exposure as follows: 390 shifts with
2 a second meal period violation x \$16.20 average meal premium = \$6,318. *Id.* Adding these figures
3 together provide Plaintiff's calculation for Defendant's total meal period exposure, \$6,318 +
4 \$6,318 = \$12,636. *Id.*

5 Defendant contends that employees were provided all meal periods to which they were
6 entitled and rely on their facially-compliant written meal period policies in defense to these
7 claims. Schmidt Decl., ¶ 13. To the extent that an employee did not take a second 30 minute meal
8 period when working a shift between 10.0 and 12.0 hours, Defendant contends that is due to
9 employee choice, not overarching policy. *Id.* Plaintiff accordingly discounted Defendant's
10 potential liability by 25% for a risk of non-certification, and by an additional 25% for the risk that
11 Defendant could prevail on the merits outright, or at least succeed in establishing a lower damages
12 measure, for a projected total of \$7,108. *Id.*, ¶ 12.

13 **Unreimbursed Expenses: \$10,126**

14 Plaintiff alleges that Defendant does not maintain any payroll code or make any payments
15 for mobile phone reimbursement, despite employees having to use their personal phones to
16 communicate with supervisors and navigate to job sites. Schmidt Decl., ¶ 14. Plaintiff estimates
17 the average monthly cell phone expense incurred by employees was approximately \$50.00. *Id.*
18 Plaintiff therefore calculates Defendant's exposure for its failure to reimburse necessary business
19 expenditures as follows: 1,560 workweeks ÷ 4.333 weeks per month x \$50.00 monthly business
20 expense = \$18,001. *Id.* Defendant contends that it always reimbursed employees for necessary
21 business expenditures. *Id.* Defendant also maintains that this claim faces similar obstacles towards
22 certification as Plaintiff's other claims, particularly that it would require a series of mini-trials to
23 determine which expenses were reasonable and necessary for the particular job duties of the
24 affected employee. *Id.* Plaintiff discounted Defendant's potential liability by 25% for a risk of

1 non-certification, and by an additional 25% for the risk that Defendant could prevail on the merits,
2 for a projected total of \$10,126. *Id.*

3 **Wage Statement Violations: \$14,766**

4 According to the data produced by Defendant, there were 303 wage statements issued to
5 81 putative class members who did not sign general releases during the time period associated
6 with wage statement penalties (1 year prior to the filing of the complaint to the present). Schmidt
7 Decl., ¶ 15. Defendant's exposure for wage statement penalties is as follows: 81 "initial"
8 violations x \$50.00 per violation + 222 "subsequent" violations x \$100.00 per violation =
9 \$26,250. *Id.* Defendant argues that meal period claims cannot support wage statement penalties.
10 *Id.*, ¶ 16. Even if they could, Defendant contends that employees could not show that they
11 "suffer[ed] injury," as required by Labor Code § 226(e). *Id.* Plaintiff accordingly discounted
12 Defendant's potential liability by 25% for a risk of non-certification, and by an additional 25%
13 for the risk of losing on the merits or failing to prove violations were "knowing and intentional,"
14 for a projected total of \$14,766. *Id.*, ¶ 15.

15 **Waiting Time Penalties: \$153,090**

16 Plaintiff contends that Defendant is liable for waiting time penalties as a result of its
17 willful failure to pay all overtime wages, as well as meal period premium wages. *See Amaral v.*
18 *Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1201 (willful under Section 203 means the
19 "employer has intentionally failed or refused to perform an act which was required to be done"
20 and need not be "based on deliberate evil purpose."); *see also Murphy v. Kenneth Cole*
21 *Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 (holding that meal period premium payments are
22 "wages"); *see also In re: Autozone, Inc.* (N.D. Cal., Aug. 10, 2016, No. 3:10-MD-02159-CRB)
23 2016 WL 4208200, at *7 (collecting cases that have held that meal period premium payments
24 constitute "wages" and can therefore form the basis of a Labor Code §§ 201-203 claim for waiting
25 time penalties). Plaintiff's review of the pre-mediation document production revealed there are
26 approximately 70 employees who have not signed general releases and have separated their
27 employment with Defendant during the time period applicable to waiting time penalties (3 year
28 prior to date of filing to the present). Schmidt Decl., ¶ 17. Plaintiff therefore calculated

1 Defendant's waiting time exposure as follows: 70 former employees x \$16.20 average hourly rate
2 x 8 hours x 30 days = \$272,160. *Id.*

3 Defendant maintains that waiting time penalties are not appropriate to the extent they are
4 derivative of meal period claims as these claims cannot support such penalties. *See Ling v. P.F.*
5 *Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th 1242. 1261 (holding that meal period
6 premium pay compensates for the non-provision of meal periods, not for the 'nonpayment of
7 wages' as required by Labor Code section 203). Defendant also argues it attempted to pay its
8 employees all final wages owed in good faith upon their separation, therefore precluding a finding
9 of wilfulness which is necessary to obtain waiting time penalties under 8 Cal. Code Regs.
10 § 13520. Schmidt Decl., ¶ 16. Plaintiff discounted the value of this claim by 25% for the risk of
11 non-certification of the underlying claims, and 25% for a risk of being unsuccessful on the merits
12 (including a failure to establish wilfulness), for an estimated recovery on this claim of \$153,090.
13 *Id.*, ¶ 17.

14 **PAGA Penalties: \$88,181**

15 The success of Plaintiff's PAGA claim is wholly dependent upon the success of the
16 underlying claims occurring within the time period associated with PAGA (1 year prior to the
17 submission of the LWDA letter to the present). Schmidt Decl., ¶ 18. Assuming that Plaintiff could
18 prove at least one substantive violation in each pay period for the PAGA time period, Defendant's
19 potential exposure for PAGA civil penalties is \$470,300 (4,703 pay periods x \$100.00 "initial"
20 violation rate). *See Amaral, supra*, 163 Cal.App.4th at 1209 (finding "initial" violation rate
21 applies until employer has been notified that it is violating a Labor Code provision). However,
22 these penalties derived from the underlying wage and hour violations discussed above, which
23 Defendant disputes. *See e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506,
24 *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying
25 claims). Plaintiff also recognizes that the Court has discretion to reduce any award of PAGA
26 penalties if it views them as duplicative. *See* Labor Code § 2699(e)(2); *Thurman, supra*, 203
27 Cal.App.4th at 1135; *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011
28 WL 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to

1 \$500,000); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing PAGA penalties
2 from \$70 million to \$150,000). Plaintiff accordingly discounted Defendant’s potential liability by
3 25% for the risk of manageability issues preventing the case from proceeding on a representative
4 basis, and by an additional 75% to account for the potential for this Court to reduce the civil
5 penalties, for a projected total of \$88,181. Schmidt Decl., ¶ 18.

6 Plaintiff predicts that a realistic classwide recovery for all of these claims would be
7 approximately \$294,593. Schmidt Decl., ¶ 19. This Settlement provides a recovery to the
8 Settlement Class of \$265,000, which is approximately 89.95% of Plaintiff’s projected potential
9 recovery, while avoiding the further expense and serious risk of proceeding towards class
10 certification and trial. *Id.* Considering the risk of non-certification for the claims maintained by
11 the individuals who did not sign general releases, the risk of failure to prevail on the merits, as
12 well as the Court’s power to reduce the civil penalties, the proposed Settlement falls well within
13 the realm of being fair, reasonable, and adequate. *See e.g., Altamirano v. Shaw Industries, Inc.*,
14 (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action
15 settlement, stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum
16 recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval
17 given the merits of Plaintiff’s claims.”) Preliminary approval is appropriate since the Settlement
18 will provide tangible monetary relief to Settlement Class Members without the uncertainty, delay,
19 and additional expense of further litigation.

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

21 “Parties represented by competent counsel are better positioned than courts to produce a
22 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
23 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Plaintiff is represented by
24 competent and experienced counsel who possess extensive experience litigating wage and hour
25 class actions from both the plaintiff and defense side. *See* Schmidt Decl., ¶¶ 2-6; Declaration of
26 Paul K. Haines (“Haines Decl.”), ¶ 2-8; Declaration of Andrew J. Rowbotham (“Rowbotham
27 Decl.”), ¶¶ 2-5; and Declaration of Alma V. Montenegro (“Montenegro Decl.”), ¶¶ 2-4. Plaintiff’s
28 attorneys have been appointed as class counsel in numerous cases alleging similar claims. *Id.*

1 Plaintiff's attorneys conducted an extensive review of Defendant's documents and data produced
2 for mediation and drew on their extensive experience in similar cases to assess the strengths and
3 weaknesses of this case. *See* Schmidt Decl., ¶¶ 2-5. The Settlement was reached with the input
4 and assistance of Will Klatte, Esq., an experienced wage and hour class action mediator. *Id.*, ¶ 22.
5 This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168
6 Cal.App.4th at 130.

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

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

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

14 The proposed Settlement will provide substantial compensation for contested claims and
15 derivative penalties, and the average payment amounts exceed averages achieved in other wage
16 and hour class action settlements.⁸ The proposed Settlement falls within the range of possible
17 approval and Plaintiff requests that this Court approve the Class Notice to be mailed to Settlement
18 Class Members. The Court will again have the opportunity to assess the reasonableness of the
19 Settlement after the Settlement Class Members have had the opportunity to opt-out or object to
20 it.

21 **b. The Settlement Resulted from Serious, Informed, and Non-Collusive**
22 **Negotiations**

23 This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar,*
24 *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of data, which was analyzed by
25 Plaintiff's attorneys, arm's length negotiations by counsel; mediation with a respected and
26 experienced wage and hour class action mediator; and additional time spent negotiating and

27
28 ⁸ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012)
(average net recovery of approximately \$105); *see also Ressler v. Federated Department Stores, Inc.*, Case No.
BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90).

1 finalizing the terms of the long-form Settlement Agreement. *See* Schmidt Decl., ¶¶ 21-22. The
2 proposed Settlement is thus entitled to an initial presumption of fairness. *See Kullar, supra*, 168
3 Cal.App.4th at 130.

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

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

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

12 The proposed Settlement Class satisfies the criteria for certification of a settlement class
13 under California law because: (1) the Settlement Class Members are so numerous that joinder
14 would be impractical; (2) common questions of law and fact predominate over individual
15 questions such that class certification is the most efficient and desirable way to maintain this
16 litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class Members;
17 and (4) Plaintiff and Class Counsel will fairly and adequately represent the interests of the absent
18 Settlement Class Members. *See* Cal. Code 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.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). The proposed Settlement Class
23 is defined as all current and former non-exempt employees who have worked for Defendant in
24 California at any time during the Class Period, and who have not signed a general release.
25 According to Defendant's records, there are approximately 81 individuals who meet the
26 Settlement Class definition, rendering it impracticable to gather all these individuals and bring
27 them before the Court. *See* Schmidt Decl., ¶ 25. The proposed Settlement Class therefore satisfies
28 the numerosity requirement.

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

2 The focus in a certification dispute is not on the merits of the case, but rather on what
3 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*
4 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Plaintiff’s claims are predicated on
5 Defendant’s allegedly unlawful meal period policies and practices. These types of claims are
6 commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1033
7 (“The theory of liability—that Brinker has a uniform policy, and that that policy...allegedly
8 violates the law—is by its nature a common question eminently suited for class treatment.”);
9 *Faulkinbury v. Boyd & Assoc., Inc.* (2013) 216 Cal.App.4th 220, 240 (certifying meal period
10 claims); *Bradley v. Networkers Int’l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying meal
11 period claims).

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

13 The typicality requirement is satisfied when the class representative has claims that are
14 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
15 Cal.App.3d 1341, 1347. Plaintiff’s claims are typical of those held by the Settlement Class
16 Members. Like other Settlement Class Members, Plaintiff was employed by Defendant in
17 California during the Class Period. *See Vides Decl.*, ¶¶ 2-4. Plaintiff was not provided all meal
18 periods, had time deducted from his hours worked as a result of Defendant’s automatic deduction
19 practice, and was not reimbursed for all business expenses. *Id.* Because of these violations,
20 Plaintiff was not provided accurate and complete wage statements, was not paid all wages owed
21 to him upon separation, and is also an aggrieved employee under PAGA. *Id.* Plaintiff was
22 therefore impacted by the same challenged policies that allegedly injured the Settlement Class as
23 a whole and was subject to Defendant’s same classwide defenses. *Id.*

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

26 The adequacy of representation requirement examines conflicts of interest between named
27 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
28 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiff and Class Counsel will
adequately represent the Settlement Class Members, as there are no conflicts between Plaintiff

1 and the Settlement Class they seek to represent. Plaintiff possesses claims that are in line with
2 those of the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450
3 (finding adequacy satisfied where there was no indication that the plaintiff's counsel were not
4 qualified and the named plaintiff had no interests antagonistic to those of the proposed class).
5 Class Counsel also has extensive experience in wage and hour class action litigation. *See Schmidt*
6 *Decl.*, ¶¶ 2-6; *Haines Decl.*, ¶¶ 2-8; *Rowbotham Decl.*, ¶¶ 2-5; *Montenegro Decl.*, ¶¶ 2-4.

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

9 This Court should order distribution of the proposed Class Notice to the Settlement Class
10 Members by first class mail, postage prepaid, using the last known mailing address information
11 provided by Defendant. This manner of giving notice is the “best notice practicable” under the
12 circumstances because it provides “individual notice to all members who can be identified through
13 reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Plaintiff
14 proposes that the Settlement be administered by Phoenix Settlement Administrators, an
15 experienced class action settlement administrator. *See* Declaration of Jodey Lawrence and
16 attached exhibits. Phoenix has never had any financial interests in nor affiliation with the parties
17 or counsel in this matter. *Id.* Additionally, Phoenix maintains a robust system of safeguards and
18 redundancy policies to ensure the data and funds entrusted to it. *Id.*; Exhibits B-D. Phoenix also
19 maintains an errors and omissions insurance policy which covers data breaches. *Id.*; Exhibit E.

20 Settlement Class Members' addresses will be ascertainable through Defendant's personnel
21 and payroll records, which Defendant will provide to Phoenix within 10 business days after
22 preliminary approval of the Settlement. *See* Settlement § 10.A. To the extent that any notices are
23 returned, Phoenix will run those addresses through the National Change of Address database
24 and/or conduct skip traces to obtain current address information. *Id.*, § 10.B. The content of the
25 Class Notice satisfies California Rule of Court 3.766(d) as it advises proposed Settlement Class
26 Members of the nature of the claims, the basic contentions and denials of the Parties, the key
27 terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
28 procedure by which to do so. The Class Notice also explains the recovery formula, includes the
expected recovery amount for each individual, advises individuals that they will be bound by the

1 terms of the Settlement if they do not request exclusion, advises aggrieved employees that they
2 do not have an opportunity to opt-out of the PAGA release, advises putative class members of the
3 final approval hearing date, provides contact information for Class Counsel, and advises that they
4 putative class members enter an appearance through their own counsel if they wish. *See* Schmidt
5 Decl., Exhibit 2 (Notice Packet). This manner of giving notice is the most reliable and cost-
6 effective method of reaching Settlement Class Members and therefore satisfies California Rule of
7 Court 3.766(e).

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

9 This Court should set a hearing for the final approval of this Settlement on a date
10 appropriately scheduled to follow the deadline for Settlement Class Members to submit any opt-
11 outs or objections to the Settlement. *See* California Rule of Court 3.769.

12 **V. CONCLUSION**

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

16
17 Dated: September 9, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

18
19 By:



20 Fletcher W. Schmidt
21 Attorneys for Plaintiff
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