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SIGNATURE RESOLUTION

JUAN MELENDREZ, as an individual and on
behalf of all others similarly situated,

Claimant,

vs.

S. STAMOULES, INC., a California
Corporation,

Respondent.

CASE ID: WBMDX

[Before the Hon. Peter D. Lichtman (Ret.)]

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

1 PLEASE TAKE NOTICE that Juan Melendrez (“Claimant”), individually and on behalf
2 of a class of similarly situated individuals, will and hereby does move this tribunal for:

- 3 1. Preliminary approval of the proposed Settlement of this lawsuit;
4 2. Provisional certification of the following Settlement Class defined as follows:

5 **Settlement Class** – All current and former employees of S. Stamoules,
6 Inc. in the state of California who received a wage statement during the
7 time period from April 1, 2019 to August 7, 2020.

- 8 3. Preliminary appointment of Claimant Juan Melendrez as Class Representative;
9 4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, and Matthew K.
10 Moen of Haines Law Group, APC as Class Counsel;
11 5. The scheduling of a hearing to consider whether the Settlement should be finally
12 approved and to award amounts for the Class Representative Enhancement Payment,
13 Settlement Administrator costs, the Private Attorneys General Act (“PAGA”) payment to the Labor and Workforce Development Agency, as well as attorneys’ fees
14 and costs to Class Counsel;
15 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
16 Administrator for mailing notices; and
17 7. Approval of the Class Notice and entry of the Proposed Order instructing the Class
18 Notice to be disseminated to Settlement Class Members as provided in the Settlement.
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1 This motion is based on this notice of motion, the attached memorandum of points and
2 authorities, the declarations of Fletcher W. Schmidt, Juan Melendrez, Jodey Lawrence of Phoenix
3 Settlement Administrators, and the exhibits attached thereto.

4
5 Dated: April 1, 2022

Respectfully Submitted,
HAINES LAW GROUP, APC

6
7 By:



Fletcher W. Schmidt
Attorneys for Claimant

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Claimant Juan Melendrez (“Claimant”) pursues this putative class action (the “Lawsuit”)
4 on behalf of a proposed class of current and former employees of S. Stamoules, Inc.
5 (“Respondent”) who have worked in California at any time between April 1, 2019 to August 7,
6 2020 (the “Class Period”). Claimant and Respondent are referred to collectively as the “Parties.”

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

10 **Settlement Class** – All current and former employees of S. Stamoules, Inc. in
11 the state of California who received a wage statement during the time period
12 from April 1, 2019 to August 7, 2020.

13 Based upon the data received from Respondent, there are approximately 1,896 individuals
14 who meet the Settlement Class definition. Respondent has agreed to pay a Maximum Settlement
15 Amount (“MSA”) of \$2,327,000, which represents an exemplary result for the Settlement Class
16 Members, who will only be agreeing to a release of claims that were actually pled in the Lawsuit,
17 or which could have been pled based on the operative facts alleged in the Lawsuit, which is based
18 solely on violations of Labor Code § 226(a) for deficient wage statements. After deductions for
19 Claimant’s requested enhancement payment, settlement administrator costs, the Private Attorneys
20 General Act (“PAGA”) payment to the Labor & Workforce Development Agency (“LWDA”),
21 and Class Counsel’s attorneys’ fees and costs, the remaining amount (the “Net Settlement
22 Amount”) of at least **\$1,471,383.33** will be distributed to the Settlement Class Members.
23 Significantly, Settlement Class Members do not need to file a claim form in order to receive an
24 Individual Settlement Payment, and all Settlement Class Members who do not opt-out will
25 automatically receive Individual Settlement Payments. Payments will be proportionate to the

26
27 ¹ The Stipulation of Settlement (“Settlement Agreement”) and the proposed Notice Packet (which is comprised of
28 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.

1 number of wage statements received by each Settlement Class Member, and are calculated to
2 average approximately \$776 per employee.

3 Prior to reaching this proposed Settlement, Respondent provided Claimant with a sworn
4 declaration which set forth the total number of employees who had received a wage statement in
5 California during the Class Period, the total number of wage statements issued during the Class
6 Period, the number of employees who received 41 or more wage statements during the Class
7 Period (who would therefore be subject to the \$4,000 cap on wage statement penalties under
8 Labor Code § 226(e)), as well as proof that Respondent came into compliance with Labor Code
9 § 226(a) as of August 3, 2020. *See* Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), Ex 3.
10 Claimant used these data points to complete a classwide exposure analysis for the claims at issue.
11 The Parties participated in a mediation session with respected mediator Jeffrey A. Ross, Esq. on
12 May 3, 2021, during which they were able to reach a classwide settlement of all claims.

13 This proposed Settlement is well within the range of possible approval in light of the legal
14 and factual obstacles that Claimant faced, the risks and costs of further litigation, and the
15 substantial monetary benefits to the Settlement Class. Claimant therefore respectfully requests
16 preliminary approval of the Settlement.

17 **II. SUMMARY OF THE LITIGATION**

18 Respondent operates a produce company in Fresno County California specializing in
19 melons and other fruits and vegetables. Schmidt Decl., ¶ 9. Claimant worked for Respondent on
20 a seasonal basis, going back to as early as 2009, and most recently from July to October of 2019.
21 Declaration of Juan Melendrez (“Melendrez Decl.”), ¶ 2.

22 **A. CLAIMANT’S ALLEGATIONS AND RESPONDENT’S DEFENSES**

23 The sole allegation made by Claimant in this litigation is that, for the time period from
24 April 6, 2019 to August 7, 2020, Respondent issued wage statements to its employees that
25 included the employees’ full 9-digit social security numbers, in violation of Labor Code §
26 226(a)(7) (requiring wage statements to list “the name of the employee and only the last four
27 digits of his or her social security number or an employee identification number other than a social
28 security number”) (emphasis added). Schmidt Decl., ¶ 10. Respondent does not dispute this

1 allegation, but contends that the inclusion of the full social security numbers on the wage
2 statements was not knowing and intentional, but was rather the result of a clerical error that was
3 promptly remedied upon being brought to its attention. *Id.* Respondent maintains that there is no
4 evidence that any Class Members were harmed in any way as a result of the inclusion of the full
5 social security numbers on wage statements, and Respondent has provided proof that its wage
6 statements have been legally-complaint since August 3, 2020, meaning that it promptly updated
7 its wage statements less than a month after Claimant filed this lawsuit. *See id.* at ¶ 10 & Ex. 3.

8 As a result of the alleged violations of Section 226(a), Claimant also contends that
9 Respondent faces derivative liability for civil penalties under PAGA. Schmidt Decl., ¶ 10. Since
10 these penalties would be wholly derivative of the underlying wage statement violations,
11 Respondent asserts that they would be subject to reduction as duplicative, and given its good faith
12 defenses, argues that any PAGA penalties awarded would be substantially reduced, if awarded at
13 all. *Id.*; *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
14 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.* (2018) 30
15 Cal.App.5th 504, 529 (affirming trial court's reduction of PAGA penalties to 10% of calculated
16 exposure after bench trial).

17 **B. PROCEDURAL BACKGROUND**

18 This matter was originally filed as a class and PAGA action in Fresno County Superior
19 Court on July 20, 2020. Schmidt Decl., ¶ 8. After a number of discussions between counsel for
20 the Parties, the Parties agreed to attend mediation in the hopes of reaching a classwide resolution.
21 *Id.* In connection with mediation, Respondent provided Claimant with a sworn declaration that
22 contained all data points necessary to complete a classwide exposure analysis for the claims at
23 issue, as well as exemplar wage statements from both before and after Respondent made the
24 update in August 2020. *Id.* at Ex. 3. Claimant then conducted an analysis of this data and created
25 a comprehensive damages model to calculate the likely exposure that Respondent faced.

26 On May 3, 2021, the Parties participated in a mediation with Jeffrey A. Ross, Esq., a
27 respected wage and hour class action mediator in California. Schmidt Decl., ¶ 11. During
28 mediation, the Parties exchanged divergent views on Respondent's liability and Claimant's

1 exposure valuations, debated their legal positions, and shared their arguments regarding the
2 likelihood of certification of Claimant’s claims. *Id.* At the conclusion of mediation, the Parties
3 were able to reach a resolution of the case and spent the following months preparing the long-
4 form settlement documents. *Id.*

5 As part of the Settlement, the Parties stipulated to the appointment of the Hon. Peter D.
6 Lichtman (Ret.) as Arbitrator for purposes of seeking approval of the settlement. Schmidt Decl.,
7 ¶ 11. The Parties advised the Court of their intention to seek approval before an arbitrator, and
8 the Court expressly approved this procedure, but required that written notice be provided to the
9 LWDA first, which Claimant provided on October 6, 2021. *Id.* at Ex. 5. After waiting 65 days for
10 any response or objection from the LWDA, on January 6, 2022, the Court entered an Order
11 authorizing the Parties to seek settlement approval before this Arbitrator, and stayed the civil case
12 pending settlement approval in arbitration. *Id.* at Ex. 6. Should the Arbitrator grant final approval
13 of this Settlement, the Parties will thereafter petition the Superior Court for an Order confirming
14 the Arbitrator’s award prior to the Settlement becoming effective. *See id.* at Ex. 4.

15 **III. THE PROPOSED SETTLEMENT**

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

17 If preliminarily approved, this Settlement requires Respondent to pay a Maximum
18 Settlement Amount of \$2,327,000.00. Settlement § 3. This Settlement is non-reversionary and
19 Settlement Class Members will automatically receive their Individual Settlement Payment unless
20 they affirmatively opt-out of the Settlement. *Id.*, § 3.C. Respondent will fund the entire Maximum
21 Settlement Amount within 30 days of the date on which the Court issues an Order confirming the
22 Arbitrator’s award of final approval of the Settlement (the “Effective Date”). *Id.*, §§ 2.D & 3.B.

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The proposed deductions from the Maximum Settlement Amount are as follows:

Maximum Settlement Amount:	\$2,327,000.00
Minus approved attorneys' fees (1/3 of MSA):	\$775,666.67
Minus approved attorneys' costs (up to):	\$20,000.00
Minus approved enhancement payment:	\$10,000.00
Minus approved administration costs (up to):	\$19,950.00
Minus PAGA payment to the LWDA:	\$30,000.00
Net Settlement Amount:	\$1,471,383.33

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, Claimant's enhancement payment, costs of settlement administration, the PAGA payment to the LWDA, the Settlement will provide for distribution of a Net Settlement Amount of at least \$1,471,383.33 to Settlement Class Members. *See* Settlement § 3.C. Because the potential recovery consists entirely of penalties and no wages, there will be no payroll taxes owed on any portion of the MSA.

Respondent attests that there are 1,896 potential individuals who will take part in this Settlement. *See* Schmidt Decl., Ex. 3 at ¶ 3. The Settlement Class members recieved a total of 17,745 wage statements during the Settlement Class Period. *Id.* at ¶ 5. Based on the proposed allocations of the Net Settlement Amount, Settlement Class Members will receive payments equivalent to approximately \$83.00 per wage statement received during the Class Period, for average overall payments of approximately \$776.00.²

Settlement Class Members will have 60 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement § 9.D. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against

² Pursuant to the Settlement, any settlement funds that remain uncashed after 180 days shall be distributed to the California Farmworker Foundation, a 501(c)(3) non-profit organization dedicated to serving and supporting California farmworkers, pursuant to the *cy pres* doctrine codified in California Civil Code § 384. *See* Settlement, § 4.E.

Respondent that were asserted, or could have been asserted based on the operative facts in the Lawsuit during the Class Period. *Id.*, § 2.A.

2. Attorneys' Fees, Costs, and Representative Enhancement Payment

At the time of seeking final approval, Claimant will apply for an enhancement payment in the total amount of \$10,000.00. *See* Settlement §§ 3.C.3. “[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* (2010) 186 Cal.App.4th 1380, 1393-94. Claimant’s Enhancement Payment is intended to recognize the significant benefits conferred upon the Settlement Class due to the time and effort that Claimant expended on their behalf, including providing factual information and documents to his attorneys, identifying potential witnesses who also worked for Defendant and experienced the same alleged Labor Code violations, and participating in meetings with his attorneys to discuss the claims and theories at issue in the litigation. Melendrez Decl., ¶¶ 3-4. Claimant’s Enhancement Payment is also requested due to the significant risks that Claimant undertook by agreeing to serve as the named representative in this case, as well as the fact that Claimant agreed to a general release of all claims subject to a waiver of California Civil Code § 1542. *Id.*; Settlement § 2.B.

Class Counsel will also apply for an attorneys’ fee award of \$775,666.67 (one-third of the MSA) and up to \$20,000.00 in verified costs. *See* Settlement §§ 3.C.4. Claimant submits that the requested fee is fair compensation for the undertaking of complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel has incurred substantial attorneys’ fees in litigating this matter to a successful resolution. Class Counsel will also expend future attorney time in overseeing the Notice process and fielding questions from Settlement Class Members, drafting the Final Approval Motion along with supporting documents, and obtaining an Order from the Court confirming the Arbitrator’s award, among other tasks. Should this Settlement receive preliminary approval, Class Counsel will seek an award of attorneys’ fees and verified litigation costs at the time of seeking final approval of the Settlement.

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

IV. **ARGUMENT**

A. **PRELIMINARY APPROVAL IS WARRANTED**

California Rule of Court 3.769 conditions the settlement of a class action on court approval. This approval is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Arbitrator's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 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. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

1 **1. Standard for Preliminary Approval**

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

11 **a. The Strength of Claimant’s Case**

12 Although Claimant steadfastly maintains that his claims are meritorious, Claimant
13 acknowledges that there were substantial risks and uncertainty in proceeding with class
14 certification and trial. As explained in Section II.A., *supra*, Respondent argued that it would not
15 have any liability for wage statement penalties since its violations could not be shown to be
16 “knowing and intentional” as required for imposition of penalties. *See* Labor Code § 226(e).
17 Although Claimant was prepared to litigate this issue through class certification and trial, given
18 the amount offered in the Settlement, Claimant determined that the potential for securing a larger
19 judgment at trial was outweighed by the benefit of a substantial, guaranteed recovery now.

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

21 Absent the Settlement, the Parties would need to expend substantial time and resources to
22 undertake formal written and deposition discovery and prepare this case for class certification and
23 trial. This Settlement avoids the considerable attorneys’ fees and costs associated with conducting
24 formal discovery, moving for class certification, filing for summary judgment or adjudication,
25 and ultimately, participating in trial. The Settlement also limits the risks and the accompanying
26 burden of continued litigation on the Court.

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

2 At the time of the Parties’ proposed Settlement, Claimant had not yet filed a motion for
3 class certification. However, given the nature of Claimant’s claims, Claimant anticipates that he
4 would obtain class certification, although there remained a risk that Respondent could defeat
5 certification or obtain decertification based on manageability issues, such as if the Court
6 determined that it was necessary to conduct individualized inquiries into whether any Class
7 Members experienced particularized harm as a result of the violations. This Settlement avoids the
8 risk that there could not be a certified class at the time of trial.

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

10 This proposed Settlement provides an exemplary monetary recovery for the Settlement
11 Class Members. Based on the sworn figures provided by Respondent prior to mediation, Claimant
12 prepared a classwide exposure model and forecasted the expected recovery to the Class as
13 follows:

14 **Wage Statement Penalties: \$1,432,080**

15 According to the declaration provided by Respondent, there were 17,745 wage statements
16 issued to 1,896 putative class members during the liability period, prior to Respondent revising
17 its wage statements in August 2020. Schmidt Decl., Ex 3 at ¶ 5. Respondent further attests that
18 only 30 of the employees were subject to the \$4,000 cap on wage statement penalties as a result
19 of receiving more than 41 wage statements during the liability period. *Id.* at ¶ 4. Claimant
20 therefore calculated Respondent’s exposure for wage statement penalties as follows: 1,866
21 “initial” violations x \$50.00 per violation + 13,779 “subsequent” violations x \$100.00 per
22 violation = \$1,471,200, plus \$120,000, representing the additional exposure for the 30 capped
23 employees at \$4,000 each, for a grand total of \$1,591,200. Schmidt Decl., ¶ 12. Respondent
24 argues that the violations were not “knowing and intentional” and that there was no evidence that
25 any employees “suffer[ed] injury,” as required by Labor Code § 226(e). *Id.* at ¶ 10. Claimant
26 accordingly discounted Respondent’s potential liability by 10% for a risk of losing on the merits
27
28

or failing to prove violations were “knowing and intentional,” for a projected total of \$1,432,080. *Id.*, ¶ 12.

PAGA Penalties: Unknown

Claimant’s PAGA claim is entirely derivative of, and coextensive with, the underlying claim for wage statement penalties. Assuming one PAGA penalty per wage statement, Respondent’s potential maximum exposure for PAGA civil penalties is \$1,774,500 (17,745 pay periods x \$100.00 “initial” violation rate). Schmidt Decl., ¶ 13; *Amaral, supra*, 163 Cal.App.4th at 1209 (finding “initial” violation rate applies until employer has been notified that it is violating a Labor Code provision). However, Claimant recognizes that the Court has discretion to reduce any award of PAGA penalties if it views them as duplicative, which was a significant risk here. *See* Labor Code § 2699(e)(2); *Thurman, supra*, 203 Cal.App.4th at 1135; *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing PAGA penalties from \$70 million to \$150,000). Claimant also acknowledges that a Court might find that the lack of evidence of any ill intent or harm to employees coupled with Respondent’s extremely prompt action to remedy the violations upon receiving notice of the lawsuit justifies a drastic reduction in PAGA penalties. Schmidt Decl., ¶ 13. Claimant predicted that a best-case scenario might result in an award of 50% of the maximum PAGA penalties (\$887,250) but that in all likelihood it would be drastically less than this figure. Schmidt Decl., ¶ 13.

Therefore, Claimant projected that even if he were to certify the class and prevail at trial on all claims, a best-case scenario would be an award of approximately \$2,319,330 (not including statutory attorney’s fees), with a significant likelihood that it would be even less. Schmidt Decl., ¶ 14. This Settlement provides a recovery to the Settlement Class of \$2,327,000, which is slightly *more than* 100% of Claimant’s projected best-case scenario, while avoiding the further expense and serious risk of proceeding towards class certification and trial. *Id.* In other words, the proposed settlement is recovering **100%** of the **maximum** statutory wage statement penalties, plus nearly \$900,000 in additional compensation for PAGA penalties, attorneys’ fees, and

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

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

10 “Parties represented by competent counsel are better positioned than courts to produce a
11 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
12 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Claimant is represented by
13 competent and experienced counsel who possess extensive experience litigating wage and hour
14 class actions from both the plaintiff and defense side. *See* Schmidt Decl., ¶¶ 2-6. Claimant’s
15 attorneys have been appointed as class counsel in numerous cases alleging similar claims. *Id.*
16 Claimant’s attorneys drew on their extensive experience in similar cases to assess the strengths
17 and weaknesses of this case. *See* Schmidt Decl., ¶¶ 2-5. The Settlement was reached with the
18 input and assistance of an experienced wage and hour class action mediator. *Id.*, ¶ 11. This factor
19 strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at
20 130.

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

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

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

2 The proposed Settlement will provide substantial compensation for contested claims and
3 derivative penalties, and the average payment amounts exceed averages achieved in other wage
4 and hour class action settlements.³ The proposed Settlement falls within the range of possible
5 approval and Claimant requests that the Arbitrator approve the Class Notice to be mailed to
6 Settlement Class Members. The Arbitrator will again have the opportunity to assess the
7 reasonableness of the Settlement after the Settlement Class Members have had the opportunity to
8 opt-out or object to it.

9 **b. The Settlement Resulted from Serious, Informed, and Non-Collusive**
10 **Negotiations**

11 This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar,*
12 *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of verified data, which was
13 analyzed by Claimant's attorneys; arm's length negotiations by counsel; mediation with a
14 respected and experienced wage and hour class action mediator; and additional time spent
15 negotiating and finalizing the terms of the long-form Settlement Agreement. *See Schmidt Decl.*,
16 ¶¶ 8-14. The proposed Settlement is thus entitled to an initial presumption of fairness. *See Kullar,*
supra, 168 Cal.App.4th at 130.

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

18 The Settlement will provide tangible monetary relief to Settlement Class Members.
19 Moreover, the amounts requested for attorneys' fees and costs to Class Counsel, Claimant's
20 Enhancement Payment, settlement administration costs, and the PAGA payment to the LWDA
21 are all reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this
22 final factor supports preliminary approval.
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27 ³ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super.
28 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 **B. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT**
2 **CLASS**

3 The proposed Settlement Class satisfies the criteria for certification of a settlement class
4 under California law because: (1) the Settlement Class Members are so numerous that joinder
5 would be impractical; (2) common questions of law and fact predominate over individual
6 questions such that class certification is the most efficient and desirable way to maintain this
7 litigation; (3) Claimant's claims are typical of the claims of the absent Settlement Class Members;
8 and (4) Claimant and Class Counsel will fairly and adequately represent the interests of the absent
9 Settlement Class Members. *See* Cal. Code Civ. Proc. § 382.

10 **1. The Proposed Class is Ascertainable and Numerous**

11 A class is "ascertainable" where the members "may be readily identified without
12 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
13 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). The proposed Settlement Class
14 is defined as all current and former employees received a wage statement in California during the
15 Class Period. According to Respondent's records, there are approximately 1,896 individuals who
16 meet the Settlement Class definition, rendering it impracticable to gather all these individuals and
17 bring them before the tribunal. The proposed Settlement Class therefore satisfies the numerosity
18 requirement.

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

20 The focus in a certification dispute is not on the merits of the case, but rather on what
21 types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug*
22 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Claimant's claims are based on a
23 uniform method of issuing wage statements. These types of claims are commonly held to be
24 proper for class certification. *See, e.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286
25 (certifying wage statement class).

26 **3. The Claims of the Named Representative Are Typical**

27 The typicality requirement is satisfied when the class representative has claims that are
28 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
Cal.App.3d 1341, 1347. Claimant's claims are typical of those held by the Settlement Class

1 Members. Like other Settlement Class Members, Claimant received wage statements bearing his
2 full 9-digit social security number. *See* Melendrez Decl., ¶ 2. Claimant was therefore impacted by
3 the same challenged policies that allegedly injured the Settlement Class as a whole and was
4 subject to Respondent’s same classwide defenses. *Id.*

5 **4. Claimant and Class Counsel Will Fairly and Adequately Represent**
6 **the Class**

7 The adequacy of representation requirement examines conflicts of interest between named
8 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
9 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Claimant and Class Counsel will
10 adequately represent the Settlement Class Members, as there are no conflicts between Claimant
11 and the Settlement Class he seeks to represent. Claimant possesses claims that are in line with
12 those of the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450
13 (finding adequacy satisfied where there was no indication that the plaintiff’s counsel were not
14 qualified and the named plaintiff had no interests antagonistic to those of the proposed class).
15 Class Counsel also has extensive experience in wage and hour class action litigation. *See* Schmidt
16 Decl., ¶¶ 2-6.

17 **C. THE ARBITRATOR SHOULD ORDER DISTRIBUTION OF THE**
18 **PROPOSED CLASS NOTICE**

19 This Arbitrator should order distribution of the proposed Class Notice to the Settlement
20 Class Members by first class mail, postage prepaid, using the last known mailing address
21 information provided by Respondent. This manner of giving notice is the “best notice practicable”
22 under the circumstances because it provides “individual notice to all members who can be
23 identified through reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156,
24 173. Claimant proposes that the Settlement be administered by Phoenix Settlement
25 Administrators, an experienced class action settlement administrator. *See* Declaration of Jodey
26 Lawrence and attached exhibits. Phoenix has never had any financial interests in nor affiliation
27 with the parties or counsel in this matter. *Id.* at ¶ 4. Additionally, Phoenix maintains a robust
28 system of safeguards and redundancy policies to ensure the data and funds entrusted to it. *Id.* at
¶¶ 11-12. Phoenix also maintains an errors and omissions insurance policy which covers data
breaches. *Id.* at ¶ 13.

1 Settlement Class Members' addresses will be ascertainable through Respondent's
2 personnel and payroll records, which Respondent will provide to Phoenix within 15 calendar days
3 after preliminary approval of the Settlement. *See* Settlement § 9.A. To the extent that any notices
4 are returned, Phoenix will run those addresses through the National Change of Address database
5 and/or conduct skip traces to obtain current address information. *Id.*, § 9.B. The content of the
6 Class Notice satisfies California Rule of Court 3.766(d) as it advises proposed Settlement Class
7 Members of the nature of the claims, the basic contentions and denials of the Parties, the key
8 terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
9 procedure by which to do so. The Class Notice also explains the recovery formula, includes the
10 expected recovery amount for each individual, advises individuals that they will be bound by the
11 terms of the Settlement if they do not request exclusion, advises putative class members of the
12 final approval hearing date, provides contact information for Class Counsel, and advises that the
13 putative class members may enter an appearance through their own counsel if they wish. *See*
14 Schmidt Decl., Ex. 2. This manner of giving notice is the most reliable and cost-effective method
15 of reaching Settlement Class Members and therefore satisfies California Rule of Court 3.766(e).

16 Additionally, statutory notice to the LWDA is being provided concurrently with the
17 submission of this motion, by serving a copy of the proposed Settlement Agreement, as well as
18 copies of this motion and all papers filed in support hereof, on the LWDA.

19 **D. THE ARBITRATOR SHOULD SET A FINAL APPROVAL HEARING**

20 This Arbitrator should set a hearing for the final approval of this Settlement on a date
21 appropriately scheduled to follow the deadline for Settlement Class Members to submit any opt-
22 outs or objections to the Settlement. *See* California Rule of Court 3.769. Claimant is proposing a
23 final fairness hearing date of August 5, 2022, subject to the availability of the Arbitrator.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Claimant respectfully requests that the Arbitrator preliminarily
3 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
4 Proposed Order submitted concurrently herewith.

5
6 Dated: April 1, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:



Fletcher W. Schmidt
Attorneys for Claimant