

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

EDUARDO GONZALEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

GUARDIAN INDUSTRIES, LLC, a Delaware
corporation; and DOES 1 through 100,

Defendants.

CASE NO. 19CECG02134

*[Case assigned to the Hon. Rosemary
McGuire, Dept. 402]*

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

Date: March 25, 2021
Time: 3:30 p.m.
Dept.: 402

Action Filed: June 20, 2019
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on March 25, 2021, at 3:30 p.m. in Department 402 of the above-entitled Court, located at 1130 O Street, Fresno, California 93721, Plaintiff Eduardo Gonzalez ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

Settlement Class – All current and former non-exempt hourly employees of Guardian Industries, LLC in the State of California from June 20, 2015, through May 27, 2020.

3. Preliminary appointment of Plaintiff Eduardo Gonzalez as Class Representative;
4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award amounts for the Class Representative Enhancement Payment, Settlement Administrator costs, the PAGA payment to the Labor and Workforce Development Agency, as well as attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the Class Notice and entry of the Proposed Order instructing the Class Notice to be disseminated to Settlement Class members as provided in the Settlement.

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

Given the multiplicity of issues addressed in this Motion, Plaintiff believes there is good cause to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and

1 respectfully requests that the Court consider Plaintiff's Memorandum of Points and Authorities,
2 which is 22 pages in length.

3
4 Dated: March 1, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC

5
6 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	3
A. DISCOVERY AND MEDIATION	6
III. THE PROPOSED SETTLEMENT.....	7
A. ESSENTIAL TERMS OF THE SETTLEMENT	7
1. The Settlement Provides for Reasonable Monetary Payments	8
2. Attorneys' Fees, Costs, and Representative Enhancement Payment.....	9
IV. ARGUMENT.....	10
A. PRELIMINARY APPROVAL IS WARRANTED	10
1. Standard for Preliminary Approval.....	11
a. The Strength of Plaintiff's Case.....	11
b. Risk, Expense, Complexity, and Duration of Further Litigation.....	12
c. Risk of Maintaining Class Action Status	12
d. Amount Offered in Settlement Given Realistic Value of Claims.....	12
e. The Experience and Views of Counsel	18
2. The Preliminary Approval Standard is Met.....	18
a. The Settlement is Within the Range of Possible Approval.....	18
b. The Settlement Resulted from Serious, Informed, and Non-Collusive Negotiations	19
c. The Settlement is Devoid of Obvious Deficiencies	19
B. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS	19
1. The Proposed Class is Ascertainable and Numerous.....	19
2. Common Issues of Law and Fact Predominate.....	20
3. The Claims of the Named Plaintiff Are Typical.....	20
4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class	21
C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED CLASS NOTICE	21

1	D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	22
2	V. CONCLUSION	22

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

TABLE OF AUTHORITIES

Federal Cases

<i>Alvarez v. IBP, Inc.</i> 339 F.3d 894 (9th Cir. 2003)	4
<i>Eisen v. Carlisle and Jacquelin</i> 417 U.S. (1974) 156	21
<i>Hanlon v. Chrysler Corp.</i> 150 F.3d (9th Cir. 1998) 1011	10-11
<i>In re Pacific Enterprises Securities Litigation</i> 47 F.3d 373 (9th Cir. 1995)	18
<i>In re Syncor ERISA Litigation</i> 516 F.3d 1095 (9th Cir. 2008)	11
<i>Leyva v. Medline Industries Inc.</i> 716 F.3d 510 (9th Cir. 2013)	20

States Cases

<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	20
<i>Benton v. Telecom Network Specialists, Inc.</i> (2013) 220 Cal.App.4th 701	5
<i>Bradley v. Networkers Int'l, LLC</i> (2012) 211 Cal.App.4th 1129	20
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	5, 13 20
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676	21
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	6, 17
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	11
<i>Faulkinbury v. Boyd & Assoc., Inc.</i> (2013) 216 Cal.App.4th 220	20
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	9

1	<i>Kullar v. Foot Locker Retail, Inc.</i>	
2	(2008) 168 Cal.App.4th 116	11, 18, 19
3	<i>Laffitte v. Robert Half Int'l Inc.</i>	
4	(2016) 1 Cal.5th 480	10
5	<i>Ling v. P.F. Chang's China Bistro, Inc.</i>	
6	(2016) 245 Cal.App.4th 1242	6, 15
7	<i>McGhee v. Bank of America</i>	
8	(1976) 60 Cal.App.3d 442	21
9	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
10	(2019) 40 Cal.App.5th 444	6, 15
11	<i>Price v. Starbucks Corp.</i>	
12	(2011) 192 Cal.App.4th 1136	6
13	<i>Reed v. United Teachers Los Angeles</i>	
14	(2012) 208 Cal.App.4th 322	10
15	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
16	(2004) 34 Cal.4th 319	20
17	<i>See's Candy Shops, Inc. v. Superior Court</i>	
18	(2012) 210 Cal.App.4th 889	3
19	<i>Sevidal v. Target Corp.</i>	
20	(2010) 189 Cal.App.4th 905	20
21	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
22	(2012) 203 Cal.App.4th 1112	6, 17
23	<i>Wershba v. Apple Computer, Inc.</i>	
24	(2001) 91 Cal.App.4th 224	10, 11
25	<u>State Statutes and Rules</u>	
26	8 Cal. Code Regs. § 13520.....	6
27	Labor Code § 2699(e)(2)	17
28	Labor Code § 2699(f)(2).....	16
	<u>Unpublished Cases</u>	
	<i>Abad v. Waste Connections, Inc.</i>	
	No. CV 12-06708 DDP (RZx)	
	2013 WL 1163982 (C.D. Cal. Mar. 20, 2013).....	3

1	<i>Altamirano v. Shaw Industries, Inc</i>	
2	(N.D. Cal. 2015) 2015 WL 4512372	17
3	<i>Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.</i>	
4	No. 05cv1199–IEG–CAB	
5	2009 WL 2448430 (S.D. Cal. 2009)	16
6	<i>Bercea v. AE Retail West</i>	
7	Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012)	18
8	<i>Fleming v. Covidien Inc.</i>	
9	Case No. ED CV 10-01487 RGK (OPx)	
10	2011 WL 7563047 (C.D. Cal. Aug. 12, 2011).....	6, 17
11	<i>Green v. Lawrence Service Co.</i>	
12	(C.D. Cal. 2013) 2013 WL 3907506.....	16
13	<i>Ressler v. Federated Department Stores, Inc.</i>	
14	Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009)	18
15	<i>Trang v. Turbine Engine Components Technologies Corp.</i>	
16	No. CV 12–07658 DDP (RZx)	
17	2012 WL 6618854	16
18	<u>Other Sources</u>	
19	4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013)	1
20	4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	10
21	Manual for Complex Litigation § 30.41(3rd Ed. 1995).....	18

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eduardo Gonzalez (“Plaintiff”) pursues this putative class action (the “Lawsuit”) on behalf of all current and former non-exempt hourly employees of Guardian Industries, LLC (“Guardian”) in the State of California from June 20, 2015, through May 27, 2020 (the “Class Period”). (Plaintiff and Guardian are referred to collectively as the “Parties”). Plaintiff alleges that Guardian: failed to provide putative class members with all minimum wages, overtime wages, and required meal periods; failed to timely payment of wages upon separation of employment; and engaged in unfair competition. Plaintiff also seeks civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”) as a result of these alleged violations.

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

14 **Settlement Class** – All current and former non-exempt hourly employees of Guardian Industries, LLC in the State of California from June 20, 2015, through May 27, 2020.

17 Based upon the data received from Guardian, there are approximately 315 potential Settlement Class members who worked during the Class Period. Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶ 10; *see also* Declaration of Lily Yang (“Yang Decl.”), ¶ 4 (filed concurrently and attached as Exhibit 1 to Schmidt Decl.). The \$500,000.00 Maximum Settlement Amount (“MSA”) represents a substantial benefit to Settlement Class members, who will only be agreeing to a release of claims that were actually pled in the Lawsuit, or which could have been pled based on the operative facts alleged in the Lawsuit. After deductions for Plaintiff’s Enhancement Payment, settlement administrator costs, the PAGA payment to the Labor & Workforce Development Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the

27 ¹ The Stipulation of Settlement (“Settlement Agreement”) and the proposed Notice Packet (which is comprised of the Notice of Class Action Settlement (“Class Notice”) and Notice of Settlement Award (“Dispute Form”)) are attached as Exhibits 2 and 3, respectively, to the Declaration of Fletcher W. Schmidt filed concurrently herewith.

1 remaining amount (the “Net Settlement Amount”) of approximately \$250,833.33 will be
2 distributed to Settlement Class members. Employer-side payroll taxes on amounts paid as wages
3 will be paid separate and apart from, and in addition to, the Maximum Settlement Amount.
4 Significantly, Settlement Class members do not need to file a claim form in order to receive an
5 Individual Settlement Payment, and all Settlement Class members who do not opt-out will
6 automatically receive Individual Settlement Payments which average approximately \$796.30 on
7 a per capita basis.²

8 Prior to reaching this proposed Settlement, Guardian provided Plaintiff with electronic
9 timekeeping records and corresponding payroll records for an approximate 12% sample of
10 putative class members. *See* Schmidt Decl., ¶ 8; Yang Decl., ¶ 2-3. The Parties agreed upon the
11 following methodology for selecting the sample: Guardian created a list that included each
12 putative class member by date of hire and then selected every 8th name in descending order. *See*
13 *Id.* The Parties believe this methodology ensures the sampling is representative of the entire class
14 as it includes a proportionate number of tenured employees as well as newer hires spanning the
15 entire putative class period. Schmidt Decl., ¶ 8. Guardian also produced relevant policies for
16 timekeeping, meal periods, and required personal protective equipment (“PPE”) as well as a
17 summary of relevant information necessary for a classwide damages analysis. *See* Schmidt Decl.,
18 ¶ 8; Yang Decl., ¶ 2-3. Plaintiff, with the help of his retained expert who holds a Ph.D. in labor
19 economics, extrapolated the sampling of records that Guardian provided in order to cover the
20 entire putative class. *See* Schmidt Decl., ¶ 9; Exhibit 4 (DuMond CV).

21 After extensive legal research and evaluation along with a comprehensive review of the
22 data, the Parties participated in a mediation session with the Francis “Tripper” Ortman, Esq. on
23 April 27, 2020. Schmidt Decl., ¶ 28. The Parties debated their respective legal theories and, with
24 the help of Mr. Ortman at mediation, the Parties confirmed their agreement to a classwide
25 settlement. *Id.* As a material term of the Settlement, the Parties stipulated to the filing of the
26 _____

27 ² To ensure that individuals who experienced more Labor Code violations will receive a greater share of
28 the Net Settlement Amount, the Settlement utilizes workweeks worked (as opposed to time employed) to
calculate Individual Settlement Payments. Settlement, § 4.B.

operative First Amended Complaint, adding class-wide causes of action for alleged waiting time penalties (Labor Code §§ 201-203) and civil penalties under the PAGA (Labor Code § 2698 *et seq.*) based on the underlying Labor Code violations pled therein.³

This proposed Settlement is well within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to the Settlement Class. Plaintiff therefore respectfully requests that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

Guardian manufactures float glass, fabricated glass products, fiberglass insulation and building materials for commercial, residential, and automotive applications. Schmidt Decl., ¶ 11. Plaintiff, like all other Settlement Class members, was an employee of Guardian and worked in California during the Class Period. *Id.*; *see also* Declaration of Eduardo Gonzalez (“Gonzalez Decl.”), ¶ 3.

Guardian requires non-exempt employees to clock in and out at the start and end of their daily work shifts. Guardian’s timekeeping system records this punch data to the second. *See* Schmidt Decl., ¶ 12; Exhibit 5 (Timekeeping Exemplar). Between June 2015 and June 2018, Guardian rounded employee timekeeping entries in quarter hour increments. *Id.* Plaintiff alleges that Guardian’s rounding system was not even-handed over time and unfavorably rounded against employees on a large majority of shifts. *See See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 901 (time-rounding policy is only legal if “it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked”); *see also Abad v. Waste Connections, Inc.*, No. CV 12-06708 DDP (RZx) 2013 WL 1163982 at *3 (C.D. Cal. Mar. 20, 2013) (“[I]t is only lawful for employers to use a rounding policy for recording and compensating employee time as long as the employer’s rounding policy does not consistently result in a failure to pay employees for time

³ Although not pled in the Complaint at the time of mediation, Plaintiff evaluated Guardian’s waiting time penalty and PAGA civil penalty exposure so that Plaintiff would be prepared to discuss the value of those claims at mediation.

1 worked.”); Schmidt Decl., ¶ 12. As a result of this unlawful rounding policy, Plaintiff maintains
2 that Guardian did not pay non-exempt employees for all minimum and overtime wages earned.
3 Schmidt Decl., ¶ 12.

4 Plaintiff alleges that Guardian required employees to don and doff required PPE while
5 off-the-clock. Gonzalez Decl., ¶ 5; Schmidt Decl., ¶ 16; Exhibit 6 (Minimum PPE Handout).
6 Some of these PPE items included cut resistant sweaters and leggings, gloves, helmets, and face
7 shields. *Id.* Plaintiff contends that donning and doffing time (approximately 5 to 10 minutes at the
8 beginning and end of each shift) is compensable time, which Guardian should have compensated
9 employees, but did not. *See Alvarez v. IBP, Inc.* (9th Cir. 2003) 339 F.3d 894, 903, *aff’d* (2005)
10 546 U.S. 21 (holding that time spent donning and doffing unique protective gear must be
11 compensated); Schmidt Decl., ¶ 16.

12 Guardian contends that it has paid all wages owed to employees, including overtime wages
13 and that it strictly forbids off-the-clock work. *See* Schmidt Decl., ¶ 18; Exhibit 7 (Timekeeping
14 Policy). Guardian argues that its quarter-hour rounding system used through May 2018 was
15 neutral and not operated in a way to deprive employees of time worked. *Id.* As of June 3, 2018,
16 Guardian stopped rounding time and changed its time keeping system to reflect the time clocked
17 in/out at the nearest minute. *Id.*; Exhibit 6. Guardian further contends that that employees are
18 expected to clock in for their shift before donning any substantive personal protective equipment
19 necessary to perform their work. Additionally, Guardian contends that many employees arrive in
20 boots and high visibility shirts or sweatshirts as part of their everyday clothing as a result of
21 Guardian’s policy requiring those items in order to enter the plant. *Id.* Guardian provides three
22 time punch machines immediately upon entry to the plant to enable employees to clock in prior
23 to performing any work, and provides a locker room located next to the time clocks immediately
24 upon entry for the employees’ use. *Id.* At the end of each shift, employees remove any PPE before
25 clocking out to head home. *Id.* Guardian argues that class certification will be unlikely due to the
26 number of individualized inquiries that will be necessary to determine liability for each class
27 member, including the circumstances of each class member’s employment, the timekeeping
28 practices/schedule in that employee’s department and the employees work and clocking patterns.

1 *Id.*

2 Plaintiff alleges that Guardian has failed to provide non-exempt employees with a second
3 meal period for shifts in excess of 10.0 hours in length as well as a 30 minute, uninterrupted first
4 meal period beginning before the end of the fifth hour of work. Gonzalez Decl., ¶ 6; Schmidt
5 Decl., ¶ 19; *see also Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1039-1041 (holding that
6 the employer’s obligation to provide a meal period is only satisfied when it provides “a reasonable
7 opportunity to take an uninterrupted 30-minute break” that begins “no later than the end of an
8 employee’s fifth hour of work and a second meal period no later than the end of an employee’s
9 10th hour of work.”); *see also Benton v. Telecom Network Specialists, Inc.* (2013) 220
10 Cal.App.4th 701, 728-29 (“[The wage order] imposes an affirmative obligation on every
11 employer to authorize and provide legally required meal and rest breaks; if it fails to do so, it has
12 violated the law and is liable.”).

13 Guardian contends that it has always provided employees with legally-compliant meal
14 periods and that any meal periods that did not meet that standard were solely the result of
15 employee choice (not Guardian’s policy/practice). *See* Schmidt Decl., ¶ 20; Exhibit 8 (Meal
16 Period Policies). Guardian contends that most, if not all, employees agreed to waive their meal
17 period when legally-allowed to do so (*e.g.* shift in excess of 5.0 hours but less than 6.0 hours total
18 or a shift in excess of 10.0 hours but less than 12.0 hours total). *Id.* Guardian further argues that
19 under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure”
20 meal periods are taken – which Guardian contends it has always done. *Brinker, supra*, 53 Cal.4th
21 at 1038 (rejecting “ensure” standard); Schmidt Decl., ¶ 20. To the to the extent putative class
22 members did not take a compliant meal period, Guardian paid meal period premiums for non-
23 compliant meal periods throughout the relevant time period. Schmidt Decl., ¶ 20. Finally,
24 Guardian contends that Plaintiff’s meal period claim is not suited for class certification as
25 individual inquiries would be required to assess which employees received non-compliant meal
26 periods, how many meal periods were non-compliant or missed, and the reasons why a particular
27 individual recorded a non-compliant meal period or missed a meal period on a particular shift. *Id.*

28 As a result of these alleged substantive violations, Plaintiff contends that Guardian is liable

1 for derivate waiting time liability for its failure to pay employees all final wages upon separation
2 of employment and civil penalties under PAGA. *See* Schmidt Decl., ¶ 21. Guardian contends that
3 it possesses strong, good faith defense to Plaintiff’s underlying claims, precluding recovery of
4 waiting time penalties (which are only available for the “willful” failure to pay wages). *See* 8 Cal.
5 Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of
6 waiting time penalties under Section 203...A good-faith dispute that any wages are due occurs
7 when an employer presents a defense, based in law or fact which, if successful, would preclude
8 any recovery on the part of the employee.”); Schmidt Decl., ¶ 21. Guardian maintains that not all
9 former employees (if any) experienced an underpayment of wages, thus Plaintiff’s exposure
10 analysis is overstated. *See* Schmidt Decl., ¶ 21. Guardian contends that any alleged failure to pay
11 meal period premiums cannot support a derivative claim for wage statement or waiting time
12 penalties. *See Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, 474, *review*
13 *granted Jan. 2, 2020 (\$258966)*; *see also Ling v. P.F. Chang’s China Bistro, Inc.* (2016) 245
14 Cal.App.4th 1242, 1261 (meal period premium pay compensates for the non-provision of meal
15 periods, not for the ‘nonpayment of wages’ as required by Labor Code section 203); Schmidt
16 Decl., ¶ 21.

17 Since Plaintiff’s PAGA claim is derivative of the underlying wage claims, Guardian
18 asserts that the PAGA claim will fail with those claims. *See Price v. Starbucks Corp.* (2011) 192
19 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and
20 PAGA claims also fail.”); Schmidt Decl., ¶ 24. Guardian also maintains that given its good faith
21 defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if
22 it were to find Guardian liable for any of Plaintiff’s claims. *See Thurman v. Bayshore Transit*
23 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties);
24 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming \$5.00 initial violation
25 rate for PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011) 2011 WL 7563047,
26 at *4 (reducing PAGA penalties from \$2.8 million to \$500,000); Schmidt Decl., ¶ 24.

27 **A. DISCOVERY AND MEDIATION**

28 In connection with mediation, Guardian provided Plaintiff with electronic timekeeping

records and corresponding payroll records for an approximate 12% sample of putative class members. Schmidt Decl., ¶ 8; Yang Decl., ¶ 2. Plaintiff, with the help of his retained expert who holds a Ph.D. in labor economics, conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Guardian faced on each claim for the entire Class Period. Schmidt Decl., ¶ 9; Exhibit 4.

On April 27, 2020, the Parties participated in a mediation with Francis “Tripper” Ortman, Esq., a respected wage and hour class action mediator in California. Schmidt Decl., ¶ 28. During mediation, the Parties exchanged divergent views on Guardian’s liability and exposure valuations, debated their legal positions, and shared their arguments regarding the likelihood of certification of Plaintiff’s claims. *Id.* As a result of a mediator’s proposal from Mr. Ortman, the Parties were able to reach a classwide agreement. *Id.* During the months that followed, the Parties memorialized the terms of the settlement into the long-form Settlement Agreement. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Should the Court preliminarily approve this settlement, Guardian will pay a Maximum Settlement Amount of \$500,000.00. Settlement, § 3. This Settlement is non-reversionary and Settlement Class members will automatically receive their Individual Settlement Payment unless they affirmatively opt-out of the Settlement. *Id.*, § 3.C.

Guardian will deposit the entire Maximum Settlement Amount within 30 calendar days of the order granting final approval of the Settlement. *See* Settlement, § 3.B. The proposed deductions from the Maximum Settlement Amount are itemized within the table below:

Maximum Settlement Amount:	\$500,000.00
Minus Court-approved attorneys’ fees (1/3 of MSA):	\$166,666.67
Minus Court-approved attorneys’ costs (up to):	\$45,000.00
Minus Court-approved enhancement payment:	\$5,000.00
Minus Court-approved administration costs (up to):	\$10,000.00
Minus PAGA payment to the LWDA:	\$22,500.00
Net Settlement Amount:	\$250,833.33

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

2 After deducting amounts for court-approved attorneys' fees and costs, Plaintiff's
3 Enhancement Payment, costs of settlement administration, and the PAGA payment to the LWDA,
4 the Settlement requires Guardian to pay a Net Settlement Amount of approximately \$250,833.33
5 to Settlement Class members. *See* Settlement, § 3.C. Employer-side payroll taxes on amounts
6 paid as wages will be paid separate and apart from, and in addition to, the Maximum Settlement
7 Amount. *Id.*, § 3.G.

8 Guardian's records as of the date of mediation indicate that there are approximately 315
9 potential Settlement Class members who worked during the Class Period. Schmidt Decl., ¶ 10.
10 Based on the records provided for mediation purposes, there were approximately 50,950
11 workweeks worked during the Class Period. Schmidt Decl., ¶ 29; Settlement § 3.E. Based on the
12 proposed allocations of the Net Settlement Amount, Settlement Class members will receive
13 average payments of approximately \$796.30. Schmidt Decl., ¶ 29. The lowest potential Individual
14 Settlement Payment that a Settlement Class member could receive is estimated to be
15 approximately \$4.92 (if the Settlement Class member only worked a single workweek during the
16 Class Period). *Id.* The highest potential Individual Settlement Payment that a Settlement Class
17 member could receive is estimated to be approximately \$1,457.25 (if the Settlement Class
18 member worked every workweek during the Class Period). *Id.*

19 Settlement Class members will have 60 calendar days from the mailing of the Class Notice
20 to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice
21 without unduly delaying the Settlement. *See* Settlement, § 9.D. Those Settlement Class members
22 who do not opt-out of the Settlement will be bound by its terms and will release all claims against
23 Guardian that were asserted, or could have been asserted based on the operative facts in the
24 Lawsuit for the period of June 20, 2015 through May 27, 2020. *Id.*, § 2.A.⁴

25
26
27

28 ⁴ The Parties propose that any uncashed settlement checks shall be distributed to the California State
Controller to be deposited in the California Unclaimed Property Fund in the name of the Settlement Class
member. *See* Settlement, § 4.E.

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

2 Plaintiff will apply for an enhancement payment in the total amount of \$5,000.00 for his
3 service to the Settlement Class. *See* Settlement § 6; Schmidt Decl., ¶ 30. “[I]ncentive awards are
4 fairly typical in class action cases . . . and are intended to compensate class representatives for
5 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
6 bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-
7 94. Plaintiff’s Enhancement Payment is intended to recognize the significant benefits conferred
8 upon the Settlement Class due to the time and effort that Plaintiff expended on their behalf,
9 including providing factual information and documents to his attorneys, identifying potential
10 witnesses who also worked under the same policies and experienced the same alleged Labor Code
11 violations, and participating in meetings with his attorneys to discuss the claims and theories at
12 issue in the litigation. Schmidt Decl., ¶ 30. Plaintiff’s Enhancement Payment is also requested
13 due to the significant risks that Plaintiff undertook by agreeing to serve as the named plaintiff in
14 this case, such as potential consequences from subsequent employers if they are aware Plaintiff
15 has previously sued his employer. *Id.* Should the Court grant preliminary approval of this
16 Settlement, Plaintiff will seek this enhancement payment at the time of seeking final approval of
17 the Settlement.

18 Class Counsel will also apply for an attorneys’ fee award of \$166,666.67 (one-third of the
19 Maximum Settlement Amount) and up to \$45,000.00 in verified costs. *See* Settlement, §§ 3.C.4,
20 5; Schmidt Decl., ¶ 31. Plaintiff submits that the requested fee is fair compensation for the
21 undertaking of complex, risky, expensive, and time-consuming litigation on a purely contingent
22 fee. Class Counsel incurred substantial attorneys’ fees conducting the pre-filing investigation,
23 analyzing Plaintiff’s claims, conducting legal research and analysis into those claims, reviewing
24 data and documents produced by Guardian, building a comprehensive damages model, preparing
25 for and attending mediation, negotiating and preparing the long-form Settlement Agreement,
26 preparing this motion for preliminary approval, and otherwise litigating the case. Schmidt Decl.,
27 ¶ 31. Class Counsel will also expend future attorney time in attending the hearing on this Motion,
28 overseeing the Notice process and fielding questions from Settlement Class members, drafting

1 the Final Approval Motion along with supporting documents, and attending the final approval
2 hearing, among other tasks. *Id.*

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 a
11 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 Class Counsel submits that the request for attorneys' fees is reasonable when viewed as
15 an overall percentage of the Maximum Settlement Amount (one-third) and in light of the
16 substantial risks presented against the merits of the case. Schmidt Decl., ¶ 31. The reasonableness
17 of the fee request is also supported by the significant work undertaken by Class Counsel, the
18 significant result obtained for the Settlement Class members, and the efficiency by which the
19 litigation was conducted. *Id.* Should the Court grant preliminary approval of this Settlement, Class
20 Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking
21 final approval of the Settlement.

22 **IV. ARGUMENT**

23 **A. PRELIMINARY APPROVAL IS WARRANTED**

24 California Rule of Court 3.769 conditions the settlement of a class action on court
25 approval. This approval is generally evaluated under the federal standards applicable under Rule
26 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
27 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the
28 settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir.

1 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
2 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
3 preferred means of dispute resolution, particularly in complex class action litigation. *See In re*
4 *Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a
5 proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not
6 the product of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150
7 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was
8 negotiated at arm’s length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168
9 Cal.App.4th 116, 130.

10 **1. Standard for Preliminary Approval**

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

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

21 Class Counsel carefully vetted the claims at issue, reviewed hundreds of timekeeping and
22 payroll records for putative class members and conducted a detailed analysis of that data to create
23 a comprehensive damages model for Guardian’s classwide liability. *See Schmidt Decl.*, ¶¶ 8-9.
24 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges
25 that there were substantial risks and uncertainty in proceeding with class certification and trial.
26 As explained in detail in section II.B., *supra*, Guardian presented numerous defenses to Plaintiff’s
27 claims, both on the merits and with respect to class certification. Although Plaintiff was prepared
28 to litigate these claims through class certification and trial, given the amount offered in the

Settlement, Plaintiff predicted that it was unlikely that further litigation would result in a more beneficial result for the Settlement Class members.

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

Although the Parties engaged in extensive informal discovery prior to mediation, the Parties had not yet commenced formal written or deposition discovery at the time the Parties executed the proposed Settlement Agreement. *See* Schmidt Decl., ¶ 8. Absent the Settlement, the Parties would need to expend substantial time and resources to complete formal discovery and prepare this case for class certification and trial. This Settlement avoids the considerable attorneys' fees and costs associated with conducting formal discovery, moving for class certification, filing for summary judgment or adjudication, and ultimately, participating in trial. The Settlement also limits the risks and the accompanying burden of continued litigation on the Court.

c. Risk of Maintaining Class Action Status

At the time of the Parties' proposed Settlement, Plaintiff had not yet filed his Motion for Class Certification. Given Guardian's numerous arguments that individualized issues would predominate Plaintiff's claims, thereby precluding class certification, there was a legitimate risk that there would not be a certified class at the time of trial.

d. Amount Offered in Settlement Given Realistic Value of Claims

This proposed Settlement provides a fair and reasonable monetary recovery for the Settlement Class members notwithstanding the disputed claims and Guardian's numerous defenses. After analyzing the data provided by Guardian prior to mediation, Plaintiff prepared a classwide exposure model and forecasted the expected recovery for each claim as follows:

Unpaid Wages Due To Rounding: \$143,484

Using the documents and data provided by Guardian prior to mediation, Plaintiff's expert compared the actual employee punch data with the rounded timekeeping entries and determined that Guardian's system unfavorably rounded against employees on 70.9% of shifts. *See* Schmidt Decl., ¶ 13; *see also* Yang Decl., ¶¶ 2-4. This resulted in a net loss of 9,146 hours. Schmidt Decl., ¶ 13. Plaintiff's expert also determined from Guardian's records that the average shift length

1 during the relevant time period was 10.87 hours and that the average overtime rate for the putative
2 class was \$27.89. *Id.*, ¶ 14. Assuming Plaintiff could prove these unpaid hours were overtime
3 hours, Plaintiff calculated Guardian’s exposure for unpaid wages due to its rounding policy as
4 follows: \$255,082 (9,146 unpaid overtime hours x \$27.89 average overtime rate). *Id.*, ¶ 15.

5 Guardian contends that has paid all wages owed to employees, including overtime wages
6 and that its quarter-hour rounding system used through May 2018 was neutral and not operated
7 in a way to deprive employees of time worked. *See* Schmidt Decl., ¶ 18; Exhibit 7. Even if
8 Guardian was found liable for its rounding practice, Guardian maintains that it stopped rounding
9 employee time in June 2018, thereby limiting potential damages to a subset of the relevant time
10 period. *Id.* Further, Guardian contends that Plaintiff’s exposure is overstated in that it assumes
11 each allegedly unpaid hour is an overtime hour. *Id.* Plaintiff therefore discounted Guardian’s
12 exposure by 25% to account for the risk of losing on the merits and an additional 25% for the
13 possibility that Plaintiff would not be able to prove that each unpaid hour is owed at the overtime
14 rate of pay, for a projected total of \$143,484. *Id.*, ¶ 15.

15 Unpaid Wages Due to Donning and Doffing: \$63,552

16 Based on discussions with Plaintiff and corroborated by other putative class members,
17 Plaintiff estimates that he spent approximately 5 to 10 minutes each shift donning and doffing his
18 PPE. *See* Schmidt Decl., ¶ 16; Gonzalez Decl., ¶ 2. Assuming Plaintiff is able to prove that he
19 was instructed to perform these tasks off-the-clock and again assuming that each of these unpaid
20 hours are overtime hours, Plaintiff calculated Guardian’s exposure for unpaid wages due to off-
21 the-clock work as follows: \$1,016,835 (218,316 total shifts x 0.167 (10 minutes / 60 minutes) x
22 \$27.89 average overtime rate). Schmidt Decl., ¶ 17.

23 Guardian contends that it maintains a clear policy prohibiting off-the-clock work. *See*
24 Schmidt Decl., ¶ 18; Exhibit 7. Guardian further contends that Plaintiff never complained to any
25 supervisor or manager about not being paid for donning and doffing PPE therefore Guardian had
26 no actual or constructive knowledge that he was working off the clock. *See Brinker, supra*, 53
27 Cal. 4th at 1051 (“[L]iability [for unpaid work] is contingent on proof [the employer] knew or
28 should have known off-the-clock work was occurring.”); Schmidt Decl., ¶ 18. Guardian also

1 contends that there is no evidence that any supervisor or manager instructed employees to don
2 and doff PPE off-the-clock. Schmidt Decl., ¶ 18. As a result, Guardian contends that Plaintiff's
3 donning and doffing claim will fail as a matter of law. *Id.* Guardian also contends that this claim
4 will face significant obstacles at certification as putative class members worked in multiple
5 different departments with varying timekeeping and PPE requirements. *Id.*; Exhibit 6. Thus, the
6 Court would need to entertain multiple individualized trials to determine which employees
7 actually worked off the clock, the reasons they performed work off the clock, as well as to what
8 extent Guardian had knowledge of such work. *Id.* Plaintiff therefore discounted Guardian's
9 exposure by 75% to account for the risk of non-certification and an additional 75% for the chance
10 of losing on the merits, for a projected total of \$63,552. *Id.*, ¶ 17.

11 **Meal Period Violations: \$333,297**

12 The timekeeping records produced by Guardian reflect a significant number of first meal
13 period violations recorded by putative class members. Schmidt Decl., ¶ 19. For example,
14 Plaintiff's expert determined that 48.4% of all shifts in excess of 6.0 hours (for which a meal
15 period cannot be waived) reflected either a short (less than 30 minutes), late (commencing after
16 the end of the fifth hour of work), or missed meal period. *Id.* This resulted in 112,731 first meal
17 period violations during the relevant time period. *Id.* Plaintiff's expert also determined that only
18 398 of the 184,738 shifts in excess of 10.0 hours included a recorded second meal period. *Id.*
19 Using the average hourly rate for putative class members during the relevant time period (\$18.59)
20 and giving Guardian credit for the \$189,806 in meal period premiums paid, Plaintiff calculated
21 Guardian's exposure for meal period violations as follows: \$5,332,744 (112,731 first meal
22 violations + 184,340 second meal violations x \$18.59 average meal period premium – \$189,806
23 meal period premiums paid). *Id.*

24 Guardian contends that Plaintiff's meal period exposure is overstated for multiple reasons.
25 *See* Schmidt Decl., ¶ 20. First, many of the supposed meal period violations were not as a result
26 of Guardian's policy or practice. *Id.* Instead, Guardian contends that it enforced a legally-
27 compliant meal schedule for employees and shift managers were instructed to remind employees
28 to follow the schedule and take their breaks. *Id.* Failure to follow this policy would lead to

discipline and potentially termination. *Id.*; Exhibit 8. Guardian maintains that it is not liable for non-complaint meal periods in these instances because Guardian is not required to ensure that meal periods are actually taken, just that they be provided. *Id.* Second, Guardian highlights the fact that most of the second meal period violations identified by Plaintiff were the result of validly waived second meal periods. *Id.* To support this argument, Guardian provided sample meal period waivers that were signed as part of the onboarding process. *Id.*; Exhibit 9 (Sample Meal Period Waiver); *see also* Exhibit 10 (New Hire Checklist). Finally, Guardian maintains that Plaintiff cannot recover both a first and second meal period violation on the same workday, thus dramatically lowering the overall potential violations. *Id.* Guardian also contends Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees were provided non-compliant meal periods or missed meal periods and the reasons why a particular employee recorded a non-compliant meal period or missed a meal period on a particular shift. *Id.* Given these potential defenses, Plaintiff discounted Guardian's maximum exposure by 75% for the risk of non-certification and 75% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of \$333,297. *Id.*, ¶ 19.

Waiting Time Penalties: \$69,601

There are approximately 104 putative class members who separated their employment with Guardian during the three-year relevant time period. Schmidt Decl., ¶ 22. Guardian's potential exposure for waiting time penalties is therefore \$464,006 (104 former employees x 18.59 average hourly rate x 8 hours per workday x 30 days of waiting time penalty). *Id.*, ¶ 23.

Guardian maintains that waiting time penalties are not appropriate to the extent they are derivative of meal period claims as these claims cannot support such penalties. *See Naranjo, supra*, 40 Cal.App.5th at 474; *see also Ling, supra*, 245 Cal.App.4th at 1261; Schmidt Decl., ¶ 21. Guardian also argues it attempted to pay its employees all final wages owed in good faith upon their separation, therefore precluding a finding of wilfulness necessary to obtain waiting time penalties under 8 Cal. Code Regs. Section 13520. *See* Schmidt Decl., ¶ 21; Exhibit 11 (Final Wages Policy). Plaintiff accordingly discounted Guardian's potential liability by 25% for a risk

of non-certification, and by an additional 80% for the risk of losing on the merits or failing to establish wilfulness, for a projected total of \$69,601. *Id.*, ¶ 23.

PAGA Penalties: \$79,870

Labor Code section 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. *See* Labor Code § 2699(f)(2). However, courts have interpreted section 2699(f)(2) to only impose the \$200 subsequent penalty after an employer has been notified that its conduct violates the Labor Code. *See, e.g., Amaral, supra*, 163 Cal.App.4th at 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009) (finding that California law imposes the “subsequent violation penalty” only after an employer has been notified its conduct violates the Labor Code).

The success of Plaintiff’s PAGA claim is wholly dependent upon the success of his underlying claims occurring within the time period relevant time PAGA. Schmidt Decl., ¶ 24 Plaintiff’s expert used the payroll records to determine that 120 employees worked 7,987 pay periods during the penalty period applicable to PAGA. *Id.*, ¶ 25. Assuming that Plaintiff could prove at least one substantive violation in each pay period for this time period, Guardian’s potential exposure for PAGA civil penalties is \$798,700 (7,987 pay periods x \$100.00 “initial” violation rate). *Id.*, ¶ 26.

However, these penalties derived from the underlying wage and hour violations discussed above, which Guardian disputes. *See e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim’s success was determined by the merits of its underlying claims); Schmidt Decl., ¶ 24. Plaintiff also recognizes that the Court has discretion

1 to reduce any award of PAGA penalties if it views them as duplicative. *See* Labor Code §
2 2699(e)(2); *Thurman, supra*, 203 Cal.App.4th at 1135; *Fleming v. Covidien Inc.*, Case No. ED
3 CV 10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA
4 penalties from \$2.8 million to \$500,000); Schmidt Decl., ¶ 26. Guardian specifically relied on the
5 then-recent decision in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, in which the
6 Court of Appeal reduced an award of PAGA penalties from the requested \$70 million to
7 \$150,000—or 0.21% of the maximum recoverable amount—and stated that this reduction was
8 warranted because imposing the maximum penalty would be “unjust, arbitrary, and oppressive”
9 based in part because the court found the violations were minimal. *Carrington*, 30 Cal.App.5th at
10 517; Schmidt Decl., ¶ 24. Plaintiff accordingly discounted Guardian’s potential liability by 50%
11 for the risk of manageability issues preventing the case from proceeding on a representative basis,
12 and by an additional 80% to account for the potential for this Court to reduce the civil penalties,
13 for a projected total of \$79,870. Schmidt Decl., ¶ 26.

14 Assuming Plaintiff would prevail on all of these claims for the entire Class Period,
15 Plaintiff calculates the total value of Guardian’s violations at \$7,867,367. Schmidt Decl., ¶ 27.
16 Taking Guardian’s defenses into account and using the reduced figures for each of the claims
17 described above, Plaintiff predicts that a realistic classwide recovery would be approximately
18 \$689,803. *Id.* This Settlement provides a recovery to the Settlement Class of \$500,000, which is
19 approximately 72.48% of Plaintiff’s projected potential recovery, while avoiding the further
20 expense and serious risk of proceeding towards class certification and trial. *Id.* Considering the
21 risk of non-certification and failure to prevail on the merits, as well as the Court’s power to reduce
22 the civil penalties, the proposed Settlement falls well within the realm of being fair, reasonable,
23 and adequate. *See e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372,
24 at *9 (preliminarily approving wage and hour class action settlement, stating, “[a]lthough 15%
25 represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that
26 figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s
27 claims.”) Preliminary approval is appropriate since the Settlement will provide tangible monetary
28 relief to Settlement Class members without the uncertainty, delay, and additional expense of

1 further litigation.

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

3 “Parties represented by competent counsel are better positioned than courts to produce a
4 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
5 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Plaintiff is represented by
6 competent and experienced counsel who possess extensive experience litigating wage and hour
7 class actions from both the plaintiff and defense side. *See* Schmidt Decl., ¶¶ 2-6; Declaration of
8 Paul K. Haines (“Haines Decl.”), ¶ 2-8; and Declaration of Andrew J. Rowbotham (“Rowbotham
9 Decl.”), ¶¶ 2-5. Plaintiff’s counsel has been appointed as class counsel in numerous cases alleging
10 similar claims. *Id.* Plaintiff’s counsel, with the help of a retained expert, conducted an extensive
11 review of Guardian’s records produced for mediation and drew on their extensive experience in
12 similar cases to assess the strengths and weaknesses of this case. *See* Schmidt Decl., ¶¶ 8-9. The
13 Settlement was reached with the input and assistance of the Francis “Tripper” Ortman, Esq., an
14 experienced wage and hour class action mediator. *Id.*, ¶ 28. This factor strongly supports
15 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

23 The proposed Settlement will provide substantial compensation for contested claims and
24 derivative penalties, and the overall average payment of \$796.30 greatly exceeds averages
25 achieved in other wage and hour class action settlements.⁵ The proposed Settlement falls within
26

27 ⁵ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May
28 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 the range of possible approval and Plaintiff requests that this Court approve the Class Notice to
2 be mailed to Settlement Class members. The Court will again have the opportunity to assess the
3 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
4 opt-out or object to it.

5 **b. The Settlement Resulted from Serious, Informed, and Non-Collusive**
6 **Negotiations**

7 This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar,*
8 *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial records which
9 were analyzed by Plaintiff's counsel, arm's length negotiations by counsel; mediation with a
10 respected and experienced wage and hour class action mediator; and additional time spent
11 negotiating and finalizing the terms of the long-form Settlement Agreement. *See* Schmidt Decl.,
12 ¶¶ 8-9, 28. The proposed Settlement is thus entitled to an initial presumption of fairness. *See*
13 *Kullar, supra*, 168 Cal.App.4th at 130.

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

15 The Settlement will provide tangible monetary relief to Settlement Class members.
16 Moreover, the amounts requested for attorneys' fees and costs to Class Counsel, Plaintiff's
17 Enhancement Payment, settlement administration costs, and the PAGA payment to the LWDA
18 are all reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this
19 final factor supports preliminary approval.

20 **B. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT**
21 **CLASS**

22 The proposed Settlement Class satisfies the criteria for certification of a settlement class
23 under California law because: (1) the Settlement Class members are so numerous that joinder
24 would be impractical; (2) common questions of law and fact predominate over individual
25 questions such that class certification is the most efficient and desirable way to maintain this
26 litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class members;
27 and (4) Plaintiff and his counsel will fairly and adequately represent the interests of the absent
28 Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

1. The Proposed Class is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without

unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). The proposed Settlement Class is defined as all current and former non-exempt hourly employees of Guardian Industries, LLC in the State of California from June 20, 2015, through May 27, 2020. According to Guardian’s records, the Settlement Class consists of approximately 315 individuals, rendering it impracticable to gather all the Settlement Class members and bring them before the Court. *See Schmidt Decl.*, ¶ 10. The proposed Settlement Class therefore satisfies the numerosity requirement.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Plaintiff’s claims are predicated on Guardian’s uniform rounding system, donning and doffing policies/practices, and meal period policies/practices. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 (“The theory of liability—that Brinker has a uniform policy, and that that policy...allegedly violates the law—is by its nature a common question eminently suited for class treatment.”); *Leyva v. Medline Industries Inc.* (9th Cir. 2013) 716 F.3d 510, 515 (certifying rounding claims); *Faulkinbury v. Boyd & Assoc., Inc.* (2013) 216 Cal.App.4th 220, 240 (certifying meal period claims); *Bradley v. Networkers Int’l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying meal period claims).

3. The Claims of the Named Plaintiff Are Typical

The typicality requirement is satisfied when the class representative has claims that are 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. Plaintiff’s claims are typical of those held by the Settlement Class members. Like other Settlement Class members, Plaintiff was employed by Guardian in California during the Class Period. *See Schmidt Decl.*, ¶ 11; *Gonzalez Decl.*, ¶ 2. Plaintiff was not paid all of his wages due to Guardian’s rounding practice, was not paid for time spent donning and doffing his required PPE, and was not provided all meal periods. *Id.*, ¶¶ 3-6. Plaintiff was

1 impacted by the same challenged policies that allegedly injured the Settlement Class as a whole.
2 Plaintiff was also subject to the same classwide defenses forwarded by Guardian. Plaintiff is
3 therefore typical of the Settlement Class.

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

6 The adequacy of representation requirement examines conflicts of interest between named
7 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
8 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiff and Class Counsel will
9 adequately represent the Settlement Class members, as there are no conflicts between Plaintiff
10 and the Settlement Class he seeks to represent. Plaintiff possesses claims that are in line with
11 those of the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450
12 (finding adequacy satisfied where there was no indication that the plaintiff's counsel was not
13 qualified, and the named plaintiff had no interests antagonistic to those of the proposed class).
14 Class Counsel also has extensive experience in wage and hour class action litigation. *See Schmidt*
15 *Decl.*, ¶¶ 2-6; *Haines Decl.*, ¶¶ 2-8; *Rowbotham Decl.*, ¶¶ 2-5.

16 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
17 **CLASS NOTICE**

18 This Court should order distribution of the proposed Class Notice to the Settlement Class
19 members by first class mail, postage prepaid, using the last known mailing address information
20 provided by Guardian. This manner of giving notice is the "best notice practicable" under the
21 circumstances because it provides "individual notice to all members who can be identified through
22 reasonable effort." *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Plaintiff
23 proposes that the Settlement be administered by Phoenix Settlement Administrators, an
24 experienced class action settlement administrator. *See Declaration of Jodey Lawrence and*
25 *attached exhibits.* Settlement Class members' addresses will be ascertainable through Guardian's
26 personnel and payroll records, which Guardian will provide to Phoenix within 30 days after
27 preliminary approval of the Settlement. *See Settlement*, § 9.A. To the extent that any notices are
28 returned, Phoenix will run those addresses through the National Change of Address database
and/or conduct skip traces to obtain current address information. *Id.*, § 9.B. The content of the
Class Notice satisfies California Rule of Court 3.766(d) because it advises proposed Settlement

1 Class members of the nature of the claims, the basic contentions and denials of the Parties, the
2 key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement
3 and the procedure by which to do so; it also explains the recovery formula and includes the
4 expected Individual Settlement Payment for each Settlement Class member. The Class Notice
5 also advises Settlement Class members that they will be bound by the terms of the Settlement if
6 they do not request exclusion, advises them of the final approval hearing date, provides the contact
7 information for Class Counsel, and advises that they may enter an appearance through their own
8 counsel if they wish. *See* Schmidt Decl., Exhibit 3. This manner of giving notice satisfies
9 California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching
10 Settlement Class members.

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

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

15 **V. CONCLUSION**

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

19 Dated: March 1, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

20
21 By:



Fletcher W. Schmidt
Attorneys for Plaintiff