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

STEVE DIAB QAWAS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SOCAL FRAMING, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. RIC1902588

*[Case assigned for all purposes to the Hon.
Sunshine S. Sykes, Dept. 6]*

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

Date: February 24, 2021
Time: 8:30 a.m.
Dept.: 6

Reservation: RES243098

Action Filed: April 23, 2019
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on February 24, 2021, at 8:30 a.m. in Department 6 of the above-entitled Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff Steve Diab Qawas (“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 employees of Socal Framing, Inc. who worked in California between April 23, 2015, and the date of preliminary approval of the settlement.

3. Preliminary appointment of Plaintiff Steve Diab Qawas 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, Steve Diab Qawas, 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 23 pages in length.

3
4 Dated: January 21, 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	7
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.....	11
A. PRELIMINARY APPROVAL IS WARRANTED	11
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.....	13
e. The Experience and Views of Counsel	19
2. The Preliminary Approval Standard is Met.....	19
a. The Settlement is Within the Range of Possible Approval.....	19
b. The Settlement Resulted from Serious, Informed, and Non-Collusive Negotiations	20
c. The Settlement is Devoid of Obvious Deficiencies	20
B. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS	20
1. The Proposed Class is Ascertainable and Numerous.....	21
2. Common Issues of Law and Fact Predominate.....	21
3. The Claims of the Named Plaintiff Are Typical.....	21
4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class	22

1	C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED	
2	CLASS NOTICE	22
3	D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	23
4	V. CONCLUSION	23

TABLES OF AUTHORITIES

Federal Cases

<i>Eisen v. Carlisle and Jacquelin</i> 417 U.S. 156 (1974)	22
<i>Hanlon v. Chrysler Corp.</i> 150 F.3d 1011 (9th Cir. 1998)	11
<i>In re Pacific Enterprises Securities Litigation</i> 47 F.3d 373 (9th Cir. 1995)	19
<i>In re Syncor ERISA Litigation</i> 516 F.3d 1095 (9th Cir. 2008)	11

States Cases

<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	22
<i>Bluford v. Safeway, Inc.</i> (2013) 216 Cal.App.4th 864	4, 21
<i>Bradley v. Networkers Int'l, LLC</i> (2012) 211 Cal.App.4th 1129	21
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	5, 21
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676	22
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	6, 18
<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	21
<i>Gonzalez v. Downtown LA Motors, LP</i> (2013) 215 Cal.App.4th 36	3
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	9
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	11, 19

1	<i>Laffitte v. Robert Half Int'l Inc.</i>	
2	(2016) 1 Cal.5th 480	10
3	<i>Ling v. P.F. Chang's China Bistro, Inc.</i>	
4	(2016) 245 Cal.App.4th 1242	6, 16-17
5	<i>McGhee v. Bank of America</i>	
6	(1976) 60 Cal.App.3d 442	22
7	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
8	(2019) 40 Cal.App.5th 444	6, 16
9	<i>Price v. Starbucks Corp.</i>	
10	(2011) 192 Cal.App.4th 1136	6
11	<i>Reed v. United Teachers Los Angeles</i>	
12	(2012) 208 Cal.App.4th 322	11
13	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
14	(2004) 34 Cal.4th 319	21
15	<i>Sevidal v. Target Corp.</i>	
16	(2010) 189 Cal.App.4th 905	21
17	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
18	(2012) 203 Cal.App.4th 1112	6, 18
19	<i>Wershba v. Apple Computer, Inc.</i>	
20	(2001) 91 Cal.App.4th 224	10, 11
21	<u>State Statues and Rules</u>	
22	8 Cal. Code Regs. § 13520.....	6
23	Cal. Code Civ. Proc. § 382	21
24	Labor Code § 226.2.....	3
25	Labor Code § 226.7(c)	4
26	Labor Code § 2699(e)(2)	18
27	<u>Unpublished Cases</u>	
28	<i>Altamirano v. Shaw Industries, Inc</i>	
	(N.D. Cal. 2015) 2015 WL 4512372	18
	<i>Amalgamated Transit Union Local 1309 AFL-CIO v. Laidlaw Transit Services, Inc.</i>	
	No. 05cv1199–IEG–CAB	
	2009 WL 2448430	17

Bercea v. AE Retail West

Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012)20

Fleming v. Covidien Inc.

(C.D. Cal., Aug. 12, 2011) 2011 WL 75630476, 18

Green v. Lawrence Service Co.

(C.D. Cal. 2013) 2013 WL 390750617-18

Jones v. Spherion Staffing LLC

(C.D. Cal., Aug. 7, 2012) 2012 WL 3264081 16

Ressler v. Federated Department Stores, Inc.

Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009)20

Trang v. Turbine Engine Components Technologies Corp.

No. CV 12-07658 DDP (RZx)
2012 WL 6618854 17

Other Sources

4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013) 19

4 Newberg on Class Actions § 14.6 (4th Ed. 2013)..... 10

Manual for Complex Litigation § 30.41(3rd Ed. 1995 19

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Steve Diab Qawas (“Plaintiff”) pursues this putative class action (the “Lawsuit”) on behalf of all current and former non-exempt employees of Defendant Socal Framing, Inc. (“Socal Framing”) who worked in California between April 23, 2015, and the date of preliminary approval of the settlement (the “Class Period”) (Plaintiff and Socal Framing are referred to collectively as the “Parties”). Plaintiff alleges that Socal Framing: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to separately pay for rest periods; (4) failed to provide all meal periods; (5) failed to issue accurate, itemized wage statements; (6) failed to pay all final wages upon separation of employment; (7) engaged in unfair, unlawful business practices; and (8) is liable for civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”).

13 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:

16 **Settlement Class** – All current and former non-exempt employees of Socal Framing, Inc. who worked in California between April 23, 2015, and the date of preliminary approval of the settlement.

19 Based upon the data received from Socal Framing, there are approximately 1,371 potential Settlement Class members who worked during the Class Period. The \$1,475,000.00 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. This result is particularly noteworthy in light of Socal Framing’s limited financial resources, as verified by Plaintiff’s independently retained financial analyst. After deductions for Plaintiff’s Enhancement Payment,

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”), Notice of Settlement Award (“Dispute Form”), Request for Exclusion Form, and Objection Form) are attached as Exhibits 1 and 2, respectively, to the Declaration of Fletcher W. Schmidt filed concurrently herewith.

1 settlement administrator costs, the PAGA payment to the Labor & Workforce Development
2 Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the remaining amount (the
3 “Net Settlement Amount”) of approximately \$899,083.33 will be distributed to Settlement Class
4 members. Employer-side payroll taxes on amounts paid as wages will be paid separate and apart
5 from, and in addition to, the Maximum Settlement Amount. Significantly, Settlement Class
6 members do not need to file a claim form in order to receive an Individual Settlement Payment,
7 and all Settlement Class members who do not opt-out will automatically receive Individual
8 Settlement Payments which average approximately \$655.79 on a per capita basis.²

9 Prior to reaching this proposed Settlement, Socal Framing provided Plaintiff with weekly
10 timesheets and wage statements for approximately 10% of the putative class period. Socal
11 Framing also produced a summary of relevant information necessary for a classwide damages
12 analysis. After extensive legal research and evaluation along with a comprehensive review of the
13 data, the Parties participated in a mediation session with the Mark S. Rudy, Esq on April 23, 2020.
14 The Parties debated their respective legal theories and, with the help of Mr. Rudy at mediation,
15 an agreement was reached subject to the review of Socal Framing’s financial condition. Plaintiff
16 then retained a forensic accountant to analyze Socal Framing’s business tax returns for 2015
17 through 2019 along with Schedule 1 forms showing Socal Framing’s associated cash
18 reconciliation and bank account activity. Once the analysis of Socal Framing’s financial records
19 was completed, the Parties confirmed their agreement to the terms of the classwide Settlement.
20 As a material term of the Settlement, the Parties stipulated to the filing of the operative First
21 Amended Complaint, adding a class-wide cause of action for alleged wage statement violations
22 (Labor Code § 226 *et seq.*), waiting time penalties (Labor Code §§ 201-203), and civil penalties
23 under the PAGA (Labor Code § 2698 *et seq.*) based on the underlying Labor Code violations pled
24

25 ² Many employees in the framing industry, like the Settlement Class members, work sporadically
26 throughout their employment. Schmidt Decl., ¶ 9. This leads to a relatively large number of potential
27 Settlement Class members when compared to the total workweeks worked. *Id.* To ensure that individuals
28 who experienced more Labor Code violations will receive a greater share of the Net Settlement Amount,
the Settlement utilizes workweeks worked (as opposed to time employed) to calculate Individual
Settlement Payments. *Id.*; Settlement, § 4.B.

therein.³

This proposed Settlement is well within the range of possible approval in light of Socal Framing’s limited financial resources, 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

Socal Framing provides framing and home renovation services throughout Riverside County, California. Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶ 8. Plaintiff, like all other Settlement Class members, was an employee of Socal Framing and worked in California during the Class Period. *Id.*

Plaintiff alleges that throughout the Class Period, Socal Framing did not accurately record employees’ hours and employees were not compensated based on the actual hours they worked. Schmidt Decl., ¶ 10. Instead, Socal Framing paid employees a pre-determined amount per square footage of projects completed (*i.e.* framing a home). *Id.* As a result of this piece-rate compensation system, Plaintiff alleges that Socal Framing was required to separately compensate employees who were paid on a piece-rate basis for so-called “non-productive” time (*i.e.* hours spent working but not actually framing homes). *Id.* Some examples of unpaid non-productive time experienced by Plaintiff and other employees include: mandatory training and safety meetings, delays due to performing maintenance on machines, refueling equipment and refilling supplies. *Id.*; *see Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 (“DTLA”) (“...we conclude that class members [paid on a piece-rate basis] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer...”); *see also* Labor Code § 226.2 (compensable non-productive time is “time under the employer's control, exclusive of rest and recovery periods, that is not directly related to

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

1 the activity being compensated on a piece-rate basis.”) Plaintiff also alleges that Socal Framing
2 failed to pay overtime wages to employees when they worked overtime hours. Schmidt Decl., ¶
3 10.

4 Socal Framing contends that it has paid all wages owed to employees, including overtime
5 wages. Schmidt Decl., ¶ 13. Socal Framing argues that employees rarely, if ever, worked overtime
6 hours, and Socal Framing argues that individualized inquires would be required to determine how
7 long each employee actually worked on any given day, posing an obstacle to certification. *Id.*
8 Socal Framing also contends that employees experienced minimal (if any) uncompensated “non-
9 productive” time as the majority of alleged non-productive activities were directly related to the
10 piece-rate task of framing homes. *Id.* Socal Framing maintains that certification on the non-
11 productive time claim is unlikely because questions of non-productive time would be highly
12 individualized given Plaintiff’s argument that Socal Framing did not accurately account for the
13 time spent on the majority of the alleged non-productive tasks. *Id.*

14 Plaintiff contends that, despite including a line item for rest and recovery payments on
15 wage statements, Socal Framing did not actually separately compensate employees for required
16 rest periods when they were compensated on a piece-rate basis, but rather just allocated a portion
17 of the predetermined piece-rate wages as rest and recovery pay on the wage statements. Schmidt
18 Decl., ¶ 14. As a result, Plaintiff maintains that Socal Framing is liable for rest period premiums
19 for each workday in which at least one rest period was not separately compensated. *Id.*; *see*
20 *Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th 864, 872 (“[U]nder the rule of *Armenta v.*
21 *Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be separately compensated in a
22 piece-rate system.”); *see also* Labor Code § 226.7(c).

23 Socal Framing argues that it does separately compensate employees paid on a piece-rate
24 basis for rest periods and such payments were noted on wage statements as “Rest & Recovery.”
25 Schmidt Decl., ¶ 15. Socal Framing also contends that any liability for its alleged failure to
26 separately compensate employees working on a piece-rate basis for rest periods would be limited
27 to back-pay for the rest periods themselves (*i.e.* pay for the 10 minutes of rest) as opposed to the
28 rest period penalties under Labor Code section 226.7. *Id.* To the extent that Plaintiff contends that

1 the “Rest & Recovery” payments are illusory, individualized inquires would be required to
2 determine how many hours an employee actually worked on any given day as well as whether an
3 employee actually took each rest period he was legally entitled to. *Id.*

4 Plaintiff alleges that Socal Framing failed to provide timely 30-minute first meal periods
5 (commencing before the end of the fifth hour of work).⁴ *See Brinker Restaurant Corp. v. Superior*
6 *Court* (2012) 53 Cal.4th 1004, 1049 (holding that the applicable wage orders and the California
7 Labor Code require employers to provide a first meal period before the end of the fifth hour of
8 work”); Schmidt Decl., ¶ 16. Socal Framing contends that it has always provided employees with
9 legally-compliant first meal periods and that any meal periods that did not meet that standard
10 were solely the result of employee choice (not Socal Framing’s policy/practice). Schmidt Decl.,
11 ¶ 16. Socal Framing further argues that under *Brinker* it is only required to “provide” the
12 opportunity to take meal periods, not “ensure” meal periods are taken – which Socal Framing
13 contends it has always done. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard);
14 Schmidt Decl., ¶ 16. Finally, Socal Framing contends that Plaintiff’s meal period claim is not
15 suited for class certification as individual inquiries would be required to assess which employees
16 received non-compliant meal periods, how many meal periods were non-compliant or missed,
17 and the reasons why a particular individual recorded a non-compliant meal period or missed a
18 meal period on a particular shift, particularly so in light of Plaintiff’s challenges to the validity of
19 the timekeeping records. *Id.*

20 As a result of these alleged substantive violations, Plaintiff contends that Socal Framing
21 is liable for derivate wage statement violations, waiting time liability for its failure to pay
22 employees all final wages upon separation of employment, and civil penalties under PAGA.
23 Schmidt Decl., ¶ 18.

25 ⁴ Plaintiff’s complaint also asserts that Socal Framing failed to provide second meal periods to employees
26 who worked shifts in excess of 10.0 hours. Schmidt Decl., ¶ 17. However, after interviewing Plaintiff and
27 other putative class members and reviewing their corresponding timesheets produced in furtherance of
28 mediation, Plaintiff determined that putative class members generally worked shifts under 10.0 hours
during the Class Period. *Id.* This fact combined with putative class members’ ability to waive second meal
periods for shifts between 10.0 and 12.0 hours led Plaintiff to conclude that the second meal period claim
was not viable on a classwide basis. *Id.*

1 Socal Framing argues that the alleged wage statement violations were not “knowing and
2 intentional,” and that Plaintiff could not show he “suffer[ed] injury,” as required by Labor Code
3 section 226(e) for imposition of penalties. Schmidt Decl., ¶ 21. Socal Framing contends that it
4 possesses strong, good faith defense to Plaintiff’s underlying claims, precluding recovery of
5 waiting time penalties (which are only available for the “willful” failure to pay wages). *Id.*; see 8
6 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition
7 of waiting time penalties under Section 203...A good-faith dispute that any wages are due occurs
8 when an employer presents a defense, based in law or fact which, if successful, would preclude
9 any recovery on the part of the employee.”) Socal Framing maintains that not all former
10 employees (if any) experienced an underpayment of wages, thus Plaintiff’s exposure analysis is
11 overstated. Schmidt Decl., ¶ 21. Socal Framing contends that any alleged failure to pay rest period
12 premiums cannot support a derivative claim for wage statement or waiting time penalties. *Id.*; see
13 *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, 474, review granted Jan.
14 2, 2020 (S258966); see also *Ling v. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal.App.4th
15 1242, 1261 (meal and rest period premium pay compensates for the non-provision of meal and
16 rest periods, not for the ‘nonpayment of wages’ as required by Labor Code section 203).

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

1 **A. DISCOVERY AND MEDIATION**

2 In connection with mediation, Socal Framing provided Plaintiff with weekly timesheets
3 and wage statements for approximately 10% of the putative class period. Schmidt Decl., ¶ 25.
4 Plaintiff then conducted an analysis of this data and created a comprehensive damages model to
5 calculate the likely exposure that Socal Framing faced on each claim for the entire Class Period.
6 *Id.*

7 On April 23, 2020, the Parties participated in a mediation with Mark S. Rudy, a respected
8 wage and hour class action mediator in California. Schmidt Decl., ¶ 26. During mediation, the
9 Parties exchanged divergent views on Socal Framing's liability and exposure valuations, debated
10 their legal positions, and shared their arguments regarding the likelihood of certification of
11 Plaintiff's claims. *Id.* As a result of a mediator's proposal from Mr. Rudy, the Parties were able
12 to reach a classwide agreement, subject to confirmatory discovery on Socal Framing's financial
13 condition. *Id.* Plaintiff engaged a forensic accountant to review the previous five years of Socal
14 Framing's financial records. *Id.* After the assessment of Socal Framing's financial condition was
15 completed, the Parties confirmed the classwide Settlement and memorialized the terms into the
16 Settlement Agreement. *Id.*

17 **III. THE PROPOSED SETTLEMENT**

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

19 Should the Court preliminarily approve this settlement, Socal Framing will pay a
20 Maximum Settlement Amount of \$1,475,000.00. Settlement, § 3. This Settlement is non-
21 reversionary and Settlement Class members will automatically receive their Individual Settlement
22 Payment unless they affirmatively opt-out of the Settlement. *Id.*, § 3.C.

23 Socal Framing will deposit the entire Maximum Settlement Amount within 30 calendar
24 days of the order granting final approval of the Settlement, assuming there are no objections or
25 appeals. *See* Settlement, §§ 2.A, 3.B. The proposed deductions from the Maximum Settlement
26 Amount are itemized within the table on the following page:

Maximum Settlement Amount:	\$1,475,000.00
Minus Court-approved attorneys' fees (1/3 of MSA):	\$491,666.67
Minus Court-approved attorneys' costs (up to):	\$25,000.00
Minus Court-approved enhancement payment:	\$5,000.00
Minus Court-approved administration costs (up to):	\$16,750.00
Minus PAGA payment to the LWDA:	\$37,500.00
Net Settlement Amount:	\$899,083.33

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, Plaintiff's Enhancement Payment, costs of settlement administration, and the PAGA payment to the LWDA, the Settlement requires Socal Framing to pay a Net Settlement Amount of approximately \$899,083.33 to Settlement Class members. *See* Settlement, § 3.C. Employer-side payroll taxes on amounts paid as wages will be paid separate and apart from, and in addition to, the Maximum Settlement Amount. *Id.*, § 3.F.

Socal Framing's records as of the date of mediation indicate that there are approximately 1,371 potential Settlement Class members who worked during the Class Period. Schmidt Decl., ¶ 28; Settlement § 3.E. Based on the records provided for mediation purposes, there were approximately 69,420 workweeks worked during the Class Period. Schmidt Decl., ¶ 28. Based on the proposed allocations of the Net Settlement Amount, Settlement Class members will receive average payments of approximately \$655.79. Schmidt Decl., ¶ 28. The lowest potential Individual Settlement Payment that a Settlement Class member could receive is estimated to be approximately \$12.95 (if the Settlement Class member only worked a single pay period during the Class Period). *Id.* The highest potential Individual Settlement Payment that a Settlement Class member could receive is estimated to be approximately \$3,846.15 (if the Settlement Class member worked every pay period during the Class Period). *Id.*

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 Socal Framing that were asserted, or could have been asserted based on the operative facts in the

1 Lawsuit for the period of April 23, 2015, to the date of preliminary approval. *Id.*, § 2.A.⁵

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

3 Plaintiff will apply for an enhancement payment in the total amount of \$5,000.00 for his
4 service to the Settlement Class and his general release of all claims (known or unknown) against
5 Social Framing. *See* Settlement §§ 2.B, 6; Schmidt Decl., ¶ 29. “[I]ncentive awards are fairly
6 typical in class action cases . . . and are intended to compensate class representatives for work
7 done on behalf of the class [and] to make up for financial or reputational risk undertaken in
8 bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-
9 94. Plaintiff’s Enhancement Payment is intended to recognize the significant benefits conferred
10 upon the Settlement Class due to the time and effort that Plaintiff expended on their behalf,
11 including providing factual information and documents to his attorneys, identifying potential
12 witnesses who also worked under the same compensation system and experienced the same
13 alleged Labor Code violations, and participating in meetings with his attorneys to discuss the
14 claims and theories at issue in the litigation. Schmidt Decl., ¶ 29. Plaintiff’s Enhancement
15 Payment is also requested due to the significant risks that Plaintiff undertook by agreeing to serve
16 as the named plaintiff in this case, as well as the fact that Plaintiff agreed to a general release of
17 all claims subject to a waiver of California Civil Code section 1542. *Id.*; Settlement, § 2.B. Should
18 the Court grant preliminary approval of this Settlement, Plaintiff will seek this enhancement
19 payment at the time of seeking final approval of the Settlement.

20 Class Counsel will also apply for an attorneys’ fee award of \$491,666.67 (one-third of the
21 Maximum Settlement Amount) and up to \$25,000.00 in verified costs. *See* Settlement, §§ 3.C.4,
22 5; Schmidt Decl., ¶ 30. Plaintiff submits that the requested fee is fair compensation for the
23 undertaking of complex, risky, expensive, and time-consuming litigation on a purely contingent
24 fee. Class Counsel incurred substantial attorneys’ fees conducting the pre-filing investigation,
25 analyzing Plaintiff’s claims, conducting legal research and analysis into those claims, reviewing
26

27 ⁵ The Parties propose that any uncashed settlement checks shall be distributed to the California State
28 Controller to be deposited in the California Unclaimed Property Fund in the name of the Settlement Class
member. *See* Settlement, ¶ 4.E.

1 data and documents produced by Social Framing, building a comprehensive damages model,
2 preparing for and attending mediation, negotiating and preparing the long-form Settlement
3 Agreement, preparing this motion for preliminary approval, and otherwise litigating the case.
4 Schmidt Decl., ¶ 30. Class Counsel will also expend future attorney time in attending the hearing
5 on this Motion, overseeing the Notice process and fielding questions from Settlement Class
6 members, drafting the Final Approval Motion along with supporting documents, and attending
7 the final approval hearing, among other tasks. *Id.*

8 Both California and federal courts have recognized that an appropriate method for
9 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
10 as a result of the settlement. *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506 ("the
11 percentage of fund method survives in California class action cases..."); *Wershba v. Apple*
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery"
13 and "lodestar/multiplier" methods). Historically, courts have awarded percentage fees in the range
14 of 20% to 50%, depending on the circumstances of the case. *See 4 Newberg on Class Actions* §
15 14.6 (4th Ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of a
16 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
17 common fund in order to assure that the fees do not consume a disproportionate part of the
18 recovery obtained for the class, although somewhat larger percentages are not unprecedented.")

19 Class Counsel submits that the request for attorneys' fees is reasonable when viewed as
20 an overall percentage of the Maximum Settlement Amount (one-third) and in light of the
21 substantial risks presented against the merits of the case as well as Social Framing's financial
22 condition. Schmidt Decl., ¶¶ 10-26. The reasonableness of the fee request is also supported by
23 the significant work undertaken by Class Counsel, the significant result obtained for the
24 Settlement Class members, and the efficiency by which the litigation was conducted. *Id.*, ¶ 30.
25 Should the Court grant preliminary approval of this Settlement, Class Counsel will seek an award
26 of attorneys' fees and verified litigation costs at the time of seeking final approval of the
27 Settlement.

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions the settlement of a class action on court
4 approval. This approval is generally evaluated under the federal standards applicable under Rule
5 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
6 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine “that the
7 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir.
8 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
9 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
10 preferred means of dispute resolution, particularly in complex class action litigation. *See In re*
11 *Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a
12 proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not
13 the product of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150
14 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was
15 negotiated at arm’s length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168
16 Cal.App.4th 116, 130.

17 **1. Standard for Preliminary Approval**

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

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

28 Class Counsel carefully vetted the claims at issue, reviewed weekly timesheets and wage

1 statements for hundreds of employees and conducted a detailed analysis of that data to create a
2 comprehensive damages model for Socal Framing's classwide liability. *See* Schmidt Decl., ¶ 25.
3 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges
4 that there were substantial risks and uncertainty in proceeding with class certification and trial.
5 First and foremost, as supported by the confidential financial records which Plaintiff's retained
6 accountant reviewed, there was a significant risk that further litigation could force Socal Framing
7 into bankruptcy, or result in a non-collectable judgment. Furthermore, as explained in detail in
8 section II.B., *supra*, Socal Framing presented numerous defenses to Plaintiff's claims, both on
9 the merits and with respect to class certification. Although Plaintiff was prepared to litigate these
10 claims through class certification and trial, given the amount offered in the Settlement, Plaintiff
11 predicted that it was unlikely that further litigation would result in a more beneficial result for the
12 Settlement Class members.

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

14 Although the Parties engaged in extensive informal discovery prior to mediation, the
15 Parties had not yet commenced formal written or deposition discovery at the time the Parties
16 executed the proposed Settlement Agreement. *See* Schmidt Decl., ¶ 25. Absent the Settlement,
17 the Parties would need to expend substantial time and resources to complete formal discovery and
18 prepare this case for class certification and trial. This Settlement avoids the considerable
19 attorneys' fees and costs associated with conducting formal discovery, moving for class
20 certification, filing for summary judgment or adjudication, and ultimately, participating in trial.
21 The Settlement also limits the risks and the accompanying burden of continued litigation on the
22 Court.

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

24 At the time of the Parties' proposed Settlement, Plaintiff had not yet filed his Motion for
25 Class Certification. Given Socal Framing's numerous arguments that individualized issues would
26 predominate Plaintiff's claims, thereby precluding class certification, there was a legitimate risk
27 that there would not be a certified class at the time of trial.
28

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

2 This proposed Settlement provides a fair and reasonable monetary recovery for the
3 Settlement Class members notwithstanding the disputed claims and Socal Framing’s limited
4 financial resources. After analyzing the data provided by Socal Framing prior to mediation,
5 Plaintiff prepared a classwide exposure model and forecasted the expected recovery for each
6 claim as follows:

7 **Unpaid Non-Productive Time: \$49,411**

8 Based on Plaintiff’s experience, and corroborated by discussions with other putative class
9 members, Plaintiff determined that employees worked about 10 minutes of non-productive time
10 per shift, which was not compensated. Schmidt Decl. ¶ 11. Based on the documents provided by
11 Socal Framing prior to mediation, Plaintiff also determined that putative class members worked
12 a combined total of 219,367 shifts during the Class Period (69,420 workweeks x 3.16 shifts per
13 workweek). *Id.* The weighted average minimum wage in California during the relevant time
14 period was \$10.79. *Id.* Socal Framing’s potential exposure for unpaid non-productive time is
15 therefore \$395,284 (219,367 shifts x 0.167 hours per shift x \$10.79 average minimum wage). *Id.*

16 Socal Framing argues that all work performed by employees was “directly related” to
17 piece-rate activities and need not be separately compensated. *See* Schmidt Decl., ¶ 13. Socal
18 Framing also contends that this claim is not amenable to class treatment because the majority of
19 supposed non-productive activities are not logged or recorded in any way. *Id.* An unmanageable
20 series of mini-trials would then be required to determine whether a given activity was “directly
21 related” to the piece-rate work, and if not, how much time was spent on each activity for each
22 employee. *Id.* Plaintiff accordingly discounted Socal Framing’s potential liability by 75% for a
23 risk of non-certification, and by an additional 50% for risk of being unsuccessful on the merits,
24 for a projected total of \$49,411. *Id.*, ¶ 11.

25 **Unpaid Overtime Wages: \$212,981**

26 Because Socal Framing did not record employees’ actual hours worked, the exact amount
27 of overtime hours worked is unknown. *See* Schmidt Decl., ¶ 10. Socal Framing argues that
28 employees rarely, if ever, worked overtime hours, and were free to set their own schedule and

1 take breaks at their discretion. Schmidt Decl. ¶ 13. Based on Plaintiff's investigation, Plaintiff
2 believed he would be able to prove an average of at least one hour of overtime work per
3 workweek, but recognized that further discovery could lead to a lesser figure. *Id.*, ¶ 12. The
4 average hourly rate of pay for employees during the relevant time period was calculated from the
5 payroll records at \$30.67. *Id.* Because Socal Framing did not pay any overtime wages during the
6 Class Period, Plaintiff contends that Socal Framing is liable to putative class members for the
7 overtime premium above the piece-rate pay amount (calculated as 0.5 x the average hourly rate).
8 *Id.* If Plaintiff could prove two hours of overtime work per workweek, Socal Framing's potential
9 exposure for unpaid overtime wages would be \$1,064,903 (69,420 workweeks x 1 hour x \$15.34
10 average overtime premium). *Id.* However, Plaintiff recognizes that certification of this claim
11 would be challenging because individualized inquiries would be necessary to determine what
12 hours each employee actually worked on any given workday. *Id.*, ¶ 13. Plaintiff accordingly
13 discounted Socal Framing's potential liability by 60% for a risk of non-certification, and by an
14 additional 50% for the risk that this Court determines a lesser number of overtime hours were
15 actually worked during the relevant time period, for a projected total of \$212,981. *Id.*, ¶ 12.

16 **Rest Period Violations: \$1,009,199**

17 Plaintiff contends that Socal Framing's "Rest & Recovery" payments are illusory.
18 Schmidt Decl., ¶ 14. Employees were not actually separately compensated for rest breaks because
19 Socal Framing was simply reallocating a portion of the piece-rate wages and listing it as "Rest &
20 Recovery" pay but was not actually increasing the total wages paid. *Id.* Using the daily timesheets
21 provided for mediation, Plaintiff determined that, on average, employees worked 3.16 shifts per
22 workweek and would be entitled to at least one rest period for each of these shifts. *Id.* Because
23 only one rest period premium is recoverable per workday, Socal Framing's potential exposure for
24 its failure to separately compensate rest periods is \$6,727,992 (69,420 workweeks x 3.16 shifts
25 per workweek x \$30.67 average rest period premium). *Id.*

26 Socal Framing contends that it does separately compensate for rest periods and the
27 payments are displayed on employee wage statements as "Rest & Recovery." Schmidt Decl., ¶
28 15. Socal Framing maintains that, even if the Court were to find it liable for failing to separately

1 compensate rest periods, it would only liable for the unpaid rest period minutes themselves, since
2 it is undisputed that it authorized and permitted employees to take rest periods at their discretion.
3 *Id.* If accurate, this would reduce Plaintiff's liability for this claim by at least two-thirds. *Id.*
4 Although Plaintiff believes that the law supports his reading of the statute, Plaintiff is unaware of
5 any controlling precedent directly on point. *Id.* Socal Framing also argues that individualized
6 inquiries would be necessary to determine whether certain rest periods were actually taken by
7 employees on each shift, posing a serious obstacle to certification. *Id.* Plaintiff accordingly
8 discounted Socal Framing's potential liability by 40% for a risk of non-certification, and by an
9 additional 75% for the risk that Socal Framing could prevail on the merits outright, or at least
10 succeed in establishing a lower damages measures, for a projected total of \$1,009,199. *Id.*, ¶ 14.

11 **Meal Period Violations: \$168,200**

12 Plaintiff alleges that Socal Framing failed to provide full, 30-minute first meal periods
13 commencing before the end of the fifth hour of work. *See* Schmidt Decl., ¶ 16. Based on Plaintiff's
14 analysis of the timekeeping records, many of the daily timecards show first meal periods provided
15 at legally-compliant intervals. *Id.* However, as described above, Plaintiff alleges that these
16 timecards are not an accurate representation of the actual hours worked by employees. *Id.* Based
17 on conversations with Plaintiff and other putative class members, Plaintiff estimates that
18 approximately 20% of shifts were not provided with a legally-compliant first meal period. *Id.*
19 Plaintiff therefore calculates Socal Framing's liability for meal period violations as \$1,345,598
20 (69,420 workweeks x 3.16 shifts per week x 20% violation rate x \$30.67 average meal period
21 premium). *Id.*

22 Socal Framing contends Plaintiff's meal period claim is not suited for class certification,
23 since individual inquiries would be required to assess which employees were provided non-
24 compliant meal periods or missed meal periods and the reasons why a particular employee
25 recorded a non-compliant meal period or missed a meal period on a particular shift. Schmidt Decl.
26 ¶ 16. The fact that Plaintiff claims the written timecards are not accurate poses further
27 manageability obstacles. *Id.* Given these potential defenses, Plaintiff discounted Socal Framing's
28 maximum exposure by 75% for the risk of non-certification and 50% for the risk of being

1 unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of
2 \$168,200. *Id.*

3 **Wage Statement Violations: \$810,563**

4 According to the data produced by Socal Framing, there were 32,841 wage statements
5 issued to approximately 837 putative class members during the one-year relevant time period.
6 Schmidt Decl., ¶ 19. Socal Framing’s potential exposure for wage statement penalties is therefore
7 \$3,242,250 (837 “initial” violations x \$50.00 initial violation rate + 32,004 “subsequent”
8 violations x \$100.00 subsequent violation rate). *Id.*

9 Socal Framing argues that Plaintiff’s meal and rest period claims cannot support
10 derivative wage statement penalties. Schmidt Decl. ¶ 21; *see Naranjo, supra*, 40 Cal.App.5th at
11 474; *see also Jones v. Spherion Staffing LLC* (C.D. Cal., Aug. 7, 2012) 2012 WL 3264081, at *8-
12 9 (granting motion for judgment on the pleadings because plaintiffs “cannot advance a claim for
13 noncompliant wage statements or failure to pay wages due upon termination based solely on
14 alleged violations of section 226.7.”) Socal Framing also argues that employees could not show
15 that they “suffer[ed] injury,” as required by Labor Code section 226(e). *Id.* Plaintiff accordingly
16 discounted Socal Framing’s potential liability by 50% for a risk of non-certification, and by an
17 additional 50% for the risk of losing on the merits or failing to prove violations were ‘knowing
18 and intentional,’ for a projected total of \$810,563. *Id.*, ¶ 19.

19 **Waiting Time Penalties: \$290,016**

20 There are approximately 394 putative class members who separated their employment
21 with Socal Framing during the three-year relevant time period. Schmidt Decl., ¶ 20. Socal
22 Framing’s potential exposure for waiting time penalties is therefore \$2,900,155 (394 former
23 employees x 30.67 average hourly rate x 8 hours per workday x 30 days of waiting time penalty).
24 *Id.*

25 Socal Framing maintains that waiting time penalties are not appropriate to the extent they
26 are derivative of meal and rest period claims as these claims cannot support such penalties.
27 Schmidt Decl. ¶ 21; *see Naranjo, supra*, 40 Cal.App.5th at 474; *see also Ling, supra*, 245
28 Cal.App.4th at 1261. Socal Framing 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. Schmidt Decl., ¶ 21. Plaintiff accordingly discounted Socal Framing’s potential liability by 50% 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 \$290,016. *Id.*, ¶ 20.

PAGA Penalties: \$328,410

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); Schmidt Decl., ¶ 22. 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). Schmidt Decl., ¶ 22.

The success of Plaintiff’s PAGA claim is wholly dependent upon the success of his underlying claims occurring within the one-year relevant time period. Schmidt Decl., ¶ 22. Assuming that Plaintiff could prove at least one substantive violation in each pay period for the 1-year statute of limitations, Socal Framing’s potential exposure for PAGA civil penalties is \$3,284,100 (32,841 pay periods x \$100.00 “initial” violation rate). *Id.*

However, these penalties derived from the underlying wage and hour violations discussed above, which Socal Framing 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

1 of its underlying claims). Plaintiff also recognizes that the Court has discretion to reduce any
2 award of PAGA penalties if it views them as duplicative. *See* Labor Code § 2699(e)(2); *Thurman*,
3 *supra*, 203 Cal.App.4th at 1135; *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK
4 (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8
5 million to \$500,000). Socal Framing specifically relied on the then-recent decision in *Carrington*
6 *v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, in which the Court of Appeal reduced an award
7 of PAGA penalties from the requested \$70 million to \$150,000—or 0.21% of the maximum
8 recoverable amount—and stated that this reduction was warranted because imposing the
9 maximum penalty would be “unjust, arbitrary, and oppressive” based in part because the court
10 found the violations were minimal. *Carrington*, 30 Cal.App.5th at 517; Schmidt Decl., ¶ 23.
11 Plaintiff accordingly discounted Socal Framing’s potential liability by 50% for the risk of
12 manageability issues preventing the case from proceeding on a representative basis, and by an
13 additional 80% to account for the potential for this Court to reduce the civil penalties, for a
14 projected total of \$328,410. *Id.*, ¶ 22.

15 Assuming Plaintiff would prevail on all of these claims for the entire Class Period,
16 Plaintiff calculates the total value of Socal Framing’s violations at \$18,960,282. Schmidt Decl.,
17 ¶ 24. Taking Socal Framing’s defenses into account and using the reduced figures for each of the
18 claims described above, Plaintiff predicts that a realistic classwide recovery would be
19 approximately \$2,868,778. *Id.* This Settlement provides a recovery to the Settlement Class of
20 \$1,475,000.00, which is approximately 51.42% of Plaintiff’s projected potential recovery, while
21 avoiding the further expense and serious risk of proceeding towards class certification and trial.
22 *Id.* Taking into account Socal Framing’s limited financial resources, the risk of non-certification
23 and failure to prevail on the merits, as well as the Court’s power to reduce the civil penalties, the
24 proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See e.g.*,
25 *Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily
26 approving wage and hour class action settlement, stating, “[a]lthough 15% represents a modest
27 fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for
28 the Court to grant preliminary approval given the merits of Plaintiff’s claims.”) Preliminary

1 approval is appropriate since the Settlement will provide tangible monetary relief to Settlement
2 Class members without the uncertainty, delay, and additional expense of further litigation.

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

4 “Parties represented by competent counsel are better positioned than courts to produce a
5 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
6 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Plaintiff is represented by
7 competent and experienced counsel who possess extensive experience litigating wage and hour
8 class actions from both the plaintiff and defense side. *See* Schmidt Decl., ¶¶ 2-6; Declaration of
9 Paul K. Haines (“Haines Decl.”), ¶ 2-8; and Declaration of Andrew J. Rowbotham (“Rowbotham
10 Decl.”), ¶¶ 2-5. Plaintiff’s counsel has been appointed as class counsel in numerous cases alleging
11 similar claims. *Id.* Plaintiff’s counsel conducted an extensive review of Socal Framing’s records
12 produced for mediation and drew on their extensive experience in similar cases to assess the
13 strengths and weaknesses of this case. *See* Schmidt Decl., ¶ 25. The Settlement was reached with
14 the input and assistance of the Mark S. Rudy, an experienced wage and hour class action mediator.
15 *Id.*, ¶ 26. This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*,
16 168 Cal.App.4th at 130.

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

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

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

24 The proposed Settlement will provide substantial compensation for contested claims and
25 derivative penalties, and the overall average payment of \$655.79 greatly exceeds averages
26
27
28

1 achieved in other wage and hour class action settlements.⁶ The proposed Settlement falls within
2 the range of possible approval and Plaintiff requests that this Court approve the Class Notice to
3 be mailed to Settlement Class members. The Court will again have the opportunity to assess the
4 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
5 opt-out or object to it.

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

8 This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar,*
9 *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial records which
10 were analyzed by Plaintiff's counsel, arm's length negotiations by counsel; mediation with a
11 respected and experienced wage and hour class action mediator; and additional time spent
12 negotiating and finalizing the terms of the long-form Settlement Agreement. *See Schmidt Decl.*,
13 ¶¶ 25-26. The proposed Settlement is thus entitled to an initial presumption of fairness. *See*
14 *Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

23 The proposed Settlement Class satisfies the criteria for certification of a settlement class
24 under California law because: (1) the Settlement Class members are so numerous that joinder
25 would be impractical; (2) common questions of law and fact predominate over individual
26 questions such that class certification is the most efficient and desirable way to maintain this

27 ⁶ *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).

litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class members; and (4) Plaintiff and his counsel will fairly and adequately represent the interests of the absent 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 employees of Socal Framing who worked in California between April 23, 2015, and the date of preliminary approval of the settlement. According to Socal Framing's records, the Settlement Class consists of approximately 1,371 individuals, rendering it impracticable to gather all the Settlement Class members and bring them before the Court. *See* Schmidt Decl., ¶ 28. 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 Socal Framing's piece-rate compensation system, including an alleged failure to pay all minimum and overtime wages, failure to separately compensate for rest periods, and failure to provide all meal periods. 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.”); *Faulkinbury v. Boyd & Assoc., Inc.* (2013) 216 Cal.App.4th 220, 240 (certifying rest period claims); *Bradley v. Networkers Int'l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying rest period claims); *Bluford, supra*, 216 Cal.App.4th at 871 (reversing denial for certification of rest period claim).

3. The Claims of the Named Plaintiff Are Typical

The typicality requirement is satisfied when the class representative has claims that are

1 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
2 Cal.App.3d 1341, 1347. Plaintiff's claims are typical of those held by the Settlement Class
3 members. Like other Settlement Class members, Plaintiff was employed by Socal Framing in
4 California during the Class Period. *See* Declaration of Steve Diab Qawas ("Qawas Decl."), ¶ 2.
5 Plaintiff was not paid for time spent performing tasks not compensated via piece-rate, was not
6 paid overtime wages, was not separately compensated for rest periods, and was not provided all
7 meal periods. *Id.* Plaintiff was impacted by the same challenged policies that allegedly injured the
8 Settlement Class as a whole. Plaintiff was also subject to the same classwide defenses forwarded
9 by Socal Framing. Plaintiff is therefore typical of the Settlement Class.

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

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

22 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
23 **CLASS NOTICE**

24 This Court should order distribution of the proposed Class Notice to the Settlement Class
25 members by first class mail, postage prepaid, using the last known mailing address information
26 provided by Socal Framing. This manner of giving notice is the "best notice practicable" under
27 the circumstances because it provides "individual notice to all members who can be identified
28 through reasonable effort." *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Plaintiff
proposes that the Settlement be administered by Phoenix Settlement Administrators, an
experienced class action settlement administrator. *See* Declaration of Jodey Lawrence and

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

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

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

21 **V. CONCLUSION**

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

25 Dated: January 21, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

26
27 By: _____


Fletcher W. Schmidt
Attorneys for Plaintiff