

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

Attorneys for Plaintiff Inskeep, Settlement  
Class Members, and Aggrieved Employees

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

WILMER BERNAL and AARON INSKEEP,  
as individuals and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

HORIZON LIGHTING, INC., a California  
corporation; and DOES 1 through 100,

Defendants.

Case No. 30-2020-01125687-CU-OE-CXC

**CLASS ACTION**

*[Assigned for all purposes to the Honorable  
Randall J. Sherman, Dept. CX-105]*

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

Date: April 30, 2021  
Time: 10:00 a.m.  
Dept.: CX-105

**Reservation No. 73500488**

Complaint Filed: January 21, 2020  
Trial Date: None set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 30, 2021 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department CX-105 of the above-entitled Court, located at 751 W. Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Aaron Inskeep (“Plaintiff Inskeep”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the proposed Settlement Class, which includes the following two subclasses:
  - a. **Non-Release Sub-Class**: All current and former non-exempt employees who worked for Defendant Horizon Lighting, Inc. (“Horizon”) in California at any time from January 21, 2016 until the date of preliminary approval of the Settlement (the “Class Period”), and who did not enter into an individual settlement agreement and release with Horizon pursuant to Horizon’s *Pick Up Stix* campaign.
  - b. **Release Sub-Class**: All current and former non-exempt employees who worked for Horizon in California at any time during the Class Period and who did sign an individual settlement and release pursuant to Horizon’s *Pick Up Stix* campaign.
3. Preliminary appointment of Plaintiff Inskeep as Class Representative;
4. Preliminary appointment of Paul K. Haines and Tuvia Korobkin of Haines Law Group, APC as Class Counsel;
5. Appointment of Simpluris, Inc., as the third-party Settlement Administrator for mailing notices;
6. Approval of the proposed Class Notice, and an order that it be disseminated to the proposed Class as provided in the Settlement Agreement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award an amount for incentive award to the Class Representative, and attorneys’ fees and costs to Class Counsel.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declarations of Paul K. Haines and Tuvia Korobkin and exhibits attached thereto; the declaration of Aaron Inskeep; the declaration of Kimberly Sutherland of Simpluris, Inc. and

1 exhibits attached thereto; the declaration of Kathryn Marr of proposed *cy pres* recipient  
2 Community Legal Aid Social; the pleadings and other papers filed in this action; and any further  
3 oral or documentary evidence or argument presented at the time of hearing.

4  
5 Dated: March 30, 2021

Respectfully Submitted,  
HAINES LAW GROUP, APC

6  
7 By:



Paul K. Haines  
Attorneys for Plaintiff Inskeep, Settlement Class  
Members, and Aggrieved Employees

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### **Federal Cases**

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| <i>Naranjo v. Spectrum Security Services</i> , No. S258966 (review granted Jan. 2, 2020).....   | ..7        |
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| 22 | No. C 05-4526 MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011).....                  | 12     |
| 23 | <i>Fleming v. Covidien, Inc.</i>                                                  |        |
| 24 | No. ED-CV-10-1487-RGK(OPx), 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011) ...         | 8, 21  |
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| 26 | 2013 WL 3541217 (N.D. Cal. 2013) .....                                            | 12     |
| 27 | <i>Garcia v. Wal-Mart Stores, Inc.</i> ,                                          |        |
| 28 | No. 16-01645 TJH, 2018 WL 4959824 (C.D. Cal. Sept. 28, 2018) .....                | 24     |

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**Other Sources**

4 *Newberg on Class Actions*, § 11:24-25 (4th Ed. 2013)..... 22

*Manual for Complex Litigation*, § 30.41 (3rd Ed. 1995)..... 22

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Aaron Inskeep (“Plaintiff”)<sup>1</sup> seeks preliminary approval of a classwide settlement  
4 reached between him and Defendant Horizon Lighting, Inc. (“Horizon” or “Defendant”). In this  
5 lawsuit, Plaintiff alleges that Horizon failed to pay non-exempt employees all required overtime  
6 wages due to Horizon’s allegedly unlawful alternative workweek schedule; failed to pay all  
7 minimum wages owed due to its alleged failure to pay for all travel time; failed to pay the required  
8 prevailing wage on certain public works projects; failed to provide all required meal periods; and  
9 failed to authorize and permit all required rest periods. Based on these allegations, Plaintiff also  
10 brings derivative claims for Horizon’s alleged failure to furnish accurate itemized wage  
11 statements and alleged failure to timely pay all final wages, as well as a derivative claim for civil  
12 penalties under the Private Attorneys General Act (“PAGA”).

13 Plaintiff now respectfully requests that the Court preliminarily approve this common-  
14 fund, non-reversionary class action settlement,<sup>2</sup> in which Horizon has agreed to pay \$1,400,000  
15 to Settlement Class members, **in addition to** \$28,200 it previously paid Settlement Class members  
16 through individual settlements, for a total settlement payment of \$1,428,200. The Settlement  
17 Class includes approximately 198 employees, consisting of the following subclasses:

18 **Non-Release Sub-Class:** All current and former non-exempt employees who  
19 worked for Horizon in California at any time from January 21, 2016 until the date  
20 of preliminary approval of the Settlement (the “Class Period”), and who did not  
enter into an individual settlement agreement and release with Horizon pursuant to  
Horizon’s *Pick Up Stix* campaign.

21 **Release Sub-Class:** All current and former non-exempt employees who worked for  
22 Horizon in California at any time during the Class Period and who did sign an  
individual settlement and release pursuant to Horizon’s *Pick Up Stix* campaign.

23 As explained below, just over one month after this lawsuit was originally filed, Horizon  
24 offered its employees individual settlement agreements to extinguish the claims brought on their  
25 behalf in this lawsuit. Each employee was offered a payment of between \$100 and \$500, based

26 <sup>1</sup>This case was originally filed by Wilmer Bernal. As the Court is aware, after mediation a conflict arose  
27 whereby Plaintiff’s counsel did not feel they could represent both Mr. Bernal and the putative class, as his  
28 interests no longer aligned with the class. Plaintiff’s counsel brought a motion to withdraw as Mr. Bernal’s  
counsel, which the Court granted in November 2020. In the interim, Mr. Inskeep joined as a named plaintiff.

<sup>2</sup> The Stipulation of Settlement (“Settlement”) is attached as Exhibit 1 to the Declaration of Paul K. Haines.  
The Class Notice and Notice of Settlement Award are attached as Exhibits A and B to the Settlement.

on how long the employee had been employed by Horizon as of February 29, 2020, the date the settlement agreements were offered. Horizon represents that approximately 85 employees opted to sign the agreements and receive the offered compensation. Those employees comprise the “Release Sub-Class.” The approximately 113 employees who did not sign individual releases comprise the “Non-Release Sub-Class.” When taking into account the Settlement fund as well as the funds already paid by Horizon for individual releases, Settlement Class members will be receiving average payments of **more than \$4,442.59** as a direct result of this litigation.

The Settlement was only reached after a full-day mediation was held with the Hon. Peter D. Lichtman (Ret.), a founding judge of the Los Angeles Superior Court’s complex litigation program and a respected wage and hour class action mediator. In connection with mediation, Horizon provided Plaintiff’s counsel with extensive informal discovery, including all timekeeping and payroll records for a sampling of the putative class period; dates of employment and other relevant data for each employee; relevant data regarding Horizon’s prevailing wage projects; examples of the *Pick Up Stix* agreements signed by putative class members; and other data and information. Horizon also produced its employee handbooks, relevant wage and hour policies, and other documents. A full-day mediation was conducted on August 24, 2020. At the end of mediation, Judge Lichtman made a mediator’s proposal which was later accepted by the parties and memorialized in a Memorandum of Understanding. Over the following months the parties negotiated and finalized the long-form Settlement.

Settlement Awards will be calculated as follows: First, each Non-Release Sub-Class member will receive an amount equal to what they would have received as part of the *Pick Up Stix* process, based on their tenure with Horizon prior to February 29, 2020. Second, all Settlement Class members will receive a *pro rata* payment based on the number of workweeks they were employed by Horizon during the Class Period. Finally, Settlement Class members who were employed by Horizon at any time during the PAGA Period will receive a *pro rata* share of the \$12,500 “PAGA Amount,” based on the number of pay periods worked by each eligible Settlement Class member during that time period.

///

1 **II. SUMMARY OF THE LITIGATION**

2 **A. THE PARTIES**

3 Horizon installs and maintains electrical and lighting systems for commercial properties,  
4 HOAs, and retail shopping centers throughout Southern California and the San Francisco Bay  
5 Area. See Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10. Plaintiff and Settlement Class  
6 members worked as non-exempt employees for Horizon in California during the Class Period. *Id.*

7 **B. PLAINTIFF’S CLAIMS AND HORIZON’S DEFENSES**

8 **1. Unpaid Overtime Claim Based on Unlawful Alternative Workweek**

9 Plaintiff alleges that, until February 2020, Horizon generally required its employees to  
10 work pursuant to a 4/10 alternative workweek schedule (AWS), under which employees worked  
11 four 10-hour workdays and were not paid overtime for hours worked between 8.01 and 10 hours.  
12 Haines Decl., ¶ 20. Although this was pursuant to a purported AWS election by Horizon  
13 employees, Plaintiff alleges that Horizon failed to hold a new ratification election after the work  
14 unit that conducted the original election increased by 50%, as required under Wage Order 16, §  
15 3(C)(6). *Id.* Consequently, Plaintiff contends Horizon owes those employees overtime wages for  
16 hours worked between 8.01-10.0 hours on each shift the AWS was in effect during the Class  
17 Period. *Id.* Plaintiff further alleges that Horizon failed to pay double-time on all shifts over 12.0  
18 hours as required by California law and instead only paid double-time on shifts over 14 hours. *Id.*

19 Horizon argues its AWS was properly enacted, that it was instituted for the benefit of its  
20 workers, that its workers preferred the 4/10 schedule since it provided them an extra day off each  
21 week and otherwise afforded them flexibility, and that all workers affirmatively agreed to the  
22 AWS upon hire, essentially ratifying the AWS and eliminating the need for additional elections.  
23 Haines Decl., ¶ 20. Horizon further contends it has always paid its employees properly for  
24 overtime and double-time, consistent with California law. *Id.* Horizon also asserts this claim  
25 would not be amenable to class certification, as it would require individualized inquiries into  
26 whether each employee worked an AWS shift, how much (if any) overtime and/or double-time  
27 work was performed, and whether the employee was paid for their overtime hours worked. *Id.*

28 ///

1                                   **2. Unpaid Wages for Travel Time**

2           Horizon employees frequently work at multiple jobsites in one workday. Haines Decl., ¶

3   21. Plaintiff alleges that, when an employee’s last jobsite of the day is outside their home county,

4   Horizon requires the employee to clock out when they reach their home county line and fails to

5   pay them for travel time from their home county line to their home. *Id.* Plaintiff further alleges

6   that when an employee’s final jobsite of the day is in their county of residence, Horizon does not

7   pay for any travel time from the last jobsite. *Id.* Plaintiff alleges that because Horizon requires

8   employees to work at various jobsites, the travel time is at Horizon’s request and must be paid. *Id.*

9           Horizon argues that travel time from the last jobsite of the day to the employee’s home is

10   non-compensable, “ordinary commute time” since employees are not subject to Horizon’s control

11   during such time. *Id.*; see also *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 587 (2000)

12   (distinguishing between “travel that the employer specifically compels and controls [which is

13   compensable]...and an ordinary commute that employees take on their own [which is not

14   compensable]); *Hernandez v. Pac. Bell Telephone Co.*, 29 Cal.App.5th 131, 137 (2018) (holding

15   commute time between workers’ home and worksites not compensable because employee not

16   subject to employer control). Horizon asserts it has no obligation even to pay employees from the

17   last jobsite until the employee reaches his or her home county line, and that as a result, employees

18   are frequently *overpaid* as a result of Horizon’s generous policy. *Id.* Horizon further contends this

19   claim is not suited for class certification, as it requires individualized inquiries into how much

20   travel time an employee was paid (or not paid) on each shift, and where the last jobsite was in

21   relation to their residence on each shift, resulting in an unmanageable series of mini-trials. *Id.*

22                                   **3. Unpaid Wages for Traveling Between Jobsites During Meal Periods**

23           Plaintiff alleges that employees often used their meal periods to travel between jobsites

24   rather than take a duty-free meal period, resulting in additional unpaid wages. Haines Decl., ¶ 22.

25   Plaintiff contends this is evident from employee time records, which often reflect employees

26   beginning their meal periods at one jobsite and ending them at another jobsite. *Id.*

27           Horizon asserts it consistently provides employees with 30-minute, off-duty meal periods

28   each workday, and therefore, any work-related travel during meal periods is not a result of any

Horizon policy or practice but is instead the choice of the individual employee, and that moreover, Horizon had no reason to believe that such travel was taking place and therefore cannot be liable. *Id.*; see also *Brinker Restaurant Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1040 n.19 (2012) (observing that employer does not need to pay for work performed during a meal period unless it “knew or reasonably should have known that the worker was working through the authorized meal period”). Horizon further argues that just because an employee’s time records show an employee beginning and ending a meal period at different jobsites does not mean the employee used the meal period to travel between jobsites; it is equally plausible that that time entry indicates the employee began traveling to the second jobsite *after the end* of the meal period, not *during* the meal period. *Id.* Finally, Horizon argues this claim is not amenable to class certification because it would require individualized inquiries into whether each employee traveled between jobsites during meal periods, and why the employee did so, on each shift reflecting a potential violation. *Id.*

#### **4. Meal Period Claim**

Plaintiff alleges employees frequently took meal periods that were short (less than 30 minutes) or late (starting after the end of the fifth hour of work), due to the workload imposed on them by Horizon. Haines Decl., ¶ 23. Plaintiff also alleges that, as noted above, employees often took meal periods while they were traveling between jobsites and thus were not off-duty. *Id.* Plaintiff further alleges that Horizon often failed to provide second meal periods on shifts over 10.0 hours. *Id.*; see also *Brinker*, 53 Cal.4th at 1034-49 (discussing meal period requirements).

Horizon contends its written meal period policy is legally compliant, and that it has always provided employees an *opportunity* to take legally compliant meal periods, including second meal periods, consistent with its policy. Haines Decl., ¶ 23. Horizon further contends that under *Brinker* it is only required to “provide” meal periods, not “ensure” they are taken, and that, as stated, it has always done so. *Id.*; *Brinker*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Any failure to take compliant meal periods was a result of employee choice, Horizon asserts, rather than a policy or practice of Horizon. *Id.* Horizon further argues there is no reason employees would need to take lunch while traveling between jobsites, and, as noted above, just because an employee time records show a meal period beginning in one location and ending in another location does not

mean the employee traveled during the meal period. *Id.* Finally, Horizon argues the meal period claim is not suited for class certification, since individual inquiries would be needed to assess which employees missed or took non-compliant meal periods, how many meal periods were missed or non-compliant, and the reason why an employee did not take a compliant meal period on each particular shift. *Id.*

## **5. Rest Period Claim**

Plaintiff asserts that Horizon failed to authorize and permit legally compliant rest periods, because it frequently required employees to remain on the work premises during rest periods in violation of California law. Haines Decl., ¶ 24.; *see also Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th 257, 272 (2016) (during rest periods employers must “relieve their employees of all work-related duties and employer control...”).

As with the meal period claim, Horizon asserts its rest period policy complies with California law, and that it has always authorized and permitted rest periods, consistent with its policy. Haines Decl., ¶ 24. Horizon further asserts that the *Augustus* decision rejected Plaintiff’s “on premises” theory when it observed that “one would expect that employees will ordinarily have to remain onsite or nearby. This constraint, which is of course common to all rest periods, is not sufficient to establish employer control.” *Augustus*, 2 Cal.5th at 270. In any event, Horizon contends, employees are always allowed to leave the work premises during rest periods. Haines Decl., ¶ 24. Finally, Horizon argues this claim is not amenable to class treatment, as individual inquiries would be required to determine how many (if any) rest periods each employee failed to take, the reasons why each employee failed to take a rest period on a particular shift, and whether each employee was in fact able to leave the premises during each particular rest period. *Id.*

## **6. Prevailing Wage Claim**

Plaintiff alleges that until February 2020, Horizon failed to pay the prevailing wage on public works projects, which accounted for a small portion of Horizon projects during the Class Period. Haines Decl., ¶ 25. Specifically, and based on interviews of putative class members, Plaintiff estimates that Horizon underpaid employees by up to \$28.86 per hour on public works projects, when comparing what employees were paid on such projects prior to February 2020 and

1 what they were paid after February 2020, when Horizon began paying the prevailing wage. *Id.*  
2 For its part, Horizon argues it has always paid employees properly on public works projects, and  
3 any claim to the contrary is based on employees’ misunderstanding of their wage classification  
4 (journeyman level, apprentice, etc.). Horizon further asserts that this claim is not amenable to  
5 class certification, as individual inquiries would be required to determine whether each employee  
6 on each prevailing wage project was paid the proper prevailing wage, and if they were underpaid,  
7 by how much, which would devolve into a series of unmanageable min-trials. Finally, Horizon  
8 points out that, as noted above, prevailing wage projects account for less than 2% of workweeks  
9 worked during the Class Period, and thus potential damages for any employee are *de minimis*. *Id.*

10 **7. Claims Under Labor Code §§ 203, 226, and the PAGA**

11 As a result of these alleged wage and hour violations, Plaintiff asserts that Horizon failed  
12 to comply with its final payment and wage statement obligations, in violation of Lab. Code §§  
13 203 and 226, respectively. Finally, Plaintiff seeks civil penalties under PAGA, based on the  
14 aforementioned claims. Haines Decl., ¶¶ 26-28.

15 Horizon asserts it has strong defenses to the waiting time claim because there exist good-  
16 faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. *See* 8 Cal.  
17 Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of  
18 waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good  
19 faith dispute” precluded imposition of waiting time penalties). Horizon further contends that  
20 Plaintiff’s meal and rest period claims cannot support a claim for waiting time penalties or wage  
21 statement penalties, an issue which is set to be decided by the California Supreme Court in  
22 *Naranjo v. Spectrum Security Services*, No. S258966 (review granted Jan. 2, 2020)).

23 Horizon further contends any alleged wage statement violations could not be shown to be  
24 “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show  
25 he or other employees “suffer[ed] injury” due to alleged wage statement violations, as required  
26 by Lab. Code § 226(e); and that wage statements always accurately reflected amounts *paid* to  
27 employees. Haines Decl., ¶ 27; *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th  
28 1308, 1336-37 (2018) (“The purpose of section 226 is to ‘document the paid wages to ensure the

employee is fully informed regarding the calculation of those wages.”) (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

Finally, Horizon asserts that Plaintiff’s PAGA claim fails because his underlying claims fail. *See Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Horizon further maintains that given its good-faith defenses, the Court would utilize its discretion to drastically reduce any PAGA civil penalties. Haines Decl., ¶ 28; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because “the evidence showed...defendants took their obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at \*4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because the employer was “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

**C. THE LAWSUIT, HORIZON’S PICK UP STIX CAMPAIGN, AND RELEASES AND ARBITRATION AGREEMENTS OBTAINED**

This case was originally filed by Wilmer Bernal, through Plaintiff’s counsel, on January 21, 2020. Haines Decl., ¶ 11. About one month later, in late February 2020, Horizon conducted a “Pick Up Stix” campaign<sup>3</sup> in which it offered individual settlement payments directly to putative class members in exchange for a release of claims, including the claims alleged in this lawsuit. The offered settlement payments were calculated based on how long each employee had worked for Horizon as of February 29, 2020. Employees who had worked for Horizon for up to 1 year were offered \$100, employees who had worked for Horizon 1-3 years were offered \$250, and employees who worked for Horizon for more than 3 years were offered \$500.

Horizon represents that 85 putative class members signed the *Pick Up Stix* agreements. In total, Horizon paid \$28,200 to those employees in exchange for releases. Haines Decl., ¶ 11; *see*

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<sup>3</sup> *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009) held that an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members receive compensation in exchange for a release of claims for past unpaid wages and penalties.

1 also Settlement, §§ 1, 5. As a result, Horizon contends the claims of these employees, including  
2 the claims raised in this lawsuit, were released by the *Pick Up Stix* agreements.

3 The *Pick Up Stix* agreements also contained arbitration agreements with express class  
4 action waivers. Thus, in addition to the releases obtained through its *Pick Up Stix* campaign and  
5 its other defenses described above, Horizon maintains the arbitration agreements signed by a large  
6 segment of employees would further restrict Plaintiff's ability to maintain his classwide claims.

7 **D. DISCOVERY AND MEDIATION**

8 In preparation for mediation, the parties engaged in extensive informal discovery,  
9 including Horizon's production to Plaintiff's counsel of its relevant wage and hour policies; a  
10 class list containing each putative class member's hire date, termination date, whether they had  
11 signed the *Pick Up Stix* release, and other information, which Plaintiff's counsel's retained expert  
12 used to calculate workweeks, pay periods, and other pertinent information; timekeeping and  
13 payroll records for all putative class members for approximately 18% of the putative class period;  
14 the total workweeks worked and other information regarding Horizon's prevailing wage projects;  
15 and other relevant data and documents. Haines Decl., ¶ 13. Along with their retained expert  
16 economist who holds a Ph.D. in economics, Plaintiff's counsel conducted a comprehensive  
17 analysis of the data produced by Horizon and developed damages models based on that analysis.  
18 *Id.* This discovery allowed the parties to assess the merits of the claims alleged in the lawsuit, the  
19 potential value of those claims, as well as Horizon's defenses. *Id.*

20 A full-day mediation was held on August 24, 2020 with Judge Lichtman. Haines Decl., ¶  
21 14. The parties vigorously debated their opposing legal positions, the likelihood of certification  
22 of the claims alleged, and the legal bases for the claims and defenses. *Id.* At the conclusion of the  
23 mediation, Judge Lichtman made a mediator's proposal for classwide resolution. *Id.*

24 **E. PLAINTIFF INSKEEP JOINS AS NAMED PLAINTIFF**

25 Shortly after the mediation, the parties stipulated to the filing of a Second Amended  
26 Complaint adding Plaintiff Inskeep, who had previously retained Plaintiff's counsel months prior.  
27 Haines Decl., ¶ 15. The Court granted the stipulation, and on September 1, 2020, the Second  
28 Amended Complaint was filed. *Id.*

As discussed in Plaintiff’s counsel’s previously-filed Motion to Withdraw, based on privileged communications between Mr. Bernal and Plaintiff’s counsel concerning mediation, Plaintiff’s counsel believed that a conflict had arisen between Mr. Bernal and the putative class, such that Plaintiff’s counsel could not continue to represent both Mr. Bernal and the putative class. Haines Decl., ¶ 16. Consequently, Plaintiff’s counsel filed a Motion to Withdraw as Mr. Bernal’s counsel, which the Court granted in November 2020. *Id.*

### **III. THE PROPOSED SETTLEMENT**

After Plaintiff Inskeep was added as a named plaintiff, the parties accepted the proposal made by Judge Lichtman and memorialized their agreement in a binding Memorandum of Understanding. Haines Decl., ¶ 17. Over the following months, the parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement now before the Court. *Id.*

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

Under the Settlement, Horizon will pay a non-reversionary Gross Settlement Amount of \$1,400,000.00. *See* Settlement, § 3. As noted, this is *in addition to* the \$28,200 Horizon previously paid to Settlement Class members, resulting in a total payment of \$1,428,200.00. No Settlement Class member will need to submit a claim to reap financial benefit from the Settlement. All Settlement Class members will automatically receive a payment (“Settlement Award”) unless they affirmatively opt-out. The monetary terms of the settlement are summarized below:

|                                                                                               |                     |
|-----------------------------------------------------------------------------------------------|---------------------|
| • Gross Settlement Amount (“GSA”):                                                            | \$1,400,000.00      |
| • Minus Court-approved attorneys’ fees (one-third of GSA plus \$9,400.00 in “catalyst fees”): | \$476,066.67        |
| • Minus Court-approved, verified costs (up to):                                               | \$20,000.00         |
| • Minus Court-approved incentive award:                                                       | \$7,500.00          |
| • Minus Amount set aside as PAGA penalties:                                                   | \$50,000.00         |
| • <u>Minus estimated settlement administration costs:</u>                                     | <u>\$7,500.00</u>   |
| Net Settlement Amount (“NSA”):                                                                | \$838,933.33        |
| • PLUS 25% of PAGA penalties to Settlement Class:                                             | \$12,500.00         |
| <b>Total Amount Paid to Settlement Class Members:</b>                                         | <b>\$851,433.33</b> |

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

After deducting Plaintiff’s incentive award, administration costs, reasonable attorneys’ fees and costs, and the LWDA payment, Settlement Class members will receive at least \$851,433.33, *in addition to* the \$28,200 previously paid by Horizon, for a total of \$879,633.33. Haines Decl., ¶ 19; *see also* Settlement, § 3. As noted, there are approximately 198 Settlement

Class members. Thus, when taking into account the \$28,200 already paid, Settlement Class members will have received average payments of \$4,442.59 as a direct result of this litigation.

Settlement payments will be calculated as follows. First, Non-Release Sub-Class members will receive a payment equal to what they would have received under Horizon’s *Pick Up Stix* process, based on how long they worked for Horizon as of February 29, 2020: Non-Release Sub-Class members who worked less than 1 year will receive \$100, those who worked for 1-3 years will receive \$250, and those who worked for over 3 years will receive \$500. *See* Settlement, § 4.B.i. After these amounts are deducted from the NSA, the remainder of the NSA will be divided among all Settlement Class members *pro rata* based on the number of workweeks employed by Horizon during the Class Period. *Id.*, § 4.B.ii. Finally, the \$12,500 PAGA Amount will be distributed *pro rata* among all Settlement Class members who worked for Horizon from January 21, 2019 through the end of the Class Period, based on the number of pay periods worked during that time period. *Id.*, § 4.B.iii.

Class Data will be provided to the Settlement Administrator within 20 business days of preliminary approval, and Notices will be mailed to Settlement Class members within 10 business days thereafter. *See* Settlement, §§ 9.A-B. Settlement Class members will have 60 days from mailing to opt-out or object, thereby providing ample time to review the Notice without unduly delaying the settlement. *Id.*, §§ 9.C-D.

Settlement Class members who do not opt out of the Settlement will be bound its terms, and will release all claims against Horizon that were asserted in, or could have been asserted based on the facts alleged in, the operative Complaint, for the duration of the Class Period. *See* Settlement, § 2.A. Plaintiff has additionally agreed to a general release of all claims, known or unknown, against Horizon, subject to a waiver of Civil Code § 1542. *Id.*, § 2.B.

## **2. The Settlement Provides Reasonable Incentive and PAGA Payments**

As part of the Settlement, Plaintiff will apply for an Incentive Award in the amount of \$7,500 for his services to the Settlement Class. Haines Decl., ¶ 32; *see also* Settlement, § 3.C.3 “[I]ncentive awards are fairly typical in class action cases...and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational

1 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th  
2 1380, 1393-94 (2010). As will be fully briefed at final approval, Plaintiff’s requested incentive  
3 award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement  
4 Class, including providing substantial factual information to counsel, identifying potential  
5 witnesses, attending meetings with counsel to discuss the claims and theories at issue in the  
6 litigation, and otherwise actively participating in the prosecution of his claims. *Id.* Plaintiff  
7 respectfully submits that his requested incentive award is well within the range of approval and  
8 is in line with enhancement payments approved in similar class action settlements. *See, e.g.,*  
9 *Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 90228 (E.D. Cal. Jan. 11,  
10 2011) (approving \$7,500 incentive awards each to 5 named plaintiffs in \$505,058.60 settlement).

11 The parties have also agreed to designate \$50,000.00 as PAGA penalties, of which  
12 \$37,500.00 will be paid to the LWDA, consistent with the PAGA’s requirement that 75% of such  
13 penalties be allocated to the LWDA, with the remaining 25% of penalties allocated to aggrieved  
14 employees (*see* Lab. Code § 2699(i)). *See* Settlement, § 3.C.4. Plaintiff submits this allocation to  
15 the LWDA is appropriate in light of other settlements allocating penalties to the LWDA. *See,*  
16 *e.g., Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645 (N.D. Cal. 2011) (approving \$7,500  
17 payment to LWDA out of \$6.9 million settlement); *Lazarin v. Pro Unlimited, Inc.*, 2013 WL  
18 3541217 (N.D. Cal. 2013) (approving \$7,500 payment to LWDA from \$1.25 million settlement).

19 **3. The Settlement Provides for Reasonable Attorneys’ Fees and Costs Under**  
20 **the Catalyst Theory**

21 Plaintiff’s counsel will apply for an attorneys’ fee award of \$476,066.67, which amounts  
22 to one-third of the Gross Settlement Amount plus \$9,400.00 in “catalyst fees” based on the  
23 \$28,200 amount already paid by Horizon as part of its *Pick Up Stix* campaign, as well as up to  
24 \$20,000 in verified costs. Haines Decl., ¶ 31; Settlement, § 3.C.5. Plaintiff’s counsel’s requested  
25 fee of \$9,400.00 in “catalyst fees” in this lawsuit is proper under the catalyst theory.

26 The California Supreme Court has held, “California law continues to recognize the  
27 catalyst theory and does not require ‘a judicially recognized change in the legal relationship  
28 between the parties’ as a prerequisite for obtaining attorney fees under [CCP] section 1021.5.”

1 *Tipton-Whittingham v. City of Los Angeles*, 34 Cal.4th 604, 608 (2004). “In order to obtain  
2 attorney fees [in such circumstances]..., a plaintiff must establish that (1) the lawsuit was a  
3 catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had  
4 merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of  
5 expense...; and (3) that the plaintiffs reasonably attempted to settle the litigation.” *Id.*

6 Here, just one month after this lawsuit was filed, Horizon offered individual settlements  
7 to putative class members, together with a document that explicitly mentioned this litigation,  
8 implicitly acknowledging this lawsuit was the catalyst for the payments. The document included  
9 a release of claims, and offered Release Sub-Class members an amount based on how long the  
10 Release Sub-Class member had worked for Horizon. In total, Horizon paid \$28,200 as release  
11 consideration after this lawsuit was initiated. Thus, the filing of this lawsuit was the catalyst that  
12 activated Horizon to provide substantial monetary benefit to its employees.

13 The requested fee is also fair compensation for undertaking complex, risky, expensive,  
14 and time-consuming litigation on a contingent basis. Plaintiff’s counsel have incurred substantial  
15 attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal  
16 research, reviewing documents produced by Horizon, analyzing timekeeping and payroll data,  
17 preparing for and attending mediation, negotiating and preparing the Settlement, preparing this  
18 Motion, and otherwise prosecuting the case. Haines Decl., ¶ 31. Plaintiff’s counsel will also incur  
19 future fees in appearing at the hearing on this Motion, supervising the Notice process, preparing  
20 the Final Approval motion and appearing at the final fairness hearing. *Id.*

#### 21 **IV. ARGUMENT**

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

23 California Rule of Court 3.769 conditions the settlement of a class action on court  
24 approval, which is generally evaluated under the federal standards applicable under Fed. R. Civ.  
25 Proc. 23. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769  
26 requires trial court to determine settlement is “fair, reasonable and adequate to all concerned”);  
27 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires trial court to  
28 determine whether settlement is “fundamentally fair, adequate, and reasonable”). Settlement is

the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by class counsel. *See, e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

**1. Standard for Preliminary Approval**

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

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

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

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

Although the parties had engaged in significant informal discovery in advance of mediation, the parties had not yet conducted formal written and deposition discovery, which would have required the expenditure of substantial time and resources by all parties. Haines Decl., ¶ 30. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys’ fees and costs through a possible

1 decertification motion, trial, and possible appeal. *Id.* This settlement avoids those risks and the  
2 accompanying expense. Thus, this factor supports preliminary approval.

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

4 Plaintiff had not yet filed his motion for class certification. Absent settlement, there was  
5 a risk that there would not be a certified class at the time of trial, or if there were, it would consist  
6 of a significantly smaller group of employees than the proposed Settlement Class, especially given  
7 that Horizon had already obtained releases and arbitration agreements from a significant number  
8 of putative class members. Thus, this factor supports preliminary approval.

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

10 The Settlement provides fair and reasonable monetary recovery for the Settlement Class  
11 on hotly disputed claims. Based on data provided by Horizon, Plaintiff's counsel conducted the  
12 following exposure analysis of Horizon's potential liability:

13 **Unpaid Overtime/Double-Time Due to Unlawful AWS: \$280,188**

14 Plaintiff's expert's analysis and extrapolation of the timekeeping and payroll data revealed  
15 that there were approximately 15,786 AWS workweeks worked during the Class Period through  
16 February 29, 2020, when Horizon ceased its AWS practice, where employees were paid straight  
17 time rather than overtime for between 8.01 and 10.0 hours worked. Haines Decl., ¶ 20. Data  
18 provided by Horizon further revealed that Settlement Class members' average hourly rate was  
19 approximately \$21.14. *Id.* Thus, given 2 hours of unpaid overtime per workday and 4 workdays  
20 per 4/10 workweek, Plaintiff estimated Horizon's potential exposure for unpaid overtime as:  
21  $15,786 \text{ wks} * 4 \text{ days/wk} * 2 \text{ hrs/day} * 0.5 \text{ OT premium} * 21.14 = \$1,334,864$ . In addition, Plaintiff  
22 alleges that until February 2020, Horizon only paid double-time for hours worked over 14.0 hours  
23 in a day on AWS shifts, rather than 12.0 hours in a day as required under California law, and  
24 instead paid only time-and-a-half for 12.01-14.0 hours. *Id.* Plaintiff's expert's analysis revealed  
25 approximately 6.6% of all AWS shifts were over 12 hours, for an average of about 13.5 hours per  
26 shift. *Id.* Plaintiff therefore estimated Horizon's potential liability for double-time as:  $15,786 \text{ wks}$   
27  $* 4 \text{ days/wk} * 0.066 * 1.5 \text{ hrs/day} * \$21.14 * 0.5 = \$66,076$ . Thus, Plaintiff estimated a total of  
28 \$1,400,940 in potential unpaid overtime/double-time damages. Haines Decl., ¶ 20.

1 But as explained above, Plaintiff's AWS claim faced significant obstacles both on the  
2 merits and on class certification. Horizon contends its AWS was lawfully enacted, that it always  
3 paid overtime and double-time properly pursuant to California law, and that the AWS was favored  
4 by employees and enacted for their benefit. Horizon also argues individual inquiries would be  
5 necessary to determine how many shifts (if any) each employee worked pursuant to the AWS,  
6 how many overtime or double-time hours (if any) were worked on each shift, and whether each  
7 employee was paid properly on each shift, making the claim unfit for certification due to the  
8 individual inquiries necessary to establish liability for each putative class member. Haines Decl.,  
9 ¶ 20. Moreover, Horizon contends that many of the employees subject to these allegedly unlawful  
10 policies signed releases and arbitration agreements with express class action waivers, further  
11 diminishing the likelihood of class certification and reducing any potential damages drastically.  
12 *Id.* Based on these defenses, Plaintiff discounted the maximum exposure by 50% for a risk of  
13 non-certification and an additional 60% to account for a risk of being unsuccessful on the merits  
14 or failure to recover the full amount sought, to arrive at an estimated exposure of \$280,188. *Id.*

15 Unpaid Wages for End-of-Shift Travel Time: \$315,875

16 As explained above, Plaintiff alleges that after their last job of the day, Horizon required  
17 employees to clock out when they reached the county line of their residence, or to clock out after  
18 the end of their last job if it was in their county of residence, and did not pay employees for any  
19 travel time after they clocked out. Haines Decl., ¶ 21. Plaintiff further contends that because  
20 Horizon employees do not have an established worksite, they should be compensated for all such  
21 travel time, including commute time home. *Id.* Based on data provided by Horizon (which  
22 included the home county of each putative class member as well as the location of jobsites for all  
23 timekeeping records), as well as Plaintiff's and other putative class members' experience,  
24 Plaintiff's counsel estimated that employees typically spent approximately 1 hour of unpaid drive  
25 time at the end of each shift, on average. *Id.* Moreover, because this travel time occurred at the  
26 end of the shift, it was virtually always overtime hours. Plaintiff's expert further calculated  
27 approximately 18,447 workweeks during the Class Period, and typically worked 4 days per  
28 workweek. Thus, Plaintiff calculated Horizon's potential exposure as follows: 18,447 wks \* 4

1 days/wk \* 1 hour \* \$21.14/hr \* 1.5 = \$2,339,817. As noted above, Horizon asserted multiple  
2 defenses to this claim. Horizon contends travel time from the last jobsite the employee's home is  
3 non-compensable, "ordinary commute time" since employees are not subject to Horizon's  
4 control, and that the relevant case law supports its position. *Id.* Horizon asserts it has no obligation  
5 to pay employees from the last jobsite until the employee reaches his or her home county line,  
6 and that as a result, employees are frequently *overpaid* as a result of Horizon's generous policy.  
7 *Id.* Horizon further contends this claim is not suited for class certification, as it would require  
8 individualized inquiries into how much travel time an employee was paid for (or not paid for) on  
9 each individual shift, including where the employee's last jobsite was on each and every shift and  
10 how far it is from where they live, resulting in an unmanageable series of mini-trials. Horizon  
11 further points to the individual releases and arbitration agreements obtained from a large number  
12 of class members. *Id.* Based on these defenses, Plaintiff discounted the maximum potential  
13 amount by 55% for risk of non-certification, and by an additional 70% for risk of losing on the  
14 merits or failing to recover the full amount sought, for a realistic exposure of \$315,875. *Id.*

15 Unpaid Travel Time During Meals: \$74,245

16 Plaintiff alleges that employees often were required to use their meal periods to travel  
17 between job sites. Haines Decl., ¶ 22. Plaintiff contends this is evidenced by the fact that time  
18 records sometimes show employees clocking out for 30-minute meal periods at one jobsite and  
19 clocking back in from the meal period at another jobsite. *Id.* Based on Plaintiff's counsel's  
20 analysis of the timekeeping records produced by Horizon, employees began and ended their meal  
21 periods at different locations on approximately 45% of all shifts. *Id.* Moreover, during the Class  
22 Period the average California state minimum wage was approximately \$11.18. *Id.* Plaintiff  
23 therefore calculated Horizon's potential unpaid wage exposure on this claim as follows: 0.5 hrs \*  
24 4 days/wk \* 18,447 weeks \* .45 violation rate \* \$11.18 min. wage \* 2 (liq. Damages under Labor  
25 Code § 1194.2) = \$371,227. But as explained above, Horizon presented multiple defenses to this  
26 claim on both the merits and class certification. Horizon asserts it consistently provides 30-  
27 minute, off-duty meal periods each workday, and any work-related travel during meal periods  
28 was a result of individual employee choice and not any Horizon policy or practice. *Id.* In addition,

1 Horizon had no reason to believe that such travel was taking place and thus cannot be held liable  
2 for it under California law. *Id.* Horizon further argues that just because time records show an  
3 employee beginning and ending a meal period at different jobsites does not mean the employee  
4 used the meal period to travel between jobsites; it is equally plausible that the time entry indicates  
5 the employee began traveling to the second jobsite *after the end* of the meal period, not *during*  
6 the meal period. *Id.* Horizon also argues this claim is not amenable to class certification because  
7 many employees signed releases containing arbitration agreements with class action waivers, and  
8 in any event, this claim would require individualized inquiries into whether each employee  
9 traveled between jobsites during meal periods, and why the employee did so, on each individual  
10 shift reflecting a potential violation. In light of these defenses, Plaintiff discounted this claim by  
11 60% for risk of non-certification and an additional 50% for risk of losing on the merits or failing  
12 to recover the full amount sought, to arrive at a realistic exposure of \$74,245.

13 **Meal Period Premium Wages: \$304,416**

14 Plaintiff alleges that Horizon failed to provide employees with legally-compliant first meal  
15 periods and failed to provide second meal periods on shifts of over 10.0 hours. Haines Decl., ¶  
16 23. Based on Plaintiff’s counsel’s analysis and extrapolation of the timekeeping records, there  
17 were approximately 64,000 shifts of over 5.0 hours worked by Settlement Class members during  
18 the Class Period reflecting at least potential meal period violation (i.e., a late, short, or missing  
19 first and/or second meal period).<sup>4</sup> *Id.* As noted, the average hourly rate of pay for Settlement  
20 Class members during the Class Period was approximately \$21.14. *Id.* Thus, assuming a 100%  
21 violation rate for those shifts, Plaintiff calculated Horizon’s maximum potential liability on the  
22 meal period claim as \$1,352,960. *Id.* But as explained above, Plaintiff’s theories of liability carried  
23 significant risks of both non-certification and reduction on the merits. Horizon argues significant  
24 individualized issues would arise based on differences as to whether, how often, and why a  
25 particular employee took a particular meal period late or missed a particular meal period on a  
26 particular shift. *Id.* Horizon also contends it has compliant written meal period policies and has

27 \_\_\_\_\_  
28 <sup>4</sup> Plaintiff may recover up to one meal period premium and one rest period premium per workday. *United Parcel Service, Inc. v. Sup. Ct.*, 196 Cal.App.4th 57, 69 (2011) (construing Labor Code § 226.7 “as permitting up to two premium payments per workday—one for failure to provide one or more meal periods, and another for failure to provide one or more rest periods.”)

1 always “provided” employees with compliant meal periods, and that non-compliant meal periods  
2 reflected in timekeeping records are the result of employee choice. *Id.* Moreover, as noted, a large  
3 segment of Settlement Class members signed releases and arbitration agreements with class action  
4 waivers, significantly reducing the likelihood of class certification and reducing any potential  
5 damages. *Id.* Based on these risks, Plaintiff discounted the maximum amount by 55% for risk of  
6 non-certification and an additional 50% for risk of being unsuccessful on the merits or failing to  
7 recover the full amount sought, to arrive at an estimated exposure of \$304,416. *Id.*

8 **Rest Period Premium Wages: \$213,091**

9 Plaintiff’s rest period claim is based primarily on Horizon’s alleged practice of frequently  
10 requiring employees to remain on premises during rest periods. Haines Decl., ¶ 24. Assuming  
11 the same violation rate for rest periods as for meal periods, Plaintiff estimated approximately  
12 64,000 shifts with potential rest period violations, for a maximum exposure of \$1,352,960. *Id.*  
13 But as explained above, Horizon asserts that its rest period policy complies with California law,  
14 that it has always “authorized and permitted” employees to take rest periods in accordance with  
15 California law, and that, as with meal periods, it is not required to “ensure” rest periods are taken.  
16 *Id.* Horizon further asserts that *Augustus* rejected Plaintiff’s “on premises” theory of liability, as  
17 explained above. In any event, Horizon contends, employees are able to leave the premises during  
18 rest periods. *Id.* Horizon further argues the rest period claim is not amenable to class treatment,  
19 as individual inquiries would be needed to determine how many rest periods each employee failed  
20 to take, the reason(s) why an employee failed to take a rest period on a particular shift, and  
21 whether each employee was in fact able to leave the premises during rest periods on each shift,  
22 and that these individualized issues are especially present with respect to rest periods, which need  
23 not be recorded. *Id.* Finally, Horizon again points to the releases and arbitration agreements  
24 obtained and argues the chances of class certification or recovery on the merits are substantially  
25 reduced as a result. Based on these defenses, Plaintiff discounted the maximum amount by 65%  
26 for risk of non-certification and an additional 55% for risk of being unsuccessful on the merits, to  
27 arrive at an estimated exposure of \$213,091. *Id.*

28 ///

1           Underpaid Prevailing Wages: \$95,065

2           As noted, Plaintiff alleges that prior to February 2020, Horizon underpaid employees on  
3 public works projects by failing to pay the “prevailing wage” on such projects, and underpaid  
4 employees by as much as \$28.86 per hour. Haines Decl., ¶ 25. Based on data provided by Horizon,  
5 there were 18 public works projects contracted by Horizon during the relevant time period and  
6 305 total workweeks worked by employees on those projects. *Id.* Because the AWS did not apply  
7 to public works projects, Plaintiff assumed five, 8-hour workdays for each workweek. Plaintiff  
8 thus estimated Horizon’s maximum potential liability on this claim as: 305 workweeks \* 5  
9 days/wk \* 8 hrs/day \* \$28.86/hr underpayment = \$352,092. But as noted above, Horizon argues  
10 it always paid the proper prevailing wage when necessary, that the prevailing wage claim is based  
11 on an erroneous belief that Plaintiff and other employees were owed higher wages on the relevant  
12 wage scale, that prevailing wage projects comprise a small fraction of all workweeks and thus  
13 any damages to individual employees are de minimis, and that this claim is unsuited for class  
14 certification because individual inquiries would be required to determine whether each employee  
15 on each project was paid the proper wage, and if they were underpaid, by how much. *Id.* Finally,  
16 as with Plaintiff’s other wage claims, Horizon argues the releases and arbitration agreements  
17 entered into by many employees would significantly reduce the chances of certification and any  
18 damages. *Id.* Based on these defenses, Plaintiff discounted the maximum exposure by 55% for  
19 risk of non-certification, and an additional 40% for risk of losing on the merits or failure to recover  
20 the full amount sought, to arrive at a realistic exposure of \$95,065. *Id.*

21           Waiting Time Penalties: \$92,347

22           Plaintiff alleges that all Settlement Class members whose employment ended on or after  
23 January 21, 2017 are entitled to derivative “waiting time” penalties under Labor Code § 203.  
24 Based on data from Horizon, there are approximately 91 Settlement Class members who separated  
25 their employment since that date, and an estimated average maximum waiting time penalty of  
26 \$5,074 (\$21.14 \* 8 \* 30), for total maximum exposure of \$461,734. Haines Decl., ¶ 26. As noted,  
27 however, there was significant risk of non-recovery on this claim given the arbitration agreements  
28 and releases obtained, Horizon’s good-faith defenses to Plaintiff’s claims, as well as Horizon’s

1 contention that such penalties are not available for meal or rest period claims. Thus, Plaintiff  
2 discounted this maximum by 50% for risk of non-certification and by an additional 60% for risk  
3 of being unsuccessful on the merits, to arrive at an estimated exposure of \$92,347. *Id.*

4 **Wage Statement Penalties: \$88,013**

5 Data provided by Horizon reflected that there have been approximately 7,041 pay periods  
6 worked by Settlement Class members since January 21, 2019 (one year prior to the filing of this  
7 lawsuit). Haines Decl., ¶ 27. Plaintiff assumed he could obtain the “initial” wage statement  
8 penalty of \$50 per violation, for a maximum of \$352,050 in wage statement penalties. *Id.*; see  
9 also Lab. Code § 226(e) (providing \$50 penalty for “initial” violations); *Amaral v. Cintas Corp.*  
10 *No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until the  
11 employer has been notified that it violated the Labor Code). However, given the releases obtained  
12 by Horizon, Horizon’s other defenses to Plaintiff’s underlying claims, as well as Horizon’s  
13 arguments that any alleged violation was not “knowing and intentional,” that employees did not  
14 suffer “injury,” and Horizon’s *Kirby* argument delineated above, Plaintiff discounted this  
15 maximum exposure by 50% for risk of non-certification, and by an additional 50% for risk of  
16 being unsuccessful on the merits, to arrive at an estimated total of \$88,013. *Id.*

17 **PAGA Penalties: \$123,218**

18 Plaintiff estimated a total PAGA exposure of \$704,100 (7,041 “initial” violations at \$100  
19 each). Haines Decl., ¶ 28; *Amaral*, 163 Cal.App.4th at 1209. However, these penalties derived  
20 from the underlying violations discussed herein, each of which Horizon vigorously disputes.  
21 Moreover, the PAGA grants courts discretion to reduce penalties (Lab. Code § 2699(e)(2)), and  
22 Horizon argues the Court would significantly reduce penalties in light of its several good-faith  
23 defenses. Based on these risks, Plaintiff discounted that maximal figure by 50% for risk of losing  
24 on the merits and by an additional 65% for risk of the Court reducing penalties, to arrive at an  
25 estimated total of \$123,218. Haines Decl., ¶ 28; see also *Thurman*, 203 Cal.App.4th at 1135  
26 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at \*4 (reducing penalties  
27 by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming penalty  
28 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

1 Using these estimated figures, Plaintiff predicted the realistic total recovery for the  
2 Settlement Class on the non-settled claims would be approximately \$1,586,458. Haines Decl., ¶  
3 29. The proposed Gross Settlement Amount of \$1,400,000 therefore represents approximately  
4 88.2% of Plaintiff's reasonably forecasted recovery at trial. *Id.* Preliminary approval is  
5 appropriate since the settlement will provide significant monetary relief to the Settlement Class.

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

7 "Parties represented by competent counsel are better positioned than courts to produce a  
8 settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Sec.*  
9 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by competent, experienced  
10 counsel with extensive experience litigating wage and hour class actions from both the plaintiff  
11 and defense side and who have been appointed class counsel in numerous cases with similar  
12 claims. *See* Haines Decl., ¶¶ 3-; Declaration of Tuvia Korobkin ("Korobkin Decl."), ¶¶ 2-6. The  
13 settlement was also reached with the assistance of Judge Lichtman, a respected wage and hour  
14 class action mediator. Haines Decl., ¶¶ 13-14. This factor strongly supports preliminary approval.  
15 *Kullar*, 168 Cal.App.4th at 130.

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

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

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

22 The proposed settlement reflects over 88% of the estimated recovery the Settlement Class  
23 could reasonably expect in light of significant litigation risks, and it will provide tangible,  
24 monetary compensation for hotly disputed wage claims. Plaintiff submits the settlement is within  
25 the range of possible approval, such that notice should be provided to the Settlement Class. The  
26 Court will again have the opportunity to assess the reasonableness of the settlement after  
27 Settlement Class members have had the opportunity to opt-out and/or object.

28 ///

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

2           The proposed settlement resulted from the exchange of substantial information, a full-day  
3 mediation before an experienced mediator, and months of arm’s-length negotiations. Thus, the  
4 settlement is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiff’s  
5 counsel carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and  
6 conducted detailed analyses of the data to arrive at estimated classwide damages figures.

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

8           Preliminary approval is also warranted because there are no obvious deficiencies. This  
9 settlement will provide tangible monetary relief to Settlement Class members. The amounts  
10 proposed for attorneys’ fees and costs, Plaintiff’s incentive award, and the PAGA set-aside are  
11 all reasonable and appropriate based on the particular facts of this case.

12                   **B.     THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

13           The proposed Settlement Class satisfies the criteria for certification of a settlement class  
14 under California law because: 1) the individuals in the class are so numerous that joinder would  
15 be impractical; 2) common questions of law and fact predominate over individual questions such  
16 that class certification is the most efficient and desirable way to maintain this litigation; 3)  
17 Plaintiff’s claims are typical of the class’s claims; and 4) Plaintiff and his counsel will fairly and  
18 adequately represent the interests of the absent class members. Code Civ. Proc. § 382.

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

20           A class is “ascertainable” where members “may be readily identified without unreason-  
21 able expense or time by reference to...[business] records.” *Sevidal v. Target*, 189 Cal.App.4th  
22 905, 919 (2010). The Settlement Class includes non-exempt employees employed by Horizon in  
23 California during the Class Period. Thus, Settlement Class members can be identified from  
24 Horizon’s records. Horizon represents there are about 198 Settlement Class members, rendering  
25 it impracticable to bring all class members before the Court. Numerosity is therefore satisfied.

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

27           The focus on certification is not on the merits, but on what types of questions, “common  
28 or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th

319, 327 (2004). Plaintiff's claims are predicated largely on Horizon's allegedly unlawful AWS practices, meal period, and rest period policies and practices. Such claims are often held proper for class certification. *See, e.g., Garcia v. Wal-Mart Stores, Inc.*, No. 16-01645 TJH, 2018 WL 4959824 at \*2 (C.D. Cal. Sept. 28, 2018) (certifying AWS claim); *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701 (2013) (certifying meal & rest period claims).

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

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff was employed by Horizon during the Class Period, was subject to Horizon's relevant wage and hour policies, and was injured in the same manner as the members of the Settlement Class. *See* Inskeep Decl. Thus, typicality is satisfied.

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

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th 676, 697 (2007). There are no conflicts between Plaintiff and the Settlement Class, and Plaintiff's claims are in line with those of the Settlement Class. *See* Declaration of Aaron Inskeep. Finally, as discussed above, Plaintiff's counsel have extensive experience in wage and hour class action litigation.

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

This Court should order distribution of the proposed notice by U.S. Mail, postage prepaid, using last known mailing address information provided by Defendant. *See* Settlement, § 9. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes that the settlement be administered by Simpluris, Inc., an experienced class action settlement administrator. *See* Declaration of Kimberly Sutherland and attached exhibits. To the extent employees' addresses have changed, Simpluris, Inc. will run all addresses provided through the U.S. Postal Service National Change of Address database to obtain current address information. Settlement, § 9.B.

1 The proposed class notice satisfies California Rule of Court 3.766(d) because it advises  
2 Settlement Class members of the nature of the basic contentions and denials of the parties and  
3 the key terms of the settlement, the 60-day deadline to opt-out or object, the recovery formula  
4 and expected recovery amount for each Settlement Class member, and advises that they will be  
5 bound by the terms of the settlement if they do not request exclusion. See Haines Decl., Exh. A  
6 to Exh. 1. The Notice will also notify Settlement Class members of the final fairness hearing, and  
7 provide contact information for Class Counsel. *Id.* This notice satisfies C.R.C. 3.766(e) as the  
8 most reliable and cost-effective method of reaching Settlement Class Members.

9 **D. THE COURT SHOULD SET A FINAL FAIRNESS HEARING**

10 Finally, the Court should set a hearing for final approval of the settlement on a date  
11 appropriately scheduled to follow the deadline by which Settlement Class members must file  
12 objections to the settlement or opt-out. See California Rule of Court 3.769.

13 **V. CONCLUSION**

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

17  
18 Dated: March 30, 2021

Respectfully submitted,  
HAINES LAW GROUP, APC

19 By: \_\_\_\_\_

20 Paul K. Haines  
21 Attorneys for Plaintiff Inskeep, Settlement Class  
22 Members, and Aggrieved Employees  
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