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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JAYVIN JACOBS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RTI SYSTEMS, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No.: 20STCV40907

*[Assigned for all purposes to Hon. William
Highberger; Dept. SSC-10]*

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

Date: December 4, 2023
Time: 10:30 a.m.
Dept.: SSC-10

Complaint Filed: October 23, 2020
Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on December 4, 2023, at 10:30 a.m. in Department SSC-10 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Jayvin Jacobs (“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 class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class as defined as follows:
All current and former non-exempt employees employed by Defendants RTI Systems, Inc. and RTI Systems PS in California from April 6, 2016 until November 4, 2022 (the “Class Period”).
3. Preliminary appointment of Plaintiff Jayvin Jacobs as Class Representative;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely 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 permit a Class Representative Enhancement Award to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and 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 proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the supporting declarations of Paul K. Haines, Sean M. Blakely, Plaintiff Jayvin
3 Jacobs, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached
4 thereto, the pleadings, and other papers filed in this Action, and on any further oral or
5 documentary evidence or argument presented at the time of the hearing.

6
7 Respectfully submitted,

8 Dated: October 30, 2023

HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jayvin Jacobs (hereinafter “Plaintiff”) brought this class and representative action
4 for various wage and hour violations on behalf of all current and former non-exempt employees
5 of Defendants RTI Systems, Inc. and RTI Systems PS (collectively “RTI Systems”) who worked
6 for RTI Systems in California at any time from April 6, 2016, until November 4, 2022 (the “Class
7 Period”). Plaintiff’s primary allegations are that RTI Systems failed to pay all minimum and
8 overtime wages due to its allegedly unlawful timekeeping policies/practices and failed to provide
9 all legally compliant meal and rest periods. As a result of these alleged violations, Plaintiff also
10 brought derivative claims for RTI Systems’ alleged failure to pay all final wages owed, failure to
11 issue accurate and compliant wage statements, and for civil penalties under the Private Attorneys’
12 General Act (“PAGA”).¹

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which RTI Systems has agreed to pay
15 Two Hundred Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) to the following
16 Settlement Class:

17 All current and former non-exempt employees employed by Defendants
18 RTI Systems, Inc. and RTI Systems PS in California from April 6, 2016,
until November 4, 2022 (the “Class Period”).

19 If the Settlement is approved, RTI Systems will pay a non-reversionary Gross Settlement
20 Amount (“GSA”) of \$275,000.00. After deducting administration costs, Plaintiff’s requested
21 Class Representative Enhancement Award, the amount designated as PAGA civil penalties, and
22

23
24 ¹ Plaintiff’s operative First Amended Class and Representative Action Complaint (“FAC”) pleads
25 the following causes of action: (1) failure to pay all overtime wages; (2) minimum wage
26 violations; (3) meal period violations; (4) rest period violations; (5) wage statement penalties; (6)
waiting time penalties; (7) unfair competition; and (8) civil penalties under the PAGA.

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
28 as **Exhibit A**. The proposed Class Notice and Notice of Estimated Individual Settlement Award
are attached to the Settlement as **Exhibits 1** and **2**, respectively. All defined terms in this motion
have the same definition as that in the Settlement.

1 requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately
2 \$118,833.34 will be distributed to all Settlement Class members who do not opt-out of the
3 Settlement based on the proportionate number of workweeks worked by each Settlement Class
4 member during the Class Period. Employees with standing for waiting time penalties, wage
5 statement penalties and PAGA civil penalties will also receive consideration for the release of
6 those penalty claims.

7 Significantly, Settlement Class members do not need to file a claim to reap the financial
8 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
9 unless they affirmatively opt-out. There are approximately 235 Settlement Class members, and
10 the average payment to participating Settlement Class members is projected to be approximately
11 \$505.67.

12 The proposed Settlement is within the range of possible approval in light of the significant
13 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the
14 tangible monetary benefits to be received by Plaintiff and the Settlement Class. For the reasons
15 discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval of the
16 Settlement.

17 **II. SUMMARY OF THE LITIGATION**

18 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

19 RTI Systems provides remote security and surveillance services to construction sites and
20 retail, commercial, and hospitality properties. *See* Declaration of Sean M. Blakely ("Blakely
21 Decl."), ¶ 9. Plaintiff worked for RTI Systems as a non-exempt employee in the position of
22 "operator" from approximately March 2018 until approximately September 18, 2020. *See*
23 Declaration of Jayvin Jacobs In Support of Approval of Class Action Settlement ("Jacobs Decl."),
24 ¶ 2. Plaintiff's primary job duties consisted of monitoring multiple surveillance cameras at RTI
25 Systems' Burbank, California office.

26 On October 23, 2020, Plaintiff filed his Class Action Complaint in Los Angeles County
27 Superior Court, alleging that RTI Systems: (i) failed to pay all overtime wages; (ii) failed to pay
28 all minimum wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and

1 permit all rest periods; (v) failed to issue accurate, itemized wage statements; (vi) failed to pay
2 all final wages due upon separation of employment; and (vii) engaged in unfair competition in
3 violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 10. That
4 same day, Plaintiff sent his PAGA notice letter to the Labor and Workforce Development Agency
5 (“LWDA”). *Id.*, Exhibit B. On December 28, 2020, Plaintiff filed the operative First Amended
6 Class and Representative Action Complaint (“FAC”) to add an eighth cause of action for civil
7 penalties under the PAGA. *Id.*

8 **B. PLAINTIFF’S CLAIMS AND RTI SYSTEMS’ DEFENSES**

9 **1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices**

10 Plaintiff alleges that RTI Systems’ timekeeping policies and/or practices resulted in
11 Plaintiff and other non-exempt employees not being compensated for all hours actually worked.
12 Blakely Decl., ¶ 15. Specifically, Plaintiff alleges that Plaintiff and other non-exempt employees
13 clocked in and out for their work shifts through a computer, however, RTI Systems’
14 policies/practices were to only compensate them for eight (8) scheduled hours each workday,
15 despite Plaintiff or other non-exempt employees working shifts greater than eight (8) hours in
16 length. *Id.* As a result of these policies/practices, Plaintiff alleges RTI Systems failed to
17 compensate Plaintiff and other non-exempt employees for all minimum and overtime wages
18 owed. *Id.*

19 However, RTI Systems counters that its timekeeping policies/practices complied with
20 California law and that it has always properly compensated Settlement Class members for all
21 hours worked throughout the Class Period. Blakely Decl., ¶ 15. RTI Systems also contends that
22 any unpaid time could have only amounted to a few minutes per day, at most, and was thus *de*
23 *minimis*. *Id.* While Plaintiff points to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where
24 the California Supreme Court held California’s labor laws generally do not recognize a *de minimis*
25 defense, RTI Systems argues *Troester* should be limited to its facts. (“[W]e decide only whether
26 the *de minimis* rule is applicable to the facts of this case as described by the Ninth Circuit.”
27 *Troester*, 5 Cal.5th at 829.). RTI Systems further argues that it is not possible for Settlement Class
28 members to perform compensable work outside of their scheduled shift. Blakely Decl., ¶ 15.

1 Finally, RTI Systems asserts that Plaintiff would be unable to certify this claim since its
2 timekeeping policy is facially neutral, and individualized inquiries would be necessary as to
3 whether employees were in fact underpaid or overpaid for each workday in question (including
4 whether they were actually working when they were clocked in), resulting in an unmanageable
5 series of mini-trials. *Id.*

6 **2. Meal Period Claims**

7 Plaintiff alleges RTI Systems failed to provide legally compliant first meal periods
8 because RTI Systems' policies/practices failed to provide Plaintiff and other non-exempt
9 employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before
10 the end of the fifth hour of work. Blakely Decl., ¶ 16. Plaintiff alleges that RTI Systems required
11 Plaintiff and other non-exempt employees to remain on the clock and on duty for the entirety of
12 their shift due to RTI Systems' work demands. *Id.* Specifically, Plaintiff alleges he was required
13 to monitor multiple surveillances cameras throughout the duration of his work shift and was not
14 able to take an off-duty meal period. *Id.* RTI systems acknowledged this fact, as they paid
15 Plaintiff for the time he was taking a meal period. *Id.* Plaintiff alleges that RTI Systems did not
16 maintain a lawful on-duty meal period agreement given the nature of the work performed by
17 Plaintiff and other non-exempt employees, resulting in meal period liability. *Id.*

18 RTI Systems counters it has maintained compliant written meal period policies throughout
19 the Class Period and has always provided compliant meal periods in line with those policies.
20 Blakely Decl., ¶ 16. RTI Systems further contends that it always *provides* employees the
21 opportunity to take meal periods and is not required to *ensure* they are taken. *Id.*; *see Brinker*
22 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting "ensure" standard). Thus, RTI
23 Systems argues that any missed, late or short meal periods resulted from lawful employee choice
24 rather than any policy and/or practice of RTI Systems. Blakely Decl., ¶ 16. Finally, RTI Systems
25 maintains Plaintiff's meal period claim is not suited for class certification since individual
26 inquiries would be needed to assess which employees took non-compliant or missed meal periods,
27 how many meal periods were non-compliant or missed, the reasons why a particular employee
28 did not take a meal period on a particular shift. *Id.*

1 **3. Rest Period Claims**

2 Plaintiff alleges RTI Systems failed to authorize and permit all required off-duty rest
3 periods. Blakely Decl., ¶ 17. Specifically, Plaintiff alleges he was not authorized or permitted to
4 take any off-duty rest period during his work shifts due to work demands imposed by RTI
5 Systems. *Id.* As with Plaintiff’s meal period claim, Plaintiff alleges that he was required to
6 monitor surveillance cameras at all times throughout his shift, thereby preventing Plaintiff from
7 being relieved to take off-duty rest periods. *Id.*

8 RTI Systems counters that it has maintained compliant written rest period policies
9 throughout the Class Period and has always authorized and permitted employees a 10-minute rest
10 period for each four (4) hours worked, or major fraction thereof, as required under the Wage
11 Order, and that any failure to take rest periods was a result of employee choice, rather than any
12 RTI Systems’ policy and/or practice. Blakely Decl., ¶ 17. RTI Systems also argues that Plaintiff’s
13 rest period claim is not amenable to class treatment, since individual inquiries would be required
14 to determine which employees failed to take rest periods, how many rest periods they failed to
15 take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.*
16 These manageability concerns are especially present with respect to rest period claims, RTI
17 Systems argues, given that rest periods are not recorded. *Id.*

18 **4. Wage Statement Claims**

19 As a result of the unpaid wages and unpaid meal and rest period premium wages described
20 above, Plaintiff alleges that RTI Systems is liable for wage statement penalties. Blakely Decl., ¶
21 18.

22 RTI Systems argues any alleged wage statement violations were not “knowing and
23 intentional,” and Plaintiff cannot show he or other employees “suffer[ed] injury” due to the
24 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
25 penalties. Blakely Decl., ¶ 18. Further, RTI Systems contends its wage statements always
26 accurately reflected hours worked and amounts paid as well as all other required information,
27 precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22
28 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the

1 pay stubs were accurate in that they correctly reflected the hours worked and the pay
2 received...The purpose of section 226 is to *document the paid wages* to ensure the employee is
3 fully informed regarding the calculation of those wages.”) (Italics in original). Blakely Decl., ¶
4 18.

5 **5. Waiting Time Penalties**

6 As a further result of the unpaid wages and unpaid meal and rest period premium wages
7 described above, Plaintiff alleges that RTI Systems failed to comply with its final pay obligations
8 set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 19.

9 RTI Systems argues that it possesses strong, good faith defenses to Plaintiff’s underlying
10 claims, thus precluding recovery of waiting time penalties, which are only available for the
11 “willful” failure to pay wages. Blakely Decl., ¶ 19; see *also* 8 Cal. Code Regs. § 13520 (“[A]
12 good faith dispute that any wages are due will preclude imposition of waiting time penalties under
13 Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents
14 a defense, based in law or fact which, if successful, would preclude any recovery on the part of
15 the employee.”). RTI Systems further asserts that Plaintiff’s waiting time penalty exposure was
16 grossly inflated as not every former employee experienced the alleged Labor Code violations.
17 Blakely Decl., ¶ 19.

18 **6. PAGA Civil Penalties**

19 As a result of the foregoing Labor Code violations, Plaintiff alleges that RTI Systems is
20 liable for civil penalties under the PAGA. Blakely Decl., ¶ 20. Since Plaintiff’s PAGA claim is
21 derivative of Plaintiff’s underlying wage claims, RTI Systems asserts the PAGA claim would fail
22 with those claims. Blakely Decl., ¶ 20; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147
23 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
24 fail.”). RTI Systems further maintains that, given its good faith defenses, this Court would
25 exercise its discretion to substantially reduce any PAGA penalties if it were to find RTI Systems
26 liable for any of Plaintiff’s claims. Blakely Decl., ¶ 20; see Lab. Code § 2699(e)(2); *Thurman v.*
27 *Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA
28 penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047,

1 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not
2 aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming
3 PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to
4 comply with the law).

5 **C. DISCOVERY AND MEDIATION**

6 In connection with mediation, RTI Systems provided Plaintiff’s counsel with a random
7 sampling of timekeeping and payroll records for approximately 20% of putative class members.
8 Blakely Decl., ¶ 11. In addition, RTI Systems produced a “Class List” containing all putative
9 class members’ hire and termination dates (if applicable), rates of pay, as well as RTI Systems’
10 written policies and other information. *Id.* Plaintiff, with the help of his retained expert, conducted
11 a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by RTI
12 Systems to create a detailed exposure analysis for all claims at issue. *Id.* This discovery allowed
13 the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of
14 Plaintiff’s claims, and RTI Systems’ potential defenses. *Id.*

15 On November 17, 2021, the Parties participated in a full-day mediation with Steven G.
16 Mehta, Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 12. During
17 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
18 certification of Plaintiff’s claims, the legal basis for the claims and defenses, as well as RTI
19 Systems’ financial condition. *Id.* The Parties did not reach a settlement at mediation. *Id.* In the
20 months following mediation, RTI Systems provided Plaintiff’s counsel with its financial records
21 and Plaintiff, with the help of its retained forensic accountant, reviewed the documents provided
22 by RTI Systems. *Id.* The parties continued their discussions with Mr. Mehta following the
23 mediation and Mr. Mehta issued a mediator’s proposal for a class-wide settlement, which was
24 ultimately accepted by both sides. *Id.* During the months that followed, the Parties finalized the
25 terms of the Settlement and executed the long-form Settlement Agreement now before the court.
26 *Id.*

27 ///

28 ///

1 **III. THE PROPOSED SETTLEMENT**

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

3 If the Court preliminarily approves the Settlement, RTI Systems will pay a Gross
4 Settlement Amount (“GSA”) of \$275,000.00.³ See Settlement, ¶ 3. Significantly, this Settlement
5 is non-reversionary, and no Settlement Class member will have to submit a claim form to receive
6 a Settlement Award. *Id.*, at ¶ 4. Each Settlement Class member will automatically receive a
7 Settlement Award unless they affirmatively opt out of the Settlement. *Id.* The monetary terms of
8 the Settlement are summarized below:

9	• Gross Settlement Amount (“GSA”):	\$275,000.00
10	• Minus Court-approved attorneys’ fees:	\$91,666.66
11	• Minus Court-approved verified costs (up to):	\$25,000.00
12	• Minus Court-approved Enhancement Award:	\$7,500.00
13	• Minus amount set aside as PAGA penalties:	\$20,000.00
14	• <u>Minus estimated settlement administration costs:</u>	<u>\$12,000.00</u>
	Net Settlement Amount (“NSA”):	\$118,833.34
	• PLUS 25% “PAGA Payment” to Settlement Class:	\$5,000.00
	Total Amount Paid to Settlement Class members:	\$123,833.34

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

16 After deducting amounts for the Court-approved attorneys’ fees and costs, Class
17 Representative Enhancement Award to Plaintiff, the amount designated as PAGA civil penalties,
18 and settlement administration costs, the Settlement requires RTI Systems to pay a Net Settlement
19 Amount (“NSA”) of at least \$118,833.34 to all Settlement Class members who do not timely opt-
20 out. See Settlement, ¶ 4(A). Eighty percent (80%) of the NSA shall be distributed to all
21 participating Settlement Class members based on the proportionate number of workweeks each
22 participating Settlement Class member worked during the Class Period. Settlement, ¶ 4(B)(i). Ten
23

24 ³ Following RTI Systems’ representation of its financial condition, RTI Systems turned over its
25 financial records to Plaintiff’s retained expert, Keith D. Messerschmidt, who is a forensic
26 accountant and has consulted or provided expert testimony in dozens of litigation and insurance
27 matters. Blakely Decl., ¶ 12. Mr. Messerschmidt opines that RTI Systems could not reasonably
28 afford to pay more than the Gross Settlement Amount, and that the requested payment schedule
was necessary for RTI Systems to remain in business without dramatically impacting its
operations. Should the Court wish to review a declaration from Mr. Messerschmidt attesting to
these facts and RTI Systems’ financial condition, this declaration could either be filed in *camera*
or filed under seal, at the Court’s request.

1 percent (10%) of the NSA shall be designated as the “Waiting Time Amount” and will be
2 distributed in equal, pro-rata shares to each participating Settlement Class member who separated
3 their employment with RTI Systems at any time from April 6, 2017 through November 4, 2022.
4 *Id.*, at ¶ 4(B)(ii). Ten percent (10%) of the NSA shall be designated as the “Wage Statement
5 Amount” and will be paid to each participating Settlement Class member who worked for RTI
6 Systems at any time from April 6, 2019 through November 4, 2022 based on the proportionate
7 number of workweeks worked during that time period. *Id.*, at ¶ 4(B)(iii). Finally, Five Thousand
8 Dollars and Zero Cents (\$5,000.00) shall be designated as the “PAGA Amount,” and shall be
9 distributed to all Settlement Class members (regardless of whether they opt-out) proportionately
10 based on the number of workweeks worked at any time from October 23, 2019 through November
11 4, 2022 (“PAGA Period”). *Id.*, at ¶ 4(B)(iv).

12 According to RTI Systems, there are approximately 235 Settlement Class members.
13 Blakely Decl., ¶ 14. Therefore, the average Settlement Award from the NSA is projected to be
14 approximately \$505.67. *Id.* There are approximately 143 Aggrieved Employees during the PAGA
15 Period. *Id.* Therefore, each Aggrieved Employee will receive an average of approximately \$34.96
16 from the PAGA Amount. *Id.* Settlement Class members will have sixty (60) calendar days from
17 the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample
18 time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(C)-
19 (D). Those Settlement Class members who do not opt-out of the Settlement will be bound by its
20 terms and will release all claims against RTI Systems included within the Settlement. *See Id.*, at
21 ¶ 2(A).

22 **2. Attorneys’ Fees and Costs, Enhancement Award, and PAGA Payment**

23 Plaintiff will apply for Class Representative Enhancement Award at the time of seeking
24 final approval of the proposed class action settlement in the amount of \$7,500.00 for his service
25 to the Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6; Blakely Decl., ¶ 24. “[I]ncentive awards
26 are fairly typical in class action cases . . . and are intended to compensate class representatives for
27 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
28 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94

(2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement Award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 3(C)(3), 6; Blakely Decl., ¶ 24; *see also* Jacobs Decl.

Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross Settlement Amount, which is currently estimated to be \$91,666.66, and up to \$25,000.00 in verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; Blakely Decl., ¶ 23. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, conducting extensive informal discovery, analyzing Settlement Class members’ timekeeping and payroll records, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing. *Id.*

California courts recognize that an appropriate method for awarding attorneys’ fees in class actions is to award a percentage of the “common fund” created as a result of a settlement. *See, e.g., Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of fund method survives in California class action cases”). Class Counsel’s request for fees of one-third of the Gross Settlement Amount is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4

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

2 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
3 overall percentage of the Settlement and in light of the substantial risks and significant work
4 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
5 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
6 and verified costs upon seeking final approval.

7 Additionally, the parties have agreed to designate \$20,000.00 of the Gross Settlement
8 Amount as PAGA civil penalties, of which \$15,00.00 (75%) will be paid to the LWDA, with the
9 remaining \$5,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires
10 such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(5). Plaintiff
11 submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v.*
12 *Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal.
13 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
14 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
15 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
16 settlement).

17 **IV. ARGUMENT**

18 **A. PRELIMINARY APPROVAL IS WARRANTED**

19 California Rule of Court 3.769 conditions settlement of a class action on court approval,
20 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
21 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
22 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and
23 adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
24 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair,
25 adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly
26 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
27 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the
28 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial

1 presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class
2 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
3 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

4 **1. Standard for Preliminary Approval**

5 To make a fairness determination, the Court should consider several factors, including:
6 "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further
7 litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
9 experience and views of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
10 "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
11 of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.*,
12 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
13 reasonable in light of the overall balance of factors in this case.

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

15 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff
16 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
17 described above in section II.B., *supra*, RTI Systems presented multiple defenses to Plaintiff's
18 claims, both on the merits and with respect to class certification. Thus, while Plaintiff was
19 prepared to litigate these claims through class certification and ultimately trial, success was far
20 from certain.

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

22 Although the parties engaged in significant informal discovery prior to mediation, the
23 parties still had significant formal discovery to complete had the matter not been settled. Blakely
24 Decl., ¶ 22. This would have required the expenditure of substantial time and resources by both
25 parties that would have very likely spanned several years. *Id.* Even if Plaintiff was to certify the
26 classes, the parties would incur considerably more attorneys' fees and costs through a possible
27 decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the
28 accompanying expense. *Id.*

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

2 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which
3 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
4 was a risk that there would not be a certified class at the time of trial, or if there were, it would
5 consist of a significantly smaller group of employees than the proposed Settlement Class (either
6 due to a narrowing of the class definition in a Court order on a contested motion for class
7 certification, or through settlement agreements entered into by RTI Systems with individual class
8 members by way of *Pick-up-Stix* type settlement agreements⁴), and the expected recovery could
9 be significantly reduced, given the settlement amounts that are typically offered through the *Pick-*
10 *up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

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

12 The Settlement provides a positive recovery for the Settlement Class in the face of
13 disputed claims. Plaintiff conducted a detailed analysis of underpaid wages due to RTI Systems'
14 alleged unlawful timekeeping policies/practices, potential meal and rest period premium
15 payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A
16 summary of the results of Plaintiff's exposure analysis are discussed below:

17 Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: **\$91,818**

18 Plaintiff alleges that RTI Systems' timekeeping policies and/or practices resulted in
19 Plaintiff and other non-exempt employees not being compensated for all hours actually worked.
20 Blakely Decl., ¶ 15. Based on Plaintiff's analysis and extrapolation of RTI Systems' timekeeping
21 and payroll records, Plaintiff estimated that RTI Systems' timekeeping policies/practices resulted
22 in approximately 2.72 hours of unpaid time per pay period. *Id.* Because employees generally
23 worked shifts of at least eight (8) hours, Plaintiff contends that these unpaid wages must be paid
24 at an overtime rate of pay. *Id.* Therefore, Plaintiff estimates RTI Systems' maximum exposure

25 _____
26 ⁴ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
27 employer may enter into pre-certification settlement agreements with individual putative class
28 members in which the putative class members release claims for past unpaid wages and penalties
in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

1 for this claim at approximately \$367,271 (4,778 pay period * 2.72 unpaid hours * \$28.26 average
2 overtime rate of pay). *Id.*

3 As noted above, RTI Systems argues that its timekeeping system is even-handed and
4 facially neutral, and compensated employees for all hours worked. Blakely Decl., ¶ 15. RTI
5 Systems further argues that just because an employee is clocked in does not mean they are
6 working. *Id.* RTI Systems also asserts that Plaintiff would be unable to certify this claim given
7 the individualized inquiry as to whether employees were in fact underpaid, or potentially
8 overpaid, for each workday in question. *Id.* Based on these defenses, Plaintiff discounted the
9 estimated maximum amount by 50% for risk of non-certification, and by an additional 50% to
10 account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive
11 at an estimated exposure of approximately \$91,818. *Id.*

12 Meal Period Violations: \$120,256

13 Plaintiff alleges that RTI Systems failed to provide timely 30-minute first meal periods
14 before the conclusion of the fifth hour of work. Blakely Decl., ¶ 16. Based on Plaintiff's review
15 and extrapolation of the timekeeping data produced by RTI Systems, there were approximately
16 45,593 non-compliant meal periods during the Class Period. *Id.* In addition, based on data
17 provided by RTI Systems, Settlement Class members' average hourly rate of pay during the Class
18 Period was approximately \$18.84 per hour. *Id.* Therefore, Plaintiff calculated RTI Systems'
19 maximum exposure on this claim at approximately \$858,972 (45,593 non-compliant first meal
20 periods * \$18.84 average meal period premium). *Id.*

21 However, as noted above, RTI Systems contends that it provided compliant meal periods
22 to Settlement Class members throughout the Class Period. Blakely Decl., ¶ 16. RTI Systems also
23 asserts that under *Brinker* it is only required to "provide" the opportunity to take meal periods,
24 not "ensure" meal periods are taken, and that, as described above, it has always done so, and any
25 non-complaint first meal periods in the timekeeping records were the result of employee choice.
26 *Id.*; see also *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard and holding
27 employers only have to "provide" employees the opportunity to take meal periods). Finally, RTI
28 Systems maintains that the first meal period claim is not suited for class certification, since

individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. Blakely Decl., ¶ 16. In light of these defenses and arguments, Plaintiff discounted RTI Systems' maximum exposure by 60% for the risk of non-certification, and an additional 65% to account for RTI Systems' defenses on the merits, to arrive at an estimated exposure of approximately \$120,256. *Id.*

Rest Period Violations: \$67,520

As indicated above, Plaintiff alleges RTI Systems failed to authorize and permit Plaintiff and other non-exempt employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to RTI Systems' work demands. Blakely Decl., ¶ 17. Based on Plaintiff's analysis and extrapolation of RTI Systems' timekeeping records, Plaintiff estimates there were approximately 47,785 non-compliant rest periods during the Class Period. *Id.* Therefore, Plaintiff estimates RTI Systems' maximum potential exposure for rest period violations at approximately \$900,269 (47,785 rest period violations * \$18.84 average premium). *Id.*

However, RTI Systems contends it has maintained and enforced compliant written rest period policies/practices and has always authorized and permitted employees a 10-minute rest period for each 4 hours worked, and that any failure to take rest periods was as a result of employee choice, rather than any RTI Systems policy and/or practice. Blakely Decl., ¶ 17. RTI Systems further argues that Plaintiff's rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially present with respect to rest period claims, RTI Systems argues, given that rest periods are not recorded. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 75% for risk of non-certification and an additional 70% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately

1 \$67,520. *Id.*

2 Wage Statement Penalties: \$27,499

3 Plaintiff alleges that RTI Systems is liable for wage statement penalties as a result of the
4 unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 18. Those penalties
5 are calculated as \$50 for each “initial” violation and \$100 for each “subsequent” violation, with
6 a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff’s analysis reflected
7 that there were approximately 143 unique employees and approximately 3,127 pay periods
8 worked during the liability period applicable to Plaintiff’s wage statement claim. *Id.* Therefore,
9 Plaintiff calculated RTI Systems’ potential wage statement exposure at approximately \$305,550
10 ([143 “initial” violations * \$50] + [2,984 “subsequent” violations * \$100]). *Id.*; *see also* Labor
11 Code § 226(e).

12 In light of RTI Systems’ arguments that no violations occurred, that employees suffered
13 no “injury,” that any alleged violations were not “knowing and intentional,” that the wage
14 statements always accurately reflected hours worked and amounts paid to employees, as well as
15 risks associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted the
16 maximum exposure by 70% for risk of non-certification, and by an additional 70% for risk of
17 being unsuccessful on the merits, for an estimated realistic exposure of approximately \$27,499.
18 Blakely Decl., ¶ 18.

19 Waiting Time Penalties: \$51,743

20 RTI Systems’ records reflected approximately 109 former Settlement Class members who
21 are eligible for waiting time penalties. Blakely Decl., ¶ 19. Based on an hourly rate of \$18.84,
22 Plaintiff estimated the average waiting time penalty per former employee to be approximately
23 \$4,521 (\$18.84 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated RTI Systems’
24 maximum exposure for potential waiting time penalties to be approximately \$492,789 (109
25 former employees * \$4,521 average penalty). *Id.*

26 However, RTI Systems presented several defenses to this claim, most notably their
27 assertion that because they possessed good-faith defenses to the underlying claims, any failure to
28 pay wages was not “willful” as a matter of law. Blakely Decl., ¶ 19. RTI Systems further asserts

1 that Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee
2 experienced the alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is
3 derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome RTI Systems'
4 defenses, both as to class certification and on the merits, as to her underlying claims. *Id.* To
5 account for RTI Systems' defenses, Plaintiff discounted the maximum exposure by 70% for the
6 risk of non-certification and an additional 65% for the risk of losing on the merits and/or not
7 receiving the maximum penalties sought, to arrive at an estimated exposure of approximately
8 \$51,743. *Id.*

9 **PAGA Penalties: \$23,452**

10 Plaintiff estimated a maximum total PAGA exposure of approximately \$312,700 (3,127
11 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 20; *Amaral v. Cintas Corp. No. 2*, 163
12 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified
13 that it is violating a Labor Code provision). However, these penalties derive from the underlying
14 wage and hour violations discussed above, which RTI Systems disputes vigorously. Blakely
15 Decl., ¶ 20; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013)
16 (explaining that a PAGA claim's success was determined by the merits of its underlying claims).
17 RTI Systems also asserts that the Court would drastically reduce any award of PAGA penalties
18 as "confiscatory." Blakely Decl., ¶ 20; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203
19 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
20 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing
21 PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum
22 figure by 70% for the risk of losing on the merits and/or not recovering a PAGA penalty for each
23 and every pay period, and an additional 75% to account for the possibility of this Court reducing
24 penalties to arrive at an estimated exposure of approximately \$23,452. Blakely Decl., ¶ 20.

25 Using these estimated figures for each of the claims described above, Plaintiff predicted
26 that the potential recovery for the Settlement Class would be approximately \$382,288. Blakely
27 Decl., ¶ 21. The proposed Settlement of \$275,000.00 represents approximately 72% of the
28 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate

1 since the Settlement will provide significant monetary relief to the Settlement Class, which is
2 consistent with what Plaintiff's counsel believes could have been recovered had the case
3 proceeded through trial, and in light of RTI Systems' financial condition.

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

5 "Parties represented by competent counsel are better positioned than courts to produce a
6 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
7 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
8 by competent, experienced counsel who possess extensive experience prosecuting and defending
9 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
10 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6. *see also* Declaration of Paul K. Haines ("Haines
11 Decl."), ¶¶ 2-8; Class Counsel, with the help of a retained expert, conducted an in-depth review
12 of RTI Systems' timekeeping and payroll records and drew on their extensive experience in
13 similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely Decl., ¶¶ 15-
14 21. The Settlement was also reached with the assistance of an experienced and respected wage-
15 and-hour class action mediator. This factor strongly supports preliminary approval of the
16 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

24 The proposed Settlement reflects approximately 72% of the estimated recovery the
25 Settlement Class could reasonably expect in light of the significant litigation risks and will
26 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
27 percentage of the liability exposure recovered in this case far exceeds percentages routinely
28 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL

221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Further, the average Individual Settlement Award of approximately \$505.67 is in line with average payments achieved in other wage and hour class action settlements.⁵ Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm’s-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is

⁵ See e.g., *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good”); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data to arrive at his estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 15-21. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Settlement Class members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment, and Plaintiff’s Class Representative Enhancement Award, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff’s claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his counsel will fairly and adequately represent Settlement Class members’ interest. *See Cal. 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.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees employed by RTI Systems in California during the Class Period. Therefore, Settlement Class members can be identified from RTI Systems’ personnel and employment records. RTI Systems represents that the Settlement Class consists of approximately 235 current and former non-exempt employees. *See Blakely Decl.*, ¶

14. It would therefore be impracticable to bring all Settlement Class members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits but rather on what types of questions, “common or individual,” are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on, among other issues, RTI Systems’ timekeeping policies/practices and meal and rest period policies/practices. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and 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) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff’s claims are typical of those held by the Settlement Class members. First, RTI Systems employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff was subject to RTI Systems’ wage and hour policies at issue in this case. *See Jacobs Decl.*, ¶ 2. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he was deprived of all wages and contends that he was deprived of all legally compliant meal and rest periods. Plaintiff further asserts that he did not receive accurate and compliant wage statements and did not receive all wages at the time of separation of employment. *See generally*, *Jacobs Decl.* Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

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///

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

3 The adequacy requirement examines conflicts of interest between named parties and the
4 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
5 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
6 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
7 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
8 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
9 indication that Class Counsel were not qualified and the named plaintiff had no interests
10 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
11 and hour class action litigation. *See Blakely Decl.*, ¶¶ 2-6; *Haines Decl.*, ¶¶ 2-8.

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

13 This Court should order distribution to the Settlement Class of the proposed Class Notice
14 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address
15 information provided by RTI Systems. *See Settlement*, ¶ 9. This manner of giving notice is the
16 “best notice practicable” under the circumstances because it provides “individual notice to all
17 members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417
18 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by
19 Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement
20 administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached
21 exhibits. Settlement Class members’ addresses will be ascertainable through RTI Systems’
22 personnel and payroll records, which RTI Systems will provide to Phoenix within ten (10)
23 business days of preliminary approval of the Settlement. *See Settlement*, ¶ 9(A). Within ten (10)
24 business days of receipt of the Settlement Class members’ addresses, Phoenix will mail the Class
25 Notice to all Settlement Class members. *Id.*, at ¶ 9(B). To the extent that any notices are returned,
26 Phoenix will perform a “skip trace” to track any Settlement Class member’s current mailing
27 address. *Id.*, at ¶ 9(F).

28 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)

1 because it advises Settlement Class members of the nature of the claims, basic contentions and
2 denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object
3 to the Settlement and the procedures by which to do so, explains the recovery formula and
4 expected recovery amount for each Settlement Class member, and advises them that they will be
5 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1-2 to Exh.
6 A. The proposed Class Notice will also notify Settlement Class members of the final approval
7 hearing date and provides the Settlement Class contact information for Class Counsel and advises
8 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
9 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
10 cost-effective method of reaching Settlement Class members.

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

12 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
13 appropriately scheduled to follow the deadline by which Settlement Class members must file
14 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

15 **V. CONCLUSION**

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

19
20 Dated: October 30, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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22 By:



23 Paul K. Haines
24 Sean M. Blakely
25 Attorneys for Plaintiff
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