

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
OSCAR GERARDO

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
OSCAR GERARDO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OSCAR GERARDO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

STRATASYS DIRECT, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 20STCV44366

*[Assigned for all purposes to the Honorable William
F. Highberger, Dept. SSC-10]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: March 22, 2022
Time: 1:30 p.m.
Dept.: SSC-10

Action Filed: November 17, 2020
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on March
3 22, 2022 at 1:30 p.m. in Department SSC-10 of the above-entitled Court, located at 312 North Spring
4 Street, Los Angeles, California, 90012, Plaintiff Oscar Gerardo (“Plaintiff”), individually and on behalf
5 of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement
8 purposes only, provisional certification of the following Settlement Class defined as follows:

9 All current and former non-exempt employees who worked for Defendant
10 Stratasys Direct, Inc. in California at any time from November 17, 2016 through
11 date of the order granting Preliminary Approval of the Settlement, unless the
12 Escalator Clause is triggered and Defendant elects to end the Class Period on the
date at which the number of weeks worked by Class Members reaches 52,726
workweeks.

- 13 3. Preliminary appointment of Plaintiff Oscar Gerardo as Class Representative;
14 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
15 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
16 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
17 and to permit an enhancement award to Plaintiff, Settlement Administration costs, civil
18 penalties payable to the California Labor Workforce Development Agency, and attorneys’
19 fees and costs to Class Counsel;
20 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
21 Administrator for mailing notices; and
22 7. Approval of the proposed Settlement Notice is attached to the Settlement as Exhibit A and
23 an order that it be disseminated to the proposed Settlement Class Members as provided in
24 the Settlement Agreement.

25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Oscar
27 Gerardo, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto,
28

1 the pleadings and other papers filed in this action, and on any further oral or documentary evidence or
2 argument presented at the time of hearing.

3
4 Dated: February 17, 2022

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Scott M. Lidman
Attorney for Plaintiff
OSCAR GERARDO

TABLE OF CONTENTS

I.	INTRODUCTION	7
II.	SUMMARY OF THE LITIGATION	8
A.	THE PARTIES.....	8
B.	BRIEF PROCEDURAL HISTORY	8
C.	CLAIMS ASSERTED AND NEGOTIATED AS PART OF PROPOSED SETTLEMENT	8
III.	DUNK/KULLAR ANALYSIS	9
A.	INVESTIGATION AND DISCOVERY	9
B.	ARMS-LENGTH NEGOTIATIONS.....	10
C.	THE EXPERIENCE AND VIEWS OF COUNSEL	10
D.	AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS	10
E.	THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL	14
F.	RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER LITIGATION.....	15
G.	RISK OF MAINTAINING CLASS ACTION STATUS	15
IV.	CLASS CERTIFICATION FOR SETTLEMENT PURPOSES	15
A.	NUMEROSITY IS SATISFIED.....	16
B.	COMMONALITY IS SATISFIED.....	16
C.	TYPICALITY IS SATISFIED.....	17
D.	ADEQUACY IS SATISFIED.....	18
V.	SETTLEMENT AGREEMENT	18
A.	THE BASICS	18
B.	RELEASE OF CLAIMS	19
1.	Scope of Settlement Class Members' Release.....	19
2.	Scope of PAGA Release	19

1	3.	Releases Effective Date	20
2	C.	MONETARY TERMS OF SETTLEMENT	20
3	1.	Gross Settlement Amount and Timing of Payment	20
4	2.	Deductions from Gross Settlement Amount	21
5	3.	Class Representative Service Award	21
6	4.	Attorneys' Fees and Costs	22
7	5.	Payroll Taxes	23
8	6.	Payment Formula	23
9	7.	Tax Allocation	24
10	8.	PAGA Penalty	24
11	VI.	NOTICE ADMINISTRATION	24
12	A.	SETTLEMENT ADMINISTRATOR	24
13	B.	QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR	25
14	C.	CLASS LIST FROM DEFENDANT	25
15	D.	CLASS LIST UPDATED PRIOR TO INITIAL MAILING	25
16	E.	DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS	25
17	F.	NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)	25
18	G.	COURT'S CURRENT SOCIAL DISTANCING PROCEDURES	26
19	H.	PROCESSING OF PAYMENTS	26
20	I.	UNDELIVERABLE SETTLEMENT NOTICE	26
21	VII.	RESPONSES TO SETTLEMENT NOTICE	26
22	A.	REQUESTS FOR EXCLUSION	26
23	B.	RE-MAILED NOTICES	27
24	C.	OBJECTION PROCEDURES	27
25	VIII.	DISTRIBUTION OF UNCASHED FUNDS	27
26	IX.	CONCLUSION	27
27			
28			

TABLE OF AUTHORITIES

Federal Cases

<i>Dunleavy v. Nadler</i> 213 F.3d 454 (9th Cir. 2000)	16
<i>Fleming v. Covidien Inc.</i> Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	15
<i>Glass v. UBS Finan. Servs.</i> Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007).....	16
<i>Hanlon v. Chrysler Corp.</i> 150 F.3d 1011 (9th Cir. 1998)	17
<i>In re Pacific Enterprises Securities Litigation</i> 47 F.3d 373 (9th Cir. 1995)	11
<i>In re Syncor ERISA Litig.</i> 516 F.3d 1095 (9th Cir. 2008)	10
<i>Jones v. Spherion Staffing</i> No. LA-CV-11-06462-JAK(JCx) 2012 WL 3264081 (C.D. Cal. 2012)	14
<i>Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.</i> 221 F.R.D. 523 (C.D. Cal. 2004).....	16
State Cases	
<i>Amaral v. Cintas Corp. No. 2</i> 163 Cal.App.4th 1157 (2008)	14
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> 191 Cal.App.3d 1341 (1987)	17
<i>Benton v. Telecom Network Specialists, Inc.</i> 220 Cal.App.4th 701 (2013)	17
<i>Bowles v. Sup. Ct.</i> 44 Cal.2d 574 (1955)	16
<i>Brinker Restaurant Corp. v. Superior Court</i> 53 Cal. 4th 1004 (2012)	12
<i>Capital People First v. State Dept. of Developmental Services</i> 155 Cal.App.4th 676 (2007)	18
<i>In re Cellphone Fee Termination Cases</i> 186 Cal.App.4th 1380 (2010)	21

1	<i>Kao v. Joy Holiday</i>	
2	12 Cal.App.5th 947 (2017)	13
3	<i>Kullar v. Foot Locker Retail, Inc.</i>	
4	168 Cal.App.4th 116 (2008)	9, 10
5	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
6	1 Cal.5th 480, 506 (2016)	22
7	<i>McGhee v. Bank of America</i>	
8	60 Cal.App.3d 442 (1976)	18
9	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
10	40 Cal. App. 5th 444 (2019)	13
11	<i>Price v. Starbucks Corp.</i>	
12	192 Cal.App.4th 1136 (2011)	14
13	<i>Reed v. United Teachers Los Angeles</i>	
14	208 Cal.App.4th 322 (2012)	15
15	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i>	
16	34 Cal.4th 319 (2004)	16
17	<i>Sevidal v. Target Corp.</i>	
18	189 Cal.App.4th 905 (2010)	16
19	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
20	203 Cal.App.4th 1112 (2012)	14
21	Federal Rules	
22	F.R.C.P. Rule 23	15
23	State Statutes and Rules	
24	Civ. Code § 1542	22
25	Civ. Proc. § 382	16
26	C.R.C. Rule 3.766(d)	25
27	C.R.C. Rule 3.766(e).....	26
28	Lab.Code § 203	13
	Lab. Code § 226(e)	13
	Lab. Code § 2699(e)(2).....	14
	Regulations	
	8 Cal. Code Regs. § 13520.....	14
	Other Sources	
	4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	23

1 **MEMORANDUM OF POINTS AND AUTHORITIES¹**

2 **I. INTRODUCTION**

3 Plaintiff Oscar Gerardo (“Plaintiff”) brought this class and representative action against
4 Defendant Stratasys Direct, Inc. (hereinafter “Stratasys” or “Defendant”) alleging various wage and
5 hour and related violations. After the Parties agreed to attend a private mediation, they exchanged
6 information and data, and also agreed to expand the scope of the mediation. Therefore, Plaintiff’s
7 primary claims/allegations which are being settled subject to Court approval are that Stratasys: (1) failed
8 to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all
9 legally required meal periods; (4) failed to provide accurate, itemized wage statements; (5) engaged in
10 unlawful business practices; (6) failed to authorize and permit all legally required rest periods; (7) failed
11 to timely pay all wages upon termination; and (8) liable for civil penalties under the Labor Code Private
12 Attorneys General Act of 2004 (“PAGA”).

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
14 class action settlement,² in which Stratasys has agreed to pay One Million One Hundred Fifteen
15 Thousand Dollars and Zero Cents (\$1,115,000.00) on behalf of the following Settlement Class:

16 All current and former non-exempt employees who worked for Defendant
17 Stratasys Direct, Inc. in California at any time from November 17, 2016 through
18 the date of the order granting Preliminary Approval of the Settlement, unless the
19 Escalator Clause is triggered and Defendant elects to end the Class Period on the
20 date at which the number of weeks worked by Class Members reaches 52,726
21 workweeks.

22 Significantly, Settlement Class members do not need to file a claim to benefit from the
23 Settlement because all Settlement Class members will automatically receive a payment unless they
24 affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees
25 and costs, and the PAGA Payment, the remaining Net Settlement Amount (“NSA”) of approximately

26 ¹ Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court
27 allow Plaintiff to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the
28 Court consider the attached memorandum of points and authorities which is 22 pages in length.

² The Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement”) is attached to
the Declaration of Scott M. Lidman as Exhibit 2. The proposed Settlement Notice is attached to the
Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the
Settlement.

1 \$601,333.34 will be distributed to all Settlement Class members who do not opt-out of the Settlement.
2 There were approximately 326 Settlement Class members as of the date of mediation, and including the
3 \$25,000 for PAGA Employees, the average payment to participating Settlement Class members is
4 estimated to be approximately **\$1,921.27**.

5 This proposed Settlement is well-within the range of possible approval in light of the significant
6 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
7 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff
8 respectfully requests that the Court grant preliminary approval of the Settlement.

9 **II. SUMMARY OF THE LITIGATION**

10 **A. THE PARTIES**

11 Stratasys provides 3D printing, plastic molding and other manufacturing services. *See*
12 Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff was employed by Stratasys from
13 approximately 2008 through approximately February 2020, at which time he began a medical leave of
14 absence. *See* Declaration of Oscar Gerardo (“Nunez Decl.”), ¶ 2. Since the filing of the lawsuit,
15 Plaintiff has agreed to voluntarily separate his employment with Stratasys. *Id.*

16 **B. BRIEF PROCEDURAL HISTORY**

17 On November 17, 2020, Plaintiff filed a putative class action complaint against Stratasys in Los
18 Angeles County Superior Court. Lidman Decl., ¶ 10. On November 17, 2020, Plaintiff submitted a
19 letter to the California Labor & Workforce Development Agency (“LWDA”) and Stratasys of his
20 intention of filing a PAGA claim based on the labor code violations as alleged in his complaint. *Id.*,
21 Exhibit 1. Therefore, on September 29, 2021, after exhausting his administrative remedies, Plaintiff
22 filed a First Amended Class and Representative Action Complaint adding a cause of action for civil
23 penalties under the PAGA. *Id.*

24 **C. CLAIMS ASSERTED AND NEGOTIATED AS PART OF PROPOSED 25 SETTLEMENT**

26 Plaintiff’s primary allegations are that Stratasys: (1) failed to pay all overtime wages owed; (2)
27 failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (5)
28 failed to provide accurate, itemized wage statements; (5) engaged in unlawful business practices; and
(6) is liable for civil penalties under the PAGA. After the Parties agreed to attend a private mediation,
they exchanged information and data, and also agreed to expand the scope of the mediation.

Specifically, the Parties agreed that they would exchange data and mediate additional claims for: (7) failure to authorize and permit all legally required rest periods and (8) failure to timely pay all wages upon termination. Therefore, on February 2, 2022, Plaintiff submitted a supplemental letter to the LWDA and Stratasys of his intention of filing a PAGA claim based on the foregoing additional labor code violations. Lidman Decl., ¶ 10, Exh. 3.³

Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date he files this Motion and will submit a supplemental declaration showing the submission. Lidman Decl., ¶ 33.

III. DUNK/KULLAR ANALYSIS

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

A. INVESTIGATION AND DISCOVERY

After agreeing to participate in private mediation, Stratasys informally produced a 15% sampling of timekeeping and payroll data for the putative class members, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 11. Stratasys also provided necessary metrics, including without limitation, class size, number of workweeks and pay periods. After the detailed review of the payroll and time records for the putative class and other documents and policies produced by Stratasys, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Stratasys' defenses thereto, if a settlement could not be reached.

³ As part of the Settlement, the Parties stipulated to the filing of a Second Amended Complaint ("SAC") to include causes of action for: (i) failure to authorize and permit rest periods and (ii) failure to pay all wages upon termination. The Court approved it on February 16, 2022. Given the need to exhaust his administrative remedies with the LWDA, Plaintiff intends to file the SAC on April 11, 2022.

1 **B. ARMS-LENGTH NEGOTIATIONS**

2 On October 27, 2021, after extensive research and analysis, a full-day mediation was held with
3 Steven G. Mehta, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During
4 mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification
5 of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed
6 in principle on a class-wide resolution. *Id.* As part of the Settlement, the Parties agreed that, subject to
7 Court approval, Plaintiff would file a Second Amended Complaint which adds claims for: (i) failure to
8 authorize and permit all legally required rest periods and (ii) failure to pay all wages upon termination.
9 *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Joint
10 Stipulation of Class Action and PAGA Settlement and Release (“Settlement”).

11 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

12 “Parties represented by competent counsel are better positioned than courts to produce a
13 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
14 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
15 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour
16 class actions, and who have been appointed as class counsel in numerous cases alleging similar
17 claims. *See* Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel
18 conducted an in-depth review of Stratasys’ policies and timekeeping and payroll records, and drew on
19 their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case.
20 *See* Lidman Decl., ¶¶ 10-28. The Settlement was also reached with the assistance of an experienced
21 and respected wage and hour class action mediator. *Id.* This factor strongly supports preliminary
22 approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

23 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**
24 **CLAIMS**

25 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in
26 the face of disputed claims. Plaintiff’s analysis of the maximum and realistic expected recoveries for
27 each of the theories of liability pled is set forth below:

28 Stratasys Failed to Pay for All Hours Worked: Plaintiff alleges that he and Settlement Class
members were not fully compensated for all of their time worked. Lidman Decl., ¶ 16. Specifically,

1 Plaintiff alleges Stratasys would keep track of his hours and the hours of the other non-exempt
2 employees, and would unlawfully shave their work time and/or round their work time such that they
3 would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time shaving and/or
4 rounding practice utilized by Stratasys was not-even handed over time and would almost exclusively
5 round and shave in Stratasys' favor such that the employees were routinely underpaid for their time
6 worked. *Id.* Accordingly, Plaintiff's expert analyzed this rounding issue and found that it appeared to
7 favor the employer, and then calculated a total wage underpayment of approximately \$27,416. *Id.*

8 Stratasys contends that it compensated Settlement Class members for all of their time worked.
9 Lidman Decl., ¶ 17. Stratasys also contends that its rounding practices were lawful, and any unpaid
10 time was *de minimis* and therefore non-compensable. *Id.* Stratasys further asserts that Plaintiff would
11 be unable to certify a rounding class given the individualized inquiries that would be required, and also
12 that Stratasys' rounding policy/mechanism was, according to it, neutral on its face and in its application.
13 *Id.* In light of these defenses, Plaintiff discounted the maximum exposure by 35% for the risk of non-
14 certification, and an additional 35% to account for Stratasys' defenses on the merits, to arrive at an
15 estimated exposure of \$11,583.26. *Id.*

16 Stratasys Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and
17 Settlement Class members were not provided with all legally-compliant first meal periods beginning
18 before the end of the fifth hour of work. Lidman Decl., ¶ 18. Specifically, as a result of the work
19 demands imposed by Stratasys, Plaintiff claims he was often provided with a meal period after his fifth
20 hour of work, or a meal period less than 30 minutes, in violation of California law. *Id.* Indeed, based
21 on the timekeeping data produced in connection with mediation, there appeared to be a 53.19% non-
22 compliance rate- with the majority of the meal periods being short or less than 30 minutes. *Id.* Therefore,
23 Plaintiff calculated Stratasys' maximum exposure for the alleged meal period violations at
24 approximately \$1,838,222 (110,803 shifts with meal period violations x \$16.59 average hourly rate). *Id.*

25 Stratasys counters that it has always maintained a lawful meal period policy and provided non-
26 exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
27 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
28 than any policy or practice of Stratasys. Lidman Decl., ¶ 19. Stratasys points out that under *Brinker*

1 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the
2 opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done
3 so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, Stratasys contends
4 Plaintiff’s meal period claim is not suited for class certification, since individual inquiries would be
5 required to assess which employees took non-compliant meal periods, how many meal periods were
6 non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period
7 or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum
8 exposure by 45% for the risk of non-certification, and an additional 35% to account for Stratasys’
9 defenses on the merits to arrive at an estimated exposure of \$657,164.37. *Id.*

10 Stratasys Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and
11 Settlement Class members were also not authorized and permitted to take all required rest periods due
12 to Stratasys’ rest period policies and practices. Lidman Decl., ¶ 20. Specifically, Plaintiff alleges that
13 Stratasys failed to authorize and permit all rest periods for every four hours worked, *or major fraction*
14 *thereof*. *Id.* Accordingly, Plaintiff calculated Stratasys’ maximum exposure for rest period violations
15 at \$3,589,296 (216,353 shifts over 3.5 hours x \$16.59 average hourly rate). *Id.*

16 Stratasys contends it has always maintained and enforced lawful rest period policies and
17 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
18 periods in compliance with California law. Lidman Decl., ¶ 21. Stratasys also argues that Plaintiff’s
19 rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into
20 whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest
21 period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
22 discounted the maximum exposure by 60% for the risk of non-certification, and an additional 55% to
23 account for Stratasys’ defenses on the merits to arrive at an estimated exposure of \$646,073.28. *Id.*

24 Stratasys Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that Stratasys
25 issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid
26 minimum wages and overtime wages, and meal and rest period premium wages described above.
27 Lidman Decl., ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a)
28 because the wage statements issued to Settlement Class Members did not include all hours worked and

1 the rate at which they were being paid. *Id.* Plaintiff's data analysis reflected that there were
2 approximately 8,670 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff
3 calculated Stratasys' maximum exposure for wage statement violations at approximately \$859,650
4 (($\$50.00 \times 147$ current employees) + ($\$100.00 \times 8,523$ subsequent wage statements)). *Id.*

5 Stratasys argues that meal and rest period claims cannot support a claim for wage statement
6 penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, review granted
7 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones v. Spherion Staffing*,
8 No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Lidman Decl., ¶ 23.
9 Stratasys further argues that its alleged wage statement violations could not be shown to be "knowing
10 and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a
11 result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of
12 penalties. *Id.* As such, Plaintiff discounted the calculated exposure by 40% for a risk of non-certification
13 and an additional 35% for a risk of being unsuccessful on the merits, to arrive at an estimated total of
14 \$335,263.50. *Id.*

15 Stratasys is Liable for Waiting Time Penalties: Plaintiff alleges that Stratasys is also liable for
16 waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all wages
17 upon separation. Lidman Decl., ¶ 24. Based on the data provided by Stratasys, there were approximately
18 179 Settlement Class members who have separated their employment with Stratasys during the relevant
19 time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Stratasys'
20 maximum exposure for waiting time penalties at approximately \$712,706 (179 former employees x
21 \$16.59/hour x 30 days x 8 hours/day). *Id.*

22 Stratasys asserts it has strong defenses to the waiting time claim because there exist good-faith
23 disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 25.
24 See also 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
25 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
26 that "good faith dispute" over whether employee was exempt precluded imposition of waiting time
27 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
28 30% for the risk of non-certification, and an additional 35% to account for Stratasys' defenses on the

merits, to arrive at an estimated exposure of \$324,281.23. *Id.*

Stratasys is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. Plaintiff calculated Stratasys' maximum exposure at \$867,000 (8,670 pay periods x \$100 initial violation rate). *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Stratasys argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 27; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Stratasys also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Stratasys liable for any of Plaintiff's claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 35% for a risk of being unsuccessful on the merits, and an additional 30% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$394,485.00. *Id.*

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$2,368,850.64. Lidman Decl., ¶ 28. The proposed settlement of \$1,115,000.00 therefore represents approximately 47.1% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class members, and will still provide an average recovery to Settlement Class members of nearly \$2,000.00.

The proposed settlement reflects approximately 47.1% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. See, e.g., *Glass v. UBS Finan.*

1 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
2 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
3 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm.*
4 *Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed
5 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that
6 might be available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed
7 settlement is within the range of possible approval, such that notice should be provided to the
8 Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again
9 assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-
10 out or object.

11 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER** 12 **LITIGATION**

13 Although the parties engaged in informal discovery throughout this action, the parties still had
14 significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 32.
15 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
16 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
17 Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur
18 considerably more attorneys’ fees and costs through a possible decertification motion, trial, and possible
19 appeal. *Id.* This Settlement avoids those risks and the accompanying expense. Thus, this factor
20 supports preliminary approval.

21 **G. RISK OF MAINTAINING CLASS ACTION STATUS**

22 Plaintiff had not yet filed his motion for class certification and as such, the extent to which
23 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there was a
24 risk that there would not be a certified class at the time of trial.

25 **IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

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

1 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine “whether a
2 proposed settlement is fundamentally fair, adequate, and reasonable”).

3 As further explained below, the Settlement Class satisfies the criteria for certification of a
4 settlement class under California law because: (1) the Settlement Class is so numerous that joinder
5 would be impractical; (2) common questions of law and fact predominate over individual questions
6 such that class certification is the most efficient and desirable way to maintain this litigation; (3)
7 Plaintiff’s claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and
8 his counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ. Proc.
9 § 382.

10 **A. NUMEROSITY IS SATISFIED.**

11 Here, the proposed Settlement Class consists of at least 326 members, and is therefore
12 sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v.*
13 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
14 numerous). Thus, numerosity is satisfied.

15 Further, a class is “ascertainable” where the members “may be readily identified without
16 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
17 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class
18 is defined as “all current and former non-exempt employees who worked for Defendant Stratasys
19 Direct, Inc. in California at any time from November 17, 2016 through date of preliminary approval”
20 and is ascertainable from Defendant’s personnel records maintained in the normal course of business.
21 Lidman Decl., ¶ 14.

22 **B. COMMONALITY IS SATISFIED.**

23 The focus in a certification dispute is not the merits, but rather on what types of questions,
24 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
25 *Court (Rocher)* (2004) 34 Cal.4th 319, 327.

26 Here, Plaintiff alleges Settlement Class members’ claims arise from Stratasys’ common,
27 uniform policies and practices that applied to Settlement Class members during the class period.
28 Lidman Decl., ¶ 15. Specifically, Plaintiff alleged that Stratasys’ common and uniform policies and
practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to

1 pay all minimum wages owed; (3) failure to provide all legally required meal periods; (4) failure to
2 authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized wage
3 statements; (6) failure to pay all final wages upon separation of employment; (7) engagement in
4 unlawful business practices; and (8) liability for civil penalties under the PAGA. As a result of the
5 common and uniform policies and practices that applied to all Settlement Class members, their claims
6 involve common questions of law and fact, including but not limited to:

- 7 1. Whether Stratasys paid all overtime wages owed;
- 8 2. Whether Stratasys paid all minimum wages owed;
- 9 3. Whether Stratasys provided all legally compliant meal periods;
- 10 4. Whether Stratasys authorized and permitted all legally required rest periods;
- 11 5. Whether Stratasys failed to furnish accurate, itemized wage statements;
- 12 6. Whether Stratasys failed to pay all wages owed upon separation of employment; and
- 13 7. Whether Stratasys' conduct constituted unlawful and/or unfair business practices.

14 These alleged practices result in common questions as to the affected Settlement Class
15 members. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

16 **C. TYPICALITY IS SATISFIED.**

17 The typicality requirement is satisfied where class representatives have claims that are typical
18 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
19 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative
20 class in a consumer class action).

21 Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement
22 Class. First, Plaintiff was employed by Stratasys during the Class Period as a non-exempt employee
23 and was subject to Stratasys' wage and hour policies at issue in this case. *See Gerardo Decl.*, ¶ 2.
24 Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the
25 Settlement Class as a whole. For example, Plaintiff asserts that he was not paid all minimum and/or
26 overtime wages, was not provided all meal periods, was not authorized and permitted all rest periods,
27 received inaccurate itemized wage statements, similar to those received by the Settlement Class
28 members, and was not paid all of his wages owed upon his separation of employment. *Id.* Given that
Stratasys' policies and practices applied to all non-exempt employees, Settlement Class members

1 possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because
2 Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is
3 satisfied.

4 **D. ADEQUACY IS SATISFIED.**

5 The adequacy requirement examines conflicts of interest between named parties and the
6 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
7 (2007) Cal.App.4th 676, 697.

8 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he
9 seeks to represent. Indeed, Plaintiff's interests are aligned with those of the Settlement Class members,
10 as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel
11 does not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976)
12 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were
13 not qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

14 Further, Class Counsel also have extensive experience in wage and hour class action litigation
15 and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Elizabeth Nguyen
16 ("Nguyen Decl."), ¶¶2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶2-8; Declaration of Milan
17 Moore ("Moore Decl."), ¶¶2-4.

18 **V. SETTLEMENT AGREEMENT**

19 **A. THE BASICS**

20 **1. Class Definition and Release Period**

21 The proposed Settlement Class is defined as "current and former non-exempt employees who
22 worked for Defendant Stratasys Direct, Inc. in California at any time from November 17, 2016 through
23 the date of the order granting Preliminary Approval of the Settlement, unless the Escalator Clause is
24 triggered and Defendant elects to end the Class Period on the date at which the number of weeks worked
25 by Class Members reaches 52,726 workweeks." Lidman Decl., ¶ 14.

26 For purposes of this Settlement Agreement, the "Class Period" shall mean the time period of
27 November 17, 2016 through the date of the order granting Preliminary Approval of the Settlement,
28 unless the Escalator Clause is triggered and Defendant elects to end the Class Period on the date at
which the number of weeks worked by Class Members reaches 52,726 workweeks." *Id.*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

For purposes of this Settlement Agreement, the “PAGA Period” shall mean the time period of November 17, 2019 through the date of the order granting Preliminary Approval of the Settlement, unless the Escalator Clause is triggered and Defendant elects to end the Class Period on the date at which the number of weeks worked by Class Members reaches 52,726 workweeks.” *Id.*

1. Scope of Settlement Class Members' Release

2. Scope of PAGA Release

All PAGA Employees (including those who validly opted out from the class portion of the Settlement) shall be deemed to have released all claims under PAGA against the Released Parties that are pled in the operative Complaint or that could have been pled based on the facts and allegations set forth in the operative Complaint, including but not limited to claims seeking civil penalties under PAGA for failure to pay all minimum wages owed, failure to pay all overtime wages owed, failure to provide meal

1 periods, failure to authorize and permit rest periods, and failure to provide accurate, itemized wage
2 statements, and failure to pay all wages upon termination of employment, including but not limited to
3 claims for violation of California Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 558, 1194,
4 2698, *et seq.* The Parties agree that there is no statutory right for any PAGA Employee to opt out, object,
5 or otherwise exclude himself or herself from the PAGA Payment and the associated release of claims and
6 rights under PAGA. The release period for the PAGA claim shall be the PAGA Period as defined above.
7 Settlement, ¶ 31.

8 3. Releases Effective Date

9 The releases described above will only be effective on the date that Defendant fully funds the
10 Gross Settlement Amount. Settlement, ¶ 50.

11 C. **MONETARY TERMS OF SETTLEMENT**

12 1. Gross Settlement Amount and Timing of Payment

13 If the Court approves this Settlement, Stratasys will pay a Gross Settlement Amount (“GSA”)
14 of \$ 1,115,000.00.⁴ Lidman Decl., ¶¶ 13, Exh. 2 (Settlement, ¶ 18). Significantly, this Settlement is
15 **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a
16 Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award
17 unless he or she affirmatively opts out of the Settlement. *Id.*

18 The Gross Settlement Amount and all associated employer-side taxes shall be paid by Defendant
19 in one lump sum payment within thirty (30) calendar days after the Effective Date.⁵ See Settlement, ¶
20 52.

21 ⁴ Defendant represented that there were an estimated 47,932 Workweeks at issue for the Class Members during the
22 Class Period as of the date of mediation. If, as of the close of the Class Period, the actual number of Workweeks
23 during the Class Period is more than one hundred ten percent (110%) of this estimate (i.e., if there are 52,726 or
24 more workweeks worked by the Class Members during the Class Period), then either the Gross Settlement Amount
25 will be increased by the same proportion above one hundred ten percent (110%) or Defendant, at its sole discretion,
26 may elect to cut off the Class Period and PAGA Period as of the date the total Workweeks worked by Class Members
27 during the Class Period exceeds 10% of the 47,932 estimate. For example, if the workweeks are twenty percent
28 (20%) larger than 47,932 workweeks, Defendant may choose either that (i) the Gross Settlement Amount to be paid
will increase by 10% based on the Workweek Value determined by the Settlement Administrator; or (ii) the Class
Period and the PAGA Period will end on the date in which the Released Class Claims encompasses 52,726
workweeks. See Settlement ¶ 52.a.

⁵ Effective Date” means the date when all of the following events have occurred: (1) the Stipulation of Settlement
has been executed by all Parties, Class Counsel and Defense Counsel; (2) the Court has given preliminary
approval to the Stipulation of Settlement; (3) the Notice of Class Action Settlement has been given to the putative
members of the Settlement Class, providing them with an opportunity to object to the terms of this Stipulation of

1 2. Deductions from Gross Settlement Amount

2 The monetary terms of the Settlement are summarized below:

3 Gross Settlement Amount (“GSA”):	\$1,115,000.00
4 Minus Court-approved attorneys’ fees (update to 1/3 of GSA):	\$371,666.66
5 Minus Court-approved, verified costs (up to \$30,000.00):	\$30,000.00
6 Minus Court-approved Class Representative Service Award:	\$5,000.00
7 Minus Settlement Administration Costs:	\$7,000.00
8 Minus PAGA payment to the LWDA and PAGA Employees:	\$100,000.00
9 Net Settlement Amount (“NSA”):	\$601,333.34

10 After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service
11 Award to Plaintiff, Settlement Administrator costs, and the PAGA payment, the Settlement results in a
12 Net Settlement Amount (“NSA”) of at least \$601,333.34 to be paid out to all Settlement Class members
13 who do not timely opt out. Lidman Decl., ¶ 13, Exh. 2.

14 3. Class Representative Service Award

15 “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
16 class representatives for work done on behalf of the class [and] to make up for financial or reputational
17 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
18 1380, 1393-94.

19 Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of
20 seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for his
21 services to the Settlement Class. Lidman Decl., ¶ 31, Exh. 2 (Settlement, ¶ 53.b.); Gerardo Decl., ¶¶

22
23 Settlement or opt out of the settlement; (4) the Court has held a formal fairness hearing and entered a final Order
24 and Judgment certifying the Settlement Class and approving the Stipulation of Settlement; and (5) sixty-five (65)
25 calendar days have passed since the Court has entered a final Order and Judgment certifying the Settlement Class
26 and approving the Stipulation of Settlement; and (6) in the event there are objections to the Stipulation of
27 Settlement raised prior to or during the final fairness hearing which are not later withdrawn, the later of the
28 following events: five (5) business days after the period for filing any appeal, writ or other appellate proceeding
 opposing the Court’s final Order approving the Stipulation of Settlement has elapsed without any appeal, writ or
 other appellate proceeding having been filed; or, if any appeal, writ or other appellate proceeding opposing the
 Court’s final Order approving the Stipulation of Settlement has been filed, five (5) business days after any appeal,
 writ or other appellate proceedings opposing the Stipulation of Settlement has been finally and conclusively
 dismissed with no right to pursue further remedies or relief.

3-8. As will be fully briefed at the time of final approval, Plaintiff's requested service 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, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶ 35; Gerardo Decl., ¶¶ 3-8; Settlement ¶ 53.b.

4. Attorneys' Fees and Costs

California courts recognize 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.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the CSA 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 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be \$371,666.66, and up to \$30,000.00 in verified costs reimbursement. *See* Settlement, ¶ 53.c.; Lidman Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, analyzing Settlement Class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 29. Class Counsel expect 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.*

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the

1 extremely positive results obtained for the class, and the efficiency with which the Parties conducted
2 the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of
3 attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which
4 will include a lodestar analysis.

5 5. Payroll Taxes

6 The Settlement provides that Stratasys' payroll taxes shall be paid separately from, and in
7 addition to, and the Class Settlement Amount. Settlement ¶ 54. Defendant agrees to deposit it with the
8 Settlement Administrator on the same date the Gross Settlement Amount is due.

9 6. Payment Formula

10 According to Stratasys, there were approximately 326 total Settlement Class members as of the
11 date of mediation. Lidman Decl., ¶ 14. The Net Settlement Amount shall be allocated to Settlement
12 Class members who worked during the Class Period, as follows:

13 (1) The Settlement Administrator will calculate the Workweek Value by dividing the Net
14 Settlement Amount by the total number of Workweeks for the entire Settlement Class during the Class
15 Period;

16 (2) To determine each Class Member's estimated Individual Settlement Award, the Settlement
17 Administrator will multiply the Workweek Value by the number of Workweeks worked by each Class
18 Member. All Class Members will be entitled to payment for at least one Workweek.

19 (3) Should any of the following occur, the Settlement Administrator will proportionately
20 increase the Individual Settlement Award of each Participating Class Member to ensure that the entire
21 Net Settlement Amount is distributed to Participating Class Members: (i) any Class Member submits a
22 timely and valid, or otherwise accepted, Request for Exclusion; (ii) the Court approves a Class
23 Representative Service Award in an amount less than that requested by Plaintiff; (ii) the Court approves
24 a Class Counsel Award in an amount less than that requested by Plaintiff; and/or (iii) the Court approves
25 Settlement Administration Costs in an amount less than that requested by Plaintiff.

26 In addition, the Settlement Administrator will use the following formula to calculate the
27 Individual PAGA Awards for the PAGA Employees: Individual PAGA Award = [total value of PAGA
28 Payment to be distributed to PAGA Employees, i.e., \$25,000.00] × [Pay Periods worked by the

individual PAGA Employee during the PAGA Period ÷ total Pay Periods worked by all PAGA Employees during the PAGA Period]. Settlement, ¶ 53.d.

Thus, the average Individual Settlement Payment (assuming all Settlement Class members worked the same length of time) is projected to be approximately **\$1,921.27**. *Id.*

7. Tax Allocation

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty-Seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages. Settlement, ¶ 53.a.iii.

8. PAGA Penalty

The parties have agreed to a PAGA award of \$100,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$75,000.00. Settlement ¶ 4.C.5. This \$75,000.00 represents roughly 2.14% of the \$1,115,000.00 Class Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

VI. NOTICE ADMINISTRATION

A. SETTLEMENT ADMINISTRATOR

Phoenix Settlement Administrator’s (“PSA”) fees and expenses are estimated not to exceed \$7,000.00. *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval filed concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the proposed class size of approximately 326 Settlement Class members and the costs and expenses associated with administering the notices and distributing the awards. Additionally, PSA will translate the Notice and mail the Notice in both English and Spanish to Settlement Class members.

//

//

1 **B. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR**

2 PSA has extensive experience administering class action matters. PSA has administered
3 complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,
4 ERISA and PAGA class action matters, though final approval and distribution. PSA has developed a
5 system of quality assurance measures, to ensure the highest quality service is provided in our cases and
6 to class members. Lawrence Decl., ¶ 5.

7 **C. CLASS LIST FROM DEFENDANT**

8 Within twenty-one (21) calendar days after entry of an order preliminarily approving this
9 Agreement, Defendant will provide to the Settlement Administrator a list in Microsoft Excel format
10 containing each Class Member's (i) full name, (ii) last known address, (iii) Social Security Number, and
11 (iv) dates worked for Defendant during the Class Period as a non-exempt employee. Settlement, ¶ 51.a.

12 **D. CLASS LIST UPDATED PRIOR TO INITIAL MAILING**

13 Prior to mailing, the Settlement Administrator shall (i) run the names of all Settlement Class
14 members through the National Change of Address ("NCOA") database to determine any updated
15 addresses for Settlement Class members and (ii) update the address of any Settlement Class member for
16 whom an updated address was found through the NCOA search. Settlement, ¶ 51.b.

17 **E. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS**

18 Within fourteen (14) calendar days from receipt of the class list, the Settlement Administrator
19 shall mail a Notice to each Settlement Class member at his or her last known address or at the updated
20 address found through the NCOA search, and retain proof of mailing. Settlement, ¶ 51.b.

21 **F. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)**

22 The content of the proposed Settlement Notice satisfies California Rule of Court 3.766(d)
23 because it advises Settlement Class members of the nature of the claims, basic contentions and denials
24 of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the
25 Settlement and the procedures by which to do so, explains the recovery formula and expected recovery
26 amount for each Settlement Class member, provides them the opportunity to contest their total
27 workweeks included in the notice, and advises them that they will be bound by the terms of the
28 Settlement if they do not opt-out. See Lidman Decl., Exh. 2 (Settlement, Exh. A). The proposed
Settlement Notice will also notify Settlement Class members of the final approval hearing date and

provides Settlement Class members the contact information for Class Counsel, and advises Settlement Class members that they may enter an appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

G. COURT'S CURRENT SOCIAL DISTANCING PROCEDURES

The Class Notice expressly states the following:

Any Settlement Class member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's social distancing and mandatory face covering requirements, as well as any other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.lacourt.org.

For more information on how to appear remotely, please visit the Court's website at <http://www.lacourt.org/division/civil/CI0040.aspx> and <https://www.lacourt.org/lacc/>

H. PROCESSING OF PAYMENTS

Within fourteen (14) calendar days following Defendant's deposit of the Gross Settlement Amount and associated employer-side taxes, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members and PAGA Employees. Settlement, ¶ 53.a.i.

I. UNDELIVERABLE SETTLEMENT NOTICE

Any Settlement Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto within five (5) calendar days of receipt of the returned Settlement Notice by the Settlement Administrator. Settlement, ¶ 51.c.

VII. RESPONSES TO SETTLEMENT NOTICE

A. REQUESTS FOR EXCLUSION

The Request for Exclusion must: (a) be signed by the Class Member; (b) contain the name, address, telephone number, and the last four digits of the Social Security number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Settlement; (d) be returned by fax or mail to the Settlement Administrator at the specific address and/or facsimile number and be postmarked or faxed on or before the Response Deadline. Settlement, ¶ 33.

1 PAGA Employees are prohibited from submitting a Request for Exclusion as to the PAGA
2 Payment and shall be subject to the Released PAGA Claims even if they are also a Class Member who
3 has submitted a timely and proper Request for Exclusion from the Class portion of the Settlement. *Id.*

4 **B. RE-MAILED NOTICES**

5 Any Settlement Notice returned to the Settlement Administrator as non-deliverable on or before
6 the Response Deadline shall be re-mailed to the forwarding address affixed thereto within five (5)
7 calendar days of receipt of the returned Settlement Notice by the Settlement Administrator. Class
8 Members who are sent a re-mailed Settlement Notice shall have their Response Deadline, including
9 their deadline to submit a Workweek Dispute, extended by ten (10) calendar days from the date the
10 Settlement Administrator re-mails the Settlement Notice. Settlement, ¶ 51.c.

11 **C. OBJECTION PROCEDURES**

12 Any written objection must: (a) the objector's full name, signature, address, telephone number,
13 and the last four digits of his/her Social Security number, and (b) a written statement of all grounds for
14 the objection. Any Class Member may orally object at the final approval hearing, at their own expense,
15 without submitting a written Notice of Objection, unless the Court in its discretion determines
16 otherwise. Settlement, ¶ 20.

17 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

18 The Settlement provides that Settlement Class members with 180 days from the date the
19 Settlement Administrator mails the checks and any funds remaining after 180 days shall be transmitted
20 by the Settlement Administrator to the California State Controller's Office under the unclaimed
21 property laws in the names and corresponding amounts associated with each Participating Class
22 Member. Settlement ¶ 53.a.iv. As all settlement funds will be distributed to the Settlement Class
23 members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

24 **IX. CONCLUSION**

25 This Court should set a hearing for final approval of the Settlement on a date appropriately
26 scheduled to follow the deadline by which Settlement Class members must file objections to the
27 Settlement or opt-out. *See* California Rule of Court 3.769.

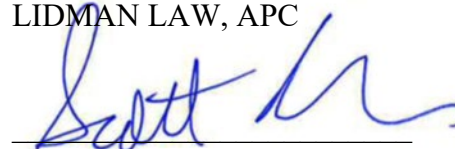
28 Therefore, for the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily

1 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed
2 Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

3
4
5 Dated: February 17, 2021

Respectfully submitted,
LIDMAN LAW, APC

6
7 By:



8 Scott M. Lidman
9 Attorney for Plaintiff
10 OSCAR GERARDO
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28