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

LUCIANO JIMENEZ, as an individual, and
on behalf of all others similarly situated,

Plaintiff,

vs.

ARCADIA CHAIR COMPANY, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. 30-2020-01175920-CU-OE-CXC

*[Assigned for all purposes to Hon. Lon
Hurwitz, Dept. CX-103]*

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

Date: February 16, 2024
Time: 1:30 p.m.
Dept.: CX-103

Complaint Filed: December 23, 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,
3 on February 16, 2024, at 1:30 p.m. in Department CX-103 of the above-entitled Court, located at
4 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Luciano Jimenez
5 (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby
6 does move this Court for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;
- 8 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional
9 certification of the following Settlement Class defined as follows:
10 All current and former non-exempt employees of Defendant Arcadia
11 Chair Company, Inc. directly hired by Arcadia Chair Company, Inc.
12 who worked in California at any time between June 23, 2016 through
November 30, 2023 (the “Class Period”), and who did not sign a
severance agreement.
- 13 3. Preliminary appointment of Plaintiff Luciano Jimenez as Class Representative;
- 14 4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law
15 Group, APC, as Class Counsel;
- 16 5. The scheduling of a hearing to consider whether the Settlement should be finally
17 approved and to permit a Class Representative Enhancement Payment to Plaintiff,
18 civil penalties payable to the Labor & Workforce Development Agency (“LWDA”),
19 settlement administration costs, and attorneys’ 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 Class Notice and an order that it be disseminated to the
23 proposed Settlement Class as provided in the Settlement Agreement.

24 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
25 Authorities; the declarations of Paul K. Haines, Sean M. Blakely, Plaintiff, and Jodey Lawrence
26 of Phoenix Settlement Administrators, and the exhibits attached thereto; the pleadings and other
27 papers filed in this action; and on any further oral or documentary evidence or argument presented
28 at the time of hearing. Defendant does not intend to oppose this Motion and given the multiplicity

1 of issues addressed in this Motion, has indicated its approval of Plaintiff's expressed need to
2 exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, the parties
3 jointly request the Court's consideration of Plaintiff's memorandum of points and authorities,
4 which is 27 pages in length.

5
6 Respectfully submitted,

7 Dated: January 17, 2024

HAINES LAW GROUP, APC

8
9 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 Luciano Jimenez (hereinafter “Plaintiff”) respectfully requests that this Court
4 preliminarily approve the Stipulation of Settlement, entered into by Plaintiff and Defendant
5 Arcadia Chair Company, Inc. (“Arcadia”). This is a significant non-reversionary settlement
6 reached after years of litigation, and only after Plaintiff’s Motion for Class Certification was fully
7 briefed and two unsuccessful mediations. *See* Register of Actions (“ROA”) Nos. 84, 91, 105.

8 Plaintiff now respectfully requests that this Court preliminarily approve this non-
9 reversionary, common-fund class action settlement,¹ in which Arcadia has agreed to pay Four
10 Million Three Hundred Fifty Thousand Dollars and Zero Cents (\$4,350,000.00) to the following
11 Settlement Class:

12 All current and former non-exempt employees of Defendant Arcadia
13 Chair Company, Inc. directly hired by Arcadia Chair Company, Inc.
14 who worked in California at any time between June 23, 2016 through
November 30, 2023 (the “Class Period”), and who did not sign a
severance agreement.

15 If the Settlement is approved, Arcadia will pay a non-reversionary Gross Settlement
16 Amount of \$4,350,000.00. After deducting administration costs, Plaintiff’s requested Class
17 Representative Enhancement Payment, the amount designated as civil penalties under the Private
18 Attorneys General Act (“PAGA”), and requested attorneys’ fees and costs, the Net Settlement
19 Amount of approximately \$2,666,000.00 will be distributed to all Settlement Class members who
20 do not opt-out of the Settlement based on the proportionate number of workweeks worked by
21 each Settlement Class member during the Class Period. Former employees with standing for
22 waiting time penalties, and employees with standing for wage statement and PAGA penalties will
also receive additional consideration for their release of these penalty claims.

23 Significantly, Settlement Class members do not need to file a claim to reap the financial
24 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
25 unless they affirmatively opt-out. There are approximately 750 Settlement Class members, and
26

27 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Paul K. Haines as
28 **Exhibit A**. The proposed Class Notice, Request for Exclusion Form, and Notice of Estimated
Settlement Award are attached to the Settlement as Exhibits 1, 2, and 3, respectively. All defined
terms in this motion have the same definition as that in the Settlement.

1 the average payment to participating Settlement Class members is projected to be
2 approximately \$3,554.67. This is an excellent result for Settlement Class members, especially
3 in light of the significant risks associated with continued litigation.

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

9 **II. SUMMARY OF THE LITIGATION**

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

11 Arcadia manufactures and sells “contract furniture” to commercial customers throughout
12 the United States and internationally. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10.
13 Plaintiff was employed by Arcadia as a non-exempt employee from approximately January 2018
14 to October 2020, at its manufacturing facilities in La Palma, California. *See* Declaration of
15 Luciano Jimenez In Support of Approval of Class Action Settlement (“Jimenez Decl.”), ¶ 2.

16 On December 23, 2020, Plaintiff filed his Class Action Complaint in Orange County
17 Superior Court, alleging causes of actions for: (i) failure to pay all overtime wages; (ii) failure to
18 pay all minimum wages; (iii) meal period violations; (iv) rest period violations; (v) wage
19 statement violations; (vi) waiting time penalties; and (vii) unfair competition in violation of
20 California Business & Professions Code § 17200 *et seq.* Haines Decl., ¶ 11. On March 1, 2021,
21 Plaintiff filed a First Amended Class and Representative Action Complaint (“FAC”) which added
22 a cause of action for civil penalties under the Private Attorneys General Act (“PAGA”). *Id.* As
23 part of the Settlement, the parties stipulate to the filing of a Second Amended Class and
24 Representative Action Complaint (“SAC”) which adds a cause of action for failure to reimburse
25 employees for necessary business expenditures. *Id.*

26 **B. PLAINTIFF’S CLAIMS AND ARCADIA’S DEFENSES**

27 **1. Failure to Pay For All Rest Period Time**

28 Plaintiff alleges that from June 28, 2016 to April 4, 2021, certain non-exempt employees

1 were provided with a first rest period that was 20-minutes in duration, as well as a second rest
2 period that was 10 minutes in duration. Haines Decl., ¶ 16. However, rather than pay these
3 employees for the entirety of their rest periods, Plaintiff alleges that Arcadia did not pay them for
4 10 minutes of the 20-minute rest period. *Id.* Plaintiff alleges that Arcadia recouped those 10
5 minutes of non-work time on the back-end of the shift by, for example, requiring employees to
6 work until 2:40 p.m. rather than to 2:30 p.m., but only paying them up until 2:30 p.m. *Id.* Plaintiff
7 contends that Arcadia’s practice of requiring employees to work 10 minutes at the end of their
8 shift without pay in order to “pay back” the extra 10 minutes given to them for their first rest
9 period violates California law. *Id.*; see Wage Order 1, § 12(A) (requiring that time spent during a
10 rest period must be compensated).

11 Arcadia argues that it has always compensated its employees for all hours worked and that
12 its rest period policies and practices comply with California law. Haines Decl., ¶ 16. Arcadia
13 further contends that its practice of providing a 20-minute rest period in the morning, of which
14 ten minutes were paid, and ten minutes were not paid, is not unlawful. *Id.* Arcadia contends that
15 case law nor the applicable Wage Order forecloses an employer from providing additional unpaid
16 rest period time to benefit the health of its employees. *Id.* Indeed, Arcadia argues it provided
17 employees a 20-minute rest period in the morning based on employees’ request for a longer break
18 to enable them to eat breakfast or purchase food from a nearby food truck. *Id.* Arcadia contends
19 that Plaintiff’s theory of liability is unsupported by California law and that its practice of
20 providing a paid ten-minute rest period supplemented by an additional ten minutes of unpaid
21 break time is lawful and presents no exposure to Arcadia. *Id.*

22 **2. Failure to Pay All Wages Due to Unlawful Timekeeping**
23 **Polices/Practices**

24 Plaintiff alleges that from June 28, 2016 to April 4, 2021, Arcadia utilized a timekeeping
25 practice that grossly and systemically underpaid employees through a process of unlawful
26 rounding and/or time-shaving. Haines Decl., ¶ 17. Plaintiff alleges that Arcadia required Plaintiff
27 and putative class members to accurately record their time worked and meal periods by clocking
28 in and out using an electronic system that recorded their time to the minute; however, Arcadia

1 would thereafter round/shave employees' recorded time to their detriment, which resulted in the
2 consistent under-payment of employee wages. *Id.*

3 Arcadia counters that it utilizes a fair and neutral time-rounding mechanism that results,
4 over time, in employees being paid for all hours worked. Haines Decl., ¶ 17; *see also, See's Candy*
5 *Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer
6 "applies a consistent rounding policy that, on average, favors neither overpayment nor
7 underpayment."); *AHMC Healthcare, Inc. v. Sup. Ct.*, 24 Cal.App.5th 1014, 1027-28 (2018)
8 (finding rounding policy lawful where policy was "neutral on its face" and resulted in employees
9 being overpaid). Arcadia further argues that it simply allowed employees to clock-in up to six (6)
10 minutes prior to their scheduled start of shift, however, it was not possible for employees to begin
11 working prior to the scheduled start of shift, and therefore, employees could not perform
12 compensable work prior to the start of their scheduled shift. Haines Decl., ¶ 17. Arcadia argues
13 that if employees did clock in prior to their scheduled shift, they engaged in personal activities
14 such as storing food in the breakroom, drinking coffee, and socializing with other employees, and
15 were not, and could not, perform compensable work. *Id.* Moreover, Arcadia asserts that Plaintiff
16 would be unable to certify this claim since its timekeeping policy/practice is facially neutral and
17 some employees were *overpaid* due to rounding, and individualized inquiries would be necessary
18 as to whether employees were in fact underpaid or overpaid for each workday in question
19 (including whether they were actually working when they were clocked in), resulting in an
20 unmanageable series of mini-trials. *Id.* Arcadia further contends that employees worked across
21 thirty (30) different departments with varying job duties, responsibilities, and schedules, thereby
22 making certification of any claim unlikely. *Id.*

23 **3. Meal Period Claims**

24 Plaintiff alleges that Arcadia utilized a bell system to govern employees' meal periods
25 that worked at two of its locations. Haines Decl., ¶ 18. In accordance with Arcadia's bell system,
26 a bell rings at the beginning of the meal period, a warning bell at approximately the 28-minute
27 mark of each meal period, and a final bell at the 30-minute mark. *Id.* After the 28-minute warning
28 bell rings, employees at these locations are then required to begin walking back toward the time

1 clocks, so that they can line-up in order to clock back in from lunch and be back at their
2 workstations before 30 minutes has elapsed. *Id.* Plaintiff contends that Arcadia’s bell schedules
3 resulted in employees routinely receiving short first meal periods, because the warning bells
4 impede upon their ability to take meal periods that are “net 30” minute in duration. *Id.*; *Brinker*
5 *Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040 (2012) (finding that an employer satisfies its
6 meal period obligations *only if* it “relieves its employees of all duty, relinquishes control over
7 their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute
8 break, and does not impede or discourage them from doing so.”) (emphasis added); *Donohue v.*
9 *AMN Servs., LLC*, 11 Cal. 5th 58, 61 (2021) (“The meal period provisions are designed to prevent
10 even minor infringements on meal period requirements, and rounding is incompatible with that
11 objective.”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal. App. 5th 778, 801 (2018) (finding that
12 the loss of three to five minutes of a 30-minute break is not *de minimis*). Plaintiff also alleges
13 Arcadia failed to provide second meal periods during shifts in excess of 10.0 hours. Haines Decl.,
14 ¶ 19.

15 Arcadia argues that it maintained compliant meal period policies and practices throughout
16 the Class Period and provided compliant meal periods in line with those policies/practices. Haines
17 Decl., ¶ 18. Arcadia further contends that its bell schedule for production employees provides for
18 timely, full 30-minute meal periods that start before the end of the fifth hour of work. *Id.* Arcadia
19 vigorously disputes Plaintiff’s allegations that its bell schedule results in “short” meal periods as
20 Arcadia argues that employees were not expected to strictly adhere to the bell schedule, and that
21 employees understood that they were not required to resume working until the completion of the
22 30-minute meal period. *Id.* With respect to second meal periods, Arcadia asserts that many
23 employees choose to waive their second meal periods on shifts over 10.0 hours and under 12.0
24 hours, as they may do under Labor Code § 512(a), so that they do not need to stay at work for an
25 extra unpaid 30 minutes. *Id.*, at ¶ 19. Finally, Arcadia maintains Plaintiff’s meal period claim is
26 not suited for class certification since individual inquiries would be needed to assess which
27 employees, if any, took non-compliant or missed meal periods, how many meal periods were non-
28 compliant or missed, each employee’s understanding of Arcadia’s bell schedule, and for second

meal periods, whether they waived the meal period. *Id.*, ¶¶ 18-19. Arcadia argues certification of this claim was also unlikely as Arcadia employs non-exempt employees across thirty (30) different departments with varying job duties, responsibilities, and work schedules. *Id.*, at ¶ 18.

4. Rest Period Claims

Similar to Plaintiff’s meal period claims, Plaintiff alleges Arcadia rings warning bells at two of its locations at the 8-minute mark of each 10-minute rest break, and that employees at these locations are expected to be back at their workstations by the time the final bell rings at the 10-minute mark. Haines Decl., ¶ 20. Plaintiff contends Arcadia’s bell schedules resulted in rest periods that are not “net 10” minutes in duration. *Id.*; see Wage Order 1, § 12(A) (requiring 10 minutes of “net rest time” for every four hours worked or major fraction thereof); *see also e.g., Augustus v. ABM Security Servs., Inc.*, 2 Cal. 5th 257, 270 (2016) (“a rest period means an interval of time free from labor, work, or any other employment-related duties. And employees must not only be relieved of work duties, but also be freed from employer control over how they spend their time.”).

Arcadia counters that it has maintained compliant written rest period policies and has always authorized and permitted employees a 10-minute rest period for each 4 hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was as a result of employee choice, rather than any Arcadia policy and/or practice. Haines Decl., ¶ 20. As with its defenses to Plaintiff’s meal period claim, Arcadia argues employees were not required to strictly adhere to Arcadia’s bell schedule for rest periods, and that employees understood that they were not required to resume working until the completion of the 10-minute rest break. *Id.* Arcadia maintains the 8-minute bell was simply to let production employees who take their rest period far outside of the facility where they worked know what time it is, and that the end of the break was near. *Id.* Arcadia 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, each employee’s understanding of the bell schedule, 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, Arcadia argues, given that rest periods are not recorded. *Id.*

5. Failure to Reimburse for Necessary Business Expenditures

Plaintiff contends that Arcadia required Settlement Class members to use their personal cellphones for a variety of work activities, including but not limited to, communicating with supervisors, but were not reimbursed for these business expenses. Haines Decl., ¶ 21; *see also* Labor Code § 2802; *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137, 1144 (2014) (“Thus to be in compliance with section 2802, the employer must pay some reasonable percentage of the employee’s cell phone bill.”).

Arcadia maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Haines Decl., ¶ 21. Arcadia further argues that any expenses incurred by Settlement Class members were minimal, given the wide availability of low-cost cellular phone plans. *Id.* Lastly, Arcadia argues this claim is not suitable for class treatment, as it would require individualized determinations as to whether each Settlement Class member used a personal cellular phone for work-related purposes, and if so, how much of that use was a reasonable percentage of their individual monthly phone bill. *Id.*; *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) (“In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee’s choices”).

6. Claims Under Labor Code §§ 203 and 226

As a result of Arcadia’s alleged failure to pay all wages and all meal and rest period premiums, Plaintiff asserts Arcadia failed to comply with its final payment obligations set forth in Labor Code § 203, and failed to issue accurate and compliant wage statements in violation of Labor Code § 226. Haines Decl., ¶¶ 22-23.

Arcadia asserts it has strong, good-faith defenses to Plaintiff’s underlying claims, precluding the imposition of waiting time penalties, which are only available for “willful” violations. Haines Decl., ¶ 22; *see also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12

Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting time penalties). Moreover, because the waiting time and wage statement claims are derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome Arcadia’s defenses, both as to class certification and on the merits, as to his underlying claims. Haines Decl., ¶¶ 22-23. Arcadia further asserts Plaintiff’s waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id.* Arcadia further contends any alleged wage statement violations could not be shown to be “knowing and intentional” given its good-faith defenses, and that Plaintiff cannot show he or other employees “suffer[ed] injury,” as required by Labor Code § 226(e) for the imposition of penalties. Haines Decl., ¶ 23. Arcadia further argues that wage statements always accurately reflected hours worked and amounts paid to employees. *Id.*; see *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received).

7. PAGA Civil Penalties

As a result of the foregoing Labor Code violations, Plaintiff alleges that Arcadia is liable for civil penalties under the PAGA. Haines Decl., ¶ 24. Since Plaintiff’s PAGA claim is derivative of Plaintiff’s underlying wage claims, Arcadia asserts the PAGA claim would fail with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Arcadia further maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Arcadia liable for any of Plaintiff’s claims. Haines Decl., ¶ 24; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

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1 **C. DISCOVERY AND MEDIATION**

2 Prior to reaching the proposed Settlement, the parties engaged in significant formal and
3 informal discovery. Haines Decl., ¶ 12. The parties agreed to attend an early mediation, and in
4 connection with mediation, Arcadia produced a 25% sampling of timekeeping and payroll records
5 for the putative class. *Id.* Arcadia also produced a “class list” with Settlement Class members’
6 hire, termination dates (if applicable), and rates of pay, as well as its relevant written wage and
7 hour policies, procedures and employee handbooks. *Id.* Plaintiff hired a labor economist with a
8 Ph.D. in economics to analyze and extrapolate the data to assist Plaintiff in calculating Arcadia’s
9 potential exposure for each of Plaintiff’s claims. *Id.*

10 On December 8, 2021, the parties participated in a full-day mediation with Steven G.
11 Mehta, Esq., a well-respected wage and hour class action mediator. Haines Decl., ¶ 13. However,
12 the parties were not able to reach a settlement. *Id.* Following the unsuccessful mediation, the
13 parties engaged in extensive formal discovery. *Id.* The parties entered into a stipulation which
14 allowed Plaintiff to use the 25% sampling of time and payroll records produced in advance of the
15 mediation in the formal litigation. *Id.* Plaintiff was also provided with the contact information for
16 the putative class, and Plaintiff’s counsel interviewed dozens of Settlement Class members
17 regarding their work experiences at Arcadia. *Id.* The parties agreed to exchange any and all signed
18 witness declarations obtained from Settlement Class members, and the parties agreed that each
19 party would be entitled to take the deposition of up to six (6) of the other party’s declarants. *Id.*
20 Ultimately, the parties took the deposition of eleven (11) declarants. *Id.* Arcadia took the
21 deposition of Plaintiff on April 8, 2022. *Id.* Plaintiff took the deposition of Arcadia’s Person Most
22 Knowledgeable (“PMK”) on April 28, 2022. *Id.*

23 After completing this formal discovery, the parties agreed to attend a second mediation
24 with Mr. Mehta. Haines Decl., ¶ 14. On May 3, 2022, the parties participated in a second
25 mediation with Mr. Mehta. *Id.* During mediation, the parties vigorously debated their opposing
26 legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the
27 claims and defenses. *Id.* Ultimately, the parties were not able to reach a settlement at this second
28 mediation. *Id.* Following the second mediation, Arcadia provided Plaintiff’s counsel with three

(3) years of financial records and Plaintiff, with the help of his retained forensic accountant, reviewed the financial documents provided by Arcadia. *Id.*

Following the unsuccessful second mediation, on November 9, 2022, Plaintiff filed his Motion for Class Certification. Haines Decl., ¶ 15; *see* ROA # 84. Arcadia filed its Opposition to Plaintiff's Motion for Class Certification on February 17, 2023, and Plaintiff filed his Reply Brief on March 9, 2023. *Id.*; *see* ROA # 91, 105. After Plaintiff's Motion for Class Certification was fully briefed, the parties resumed settlement negotiations with Mr. Mehta. Haines Decl., ¶ 15. Following these continued settlement discussions, Mr. Mehta issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by the parties. *Id.*² During the months that followed, the parties negotiated and finalized the long-form Settlement Agreement now before this Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Arcadia will pay a Gross Settlement Amount ("GSA") of \$4,350,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.*, at ¶¶ 3-4. Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	\$4,350,000.00
• Minus Court-approved attorneys' fees:	\$1,450,000.00
• Minus Court-approved verified costs (up to):	\$100,000.00
• Minus Court-approved Enhancement Payment:	\$15,000.00
• Amount designated as PAGA civil penalties:	\$100,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$19,000.00</u>
Net Settlement Amount ("NSA"):	\$2,666,000.00

² Following Arcadia's representation of its financial condition, Arcadia turned over its financial records to Plaintiff and his retained expert, a forensic accountant who has consulted or provided expert testimony in dozens of litigation and insurance matters. Haines Decl., ¶¶ 14-15. Plaintiff's expert opines that Arcadia could not reasonably afford to pay more than the Gross Settlement Amount, and that the requested payment schedule was necessary for Arcadia to remain in business without dramatically impacting its operations. *Id.*

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

2 After deducting amounts for the Court-approved attorneys’ fees and costs, Class
3 Representative Enhancement Payment to Plaintiff, the amount designated as PAGA civil
4 penalties, and settlement administration costs, the Settlement requires Arcadia to pay a Net
5 Settlement Amount (“NSA”) of at least \$2,666,000.00 to all Settlement Class members who do
6 not timely opt out. *See* Settlement, ¶ 4. Eighty percent (80%) of the NSA shall be distributed to
7 all participating Settlement Class members based on each participating Settlement Class
8 member’s proportionate number of workweeks worked during the Class Period. *See* Settlement,
9 ¶ 4(B)(i). Ten percent (10%) of the NSA shall be designated as the “Waiting Time Amount” and
10 shall be allocated in equal amounts to all participating Settlement Class members who separated
11 their employment from Arcadia at any time from June 23, 2017 to November 30, 2023.
12 Settlement, ¶ 4(B)(ii). Ten percent (10%) of the NSA shall be designated as the “Wage Statement
13 Amount” and will be paid proportionally based on the number of workweeks worked from June
14 23, 2019 to November 30, 2023 Settlement, ¶ 4(B)(iii). Additionally, Twenty-Five Thousand
15 Dollars (\$25,000.00) has been designated as the “PAGA Amount,” and shall be distributed to all
16 “PAGA Aggrieved Employees” (i.e., all current and former non-exempt employees in California
17 who worked for Arcadia, whether employed directly by Arcadia or through a staffing agency, at
18 any time from December 24, 2019, until November 30, 2023 (the “PAGA Period”)), including
19 those who submit a valid and timely Request for Exclusion from the class action settlement,
20 proportionally based on the number of workweeks worked during the PAGA Period. Settlement,
21 ¶¶ 1, 4(B)(iv).

22 According to Arcadia, there are approximately 750 Settlement Class members. Haines
23 Decl., ¶ 28. Therefore, the average Settlement Award from the NSA is projected to be
24 approximately \$3,554.67. *Id.* There are also approximately 1,050 PAGA Aggrieved Employees.
25 *Id.* Therefore, the average payment from the PAGA Amount is estimated to be approximately
26 \$23.81. *Id.*

27 Settlement Class members will have sixty (60) calendar days from the mailing of the
28 Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the

1 Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(E), (F). Those
2 Settlement Class members who do not opt-out of the Settlement will be bound by its terms and
3 will release all claims against Arcadia included within the Settlement. *See Id.*, at ¶ 2(A).

4 **2. Attorneys’ Fees and Costs, Enhancement Payment, and PAGA**
5 **Payment**

6 Plaintiff will apply for Class Representative Enhancement Payment at the time of seeking
7 final approval of the proposed class action settlement in the amount of \$15,000.00, for his service
8 to the Settlement Class. *See* Settlement, ¶¶ 3(D)(iii), 6; Haines Decl., ¶ 31. “[I]ncentive awards
9 are fairly typical in class action cases . . . and are intended to compensate class representatives for
10 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
11 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
12 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement
13 Payment is intended to recognize the time and effort Plaintiff expended on behalf of the
14 Settlement Class, including providing substantial factual information and documents to Class
15 Counsel, discussing the claims and theories at issue in the litigation, actively participating in the
16 prosecution of his claims, preparing for and attending a full-day deposition, as well as the
17 significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and
18 the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil Code §
19 1542. *See* Settlement, ¶ 2(C); Haines Decl., ¶ 31; *see also* Jimenez Decl.

20 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
21 Settlement Amount, which is currently estimated to be \$1,450,000.00, and up to \$100,000.00 in
22 verified costs reimbursement. *See* Settlement, ¶¶ 3(D)(iv), 5; Haines Decl., ¶ 30. Plaintiff submits
23 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
24 consuming litigation on a purely contingent fee basis. Haines Decl., ¶ 30. Class Counsel has
25 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s
26 claims, conducting legal research, conducting extensive informal and formal discovery,
27 interviewing Settlement Class members regarding their work experiences, analyzing Settlement
28 Class members’ timekeeping and payroll records, working with its retained expert to create a

1 comprehensive damages model, preparing for and attending two mediation sessions, taking
2 declarant depositions, defending Plaintiff's deposition and taking the deposition of Arcadia's
3 PMK, drafting and filing Plaintiff's Motion for Class Certification, reviewing Arcadia's
4 Opposition and preparing Plaintiff's Reply Brief in support of Class Certification, conducting
5 extensive settlement negotiations through Mr. Mehta, negotiating and preparing the long-form
6 Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel
7 expect to expend additional attorney time in attending the hearing on this Motion, overseeing the
8 Notice process and fielding questions from Settlement Class members, preparing the final
9 approval papers, and attending the Final Approval hearing. *Id.*

10 California courts recognize an appropriate method for awarding attorneys' fees in class
11 actions is to award a percentage of the "common fund" created as a result of a settlement. *See*
12 *e.g., Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund
13 method survives in California class action cases"). Class Counsel's request for fees of one-third
14 of the Gross Settlement Amount is well within the range of reasonableness, and indeed is
15 considered the typical rate for common fund settlements. Historically, courts have awarded
16 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See*
17 *Newberg on Class Actions* § 14.6 (4th Ed. 2013).

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

23 Additionally, the parties have agreed to designate \$100,000.00 of the Gross Settlement
24 Amount as PAGA civil penalties, of which \$75,000.00 (75%) will be paid to the LWDA, with
25 the remaining \$25,000.00 (25%) for distribution to PAGA Aggrieved Employees, as the PAGA
26 requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(D)(v).
27 Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
28 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.

Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement 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.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

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

reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff's Case

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

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

Although the parties engaged in significant informal and formal discovery prior to briefing class certification, the parties still had significant formal discovery to complete had the matter not settled. Haines Decl., ¶ 29. This would have required expenditure of substantial time and resources by both parties that would have very likely spanned several years. *Id.* Even if Plaintiff was to certify the classes, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, summary judgment motions, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

c. Risk of Maintaining Class Action Status

As indicated above, the parties reached a settlement prior to a ruling on Plaintiff's pending Motion for Class Certification. As such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Arcadia with individual class members by way of *Pick-up-Stix* type settlement agreements³), and the expected recovery could be significantly reduced, given the settlement

³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class 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

amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Settlement Class in the face of hotly disputed claims. With the assistance of a retained economist with a Ph.D. in economics, counsel for Plaintiff conducted an analysis of underpaid wages due to Arcadia's alleged unlawful timekeeping policies/practices, potential meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

Unpaid Wages Due to Arcadia's Failure to Pay for Rest Period Time and Unlawful Timekeeping Policies/Practices: \$689,545

As alleged above, Plaintiff contends Arcadia failed to pay for ten (10) minutes of the morning 20-minute rest period and engaged in unlawful timekeeping policies/practices which failed to compensate employees for all hours on the clock. Haines Decl., ¶¶ 16-17. Plaintiff's expert's analysis revealed that during the Class Period, Settlement Class members were clocked in for approximately 85,066 more hours than they were paid due to Arcadia's policies/practices. *Id.*, ¶ 17. Therefore, Plaintiff calculated Arcadia's maximum exposure on these claims to be approximately \$1,313,419 (85,066 unpaid hours * \$15.44 average rate of pay). *Id.*

However, Arcadia counters that it utilizes a fair and neutral time-rounding mechanism that results, over time, in employees being paid for all hours worked. Haines Decl., ¶ 17. Arcadia further contends that its practice of providing a 20-minute rest period in the morning, of which ten minutes were paid, and ten minutes were not paid, is not unlawful. *Id.*, at ¶ 16 Arcadia contends that case law nor the applicable Wage Order forecloses an employer from providing additional unpaid rest period time to benefit the health of its employees. *Id.* In light of Arcadia's defenses, Plaintiff discounted the maximum amount by 25% for risk of non-certification and an individual employees from recovery in class action litigation against the employer for the same wage claims.

1 additional 30% for risk of losing on the merits or failing to recover the full amount sought, to
2 arrive at an estimated exposure of approximately \$689,545. *Id.*, at ¶ 17.

3 First Meal Period Violations: \$1,691,029

4 Based on Plaintiff's review and extrapolation of Arcadia's timekeeping records,
5 approximately 306,357 shifts during the Class Period reflected a non-compliant first meal period.
6 Haines Decl., ¶ 18. Plaintiff further calculated that the average rate of pay for putative class
7 members during the Class Period at approximately \$15.44. *Id.* Therefore, assuming each non-
8 compliant meal period in the timekeeping records represents a violation, Plaintiff estimated total
9 maximum damages for first meal period violations at approximately \$4,730,152 (306,357 non-
10 compliant first meal periods * \$15.44 average premium). *Id.*

11 As noted above, however, Arcadia argues that it maintained compliant meal period
12 policies and practices throughout the Class Period and provided compliant meal periods in line
13 with those policies/practices. Haines Decl., ¶ 18. Arcadia vigorously disputes Plaintiff's
14 allegations that its bell schedule results in "short" meal periods as Arcadia argues that employees
15 were not expected to strictly adhere to the bell schedule, and that employees understood that they
16 were not required to resume working until the completion of the 30-minute meal period. *Id.*
17 Arcadia also maintains Plaintiff's meal period claim is not suited for class certification since
18 individual inquiries would be needed to assess which employees, if any, took non-compliant or
19 missed meal periods, how many meal periods were non-compliant or missed, and to understand
20 each employee's understanding of Arcadia's bell schedule. *Id.* Based on these defenses, Plaintiff
21 discounted the maximum amount by 35% for risk of non-certification and an additional 45% for
22 risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated
23 exposure of approximately \$1,691,029. *Id.*

24 Second Meal Period Violations: \$80,247

25 Plaintiff's analysis and extrapolation of the timekeeping data showed that during the Class
26 Period there were approximately 29,699 shifts worked in excess of 10.0 hours that did not reflect
27 a compliant second meal period and where there was no first meal period violation. Haines Decl.,
28 ¶ 19. Plaintiff contends that Arcadia can only be liable for one meal period premium each shift.

1 *Id.*; see *United Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011)
2 (“[E]mployees in this case may recover up to two additional hours of pay on a single work day
3 for meal period and rest period violations – one for failure to provide a meal period and another
4 for failure to provide a rest period.”). Therefore, Plaintiff calculates Arcadia’s maximum exposure
5 for second meal period violations at approximately \$458,553 (29,699 second meal period
6 violations * \$15.44 average premium). *Id.*

7 However, Plaintiff’s theory of liability carried significant risks, based on Arcadia’s
8 arguments that it has always provided employees the opportunity for second meal periods and
9 that Settlement Class members voluntarily waived their second meal period on shifts in excess of
10 10.0 hours but less than 12.0 hours, as they are entitled to do under Labor Code § 512. Haines
11 Decl., ¶ 19. In addition, as with first meal periods, Arcadia argued this claim would not be certified
12 as requiring individualized inquiries into both the merits and damages. *Id.* In light of these risks,
13 Plaintiff discounted the maximum amount that the class could potentially recover for second meal
14 periods by 50% for a risk of non-certification, and an additional 65% for the risk of losing on the
15 merits, or having exposure reduced due to Arcadia’s waiver arguments, to arrive at an estimated
16 exposure amount of approximately \$80,247. *Id.*

17 Rest Period Violations: \$1,790,533

18 As indicated above, Plaintiff alleges Arcadia rings warning bells at the 8-minute mark of
19 each 10-minute rest break, and that employees are expected to be back at their workstations by the
20 time the final bell rings at the 10-minute mark. Haines Decl., ¶ 20. Plaintiff contends Arcadia’s
21 bell schedules resulted in rest periods that are not “net 10” minutes in duration. *Id.* Based on
22 Plaintiff’s analysis and extrapolation of Arcadia’s timekeeping records, Plaintiff estimated there
23 were approximately 509,746 qualifying shifts (i.e., a shift over 6.0 hours in duration, as the second
24 rest period was the 10-minute rest period interrupted by the 8-minute Warning Bell). *Id.*
25 Therefore, Plaintiff estimated Arcadia’s maximum potential exposure for rest period violations at
26 approximately \$7,870,478 (509,746 rest period violations * \$15.44 average premium). *Id.*

27 However, as indicated above, Arcadia argues employees were not required to strictly
28 adhere to Arcadia’s bell schedule for rest periods, and that employees understood that they were

not required to resume working until the completion of the 10-minute rest break. Haines Decl., ¶ 20. Arcadia maintains the 8-minute bell was simply to let employees who take their rest period far outside of the facility where they worked know what time it is, and that the end of the break was near. *Id.* Arcadia 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 each employee's understanding of the bell schedule. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 35% for risk of non-certification and an additional 65% 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 \$1,790,533. *Id.*

Failure to Reimburse for Necessary Business Expenditures: \$69,782

Plaintiffs allege that Arcadia failed to reimburse Plaintiff and other Settlement Class members for necessary business expenditures, including the use of their personal cellular phones for work activities, as required under Labor Code § 2802. Haines Decl., ¶ 21. Based on the analysis and extrapolation of Arcadia's records, Plaintiff estimates that Settlement Class members have worked a total of approximately 24,922 aggregate months during the Class Period. *Id.* Using a conservative estimate of \$20 per month reimbursement for personal cellular phone use, Plaintiff calculates Arcadia's maximum exposure for this claim at approximately \$498,440 (\$20 per month * 24,922 months). *Id.*

As noted above, Arcadia maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Haines Decl., ¶ 21. Arcadia further argues that any expenses incurred by Settlement Class members were minimal, given the wide availability of low-cost cellular phone plans. *Id.* Arcadia further argues that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.* Based on these defenses, Plaintiffs discounted the estimated maximum amount by 60% for risk of non-certification, and by an additional 65% to account for risk of losing on the

merits and/or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately \$69,782. *Id.*

Wage Statement Penalties: \$383,900

Plaintiff's analysis reflected that there were approximately 349 unique employees and approximately 31,134 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. Haines Decl., ¶ 23. Those penalties are calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* In calculating potential exposure for this claim, utilizing the "initial" and "subsequent" violation rates resulted in a number greater than the \$4,000 cap per employee. *Id.* Plaintiff, therefore, calculated potential wage statement exposure at approximately \$1,396,000 (349 employees * \$4,000 max. penalty). *Id.*; *see also* Labor Code § 226(e). *Id.*

But given Arcadia's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 45% for risk of non-certification, and by an additional 50% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$383,900. Haines Decl., ¶ 23.

Waiting Time Penalties: \$303,707

Arcadia's records reflected approximately 298 former Settlement Class members who separated from their employment with Arcadia and are eligible for waiting time penalties. Haines Decl., ¶ 22. Based on an hourly rate of \$15.44, Plaintiff estimated the average waiting time penalty per former employee to be \$3,706 (\$15.44 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated Arcadia's maximum exposure for potential waiting time penalties to be approximately \$1,104,388 (298 former employees * \$3,706 average penalty). *Id.*

However, Arcadia presented several defenses to this claim, most notably their assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. Haines Decl., ¶ 22. Moreover, because the waiting time claim

1 is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Arcadia's
2 defenses, both as to class certification and on the merits, as to his underlying claims. *Id.* To
3 account for Arcadia's defenses, Plaintiff discounted the maximum exposure by 45% for the risk
4 of non-certification, and an additional 50% for risk of losing on the merits, and/or not receiving
5 the maximum penalties sought, to arrive at an estimated exposure of approximately \$303,707. *Id.*

6 PAGA Penalties: \$274,965

7 Plaintiff estimated a maximum total PAGA exposure at \$7,332,400 (73,324 pay periods
8 * \$100 "initial" penalty). Haines Decl., ¶ 24; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th
9 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is
10 violating a Labor Code provision). However, these penalties derive from the underlying wage and
11 hour violations discussed above, which Arcadia vigorously disputes. Haines Decl., ¶ 24; *see e.g.*,
12 *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a
13 PAGA claim's success was determined by the merits of its underlying claims). Arcadia also
14 asserts that given its good faith defenses, the Court would drastically reduce any award of PAGA
15 penalties as "confiscatory." Haines Decl., ¶ 24; *see also Thurman v. Bayshore Transit Mgmt.*,
16 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
17 *Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4
18 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the
19 maximum figure by 75% for risk of losing on the merits and manageability issues and/or not
20 recovering a PAGA penalty for each and every pay period, and an additional 85% to account for
21 the possibility of this Court reducing penalties, to arrive at an estimated exposure of
22 approximately \$274,965. Haines Decl., ¶ 24.

23 Using these estimated figures for each of the claims described above, Plaintiff predicted
24 that the potential recovery for the Settlement Class would be approximately \$5,283,708. Haines
25 Decl., ¶ 25. The proposed settlement of \$4,350,000 therefore represents approximately 82.3% of
26 the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
27 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
28 which is consistent with what Plaintiff's counsel believes could have been recovered had the case

1 proceeded through trial.

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

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

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

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

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

22 The proposed settlement reflects approximately 82.3% of the estimated recovery the
23 Settlement Class could reasonably expect in light of the significant litigation risks, and will
24 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
25 percentage of the liability exposure recovered in this case far exceeds percentages routinely
26 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
27 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
28 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 Settlement Award of approximately **\$3,554.67** greatly exceeds average payments achieved in other wage and hour class action settlements.⁴ 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, two full-day mediations before an experienced wage and hour mediator, and additional months of negotiations after the failed mediations to reach the settlement. Thus, the Settlement is 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 and reviewed extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data to arrive at

⁴ *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).

his estimated classwide damages figures. *See* Haines Decl., ¶¶ 16-25. 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, settlement administration costs, and Plaintiff’s Class Representative Enhancement Payment, 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 of Arcadia directly hired by Arcadia who worked in California during the Class Period, and who did not sign a severance agreement. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be identified from Arcadia’s personnel and employment records. Arcadia represents that the Settlement Class consists of approximately 750 current and former non-exempt employees. *See* Haines Decl., ¶ 28. 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. The proposed Settlement Class therefore

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 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, Arcadia’s timekeeping policies and/or practices, and meal and rest period policies and/or 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, Arcadia employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff was subject to Arcadia’s wage and hour policies at issue in this case. *See Jimenez 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*, Jimenez Decl. Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

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

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*

1 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
2 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
3 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
4 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
5 indication that Class Counsel were not qualified and the named plaintiff had no interests
6 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
7 and hour class action litigation. *See Haines Decl.*, ¶¶ 2-8; *Blakely Decl.*, ¶¶ 2-6.

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

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

26 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
27 because it advises Settlement Class members of the nature of the claims, basic contentions and
28 denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object

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

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

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

13 **V. CONCLUSION**

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

17
18 Dated: January 17, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

19
20 By:



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