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

ABEL MATA, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

PURITAN BAKERY, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 21STCV03614

*[Assigned for all purposes to Hon. David S.
Cunningham III in Dept. 11]*

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

Date: July 10, 2024
Time: 1:45 p.m.
Dept.: 11

Action Filed: January 29, 2021
Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on July 10, 2024 at 1:45 p.m. in Department 11 of the above-entitled Court, located at 312 North
3 Spring Street, Los Angeles, California 90012, Plaintiff Abel Mata (“Plaintiff”) individually and
4 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

8 All current and former non-exempt employees employed by Defendant
9 Puritan Bakery, Inc. in California from August 4, 2016 through
10 November 21, 2023 (the “Class Period”).

- 11 3. Preliminary appointment of Plaintiff Abel Mata as the Class Representative;
12 4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law
13 Group, APC as Class Counsel;
14 5. The scheduling of a hearing to consider whether the Settlement should be finally
15 approved and to permit a Service Award to Plaintiff, civil penalties payable to the
16 Labor & Workforce Development Agency (“LWDA”), settlement administrator costs,
17 and attorneys’ fees and costs to Class Counsel;
18 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
19 Administrator for mailing notices; and
20 7. Approval of the proposed Class Notice and an order that it be disseminated to the
21 proposed Settlement Class as provided for in the Settlement Agreement.

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

6
7 Dated: May 15, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By:



10 Paul K. Haines
11 Sean M. Blakely
12 Attorneys for Plaintiff
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TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. THE PARTIES AND BRIEF PROCEDURAL HISTORY	2
B. PLAINTIFF’S CLAIMS AND PURITAN BAKERY’S DEFENSES	3
1. Unlawful Deduction Claims	3
2. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices.....	3
3. Failure to Reimburse for Necessary Business Expenses	4
4. Claims Under Labor Code §§ 203, 226, and the PAGA.....	5
C. DISCOVERY AND MEDIATION.....	6
III. THE PROPOSED SETTLEMENT.....	7
A. ESSENTIAL TERMS OF THE SETTLEMENT	7
1. The Settlement Provides for Reasonable Monetary Payments	8
2. Attorneys’ Fees and Costs, Service Award, and LWDA Payment.....	9
IV. ARGUMENT.....	11
A. PRELIMINARY APPROVAL IS WARRANTED	11
1. Standard for Preliminary Approval.....	11
a. The Strength of Plaintiff’s Case.....	12
b. Risk, Expense, Complexity, and Duration of Further Litigation	12
c. Risk of Maintaining Class Action Status	12
d. Amount Offered in Settlement Given Realistic Value of Claims.....	13
e. The Experience and Views of Counsel	17
2. The Preliminary Approval Standard Is Met.....	18
a. The Settlement Is Within the Range of Possible Approval.....	18
b. The Settlement Resulted from Serious, Informed Negotiations	19
c. The Settlement Is Devoid of Obvious Deficiencies.....	19

1	B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS.....	19
2	1. The Proposed Class Is Ascertainable and Numerous	20
3	2. Common Issues of Law and Fact Predominate.....	20
4	3. The Claims of the Named Plaintiff Are Typical	20
5	4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the	
6	Class	21
7	C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE	21
8	D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	22
9	V. CONCLUSION.....	23

TABLE OF AUTHORITIES

Federal Cases

<i>Dunleavy v. Nadler</i> , 213 F.3d 454 (9th Cir. 2000)	18
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	2
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	11
<i>In re Pacific Enterprises Securities Litigation</i> , 47 F.3d 373 (9th Cir. 1995)	17
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	11
<i>Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	18

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	16
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	20
<i>Bowles v. Sup. Ct.</i> , 44 Cal.2d 574 (1955)	20
<i>Capital People First v. State Dept. of Developmental Services</i> , 155 Cal.App.4th 676 (2007) ...	21
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	6
<i>Chindarah v. Pick Up Stix, Inc.</i> , 171 Cal.App.4th 796 (2009)	13
<i>Cochran v. Schwan's Home Service, Inc.</i> , 228 Cal.App.4th 1137 (2014).....	4
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	12
<i>Gattuso v. Harte-Hanks Shoppers, Inc.</i> , 42 Cal.4th 554 (2007).....	4
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	9
<i>Kao v. Joy Holiday</i> , 12 Cal.App.5th 947, 963 (2017)	5, 15
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	11, 17, 19
<i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016).....	10
<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308 (2018)	5
<i>McGhee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	21
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	6
<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....	11
<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i> , 34 Cal.4th 319 (2004).....	20

1	<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010).....	20
2	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012).....	6, 17
3	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001).....	12
4	<i>ZB, N.A. v. Sup. Ct.</i> , 8 Cal.5th 175 (2019).....	6
5		
6	<u>State Statutes and Rules</u>	
7	Cal. Civ. Proc. § 382.....	20
8	8 Cal. Code Regs. § 13520.....	5, 15
9	Lab. Code § 226(e)	16
10	Lab. Code § 2699(e)(2).....	6
11	Cal. Rule of Court 3.769	22
12		
13	<u>Unpublished Cases</u>	
14	<i>Bercea v. AE Retail West</i>	
15	Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012)	18
16	<i>Chu v. Wells Fargo Investments, LLC</i> (N.D. Cal. 2011)	
17	Case No. C 05-4526 MHP, 2011 WL 672645	11
18	<i>Doty v. Costco Wholesale Corp.</i>	
19	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007)	18
20	<i>Fleming v. Covidien Inc.</i>	
21	Case No. ED CV10-01487 RGK (OPx)	
22	2011 WL 7563047 (C.D. Cal. 2011).....	17
23	<i>Fleming v. Covidien, Inc.</i>	
24	Case No. ED-CV-10-01487-RGK (OPx)	
25	2011 WL 7563047 (C.D. Cal. Aug. 12, 2011).....	6
26	<i>Glass v. UBS Finan. Servs.</i>	
27	Case No. C-06-4068 MMC	
28	2007 WL 221862 (N.D. Cal. 2007)	18

1	<i>Gomez v. Amadeus Salon, Inc.</i>	
2	Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010)	18
3	<i>Green v. Lawrence Service Co.</i>	
4	2013 WL 3907506 (C.D. Cal. 2013).....	16
5	<i>Lazarin v. Pro Unlimited, Inc.</i>	
6	(N.D. Cal. 2013) Case No. C11-03609 HRL	
7	2013 WL 3541217	11
8	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
9	Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006).....	18
10	<i>Palencia v. 99 Cents Only Stores</i>	
11	Case No. 34-2010-00079619 (Sacramento County Super. Ct.).....	18
12	<i>Ressler v. Federated Department Stores, Inc.</i>	
13	Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009).....	18
14	<i>Schiller v. David's Bridal, Inc.</i>	
15	Case No. 1:10-cv-00616-AWI-SKO	
16	2012 WL 2117001 (E.D. Cal. June 11, 2012)	18
17	<i>Sorenson v. PetSmart, Inc.</i>	
18	Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)	18
19	<i>Williams v. Centerplate, Inc.</i>	
20	Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC	
21	2013 WL 4525428 (S.D. Cal. Aug. 26, 2013).....	19
22		
23	<u>Other Sources</u>	
24	Manual for Complex Litigation § 30.41(3rd Ed. 1995).....	18
25	4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013)	18
26	4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	10
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Abel Mata (“Plaintiff”) seeks preliminary approval of a class action settlement
4 (“Settlement”) reached with Defendant Puritan Bakery, Inc. (“Puritan Bakery”). The Settlement
5 resolves this class and representative action pending before this Court (the “Action”), in which
6 Plaintiff alleges that Puritan Bakery failed to pay all minimum wages, failed to reimburse for
7 necessary business expenditures, and made unlawful deductions from earned wages. Plaintiff
8 further alleges that as a result of these violations, Puritan Bakery failed to issue accurate itemized
9 wage statements, failed to timely pay all final wages, and is liable for civil penalties under the
10 Labor Code Private Attorneys General Act (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-
12 reversionary, common-fund class action settlement,¹ in which Puritan Bakery has agreed to pay
13 Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) to the following Settlement Class:

14 All current and former non-exempt employees employed by Defendant
15 Puritan Bakery, Inc. in California from August 4, 2016 through
16 November 21, 2023 (the “Class Period”).

17 If the Settlement is approved, Puritan Bakery will pay a non-reversionary Gross
18 Settlement Amount of \$500,000.00. After deducting settlement administration costs, Plaintiff’s
19 requested Service Award, the amount set aside as PAGA civil penalties, and the requested
20 attorneys’ fees and costs, the remaining Net Settlement Amount (“NSA”) of \$235,833.33 will be
21 distributed to all Settlement Class members who do not opt out of the Settlement based on the
22 proportionate number of workweeks worked by each Settlement Class member during the Class
23 Period. Former employees with standing for waiting time penalties, and employees with standing
24 for wage statements and PAGA civil penalties will also receive consideration for their release of
25 these penalty claims.

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 and Notice of Estimated Settlement Award are attached as
Exhibits 1 and 2, respectively, to the Settlement. All defined terms in this motion have the same
definition as that in the Settlement.

1 Significantly, Settlement Class members do not need to file a claim to reap the financial
2 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
3 unless they affirmatively opt-out. There are approximately 375 Settlement Class members, and
4 the average payment to participating Settlement Class members is projected to be approximately
5 \$628.89. This is a favorable result for Settlement Class members, who will be agreeing to a release
6 of only those claims that were asserted in this litigation.

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

12 **II. SUMMARY OF THE LITIGATION**

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

14 In operation since 1938, Puritan owns and operates a wholesale bakery that sells and
15 delivers a variety of baked goods throughout California, Nevada, and Arizona. *See* Declaration
16 of Paul K. Haines (“Haines Decl.”), ¶ 10. Plaintiff worked for Puritan Bakery as a non-exempt
17 “Transport Driver” employee from approximately 2012 until approximately January 2021. *See*
18 Declaration of Abel Mata in Support of Approval of Class Action Settlement (“Mata Decl.”), ¶
19 2.

20 On January 29, 2021, Plaintiff filed a Class Action Complaint against Puritan Bakery in
21 Los Angeles Superior Court, in the matter entitled *Abel Mata v. Puritan Bakery, Inc.*, Case No.
22 21STCV03614 (the “Action”). Haines Decl., ¶ 11. On April 5, 2021, Plaintiff filed the operative
23 First Amended Class and Representative Action Complaint (“FAC”) to add a cause of action for
24 civil penalties under the PAGA. *Id.* The FAC alleges the following causes of action: (1) minimum
25 wage violations; (2) unlawful deductions from wages; (3) wage statement violations; (4) waiting
26 time penalties; (5) failure to reimburse necessary business expenses; (6) unfair competition in
27 violation of Cal. Business & Professions Code § 17200, *et seq.*; and (7) civil penalties under the
28 PAGA. *Id.*

1 **B. PLAINTIFF’S CLAIMS AND PURITAN BAKERY’S DEFENSES**

2 **1. Unlawful Deduction Claims**

3 Plaintiff alleges that Puritan Bakery made unlawful deductions from Plaintiff’s and other
4 non-exempt employees’ wages for the cleaning and maintenance of their uniforms in violation of
5 Labor Code § 221. Haines Decl., ¶ 15. Specifically, Plaintiff alleges that Puritan Bakery required
6 its non-exempt employees to wear a uniform, including a branded shirt, and unlawfully deducted
7 \$5.00 - \$8.00 from employees’ earned wages on a monthly basis for the costs associated with the
8 cleaning and maintenance of the uniforms. *Id.*

9 As an initial matter, Puritan Bakery contends that Plaintiff and the overwhelming majority
10 of its employees are unionized and covered by a Collective Bargaining Agreement (“CBA”).
11 Haines Decl., ¶ 14. Accordingly, Puritan Bakery argues that Plaintiff’s claims are preempted due
12 to the CBA between Puritan Bakery and Local Union 572. *Id.* Moreover, in response to Plaintiff’s
13 unlawful deduction claims, Puritan Bakery argues that any deductions were lawful and made with
14 employee consent. *Id.*, at ¶ 15. Puritan Bakery also argues that this claim is not suitable for class
15 treatment, as it would require individualized determinations as to whether the uniforms were
16 mandatory as to each employee and whether each employee consented to the uniform deduction.
17 *Id.*

18 **2. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices**

19 Plaintiff alleges that Puritan Bakery utilized a timekeeping policy/practice that resulted in
20 a systematic underpayment of wages through a process of unlawful time-shaving and/or rounding
21 of hours worked. Haines Decl., ¶ 16. Specifically, Plaintiff alleges that Puritan Bakery’s
22 timekeeping policies/practices were not neutral nor even-handed, and resulted in an
23 underpayment of wages to Settlement Class members. *Id.*

24 However, Puritan Bakery argues that Plaintiff’s unpaid wage claims will be preempted in
25 light of the CBA entered into with Local Union 572. Haines Decl., ¶ 14. Puritan Bakery also
26 maintains that its timekeeping policies/practices complied with California law and that it has
27 always properly compensated Settlement Class members for all hours worked throughout the
28 Class Period. *Id.*, at ¶ 16. Puritan Bakery further argues that Settlement Class members were

1 required to accurately record their time worked for Puritan Bakery, and that Puritan Bakery paid
2 Settlement Class members for all hours reported on Settlement Class members' timesheets. *Id.*
3 Finally, Puritan Bakery asserts that Plaintiff would be unable to certify this claim since its
4 timekeeping policies/practices are facially neutral and individualized inquiries would be
5 necessary as to whether employees were in fact underpaid for each workday in question, resulting
6 in an unmanageable series of mini-trials. *Id.*

7 **3. Failure to Reimburse for Necessary Business Expenses**

8 Plaintiff alleges that Puritan Bakery required Settlement Class members to use their
9 personal cellular phones for work-related purposes, including communicating with Puritan
10 Bakery's supervisors regarding job assignments, and for GPS applications to direct them to their
11 various job sites. Haines Decl., ¶ 17. Despite requiring Plaintiff and Settlement Class members to
12 incur these expenses on a daily basis, Plaintiff alleges that Puritan Bakery failed to reimburse
13 Settlement Class members for these necessary business expenses, in violation of Labor Code §
14 2802(a) ("An employer shall indemnify his or her employee for all necessary expenditures or
15 losses incurred by the employee in direct consequence of the discharge of his or her duties."); *see*
16 *also Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding employer
17 must reimburse use of personal cell phone, even where employee already has "unlimited" plan).

18 Puritan Bakery maintains that Settlement Class members were not required to use their
19 personal cellular phones as part of their job. Haines Decl., ¶ 17. Puritan Bakery further argues
20 that any expenses incurred by Settlement Class members were extremely minimal, given the wide
21 availability of low-cost cellular phone plans. *Id.* Puritan Bakery further contends that this claim
22 would require individual inquiries into whether Settlement Class members actually used their
23 personal cellular phones for work purposes, how much expense they incurred, whether they
24 submitted a request for reimbursement, and the reasonableness of that expense, thus precluding
25 class certification. *Id.*; *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568
26 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may
27 consider not only the actual expenses that the employee incurred, but also whether each of those
28 expenses was 'necessary,' which in turn depends on the reasonableness of the employee's

choices”).

4. Claims Under Labor Code §§ 203, 226, and the PAGA

As a result of the unpaid wages discussed above, Plaintiff asserts that Puritan Bakery failed to comply with its final payment and wage statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 18-19. Finally, Plaintiff seeks civil penalties under the PAGA based on the aforementioned claims. Haines Decl., ¶ 20.

Puritan Bakery argues that it possesses strong, good faith defenses to Plaintiff’s underlying claims, thus precluding the recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Haines Decl., ¶ 18; *See* 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” over employee’s exempt status precluded imposition of waiting time penalties over contested wages). Moreover, because the waiting time claim is derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome Puritan Bakery’s defenses, both as to class certification and on the merits, as to his underlying claims. Haines Decl., ¶ 18. Puritan Bakery further asserts Plaintiff’s waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id.*

In addition, Puritan Bakery argues that any alleged wage statement violations were not “knowing and intentional,” and that Plaintiff cannot show he or other employees “suffer[ed] injury” due to alleged wage statement violations, as required to recover penalties under Section 226(e). Haines Decl., ¶ 19. Further, Puritan Bakery contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *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...The purpose of section 226 is to *document the paid wages* to ensure the employee is fully informed regarding the calculation of those wages.”) (*italics in original*). Puritan Bakery further argues the same defenses as to Plaintiff’s underlying claims apply equally to Plaintiff’s

1 derivative wage statement claims. Haines Decl., ¶ 19.

2 Finally, Puritan Bakery asserts that the PAGA claim fails because Plaintiff's underlying
3 claims fail. Haines Decl., ¶ 20; *see also Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147
4 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also
5 fail."). Additionally, Puritan Bakery maintains that, given its good-faith defenses, the Court would
6 substantially reduce any PAGA civil penalties if it were to find Puritan Bakery liable for any of
7 Plaintiff's claims. Haines Decl., ¶ 20; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in
8 PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
9 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties) (*disapproved on other*
10 *grounds in ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, FN8 (2019)); *Fleming v. Covidien, Inc.*, No. ED-
11 CV-10-01487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA
12 penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018)
13 (affirming PAGA civil penalty of just \$5 per pay period where employer made "good faith
14 attempts" to comply with the law).

15 **C. DISCOVERY AND MEDIATION**

16 In connection with mediation, Puritan Bakery provided Plaintiff with a sampling of
17 timekeeping and payroll records for approximately 49 non-exempt employees, as well as several
18 classwide data points. Haines Decl., ¶ 12. Puritan Bakery also provided all relevant wage and
19 hour policy documents applicable during the Class Period and a detailed Class List which
20 included Settlement Class members' hire and termination (if applicable) date. *Id.* Plaintiff hired
21 a labor economist with a Ph.D. in economics to assist Plaintiff in conducting a comprehensive
22 analysis and extrapolation of the data produced to calculate class-wide damages for each of
23 Plaintiff's claims. *Id.* This discovery allowed the Parties to assess the merits and value of
24 Plaintiff's claims, the chances of certification of Plaintiff's claims, and Puritan Bakery's potential
25 defenses. *Id.*

26 On August 6, 2021, the parties participated in a full-day mediation with Hon. Peter D.
27 Litchman (Ret.), a well-respected wage and hour class action mediator. Haines Decl., ¶ 13. During
28 mediation, the parties vigorously debated their opposing legal positions, the likelihood of

1 certification of Plaintiff's claims, and the legal basis for the claims and defenses, however, the
2 parties did not reach a settlement. *Id.* Following the mediation, Plaintiff conducted extensive class
3 certification discovery. *Id.* In response to Plaintiff's discovery requests, Puritan Bakery produced
4 timekeeping and payroll records for a sampling of Settlement Class members. *Id.* The Parties also
5 completed a *Belaire-West* opt-out notice process, and Plaintiff's Counsel was provided with the
6 contact information for those employees who did not opt out. *Id.* Thereafter, Plaintiff's Counsel
7 interviewed Settlement Class members regarding their work experiences at Puritan Bakery. *Id.*

8 While engaged in formal class certification discovery, Puritan Bakery also turned over its
9 financial records to Plaintiff's retained forensic accountant, who reviewed Puritan Bakery's
10 financial records. Haines Decl., ¶ 13. After a thorough review of Puritan Bakery's financial
11 records, the Parties continued their settlement discussions and ultimately agreed to a classwide
12 resolution. *Id.* During the months that followed, the parties negotiated and finalized the long-form
13 Settlement Agreement now before this Court. *Id.*

14 **III. THE PROPOSED SETTLEMENT**

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

16 If the Court preliminarily approves the Settlement, Puritan Bakery will pay a Gross
17 Settlement Amount ("GSA") of \$500,000.00.² *See* Settlement, ¶ 3. Significantly, this Settlement
18 is non-reversionary, and no Settlement Class member will have to submit a claim form to receive
19 an Individual Settlement Award. *Id.*, at ¶¶ 3-4. Each Settlement Class member will automatically
20 receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

21 The monetary terms of the Settlement are summarized below:

- | | | |
|----|---|--------------|
| 22 | • Gross Settlement Amount ("GSA"): | \$500,000.00 |
| 23 | • Minus Court-approved attorneys' fees (up to 1/3): | \$166,666.67 |

24 ² Following Puritan Bakery's representation of its financial condition, Puritan Bakery turned over
25 its financial records to Plaintiff's retained expert, Keith D. Messerschmidt, who is a forensic
26 accountant and has consulted or provided expert testimony in dozens of litigation and insurance
27 matters. Haines Decl., ¶ 13. Mr. Messerschmidt opines that Puritan Bakery could not reasonably
28 afford to pay more than the Gross Settlement Amount without dramatically impacting its
operations. Should the Court wish to review a declaration from Mr. Messerschmidt attesting to
these facts and Puritan Bakery's financial condition, this declaration could either be filed in
camera or filed under seal, at the Court's request.

- Minus Court-approved verified costs (up to): \$40,000.00
- Minus Court-approved Service Award: \$7,500.00
- Minus Amount Set Aside as PAGA penalties: \$40,000.00
- Minus estimated settlement administration costs (up to): \$10,000.00
- Net Settlement Amount (“NSA”): \$235,833.33
- PLUS 25% “PAGA Amount” to Settlement Class: \$10,000.00
- **Total Amount Paid to Settlement Class members: \$245,833.33**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative Service Award to Plaintiff, the amount set aside as PAGA civil penalties, and Settlement Administrator costs, the Settlement requires Puritan Bakery to pay a Net Settlement Amount (“NSA”) of at least \$235,833.33 to all Settlement Class members who do not timely opt out. *See* Settlement, ¶¶ 3-4. Eighty percent (80%) of the NSA shall be distributed to all participating Settlement Class members based on the proportionate number of workweeks each participating Settlement Class member worked during the Class Period. Settlement, ¶ 4(B)(i). Ten percent (10%) of the NSA shall be designated as the “Waiting Time Amount” and will be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment with Puritan Bakery at any time from August 4, 2017 to November 21, 2023. *Id.*, at ¶ 4(B)(ii). Ten percent (10%) of the NSA shall be designated as the “Wage Statement Amount” and will be paid to each participating Settlement Class member who worked for Puritan Bakery at any time from August 4, 2019 through November 21, 2023 based on the proportionate number of workweeks worked during that time period. *Id.*, at ¶ 4(B)(iii). Finally, Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be designated as the “PAGA Amount,” and shall be distributed to all Settlement Class members (regardless of whether they opt-out) proportionately based on the number of pay periods worked at any time from January 29, 2020 through November 21, 2023 (“PAGA Period”). *Id.*, at ¶¶ 2(B), 4(B)(iv).

According to Puritan Bakery, there are approximately 375 total Settlement Class members. Haines Decl., ¶ 23. Therefore, the average Settlement Award from the NSA is projected to be approximately \$628.89. *Id.* There are also approximately 274 Aggrieved Employees who worked during the PAGA Period, and therefore, the average payment from the PAGA Amount is estimated to be approximately \$36.50. *Id.* Settlement Class members will have sixty (60) calendar

1 days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing
2 ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement,
3 ¶¶ 9(C)-(D). Those Settlement Class members who do not opt-out of the Settlement will be bound
4 by its terms and will release all claims against Puritan Bakery included within the Settlement. *See*
5 *Id.*, at ¶ 2(A). In addition, all Settlement Class members (whether or not they opt out) who worked
6 for Puritan Bakery during the PAGA Period will release all related PAGA claims against Puritan
7 Bakery during the PAGA Period (“Released PAGA Claims”). *Id.*, at ¶ 2(B). Plaintiff has also
8 agreed to a general release of claims, including a waiver of Cal. Civil Code § 1542. *Id.*, ¶ 2(C).

9 Settlement Awards will be valid for 180 days after issuance. *See* Settlement, ¶ 4(E). After
10 180 days, funds from uncashed checks will be distributed to the Controller of the State of
11 California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et*
12 *seq.*, in the name of the Settlement Class member to whom the check was issued, until such time
13 that they claim their property. *Id.* Lastly, Puritan Bakery’s share of employer-side payroll taxes
14 will be paid by Puritan Bakery separately, and in addition to, the GSA. *See* Settlement, at ¶ 3(E).

15 **2. Attorneys’ Fees and Costs, Service Award, and LWDA Payment**

16 Plaintiff will apply for a Class Representative Service Award at the time of seeking final
17 approval in the amount of \$7,500, for his services to the Settlement Class. *See* Settlement, ¶¶
18 3(D)(3), 6. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to
19 compensate class representatives for work done on behalf of the class [and] to make up for
20 financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination*
21 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final
22 approval, Plaintiff’s requested Service Award is intended to recognize the time and effort Plaintiff
23 expended on behalf of the Settlement Class, including providing substantial factual information
24 and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the
25 claims and theories at issue in the litigation, actively participating in the prosecution of his claims,
26 as well as the significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in
27 this case, and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of
28 Civil Code § 1542. *See* Settlement, ¶¶ 2(C), 6; Mata Decl., ¶¶ 4-6.

1 Class Counsel will also apply for an attorneys' fees award of one-third of the Gross
2 Settlement Amount, which is currently estimated to be \$166,666.67, and up to \$40,000.00 in
3 verified costs reimbursement. *See* Settlement, ¶¶ 3(D)(4), 5; *see also* Haines Decl., ¶ 25. Plaintiff
4 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
5 time-consuming litigation on a purely contingent fee basis. Haines Decl., ¶ 25. Class Counsel has
6 incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's
7 claims, conducting legal research, engaging in informal and formal written discovery, completing
8 a *Belaire-West* notice process and interviewing Settlement Class members, analyzing Settlement
9 Class members' payroll and timekeeping records, conducting a detailed analysis and
10 extrapolation of the timekeeping and payroll records in order to develop a comprehensive
11 damages model, preparing for and attending mediation, negotiating and preparing the long-form
12 Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel
13 expects to expend additional attorney time in attending the hearing on this Motion, overseeing the
14 Notice process and fielding questions from Settlement Class members, preparing the final
15 approval papers, and attending the Final Approval hearing. *Id.*

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

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

1 Additionally, the parties have agreed to designate \$40,000.00 of the GSA as PAGA civil
2 penalties, of which \$30,000.00 (75%) will be paid to the LWDA, with the remaining \$10,000.00
3 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated
4 per Labor Code § 2699(i). *See* Settlement, ¶ 3(D)(5). Plaintiff submits this allocation to the
5 LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*
6 (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment
7 of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*
8 (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of
9 \$7,500 to LWDA out of \$1.25 million common-fund settlement).

10 **IV. ARGUMENT**

11 **A. PRELIMINARY APPROVAL IS WARRANTED**

12 California Rule of Court 3.769 conditions settlement of a class action on court approval,
13 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
14 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
15 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
16 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
17 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
18 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
19 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
20 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
21 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
22 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
23 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
24 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

25 **1. Standard for Preliminary Approval**

26 To make a fairness determination, the Court should consider several factors, including:
27 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
28 litigation, the risk of maintaining class action status through trial, the amount offered in

1 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
2 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
3 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
4 the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91
5 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
6 reasonable in light of the overall balance of factors in this case.

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

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

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

15 Although the parties engaged in significant informal and formal discovery prior to
16 reaching the proposed Settlement, the parties still had substantial discovery to complete in formal
17 litigation had the matter not settled. Haines Decl., ¶ 24. This would have required expenditure of
18 substantial time and resources by both parties that would have very likely spanned several years.
19 *Id.* Even if Plaintiff was to certify the classes, the parties would incur considerably more
20 attorney’s fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*
21 This Settlement avoids those risks and the accompanying expense. *Id.*

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

23 Plaintiff had not yet filed his motion for class certification, and as such, the extent to which
24 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there
25 was a risk that there would not be a certified class at the time of trial, or if there were, it would
26 consist of a significantly smaller group of employees than the proposed Settlement Class (either
27 due to a narrowing of the class definition in a Court order on a contested motion for class
28 certification, or through settlement agreements entered into by Puritan Bakery with individual

1 class members by way of *Pick-Up-Stix* type settlement agreements³) and the expected recovery
2 could be significantly reduced, given the settlement amounts that are typically offered through
3 the *Pick-Up-Stix* process. Thus, this factor, too, supports preliminary approval of the Settlement.

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

5 The Settlement provides a positive recovery for the Settlement Class in the face of
6 disputed claims. Plaintiff conducted a detailed analysis of the unpaid wages, unlawful deductions,
7 unreimbursed expenses, wage statement penalties, waiting time penalties, and civil penalties
8 under the PAGA. The results of the damages analysis are discussed below:

9 **Unlawful Deductions: \$17,891**

10 Plaintiff alleges that Puritan Bakery unlawfully deducted approximately \$5.00 to \$8.00
11 from Plaintiff's and other Settlement Class members' wages on a monthly basis for costs
12 associated with uniforms. Haines Decl., ¶ 15. Based on Plaintiff's expert's review of the data
13 provided by Puritan Bakery, Plaintiff estimates Puritan Bakery's maximum exposure on this
14 claim at approximately \$28,065. *Id.* However, Puritan Bakery argues that its practice of deducting
15 wages from employees' wages was lawful in light of the fact that employees were not required to
16 wear or purchase the uniforms and employees consented to the deductions. *Id.* In light of these
17 defenses, Plaintiff discounted Puritan Bakery's maximum exposure by 15% to account for the
18 risk of non-certification, and an additional 25% to account for Puritan Bakery's defenses on the
19 merits and the risk of Plaintiff's claims being preempted by the CBA, to arrive at an estimated
20 exposure of approximately \$17,891. *Id.*

21 **Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$134,553**

22 Plaintiff alleges that Puritan Bakery utilized a timekeeping policy/practice that resulted in
23 a systematic underpayment of wages. Haines Decl., ¶ 16. Based on Plaintiff's expert's analysis,
24

25 ³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
26 employer may enter into pre-certification settlement agreements with individual putative class
27 members in which the putative class members release claims for past unpaid wages and penalties
28 in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

1 Plaintiff estimates that Puritan Bakery failed to compensate the Settlement Class by
2 approximately 17,277 hours during the Class Period. *Id.* Therefore, Plaintiff estimates Puritan
3 Bakery's potential exposure for this claim at approximately \$407,737 (17,277 hrs * \$11.80
4 average weighted minimum wage * 2 (liquidated damages per Lab. Code § 1194.2). *Id.*

5 As noted above, Puritan Bakery argues that its timekeeping policies/practices are even-
6 handed and facially neutral, and compensated employees for all hours worked. Haines Decl., ¶
7 16. Additionally, Puritan Bakery asserts that Plaintiff would be unable to certify this claim since
8 its timekeeping policies/practices are facially neutral and individualized inquiries would be
9 necessary as to whether employees were in fact underpaid for each workday in question, resulting
10 in an unmanageable series of mini-trials. *Id.* Based on these defenses, Plaintiff discounted the
11 maximum amount by 40% for risk of non-certification and an additional 45% for risk of losing
12 on the merits or failing to recover the full amount sought and the risk of Plaintiff's claims being
13 preempted by the CBA, to arrive at an estimated exposure of approximately \$134,553. *Id.*

14 **Failure to Reimburse Business Expenses: \$99,371**

15 Plaintiff alleges that Puritan Bakery failed to reimburse Plaintiff and other Settlement
16 Class members for necessary business expenditures, including the use of their personal cellular
17 phones for work activities, as required under Labor Code § 2802(a). Haines Decl., ¶ 17. Based on
18 Plaintiff's expert's analysis and extrapolation of Puritan Bakery's records, Plaintiff estimates that
19 Settlement Class members have worked a total of approximately 17,666 months during the Class
20 Period. *Id.* Using a conservative estimate of \$25 per month in reasonable work-related personal
21 cellular phone use, Plaintiff calculates Puritan Bakery's maximum exposure for this claim at
22 approximately \$441,650 (\$25/month * 17,666 months). *Id.*

23 As noted above, Puritan Bakery maintains that Settlement Class members were not
24 required to use their personal cellular phones as part of their job. Haines Decl., ¶ 17. Puritan
25 Bakery further argues that any expenses incurred by Settlement Class members were minimal,
26 given the wide availability of low-cost cellular phone plans. *Id.* Puritan Bakery further argues that
27 this claim would require individual inquiries into whether Settlement Class members actually
28 used their personal cellular phones for work purposes, how much expense they incurred, whether

1 they submitted a request for reimbursement, and the reasonableness of that expense, thus
2 precluding class certification. *Id.* Based on these defenses, Plaintiff discounted the estimated
3 maximum amount by 50% for risk of non-certification, and by an additional 55% to account for
4 risk of losing on the merits or failure to recover the maximal amount sought, and the risk of
5 Plaintiff's claims being preempted by the CBA, to arrive at an estimated exposure of
6 approximately \$99,371. *Id.*

7 Waiting Time Penalties: \$97,371

8 Plaintiff alleges Puritan Bakery is liable for waiting time penalties under Labor Code §
9 203 to former employees. Haines Decl., ¶ 18. Puritan Bakery's records reflected approximately
10 60 former Settlement Class members who separated their employment with Puritan Bakery at any
11 time from August 4, 2017 to November 21, 2023. *Id.* Moreover, Plaintiff estimates an average
12 waiting time penalty of \$10,819 (\$45.08/hr. * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff
13 estimated Puritan Bakery's maximum waiting time penalty exposure at approximately \$649,140
14 (60 former employees * \$10,819 average penalty). *Id.*

15 However, Puritan Bakery argues that it possesses strong, good faith defenses to Plaintiff's
16 underlying claims, thus precluding recovery of waiting time penalties, which are only available
17 for the "willful" failure to pay wages. Haines Decl., ¶ 18; *see also* 8 Cal. Code Regs. § 13520 (a
18 "good faith dispute that any wages are due will preclude imposition of waiting time penalties");
19 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" over
20 employee's exempt status precluded imposition of waiting time penalties over contested wages).
21 Moreover, because the waiting time claim is derivative of Plaintiff's underlying wage claims,
22 Plaintiff would need to overcome Puritan Bakery's defenses, both as to class certification and as
23 to the merits, to his underlying claims. Haines Decl., ¶ 18. Puritan Bakery further asserts
24 Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee
25 experienced the alleged Labor Code violations. *Id.* Based on these defenses, Plaintiff discounted
26 Puritan Bakery's maximum exposure by 50% for risk of non-certification, and an additional 70%
27 for risk of being unsuccessful on the merits or failure to recover the full amount sought, and the
28 risk of Plaintiff's claims being preempted by the CBA, to arrive at an estimated total of

1 approximately \$97,371. *Id.*

2 Wage Statement Penalties: \$164,400

3 Plaintiff's analysis reflected that there were approximately 274 unique employees and
4 approximately 31,793 pay periods worked during the liability period applicable to Plaintiff's
5 wage statement claim. Haines Decl., ¶ 19. Wage statement penalties are calculated as \$50 for
6 each "initial" violation and \$100 for each "subsequent" violation, with a maximum of \$4,000 per
7 employee. *Id.*; see Labor Code § 226(e). *Id.* In calculating the potential exposure for this claim,
8 utilizing the "initial" and "subsequent" violation rates resulted in a number greater than the \$4,000
9 cap per employee. *Id.* Therefore, Plaintiff calculated Puritan Bakery's maximum wage statement
10 exposure under Labor Code § 226(e) by using the \$4,000 cap for each employee, for a total
11 maximum exposure of \$1,096,000 (274 employees * \$4,000 max. penalty). *Id.*

12 As discussed above, Puritan Bakery argues any alleged wage statement violations were
13 not "knowing and intentional," that Plaintiff cannot show he or other employees "suffer[ed]
14 injury," that wage statements always included the actual amounts *paid* to employees, and that this
15 claim is not amenable for class certification for the same reasons as Plaintiff's underlying claims.
16 Haines Decl., ¶ 19. Thus, in light of these arguments, Plaintiff discounted the maximal exposure
17 by 50% for risk of non-certification, and by an additional 70% for risk of being unsuccessful on
18 the merits and the risk of Plaintiff's claims being preempted by the CBA, to arrive at an estimated
19 realistic total of approximately \$164,400. *Id.*

20 PAGA Penalties: \$95,379

21 Plaintiff's analysis reflected there were approximately 31,793 pay periods worked in the
22 PAGA Period. Haines Decl., ¶ 20. Therefore, Plaintiff estimated a maximum total PAGA
23 exposure of approximately \$3,179,300 (31,793 pay periods * \$100 "initial" penalty). *Id.*; see also
24 *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate
25 applies until employer is notified that it is violating a Labor Code provision).

26 However, these penalties derive from the underlying wage and hour violations discussed
27 above, which Puritan Bakery vigorously disputes. Haines Decl., ¶ 20; see e.g., *Green v. Lawrence*
28 *Service Co.*, 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success

1 was determined by the merits of its underlying claims). Puritan Bakery also asserts that, given its
2 good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA
3 penalties if it were to find Puritan Bakery liable for any of Plaintiff's claims. Haines Decl., ¶ 20;
4 *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming
5 reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx)
6 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties from \$2.8 million to
7 \$500,000). Therefore, based on these risks, Plaintiff discounted the maximum figure by 80% for
8 risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period,
9 and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at
10 an estimated exposure of approximately \$95,379. Haines Decl., ¶ 20.

11 Using these estimated figures for each of the claims described above, Plaintiff calculates
12 a maximum potential recovery to be approximately \$608,965. Haines Decl., ¶ 21. The proposed
13 settlement of \$500,000.00 therefore represents approximately 82.1 % of the reasonably forecasted
14 recovery for the Settlement Class. *Id.* Preliminary approval is appropriate since the Settlement
15 will provide significant monetary relief to the Settlement Class, which is consistent with what
16 Plaintiff's counsel believes could have been recovered had the case proceeded through trial.

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

18 "Parties represented by competent counsel are better positioned than courts to produce a
19 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
20 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
21 by competent, experienced counsel who possess extensive experience prosecuting and defending
22 wage-and-hour class actions, and who have been appointed as class counsel in numerous cases
23 alleging similar claims. *See* Haines Decl., ¶¶ 2-7; Declaration of Sean M. Blakely ("Blakely
24 Decl."), ¶¶ 2-6. Class Counsel conducted an in-depth review of Puritan Bakery's timekeeping and
25 payroll records and drew on their extensive experience in similar cases to assess the strengths and
26 weaknesses of Plaintiff's case. The Settlement was also after the parties mediated with a respected
27 wage-and-hour mediator. This factor strongly supports preliminary approval of the Settlement.
28 *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

8 The proposed settlement reflects approximately 82.1% of the estimated recovery the
9 Settlement Class could reasonably expect in light of the significant litigation risks, and will
10 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
11 percentage of liability exposure recovered in this case exceeds percentages routinely approved by
12 courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4
13 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages);
14 *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about
15 one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004)
16 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even
17 though it amounts to only a fraction of the potential recovery that might be available to the
18 Settlement Class members at trial”). Further, the average Settlement Award of approximately
19 \$628.89 is in line with average awards achieved in other wage and hour class action settlements.⁴

20 _____
21 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
22 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
23 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
24 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
25 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
26 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
27 of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
28 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

1 Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such
2 that notice should be provided to the Settlement Class members so that they can consider the
3 Settlement. The Court will have the opportunity to again assess the reasonableness of the
4 Settlement after the Settlement Class members have had the opportunity to opt-out or object.

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

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations by counsel, and a full-day mediation before an experienced wage and hour mediator,
8 and additional months of negotiating the settlement. Thus, the Settlement is entitled to an initial
9 presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff
10 carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and
11 conducted a detailed statistical analysis of the data to arrive at the estimated class-wide damages
12 figures. *See Haines Decl.*, ¶¶ 15-21. The parties attended a full day mediation and worked
13 collaboratively to finalize the Settlement. *Id.*, at ¶¶ 12-13. Thus, this factor supports preliminary
14 approval.

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

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

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

23 The Settlement Class satisfies the criteria for certification of a settlement class under
24 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
25

26 average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted
27 compelling defenses to liability; Plaintiff also notes several similar actions where the gross
28 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).

(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 who worked for Puritan Bakery in California during the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be identified from Puritan Bakery's personnel and employment records. Puritan Bakery represents that the Settlement Class consists of approximately 375 current and former non-exempt employees. *See* Haines Decl., ¶ 23. 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, Puritan Bakery's timekeeping and reimbursement policies and/or practices. These types of claims are commonly held to be proper for class certification.

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

1 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical
2 of those held by the Settlement Class members. First, Puritan Bakery employed Plaintiff as a non-
3 exempt employee during the Class Period, and Plaintiff was subject to Puritan Bakery's wage and
4 hour policies at issue in this case. *See* Mata Decl., ¶ 2. Second, Plaintiff was injured by the same
5 challenged policies/practices that allegedly injured the Settlement Class as a whole. *Id.*, at ¶ 3.
6 For example, Plaintiff contends that Puritan Bakery made unlawful deductions from his wages.
7 *Id.* Because Plaintiff has suffered the same injuries as the other members of the Settlement Class,
8 the typicality requirement is satisfied.

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

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

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

20 This Court should order distribution to the Settlement Class of the proposed Class Notice
21 in English and Spanish by U.S. Mail, using last known mailing address information provided by
22 Puritan Bakery. *See* Settlement, ¶ 9(B). This manner of giving notice is the "best notice
23 practicable" under the circumstances because it provides "individual notice to all members who
24 can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173
25 (1974). Here, Plaintiff proposes that the Settlement be administered by Phoenix Settlement
26 Administrators ("Phoenix"), an experienced class action settlement administrator. *See generally*
27 Declaration of Jodey Lawrence and attached exhibits. Settlement Class members' addresses will
28 be ascertainable through Puritan Bakery's records, which Puritan Bakery will provide to Phoenix

1 within ten (10) business days after entry of an order preliminarily approving this Settlement. *See*
2 Settlement, ¶ 9(A). Within ten (10) business days of receipt of the Settlement Class members’
3 addresses, Phoenix will run the addresses through the National Change of Address (“NCOA”)
4 database (which provides updated addresses for any individual who has moved in the previous
5 four years and has notified the U.S. Postal Service of a forwarding address) and mail the Class
6 Notice to all Settlement Class members. *See* Settlement, ¶ 9(B). To the extent that any notices are
7 returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s current
8 mailing address. *Id.*, at ¶ 9(F).

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

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

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

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1 **V. CONCLUSION**

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

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6 Dated: May 15, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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8 By:



9 Paul K. Haines
10 Sean M. Blakely
11 Attorneys for Plaintiff
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