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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ROBERTO NAVARRO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

PRIME CONVERTING CORPORATION, a
California Corporation; and DOES 1 through
100,

Defendants.

Case No.: CIVSB2106868

*[Assigned for all purposes to Hon. David
Cohn; Dept. S-26]*

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

Date: October 21, 2022
Time: 10:00 a.m.
Dept.: S-26

Complaint Filed: February 26, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 21, 2022, at 10:00 a.m. in Department S-26 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Roberto Navarro (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

All current and former non-exempt employees who worked for Defendant Prime Converting Corporation in California from September 1, 2016 until May 31, 2022 (the “Class Period”).
3. Preliminary appointment of Plaintiff Roberto Navarro as Class Representative;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Enhancement Payment to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the supporting declarations of Paul K. Haines, Sean M. Blakely, Alexandra R. McIntosh, Plaintiff Roberto Navarro, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings, and other papers filed in this Action, and on any further oral or documentary evidence or argument presented at the time of the hearing. Defendant

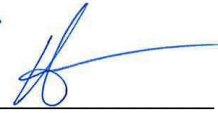
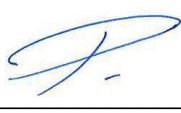
1 Prime Converting Corporation does not intend to oppose this Motion and, given the multiplicity
2 of issues addressed in this Motion, has indicated its approval of Plaintiff's expressed need to
3 exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, the parties
4 jointly request the Court's consideration of Plaintiff's memorandum of points and authorities,
5 which is 22 pages in length.

6
7 Respectfully submitted,

8 Dated: September 28, 2022

HAINES LAW GROUP, APC

9
10 By:



11 Paul K. Haines
12 Sean M. Blakely
13 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Roberto Navarro (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of current and former non-exempt
5 employees of Defendant Prime Converting Corporation (“Prime Converting”) who were
6 employed in the State of California between September 1, 2016, through May 31, 2022 (the “Class
7 Period”). Plaintiff’s primary allegations are that Prime Converting: (1) failed to pay all minimum
8 and overtime wages due to Prime Converting’s unlawful timekeeping policies/practices; (2) failed
9 to provide legally compliant second meal periods; and (3) failed to authorize and permit all legally
10 required rest periods. As a result of these alleged violations, Plaintiff also brought derivative
11 claims for Prime Converting’s alleged failure to pay all final wages owed, failure to issue accurate
12 and compliant wage statements, and for civil penalties under the Private Attorneys General Act
13 (“PAGA”).

14 Plaintiff now respectfully requests that this Court preliminarily approve this non-
15 reversionary, common-fund class action settlement,¹ in which Prime Converting has agreed to
16 pay Three Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00) to the
17 following Settlement Class:

18 All current and former non-exempt employees who worked for Defendant
19 Prime Converting Corporation in California from September 1, 2016, until
May 31, 2022 (the “Class Period”).

20 If the Settlement is approved, Prime Converting will pay a non-reversionary Maximum
21 Settlement Amount (“MSA”) of \$325,000.00. After deducting administration costs, Plaintiff’s
22 requested Class Representative Enhancement Payment, the amount designated as PAGA civil
23 penalties, and requested attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of
24 approximately \$154,166.67 will be distributed to all Settlement Class members who do not opt-
25 out of the Settlement based on the proportionate number of workweeks worked by each

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 to
the Settlement as Exhibits 1 and 2, respectively. All defined terms in this motion have the same
definition as that in the Settlement.

1 Settlement Class member during the Class Period. Former employees with standing for waiting
2 time penalties and employees with standing for wage statement and PAGA penalties will also
3 receive additional consideration for their release of these penalty claims.

4 Significantly, Settlement Class members do not need to file a claim to reap the financial
5 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
6 unless they affirmatively opt-out. There are approximately 100 Settlement Class members, and
7 the average payment to participating Settlement Class members is projected to be approximately
8 \$1,591.67.

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

14 **II. SUMMARY OF THE LITIGATION**

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

16 Founded in 2004, Prime Converting is a paper converting business that offers paper
17 converting services as well as warehouse and distribution services to businesses located within
18 and outside of the United States and has operated its plant located in Rancho Cucamonga,
19 California, during the Class Period. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10.
20 Prime Converting employed Plaintiff as a non-exempt employee in the position of “Machine
21 Operator” from October 2018 to approximately July 28, 2020. *See* Declaration of Roberto
22 Navarro In Support of Motion for Preliminary Approval (“Navarro Decl.”), ¶ 2.

23 On February 26, 2021, Plaintiff filed his Class Action Complaint in San Bernardino
24 County Superior Court, alleging that Prime Converting: (i) failed to pay all minimum wages; (ii)
25 failed to pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to
26 provide all lawful rest periods; (v) took unlawful deductions from wages; (vi) failed to issue
27 accurate, itemized wage statements; (vii) failed to pay all final wages due upon separation of
28 employment; and (viii) engaged in unfair competition in violation of California Business &

1 Professions Code § 17200 *et seq.* Haines Decl., ¶ 11. On May 3, 2021, Plaintiff filed the operative
2 First Amended Class and Representative Action Complaint (“FAC”) to add a cause of action for
3 civil penalties under the Private Attorney Generals Act (“PAGA”). *Id.*

4 **B. PLAINTIFF’S CLAIMS AND PRIME CONVERTING’S DEFENSES**

5 **1. Unpaid Wages Due to Prime Converting’s Unlawful Rounding**
6 **Policies/Practices**

7 Plaintiff alleges that Prime Converting utilized a timekeeping policy/practice that
8 systematically underpaid wages through a process of unlawful rounding. Haines Decl., ¶ 16.
9 Plaintiff alleges that Prime Converting required Plaintiff and putative class members to clock in
10 and out using a system that records hours to the minute; however, Prime Converting thereafter
11 rounded the hours worked to the nearest quarter hour, which resulted in a systematic
12 underpayment of wages. *Id.*

13 Prime Converting counters that it utilizes a neutral time-rounding mechanism that results,
14 over time, in employees being paid for all hours worked. *Id.*; *see also, See’s Candy Shops, Inc. v.*
15 *Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer “applies a
16 consistent rounding policy that, on average, favors neither overpayment nor underpayment.”);
17 *AHMC Healthcare, Inc. v. Sup. Ct.*, 24 Cal.App.5th 1014, 1027-28 (2018) (finding rounding
18 policy lawful where the policy was “neutral on its face” and resulted in employees being
19 overpaid). Prime Converting also argues that any unpaid time could have only amounted to a few
20 minutes per day, at most, and was thus *de minimis*. Haines Decl., ¶ 16. While Plaintiff points to
21 *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the California Supreme Court held
22 California’s labor laws generally do not recognize a *de minimis* defense; Prime Converting argues
23 that *Troester* should be limited to its facts. (“[W]e decide only whether the *de minimis* rule is
24 applicable to the facts of this case as described by the Ninth Circuit.” *Troester*, 5 Cal.5th at 829.).
25 Finally, Prime Converting asserts that Plaintiff would be unable to certify this claim since its
26 rounding policy is facially neutral and some employees were *overpaid* due to rounding, and
27 individualized inquiries would be necessary as to whether employees were, in fact, underpaid or
28 overpaid for each workday in question (including whether they were actually working when they

1 were clocked in), resulting in an unmanageable series of mini-trials. Haines Decl., ¶ 16.

2 **2. Meal Period Violations**

3 Plaintiff alleges Prime Converting failed to provide legally-compliant meal periods such
4 that Settlement Class members were not provided with second meal periods when they worked
5 shifts in excess of 10.0 hours in a workday. Haines Decl., ¶ 17. Plaintiff further alleges that for
6 most of the Class Period, Prime Converting did not record meal periods and automatically
7 deducted 30-minutes each workday for a purported meal period, irrespective of whether
8 Settlement Class members took a compliant, timely 30-minute meal period. *Id.*

9 Prime Converting counters it has maintained compliant written meal period policies
10 throughout the Class Period and has always provided compliant meal periods in line with those
11 policies. Haines Decl., ¶ 17. Prime Converting also asserts that many employees choose to waive
12 their second meal periods on shifts over 10.0 hours and under 12.0 hours, as they may do under
13 Labor Code § 512(a), so they do not need to stay at work for an extra unpaid 30 minutes. *Id.* Prime
14 Converting further contends that it always *provides* employees the opportunity to take meal
15 periods and is not required to *ensure* they are taken. *Id.*; see *Brinker Rest. Corp. v. Sup. Ct.*, 53
16 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus, Prime Converting argues that any
17 missed or short second meal periods resulted from lawful employee choice rather than any policy
18 and/or practice of Prime Converting. Haines Decl., ¶ 17. Finally, Prime Converting maintains
19 Plaintiff’s meal period claim is not suited for class certification since individual inquiries would
20 be needed to assess which employees if any, took non-compliant or missed meal periods, how
21 many meal periods were non-compliant or missed, the reasons why a particular employee did not
22 take a meal period on a particular shift, and whether they waived the meal period. *Id.*

23 **3. Rest Period Violations**

24 Plaintiff further alleges that Prime Converting failed to authorize and permit all legally-
25 compliant off-duty rest periods. Haines Decl., ¶ 18. Specifically, Plaintiff alleges that Prime
26 Converting improperly requires employees to combine their first rest period with their meal
27 period for a single 40-minute break, and Prime Converting fails to authorize third rest periods for
28 shifts over 10.0 hours. *Id.*; see also, *Rodriguez v. E.M.E., Inc.*, 246 Cal.App.4th 1027 (2016) (“[A]

1 departure from the preferred schedule is permissible only when the departure (1) will not unduly
2 affect employee welfare and (2) is tailored to alleviate a material burden that would be imposed
3 on the employer by implementing the preferred schedule.”). Moreover, Plaintiff alleges that Prime
4 Converting maintains an unlawful written rest period policy which requires its employees to
5 remain on premises during rest periods, expressly stating that “employees are not to leave the
6 employer’s premises during the rest period.” Haines Decl., ¶ 18; *see also, Augustus v. ABM*
7 *Security Sys., Inc.*, 2 Cal.5th 257 (2016) (Requiring employers to “relinquish any control” over
8 employees during rest periods).

9 Prime Converting counters that it has maintained lawful rest period practices/policies
10 throughout the Class Period. Haines Decl., ¶ 18. Prime Converting further argues that any failure
11 of employees to take rest periods is the result of employee choice. *Id.* Prime Converting argues
12 that Plaintiff’s rest period claim is not amenable to class treatment since individual inquiries
13 would be required to determine which employees failed to take rest periods, how many rest
14 periods they failed to take, and the reasons why each employee failed to take rest period(s) on a
15 particular shift. *Id.* These manageability concerns are especially present with respect to rest period
16 claims, Prime Converting argues, given that rest periods are not recorded. *Id.*

17 **4. Waiting Time Penalties**

18 As a result of the unpaid wages and unpaid meal and rest period premium wages described
19 above, Plaintiff alleges that Prime Converting failed to comply with its final pay obligations set
20 forth in Labor Code §§ 201-203. Haines Decl., ¶ 19. Prime Converting argues that it possesses
21 strong, good faith defenses to Plaintiff’s underlying claims, thus precluding recovery of waiting
22 time penalties, which are only available for the “willful” failure to pay wages. *Id.*; *see also* 8 Cal.
23 Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of
24 waiting time penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs
25 when an employer presents a defense, based in law or fact which, if successful, would preclude
26 any recovery on the part of the employee.”). Prime Converting further asserts that Plaintiff’s
27 waiting time penalty exposure was grossly inflated as not every former employee experienced the
28 alleged Labor Code violations. Haines Decl., ¶ 19.

1 **5. Wage Statement Claims**

2 As a further result of the unpaid wages and unpaid meal and rest period premium wages
3 described above, Plaintiff alleges that Prime Converting is liable for wage statement penalties.
4 Haines Decl., ¶ 20. Prime Converting argues any alleged wage statement violations were not
5 “knowing and intentional,” and Plaintiff cannot show they or other employees “suffer[ed] injury”
6 due to the alleged wage statement violations, as required by Labor Code § 226(e) for the
7 imposition of penalties. *Id.* Further, Prime Converting contends its wage statements always
8 accurately reflected hours worked and amounts paid as well as all other required information,
9 precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22
10 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the
11 pay stubs were accurate in that they correctly reflected the hours worked and the pay
12 received...The purpose of section 226 is to *document the paid wages* to ensure the employee is
13 fully informed regarding the calculation of those wages.”) (Italics in original). Haines Decl., ¶ 20.

14 **6. PAGA Civil Penalties**

15 As a result of the foregoing Labor Code violations, Plaintiff alleges that Prime Converting
16 is liable for civil penalties under the PAGA. Haines Decl., ¶ 21. Since Plaintiff’s PAGA claim is
17 derivative of Plaintiff’s underlying wage claims, Prime Converting asserts the PAGA claim would
18 fail with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011)
19 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
20 Prime Converting further maintains that, given its good faith defenses, this Court would exercise
21 its discretion to substantially reduce any PAGA penalties if it were to find Prime Converting liable
22 for any of Plaintiff’s claims. Haines Decl., ¶ 21; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore*
23 *Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties);
24 *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D.
25 Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of
26 violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA
27 civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with
28 the law).

1 **C. DISCOVERY AND MEDIATION**

2 In connection with mediation, the Parties engaged in extensive informal discovery. Prime
3 Converting produced timekeeping and payroll data for **all** employees during the relevant Class
4 Period, as well as its written wage and hour policies in effect during the Class Period. Haines
5 Decl., ¶ 12. Plaintiff conducted a comprehensive analysis of the payroll and timekeeping data
6 produced by Prime Converting to create a detailed exposure analysis for all claims at issue. *Id.*
7 This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances
8 of certification of Plaintiff’s claims, and Prime Converting’s potential defenses. *Id.*

9 On March 9, 2022, the Parties participated in a full-day mediation with Louis Marlin, Esq.,
10 a well-respected wage and hour class action mediator. Haines Decl., ¶ 13. During mediation, the
11 Parties vigorously debated their opposing legal positions, the likelihood of certification of
12 Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* At the conclusion of the
13 mediation, Mr. Marlin issued a mediator’s proposal for a class-wide settlement, which was
14 ultimately accepted by both sides. *Id.* During the months that followed, the Parties finalized the
15 terms of the Settlement and executed the long-form Settlement Agreement now before the court.
16 *Id.*

17 **III. THE PROPOSED SETTLEMENT**

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

19 If the Court preliminarily approves the Settlement, Prime Converting will pay a Maximum
20 Settlement Amount (“MSA”) of \$325,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement
21 is non-reversionary, and no Settlement Class member will have to submit a claim form to receive
22 an Individual Settlement Payment. *Id.*, at ¶¶ 3-4. Each Settlement Class member will
23 automatically receive an Individual Settlement Payment unless they affirmatively opt out of the
24 Settlement. *Id.* The monetary terms of the Settlement are summarized below:

- 25 • Maximum Settlement Amount (“MSA”): \$325,000.00
26 • Minus Court-approved attorneys’ fees: \$108,333.33
27 • Minus Court-approved verified costs (up to): \$25,000.00
28 • Minus Court-approved Enhancement Payment: \$7,500.00
 • Minus amount set aside as PAGA penalties: \$20,000.00
 • Minus estimated settlement administration costs: \$10,000.00

Net Settlement Amount (“NSA”): \$154,166.67
• PLUS 25% “PAGA Amount” to Settlement Class: \$5,000.00
Total Amount Paid to Settlement Class members: \$159,166.67

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative Enhancement Payment to Plaintiff, the amount designated as PAGA civil penalties, and settlement administration costs, the Settlement requires Prime Converting to pay a Net Settlement Amount (“NSA”) of at least \$154,166.67 to all Settlement Class members who do not timely opt-out. *See* Settlement, ¶ 4. Five percent (5%) of the NSA shall be designated as the “Wage Statement Amount” and will be paid proportionally based on the number of workweeks worked from September 1, 2019, to the end of the Class Period (“Wage Statement Period”). Settlement, ¶ 4(B)(i). Five percent (5%) of the NSA shall be designated as the “Waiting Time Amount” and shall be allocated in equal amounts to all participating Settlement Class members who separated their employment from Prime Converting at any time from September 1, 2017, through the end of the Class Period. Settlement, ¶ 4(B)(ii). The remainder of the NSA (i.e., 90%) shall be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period. Settlement, ¶ 4(B)(iii). Additionally, Five Thousand Dollars (\$5,000.00) of the Maximum Settlement Amount has been designated as the “PAGA Amount” and shall be distributed to Settlement Class members (including those who submit a valid and timely Request for Exclusion from the class action settlement) who were employed during the PAGA Period (i.e., February 26, 2020, until May 31, 2022) proportionally based on the number of workweeks worked during that time period. Settlement, ¶ 4(B)(1).

According to Prime Converting, there are approximately 100 Settlement Class members. Haines Decl., ¶ 15. Therefore, the average Individual Settlement Payment is projected to be approximately \$1,591.67. *Id.* Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(D), (E). Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Prime Converting included within the Settlement. *See*

1 *Id.*, at ¶ 2(A).

2 **2. Attorneys' Fees and Costs, Enhancement Payment, and PAGA Payment**

3 Plaintiff will apply for Class Representative Enhancement Payment at the time of seeking
4 final approval of the proposed class action settlement in the amount of \$7,500 for his service to
5 the Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6; Haines Decl., ¶ 24. “[I]ncentive awards are
6 fairly typical in class action cases . . . and are intended to compensate class representatives for
7 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
8 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
9 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement
10 Payment is intended to recognize the time and effort Plaintiff expended on behalf of the
11 Settlement Class, including providing substantial factual information and documents to Class
12 Counsel, discussing the claims and theories at issue in the litigation, actively participating in the
13 prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve
14 as the named plaintiff in this case, and the fact that Plaintiff agreed to a general release of all
15 claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 3(C)(3), 6; Haines Decl., ¶
16 24; *see also* Navarro Decl.

17 Class Counsel will also apply for an attorneys’ fees award of one-third of the Maximum
18 Settlement Amount, which is currently estimated to be \$108,333.33, and up to \$25,000.00 in
19 verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; Haines Decl., ¶ 23. Plaintiff submits
20 the requested fee as fair compensation for undertaking complex, risky, expensive, and time-
21 consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial
22 attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal
23 research, conducting extensive informal discovery, analyzing Settlement Class members’
24 timekeeping and payroll records, creating a comprehensive damages model, preparing for and
25 attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing
26 this Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional
27 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding
28 questions from Settlement Class members, preparing the final approval papers, and attending the

1 Final Approval hearing. *Id.*

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

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

15 Additionally, the parties have agreed to designate \$20,000.00 of the Maximum Settlement
16 Amount as PAGA civil penalties, of which \$15,000.00 (75%) will be paid to the LWDA, with
17 the remaining \$5,000.00 (25%) for distribution to the Settlement Class, as the PAGA requires
18 such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(5). Plaintiff
19 submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v.*
20 *Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal.
21 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
22 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
23 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
24 settlement).

25 **IV. ARGUMENT**

26 **A. PRELIMINARY APPROVAL IS WARRANTED**

27 California Rule of Court 3.769 conditions settlement of a class action on court approval,
28 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, Prime Converting 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.

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

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

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

10 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which
11 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
12 was a risk that there would not be a certified class at the time of trial, or if there were, it would
13 consist of a significantly smaller group of employees than the proposed Settlement Class (either
14 due to a narrowing of the class definition in a Court order on a contested motion for class
15 certification, or through settlement agreements entered into by Prime Converting with individual
16 class members by way of *Pick-up-Stix* type settlement agreements²), and the expected recovery
17 could be significantly reduced, given the settlement amounts that are typically offered through
18 the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

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

20 The Settlement provides a positive recovery for the Settlement Class in the face of
21 disputed claims. Plaintiff conducted a detailed analysis of underpaid wages due to Prime
22 Converting's alleged unlawful timekeeping policies/practices, potential meal and rest period
23 premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil
24

25 _____
26 ² In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
27 employer may enter into pre-certification settlement agreements with individual putative class
28 members in which the putative class members release claims for past unpaid wages and penalties
in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

Unpaid Wages Due to Rounding: \$68,665

Plaintiff alleges that Prime Converting utilized a timekeeping practice that systematically underpaid wages through a process of unlawful rounding. Haines Decl., ¶ 16. Based on Plaintiff's analysis of Prime Converting's time and payroll records, Plaintiff contends Prime Converting's rounding practices resulted in approximately 5,456 hours of unpaid wages. *Id.* Therefore, Plaintiff estimates Prime Converting's maximum exposure for this claim at approximately \$150,913 (5,456 hours * \$13.83 min. wage * 2 [liquidated damages per Labor Code § 1194.2]). *Id.*

However, as noted above, Prime Converting argues that its timekeeping system is even-handed and facially neutral and compensated employees for all hours worked. *Id.* Prime Converting further argues that just because an employee is clocked in does not mean they are working. *Id.* Prime Converting also asserts that Plaintiff would be unable to certify this claim given the individualized inquiry as to whether employees were, in fact, underpaid or potentially overpaid for each workday in question. *Id.* Based on these defenses, Plaintiff discounted the estimated maximum amount by 30% for the risk of non-certification and by an additional 35% to account for the risk of losing on the merits or failure to recover the maximal amount sought to arrive at an estimated exposure of approximately \$68,665. Haines Decl., ¶ 16.

Second Meal Period Violations: \$81,229

Plaintiff alleges that throughout the Class Period, Prime Converting failed to provide second meal periods during shifts in excess of 10.0 hours. Haines Decl., ¶ 17. Plaintiff's analysis showed there were approximately 15,060 shifts of over 10.0 hours worked during the Class Period, with 100% of those shifts having a second meal period violation. *Id.* In addition, data provided by Prime Converting reveals that putative class members' average rate of pay during the Class Period was approximately \$13.83. *Id.* Plaintiff therefore calculates Prime Converting's exposure for second meal period violations as \$208,280 (15,060 shifts * \$13.83 average premium). *Id.*

However, Plaintiff's theory of liability carried significant risks of both non-certification and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Prime Converting's

argument that it has maintained compliant written meal period policies throughout the Class Period, and Settlement Class members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Haines Decl., ¶ 17. In light of these risks, Plaintiff discounted the maximum amount that the class could potentially recover by 35% for the risk of non-certification and an additional 40% for the risk of losing on the merits, or having exposure reduced due to Prime Converting's waiver arguments, to arrive at estimated exposure of \$81,229. *Id.*

Rest Period Violations: \$126,773

Plaintiff alleges that Prime Converting failed to authorize third rest periods for shifts of over 10.0 hours. Haines Decl., ¶ 18. Additionally, Prime Converting improperly requires employees to combine their first rest period with their meal period for a single 40-minute break. *Id.* Plaintiff further alleges that Prime Converting maintains an unlawful rest period policy requiring its employees to remain on premises during rest periods. *Id.* Within these parameters, Plaintiff's analysis of Prime Converting's timekeeping records revealed that there were approximately 65,475 shifts with potential non-compliant rest periods. *Id.* Therefore, Plaintiff calculated Prime Converting's maximum potential exposure for rest period violations at approximately \$905,519 (65,475 rest period violations * \$13.83 premium). *Id.*

However, Prime Converting contends it has maintained compliant rest period practices throughout the Class Period and authorized and permitted all rest periods to Settlement Class members. *Id.* Prime Converting further argues that Plaintiff's rest period claim is not amenable to class treatment since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. Haines Decl., ¶ 18. These manageability concerns are especially present regarding rest periods, Prime Converting contends since rest periods are not recorded. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 60% for the risk of non-certification and an additional 65% for the risk of being unsuccessful on the merits or failing to recover the full amount sought to arrive at an estimated realistic exposure of approximately \$126,773. *Id.*

1 Waiting Time Penalties: \$26,718

2 Prime Converting's records reflected approximately 46 former Settlement Class members
3 who separated from their employment with Prime Converting and are, therefore, eligible for
4 waiting time penalties. Haines Decl., ¶ 19. Based on an hourly rate of \$13.83, Plaintiff estimated
5 the average waiting time penalty per former employee to be \$3,319 ($\$13.83 \times 8 \text{ hours per day} \times$
6 30 days). *Id.* Therefore, Plaintiff calculated Prime Converting's maximum exposure for potential
7 waiting time penalties to be approximately \$152,674 ($46 \text{ former employees} \times \$3,319 \text{ average}$
8 penalty). *Id.*

9 Prime Converting presented several defenses to this claim, most notably their assertion
10 that because they possessed good-faith defenses to the underlying claims, any failure to pay wages
11 was not "willful" as a matter of law. *Id.* Prime Converting further asserts that Plaintiff's waiting
12 time penalty exposure was grossly inflated as not every former employee experienced the alleged
13 Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of Plaintiff's
14 underlying wage claims, Plaintiff would need to overcome Prime Converting's defenses, both as
15 to class certification and on the merits, as to his underlying claims. *Id.* To account for Prime
16 Converting's defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-
17 certification and an additional 65% for the risk of losing on the merits and/or not receiving the
18 maximum penalties sought, to arrive at an estimated exposure of approximately \$26,718. *Id.*

19 Wage Statement Penalties: \$37,800

20 Plaintiff alleges that Prime Converting is liable for wage statement penalties as a result of
21 the unpaid wages and unpaid meal and rest period premiums. Haines Decl., ¶ 20. Those penalties
22 are calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with
23 a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff's analysis reflected
24 that there were approximately 63 unique employees and approximately 3,038 pay periods worked
25 during the liability period applicable to Plaintiff's wage statement claim. *Id.* Plaintiff, therefore,
26 calculated Prime Converting's potential wage statement exposure, using the maximum of \$4,000
27 per employee at approximately \$252,000 ($63 \text{ Employees} \times \$4,000 \text{ max. penalty}$). *Id.*; *see also*
28 Labor Code § 226(e).

1 In light of Prime Converting’s arguments that no violations occurred, that employees
2 suffered no “injury,” that any alleged violations were not “knowing and intentional,” that the
3 wage statements always accurately reflected hours worked and amounts paid to employees, as
4 well as risks associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted
5 the maximum exposure by 50% for risk of non-certification, and by an additional 70% for risk of
6 being unsuccessful on the merits, for an estimated realistic exposure of approximately \$37,800.
7 Haines Decl., ¶ 20.

8 **PAGA Penalties: \$36,456**

9 Plaintiff estimated a maximum total PAGA exposure at \$303,800 (3,038 pay periods *
10 \$100 “initial” penalty). Haines Decl., ¶ 21; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157,
11 1207 (2008) (finding “initial” violation rate applies until employer is notified that it is violating a
12 Labor Code provision). However, these penalties derive from the underlying wage and hour
13 violations discussed above, which Prime Converting disputes vigorously. Haines Decl., ¶ 21; see
14 e.g., *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that
15 a PAGA claim’s success was determined by the merits of its underlying claims). Prime
16 Converting also asserts that the Court would drastically reduce any award of PAGA penalties as
17 “confiscatory.” Haines Decl., ¶ 21; see also *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
18 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
19 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing
20 PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum
21 figure by 60% for the risk of losing on the merits and/or not recovering a PAGA penalty for every
22 pay period, and an additional 70% to account for the possibility of this Court reducing penalties
23 to arrive at an estimated exposure of approximately \$36,456. Haines Decl., ¶ 21.

24 Using these estimated figures for each of the claims described above, Plaintiff predicted
25 that the potential recovery for the Settlement Class would be approximately \$377,641. Haines
26 Decl., ¶ 22. The proposed Settlement of \$325,000 represents approximately 86% of the
27 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate
28 since the Settlement will provide significant monetary relief to the Settlement Class, which is

1 consistent with what Plaintiff's counsel believes could have been recovered had the case
2 proceeded through trial.

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

4 "Parties represented by competent counsel are better positioned than courts to produce a
5 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
6 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
7 by competent, experienced counsel who possess extensive experience prosecuting and defending
8 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
9 alleging similar claims. *See* Haines Decl., ¶¶ 3-7. *see also* Declaration of Sean M. Blakely
10 ("Blakely Decl."), ¶¶ 2-6; Declaration of Alexandra McIntosh, ¶¶ 2-4 ("McIntosh Decl."). Class
11 Counsel conducted an in-depth review of Prime Converting's timekeeping and payroll records
12 and drew on their extensive experience in similar cases to assess the strengths and weaknesses of
13 Plaintiff's case. *See* Haines Decl., ¶¶ 12-22. The Settlement was also reached with the assistance
14 of an experienced and respected wage-and-hour class action mediator. *Id.* This factor strongly
15 supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

23 The proposed Settlement reflects approximately 86% of the estimated recovery the
24 Settlement Class could reasonably expect in light of the significant litigation risks and will
25 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
26 percentage of the liability exposure recovered in this case far exceeds percentages routinely
27 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
28 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential

damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Further, the average Individual Settlement Payment of approximately \$1,591.67 exceeds average payments achieved in other wage and hour class action settlements.³ Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm’s-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As

³ *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).

discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data to arrive at his estimated class-wide damages figures. *See* Haines Decl., ¶¶ 12-22. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Settlement Class members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment, and Plaintiff’s Class Representative Enhancement 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 employed by Prime Converting in California during the Class Period. Therefore, Settlement Class members can be identified from Prime Converting’s personnel and employment records. Prime Converting represents that the Settlement Class consists of approximately 100 current and former non-exempt employees. *See* Haines Decl., ¶ 15. It would therefore be impracticable to bring all Settlement Class members

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

4 **2. Common Issues of Law and Fact Predominate**

5 The focus in a certification dispute is not on the merits but rather on what types of
6 questions, “common or individual,” are likely to arise in the Action. *See Sav-On Drug Store, Inc.*
7 *v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on,
8 among other issues, Prime Converting’s timekeeping policies/practices and meal and rest period
9 policies/practices. These types of claims are commonly held to be proper for class certification.
10 *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013)
11 (certifying meal and rest period claims).

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

13 The typicality requirement is satisfied where class representatives have claims that are
14 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
15 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
16 same goods as the putative class in a consumer class action). Here, Plaintiff’s claims are typical
17 of those held by the Settlement Class members. First, Prime Converting employed Plaintiff as a
18 non-exempt employee during the Class Period, and Plaintiff was subject to Prime Converting’s
19 wage and hour policies at issue in this case. *See* Navarro Decl., ¶ 2. Second, Plaintiff was injured
20 by the same challenged policies/practices that allegedly injured the Settlement Class as a whole.
21 For example, Plaintiff asserts that he was deprived of all wages and contends that he was deprived
22 of all legally-compliant meal and rest periods. Plaintiff further asserts that he did not receive
23 accurate and compliant wage statements and did not receive all wages at the time of separation of
24 employment. *See generally*, Navarro Decl. Because Plaintiff has suffered the same injuries as the
25 other members of the Settlement Class, the typicality requirement is satisfied.

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

28 The adequacy requirement examines conflicts of interest between named parties and the

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

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

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

27 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
28 because it advises Settlement Class members of the nature of the claims, basic contentions and

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

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

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

14 **V. CONCLUSION**

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

18
19 Dated: September 28, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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21 By:



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