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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

REYNALDA A. RAMOS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

THE COMPLETE LOGISTICS COMPANY, a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: CIVSB2105530

*[Assigned for all purposes to Hon. Joseph T.
Ortiz; Dept. S17]*

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

Date: October 10, 2023
Time: 1:30 p.m.
Dept.: S17

Complaint Filed: February 4, 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 10, 2023, at 1:30 p.m. in Department S17 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Reynalda A. Ramos (“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, excluding commercial drivers, of Defendant The Complete Logistics Company who are or have been employed by Defendant in California at any time from February 4, 2017, through July 15, 2022 (the “Class Period”).
3. Preliminary appointment of Plaintiff Reynalda A. Ramos as Class Representative;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Service Award to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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

6
7 Respectfully submitted,

8 Dated: July 18, 2023

HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Reynalda A. Ramos (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of all current and former non-exempt
5 employees, excluding commercial drivers, of Defendant The Complete Logistics Company
6 (“Complete Logistics”) who worked for Complete Logistics in California at any time from
7 February 4, 2017, through July 15, 2022 (the “Class Period”). Plaintiff’s primary allegations are
8 that Complete Logistics failed to pay all minimum and overtime wages due to its allegedly
9 unlawful timekeeping policies/practices and failed to provide all legally compliant meal and rest
10 periods. As a result of these alleged violations, Plaintiff also brought derivative claims for
11 Complete Logistics’ alleged failure to pay all final wages owed, failure to issue accurate and
12 compliant wage statements, and for civil penalties under the Private Attorneys’ General Act
13 (“PAGA”).¹

14 Plaintiff now respectfully requests that this Court preliminarily approve this non-
15 reversionary, common-fund class action settlement,² in which Complete Logistics has agreed to
16 pay Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) to the following Settlement
17 Class:

18 All current and former non-exempt employees, excluding commercial
19 drivers, of Defendant The Complete Logistics Company who are or have
20 been employed by Defendant in California at any time from February 4,
2017, through July 15, 2022 (the “Class Period”).

21 If the Settlement is approved, Complete Logistics will pay a non-reversionary Gross
22

23 ¹ Plaintiff’s operative Second Amended Class and Representative Action Complaint (“SAC”)
24 pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
25 wages; (3) rest period violations; (4) meal period violations; (5) wage statement penalties; (6)
26 waiting time penalties; (7) failure to reimburse for all necessary business expenditures; (8) unfair
competition; and (9) civil penalties under the PAGA.

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
28 as **Exhibit A**. The proposed Class Notice and Notice of Estimated 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 Amount (“GSA”) of \$200,000.00. After deducting administration costs, Plaintiff’s
2 requested Class Representative Service Award, the amount designated as PAGA civil penalties,
3 and requested attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately
4 \$90,833.33 will be distributed to all Settlement Class members who do not opt-out of the
5 Settlement based on the proportionate number of workweeks worked by each Settlement Class
6 member during the Class Period.

7 Significantly, Settlement Class members do not need to file a claim to reap the financial
8 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
9 unless they affirmatively opt-out. There are approximately 127 Settlement Class members, and
10 the average payment to participating Settlement Class members is projected to be approximately
11 \$715.22.

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

17 **II. SUMMARY OF THE LITIGATION**

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

19 Complete Logistics provides transportation, warehousing, and other logistics services and
20 operates locations in Fontana, San Diego, and Stockton, California. *See* Declaration of Sean M.
21 Blakely (“Blakely Decl.”), ¶ 8. Plaintiff worked for Complete Logistics as a non-exempt
22 employee in the position of warehouse clerk from approximately 2007 until approximately
23 October 16, 2020. *See* Declaration of Reynalda A. Ramos In Support of Approval of Class Action
24 Settlement (“Ramos Decl.”), ¶ 2. Plaintiff’s primary job duties consisted of data entry, preparing
25 orders and pallets, and checking inventory. *Id.*

26 On February 4, 2021, Plaintiff filed her Class Action Complaint in San Bernardino County
27 Superior Court, alleging that Complete Logistics: (i) failed to pay all minimum wages; (ii) failed
28 to pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize

1 and permit all rest periods; (v) failed to issue accurate, itemized wage statements; (vi) failed to
2 pay all final wages due upon separation of employment; (vii) failed to reimburse its employees
3 for all necessary business expenditures; and (viii) engaged in unfair competition in violation of
4 California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. That same day,
5 Plaintiff sent her PAGA notice letter to the Labor and Workforce Development Agency
6 (“LWDA”). *Id.*, Exhibit B. On April 12, 2021, Plaintiff filed a First Amended Class and
7 Representative Action Complaint (“FAC”) to add a ninth cause of action for civil penalties under
8 the PAGA. *Id.* On December 9, 2021, Plaintiff filed the operative Second Amended Class and
9 Representative Action Complaint (“SAC”) to exclude non-exempt employees employed as
10 “drivers.” *Id.*

11 **B. PLAINTIFF’S CLAIMS AND COMPLETE LOGISTICS’ DEFENSES**

12 **1. Meal Period Claims**

13 Plaintiff alleges Complete Logistics failed to provide legally compliant first meal periods
14 such that first meal periods were regularly short (i.e., less than 30 minutes) and often commenced
15 after the completion of the fifth hour of work, and that this is reflected in employee timekeeping
16 records that show such non-compliant meal periods. Blakely Decl., ¶ 14. Plaintiff further alleges
17 that Settlement Class members were not provided with second meal periods when they worked
18 shifts in excess of 10.0 hours in a workday. *Id.*

19 Complete Logistics counters it has maintained compliant written meal period policies
20 throughout the Class Period and has always provided compliant meal periods in line with those
21 policies. Blakely Decl., ¶ 14. Complete Logistics further contends that it always *provides*
22 employees the opportunity to take meal periods and is not required to *ensure* they are taken. *Id.*;
23 *see Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard).
24 Thus, Complete Logistics argues that any missed, late or short meal periods resulted from lawful
25 employee choice rather than any policy and/or practice of Complete Logistics. Blakely Decl., ¶
26 14. Complete Logistics also asserts that many employees choose to waive their second meal
27 periods on shifts over 10.0 hours and under 12.0 hours, as they may do under Labor Code §
28 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes. *Id.* Finally,

1 Complete Logistics maintains Plaintiff's meal period claim is not suited for class certification
2 since individual inquiries would be needed to assess which employees took non-compliant or
3 missed meal periods, how many meal periods were non-compliant or missed, the reasons why a
4 particular employee did not take a meal period on a particular shift, and (for second meal periods)
5 whether they waived the meal period. *Id.*

6 **2. Rest Period Claims**

7 Plaintiff alleges Complete Logistics failed to authorize and permit all required off-duty
8 rest periods. Blakely Decl., ¶ 15. Specifically, Plaintiff alleges that Complete Logistics often
9 failed to authorize and permit a third rest period when Plaintiff and other non-exempt employees
10 worked a shift in excess of 10.0 hours. *Id.*

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

21 **3. Unreimbursed Business Expenses**

22 Plaintiff alleges that Complete Logistics required Plaintiff and other non-exempt
23 employees to use their personal cellular phones to clock in and out for their work shifts and meal
24 periods by using an "ADP" application. Blakely Decl., ¶ 16. Plaintiff alleges she was instructed
25 by Complete Logistics' management to clock in/out using the ADP app on her personal cellular
26 phone, because Complete Logistics' time clock machines often were not operational or would not
27 function properly. *Id.* Despite requiring Plaintiff and Settlement Class members to incur these
28 expenses on a daily basis, Plaintiff alleges that Complete Logistics failed to reimburse Settlement

1 Class members for these necessary business expenses, in violation of Labor Code § 2802(a) (“An
2 employer shall indemnify his or her employee for all necessary expenditures or losses incurred
3 by the employee in direct consequence of the discharge of his or her duties.”); *see also Cochran*
4 *v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding employer must reimburse
5 use of personal cell phone, even where employee already has “unlimited” plan).

6 Complete Logistics maintains that Settlement Class members were not required to use
7 their personal cellular phones as part of their job. Blakely Decl., ¶ 16. Complete Logistics further
8 argues that any expenses incurred by Settlement Class members were extremely minimal, given
9 the wide availability of low-cost cellular phone plans. *Id.* Complete Logistics further contends
10 that this claim would require individual inquiries into whether Settlement Class members actually
11 used their personal cellular phones for work purposes, how much expense they incurred, whether
12 they submitted a request for reimbursement, and the reasonableness of that expense, thus
13 precluding class certification. *Id.*; *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42
14 Cal.4th 554, 568 (2007) (“In calculating the reimbursement amount due under section 2802, the
15 employer may consider not only the actual expenses that the employee incurred, but also whether
16 each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the
17 employee’s choices”).

18 **4. Unpaid Wages Due to Unlawful Rounding**

19 Plaintiff alleges that from the beginning of the Class Period until approximately
20 November 2019, Complete Logistics utilized a timekeeping practice that systematically
21 underpaid wages through a process of unlawful time rounding. Blakely Decl., ¶ 17. However,
22 Complete Logistics counters that its timekeeping policies/practices complied with California law
23 and that it has always properly compensated Settlement Class members for all hours worked
24 throughout the Class Period. *Id.*; *see also See’s Candy Shops, Inc. v. Superior Court*, 210
25 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer “applies a consistent rounding
26 policy that, on average, favors neither overpayment nor underpayment.”). Complete Logistics
27 also contends that multiple Courts of Appeal have found rounding mechanisms to be lawful under
28 similar circumstances. *See, e.g., Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal.App.5th 1239,

1 1254 (2019) (review granted on other grounds) (affirming summary judgment for employer on
2 rounding claim where employees were underpaid on 54.6% of shifts, finding that such facts do
3 not establish that employees were “systematically undercompensate[d]”); *AHMC Healthcare,*
4 *Inc. v. Superior Court*, 24 Cal.App.5th 1014, 1028 (2018) (affirming summary judgment for
5 employer where “bare majority” of employees were underpaid due to rounding). Complete
6 Logistics also asserts that Plaintiff would be unable to certify this claim since its timekeeping
7 policies/practices are facially neutral and individualized inquiries would be necessary as to
8 whether employees were in fact underpaid, or potentially overpaid, for each workday in question,
9 resulting in an unmanageable series of mini-trials. Blakely Decl., ¶ 17.

10 **5. Waiting Time Penalties**

11 As a result of the unpaid wages and unpaid meal and rest period premium wages described
12 above, Plaintiff alleges that Complete Logistics failed to comply with its final pay obligations set
13 forth in Labor Code §§ 201-203. Blakely Decl., ¶ 18.

14 Complete Logistics argues that it possesses strong, good faith defenses to Plaintiff’s
15 underlying claims, thus precluding recovery of waiting time penalties, which are only available
16 for the “willful” failure to pay wages. Blakely Decl., ¶ 18; see *also* 8 Cal. Code Regs. § 13520
17 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties
18 under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer
19 presents a defense, based in law or fact which, if successful, would preclude any recovery on the
20 part of the employee.”). Complete Logistics further asserts that Plaintiff’s waiting time penalty
21 exposure was grossly inflated as not every former employee experienced the alleged Labor Code
22 violations. Blakely Decl., ¶ 18.

23 **6. Wage Statement Claims**

24 As a further result of the unpaid wages and unpaid meal and rest period premium wages
25 described above, Plaintiff alleges that Complete Logistics is liable for wage statement penalties.
26 Blakely Decl., ¶ 19.

27 Complete Logistics argues any alleged wage statement violations were not “knowing and
28 intentional,” and Plaintiff cannot show she or other employees “suffer[ed] injury” due to the

1 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
2 penalties. Blakely Decl., ¶ 19. Further, Complete Logistics contends its wage statements always
3 accurately reflected hours worked and amounts paid as well as all other required information,
4 precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22
5 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the
6 pay stubs were accurate in that they correctly reflected the hours worked and the pay
7 received...The purpose of section 226 is to *document the paid wages* to ensure the employee is
8 fully informed regarding the calculation of those wages.”) (Italics in original). Blakely Decl., ¶
9 19.

10 **7. PAGA Civil Penalties**

11 As a result of the foregoing Labor Code violations, Plaintiff alleges that Complete
12 Logistics is liable for civil penalties under the PAGA. Blakely Decl., ¶ 20.

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

26 **C. DISCOVERY AND MEDIATION**

27 In connection with mediation, Complete Logistics provided Plaintiff’s counsel with a
28 random sampling of timekeeping and payroll records for approximately 25% of putative class

members. Blakely Decl., ¶ 10. In addition, Complete Logistics produced a spreadsheet containing all putative class members’ hire and termination dates (if applicable), rates of pay, as well as Complete Logistics’ written policies and other information. *Id.* Plaintiff conducted a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Complete Logistics to create a detailed exposure analysis for all claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Complete Logistics’ potential defenses. *Id.*

On July 7, 2022, the Parties participated in a full-day mediation with Marc J. Feder, Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, the legal basis for the claims and defenses, as well as Complete Logistics’ financial condition. *Id.* The Parties did not reach a settlement at mediation. *Id.* The parties continued their discussions with Mr. Feder in the days following mediation and Mr. Feder issued a mediator’s proposal for a class-wide settlement, which was ultimately accepted by both sides. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Complete Logistics will pay a Gross Settlement Amount (“GSA”) of \$200,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.*, at ¶ 4. Each Settlement Class member will automatically receive a Settlement Award unless they affirmatively opt out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$200,000.00
• Minus Court-approved attorneys’ fees:	\$66,666.67
• Minus Court-approved verified costs (up to):	\$15,000.00
• Minus Court-approved Service Award:	\$7,500.00
• Minus amount set aside as PAGA penalties:	\$10,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$10,000.00</u>

Net Settlement Amount (“NSA”): \$90,833.33
• PLUS 25% “PAGA Payment” to Settlement Class: \$2,500.00
Total Amount Paid to Settlement Class members: \$93,333.33

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 designated as PAGA civil penalties, and settlement administration costs, the Settlement requires Complete Logistics to pay a Net Settlement Amount (“NSA”) of at least \$90,833.33 to all Settlement Class members who do not timely opt-out. *See* Settlement, ¶ 4(A). The NSA shall be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period. Settlement, ¶ 4(A)(i). Additionally, Two Thousand Five Hundred Dollars (\$2,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” and shall be distributed to Aggrieved Employees (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 4, 2020, through July 15, 2022) proportionally based on the number of workweeks worked during that time period. Settlement, ¶¶ 2(B), 4(A)(ii).

According to Complete Logistics, there are approximately 127 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average Settlement Award from the NSA is projected to be approximately \$715.22. *Id.* There are approximately 74 Aggrieved Employees during the PAGA Period. *Id.* Therefore, each Aggrieved Employee will receive an average of approximately \$33.78 from the PAGA Amount. *Id.* Settlement Class members will have forty-five (45) 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 Complete Logistics included within the Settlement. *See Id.*, at ¶ 2(A).

2. Attorneys’ Fees and Costs, Service Award, and PAGA Payment

Plaintiff will apply for Class Representative Service Award at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for her service to the

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

13 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
14 Settlement Amount, which is currently estimated to be \$66,666.67, and up to \$15,000.00 in
15 verified costs reimbursement. *See* Settlement, ¶¶ 3(B)(4), 5; Blakely Decl., ¶ 23. Plaintiff submits
16 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
17 consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial
18 attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal
19 research, conducting extensive informal discovery, analyzing Settlement Class members’
20 timekeeping and payroll records, creating a comprehensive damages model, preparing for and
21 attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing
22 this Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional
23 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding
24 questions from Settlement Class members, preparing the final approval papers, and attending the
25 Final Approval hearing. *Id.*

26 California courts recognize that an appropriate method for awarding attorneys’ fees in
27 class actions is to award a percentage of the “common fund” created as a result of a settlement.
28 *See, e.g., Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of

fund method survives in California class action cases”). Class Counsel’s request for fees of one-third of the Gross Settlement Amount is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* Newberg on Class Actions § 14.6 (4th Ed. 2013).

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

Additionally, the parties have agreed to designate \$10,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which \$7,500.00 (75%) will be paid to the LWDA, with the remaining \$2,500.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(B)(5). Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,

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

1. Standard for Preliminary Approval

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

a. The Strength of Plaintiff’s Case

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

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

Although the parties engaged in significant informal discovery prior to mediation, the parties still had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 22. This would have required the expenditure of substantial time and resources by both

1 parties that would have very likely spanned several years. *Id.* Even if Plaintiff was to certify the
2 classes, the parties would incur considerably more attorneys' fees and costs through a possible
3 decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the
4 accompanying expense. *Id.*

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

6 Plaintiff has not yet filed her motion for class certification, and as such, the extent to which
7 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
8 was a risk that there would not be a certified class at the time of trial, or if there were, it would
9 consist of a significantly smaller group of employees than the proposed Settlement Class (either
10 due to a narrowing of the class definition in a Court order on a contested motion for class
11 certification, or through settlement agreements entered into by Complete Logistics with
12 individual class members by way of *Pick-up-Stix* type settlement agreements³), and the expected
13 recovery could be significantly reduced, given the settlement amounts that are typically offered
14 through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the
15 settlement.

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

17 The Settlement provides a positive recovery for the Settlement Class in the face of
18 disputed claims. Plaintiff conducted a detailed analysis of underpaid wages due to Complete
19 Logistics' alleged unlawful timekeeping policies/practices, potential meal and rest period
20 premium payments owing, potential reimbursement for necessary business expenditures, wage
21 statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results
22 of Plaintiff's exposure analysis are discussed below:

23 First Meal Period Violations: \$51,174

24
25
26 ³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
27 employer may enter into pre-certification settlement agreements with individual putative class
28 members in which the putative class members release claims for past unpaid wages and penalties
in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

1 Plaintiff alleges that Complete Logistics failed to provide timely 30-minute first meal
2 periods before the conclusion of the fifth hour of work. Blakely Decl., ¶ 14. Based on Plaintiff's
3 review and extrapolation of the timekeeping data produced by Complete Logistics, approximately
4 12,314 shifts during the Class Period reflected a late, short, and/or missed first meal period. *Id.*
5 In addition, based on data provided by Complete Logistics, Settlement Class members' average
6 hourly rate of pay during the Class Period was approximately \$18.47 per hour. *Id.* Therefore,
7 assuming each late, short, and/or missed meal period reflected in the timekeeping records would
8 result in a violation, Plaintiff calculated Complete Logistics' maximum exposure on this claim at
9 approximately \$227,439 (12,314 non-compliant first meal periods * \$18.47 average meal period
10 premium). *Id.*

11 However, as noted above, Complete Logistics contends that it provided compliant meal
12 periods to Settlement Class members throughout the Class Period. Blakely Decl., ¶ 14. Complete
13 Logistics also asserts that under *Brinker* it is only required to "provide" the opportunity to take
14 meal periods, not "ensure" meal periods are taken, and that, as described above, it has always
15 done so, and any non-complaint first meal periods in the timekeeping records were the result of
16 employee choice. *Id.*; *see also Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard and
17 holding employers only have to "provide" employees the opportunity to take meal periods).
18 Finally, Complete Logistics maintains that the first meal period claim is not suited for class
19 certification, since individual inquiries would be needed to assess which employees took non-
20 compliant meal periods or missed meal periods, how many meal periods were non-compliant or
21 missed, and the reasons why a particular employee did not take a compliant meal period on a
22 particular shift. Blakely Decl., ¶ 14. In light of these defenses and arguments, Plaintiff discounted
23 Complete Logistics' maximum exposure by 55% for the risk of non-certification, and an
24 additional 50% to account for Complete Logistics' defenses on the merits, to arrive at an estimated
25 exposure of approximately \$51,174. *Id.*

26 Second Meal Period Violations: \$23,412

27 Plaintiff's analysis and extrapolation of the timekeeping data revealed that approximately
28 8,048 total shifts were over 10.0 hours and did not reflect a legally compliant second meal period.

1 Blakely Decl., ¶ 14. Plaintiff therefore calculates Complete Logistics' exposure for second meal
2 period violations at approximately \$148,647 (8,048 non-compliant second meal periods * \$18.47
3 average premium). *Id.*

4 However, Plaintiff's theory of liability carried significant risks of both non-certification
5 and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Complete
6 Logistics' argument that it has maintained compliant written meal period policies throughout the
7 Class Period, and that Settlement Class members voluntarily waived their second meal period on
8 shifts in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶ 14.
9 In light of these risks, Plaintiff discounted the maximum amount that the class could potentially
10 recover by 55% for the risk of non-certification and an additional 65% for the risk of losing on
11 the merits, or having exposure reduced due to Complete Logistics' waiver arguments, to arrive at
12 estimated exposure of approximately \$23,412. *Id.*

13 **Rest Period Violations: \$26,013**

14 As indicated above, Plaintiff alleges Complete Logistics failed to authorize and permit a
15 third rest period when Plaintiff worked a shift in excess of 10.0 hours. Blakely Decl., ¶ 15. Based
16 on Plaintiff's analysis and extrapolation of Complete Logistics' timekeeping records, Plaintiff
17 estimates there were approximately 8,048 shifts over 10.0 hours during the Class Period where a
18 third rest period was not provided. *Id.* Therefore, Plaintiff estimates Complete Logistics'
19 maximum potential exposure for rest period violations at approximately \$148,647 (8,048 rest
20 period violations * \$18.47 average premium). *Id.*

21 However, Complete Logistics contends it has maintained and enforced compliant written
22 rest period policies/practices and has always authorized and permitted employees a 10-minute
23 rest period for each 4 hours worked, including third rest periods, and that any failure to take rest
24 periods was as a result of employee choice, rather than any Complete Logistics policy and/or
25 practice. Blakely Decl., ¶ 15. Complete Logistics further argues that Plaintiff's rest period claim
26 is not amenable to class treatment, since individual inquiries would be required to determine
27 which employees failed to take rest periods, how many rest periods they failed to take, and the
28 reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These

manageability concerns are especially present with respect to rest period claims, Complete Logistics argues, given that rest periods are not recorded. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 65% for risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately \$26,013. *Id.*

Failure to Reimburse Necessary Business Expenses: \$13,744

Plaintiff alleges that Complete Logistics failed to reimburse Plaintiff and other Settlement Class members for personal cellular phone expenses. Blakely Decl., ¶ 16. Based on Plaintiff's analysis and extrapolation of Complete Logistics' records, Plaintiff estimates that Settlement Class members have worked a total of approximately 2,199 months during the Class Period. *Id.* Using a conservative estimate of \$25 per month in reasonable work-related personal cellular phone use, Plaintiff calculates Complete Logistics' maximum exposure for this claim at approximately \$54,975 (\$25.00/month * 2,199 months). *Id.*

As noted above, Complete Logistics maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 16. Complete Logistics further argues that any expenses incurred by Settlement Class members were minimal, given the wide availability of low-cost cellular phone plans. *Id.* Complete Logistics further argues that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.* Based on these defenses, Plaintiff discounted the estimated maximum amount by 50% for risk of non-certification, and by an additional 50% to account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately \$13,744. *Id.*

Unpaid Wages Due to Rounding: \$2,984

Plaintiff alleges that until November 2019, Complete Logistics utilized a timekeeping system that systematically underpaid wages through a process of unlawful rounding. Blakely Decl., ¶ 17. Plaintiff's analysis of Complete Logistics' time and payroll records revealed that

Complete Logistics' rounding practices resulted in many employees being *overpaid* during the relevant time period. *Id.* Plaintiff's analysis showed that approximately 47.37% of shifts were negatively impacted by Complete Logistics' rounding practices; and approximately 52.63% of all shifts were positively impacted (i.e., employees were *overpaid* as a result of the rounding). *Id.* Only looking at the shifts where there was an underpayment, Plaintiff estimates that Complete Logistics underpaid Settlement Class members by approximately 879 hours. *Id.* Therefore, Plaintiff calculated Complete Logistics' maximum exposure for this claim at approximately \$24,357 (879 unpaid hours * \$27.71 average overtime rate). *Id.*

However, Complete Logistics counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 17. Moreover, as noted above, Complete Logistics also argues 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.* To account for Complete Logistics' defenses, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification and an additional 65% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$2,984. *Id.*

Waiting Time Penalties: \$59,566

Complete Logistics' records reflected approximately 84 former Settlement Class members who are eligible for waiting time penalties. Blakely Decl., ¶ 18. Based on an hourly rate of \$18.47, Plaintiff estimated the average waiting time penalty per former employee to be approximately \$4,432 (\$18.47 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated Complete Logistics' maximum exposure for potential waiting time penalties to be approximately \$372,288 (84 former employees * \$4,432 average penalty). *Id.*

Complete Logistics presented several defenses to this claim, most notably their assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. Blakely Decl., ¶ 18. Complete Logistics further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee

1 experienced the alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is
2 derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Complete
3 Logistics' defenses, both as to class certification and on the merits, as to her underlying claims.
4 *Id.* To account for Complete Logistics' defenses, Plaintiff discounted the maximum exposure by
5 60% for the risk of non-certification and an additional 60% for the risk of losing on the merits
6 and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of
7 approximately \$59,566. *Id.*

8 **Wage Statement Penalties: \$38,822**

9 Plaintiff alleges that Complete Logistics is liable for wage statement penalties as a result
10 of the unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 19. Those
11 penalties are calculated as \$50 for each "initial" violation and \$100 for each "subsequent"
12 violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff's
13 analysis reflected that there were approximately 74 unique employees and approximately 2,810
14 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. *Id.*
15 Therefore, Plaintiff calculated Complete Logistics' potential wage statement exposure at
16 approximately \$277,300 ([74 "initial" violations * \$50] + [2,736 "subsequent" violations *
17 \$100]). *Id.*; *see also* Labor Code § 226(e).

18 In light of Complete Logistics' arguments that no violations occurred, that employees
19 suffered no "injury," that any alleged violations were not "knowing and intentional," that the
20 wage statements always accurately reflected hours worked and amounts paid to employees, as
21 well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted
22 the maximum exposure by 60% for risk of non-certification, and by an additional 65% for risk of
23 being unsuccessful on the merits, for an estimated realistic exposure of approximately \$38,822.
24 Blakely Decl., ¶ 19.

25 **PAGA Penalties: \$17,563**

26 Plaintiff estimated a maximum total PAGA exposure of approximately \$281,000 (2,810
27 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 20; *Amaral v. Cintas Corp. No. 2*, 163
28 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified

1 that it is violating a Labor Code provision). However, these penalties derive from the underlying
2 wage and hour violations discussed above, which Complete Logistics disputes vigorously.
3 Blakely Decl., ¶ 20; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D.
4 Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its
5 underlying claims). Complete Logistics also asserts that the Court would drastically reduce any
6 award of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 20; *see also Thurman v. Bayshore*
7 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA
8 penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx),
9 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore,
10 Plaintiff discounted the maximum figure by 75% for the risk of losing on the merits and/or not
11 recovering a PAGA penalty for every pay period, and an additional 75% to account for the
12 possibility of this Court reducing penalties to arrive at an estimated exposure of approximately
13 \$17,563. Blakely Decl., ¶ 20.

14 Using these estimated figures for each of the claims described above, Plaintiff predicted
15 that the potential recovery for the Settlement Class would be approximately \$233,278. Blakely
16 Decl., ¶ 21. The proposed Settlement of \$200,000.00 represents approximately 85.7% of the
17 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate
18 since the Settlement will provide significant monetary relief to the Settlement Class, which is
19 consistent with what Plaintiff’s counsel believes could have been recovered had the case
20 proceeded through trial.

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

22 “Parties represented by competent counsel are better positioned than courts to produce a
23 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
24 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
25 by competent, experienced counsel who possess extensive experience prosecuting and defending
26 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
27 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6. *see also* Declaration of Paul K. Haines (“Haines
28 Decl.”), ¶¶ 2-8; Class Counsel conducted an in-depth review of Complete Logistics’ timekeeping

1 and payroll records and drew on their extensive experience in similar cases to assess the strengths
2 and weaknesses of Plaintiff's case. *See* Blakely Decl., ¶¶ 14-21. The Settlement was also reached
3 with the assistance of an experienced and respected wage-and-hour class action mediator. *Id.* This
4 factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168
5 Cal.App.4th at 130.

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

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

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

13 The proposed Settlement reflects approximately 85.7% of the estimated recovery the
14 Settlement Class could reasonably expect in light of the significant litigation risks and will
15 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
16 percentage of the liability exposure recovered in this case far exceeds percentages routinely
17 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
18 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
19 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
20 representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV,*
21 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may
22 be acceptable even though it amounts to only a fraction of the potential recovery that might be
23 available to the Settlement Class members at trial"). Further, the average Individual Settlement
24 Award of approximately \$715.22 is in line with average payments achieved in other wage and
25 hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the
26

27 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
28 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

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 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 her estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 14-21. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Settlement Class members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiff's Class Representative Service Award, are all reasonable and appropriate based on

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).

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 her 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, hourly-paid employees employed by Complete Logistics in California during the Class Period. Therefore, Settlement Class members can be identified from Complete Logistics' personnel and employment records. Complete Logistics represents that the Settlement Class consists of approximately 127 current and former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits but rather on what types of questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated on, among other issues, Complete Logistics' timekeeping policies/practices and meal and rest period

1 policies/practices. These types of claims are commonly held to be proper for class certification.
2 *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013)
3 (certifying meal and rest period claims).

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

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

18 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
19 **Class**

20 The adequacy requirement examines conflicts of interest between named parties and the
21 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
22 155 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the
23 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
24 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
25 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
26 indication that Class Counsel were not qualified and the named plaintiff had no interests
27 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
28 and hour class action litigation. *See Blakely Decl.*, ¶¶ 2-6; *Haines Decl.*, ¶¶ 2-8.

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

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

17 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
18 because it advises Settlement Class members of the nature of the claims, basic contentions and
19 denials of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object
20 to the Settlement and the procedures by which to do so, explains the recovery formula and
21 expected recovery amount for each Settlement Class member, and advises them that they will be
22 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1-2 to Exh.
23 A. The proposed Class Notice will also notify Settlement Class members of the final approval
24 hearing date and provides the Settlement Class contact information for Class Counsel and advises
25 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
26 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
27 cost-effective method of reaching Settlement Class members.

28 ///

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

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

5 **V. CONCLUSION**

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

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10 Dated: July 18, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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12 By:



13 Paul K. Haines
14 Sean M. Blakely
15 Attorneys for Plaintiff
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