

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
MAYRA CORTES

HAINES LAW GROUP, APC

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

Attorneys for Plaintiff
MAYRA CORTES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MAYRA CORTES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

WETMORE TOOL AND ENGINEERING
COMPANY, a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CIVDS2016160

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

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

Date: June 14, 2021

Time: 10:00 a.m.

Dept.: S-26

Action Filed: July 23, 2020

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June
3 14, 2021 in Department S-26 of the above-entitled Court, located at 247 West Third Street, San
4 Bernardino, California 92415, Plaintiff Mayra Cortes (“Plaintiff”), individually and on behalf of a class
5 of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt, hourly, employees of Defendant Wetmore
10 Tool and Engineering Company who worked in California at any time between
11 July 23, 2016 and the date of preliminary approval.

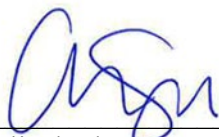
- 12 3. Preliminary appointment of Plaintiff Mayra Cortes as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, and Romina
14 Tamiry of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class
15 Counsel;
16 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
17 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
18 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
19 costs to Class Counsel;
20 6. Appointment of Phoenix Settlement Administrators (“Phoenix”) as the third-party
21 Settlement Administrator for mailing notices; and
22 7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
23 Class Action and Proposed Settlement and Notice of Individual Settlement Award) and an
24 order that it be disseminated to the proposed Settlement Class Members as provided in the
25 Settlement Agreement.
26 8. Leave to file the First Amended Complaint Class and Representative Action Complaint,
27 which is attached as Exhibit A to the Settlement.
28

1 This Motion is based on this notice of motion, the memorandum of points and authorities, the
2 declarations of Scott M. Lidman, Elizabeth Nguyen, Romina Tamiry, Milan Moore, Paul K. Haines,
3 Plaintiff Mayra Cortes, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits
4 attached 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 hearing.

6
7 Dated: April 19, 2021

Respectfully submitted,
LIDMAN LAW, APC

8
9
10 By:



Elizabeth Nguyen
Scott M. Lidman
Attorneys for Plaintiff
MAYRA CORTES

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SUMMARY OF THE LITIGATION	2
A.	THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS	2
1.	The Parties	2
2.	Procedural History	3
3.	Discovery	3
4.	Arms-Length Negotiations.....	3
III.	ARGUMENT	4
A.	CLASS CERTIFICATION FOR SETTLEMENT PURPOSES.....	4
1.	Numerosity is Satisfied.	5
2.	Commonality is Satisfied.....	5
3.	Typicality is Satisfied.	6
4.	Adequacy is Satisfied.....	6
B.	THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.....	7
1.	The Preliminary Approval Standard is Met	7
a.	The Strength of Plaintiff's Case.....	8
b.	Risk, Expenses, Complexity, and Duration of Further Litigation	8
c.	Risk of Maintaining Class Action Status	8
d.	Overview of the Settlement Agreement.....	8
e.	The Parties Engaged in Fair and Honest Negotiations.	11
f.	Amount Offered in Settlement Given Realistic Value of Claims.....	12
g.	The Settlement Is Within the Range of Possible Approval	16
h.	The Experience and Views of Counsel	17
i.	Attorneys' Fees and Costs	18

1	j.	Administration Costs	19
2	k.	Class Representative Service Award	19
3	l.	PAGA Civil Penalties	20
4	m.	Payroll Taxes	20
5	n.	Uncashed Funds	20
6			
7	C.	SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES	20
8	D.	THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE TO	
9		SETTLEMENT CLASS MEMBERS.....	21
10	E.	THE COURT SHOULD SET A FINAL APPROVAL HEARING.....	22
11	IV.	CONCLUSION.....	22

TABLE OF AUTHORITIES

Federal Cases

<i>Dunleavy v. Nadler</i> 213 F.3d 454 (9th Cir. 2000)	17
<i>Eisen v. Carlisle & Jacquelin</i> 417 U.S. 156 (1974).....	21
<i>Fleming v. Covidien Inc.</i> Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	16
<i>Glass v. UBS Finan. Servs.</i> Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007).....	17
<i>Hanlon v. Chrysler Corp.</i> 150 F.3d 1011 (9th Cir. 1998)	4, 7
<i>Hopson v. Hanesbrands, Inc.</i> No. CV 08-0844 EDL, 2008 WL 3385452 (S.D. Cal. Apr. 13, 2009)	20
<i>In re M.L. Stern Overtime Litig.</i> No. CV 07-0118 BTM (JMAx), 2009 WL 995864 (S.D. Cal. Apr. 13, 2009).....	20
<i>In re Pacific Enterprises Securities Litigation</i> 47 F.3d 373 (9th Cir. 1995)	17
<i>In re Syncor ERISA Litig.</i> 516 F.3d 1095 (9th Cir. 2008)	7
<i>Jones v. Spherion Staffing</i> No. LA-CV-11-06462-JAK(JCx) 2012 WL 3264081 (C.D. Cal. 2012)	15
<i>Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.</i> 221 F.R.D. 523 (C.D. Cal. 2004).....	17

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> 163 Cal.App.4th 1157 (2008)	16
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> 191 Cal.App.3d 1341 (1987)	6
<i>Benton v. Telecom Network Specialists, Inc.</i> 220 Cal.App.4th 701 (2013)	6
<i>Bowles v. Sup. Ct.</i> 44 Cal.2d 574 (1955)	5

1	<i>Brinker Restaurant Corp. v. Superior Court</i>	
2	53 Cal. 4th 1004 (2012)	14
3	<i>Capital People First v. State Dept. of Developmental Services</i>	
4	155 Cal.App.4th 676 (2007)	6
5	<i>Dunk v. Ford Motor Co.</i>	
6	48 Cal.App.4th 1794 (1996)	7
7	<i>In re Cellphone Fee Termination Cases</i>	
8	186 Cal.App.4th 1380 (2010)	19
9	<i>Kao v. Joy Holiday</i>	
10	12 Cal.App.5th 947 (2017)	16
11	<i>Kullar v. Foot Locker Retail, Inc.</i>	
12	168 Cal.App.4th 116 (2008)	7, 12, 18
13	<i>Laffitte v. Robert Half Int’l, Inc.</i>	
14	1 Cal.5th 480 (2016)	18
15	<i>McGhee v. Bank of America</i>	
16	60 Cal.App.3d 442 (1976)	7
17	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
18	40 Cal. App. 5th 444 (2019)	15
19	<i>Nordstrom Comm’n Cases</i>	
20	186 Cal. App. 4th 576 (2010)	20
21	<i>Price v. Starbucks Corp.</i>	
22	192 Cal.App.4th 1136 (2011)	16
23	<i>Reed v. United Teachers Los Angeles</i>	
24	208 Cal.App.4th 322 (2012)	4
25	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i>	
26	34 Cal.4th 319 (2004)	5
27	<i>Sevidal v. Target Corp.</i>	
28	189 Cal.App.4th 905 (2010)	5
	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
	203 Cal.App.4th 1112 (2012)	16
	<i>Wershba v. Apple Computer, Inc.</i>	
	91 Cal.App.4th at 245 (2001)	7

Federal Statutes and Rules

F.R.C.P. Rule 23	4
------------------------	---

State Statutes and Rules

Cal. Civ. Code § 1542.....	19
Cal. Civ. Proc. § 382.....	1, 4
Cal. Lab. Code § 226(e).....	15
Cal. Lab. Code § 2699(e)(2)	16
C.R.C. Rule 3.764(c)(2).....	1
C.R.C. Rule 3.766(d)	21
C.R.C. Rule 3.766(e).....	22

Regulations

8 Cal. Code Regs. § 13520.....	16
--------------------------------	----

Other Authorities

4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	18
---	----

1 **MEMORANDUM OF POINTS AND AUTHORITIES**¹

2 **I. INTRODUCTION**

3 Plaintiff Mayra Cortes (“Plaintiff”) brought this class and representative action against
4 Defendant Wetmore Tool and Engineering Company (hereinafter referred to as “Wetmore” or
5 “Defendant”) alleging various wage and hour violations. Plaintiff’s primary allegations are that
6 Defendant: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3)
7 failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required
8 rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages
9 upon separation of employment; (7) engaged in unlawful business practices; and (8) is liable for civil
10 penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,² in which Defendant have agreed to pay Nine Hundred Ninety Thousand
13 Dollars and Zero Cents (\$990,000.00) to the following Settlement Class:

14 All current and former non-exempt, hourly, employees of Defendant Wetmore
15 Tool and Engineering Company who worked in California at any time between
16 July 23, 2016 and the date of preliminary approval.

17 Significantly, Settlement Class Members do not need to file a claim to benefit from the
18 Settlement because all Settlement Class Members will automatically receive a payment unless they
19 affirmatively opt-out. There are approximately 274 Settlement Class Members, rendering the average
20 payment to participating Settlement Class Members to be approximately **\$2,114.05**.³

21 The Settlement was reached only after the parties mediated the action with Jeffrey A. Ross, Esq.,
22 a well-respected wage and hour class action mediator. In connection with mediation, Defendant
23

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

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as Exhibit 1.
28 The proposed First Amended Class and Representative Action Complaint (“FAC”) is attached to the Settlement
as Exhibit A. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and
Proposed Settlement and Notice of Individual Settlement Award) is attached to the Settlement as Exhibit B. All
defined terms in this motion have the same definitions as used in the Settlement.

³ This amount includes the PAGA Amount for each Settlement Class member.

1 produced timekeeping and payroll records for the putative class, as well as applicable documents
2 regarding its wage and hour policies, and other information. After extensive research and analysis, a
3 full-day mediation was held on March 1, 2021. After a full day of mediation, the Parties agreed on a
4 class-wide resolution, subject to approval by this Court, and memorialized the agreement in a
5 Memorandum of Understanding (“MOU”) at the mediation. Since mediation, the Parties finalized the
6 terms of settlement and executed the Settlement that is now submitted for this Court’s preliminary
7 approval.

8 If the Settlement is approved, Defendant will pay a non-reversionary Gross Settlement Amount
9 (“GSA”) of \$990,000.00. After deducting administration costs, Plaintiff’s service award, attorneys’
10 fees and costs, and payment of PAGA penalties to the LWDA, the remaining Net Settlement Amount
11 (“NSA”) of approximately \$579,250.00 will be distributed to all Settlement Class Members who do not
12 opt-out of the Settlement. This amount includes the \$12,500.00 (or 25% of the \$50,000.00 PAGA
13 Amount) that will be distributed to certain Settlement Class Members.

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

18 **II. SUMMARY OF THE LITIGATION**

19 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-** 20 **LENGTH NEGOTIATIONS**

21 **1. The Parties**

22 According to its website, Wetmore is a manufacturer of adaptive shank drill technology, as well
23 as fasteners, reamers and rivet shavers. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10.
24 Plaintiff was employed by Wetmore as a non-exempt employee from approximately March 2018 and
25 performed work for Defendant from approximately March 2018 through January 5, 2019. *See*
26 Declaration of Mayra Cortes (“Cortes Decl.”), ¶ 2. During her employment, Plaintiff worked at
27 Wetmore’s facility located in Chino, California as a machine operator. *Id.*
28

1 **2. Procedural History**

2 On July 23, 2020, Plaintiff filed a putative class action complaint against Defendant in San
3 Bernardino County Superior Court. Nguyen Decl., ¶ 10.

4 Pursuant to the terms of the Settlement, subject to Court approval, the Parties stipulated to allow
5 Plaintiff to file a First Amended Complaint Class and Representative Action Complaint adding causes
6 of action for: (i) failure to provide accurate, itemized wage statements; (ii) failure pay all final wages
7 due upon separation of employment; and (iii) civil penalties under the Labor Code Private Attorneys
8 General Act (“PAGA”). Nguyen Decl., ¶ 10, Exhibit 1 (Settlement, Exh. A). Therefore, in order to
9 effectuate the terms of the Settlement, Plaintiff also seeks leave from the Court to file the First Amended
10 Complaint Class and Representative Action Complaint, which is attached as Exhibit A to the
11 Settlement.⁴

12 **3. Discovery**

13 After agreeing to participate in early mediation, Defendant informally produced time records
14 and payroll data for the 15% of the putative class randomly selected by Plaintiff, as well as its wage and
15 hour policies and other relevant documents and information relevant to the claims alleged in advance
16 of mediation. Nguyen Decl., ¶ 11. Plaintiff conducted an analysis of the payroll data and time records
17 produced by Defendant. After the detailed review of the payroll and time records and other documents
18 and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases
19 to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery also allowed the Parties
20 to discuss the strengths and weaknesses of Plaintiff’s contemplated claims for waiting time penalties,
21 inaccurate wage statements, and civil penalties under the PAGA. and Plaintiff’s various theories of
22 liability on her claims. This discovery allowed the parties to assess the merits and value of Plaintiff’s
23 claims and Defendant’s defenses thereto for mediation. *Id.*

24 **4. Arms-Length Negotiations**

25 On March 1, 2021, after extensive research and analysis, including a detailed analysis of
26

27 ⁴ Plaintiff submitted a letter to the Labor and Workforce Development Agency with respect to Defendant’s
28 alleged Labor Code violations and Plaintiff’s intent to bring a claim for civil penalties under the PAGA on March
11, 2021. The sixty-five day exhaustion period will expire on May 17, 2021. *See* Nguyen Decl., ¶¶ 10 and 33,
Exh. 2.

1 Defendant's potential exposure by Plaintiff, a full-day mediation was held with Jeffrey A. Ross, Esq., a
2 well-respected wage and hour class action mediator, at Jeffrey A. Ross, Employment Mediation.
3 Nguyen Decl., ¶ 12. During mediation, the Parties vigorously debated their opposing legal positions,
4 the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.*
5 As part of the negotiations and settlement discussions, the Parties agreed that Plaintiff would file a First
6 Amended Complaint adding causes of action for: (i) failure to provide accurate, itemized wage
7 statements pursuant to Labor Code section 226; (ii) failure pay all final wages due upon separation of
8 employment pursuant to Labor Code section 203; and (iii) civil penalties under the under the PAGA
9 pursuant to Labor Code sections 2699 *et seq.* *Id.* After a full day of mediation, the Parties reached an
10 agreement and executed a MOU. Thereafter, the Parties signed the Stipulation of Settlement
11 ("Settlement"). *Id.*

12 **III. ARGUMENT**

13 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

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

20 As further explained below, the Settlement Class satisfies the criteria for certification of a
21 settlement class under California law because: (1) the Settlement Class is so numerous that joinder
22 would be impractical; (2) common questions of law and fact predominate over individual questions
23 such that class certification is the most efficient and desirable way to maintain this litigation; (3)
24 Plaintiff's claims are typical of the claims of absent Settlement Class Members; and (4) Plaintiff and
25 his counsel will fairly and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc.
26 § 382.

1 **1. Numerosity is Satisfied.**

2 Here, there are approximately 274 Settlement Class Members. Therefore, numerosity is
3 satisfied. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class
4 representing 10 beneficiaries of a trust sufficiently numerous).

5 Further, a class is “ascertainable” where the members “may be readily identified without
6 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
7 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class
8 is defined as “All current and former non-exempt, hourly, employees of Defendant Wetmore Tool and
9 Engineering Company who worked in California at any time between July 23, 2016 and the date of
10 preliminary approval.” Nguyen Decl., ¶ 14.

11 In addition, PAGA Employees is defined as: “All current and former non-exempt, hourly,
12 employees of Defendant Wetmore Tool and Engineering Company who worked in California at any
13 time between July 23, 2019 and the date of preliminary approval (or end date of Class Period if
14 Defendant exercises its right under Paragraph 5.D).” Paragraph 5.D of the Settlement is the Escalator
15 Clause.

16 **2. Commonality is Satisfied.**

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

20 Here, Settlement Class Members’ claims arise from Defendant’s common, uniform policies and
21 practices that applied to Plaintiff and Settlement Class Members during the class period. Nguyen Decl.,
22 ¶ 15. As a result of the common and uniform policies and practices that applied to all Settlement Class
23 Members, their claims involve common questions of law and fact, including but not limited to:

- 24 1. Whether Defendant properly paid all minimum wages;
25 2. Whether Defendant properly paid all overtime wages;
26 3. Whether Defendant provided all legally compliant meal periods;
27 4. Whether Defendant authorized and permitted all legally required rest periods;
28 5. Whether Defendant failed to furnish accurate, itemized wage statements;

1 6. Whether Defendant failed to timely pay all wages owed upon separation; and

2 7. Whether Defendant's conduct constituted unlawful and/or unfair business practices.

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

5 **3. Typicality is Satisfied.**

6 The typicality requirement is satisfied where class representatives have claims that are typical
7 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
8 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative
9 class in a consumer class action).

10 Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff was
11 employed by Defendant during the Class Period as a non-exempt employee and was subject to
12 Defendant's wage and hour policies at issue in this case. *See Cortes Decl.*, ¶ 2. Second, Plaintiff was
13 injured by the same challenged policies that injured the Settlement Class as a whole. For example,
14 Plaintiff asserts that she, like the Settlement Class, was not provided with all required meal periods,
15 was not provided all legally required minimum wages and overtime wages, was not authorized and
16 permitted to take all required rest periods, did not receive meal and rest period premium wages when
17 she was not provided compliant meal or rest periods, was not provided with accurate, itemized wage
18 statements, and was not paid all of his wages owed upon separation of employment. *Id.* Given that
19 Defendant's policies and practices applied to all non-exempt employees, Settlement Class Members
20 possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because
21 Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is
22 satisfied.

23 **4. Adequacy is Satisfied.**

24 The adequacy requirement examines conflicts of interest between named parties and the
25 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
26 (2007) Cal.App.4th 676, 697.

27 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class she
28 seeks to represent. *See Cortes Decl.*, ¶ 11. Indeed, Plaintiff's interests are aligned with those of the

1 Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *Id.*
2 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See*
3 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was
4 no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic
5 to those of the proposed class). Further, Class Counsel also have extensive experience in wage and
6 hour class action litigation and have vigorously litigated this case. *See* Nguyen Decl., ¶¶2-8;
7 Declaration of Scott M. Lidman (“Lidman Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines
8 Decl.”), ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4; Declaration of Romina Tamiry
9 (“Tamiry Decl.”), ¶¶ 2-3.

10 **B. THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE,**
11 **AND REASONABLE**

12 Settlement is the preferred means of dispute resolution, particularly in complex class action
13 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
14 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
15 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
16 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an
17 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008)
18 168 Cal.App.4th 116, 130.

19 **1. The Preliminary Approval Standard is Met**

20 To make a fairness determination, the Court should consider several factors, including: “the
21 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the
22 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
23 discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”
24 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the
25 court is free to engage in a balancing and weighing of the factors depending on the circumstances of
26 each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. As discussed below,
27 the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this
28 case.

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

2 Although Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges that there
3 were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant
4 presented multiple defenses to Plaintiff’s claims, both on the merits and class certification. Thus, while
5 Plaintiff was prepared to litigate these claims through certification, and ultimately trial, success was far
6 from certain.

7 **b. Risk, Expenses, Complexity, and Duration of Further Litigation**

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

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

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

20 **d. Overview of the Settlement Agreement**

21 If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount (“GSA”)
22 of \$990,000.00.⁵ Nguyen Decl., ¶ 13, Exh. 1 (Settlement, ¶ 5). Significantly, this Settlement is **non-**
23 **reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement

24 ⁵ Defendant represents that there are an estimated 35,395 workweeks worked by the Settlement Class Members
25 during the Class Period as of February 1, 2021. If the number of workweeks during the Class Period is more
26 than 15% greater than this figure (i.e., if there are 40,705) or more workweeks worked by the Settlement Class
27 Members during the Class Period), Defendant has the option to either: (1) agree to increase the Gross Settlement
28 Amount on a proportional basis by the amount by which it exceeds 15% (i.e., if there was 16% increase in the
number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by
1%); or (2) in the alternative, in the event that this escalator provision is triggered, then Defendant has the option
to elect to end the Class Period on the date on which the workweeks reach 40,704 in lieu of paying an increase
to the Gross Settlement Amount. *See* Settlement ¶ 5.D.

Award. *Id.* (Settlement, ¶ 5.B). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement.⁶ *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$990,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$330,000.00
Minus Court-approved, verified costs (up to):	\$25,000.00
Minus Court-approved Class Representative Service Award (up to):	\$10,000.00
Minus Settlement Administration Costs:	\$8,250.00
Minus PAGA payment to LWDA:	\$37,500.00
Net Settlement Amount (“NSA”):	\$579,250.00

Defendant shall pay the Gross Settlement Amount within thirty (30) days of the Effective Date.⁷
See Settlement ¶ 5.A.1.

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of at least **\$579,250.00** to all Settlement Class Members who do not timely opt out. This amount includes the \$12,500.00 PAGA Amount to be paid to the PAGA Employees. Nguyen Decl., ¶ 13, Exh. 1.

According to Defendant, there are approximately 274 total Settlement Class Members. Nguyen Decl., ¶ 14. Thus, the average Individual Settlement Awards (assuming all Settlement Class Members worked the same length of time and there are no opt-outs) is projected to be approximately **\$2,114.05**.
Id. The Individual Settlement Awards shall be determined as follows:

⁶ Pursuant to the terms of the Settlement, Defendant will have the option of rescinding the Settlement if more than 5% of the Settlement Class opts out of the Settlement and all actions taken in furtherance of it will thereby be null and void. *See* Settlement ¶ 12.

⁷ “Effective Date” refers to the date upon which both of the following have occurred: (i) final approval of the settlement is granted by the Superior Court of California for the County of San Bernardino, or other court assuming jurisdiction of this matter, and (ii) the Court’s Judgment approving the settlement becomes Final. “Final” shall mean the latest of: (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court, or, (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment. *See* Settlement ¶ 5.A.1.

- i. Ninety-Five Percent (95%) of the Net Settlement Amount shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks the Settlement Class Member worked during the Class Period, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members (who do not opt out) who worked during the Class Period. *See* Settlement, ¶ 6.B.i.
- ii. Waiting Time Penalty Amount: Five Percent (5%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." Each participating Settlement Class Member whose employment with Defendant was separated at any time during the Class Period shall receive a portion of the Waiting Time Amount. The Waiting Time Amount shall be distributed equally among each participating Settlement Class Member whose employment with Defendant was separated at any time between July 23, 2017 and the end date of the Class Period. *See* Settlement, ¶ 6.B.ii.
- iii. PAGA Amount: In addition, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount". Each Settlement Class Member (including those who opt-out) who was employed by Defendant at any time during the PAGA Period shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked as a non-exempt employee during the PAGA Period. Each PAGA Employee who worked during the PAGA Period shall receive a portion of the PAGA Amount, which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of workweeks worked as a non-exempt, hourly employee during the PAGA Period, and the denominator of which is the total number of workweeks worked by all PAGA Employees as non-exempt, hourly employees during the PAGA Period. *See* Settlement, ¶ 6.C. The "PAGA Period" is defined in the Settlement as the time period of July 23, 2019 through the date of preliminary approval

(or end date of Class Period if Defendant exercises its right under Paragraph 5.D of the Settlement. *Id.*

Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶ 11.D. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement, for the period of July 23, 2016 through the date of preliminary approval. *See* Settlement, ¶ 4. Settlement Class Members who opt-out of Settlement will still receive a portion of the PAGA Amount if they are a PAGA Employee during the PAGA Period.

As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not opt-out. *See* Settlement, ¶ 5.B.

e. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of a mediator. In connection with mediation, Defendant produced timekeeping and payroll data. Plaintiff conducted an analysis of the payroll data and time records produced by Defendant to calculate Defendant's potential exposure for Plaintiff's claims, including claims for waiting time penalties, inaccurate wage statements, and civil penalties under the PAGA. Nguyen Decl., ¶ 11. After the detailed review of the payroll and time records and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id.*

On March 1, 2021, the Parties participated in a full-day mediation with Jeffrey A. Ross, Esq., a preeminent wage and hour class action mediator. Nguyen Decl., ¶¶ 11-12. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, as well as the legal basis for the claims and defenses. After a full day of mediation, the Parties agreed on a class-wide resolution. In the months that followed, the Parties memorialized the agreement

1 in a MOU.. Thereafter, the Parties finalized the terms of settlement and executed the Settlement.
2 Nguyen Decl., ¶ 12, Exhibit 1.

3 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result
4 of: factual investigation and data analysis; the exchange of substantial information and class data,
5 including timekeeping and payroll records; arm's length negotiations by counsel; and mediation before
6 an experienced wage and hour class action mediator. *See* Nguyen Decl., ¶¶ 11-12; *See Kullar, supra*,
7 168 Cal.App.4th at 130. In addition, the Parties attended a full-day mediation, and worked
8 collaboratively in the following weeks to finalize the Settlement. *Id.* Thus, these factors support
9 preliminary approval.

10 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
11 treatment to the class representative or segments of the class (except for appropriate allocations based
12 on the applicable and differing statutes of limitations for the various claims), and is within the range of
13 possible approval, as discussed in detail below. The Settlement will provide monetary relief to
14 Settlement Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, and
15 service award are all reasonable and appropriate based on the facts of this case. Because the Settlement
16 is devoid of obvious deficiencies, this factor supports preliminary approval.

17 **f. Amount Offered in Settlement Given Realistic Value of Claims**

18 Unlawful Rounding/Off-the-Clock: Plaintiff alleges that Defendant failed to compensate its
19 non-exempt employees for all time worked. Nguyen Decl., ¶ 16. Specifically, Plaintiff alleges that
20 Defendant would keep track of Plaintiff's time worked and would unlawfully round/shave Plaintiff's
21 work time such that Plaintiff would not be fully paid for all time worked. *Id.* This time-shaving and/or
22 rounding practice utilized by Defendant was not even-handed over time and would almost exclusively
23 round and shave in Defendant's favor such that Plaintiff was routinely underpaid for all her time
24 worked. *Id.* Accordingly, based on a review of the time punch data and payroll records, Plaintiff
25 calculated Defendant's maximum exposure at approximately \$125,780 (35,395 workweeks x .16 [hours
26 per workweek unpaid] x \$22.21 [average overtime rate]).

27 Defendant contends that it compensated non-exempt employees for all of their time worked and
28 that the time punch data would necessarily include minutes that were not compensable work time

1 because the employees would not and could not start performing any work prior to the start of the
2 scheduled shift time given the nature of Defendant's manufacturing operations. In addition, Defendant
3 contends employees working on the production floor would not start any work prior to the daily team
4 meetings and that the daily team meetings only occurred after the shift started, meaning even if an
5 employee clocked in prior to the start of his or her shift, the employee would be unable to perform any
6 worked until after the team meeting. Nguyen Decl., ¶ 17. Defendant also contends that its rounding
7 practices were lawful and any unpaid time was *de minimis* and therefore non-compensable. *Id.*
8 Defendant further asserts that Plaintiff would be unable to certify a rounding or off-the-clock claim
9 given the individualized inquiries that would be required, given that Defendant's rounding mechanism,
10 according to Defendant, allegedly favored the employees. Based on these risks, Plaintiff discounted
11 the maximum exposure by 20% for the risk of non-certification, and an additional 10% to account for
12 Defendant's defenses on the merits to arrive at an estimated exposure of approximately \$90,562. *Id.*

13 Meal Period Violations: Plaintiff alleges that she and Settlement Class Members were not
14 provided with all legally-required meal periods in compliance with California law due to Defendant's
15 unlawful meal period policies/practices. Nguyen Decl., ¶ 18. Specifically, Plaintiff alleges that
16 Defendant's meal period policies/practices failed to required employees to record the start and stop times
17 for alleged meal periods taken. Further, during portions of the relevant time period, Plaintiff was often
18 prevented from taking meal periods at all due to the heavy work demands imposed by Defendant.
19 Additionally, for at least a portion of the class period, Defendant would automatically-deduct 30 minutes
20 from Plaintiff's and other non-exempt employees' work time each shift for a meal break regardless of
21 whether a meal period was actually taken or not, and regardless of whether it was less than 30 minutes.
22 Further, Plaintiff alleges that she and other non-exempt employees did not receive legally-complaint
23 second meal periods when they worked in excess of 10.0 hours. *Id.* Therefore, Plaintiff calculated
24 Defendant's maximum exposure for the alleged first meal period violations at approximately \$3,774,240
25 ((169,896 shifts over 6.0 hours x \$14.81 [average hourly rate]) + (169,896 shifts over 6.0 hours x .50
26 [30 minutes auto-deducted] x \$14.81 [average hourly rate])). *Id.* This estimated exposure is based on
27 Defendant's practice of automatically-deducting 30 minutes for a purported meal period for 100% of all
28 meal enabling shifts, or shifts over 6.0 hours, and also 30 minutes of unpaid time worked for each and

1 every shift with a 30 minute automatically-deducted meal period at the average hourly rate of pay.

2 Defendant counters that it has always provided non-exempt employees with an opportunity to
3 take legally compliant meal periods, utilized a bell schedule to provide employees with legally compliant
4 lunches, and all non-exempt employees within the same department are provided with their meal breaks
5 at the same time. Defendant also counters that any non-compliant meal periods reflected in employee
6 timekeeping records were solely the result of employee choice, rather than any policy or practice of
7 Defendant. Nguyen Decl., ¶ 19. Furthermore, Defendant counters that the time records reflect compliant
8 meal periods. Defendant points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53
9 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal
10 periods are taken, and that it has always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure”
11 standard). Finally, Defendant contends Plaintiff’s meal period claim is not suited for class certification,
12 since individual inquiries would be required to assess which employees took non-compliant meal
13 periods, how many meal periods were non-compliant or missed, and the reasons why a particular
14 employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.*
15 Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and
16 an additional 40% to account for Defendant’s defenses on the merits to arrive at an estimated exposure
17 of approximately \$1,358,726. *Id.*

18 Rest Period Violations: Plaintiff alleges that she and other Settlement Class Members were not
19 authorized and permitted to take all required rest periods due to Defendant’s rest period
20 policies/practices which fail to authorize and permit all rest periods for every four hours worked, *or*
21 *major fraction thereof*. Nguyen Decl., ¶ 20. Specifically, Defendant did not authorize and permit
22 Plaintiff to take a 2nd rest period when she worked a shift in excess of 6.0 hours, nor a 3rd rest break for
23 shifts worked in excess of 10.0 hours. Accordingly, Plaintiff calculated Defendant’s maximum
24 exposure at approximately \$2,516,160 (169,896 shifts over 10.0 hours x \$14.81 [average hourly rate]).
25 *Id.*

26 Defendant contends it has always maintained and enforced lawful rest period policies and
27 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
28 periods in compliance with California law. Nguyen Decl., ¶ 21. Defendant argues that Plaintiff’s rest

1 period claims are inherently unsuited for class treatment as it requires an individualized inquiry into
2 whether each Settlement Class member was in fact authorized and permitted to take a compliant rest
3 period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
4 discounted the maximum exposure by 40% for the risk of non-certification, and an additional 30% to
5 account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately
6 \$1,056,787. *Id.*

7 Wage Statement Violations: Plaintiff further alleges that Defendant issued inaccurate wage
8 statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest
9 period premium wages described above. Nguyen Decl., ¶ 22. Specifically, Plaintiff contends that this
10 conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members
11 did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff
12 calculated Defendant's maximum exposure for wage statement violations at approximately \$530,100
13 (($\$50.00 \times 110$ current employees) + ($\$100.00 \times 5,246$ subsequent wage statements)). *Id.*

14 Defendant argues that meal and rest period claims cannot support a claim for wage statement
15 penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444 and *Kirby v.*
16 *Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones v. Spherion Staffing*, No. LA-CV-
17 11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Nguyen Decl., ¶ 23. Defendant
18 further argues that its alleged wage statement violations could not be shown to be "knowing and
19 intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result
20 of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties.
21 Nguyen Decl., ¶ 23. As such, Plaintiff discounted the calculated exposure by 30% for a risk of non-
22 certification and an additional 20% for a risk of being unsuccessful on the merits to arrive at an estimated
23 total of approximately \$296,856. *Id.*

24 Waiting Time Penalties: Plaintiff alleges that Defendant is also liable for waiting time penalties
25 under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment.
26 Nguyen Decl., ¶ 24. Based on the data provided by Defendant, there were approximately 168 Settlement
27 Class Members who have separated their employment with Defendant during the relevant time period
28 who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Defendant's

1 maximum exposure for waiting time penalties at approximately \$597,139 (168 former employees x
2 \$14.81 [average regular rate] x 30 days x 8 hours/day). *Id.*

3 Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith
4 disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25. *See*
5 *also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition
6 of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good
7 faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over
8 contested wages owed). *Id.* Accordingly, Plaintiff discounted the maximum exposure by 60% for the
9 risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits to
10 arrive at an estimated exposure of approximately \$143,313. *Id.*

11 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
12 foregoing alleged Labor Code violations. Nguyen Decl., ¶ 26. Plaintiff calculated Defendant's exposure
13 at approximately \$535,600 (5,356 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas*
14 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer
15 is notified that it is violating a Labor Code provision).

16 Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying
17 claims will fail. Nguyen Decl., ¶ 27; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
18 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
19 Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to
20 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims.
21 Nguyen Decl., ¶ 27; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
22 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
23 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
24 \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 30%
25 for a risk of being unsuccessful on the merits, and an additional 30% to account for the possibility of
26 this Court reducing penalties, to arrive at an estimated exposure of approximately \$262,444. *Id.*

27 **g. The Settlement Is Within the Range of Possible Approval**

28 Using these estimated figures for each of the claims described above, Plaintiff predicted the

1 realistic total recovery for the Settlement Class would be approximately \$3,208,689. Nguyen Decl., ¶
2 28. The proposed settlement of \$990,000.00 therefore represents approximately 30.8% of the
3 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the
4 settlement will provide tangible monetary relief to Settlement Class Members, and will still provide an
5 average recovery to Settlement Class Members of over \$2,100.

6 The proposed settlement reflects approximately 30.8% of the estimated recovery the Settlement
7 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
8 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
9 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
10 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
11 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
12 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm.*
13 *Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed
14 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that
15 might be available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed
16 settlement is within the range of possible approval, such that notice should be provided to the
17 Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again
18 assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-
19 out or object.

20 **h. The Experience and Views of Counsel**

21 “Parties represented by competent counsel are better positioned than courts to produce a
22 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
23 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
24 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
25 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
26 *Lidman Decl.*, ¶¶ 2-8; *Nguyen Decl.*, ¶¶ 2-8; *Haines Decl.*, ¶¶ 2-8. Class Counsel conducted an in-
27 depth review of Defendant’s policies and timekeeping and payroll records and drew on their extensive
28 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* *Nguyen*

Decl., ¶¶ 10-26. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

i. Attorneys' Fees and Costs

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

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be \$330,000.00, and up to \$25,000.00 in verified costs reimbursement. *See* Settlement, ¶ 7; Nguyen Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen Decl., ¶ 29. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of

attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

j. Administration Costs

Phoenix Settlement Administrator's fees and expenses are estimated not to exceed \$8,250.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This includes sending the Notice in both English and Spanish due to the nature of Defendant's workforce. This request is reasonable in light of the proposed class size of approximately 274 Settlement Class Members and the costs and expenses associated with administering the notices in Spanish and English and distributing the awards.

k. Class Representative Service Award

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

Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for her services to the Settlement Class, of which \$5,000.00 is designated as payment for Plaintiff's agreement to separate her employment with Defendant. Nguyen Decl., ¶ 31, Exh. 1 (Settlement, ¶ 5); Cortes Decl., ¶¶ 3-12. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, participating in the mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542, and Plaintiff's agreement to separate her employment with Defendant. *See* Nguyen Decl., ¶ 31; Cortes Decl., ¶¶ 3-11; Settlement ¶ 4.

//

//

1 **I. PAGA Civil Penalties**

2 The parties have agreed to a PAGA award of \$50,000.00 and in accordance with California
3 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
4 – or \$37,500.00. Settlement ¶ 6. This \$50,000.00 represents roughly 5% of the \$990,000.00 Gross
5 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by
6 Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
7 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
8 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal.
9 Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
10 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
11 claims and PAGA claims under which no money was allocated to the PAGA claims).

12 **m. Payroll Taxes**

13 The Settlement provides that the employer’s share of payroll taxes shall be paid separately from,
14 and in addition to, the Gross Settlement Amount. Settlement ¶ 5.C.

15 **n. Uncashed Funds**

16 The Settlement provides that Settlement Class Members with 180 days from the date the
17 Settlement Administrator mails the checks and any funds remaining after 180 days escheat to the
18 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
19 of the Settlement Class member. Settlement ¶ 6.F. As all settlement funds will be distributed to the
20 Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

21 **C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

22 Preliminary approval of the Settlement is also warranted because there are no obvious
23 deficiencies. The Settlement will provide monetary relief to participating Settlement Class Members.
24 The amounts proposed for Class Counsel’s attorneys’ fees and costs, and service award are all
25 reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious
26 deficiencies, this factor supports preliminary approval.

1 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
2 **NOTICE TO SETTLEMENT CLASS MEMBERS**

3 Before the final approval hearing, the Court requires adequate notice of the settlement be given
4 to all class members. This Court should order distribution to the Settlement Class of the proposed
5 Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement
6 and Notice of Individual Settlement Award) by first-class regular U.S. Mail, postage prepaid, using
7 last known mailing address information provided by Defendant. *See* Settlement, ¶ 11, Exh. B. The
8 Notice Packet will be mailed in both English and Spanish due to the nature of Defendant’s workforce.

9 This manner of giving notice is the “best notice practicable” under the circumstances because
10 it provides “individual notice to all members who can be identified through reasonable effort.” *See*
11 *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement
12 be administered by Phoenix, an experienced class action settlement administrator. *See generally*
13 Lawrence Decl. and attached exhibits. Class Data will be ascertainable through Defendant’s personnel
14 and payroll records, which Defendant will provide to Phoenix within twenty (20) calendar days of
15 preliminary approval of the Settlement. *See* Settlement ¶ 11.A. Within fourteen (14) calendar days of
16 receipt of the Settlement Class Members’ addresses, Phoenix will run the names of all Settlement Class
17 Members through the United States Postal Service Notice of Change of Address database (which
18 provides updated addresses for any individual who has moved in the previous four years and has
19 notified the U.S. Postal Service of a forwarding address), calculate the estimated Settlement Award for
20 each Settlement Class member, and mail the notices to Settlement Class Members. *See* Settlement ¶
21 11.B. To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any
22 Class Member’s current mailing address. *See* Settlement ¶ 11.G.

23 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because
24 it advises Settlement Class Members of the nature of the claims, basic contentions and denials of the
25 parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement
26 and the procedures by which to do so, explains the recovery formula and expected recovery amount
27 for each Settlement Class member, provides them the opportunity to contest their total workweeks
28 included in the notice, and advises them that they will be bound by the terms of the Settlement if they

1 do not opt-out. *See* Nguyen Decl., Exh. 1 (Settlement, Exh. B). The proposed Notice Packet will also
2 notify Settlement Class Members of the final approval hearing date and provides Settlement Class
3 Members the contact information for Class Counsel, and advises Settlement Class Members that they
4 may enter an appearance through counsel if they wish to. Additionally, as stated in the proposed Notice
5 Packet, any changes to the Final Approval hearing date, time, or location will be posted on the
6 Settlement Administrator's website. *Id.* Furthermore, the Settlement Administrator will post the notice
7 of final judgment on its website. *Id.* This manner of giving notice satisfies California Rule of Court
8 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

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

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

13 **IV. CONCLUSION**

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

17
18 Dated: April 19, 2021

Respectfully submitted,
LIDMAN LAW, APC

19
20
21 By:



Elizabeth Nguyen
Scott M. Lidman
Attorneys for Plaintiff
MAYRA CORTES