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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

KAITLYN LAMPING and SHERRY
MORROW, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

VINCENT G HARRIS INSURANCE
AGENCY, a California corporation; and DOES
1 through 100,

Defendants.

Case No.: 34-2021-00297056-CU-OE-GDS

*[Assigned for all purposes to the Honorable
Lauri A. Damrell, Dept. 28]*

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

Date: August 4, 2023
Time: 9:00 a.m.
Dept.: 28

Reservation Number: A-297056-001

Complaint Filed: March 22, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
3 on August 4, 2023, at 9:00 a.m. in Department 28 of the above-entitled Court, located at 720 9th
4 Street, Sacramento, California 95814, Plaintiffs Kaitlyn Lamping and Sherry Morrow
5 (“Plaintiffs”) individually and on behalf of a class of similarly situated individuals, will and
6 hereby do move this Court for:

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

10 All current and former non-exempt employees of Defendant
11 Vincent G Harris Insurance Agency who are or have been
12 employed by Defendant Vincent G Harris Insurance Agency
13 in California at any time from March 22, 2017, through
14 August 26, 2022 (“Class Period”).

- 15 3. Preliminary appointment of Plaintiffs Kaitlyn Lamping and Sherry Morrow as Class
16 Representatives;
17 4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law
18 Group, APC, as Class Counsel;
19 5. The scheduling of a hearing to consider whether the Settlement should be finally
20 approved and to permit Class Representative Service Awards to Plaintiffs, civil
21 penalties payable to the LWDA, settlement administration costs, and attorneys’ fees
22 and costs to Class Counsel;
23 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
24 Administrator for mailing notices; and
25 7. Approval of the proposed Class Notice and an order that it be disseminated to the
26 proposed Settlement Class as provided in the Settlement Agreement.

27 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
28 Authorities, the supporting declarations of Paul K. Haines, Sean M. Blakely, Plaintiffs Kaitlyn
Lamping and Sherry Morrow, and Jodey Lawrence of Phoenix Settlement Administrators, and

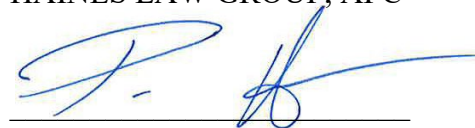
1 the exhibits attached thereto, the pleadings, and other papers filed in this Action, and on any
2 further oral or documentary evidence or argument presented at the time of the hearing.

3
4 Respectfully submitted,

5 Dated: July 13, 2023

HAINES LAW GROUP, APC

6
7 By:



8 Paul K. Haines
9 Sean M. Blakely
10 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Kaitlyn Lamping and Sherry Morrow (hereinafter “Plaintiffs”) brought this class
4 and representative action for various wage and hour violations on behalf of current and former
5 non-exempt employees of Defendant Vincent G. Harris Insurance Agency (“Defendant”) who
6 worked for Defendant in California between March 22, 2017, through August 26, 2022 (“Class
7 Period”). Plaintiffs’ primary allegations are that Defendant: (1) failed to pay all overtime wages
8 as a result of its alleged failure to include all non-discretionary remuneration when calculating
9 the regular rate of pay for its non-exempt employees; (2) failed to pay all wages for all hours
10 worked due to its allegedly unlawful timekeeping policies/practices; (4) failed to provide all
11 legally-required meal and rest periods; and (5) made unlawful deductions from earned wages. As
12 a result of these alleged violations, Plaintiffs also brought derivative claims for Defendant’s
13 alleged failure to pay all final wages owed, failure to issue accurate and compliant wage
14 statements, and for civil penalties under the Private Attorneys’ General Act (“PAGA”).¹

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

18 All current and former non-exempt employees of Defendant who are or
19 have been employed by Defendant in California at any time from March
20 22, 2017, through August 26, 2022 (the “Class Period”).

21 If the Settlement is approved, Defendant will pay a non-reversionary Gross Settlement
22 Amount (“GSA”) of \$200,000.00. After deducting administration costs, Plaintiffs’ requested
23 Class Representative Service Awards, the amount designated as PAGA civil penalties, and

24 ¹ On January 14, 2021, Plaintiff Lamping submitted a PAGA letter to the Labor & Workforce
25 Development Agency (“LWDA”). On March 5, 2021, Plaintiff Morrow submitted a PAGA letter
26 to the LWDA. Plaintiffs respective PAGA letters are attached to the Declaration of Paul K. Haines
as **Exhibit B** and **C**, respectively.

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

requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately \$55,833.33 will be distributed to all Settlement Class members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 56 Settlement Class members, and the average payment to participating Settlement Class members is projected to be approximately **\$997.02**.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendant is an insurance agency that sells insurance policies and other products. *See* Declaration of Paul K. Haines ("Haines Decl."), ¶ 9. Plaintiff Lamping worked for Defendant as a non-exempt employee in the position of "customer service and sales representative" from approximately October 2018 until approximately January 2020. *See* Declaration of Kaitlyn Lamping In Support of Approval of Class Action Settlement ("Lamping Decl."), ¶ 2. Plaintiff Morrow worked for Defendant as a non-exempt employee in the position of "dealership program agent" from approximately April 2015 until about June 2020. *See* Declaration of Sherry Morrow In Support of Approval of Class Action Settlement ("Morrow Decl."), ¶ 2.

On March 22, 2021, Plaintiffs filed a Class and Representative Action Complaint in Sacramento County Superior Court, alleging the following causes of action against Defendant: (i) minimum wage violations; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) rest period violations; (v) unlawful deductions from wages; (vi) failure to issue accurate,

1 itemized wage statements; (vii) failure to pay all final wages due upon separation of employment;
2 (viii) unfair competition in violation of California Business & Professions Code § 17200 *et seq.*;
3 and (ix) civil penalties under the Private Attorneys General Act of 2004, Labor Code Section
4 2698, *et seq.* Haines Decl., ¶ 10. Plaintiffs filed the operative First Amended Class and
5 Representative Action Complaint (“FAC”) on May 10, 2021. *Id.*

6 **B. PLAINTIFFS’ CLAIMS AND DEFENDANT’S DEFENSES**

7 **1. Unpaid Wages Due to Defendant’s Unlawful Timekeeping**
8 **Policies/Practices**

9 Plaintiffs allege that Defendant’s timekeeping policies/practices fail to compensate
10 Settlement Class members for all hours worked. Haines Decl., ¶ 15. Specifically, Plaintiffs allege
11 that Defendant required Plaintiffs and other non-exempt employees to be at work at least 10 to 15
12 minutes prior to the start of their shifts in order to prepare for their respective shifts, but Defendant
13 prohibited Plaintiffs and other non-exempt employees from clocking in until the scheduled start
14 time of their shifts. *Id.* As a result, Plaintiffs allege they and other Settlement Class members were
15 not paid for all hours actually worked. *Id.*

16 Defendant disputes Plaintiffs’ allegations and contends that it paid employees for all hours
17 worked. Haines Decl., ¶ 15. Defendant also argues that any unpaid time could have only amounted
18 to a few minutes per day, at most, and was thus *de minimis*. Haines Decl., ¶ 15. While Plaintiffs
19 point to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the California Supreme Court
20 held California’s labor laws generally do not recognize a *de minimis* defense; Defendant argues
21 that *Troester* should be limited to its facts. (“[W]e decide only whether the *de minimis* rule is
22 applicable to the facts of this case as described by the Ninth Circuit.” *Troester*, 5 Cal.5th at 829.).
23 Further, Defendant argues that it is not possible for Settlement Class members to perform
24 compensable work prior to the scheduled start of their shift. Haines Decl., ¶ 15. Defendant
25 contends that Settlement Class members did not work off-the-clock and that Defendant’s policies
26 specifically disavows such off-the-clock work. *Id.* Finally, Defendant asserts that Plaintiffs’ off-
27 the-clock claim is not appropriate for class treatment. *Id.*; *See, e.g., Brinker Restaurant Corp. v.*
28 *Superior Court*, 53 Cal.4th 1004, 1052 (2012) (affirming denial of off-the-clock subclass,

1 “[p]roof of off-the-clock liability would have had to continue in an employee-by-employee
2 fashion, demonstrating who worked off the clock, how long they worked, and whether Brinker
3 knew or should have known their work.”).

4 **2. Unpaid Overtime Wages Based on Miscalculation of the “Regular**
5 **Rate”**

6 Plaintiffs allege that Defendant paid Plaintiffs and Settlement Class members non-
7 discretionary incentive pay but failed to include these payments in employees’ “regular rate” of
8 pay when calculating overtime compensation, and underpaid employees’ overtime wages as a
9 result. Haines Decl., ¶ 16. Specifically, Plaintiffs contend that Defendant paid Settlement Class
10 members non-discretionary incentive pay, including commissions, but failed to include these
11 payments when calculating the regular rate of pay for overtime purposes. *Id.*

12 However, Defendant contends that the incentive pays at issue were discretionary bonuses
13 and therefore excludable from the “regular rate.” Haines Decl., ¶ 16; *see also* 29 C.F.R. § 778.208
14 (discretionary bonuses excludable from regular rate). Defendant further argues that Settlement
15 Class members received different types of bonuses and other remuneration throughout the Class
16 Period, creating substantive differences among Settlement Class members with respect to the
17 incentives received, making class certification unlikely. Haines Decl., ¶ 16.

18 **3. Meal Period Claims**

19 Plaintiffs allege Defendant failed to provide legally compliant first meal periods such that
20 first meal periods were regularly short and often commenced after the completion of the fifth hour
21 of work. Haines Decl., ¶ 17. Defendant counters it has maintained compliant written meal period
22 policies throughout the Class Period and has always provided compliant meal periods in line with
23 those policies. *Id.* Defendant further contends that it always *provides* employees the opportunity
24 to take meal periods and is not required to *ensure* they are taken. *Id.*; *see Brinker Rest. Corp. v.*
25 *Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus, Defendant argues that
26 any missed or short second meal periods resulted from lawful employee choice rather than any
27 policy and/or practice of Defendant. Haines Decl., ¶ 17. Finally, Defendant maintains Plaintiffs’
28 meal period claim is not suited for class certification since individual inquiries would be needed

1 to assess which employees if any, took non-compliant or missed meal periods, how many meal
2 periods were non-compliant or missed, the reasons why a particular employee did not take a meal
3 period on a particular shift, and whether they waived the meal period. *Id.*

4 **3. Rest Period Claims**

5 Plaintiffs allege that Defendant failed to authorize and permit all legally compliant off-
6 duty rest periods. Haines Decl., ¶ 18. Specifically, Plaintiffs allege that they and other Settlement
7 Class members were frequently prevented from taking rest periods, or were interrupted during
8 rest periods, as a result of work demands. *Id.*

9 However, Defendant argues that it has always maintained and enforced lawful rest period
10 practices during the Class Period, and has, in fact, authorized and permitted all required rest
11 periods to Settlement Class members. Haines Decl., ¶ 18. Additionally, Defendant maintains that
12 any failure to take a rest period was the result of employee choice. *Id.* Defendant also asserts this
13 claim is not amenable to class treatment as individualized inquiries would be required to
14 determine which employees failed to take a rest period, and the reasons why. *Id.* Defendant also
15 contends that manageability concerns are especially present with respect to rest period claims,
16 since rest periods are not recorded. *Id.*

17 **4. Unlawful Deductions from Wages**

18 Plaintiffs allege that Defendant made unlawful deductions from earned wages in
19 violation of Labor Code § 221. Haines Decl., ¶ 19. Specifically, Plaintiffs allege that if employees
20 exhausted their accrued PTO, and thereafter missed a day of work, Defendant would deduct that
21 time from their earned bonuses for that month. *Id.* However, Defendant disputes this allegation
22 and contends that it never deducted earned wages from employees and paid Settlement Class
23 members all earned bonuses in full. *Id.*

24 **5. Waiting Time Penalties**

25 As a result of the unpaid wages and unpaid meal and rest period premium wages described
26 above, Plaintiffs allege that Defendant failed to comply with its final pay obligations set forth in
27 Labor Code §§ 201-203. Haines Decl., ¶ 20. Defendant argues that it possesses strong, good faith
28 defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties,

1 which are only available for the “willful” failure to pay wages. *Id.*; see *also* 8 Cal. Code Regs. §
2 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time
3 penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an
4 employer presents a defense, based in law or fact which, if successful, would preclude any
5 recovery on the part of the employee.”). Defendant further asserts that Plaintiffs’ waiting time
6 penalty exposure was grossly inflated as not every former employee experienced the alleged
7 Labor Code violations. Haines Decl., ¶ 20.

8 **6. Wage Statement Claims**

9 As a further result of the unpaid wages and unpaid meal and rest period premium wages
10 described above, Plaintiffs allege that Defendant is liable for wage statement penalties. Haines
11 Decl., ¶ 21. Defendant argues any alleged wage statement violations were not “knowing and
12 intentional,” and Plaintiffs cannot show they or other employees “suffer[ed] injury” due to the
13 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
14 penalties. *Id.* Further, Defendant contends its wage statements always accurately reflected hours
15 worked and amounts paid as well as all other required information, precluding liability for wage
16 statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37
17 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that
18 they correctly reflected the hours worked and the pay received...The purpose of section 226 is to
19 *document the paid wages* to ensure the employee is fully informed regarding the calculation of
20 those wages.”) (*Italics in original*). Haines Decl., ¶ 21.

21 **5. PAGA Civil Penalties**

22 As a result of the foregoing Labor Code violations, Plaintiffs allege that Defendant is
23 liable for civil penalties under the PAGA. Haines Decl., ¶ 22. Since Plaintiffs’ PAGA claim is
24 derivative of Plaintiffs’ underlying wage claims, Defendant asserts the PAGA claim would fail
25 with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because
26 the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant
27 further maintains that, given its good faith defenses, this Court would exercise its discretion to
28 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiffs’

claims. Haines Decl., ¶ 22; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, Defendant provided Plaintiffs with time and payroll records for all Settlement Class members during the Class Period, as well as a class list with hire and termination dates for all Settlement Class members. Haines Decl., ¶ 11. Plaintiffs conducted a comprehensive analysis of the payroll and timekeeping data produced by Defendant to create a detailed exposure analysis for all claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiffs’ claims, the chances of certification of Plaintiffs’ claims, and Defendant’s potential defenses. *Id.*

On June 21, 2022, the Parties participated in a full-day mediation with Phillip Cha, Esq., a well-respected wage and hour class action mediator. Haines Decl., ¶ 12. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs’ claims, and the legal basis for the claims and defenses. *Id.* The Parties did not reach a settlement at mediation; however, the Parties continued their discussions with Mr. Cha in the following weeks and Mr. Cha 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, Defendant 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 ¶¶ 3-4. 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):	\$25,000.00
• Minus Court-approved Service Awards:	\$20,000.00
• Minus amount set aside as PAGA penalties:	\$25,000.00
• Minus estimated settlement administration costs:	\$7,500.00
Net Settlement Amount (“NSA”):	\$55,833.33
• PLUS 25% “PAGA Payment” to Settlement Class:	\$6,250.00
Total Amount Paid to Settlement Class members:	\$62,083.33

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative Service Awards to Plaintiffs, the amount designated as PAGA civil penalties, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of at least \$55,833.33 to all Settlement Class members who do not timely opt-out. *See* Settlement, ¶¶ 3-4. 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, Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00) of the Gross Settlement Amount has been designated as the “PAGA Payment” 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., January 14, 2020, through August 26, 2022) proportionally based on the number of Pay Periods worked during that time period. Settlement, ¶¶ 4(A)(ii).

According to Defendant, there are approximately 56 Settlement Class members. Haines Decl., ¶ 14. Therefore, the average Individual Settlement Award from the NSA is projected to be approximately \$997.02. *Id.* There are approximately 48 Aggrieved Employees during the PAGA Period. *Id.* Therefore, each Aggrieved Employee will receive an average of approximately \$130.21 from the PAGA Amount. *Id.* Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby

1 providing ample time to review the Class Notice without unduly delaying the Settlement. *See*
2 Settlement, ¶¶ 9(C)-(D). Those Settlement Class members who do not opt out of the Settlement
3 will be bound by its terms and will release all claims against Defendant included within the
4 Settlement. *See Id.*, at ¶ 2(A).

5 **2. Attorneys' Fees and Costs, Service Awards, and PAGA Payment**

6 Plaintiffs will apply for Class Representative Service Awards at the time of seeking final
7 approval of the proposed class action settlement in the amount of \$10,000.00 for each Plaintiff,
8 for a total of \$20,000.00, for their service to the Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6;
9 Haines Decl., ¶ 24. "[I]ncentive awards are fairly typical in class action cases . . . and are intended
10 to compensate class representatives for work done on behalf of the class [and] to make up for
11 financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination*
12 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final
13 approval, Plaintiffs' requested Service Awards are intended to recognize the time and effort
14 Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual
15 information and documents to Class Counsel, discussing the claims and theories at issue in the
16 litigation, actively participating in the prosecution of their claims, as well as the significant risks
17 Plaintiffs undertook by agreeing to serve as the named Plaintiffs in this case, and the fact that
18 Plaintiffs agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See*
19 Settlement, ¶¶ 2(C), 6; Haines Decl., ¶ 24; *see also* Lamping Decl.; Morrow Decl.

20 Class Counsel will also apply for an attorneys' fees award of one-third of the Gross
21 Settlement Amount, which is currently estimated to be \$66,666.67, and up to \$25,000.00 in
22 verified costs reimbursement. *See* Settlement, ¶ 3(C)(4); 5; Haines Decl., ¶ 25. Plaintiffs submit
23 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
24 consuming litigation on a purely contingent fee basis. Haines Decl., ¶ 25. Class Counsel has
25 incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs'
26 claims, conducting legal research, conducting extensive informal discovery, analyzing Settlement
27 Class members' timekeeping and payroll records, interviewing Settlement Class members,
28 creating a comprehensive damages model, preparing for and attending mediation, negotiating and

1 preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating
2 the case. *Id.* Class Counsel expects to expend additional attorney time in attending the hearing on
3 this Motion, overseeing the Notice process and fielding questions from Settlement Class
4 members, preparing the final approval papers, and attending the Final Approval hearing. *Id.*

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

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

18 Additionally, the parties have agreed to designate \$25,000.00 of the Gross Settlement
19 Amount as PAGA civil penalties, of which \$18,750.00 (75%) will be paid to the LWDA, with
20 the remaining \$6,250.00 (25%) for distribution to the Aggrieved Employees, as the PAGA
21 requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(5).
22 Plaintiffs submit this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
23 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.
24 Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
25 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
26 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
27 settlement).

28 ///

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions settlement of a class action on court approval,
4 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
5 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
6 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
7 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
8 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
9 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
10 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
11 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
12 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
13 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
14 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
15 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

16 **1. Standard for Preliminary Approval**

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

26 **a. The Strength of Plaintiffs’ Case**

27 Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs
28 acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As

described above in section II.B., *supra*, Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were 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. Haines Decl., ¶ 26. This would have required the expenditure of substantial time and resources by both parties that would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the classes, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expenses. *Id.*

c. Risk of Maintaining Class Action Status

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

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

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

2 The Settlement provides a positive recovery for the Settlement Class in the face of
3 disputed claims. Plaintiffs conducted a detailed analysis of underpaid wages due to Defendant's
4 alleged unlawful timekeeping policies/practices, potential meal and rest period premium
5 payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A
6 summary of the results of Plaintiffs' exposure analysis are discussed below:

7 Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$22,982

8 Plaintiffs allege that Defendant failed to compensate Settlement Class members for all
9 hours worked as a result of its policy/practice of requiring Settlement Class members to arrive
10 10-15 minutes before their scheduled start time. Haines Decl., ¶ 15. Based on Plaintiffs'
11 experiences and interviews with Settlement Class members, Plaintiffs contend Settlement Class
12 members were underpaid by approximately 1.75 hours per workweek *Id.* Therefore, Plaintiffs
13 estimate that Defendant's timekeeping practices resulted in approximately 6,321 hours of unpaid
14 wages (3,612 workweeks * 1.75 hours). *Id.* Therefore, Plaintiffs estimate Defendant's maximum
15 exposure for this claim at approximately \$187,607 (6,321 hours * \$29.68 average hourly rate).
16 *Id.*

17 However, as noted above, Defendant argues that it compensated Settlement Class member
18 for all hours worked and expressly prohibited off-the-clock work. Haines Decl., ¶ 15. Defendant
19 also asserts that Plaintiffs would be unable to certify this off-the-clock claim. *Id.* Based on these
20 defenses, Plaintiffs discounted the estimated maximum amount by 65% for the risk of non-
21 certification and by an additional 65% to account for the risk of losing on the merits or failure to
22 recover the maximum amount sought to arrive at an estimated exposure of approximately
23 \$22,982. *Id.*

24 Unpaid Overtime Wages Due to Miscalculation of Regular Rate: \$62,885

25 Plaintiffs allege that Defendant paid its non-exempt employees non-discretionary
26 incentive pay but failed to include these payments in employees "regular rate" of pay when
27 calculating overtime compensation, and underpaid employees' overtime wages as a result. Haines
28 Decl., ¶ 16. Based on Plaintiffs' analysis and extrapolation of payroll data provided by Defendant,

1 Plaintiffs calculated that Settlement Class members were underpaid by approximately \$167,694
2 in overtime wages during the Class Period as a result of Defendant's alleged failure to properly
3 calculate the "regular rate." *Id.*

4 However, as discussed above, Defendant contends that the incentive payments at issue
5 were discretionary and therefore excludable from the "regular rate." Haines Decl., ¶ 16.
6 Defendant further alleges that Settlement Class members received different types of bonuses and
7 other renumerations throughout the Class Period, creating substantive difference among
8 Settlement Class members with respect to the incentives received, making class certification
9 unlikely. *Id.* Thus, Plaintiffs discounted the estimated maximum by 25% for risk of non-
10 certification, and by an additional 50% to account for risk of losing on the merits or failure to
11 recover the full amount sought, to arrive at an estimated exposure of approximately \$62,885. *Id.*

12 Meal Period Violations: \$26,533

13 Plaintiffs allege that Defendant failed to provide timely 30-minute meal periods before
14 the conclusion of the fifth hour of work due to work demands. Haines Decl., ¶ 17. Plaintiffs
15 estimate there were approximately 3,612 shifts during the Class Period that reflected a non-
16 compliant meal period. *Id.* In addition, based on data provided by Defendant, Settlement Class
17 members' average hourly rate of pay during the Class Period was \$29.68 per hour. *Id.* Therefore,
18 Plaintiffs calculated Defendant's maximum exposure on this claim at approximately \$107,204
19 (3,612 non-compliant first meal periods * \$29.68 average meal period premium). *Id.*

20 However, as noted above, Defendant contends that it provided compliant meal periods to
21 Settlement Class members throughout the Class Period. Haines Decl., ¶ 17. Defendant also asserts
22 that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not
23 "ensure" meal periods are taken, and that, as described above, it has always done so, and any non-
24 complaint first meal periods were the result of employee choice. *Id.*; see also *Brinker, supra*, 53
25 Cal.4th at 1038 (rejecting "ensure" standard and holding employers only have to "provide"
26 employees the opportunity to take meal periods). Finally, Defendant maintains that the meal
27 period claim is not suited for class certification, since individual inquiries would be needed to
28 assess which employees took non-compliant meal periods or missed meal periods, how many

meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. Haines Decl., ¶ 17. In light of these defenses and arguments, Plaintiffs discounted Defendant's maximum exposure by 45% for the risk of non-certification, and an additional 55% to account for Defendant's defenses on the merits, to arrive at an estimated total of approximately \$26,533. *Id.*

Rest Period Violations: \$21,441

As indicated above, Plaintiffs allege that Defendant failed to authorize and permit all legally compliant off-duty rest periods. Haines Decl., ¶ 18. Specifically, Plaintiffs allege that they and other Settlement Class members were frequently prevented from taking rest periods, or were interrupted during rest periods, as a result of work demands. *Id.* Based on Plaintiffs' experiences and interviews with Settlement Class members, Plaintiffs estimate there were 7,224 shifts with potential non-compliant rest periods. *Id.* Therefore, Plaintiffs calculated Defendant's maximum exposure on this claim at approximately \$214,408 (7,224 rest period violations * \$29.68 average rest period premium). *Id.*

However, as stated above, Defendant contends that it maintained legally compliant rest period practices throughout the Class Period, and in fact, authorized and permitted all rest periods to Settlement Class members. Haines Decl., ¶ 18. Defendant also asserts that this claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take a rest period, and the reasons why. *Id.* Defendant further maintains that manageability concerns are especially present with respect to Plaintiffs' rest period claim, given that rest periods are not recorded. *Id.* In light of these defenses, Plaintiffs discounted Defendant's maximum exposure by 75% to account for the risk of non-certification, and an additional 60% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of approximately \$21,441. *Id.*

Unlawful Deduction from Earned Wages: \$4,550

Based on Plaintiffs' experiences and interviews with Settlement Class members, Plaintiffs estimate that each Settlement Class member had approximately \$250 deducted from bonuses as a result of Defendant's policies/practices. Haines Decl., ¶ 19. Therefore, Plaintiffs calculate

1 Defendant's maximum exposure for this claim at approximately \$14,000 (\$250 * 56 employees).
2 *Id.* However, Defendant disputes this allegation and contends that it never deducted earned wages
3 from employees and paid Settlement Class members all earned bonuses in full. *Id.* In light of these
4 defenses, Plaintiffs discounted Defendant's maximum exposure by 35% to account for the risk of
5 non-certification, and an additional 50% to account for Defendant's defenses on the merits, to
6 arrive at an estimated exposure of approximately \$4,550. *Id.*

7 Waiting Time Penalties: \$53,600

8 Defendant's records reflected approximately 43 former Settlement Class members who
9 are eligible for waiting time penalties. Haines Decl., ¶ 20. Based on an hourly rate of \$29.68,
10 Plaintiffs estimated the average waiting time penalty per former employee to be \$7,123 (\$29.68
11 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiffs calculated Defendant's maximum exposure
12 for potential waiting time penalties to be approximately \$306,289 (43 former employees * \$7,123
13 average penalty). *Id.*

14 Defendant presented several defenses to this claim, most notably their assertion that
15 because they possessed good-faith defenses to the underlying claims, any failure to pay wages
16 was not "willful" as a matter of law. Haines Decl., ¶ 20. Defendant further asserts that Plaintiffs'
17 waiting time penalty exposure was grossly inflated as not every former employee experienced the
18 alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of
19 Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Defendant's defenses, both
20 as to class certification and on the merits, as to their underlying claims. *Id.* To account for
21 Defendant's defenses, Plaintiffs discounted the maximum exposure by 50% for the risk of non-
22 certification and an additional 65% for the risk of losing on the merits and/or not receiving the
23 maximum penalties sought, to arrive at an estimated exposure of approximately \$53,600. *Id.*

24 Wage Statement Penalties: \$18,471

25 Plaintiffs allege that Defendant is liable for wage statement penalties as a result of the
26 unpaid wages and unpaid meal and rest period premiums. Haines Decl., ¶ 21. Those penalties are
27 calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with a
28 maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiffs' analysis reflected that

1 there were approximately 39 unique employees and approximately 1,075 pay periods worked
2 during the liability period applicable to Plaintiffs' wage statement claim. *Id.* Plaintiffs, therefore,
3 calculated Defendant's potential wage statement exposure at approximately \$105,550 ([39
4 "initial" violations * \$50] + [1,036 "subsequent" violations * \$100]). *Id.*; *see also* Labor Code §
5 226(e).

6 In light of Defendant's arguments that no violations occurred, that employees suffered no
7 "injury," that any alleged violations were not "knowing and intentional," that the wage statements
8 always accurately reflected hours worked and amounts paid to employees, as well as risks
9 associated with Plaintiffs' underlying claims discussed above, Plaintiffs discounted the maximum
10 exposure by 50% for risk of non-certification, and by an additional 65% for risk of being
11 unsuccessful on the merits, for an estimated realistic exposure of approximately \$18,471. Haines
12 Decl., ¶ 21.

13 **PAGA Penalties: \$25,211**

14 Plaintiffs estimated a maximum total PAGA exposure of approximately \$124,500 (1,245
15 semi-monthly pay periods * \$100 "initial" penalty). Haines Decl., ¶ 22; *Amaral v. Cintas Corp.*
16 *No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer
17 is notified that it is violating a Labor Code provision). However, these penalties derive from the
18 underlying wage and hour violations discussed above, which Defendant disputes vigorously.
19 Haines Decl., ¶ 22; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal.
20 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying
21 claims). Defendant also asserts that the Court would drastically reduce any award of PAGA
22 penalties as "confiscatory." Haines Decl., ¶ 20; *see also Thurman v. Bayshore Transit Mgmt.,*
23 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
24 *Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4
25 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiffs discounted the
26 maximum figure by 55% for the risk of losing on the merits and/or not recovering a PAGA penalty
27 for every pay period, and an additional 55% to account for the possibility of this Court reducing
28 penalties to arrive at an estimated exposure of approximately \$25,211. Haines Decl., ¶ 22.

1 Using these estimated figures for each of the claims described above, Plaintiffs predicted
2 that the potential recovery for the Settlement Class would be approximately \$235,673. Haines
3 Decl., ¶ 23. The proposed Settlement of \$200,000.00 represents approximately 85% of the
4 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate
5 since the Settlement will provide significant monetary relief to the Settlement Class, which is
6 consistent with what Plaintiffs’ counsel believes could have been recovered had the case
7 proceeded through trial. *Id.*

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

9 “Parties represented by competent counsel are better positioned than courts to produce a
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
11 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented
12 by competent, experienced counsel who possess extensive experience prosecuting and defending
13 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
14 alleging similar claims. *See* Haines Decl., ¶¶ 2-8; *see also* Declaration of Sean M. Blakely
15 (“Blakely Decl.”), ¶¶ 2-6. Class Counsel conducted an in-depth review of Defendant’s
16 timekeeping and payroll records and drew on their extensive experience in similar cases to assess
17 the strengths and weaknesses of Plaintiffs’ case. *See* Haines Decl., ¶¶ 15-23. The Settlement was
18 also reached with the assistance of an experienced and respected wage-and-hour class action
19 mediator. *Id.*, at ¶ 12. This factor strongly supports preliminary approval of the Settlement. *See*
20 *Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

28 The proposed Settlement reflects approximately 85% of the estimated recovery the

1 Settlement Class could reasonably expect in light of the significant litigation risks and will
2 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
3 percentage of the liability exposure recovered in this case far exceeds percentages routinely
4 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
5 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
6 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
7 representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV,*
8 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
9 be acceptable even though it amounts to only a fraction of the potential recovery that might be
10 available to the Settlement Class members at trial”). Further, the average Settlement Award of
11 approximately \$997.02 exceeds average payments achieved in other wage and hour class action
12 settlements.⁴ Thus, Plaintiffs submit that the proposed settlement is within the range of possible
13 approval, such that notice should be provided to the Settlement Class members so that they can
14 consider the Settlement. The Court will have the opportunity to again assess the reasonableness
15 of the Settlement after the Settlement Class members have had the opportunity to opt-out or
16 object.

18 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
19 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
20 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
21 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
22 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
23 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
24 of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
25 County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
26 *Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
27 recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
28 *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).

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

2 The Settlement resulted from an exchange of substantial information, arm's-length
3 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
4 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
5 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
6 discussed above, Plaintiffs carefully vetted the claims at issue, reviewed extensive timekeeping
7 and payroll data, and conducted a detailed statistical analysis of the data to arrive at their estimated
8 class-wide damages figures. *See Haines Decl.*, ¶¶ 15-23. Thus, this factor supports preliminary
9 approval.

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

11 Preliminary approval of the Settlement is also warranted because there are no obvious
12 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
13 members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment,
14 and Plaintiffs' Class Representative Service Awards, are all reasonable and appropriate based on
15 the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports
16 preliminary approval.

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

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

25 **1. The Proposed Class Is Ascertainable and Numerous**

26 A class is "ascertainable" where the members "may be readily identified without
27 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
28 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is

1 defined as all current and former non-exempt employees employed by Defendant in California
2 during the Class Period. Therefore, Settlement Class members can be identified from Defendant's
3 personnel and employment records. Defendant represents that the Settlement Class consists of
4 approximately 56 current and former non-exempt employees. *See* Haines Decl., ¶ 14. It would
5 therefore be impracticable to bring all Settlement Class members before the Court or for each
6 Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class
7 satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class
8 representing 10 beneficiaries of a trust sufficiently numerous).

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

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

17 **3. The Claims of the Named Plaintiffs Are Typical**

18 The typicality requirement is satisfied where class representatives have claims that are
19 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
20 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiffs purchased the
21 same goods as the putative class in a consumer class action). Here, Plaintiffs' claims are typical
22 of those held by the Settlement Class members. First, Defendant employed Plaintiffs as non-
23 exempt employees during the Class Period, and Plaintiffs were subject to Defendant's wage and
24 hour policies at issue in this case. *See* Lamping Decl., ¶ 2; Morrow Decl., ¶ 2. Second, Plaintiffs
25 were injured by the same challenged policies/practices that allegedly injured the Settlement Class
26 as a whole. For example, Plaintiffs assert that they were deprived of all wages and contend that
27 they were deprived of all legally compliant meal and rest periods. Plaintiffs further assert that
28 they did not receive accurate and compliant wage statements and did not receive all wages at the

1 time of separation of employment. *See generally*, Lamping Decl.; Morrow Decl. Because
2 Plaintiffs have suffered the same injuries as the other members of the Settlement Class, the
3 typicality requirement is satisfied.

4 **4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the**
5 **Class**

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

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

16 This Court should order distribution to the Settlement Class of the proposed Class Notice
17 by U.S. Mail, postage prepaid, using the last known mailing address information provided by
18 Defendant. *See Settlement*, ¶ 9. This manner of giving notice is the “best notice practicable” under
19 the circumstances because it provides “individual notice to all members who can be identified
20 through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the
21 Parties have agreed that the Settlement be administered by Phoenix Settlement Administrators
22 (“Phoenix”), an experienced class action settlement administrator. *See generally* Declaration of
23 Jodey Lawrence (“Lawrence Decl.”) and attached exhibits. Settlement Class members’ addresses
24 will be ascertainable through Defendant’s personnel and payroll records, which Defendant will
25 provide to Phoenix within ten (10) business days of preliminary approval of the Settlement. *See*
26 *Settlement*, ¶ 9(A). Within ten (10) business days of receipt of the Settlement Class members’
27 addresses, Phoenix will run the addresses through the National Change of Address (“NCOA”)
28 database (which provides updated addresses for any individual who has moved in the previous

four years and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice to all Settlement Class members. *See* Settlement, ¶ 9(B). To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s current mailing address. *Id.*, at ¶ 9(F).

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

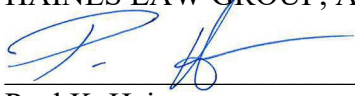
D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: July 13, 2023

Respectfully submitted,
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