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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OSMAN VENTURA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

KAY & JAMES, INC., a California
corporation, dba J & S MACHINE WORKS;
and DOES 1 through 100,

Defendants.

Case No. 19STCV25743

*[Assigned for all purposes to the
Hon. Stuart M. Rice, Dept. SSC-1]*

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

Date: January 9, 2023

Time: 10:30 a.m.

Dept.: SSC-1

Action Filed: July 24, 2019

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January 9, 2023 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department SSC-1 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Osman Ventura (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement Agreement”) between Plaintiff and Defendant Kay & James, Inc., dba J & S Machine Works (“Kay & James” or “Defendant”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the proposed Settlement Class, defined as follows:

All current and former non-exempt employees who worked for Kay & James in California from July 24, 2015 through July 16, 2022 (the “Class Period”).
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award an amount for an enhancement payment to the Class Representative, attorneys’ fees and costs to Class Counsel, settlement administration costs, and the payment to the Labor & Workforce Development Agency (“LWDA”) for its share of civil penalties;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice Packet, and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 This motion is based on this notice of motion; the attached memorandum of points and
2 authorities; the declaration of Paul K. Haines and exhibits attached thereto; the declaration of
3 Sean M. Blakely; the declaration of Jodey Lawrence of Phoenix Settlement Administrators and
4 exhibits attached thereto; the declaration of Plaintiff Osman Ventura; the Settlement Agreement;
5 the pleadings and other papers filed in this action; and any further oral or documentary evidence
6 or argument presented at the time of hearing.

7
8 Dated: December 14, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

9
10 By:

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Osman Ventura (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) with Defendant Kay & James, Inc., dba J&S Machine Works (“Kay &
5 James” or “Defendant”) (collectively with Plaintiff, the “Parties”). In this action, Plaintiff’s
6 primary allegations relate to Kay & James’ alleged failure to pay all wages owed, its failure to
7 provide all required meal periods, and its failure to authorize and permit all required rest periods.
8 Based on these alleged wage and hour violations, Plaintiff also alleges derivative claims for Kay
9 & James’ failure to timely pay all wages at separation of employment, failure to issue accurate
10 itemized wage statements, and seeks civil penalties under the Private Attorneys General Act
11 (“PAGA”), Labor Code § 2698 *et seq.*¹

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action settlement,² in which Kay & James’ has agreed to pay a
14 Gross Settlement Amount of \$1,250,000.00 to the following Settlement Class, which is estimated
15 to consist of 158 individuals:

16 All current and former non-exempt employees who worked for Kay &
17 James in California from July 24, 2015 through July 16, 2022 (the “Class
Period”).

18 The Settlement was only reached after extensive formal and informal discovery, and two
19 full-day mediation sessions. In connection with the second mediation session, Kay & James
20 provided Plaintiff with payroll and timekeeping records for a 25% sampling of putative class
21 members, as well as applicable documents regarding Kay & James’ wage and hour policies, and
22 other relevant data points including the number of current and former non-exempt employees who

23 _____
24 ¹ Plaintiff’s operative First Amended Class and Representative Action Complaint (“FAC”) pleads
25 the following causes of action: (1) failure to pay all overtime wages; (2) minimum wage
26 violations; (3) meal period violations; (4) rest period violations; (5) wage statement violation; (6)
waiting time penalties; (7) failure to pay all wages at the agreed-upon rate; (8) unfair competition;
and (9) civil penalties under the PAGA.

27 ² The Stipulation of Settlement (“Settlement” or “Settlement Agreement”) is attached as Exhibit
28 1 to the Declaration of Paul K. Haines (“Haines Decl.”). The proposed Class Notice and Notice
of Estimated Individual Settlement Payment are attached as Exhibits A and B, respectively, to the
Settlement Agreement.

1 worked during the Class Period and the number of workweeks during the Class Period. After
2 extensive research and analysis, including a detailed evaluation of Kay & James’ potential
3 exposure for each of Plaintiff’s claims, the Parties attended a second full-day mediation on May
4 17, 2022, where the Parties were ultimately able to reach a classwide settlement.

5 Significantly, Settlement Class members do not need to file a claim to reap the financial
6 benefits of the Settlement as Individual Settlement Payments will be distributed to all Settlement
7 Class members who do not affirmatively opt out. After deductions for proposed settlement
8 administration costs, requested attorneys’ fees and costs, the amount set aside as PAGA civil
9 penalties, and the Class Representative Enhancement Payment, the Settlement requires Kay &
10 James to pay a Net Settlement Amount (“NSA”) of at least \$733,333.34 to those Settlement Class
11 members who do not opt out. According to Kay & James, there are approximately 158 Settlement
12 Class members, and therefore, the average Individual Settlement Payment is estimated to be at
13 approximately \$4,641.35.³ This is an excellent result for Settlement Class members, who will be
14 agreeing to a release of only those claims that were asserted this litigation. The proposed
15 Settlement is within the range of possible approval in light of the significant legal and factual
16 obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary
17 benefits to be received by Plaintiff and the Settlement Class. For the reasons stated herein,
18 Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
19 Settlement.

20 **II. SUMMARY OF THE LITIGATION**

21 **A. FACTUAL AND PROCEDURAL BACKGROUND**

22 In business since 1981 and based in Sylmar, California, Kay & James manufactures
23 industrial machinery and equipment, primarily for the airline industry. *See* Declaration of Paul K.
24 Haines (“Haines Decl.”), ¶ 11. Plaintiff was employed by Kay & James as a non-exempt employee
25 from approximately June 2007 until approximately April 11, 2018. *See* Declaration of Osman

26 ³ In addition to the \$4,641.35 average Individual Settlement Payment from the Net Settlement
27 Amount, the approximately 105 Settlement Class members who worked during the time period
28 from July 23, 2020 through July 16, 2022 (“PAGA Period”) will also receive a portion of the
\$12,500.00 PAGA Amount. Haines Decl., ¶ 17. The average share of the PAGA Amount is
estimated to be approximately \$119.05. *Id.*

Ventura (“Ventura Decl.”), ¶ 2.

On July 24, 2019, Plaintiff filed the instant action against Kay & James, alleging claims for failure to pay overtime and minimum wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue accurate itemized wage statements, failure to timely pay all final wages, failure to pay all wages at the agreed-upon rate, and unfair competition. Haines Decl., ¶ 12. As part of the Settlement, the Parties stipulated to the filing of a First Amended Class and Representative Action Complaint (“FAC”) which adds a cause of action for civil penalties under the PAGA. *Id.* On December 12, 2022, Plaintiff filed the FAC. *Id.*

B. PLAINTIFF’S CLAIMS AND KAY & JAMES’ DEFENSES

1. Unpaid Wages due to Rounding

Plaintiff contends that Kay & James underpaid Settlement Class members up until November 2019 due to its allegedly unlawful rounding policies/practices. Haines Decl., ¶ 18. Plaintiff alleges that Kay & James’ rounding policies/practices were not even handed and resulted in a systematic underpayment to Settlement Class members. *Id.* However, Kay & James argues that its rounding practices were lawful, since it was both neutral on its face and resulted, over time, in employees being paid for all hours worked. *Id.*; *see also See’s Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer “applies a consistent rounding policy that, on average, favors neither overpayment nor underpayment.”). Kay & James also contends that multiple Courts of Appeal have found rounding mechanisms to be lawful under similar circumstances. *See, e.g., Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal.App.5th 1239, 1254 (2019) (review granted on other grounds) (affirming summary judgment for employer on rounding claim where employees were underpaid on 54.6% of shifts, finding that such facts do not establish that employees were “systematically undercompensate[d]”); *AHMC Healthcare, Inc. v. Superior Court*, 24 Cal.App.5th 1014, 1028 (2018) (affirming summary judgment for employer where “bare majority” of employees were underpaid due to rounding). Kay & James further argues that just because an employee is clocked in does not mean they are *working*. Haines Decl., ¶ 18. Moreover, Kay & James asserts the amount of unpaid time per shift is *de minimis* and thus non-compensable. *Id.* Lastly, Kay & James also contends this claim was

not certifiable, since its rounding policy is facially neutral and some employees were *overpaid* due to rounding, and individualized inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

2. Unpaid Daily Overtime

Plaintiff also alleges that from July 24, 2015 until approximately December 31, 2019, Kay & James maintained a policy of not paying daily overtime, and only paid overtime for work in excess of forty (40) hours a week. Haines Decl., ¶ 19. However, Kay & James contends that it paid all overtime due in accordance with California law. *Id.* Kay & James further argues that Settlement Class members did not work extensive overtime, and therefore, any unpaid overtime was relatively modest. *Id.*

3. Meal Period Claims

Plaintiff alleges that Kay & James failed to provide him and other Settlement Class members with legally-compliant meal periods. Haines Decl., ¶ 20. Specifically, Plaintiff alleges that from July 24, 2015 until December 2019, Kay & James automatically deducted 30-minutes from daily hours worked for a purported meal period regardless of whether meal periods were actually taken. *Id.* Plaintiff further alleges that from December 2019 and onward, Kay & James began to record its meal periods, however, Plaintiff maintains that Kay & James often failed to provide meal periods until after the completion of five hours of work. *Id.* Finally, Plaintiff alleges that Kay & James failed to provide second meal periods on shifts of at least ten (10) hours. *Id.*, at ¶ 21.

Kay & James contends that it maintained compliant written meal period policies throughout the Class Period and provided all legally-compliant meal periods in line with those policies. Haines Decl., ¶ 20. Kay & James further argues that under *Brinker*, it was only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard). Kay & James also argues that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 20. With

1 respect to second meal periods, Kay & James argues that Plaintiff’s second meal period exposure
2 is heavily inflated and maintains it can only be liable for one meal period premium per shift. *Id.*,
3 at ¶ 21; see *United Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011)
4 (“[E]mployees in this case may recover up to two additional hours of pay on a single work day
5 for meal period and rest period violations – one for failure to provide a meal period and another
6 for failure to provide a rest period.”). Kay & James also argues that second meal periods may
7 lawfully be waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code §
8 512, and that employees regularly did so. Haines Decl., ¶ 21. Lastly, Kay & James argues
9 individualized inquiries would be needed to determine why each meal period was taken late or
10 short or missed by each employee, and whether there was a valid waiver, making certification of
11 the meal period claim unlikely. *Id.*, at ¶¶ 20-21.

12 **4. Rest Period Claims**

13 Plaintiff alleges that Kay & James failed to authorize and permit all legally-compliant off-
14 duty rest periods. Haines Decl., ¶ 22. Specifically, Plaintiff alleges that Kay & James failed to
15 authorize third rest periods for shifts in excess of ten (10) hours. *Id.* However, Kay & James argues
16 that it has always maintained and enforced lawful rest period policies and practices during the
17 Class Period. *Id.* Kay & James also maintains that any failure to take rest periods was the result
18 of employee choice, and that it is not required to police rest periods. *Id.* Finally, Kay & James
19 argues that Plaintiff’s rest period claim is not amenable to class treatment, since individual
20 inquiries would be required to determine which employees failed to take rest periods and the
21 reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These
22 manageability concerns are especially present with respect to rest period claims, Kay & James
23 argues, given that rest periods are not recorded. *Id.*

24 **5. Claims Under Labor Code §§ 203, 226, and the PAGA**

25 As a result of these alleged wage and hour violations, Plaintiff asserts that Kay & James
26 failed to comply with its final wage payment and wage statement obligations, in violation of
27 Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 23-24. Finally, Plaintiff seeks civil
28 penalties under the PAGA, based on the aforementioned claims. Haines Decl., ¶ 25.

1 Kay & James asserts it has strong, good-faith defenses to Plaintiff’s underlying claims,
2 precluding imposition of waiting time penalties, which are only available for the “willful” failure
3 to pay wages. Haines Decl., ¶ 24; *see* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any
4 wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12
5 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting time
6 penalties). Kay & James further contends that any alleged wage statement violations could not be
7 shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff
8 cannot show he or other employees “suffer[ed] injury” due to alleged wage statement violations,
9 as required by Lab. Code § 226(e); and that wage statements always accurately reflected amounts
10 paid to employees. Haines Decl., ¶ 23; *see Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
11 1308, 1337 (2018) (“The purpose of section 226 is to ‘document the paid wages to ensure the
12 employee is fully informed regarding the calculation of those wages’”).

13 Finally, Kay & James contends that since Plaintiff’s PAGA claim is derivative of his
14 underlying wage claims, Plaintiff’s PAGA claim would fail with those claims. Haines Decl., ¶
15 25; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
16 causes of action fail, the derivative UCL and PAGA claims also fail”). Kay & James further
17 maintains that given its good-faith defenses, the Court would substantially reduce any PAGA
18 penalties awarded. Haines Decl., ¶ 25; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA
19 penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112,
20 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-
21 1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over
22 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty
23 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

24 C. **DISCOVERY AND MEDIATION**

25 The Parties engaged in significant formal and informal discovery in this Action. Plaintiff
26 propounded multiple sets of written discovery seeking, among other items, class contact
27 information, timekeeping and payroll records for putative class members, and Kay & James’
28 written wage and hour policies. Haines Decl., ¶ 13. The Parties completed a *Belaire-West* opt-

1 out notice process and Plaintiff was provided with the contact information for those putative class
2 members who did not opt-out of the *Belaire-West* process. *Id.* Thereafter, Plaintiff interviewed
3 Settlement Class members regarding their work experiences with Kay & James. *Id.* Plaintiff also
4 responded to Kay & James' written discovery, including interrogatories and requests for
5 documents. *Id.* On September 10, 2021, the Parties attended a mediation with William E. Klatte,
6 Esq., however, the Parties were unable to reach a settlement and the Parties continued their class
7 certification discovery. *Id.*

8 While conducting formal discovery, the Parties agreed to attend a second mediation
9 session. Haines Decl., ¶ 14. In connection with this second mediation, Kay & James produced
10 timekeeping and payroll data for 25% of employees during the Class Period, its written policies
11 in effect during the Class Period, as well as relevant data points including the number of non-
12 exempt employees employed during the Class Period and the number of workweeks worked
13 during the Class Period. *Id.* Plaintiff conducted a comprehensive analysis and extrapolation of the
14 timekeeping and payroll data to calculate Kay & James' potential exposure for each of Plaintiff's
15 claims. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff's claims,
16 the chances of certification of Plaintiff's claims, and Kay & James' potential defenses. *Id.*

17 On May 17, 2022, the Parties attended a full-day mediation with Jeffrey A. Ross, Esq, an
18 experienced wage and hour class action mediator. Haines Decl., ¶ 15. During mediation, the
19 Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff's
20 claims, and the legal bases for the claims and defenses. *Id.* At the conclusion of the mediation,
21 Mr. Ross issued a mediator's proposal for a class-wide settlement, which was ultimately accepted
22 by the Parties. *Id.* During the months that followed, the Parties negotiated and finalized the long-
23 form Settlement now before the Court. *Id.*

24 **III. THE PROPOSED SETTLEMENT**

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

26 Under the Settlement, Kay & James will pay a non-reversionary Gross Settlement Amount
27 ("GSA") of \$1,250,000.00. *See* Settlement, § 3. No Settlement Class member will need to file a
28 claim form as each Settlement Class member will automatically receive an Individual Settlement

Payment unless he or she affirmatively opts out. *Id.*, at § 4. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$1,250,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$416,666.66
• Minus Court-approved, verified costs (up to):	\$35,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus Amount designated as PAGA penalties:	\$50,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$7,500.00</u>
Net Settlement Amount (“NSA”):	\$733,333.34
<u>PLUS 25% of PAGA penalties (“PAGA Amount”)</u>	<u>\$12,500.00</u>
TOTAL Amount Paid to Settlement Class:	\$745,833.34

1. The Settlement Provides for Reasonable Monetary Payments

After deducting administration costs, enhancement payment to Plaintiff, the amount set aside as PAGA civil penalties, and requested attorneys’ fees and costs, Kay & James will pay a NSA of at least \$733,333.34 to the Settlement Class. Haines Decl., ¶ 16; *see also* Settlement, §§ 3(D); 4(A). According to Kay & James, there are approximately 158 Settlement Class members. Haines Decl., ¶ 17. Thus, the average Individual Settlement Payment from the NSA is estimated to be \$4,641.35. *Id.* Further, Kay & James represents that there are approximately 105 employees who fall within the PAGA Period. *Id.* Therefore, the average PAGA share is estimated to be \$119.05. *Id.*

The Net Settlement Amount (“NSA”) shall be distributed to all participating Settlement Class members based on each participating Settlement Class member’s proportionate number of workweeks worked during the Class Period. *See* Settlement, § 4(B). In addition to the NSA, each Settlement Class member (regardless of whether they opt out) who was employed by Kay & James at any time during the PAGA Period shall receive a portion of the Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount that has been designated as the “PAGA Amount” proportionate to the number of pay periods that he or she worked during the PAGA Period. *Id.*, at § 4(C).

For tax purposes, any payment made from the NSA shall be classified as 20% wages to be reported on an IRS Form W-2, and 40% interest and 40% penalties, to be reported on an IRS Form 1099. *See* Settlement, § 4(F). Any payment from the PAGA Amount shall be designated as 100% penalties. *Id.* Kay & James will pay employer-side payroll taxes separately, and in

1 addition to, the GSA. *Id.*, § 3(G).

2 Settlement Class members will have sixty (60) days from the mailing to opt-out or object,
3 thereby providing ample time to review the Settlement. Settlement, §§ 9(D)-(E). Settlement Class
4 members who do not opt out will be bound by the Settlement, and will release and discharge Kay
5 & James from any and all claims that were alleged in the operative Complaint, or which could
6 have been alleged based on the facts in the Complaint. *Id.*, § 2(A). In addition, all Settlement
7 Class members (whether or not they opt out as members of the Settlement Class) who worked for
8 Kay & James in California at any time during the PAGA Period shall release any right or claim
9 for PAGA civil penalties based on those alleged violations. *Id.* § 2(B).

10 **2. Enhancement Payment, Attorneys' Fees and Costs, and LWDA Payment**

11 Plaintiff will apply for a Class Representative Enhancement Payment at final approval in
12 the amount of \$7,500 for his services to the Settlement Class. Haines Decl., ¶ 29; *see also*
13 Settlement, § 6. “[I]ncentive awards are fairly typical in class action cases...and are intended to
14 compensate class representatives for work done on behalf of the class [and] to make up for
15 financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination*
16 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, the
17 requested Enhancement Payment is intended to recognize the substantial time and effort Plaintiff
18 expended on behalf of the Settlement Class, including providing documents to counsel,
19 responding to formal discovery and producing responsive documents, attending meetings with
20 counsel to discuss the claims and theories at issue in the litigation, and otherwise actively
21 participating in the prosecution of his claims. Ventura Decl., ¶ 5. Plaintiff respectfully submits
22 that this requested enhancement payment is well within the range of permissible approval. *See,*
23 *e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal.
24 May 17, 2011) (approving \$7,500 enhancement award to each of five named plaintiffs from
25 \$505,058.60 settlement).

26 At final approval, Plaintiff’s counsel will request an attorneys’ fees award of one-third of
27 the GSA, and up to \$35,000 in verified litigation costs. Haines Decl., ¶ 27; *see also* Settlement, §
28 5. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky,

expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel has expended significant time conducting pre-filing investigation; legal research; analyzing Plaintiff's claims; analyzing employee timekeeping and payroll records and other data and documents; propounding and responding to formal discovery and meeting and conferring with counsel regarding the same; interviewing Settlement Class members regarding their work experiences at Kay & James; engaging in informal discovery; developing a damages analysis and drafting a comprehensive mediation brief; preparing for and attending two mediations; negotiating the Settlement; preparing this Motion; and otherwise prosecuting this case. Haines Decl., ¶ 27. Counsel anticipates incurring additional fees in appearing at the hearing on this Motion, supervising the Notice process, and preparing the Final Approval motion and appearing at the Final Approval Hearing. *Id.*

It is appropriate to award attorneys' fees in class actions as a percentage of the "common fund" created by a settlement. *See Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). Counsel's fee request of one-third of the GSA is well within the range of reasonableness, and is typical for common fund settlements, and in fact was the percentage approved in *Laffitte*.

Additionally, the parties have agreed to designate \$50,000.00 of the GSA as PAGA civil penalties, of which \$37,500.00 (75%) will be paid to the LWDA, with the remaining \$12,500.00 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(D)(5). Plaintiff submits this allocation to the LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

Rule of Court 3.769 conditions settlement of a class action on court approval, which is

generally evaluated under the federal standards under Fed. R. Civ. Proc. Rule 23. *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule of Court 3.769 requires court to determine “the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The court’s role in evaluating a settlement is limited to ensuring the agreement, as a whole, is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when, as here, a settlement was negotiated at arm’s length by experienced class counsel, with the assistance of an experienced mediator. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, a court should consider several factors, including: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of these factors.

a. The Strength of Plaintiff’s Case

Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, Kay & James presented multiple defenses to Plaintiff’s claims, both on the merits and with respect to class certification. While Plaintiff was prepared to litigate his claims through class certification and ultimately trial, success was far from certain.

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

2 Although the Parties engaged in significant formal and informal discovery in advance of
3 mediation, the Parties still had substantial discovery to complete in formal litigation had the
4 matter not settled, which would have required the expenditure of substantial time and resources
5 by all parties. Haines Decl., ¶ 28. Even if Plaintiff obtained class certification, the Parties would
6 incur considerable attorneys' fees and costs through a possible decertification motion, trial, and
7 possible appeal. *Id.* The Settlement avoids those risks and the accompanying delay and expense,
8 and thus, this factor supports preliminary approval. *Id.*

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

10 Plaintiff had not yet filed his motion for class certification, and as such, the extent to which
11 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
12 was a risk that there would not be a certified class at the time of trial, or if there were, it would
13 consist of a significantly smaller group of employees than the proposed Settlement Class (either
14 due to a narrowing of the class definition in a Court order on a contested motion for class
15 certification, or through settlement agreements entered into by Kay & James with individual class
16 members by way of *Pick-Up-Stix* type settlement agreements⁴) and the expected recovery could
17 be significantly reduced, given the settlement amounts that are typically offered through the *Pick-*
18 *Up-Stix* process. Thus, this factor, too, supports preliminary approval of the Settlement.

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

20 The Settlement provides a fair and reasonable monetary recovery for Settlement Class
21 members concerning heavily disputed claims where the law is in a state of frequent change. Based
22 on a review of the data produced by Kay & James in connection with mediation, Plaintiff
23 conducted the following exposure analyses for each of Plaintiff's claims:

24 Unpaid Wages due to Unlawful Rounding Policies/Practices: \$192,022

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

1 Plaintiff alleges Kay & James rounded employee timekeeping entries in a manner that
2 consistently favored Kay & James and that, as a result, employees' wages were underpaid. Haines
3 Decl., ¶ 18. Based on Plaintiff's review of employee timekeeping and payroll records, Plaintiff
4 contends that Kay & James' rounding policies/practices resulted in approximately 10,507 net
5 hours of unpaid wages. *Id.* Because employees generally worked shifts of 8.0 hours or more,
6 Plaintiff contends these unpaid wages need to be paid at an overtime rate of pay. *Id.* Based upon
7 the average rate of pay of \$21.66 during the Class Period, Plaintiff estimates that Kay & James'
8 maximum exposure for this claim is approximately \$341,372 (10,507 unpaid hrs. * \$21.66 * 1.5
9 (overtime premium)). *Id.* But as noted above, Kay & James raised several defenses to this claim,
10 including its argument that it utilized an even-handed timekeeping system that, on balance,
11 resulted in employees being paid for all hours actually worked; that some employees were
12 overpaid as a result its rounding practices; and that Plaintiff would be unable to certify this claim
13 given the individualized inquiries as to whether employees were in fact underpaid, or overpaid
14 for each workday in question. *Id.* Based on these defenses, Plaintiff discounted the maximum
15 exposure by 25% to account for the risk of non-certification, and an additional 25% to account
16 for Kay & James' defenses on the merits, to arrive at an estimated exposure of approximately
17 \$192,022. *Id.*

18 Unpaid Daily Overtime: \$40,283

19 Plaintiff alleges that from July 24, 2015 until approximately December 31, 2019, Kay &
20 James maintained a policy of not paying daily overtime. Haines Decl., ¶ 19. Based on Plaintiff's
21 analysis of employee timekeeping and payroll records, Plaintiff contends Kay & James underpaid
22 employees approximately 1.0 hour of daily overtime per pay period, and there were
23 approximately 4,592 pay periods between July 24, 2015 and December 31, 2019. *Id.* Thus,
24 Plaintiff estimates Kay & James' maximum exposure for this claim at approximately \$49,731
25 (4,592 pay periods * 1 hr * 21.66/hr * 0.5 OT premium). *Id.* However, Kay & James contends
26 that it paid all overtime due in accordance with California law. *Id.* Accordingly, Plaintiff
27 discounted the maximum exposure by 10% to account for the risk of non-certification, and an
28 additional 10% to account for Kay & James' defenses on the merits and/or failing to recover the

1 full amount of unpaid wages, to arrive at an estimated exposure of approximately \$40,283. *Id.*

2 First Meal Period Violations: \$384,151

3 As stated above, Plaintiff alleges that Kay & James routinely provided non-compliant first
4 meal periods to its non-exempt employees. Specifically, Plaintiff alleges that from July 24, 2015
5 until December 2019, Kay & James automatically deducted a 30-minute meal period on all shifts
6 regardless of whether meal periods were actually taken. Haines Decl., ¶ 20. From December 2019
7 and onward, Kay & James began to record its meal periods, however, Plaintiff maintains that Kay
8 & James nonetheless often failed to provide meal periods until after the completion of five hours
9 of work. *Id.* Based on Plaintiff's review and extrapolation of employee timekeeping data, Plaintiff
10 estimated approximately 70,942 shifts reflected a non-compliant first meal period (i.e., late, short,
11 or missed first meal period(s)). *Id.* Thus, assuming each non-compliant meal period in the
12 timekeeping records represents a violation, Plaintiff estimates Kay & James' maximum exposure
13 for this claim at approximately \$1,536,603 (70,942 first meal period violations * 21.66 average
14 premium).

15 However, as noted above, Kay & James contends that it maintained compliant written
16 meal period policies throughout the Class Period, and provided legally-compliant meal periods in
17 line with those policies. Haines Decl., ¶ 20. Kay & James also argues that under *Brinker*, it was
18 only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are
19 taken. *Id.* Kay & James also argues that any short, missed, or late first meal periods were the
20 result of lawful employee waiver or choice, thereby precluding liability. *Id.* Kay & James also
21 argues individualized inquiries would be needed to determine why each meal period was taken
22 late or short or missed by each employee, making certification of the meal period claim unlikely.
23 *Id.* In light of these defenses, Plaintiff discounted the maximum amount by 50% for risk of non-
24 certification and an additional 50% for risk of being unsuccessful on the merits or failure to
25 recover the full amount sought, to arrive at an estimated realistic exposure of approximately
26 \$384,151. *Id.*

27 Second Meal Period Violations: \$46,426

28 Plaintiff further alleges that Kay & James failed to provide second meal periods on shifts

1 over 10.0 hours. Haines Decl., ¶ 21. Based on Plaintiff’s analysis of employee timekeeping data,
2 there were approximately 42,868 non-compliant second meal periods. *Id.* Plaintiff therefore
3 estimated a maximum total exposure for this claim at approximately \$928,520 (42,868 non-
4 compliant second meal periods * \$21.66 average premium). *Id.*

5 However, Kay & James contends Plaintiff’s second meal period exposure is heavily
6 inflated as Plaintiff already seeks a meal period premium for first meal periods on an
7 overwhelmingly majority of shifts in excess of 10.0 hours. *See United Parcel Service, Inc. v.*
8 *Superior Court*, 196 Cal.App.4th 57, 70 (2011) (“[E]mployees in this case may recover up to two
9 additional hours of pay on a single work day for meal period and rest period violations – one for
10 failure to provide a meal period and another for failure to provide a rest period.”). Additionally,
11 Kay & James argues that second meal periods may lawfully be waived on shifts of more than 10.0
12 hours but less than 12.0 hours per Labor Code § 512, and that employees regularly did so. Haines
13 Decl., ¶ 21. Kay & James also argues individualized inquiries would be needed to determine why
14 each second meal period was taken late or short or missed by each employee, and whether there
15 was a valid waiver, making certification of the meal period claim unlikely. *Id.* In light of these
16 defenses, Plaintiff discounted the maximum amount by 75% for risk of non-certification and an
17 additional 80% for risk of being unsuccessful on the merits, or having exposure reduced to Kay
18 & James’ waiver arguments, to arrive at an estimated realistic exposure of approximately \$46,426.
19 *Id.*

20 **Rest Period Violations: \$208,917**

21 Plaintiff alleges that Kay & James failed to authorize and permit all legally-compliant off-
22 duty rest periods. Haines Decl., ¶ 22. Specifically, Plaintiff alleges that Kay & James failed to
23 authorize third rest periods for shifts of at least ten (10) hours. *Id.* Based on Plaintiff’s analysis of
24 employee timekeeping records, there were approximately 42,868 shifts of 10 hours or more
25 worked by Settlement Class members during the Class Period. *Id.* Thus, assuming a 100%
26 violation rate for those shifts, Plaintiff estimated the maximum potential exposure for this claim
27 at approximately \$928,520 (42,868 rest period violations * \$21.66 average premium). *Id.*
28 However, as described above, Kay & James argues that it has always maintained and enforced

1 lawful rest period policies and practices during the Class Period. *Id.* Kay & James also maintains
2 that any failure to take rest periods was the result of employee choice, and that it is not required
3 to police rest periods. *Id.* Finally, Kay & James argues that Plaintiff's rest period claim is not
4 amenable to class treatment, since individual inquiries would be required to determine which
5 employees failed to take rest periods and the reasons why each employee failed to take rest
6 period(s) on a particular shift. *Id.* In light of these defenses, Plaintiff discounted the maximum
7 amount by 50% to account for the risk of non-certification, and an additional 55% for risk of
8 being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an
9 estimated realistic exposure of approximately \$208,917. *Id.*

10 Wage Statement Penalties: \$189,000

11 Plaintiff's analysis reflected that there were approximately 5,064 pay periods worked by
12 Settlement Class members, and 105 unique employees, within the one-year liability window
13 under Labor Code §226. Haines Decl., ¶ 23. In calculating Kay & James' exposure, Plaintiff
14 assumed he could recover the "initial" \$50 penalty and a "subsequent" \$100 penalty for each
15 violation thereafter, with a cap of \$4,000 per employee under Labor Code §226(e). *Id.* Plaintiff's
16 analysis reflected that the \$50/\$100 penalty calculation for "initial" and "subsequent" violations
17 exceeds the maximum of \$4,000 per employee, and therefore, Plaintiff estimated Kay & James'
18 maximum wage statement exposure at approximately \$420,000 (105 employees * \$4,000 cap per
19 employee) in potential penalties. *Id.*; see Labor Code § 226(e). However, given Kay & James'
20 arguments that no violations occurred, that Settlement Class members suffered no "injury," that
21 any violations were not "knowing and intentional," and that the wage statements always
22 accurately reflected amounts *paid* to employees, Plaintiff discounted the maximum exposure by
23 25% for risk of non-certification and by an additional 40% for risks on the merits, for an estimated
24 realistic exposure of approximately \$189,000. Haines Decl., ¶ 23.

25 Waiting Time Penalties: \$271,336

26 Based on the data produced by Kay & James, there are approximately 116 Settlement
27 Class members who separated their employment from Kay & James at any time after July 24,
28 2016 and are therefore eligible for waiting time penalties. Haines Decl., ¶ 24. Plaintiff estimated

1 an average waiting time penalty of approximately \$5,198 (\$21.66/hr * 8 hrs * 30 days), and
2 calculated Kay & James' maximum waiting time penalty exposure at approximately \$602,968
3 (116 former employees * \$5,198 average waiting time penalty). *Id.* However, Kay & James
4 asserts it has strong, good-faith defenses to Plaintiff's underlying claims and thus, even if Plaintiff
5 were able to recover on his underlying claims, he would not be able to recover waiting time
6 penalties, which are only available for the "willful" failure to pay wages. *Id.* Moreover, Plaintiff
7 would need to overcome Kay & James' defenses, both as to class certification and as to the merits,
8 to his underlying claims. *Id.* Based on these defenses, Plaintiff discounted Kay & James'
9 maximum exposure by 25% for risk of non-certification, and by an additional 40% for risk of
10 being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an
11 estimated total of approximately \$271,336. *Id.*

12 **PAGA Civil Penalties: \$59,805**

13 Plaintiff estimated a maximum PAGA exposure of \$265,800 (2,658 pay periods during
14 PAGA Period * \$100 "initial" violation rate). Haines Decl., ¶ 25; *Amaral*, 163 Cal.App.4th at
15 1209 (finding "initial" violation rate applies until employer is notified that it is violating a Labor
16 Code provision). However, these penalties derive from Plaintiff's underlying claims, each of
17 which Kay & James vigorously disputes. Haines Decl., ¶ 25. The PAGA also grants trial courts
18 discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Kay & James argued the
19 Court would reduce penalties significantly given its good-faith defenses. *Id.* Thus, Plaintiff
20 discounted the maximum figure by 50% for risk of losing on the merits and/or not recovering a
21 PAGA penalty for each and every pay period, and by an additional 55% for risk of the Court
22 reducing penalties, to arrive at a realistic exposure of approximately \$59,805. *Id.*; *see also*
23 *Fleming*, 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30
24 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

25 Using these figures, Plaintiff estimated the realistic total recovery for the Settlement Class
26 would be approximately \$1,391,940. Haines Decl., ¶ 26. Thus, the proposed \$1,250,000 GSA
27 represents approximately 89.8% of Plaintiff's reasonably forecasted recovery. *Id.* Preliminary
28 approval is appropriate since the Settlement will provide significant monetary relief to the

Settlement Class, which is consistent with what Plaintiff's counsel believes could have been recovered had the case proceeded through trial.

e. The Experience and Views of Counsel.

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed class counsel in numerous cases with similar claims. Haines Decl., ¶¶ 3-8; Declaration of Sean M. Blakely ("Blakely Decl."), ¶¶ 2-6.

2. The Preliminary Approval Standard Is Met

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

a. The Settlement Is Within the Range of Possible Approval

The Settlement reflects approximately 89.8% of the estimated recovery the Settlement Class could realistically expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed wage claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Plaintiff submits the Settlement is well within the range of possible approval, such that notice should be provided to the Settlement Class. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the

1 opportunity to opt-out or object.

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

3 The Settlement is a result of extensive discovery, two full-day mediations, and months of
4 additional negotiations. Thus, it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th
5 at 130. Plaintiff carefully vetted the claims at issue, and conducted detailed data analyses to arrive
6 at estimated potential damages. Haines Decl., ¶¶ 18-26. The Parties then worked collaboratively
7 in the following months to finalize the Settlement. *Id.*, at ¶ 15. This factor thus supports
8 preliminary approval.

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

10 The Settlement contains no obvious deficiencies. The Settlement will provide tangible
11 monetary relief to Settlement Class members. The amounts proposed for attorneys' fees, costs,
12 settlement administration costs, LWDA payment, and enhancement payment are all reasonable.
13 Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary
14 approval.

15 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

16 The Settlement Class satisfies the criteria for certification because: 1) it is sufficiently
17 numerous; 2) common questions of law and fact predominate; 3) Plaintiff's claims are typical;
18 and 4) Plaintiff and his counsel will adequately represent them. Cal. Code Civ. Proc. § 382.

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

20 A class is "ascertainable" where members "may be readily identified without unreason-
21 able expense or time by reference to...[business] records." *Sevidal v. Target*, 189 Cal.App.4th
22 905, 919 (2010). Here, the Settlement Class includes all current and former non-exempt
23 employees who worked for Kay & James in California from July 24, 2015 through July 16, 2022.
24 See Settlement, § 1. The Settlement Class can therefore be identified from Kay & James'
25 personnel and employment records. Kay & James represents that there are approximately 158
26 Settlement Class members (see Haines Decl., ¶ 17), making it impracticable to bring them all
27 before the Court. Thus, numerosity is satisfied.

28 ///

1 **2. Common Issues of Law and Fact Predominate for Settlement Purposes**

2 The focus on certification is what types of questions, “common or individual,” are likely
3 to arise. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are
4 predicated primarily on Kay & James’ alleged failure to provide meal and rest periods. These
5 claims are commonly held proper for class certification. *See, e.g., Benton v. Telecom Network*
6 *Specialists, Inc.*, 220 Cal.App.4th 701 (2013) (certifying meal & rest period claims).

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

8 Typicality is satisfied where a class representative’s claims are typical of those of the class.
9 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Plaintiff’s
10 claims are typical of the Settlement Class. Plaintiff worked in California for Kay & James during
11 the Class Period, was subject to Kay & James wage and hour policies/practices at issue in this
12 Action, and was injured in the same manner as Settlement Class members. *See Ventura Decl.*, ¶¶
13 2-4. Typicality is thus satisfied.

14 **4. Plaintiff and His Counsel Will Adequately Represent the Class**

15 The adequacy inquiry examines conflicts of interest between a named plaintiff and the
16 class he seeks to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th
17 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class as there
18 are no known conflicts between Plaintiff and Settlement Class members, and Plaintiff’s counsel
19 have extensive relevant experience. *See Haines Decl.*, ¶¶ 3-8; *Ventura Decl.*, ¶ 4.

20 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS**
21 **NOTICE**

22 This Court should order distribution of the Notice in English and Spanish by U.S. Mail,
23 using last known mailing addresses provided by Kay & James. *See Settlement*, § 9. This is the
24 “best notice practicable” under the circumstances because it provides “individual notice to all
25 members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417
26 U.S. 156, 173 (1974). Plaintiff proposes the settlement be administered by Phoenix Settlement
27 Administrators (“Phoenix”), an experienced settlement administrator. *See Declaration of Jodey*
28 *Lawrence* and exhibits. Settlement Class members’ addresses will be ascertainable through Kay

1 & James' records, which Kay & James will provide to Phoenix within ten (30) days after entry of
2 an order preliminarily approving this Settlement. *See* Settlement, § 9(A). Within ten (10) business
3 days of receipt of the Settlement Class members' addresses, Phoenix will run the addresses
4 through the National Change of Address ("NCOA") database (which provides updated addresses
5 for any individual who has moved in the previous four years and has notified the U.S. Postal
6 Service of a forwarding address) and mail the Notice Packet to all Settlement Class members. *See*
7 Settlement, § 9(B). To the extent that any notices are returned as undeliverable, Phoenix will
8 perform a "skip trace" to track any Settlement Class member's current mailing address. *Id.*, at §
9 9(C).

10 The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement
11 Class members of the basic contentions and denials of the parties, the key terms of the Settlement,
12 the 60-day deadline to opt-out or object, the recovery formula, and advises they will be bound by
13 the Settlement if they do not opt-out. *See* Haines Decl., Exhs. A-B to Exh. 1. The Notice also
14 notifies Settlement Class members of the final fairness hearing and provides Class Counsel's
15 contact information. *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-effective
16 method of reaching Settlement Class members.

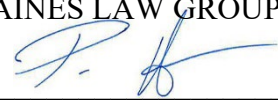
17 **V. CONCLUSION**

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

21
22 Dated: December 14, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

23 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff