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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE BAEZ, on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

INSUA GRAPHICS INCORPORATED, a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 21STCV25092

*[Assigned for all purposes to Hon. Yvette M.
Palazuelos in Dept. SSC-9]*

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

Date: December 5, 2023
Time: 10:00 a.m.
Dept.: SSC-9

Complaint Filed: July 8, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on December 5, 2023, at 10:00 a.m. in Department SSC-9 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Jose Baez (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

All current and former non-exempt employees who worked for Defendant Insua Graphics Incorporated in California from July 8, 2017 until November 1, 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 permit a Class Representative Enhancement Award to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
2 Authorities; the supporting declarations of Sean M. Blakely, Paul K. Haines, Plaintiff Jose Baez,
3 and Lisa Mullins of ILYM Group, Inc., and the exhibits attached thereto; the pleadings, and other
4 papers filed in this Action; and on any further oral or documentary evidence or argument
5 presented at the time of the hearing.

6
7 Respectfully submitted,

8 Dated: July 21, 2023

HAINES LAW GROUP, APC

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

2 **I. INTRODUCTION**

3 Plaintiff Jose Baez (hereinafter “Plaintiff”) brought this class and representative action for
4 various wage and hour violations on behalf of current and former non-exempt employees of
5 Defendant Insua Graphics Incorporated (“Insua Graphics”) who worked for Insua Graphics in
6 California from July 8, 2017 until November 1, 2022 (the “Class Period”). Plaintiff’s primary
7 allegations are that Insua Graphics failed to provide all legally compliant meal and rest periods.
8 As a result of these alleged violations, Plaintiff also brought derivative claims for Insua Graphics’
9 alleged failure to pay all final wages owed, failure to issue accurate and compliant wage
10 statements, and for civil penalties under the Private Attorneys’ General Act (“PAGA”).¹

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-
12 reversionary, common-fund class action settlement,² in which Insua Graphics has agreed to pay
13 Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) to the following Settlement Class:
14 All current and former non-exempt employees who worked for Defendant
15 Insua Graphics Incorporated in California from July 8, 2017 until
November 1, 2022 (the “Class Period”).

16 If the Settlement is approved, Insua Graphics will pay a non-reversionary Maximum
17 Settlement Amount (“MSA”) of \$600,000.00. After deducting administration costs, Plaintiff’s
18 requested Class Representative Enhancement Award, payment to the Labor and Workforce
19 Development Agency (“LWDA”) for its share of PAGA civil penalties, and requested attorneys’
20 fees and costs, the Net Settlement Amount (“NSA”) of approximately \$339,500.00 will be
21 distributed to all Settlement Class members who do not opt-out of the Settlement based on the
22 proportionate number of workweeks worked by each Settlement Class member during the Class

23 _____
24 ¹ The operative First Amended Class and Representative Action Complaint (“FAC”) pleads the
25 following causes of action: (1) meal period violations; (2) rest period violations; (3) wage
26 statement violations; (4) waiting time penalties; (5) unfair competition; and (6) civil penalties
under the PAGA.

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
28 as **Exhibit A**. The proposed Class Notice and Notice of Estimated Settlement Payment 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.

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 124 Settlement Class members, and **the average payment to participating Settlement Class members is projected to be approximately \$2,737.90.** This is an excellent result for Settlement Class members, who will be releasing only those claims alleged in the Action.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

In operation since 1996, Insua Graphics is a full-service commercial printing and packaging company. *See* Declaration of Sean M. Blakely (“Blakely Decl.”), ¶ 8. Insua Graphics provides a range of printed products and packaging materials, such as customized labels, brochures, posters, catalogs, business cards, letterheads and wrappers. *Id.* Plaintiff worked for Insua Graphics as non-exempt employee in the position of “Operator” from approximately January 2008 until approximately March 2021. *See* Declaration of Jose Baez In Support of Approval of Class Action Settlement (“Baez Decl.”), ¶ 2.

On July 8, 2021, Plaintiff filed his Class Action Complaint in Los Angeles County Superior Court, alleging that Insua Graphics: (i) failed to provide all lawful meal periods; (ii) failed to authorize and permit all legally compliant rest periods; (iii) failed to issue accurate, itemized wage statements; (iv) failed to pay all final wages due upon separation of employment; and (v) engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. On July 21, 2021, Plaintiff sent his PAGA notice letter to the LWDA. *Id.*; Exhibit B. Subsequently, on December 16, 2021, Plaintiff filed the operative First

Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq. Id.*

B. PLAINTIFF’S CLAIMS AND INSUA GRAPHICS’S DEFENSES

1. Meal Period Claims

Plaintiff alleges Insua Graphics failed to provide legally compliant first meal periods due to its meal period policies/practices, which frequently resulted in late (commencing after the fifth hour of work) first missed meal periods. Blakely Decl., ¶ 14. Plaintiff further alleges that Settlement Class members were not provided with second meal periods when they worked shifts in excess of 10.0 hours in a workday. *Id.*, at ¶ 15.

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

2. Rest Period Claims

Plaintiff alleges that Insua Graphics failed to authorize and permit all legally compliant off-duty rest periods. Blakely Decl., ¶ 16. Specifically, on shifts over 6.0 hours where two rest periods are required, Plaintiff alleges that Insua Graphics unlawfully combined employees’ rest

1 periods, providing one longer rest period during the first 4 or 5 hours of the shift, and failing to
2 authorize and permit a second rest period in the latter part of the shift. *Id.* Plaintiff alleges this
3 practice of combining rest periods violates Wage Order 1 as well as *Rodriguez v. E.M.E., Inc.*,
4 246 Cal.App.4th 1027 (2016), which held that employers generally may not combine employee
5 rest periods. Blakely Decl., ¶ 16.

6 Insua Graphics counters that it has maintained compliant written rest period policies
7 throughout the Class Period and has always authorized and permitted employees a 10-minute rest
8 period for each four (4) hours worked, or major fraction thereof, as required under the Wage
9 Order, and that any failure to take rest periods was a result of employee choice, rather than any
10 Insua Graphics policy and/or practice. Blakely Decl., ¶ 16. Insua Graphics further argues that any
11 departure from the “normal” rest period schedule was preferred by employees so that they could
12 have one longer rest period, rather than two shorter rest periods, and that it was necessary to
13 alleviate a material burden that would be imposed on Insua Graphics. *Id.*, *see also*, *Rodriguez*,
14 *supra*, 246 Cal.App.4th at 1040 (“A departure from the preferred schedule [of one rest break on
15 either side of the meal period] is permissible only when the departure (1) will not unduly affect
16 employee welfare and (2) is tailored to alleviate a material burden that would be imposed on the
17 employer by implementing the preferred schedule.”). Insua Graphics also argues that Plaintiff’s
18 rest period claim is not amenable to class treatment, since individual inquiries would be required
19 to determine which employees failed to take rest periods, how many rest periods they failed to
20 take, and the reasons why each employee failed to take rest period(s) on a particular shift. Blakely
21 Decl., ¶ 16. These manageability concerns are especially present with respect to rest period
22 claims, Insua Graphics argues, given that rest periods are not recorded. *Id.*

23 **3. Waiting Time Penalties**

24 As a result of the unpaid meal and rest period premium wages described above, Plaintiff
25 alleges that Insua Graphics failed to comply with its final pay obligations set forth in Labor Code
26 §§ 201-203. Blakely Decl., ¶ 17. Insua Graphics argues that it possesses strong, good faith
27 defenses to Plaintiff’s underlying claims, thus precluding recovery of waiting time penalties,
28 which are only available for the “willful” failure to pay wages. *Id.*; *see also* 8 Cal. Code Regs. §

1 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time
2 penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an
3 employer presents a defense, based in law or fact which, if successful, would preclude any
4 recovery on the part of the employee.”). Insua Graphics further asserts that Plaintiff’s waiting
5 time penalty exposure was grossly inflated as not every former employee experienced the alleged
6 Labor Code violations. Blakely Decl., ¶ 17.

7 **4. Wage Statement Claims**

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

20 **5. PAGA Civil Penalties**

21 As a result of the foregoing Labor Code violations, Plaintiff alleges that Insua Graphics is
22 liable for civil penalties under the PAGA. Blakely Decl., ¶ 19. Since Plaintiff’s PAGA claim is
23 derivative of Plaintiff’s underlying wage claims, Insua Graphics asserts the PAGA claim would
24 fail with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011)
25 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
26 Insua Graphics further maintains that, given its good faith defenses, this Court would exercise its
27 discretion to substantially reduce any PAGA penalties if it were to find Insua Graphics liable for
28 any of Plaintiff’s claims. Blakely Decl., ¶ 19; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore*

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

7 **C. DISCOVERY AND MEDIATION**

8 In connection with mediation, the Parties engaged in extensive informal discovery.
9 Blakely Decl., ¶ 10. Insua Graphics produced a 20% sampling of timekeeping and payroll records
10 for non-exempt employees during the Class Period, as well as its relevant written wage and hour
11 policies/procedures. *Id.* Insua Graphics also provided relevant data points such as the total number
12 of workweeks in the Class Period and the total number of Settlement Class members employed
13 by Insua Graphics in California during the Class Period. *Id.* Plaintiff hired a labor economist with
14 a Ph.D. in economics to assist Plaintiff in conducting a comprehensive analysis and extrapolation
15 of the payroll and timekeeping data produced by Insua Graphics to create a detailed exposure
16 analysis for all claims at issue. *Id.* This discovery allowed the Parties to assess the merits and
17 value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Insua Graphics’
18 potential defenses. *Id.*

19 On September 8, 2022, the Parties participated in a full-day mediation with Jeffrey Krivis,
20 Esq., a preeminent wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation,
21 the Parties vigorously debated their opposing legal positions, the likelihood of certification of
22 Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* At the conclusion of the
23 mediation, Mr. Krivis issued a mediator’s proposal for a class-wide settlement, which was
24 ultimately accepted by both sides. *Id.* During the months that followed, the Parties finalized the
25 terms of the Settlement and executed the long-form Settlement Agreement now before the court.
26 *Id.*

27 ///

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1 **III. THE PROPOSED SETTLEMENT**

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

3 If the Court preliminarily approves the Settlement, Insua Graphics will pay a Maximum
4 Settlement Amount (“MSA”) of \$600,000.00. *See* Settlement, § 3. Significantly, this Settlement
5 is non-reversionary, and no Settlement Class member will have to submit a claim form to receive
6 an Individual Settlement Payment. *Id.*, at §§ 3-4. Each Settlement Class member will
7 automatically receive an Individual Settlement Payment unless they affirmatively opt out of the
8 Settlement. *Id.* The monetary terms of the Settlement are summarized below:

9

• Maximum Settlement Amount (“MSA”):	\$600,000.00
• Minus Court-approved attorneys’ fees:	\$200,000.00
• Minus Court-approved verified costs (up to):	\$30,000.00
• Minus Court-approved Enhancement Award:	\$7,500.00
• Minus payment to the LWDA:	\$15,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$8,000.00</u>
Net Settlement Amount (“NSA”):	\$339,500.00

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14 **1. The Settlement Provides for Reasonable Monetary Payments**

15 After deducting amounts for the Court-approved attorneys’ fees and costs, Class
16 Representative Enhancement Award to Plaintiff, the payment to the LWDA for its share of PAGA
17 civil penalties, and settlement administration costs, the Settlement requires Insua Graphics to pay
18 a Net Settlement Amount (“NSA”) of at least \$339,500.00 to all Settlement Class members who
19 do not timely opt-out. *See* Settlement, § 4(A). The NSA shall be distributed to each participating
20 Settlement Class member based on their proportionate number of workweeks worked during the
21 Class Period. *Id.*, at § 4(B)(i). Additionally, Five Thousand Dollars (\$5,000.00) of the Maximum
22 Settlement Amount has been designated as the “PAGA Amount” and shall be distributed to the
23 PAGA Aggrieved Employees (including those who submit a valid and timely Request for
24 Exclusion from the class action settlement) who were employed during the PAGA Period (i.e.,
25 July 21, 2020, until November 1, 2022) proportionally based on the number of workweeks worked
26 during that time period. *Id.*, at § 4(B)(ii).

27 According to Insua Graphics, there are approximately 124 Settlement Class members.
28 Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Payment from the NSA is

1 projected to be approximately \$2,737.90. *Id.* There are approximately 107 Aggrieved Employees
2 during the PAGA Period. *Id.* Therefore, each Aggrieved Employee will receive an average of
3 approximately \$46.73 from the PAGA Amount. *Id.* Settlement Class members will have sixty
4 (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement,
5 thereby providing ample time to review the Class Notice without unduly delaying the Settlement.
6 *See* Settlement, §§ 9(C)-(D). Those Settlement Class members who do not opt-out of the
7 Settlement will be bound by its terms and will release all claims against Insua Graphics included
8 within the Settlement. *See Id.*, at § 2(A).

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

10 Plaintiff will apply for Class Representative Enhancement Award at the time of seeking
11 final approval of the proposed class action settlement in the amount of \$7,500.00 for his service
12 to the Settlement Class. *See* Settlement, §§ 3(E)(3), 6; Blakely Decl., ¶ 23. “[I]ncentive awards
13 are fairly typical in class action cases . . . and are intended to compensate class representatives for
14 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
15 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
16 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement
17 Award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement
18 Class, including providing substantial factual information and documents to Class Counsel,
19 discussing the claims and theories at issue in the litigation, actively participating in the
20 prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve
21 as the named plaintiff in this case. *See* Blakely Decl., ¶ 23; *see also* Baez Decl.

22 Class Counsel will also apply for an attorneys’ fees award of one-third of the Maximum
23 Settlement Amount, which is currently estimated to be \$200,000.00, and up to \$30,000.00 in
24 verified costs reimbursement. *See* Settlement, §§ 3(E)(4), (5); Blakely Decl., ¶ 22. Plaintiff
25 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
26 time-consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred
27 substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims,
28 conducting legal research, conducting extensive informal discovery, analyzing Settlement Class

1 members' timekeeping and payroll records with the help of a retained expert, creating a
2 comprehensive damages model, preparing for and attending mediation, negotiating and preparing
3 the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.*
4 Class Counsel expects to expend additional attorney time in attending the hearing on this Motion,
5 overseeing the Notice process and fielding questions from Settlement Class members, preparing
6 the final approval papers, and attending the Final Approval hearing. *Id.*

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

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

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

1 settlement).

2 **IV. ARGUMENT**

3 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

17 **1. Standard for Preliminary Approval**

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

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

28 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff

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

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

Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 21. 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 Plaintiff was 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 expense. *Id.*

c. Risk of Maintaining Class Action Status

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's 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 Insua Graphics 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.

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. Plaintiff, with the help of its retained expert, conducted a detailed analysis of
4 alleged meal and rest period premium payments owing, wage statement penalties, waiting time
5 penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are
6 discussed below:

7 First Meal Period Violations: \$248,271

8 Plaintiff alleges that Insua Graphics failed to provide timely 30-minute meal periods
9 before the conclusion of the fifth hour of work. Blakely Decl., ¶ 14. Based on Plaintiff's expert's
10 analysis and extrapolation of the timekeeping data produced by Insua Graphics, there were
11 approximately 39,665 shifts during the Class Period with a non-compliant first meal period. *Id.*
12 Additionally, it was revealed that Insua Graphics had made approximately 110 meal period
13 premium payments throughout the Class Period. *Id.* Further, based on data provided by Insua
14 Graphics, Settlement Class members' average hourly rate of pay during the Class Period was
15 approximately \$19.02 per hour. *Id.* Therefore, assuming each late, short, and/or missed meal
16 period reflected in the timekeeping records would result in a violation and giving Insua Graphics
17 credit for the 110 paid meal period premiums paid, Plaintiff calculated Insua Graphics' maximum
18 exposure on this claim at approximately \$752,336 (39,555 non-compliant first meal periods *
19 \$19.02 average meal period premium). *Id.*

20 However, as noted above, Insua Graphics contends that it provided compliant meal
21 periods to Settlement Class members throughout the Class Period. Blakely Decl., ¶ 14. Insua
22 Graphics also asserts that under *Brinker* it is only required to "provide" the opportunity to take
23 meal periods, not "ensure" meal periods are taken, and that, as described above, it has always
24 done so, and any non-complaint first meal periods in the timekeeping records were the result of
25 lawful employee waiver or choice. *Id.*; *see also Brinker, supra*, 53 Cal.4th at 1038 (rejecting
26 "ensure" standard and holding employers only have to "provide" employees the opportunity to
27 take meal periods). Insua Graphics also maintains that the first meal period claim is not suited for
28 class certification, since individual inquiries would be needed to assess which employees took

1 non-compliant meal periods or missed meal periods, how many meal periods were non-compliant
2 or missed, and the reasons why a particular employee did not take a compliant meal period on a
3 particular shift. Blakely Decl., ¶ 14. In light of these defenses and arguments, Plaintiff discounted
4 Insua Graphics' maximum exposure by 40% for the risk of non-certification, and an additional
5 45% to account for Insua Graphics' defenses on the merits or failing to recover the full amount
6 sought, to arrive at an estimated total of approximately \$248,271. *Id.*

7 Second Meal Period Violations: \$72,978

8 Plaintiff's expert's analysis and extrapolation of the timekeeping data revealed that
9 approximately 18,271 total shifts were over 10.0 hours and did not reflect a legally compliant
10 second meal period. Blakely Decl., ¶ 15. Plaintiff therefore calculates Insua Graphics' exposure
11 for second meal period violations at approximately \$347,514 (18,271 non-compliant second meal
12 periods * \$19.02 average premium). *Id.*

13 However, Plaintiff's theory of liability carried significant risks of both non-certification
14 and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Insua Graphics'
15 argument that it has maintained compliant written meal period policies throughout the Class
16 Period, and that Settlement Class members voluntarily waived their second meal period on shifts
17 in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶ 15. If the
18 Court accepted Insua Graphics' waiver argument for shifts less than 12.0 hours in duration, then
19 there were only approximately 939 shifts at issue, as this is the estimated number of shifts worked
20 over 12.0 hours with a non-compliant second meal period. *Id.* This would significantly reduce
21 Insua Graphics' maximum exposure as only shifts in excess of 12.0 hours would be at issue,
22 thereby reducing Insua Graphics' potential liability to approximately \$17,860 (939 shifts * \$19.02
23 average premium). *Id.* As with Plaintiff's first meal period claim, Insua Graphics argues that
24 individualized inquiries would preclude class certification for this claim as well. *Id.* In light of
25 these risks, Plaintiff discounted the maximum amount that the class could potentially recover by
26 40% for the risk of non-certification and an additional 65% for the risk of losing on the merits, or
27 having exposure reduced due to Insua Graphics' waiver arguments, to arrive at estimated
28 exposure of \$72,978. *Id.*

1 Rest Period Violation: \$135,094

2 Plaintiff alleges that Insua Graphics failed to authorize and permit Plaintiff and other non-
3 exempt employees to take duty-free 10-minute rest periods for every four hours worked, or major
4 fraction thereof, due to its combined rest period policies/practices. Blakely Decl., ¶ 16. Based on
5 Plaintiff's expert's analysis and extrapolation of employee timekeeping records, there were
6 approximately 67,645 shifts of 6.0 hours or more worked by Settlement Class members during
7 the Class Period, entitling Settlement Class members to two rest periods. *Id.* Thus, Plaintiff
8 calculated the maximum potential exposure for this claim at approximately \$1,286,608 (67,645
9 rest period violations * \$19.02 average premium). *Id.*

10 However, as discussed above, Insua Graphics argues that it always maintained and
11 enforced lawful rest period policies and practices during the Class Period. Blakely Decl., ¶ 16.
12 Insua Graphics also maintains that any failure to take rest periods was the result of employee
13 waiver or choice, and that it is not required to police rest periods. *Id.* Insua Graphics also argues
14 that any departure from the preferred rest period schedule was permitted by applicable law. *Id.*
15 Insua Graphics further argues that Plaintiff's rest period claim is not amenable to class treatment
16 as individualized inquiries would be required to determine which employees failed to take rest
17 periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id.*
18 These considerations are particularly present with respect to rest periods, Insua Graphics argues,
19 as rest periods are not – and need not be – recorded. *Id.* In light of these defenses, Plaintiff
20 discounted the maximum amount that the class could potentially recover by 70% for risk of non-
21 certification, and discounted an additional 65% for risk of being unsuccessful on the merits or
22 failure to recover the full amount sought, to arrive at a projected exposure of \$135,094. *Id.*

23 Waiting Time Penalties: \$65,280

24 Insua Graphics' records reflected approximately 52 former Settlement Class members
25 who are eligible for waiting time penalties. Blakely Decl., ¶ 17. Based on an hourly rate of \$19.02,
26 Plaintiff estimated the average waiting time penalty per former employee to be approximately
27 \$4,565 (\$19.02 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated Insua Graphics'
28 maximum exposure for potential waiting time penalties to be approximately \$237,380 (52 former

employees * \$4,565 average penalty). *Id.*

Insua Graphics presented several defenses to this claim, most notably their assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not “willful” as a matter of law. Blakely Decl., ¶ 17. Insua Graphics further asserts that Plaintiff’s waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome Insua Graphics’ defenses, both as to class certification and on the merits, as to his underlying claims. *Id.* To account for Insua Graphics’ defenses, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification and an additional 50% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$65,280. *Id.*

Wage Statement Penalties: \$117,700

Plaintiff alleges that Insua Graphics is liable for wage statement penalties as a result of the unpaid meal and rest period premiums. Blakely Decl., ¶ 18. Those penalties are calculated as \$50 for each “initial” violation and \$100 for each “subsequent” violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff’s expert’s analysis reflected that there were approximately 107 unique employees and approximately 6,422 pay periods worked during the liability period applicable to Plaintiff’s wage statement claim. *Id.* Plaintiff, therefore, assumed the maximum \$4,000.00 penalty for each employee and calculated Insua Graphics’ potential wage statement exposure at approximately \$428,000 (107 employees * \$4,000 maximum penalty)]. *Id.*; *see also* Labor Code § 226(e).

In light of Insua Graphics’ arguments that no violations occurred, that employees suffered no “injury,” that any alleged violations were not “knowing and intentional,” that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted the maximum exposure by 45% for risk of non-certification, and by an additional 50% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$117,700.

Blakely Decl., ¶ 18.

PAGA Penalties: \$48,165

Based on Plaintiff's expert's analysis and extrapolation, Plaintiff estimated a maximum total PAGA exposure of approximately \$642,200 (6,422 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 19; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Insua Graphics disputes vigorously. Blakely Decl., ¶ 19; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Insua Graphics also asserts that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 19; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum figure by 70% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$48,165. Blakely Decl., ¶ 19.

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Settlement Class would be approximately \$687,488. Blakely Decl., ¶ 20. The proposed Settlement of \$600,000 represents approximately 87.3% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary 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 Pacific*

1 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
2 by competent, experienced counsel who possess extensive experience prosecuting and defending
3 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
4 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6. *see also* Declaration of Paul K. Haines (“Haines
5 Decl.”), ¶¶ 2-8; Class Counsel, with the help of a retained expert, conducted an in-depth review
6 of Insua Graphics’ timekeeping and payroll records and drew on their extensive experience in
7 similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Blakely Decl., ¶¶ 14-
8 20. The Settlement was also reached with the assistance of an experienced and respected wage-
9 and-hour class action mediator. *Id.* This factor strongly supports preliminary approval of the
10 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

18 The proposed Settlement reflects approximately 87.3% of the estimated recovery the
19 Settlement Class could reasonably expect in light of the significant litigation risks and will
20 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
21 percentage of the liability exposure recovered in this case far exceeds percentages routinely
22 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
23 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
24 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
25 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
26 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
27 be acceptable even though it amounts to only a fraction of the potential recovery that might be
28 available to the Settlement Class members at trial”). Further, the average Individual Settlement

1 Payment of approximately \$2,737.90 greatly exceeds average payments achieved in other wage
2 and hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within
3 the range of possible approval, such that notice should be provided to the Settlement Class
4 members so that they can consider the Settlement. The Court will have the opportunity to again
5 assess the reasonableness of the Settlement after the Settlement Class members have had the
6 opportunity to opt-out or object.

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

8 The Settlement resulted from an exchange of substantial information, arm's-length
9 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
10 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
11 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
12 discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping
13 and payroll data, and conducted a detailed statistical analysis of the data with the help of a retained
14 expert to arrive at his estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 14-20. Thus,
15 this factor supports preliminary approval.

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

2 Preliminary approval of the Settlement is also warranted because there are no obvious
3 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
4 members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment,
5 and Plaintiff’s Class Representative Enhancement Award, are all reasonable and appropriate
6 based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
7 factor supports preliminary approval.

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

9 The Settlement Class satisfies the criteria for certification of a settlement class under
10 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
11 (2) common questions of law and fact predominate over individual questions such that class
12 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff’s
13 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his
14 counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ.
15 Proc. § 382.

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

17 A class is “ascertainable” where the members “may be readily identified without
18 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
19 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
20 defined as all current and former non-exempt employees who worked for Insua Graphics in
21 California during the Class Period. Therefore, Settlement Class members can be identified from
22 Insua Graphics’ personnel and employment records. Insua Graphics represents that the Settlement
23 Class consists of approximately 124 current and former non-exempt employees. *See* Blakely
24 Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the
25 Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed
26 Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding
27 a class representing 10 beneficiaries of a trust sufficiently numerous).

28 ///

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

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

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

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

23 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
24 **Class**

25 The adequacy requirement examines conflicts of interest between named parties and the
26 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
27 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
28 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,

1 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
2 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
3 indication that Class Counsel were not qualified and the named plaintiff had no interests
4 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
5 and hour class action litigation. *See Haines Decl.*, ¶¶ 2-8; *Blakely Decl.*, ¶¶ 2-6.

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

7 This Court should order distribution to the Settlement Class of the proposed Class Notice
8 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address
9 information provided by Insua Graphics. *See Settlement*, § 9. This manner of giving notice is the
10 “best notice practicable” under the circumstances because it provides “individual notice to all
11 members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417
12 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by ILYM
13 Group, Inc. (“ILYM”), an experienced class action settlement administrator. *See generally*
14 Declaration of Lisa Mullins (“Mullins Decl.”) and attached exhibits. Settlement Class members’
15 addresses will be ascertainable through Insua Graphics’ personnel and payroll records, which
16 Insua Graphics will provide to ILYM within ten (10) business days of preliminary approval of the
17 Settlement. *See Settlement*, § 9(A). Within ten (10) business days of receipt of the Settlement
18 Class members’ addresses, ILYM will run the names of all Settlement Class members through
19 the National Change of Address database to update addresses and mail the Class Notice to all
20 Settlement Class members. *Id.*, at § 9(B). To the extent that any notices are returned, ILYM will
21 perform a “skip trace” to track any Settlement Class member’s current mailing address. *Id.*, at §
22 9(F).

23 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
24 because it advises Settlement Class members of the nature of the claims, basic contentions and
25 denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object
26 to the Settlement and the procedures by which to do so, explains the recovery formula and
27 expected recovery amount for each Settlement Class member, and advises them that they will be
28 bound by the terms of the Settlement if they do not opt-out. *See Blakely Decl.*, Exhs. 1, 2 to Exh.

1 A. The proposed Class Notice will also notify Settlement Class members of the final approval
2 hearing date and provides the Settlement Class contact information for Class Counsel and advises
3 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
4 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
5 cost-effective method of reaching Settlement Class members.

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

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

10 **V. CONCLUSION**

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

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15 Dated: July 21, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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17 By:



18 Paul K. Haines
19 Sean M. Blakely
20 Attorneys for Plaintiff
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