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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LAURA LOPEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

BARLOW RESPIRATORY HOSPITAL, a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 21STCV29754 (Related to Case
Nos. 22STCV03831; 22STCV34472)

*[Assigned for all purposes to Hon. Carolyn
B. Kuhl, Dept. SSC-12]*

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

Date: July 9, 2024
Time: 10:30 a.m.
Dept.: 12

Action Filed: August 12, 2021
Trial Date: None Set

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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 July 9, 2024 at 10:30 a.m. in Department 12 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Laura Lopez and Winifred Allison (“Plaintiffs”) individually and on behalf of a class of similarly situated individuals, will and hereby do 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 Barlow Respiratory Hospital in California from February 15, 2017 until February 27, 2024 (the “Class Period”).
3. Preliminary appointment of Plaintiffs as Class Representatives;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC, Sahag Majarian II of The Law Office of Sahag Majarian II, and Joseph Lavi and Vincent Granberry of Lavi & Ebrahimi, LLP, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Enhancement Payments to Plaintiffs, civil penalties payable to the Labor & Workforce Development Agency (“LWDA”), settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Apex Class Action LLC 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, Alexandra R.
3 McIntosh, Sahag Majarian II, Vincent C. Granberry, Plaintiffs Laura Lopez and Winifred Allison,
4 and Sean Hartranft of Apex Class Action LLC, and the exhibits attached thereto; the pleadings,
5 and other papers filed in this Action; and on any further oral or documentary evidence or argument
6 presented at the time of the hearing.

7
8 Respectfully submitted,

9 Dated: May 24, 2024

HAINES LAW GROUP, APC

10
11 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. THE PARTIES AND BRIEF PROCEDURAL HISTORY	2
B. PLAINTIFFS' CLAIMS AND BARLOW'S DEFENSES	3
1. Meal Period Claims.....	3
2. Rest Period Claims.....	4
3. Failure to Timely Pay Wages.....	5
4. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices.....	5
5. Failure to Pay Wages at Agreed-Upon Rate	6
6. Waiting Time Penalties.....	7
7. Wage Statement Claims.....	7
8. PAGA Civil Penalties	8
C. DISCOVERY AND MEDIATION.....	8
III. THE PROPOSED SETTLEMENT.....	9
A. ESSENTIAL TERMS OF THE SETTLEMENT	9
1. The Settlement Provides for Reasonable Monetary Payments	10
2. Attorneys' Fees and Costs, Enhancement Payments, and PAGA Payment	11
IV. ARGUMENT.....	12
A. PRELIMINARY APPROVAL IS WARRANTED	12
1. Standard for Preliminary Approval.....	13
a. The Strength of Plaintiffs' Case.....	13
b. Risk, Expense, Complexity, and Duration of Further Litigation.....	14
c. Risk of Maintaining Class Action Status	14
d. Amount Offered in Settlement Given Realistic Value of Claims.....	14
e. The Experience and Views of Counsel	18
2. The Preliminary Approval Standard Is Met.....	19
a. The Settlement Is Within the Range of Possible Approval.....	19

1	b. The Settlement Resulted from Serious, Informed Negotiations, 20	
2	c. The Settlement Is Devoid of Obvious Deficiencies, 20	
3	B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS.....	21
4	1. The Proposed Class Is Ascertainable and Numerous	21
5	2. Common Issues of Law and Fact Predominate.....	21
6	3. The Claims of the Named Plaintiffs Are Typical	22
7	4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent	
8	the Class	22
9	C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE	23
10	D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	24
11	V. CONCLUSION.....	24

TABLE OF AUTHORITIES

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<i>Dunleavy v. Nadler</i> 213 F.3d 454 (9th Cir. 2000)	19
<i>Eisen v. Carlisle & Jacquelin</i> 417 U.S. 156 (1974).....	23
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<i>AHMC Healthcare, Inc. v. Superior Court</i> (2018) 24 Cal.App.5th 1014	6
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	18
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	22
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<i>Carrington v. Starbucks Corp.</i> 30 Cal.App.5th 504, 529 (2018)	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	13

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2	(2019) 40 Cal.App.5th 1239	6
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4	(2018) 6 Cal.5th 443	4
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6	(2010) 186 Cal.App.4th 1380	11
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8	(2008) 168 Cal.App.4th 116	13, 19, 20
9	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
10	(2016) 1 Cal.5th 480	12
11	<i>Maldonado v. Epsilon Plastics, Inc.</i>	
12	(2018) 22 Cal.App.5th 1308	7
13	<i>McGhee v. Bank of America</i> 60	
14	(1976) Cal.App.3d 442	22
15	<i>Price v. Starbucks Corp.</i>	
16	(2011) 192 Cal.App.4th 1136	8
17	<i>Reed v. United Teachers Los Angeles</i>	
18	(2012) 208 Cal.App.4th 322	13
19	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i>	
20	(2004) 34 Cal.4th 319	21-22
21	<i>Sevidal v. Target Corp.</i>	
22	(2010) 189 Cal.App.4th 905	21
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24	(2012) 203 Cal.App.4th 1112	8, 18
25	<i>Wershba v. Apple Computer, Inc.</i>	
26	(2001) 91 Cal.App.4th at 245	13
27	<u>State Statutes and Rules</u>	
28	8 Cal. Code Regs. § 13520.....	7
	Cal. Civ. Proc. § 382.....	21
	California Rule of Court 3.769	24
	Lab. Code § 2699(e)(2).....	8
	Labor Code § 226(e)	17

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Fleming v. Covidien Inc.

(C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx)
2011 WL 7563047 18

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Case No. ED CV10-01487 RGK (OPx)
2011 WL 7563047 (C.D. Cal. 2011).....8

Glass v. UBS Finan. Servs.

Case No. C-06-4068 MMC
2007 WL 221862 (N.D. Cal. 2007) 19

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Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010)20

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2013 WL 3907506 (C.D. Cal. 2013)..... 18

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2013 WL 3541217 (N.D. Cal. 2013) 12

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Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009).....20

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Wage Order 5, § 11(D)4

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Laura Lopez and Winifred Allison (hereinafter “Plaintiffs”) brought these class
4 and representative actions for various wage and hour violations on behalf of current and former
5 non-exempt employees who worked for Defendant Barlow Respiratory Hospital (“Barlow”) in
6 California from February 15, 2017 until February 27, 2024 (the “Class Period”). The primary
7 issues in this case pertain to Barlow’s alleged failure to pay all wages at the agreed upon-rate of
8 pay, failure to pay all wages due to its allegedly unlawful rounding practice, failure to timely pay
9 employees their wages, and unlawful meal and rest period policies/practices. As a result of these
10 alleged violations, Plaintiffs contend Barlow is liable for wage statement penalties, waiting time
11 penalties, and civil penalties under the Private Attorneys’ General Act (“PAGA”).¹

12 Plaintiffs now respectfully request that this Court preliminarily approve this non-
13 reversionary, common-fund class action settlement,² in which Barlow has agreed to pay One
14 Million One Hundred Seventy-Four Thousand Two Hundred Dollars and Zero Cents
15 (\$1,174,200.00) to the following Settlement Class:

16 All current and former non-exempt employees who worked for Defendant
17 Barlow Respiratory Hospital in California from February 15, 2017 until
18 February 27, 2024 (the “Class Period”).

19 If the Settlement is approved, Barlow will pay a non-reversionary Gross Settlement
20 Amount (“GSA”) of \$1,174,200.00. After deducting administration costs, Plaintiffs’ requested
21 Class Representative Enhancement Payments, the amount set aside as PAGA civil penalties, and

22 ¹ Plaintiffs’ operative Second Amended Class and Representative Action Complaint (“SAC”)
23 pleads the following causes of action: (1) failure to pay all wages at the agreed-upon rate; (2)
24 minimum wage violations; (3) wage statement violations; (4) unfair competition in violation of
25 Cal. Business & Professions Code § 17200, *et seq.*; (5) civil penalties under the PAGA; (6) meal
26 period violations; (7) rest period violations; (8) failure to timely pay earned wages during
employment; and (9) waiting time penalties.

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

requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately \$651,800.00 will be distributed to all Settlement Class members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period. Employees with standing for waiting time penalties, wage statement penalties, and PAGA civil penalties will also receive additional consideration for the release of those penalty claims.

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 1,163 Settlement Class members, and the average payment to participating Settlement Class members is projected to be approximately \$560.45.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Founded in 1902, Barlow is a long-term acute care hospital that specializes in ventilator weaning and post-ICU care. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Barlow employed Plaintiff Lopez as a non-exempt employee in the housekeeping department from approximately 2015 until approximately July 2021. *See* Declaration of Laura Lopez In Support of Approval of Class Action Settlement ("Lopez Decl."), ¶ 2. Plaintiff Allison worked for Barlow as a non-exempt employee from approximately June 2007 until approximately August 2021. *See* Declaration of Winifred Allison In Support of Approval of Class Action Settlement ("Allison Decl."), ¶ 3.

On August 12, 2021, Plaintiff Lopez filed her Class Action Complaint in Los Angeles County Superior Court, alleging that Barlow: (i) failed to pay all wages at the agreed-upon rate;

(ii) failed to pay all minimum wages; (iii) failed to issue accurate, itemized wage statements; and (iv) engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. That same day, Plaintiff Lopez sent her PAGA notice letter to the LWDA. *Id.*; Exhibit B (LWDA Letter). Subsequently, on November 12, 2021, Plaintiff Lopez filed a 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.*

On January 31, 2022, Plaintiff Allison filed a Class Action Complaint against Barlow in Los Angeles County Superior Court, in the matter entitled *Winifred Allison v. Barlow Respiratory Hospital*, Case No. 22STCV03831 (the “Allison Action”). Blakely Decl., ¶ 10. The Allison Action alleged the following causes of action: (i) minimum wage violations; (ii) meal period violations; (iii) rest period violations; (iv) failure to timely pay earned wages during employment; (v) wage statement violations; (vi) waiting time penalties; and (vii) unfair competition. *Id.* On October 27, 2022, Plaintiff Allison filed a separate representative action against Barlow in Los Angeles Superior Court in the matter entitled *Winifred Allison v. Barlow Respiratory Hospital*, Case No. 22STCV34472 (the “Allison PAGA Action”). *Id.* The Allison PAGA Action alleges a single cause of action for civil penalties under PAGA. *Id.*

As part of the Settlement, the Parties agreed and stipulated to the filing of a Second Amended Class and Representative Action Complaint (“SAC”) in this action, which adds Winifred Allison as a named plaintiff and class representative and adds all causes of action alleged in the Allison Action. Blakely Decl., ¶ 11. The operative SAC was filed on May 15, 2024. *Id.*

B. PLAINTIFFS’ CLAIMS AND BARLOW’S DEFENSES

1. Meal Period Claims

Plaintiffs allege that Barlow failed to provide legally compliant first meal periods due to their meal period policies/practices, which frequently resulted in late (commencing after the fifth hour of work) and/or short (i.e., less than a full 30 minutes) first meal periods. Blakely Decl., ¶ 17. Specifically, due to work demands imposed by Barlow, Plaintiffs allege they were often not provided with a first meal period prior to the conclusion of their fifth hour of work. *Id.* Plaintiffs

1 further allege that Settlement Class members were not provided with second meal periods when
2 they worked shifts in excess of 10.0 hours in a workday. *Id.*

3 In response, Barlow counters that it has maintained compliant written meal period policies
4 throughout the Class Period and has always provided compliant meal periods in line with those
5 policies. Blakely Decl., ¶ 17. Barlow further contends that it always provides employees the
6 opportunity to take meal periods and is not required to *ensure* they are taken. *Id.*; *see Brinker*
7 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus, Barlow
8 argues that any non-compliant meal periods resulted from lawful employee waiver or choice,
9 rather than any policy and/or practice of Barlow. Blakely Decl., ¶ 17. Barlow also argues that
10 pursuant to Wage Order 5, § 11(D), employees can voluntarily waive their right to one of their
11 two meal periods. *Id.*; *see Wage Order 5, § 11(D)* (“[e]mployees in the health care industry who
12 work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to
13 one of their two meal periods.”); *see also, Gerard v. Orange Coast Memorial Medical Center*, 6
14 Cal.5th 443 (2018). Finally, Barlow maintains Plaintiffs’ meal period claim is not suited for class
15 certification since individual inquiries would be needed to assess which employees, if any, took
16 non-compliant or missed meal periods, how many meal periods were non-compliant or missed,
17 the reasons why a particular employee did not take a meal period on a particular shift, and for
18 second meal periods, whether they waived the meal period. Blakely Decl., ¶ 17.

19 **2. Rest Period Claims**

20 Plaintiffs allege that Barlow failed to authorize and permit all required off-duty rest
21 periods. Blakely Decl., ¶ 18. Specifically, Plaintiffs allege they were not authorized or permitted
22 to take any off-duty rest period during their work shifts due to work demands imposed by Barlow
23 and the need to be on standby to service Barlow’s patients. *Id.* Moreover, Plaintiffs allege that
24 Barlow failed to authorize and permit a full ten minutes of “net rest” in an area appropriate for
25 rest away from the workstation during rest periods. *Id.*

26 Barlow counters that it has maintained compliant written rest period policies throughout
27 the Class Period and has always authorized and permitted employees a full 10-minute rest period
28 for each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and

1 that any failure to take rest periods was a result of employee choice, rather than any Barlow policy
2 and/or practice. Blakely Decl., ¶ 18. Barlow also argues that Plaintiffs’ rest period claim is not
3 amenable to class treatment, since individual inquiries would be required to determine which
4 employees failed to take rest periods, how many rest periods they failed to take, and the reasons
5 why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability
6 concerns are especially present with respect to rest period claims, Barlow argues, given that rest
7 periods are not recorded. *Id.*

8 **3. Failure to Timely Pay Wages**

9 Plaintiffs further allege that Barlow failed to pay Plaintiffs and other non-exempt
10 employees timely in compliance with Labor Code Section 204. Blakely Decl., ¶ 19. Specifically,
11 Barlow pays employees bi-weekly, and Labor Code § 204(d) requires employers who pay bi-
12 weekly to pay their employees no later than 7 days after the close of the pay period. *Id.* However,
13 until September 2021, Plaintiffs contend that Barlow did not pay its employees until 8 days after
14 the end of the bi-weekly pay period in violation of Labor Code Section 204. *Id.*

15 In response, Barlow contends that it has always timely paid its employees their wages and
16 that it has always deposited employees’ wages prior to the “Deposit Date” stated on their wage
17 statements. Blakely Decl., ¶ 19. Barlow further contends that there is no private right of action
18 under Labor Code section 204, and therefore, Plaintiffs can only pursue civil penalties under the
19 PAGA for this theory of liability. *Id.*

20 **4. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices**

21 Plaintiffs allege that Barlow underpaid Settlement Class members due to its allegedly
22 unlawful rounding policies/practices. Blakely Decl., ¶ 20. Plaintiffs contend that although
23 Barlow’s timekeeping system recorded hours worked to the minute, Barlow rounded all time-
24 punches to tenth-of-an-hour increments so that, over a period of time, they have been deprived of
25 all earned minimum wages. *Id.*

26 However, Barlow argues that its rounding policies/practices were lawful, since it was both
27 neutral on its face and resulted, over time, in employees being paid for all hours worked. Blakely
28 Decl., ¶ 20. Additionally, Barlow 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). Barlow further asserts that the Court of Appeals decision in *Camp v. Home Depot U.S.A* is currently on appeal and is not binding on trial courts. *Camp v. Home Depot U.S.A*, (February 1, 2023) S277518. Additionally, Barlow asserts Plaintiffs would be unable to certify a rounding class given the individualized inquiries as to whether Settlement Class members were in fact underpaid, or potentially overpaid, for each workday in question. Blakely Decl., ¶ 20.

5. Failure to Pay Wages at Agreed-Upon Rate

Plaintiffs contend that Barlow failed to pay employees at the rates of pay indicated on their wage statements, resulting in employees being underpaid each pay period. Blakely Decl., ¶ 21. For example, in the pay period ending January 5, 2021, Plaintiff Lopez’s wage statement indicates that she worked 64 regular hours at a rate of \$18.28 per hour, which should yield a total of: $\$18.28 * 64.0 = \$1,169.92$. *Id.* However, Plaintiff Lopez was in fact only paid \$1,169.68 for that pay period. *Id.* Accordingly, Plaintiffs allege that Barlow failed to pay employees at the agreed upon rate of pay. *Id.*

In response to this claim, Barlow asserts that the failure to pay employees at the rates listed on their wage statements was due to an inadvertent software glitch and that Barlow immediately fixed the error when they became aware. Blakely Decl., ¶ 21. Barlow further argues that the glitch only affected a small number of employees during a short period of time. *Id.* Lastly, Barlow argues that the amount underpaid was only a few cents each instance and that in total the amount allegedly underpaid was at most \$250, which Barlow argues further illustrates that any underpayment was not willful. *Id.*

///

1 **6. Waiting Time Penalties**

2 As a result of the unpaid wages and unpaid meal and rest period premium wages described
3 above, Plaintiffs allege that Barlow failed to comply with their final pay obligations set forth in
4 Labor Code §§ 201-203. Blakely Decl., ¶ 22.

5 Barlow argues that it possess strong, good faith defenses to Plaintiffs’ underlying claims,
6 thus precluding recovery of waiting time penalties, which are only available for the “willful”
7 failure to pay wages. Blakely Decl., ¶ 22; see *also* 8 Cal. Code Regs. § 13520 (“[A] good faith
8 dispute that any wages are due will preclude imposition of waiting time penalties under Section
9 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents a defense,
10 based in law or fact which, if successful, would preclude any recovery on the part of the
11 employee.”). Barlow further asserts that Plaintiffs’ waiting time penalty exposure was grossly
12 inflated as not every former employee experienced the alleged Labor Code violations. Blakely
13 Decl., ¶ 22. Moreover, because the waiting time claim is derivative of Plaintiffs’ underlying wage
14 claims, Barlow argues that Plaintiffs would need to overcome Barlow’s defenses, both as to class
15 certification and on the merits, as to their underlying claims. *Id.*

16 **7. Wage Statement Claims**

17 As a further result of the unpaid wages and unpaid meal and rest period premium wages
18 described above, Plaintiffs allege that Barlow is liable for wage statement penalties. Blakely
19 Decl., ¶ 23. Barlow argues any alleged wage statement violations were not “knowing and
20 intentional,” and Plaintiffs cannot show they or other employees “suffer[ed] injury” due to the
21 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
22 penalties. *Id.* Further, Barlow contends its wage statements always accurately reflected hours
23 worked and amounts paid as well as all other required information, precluding liability for wage
24 statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37
25 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that
26 they correctly reflected the hours worked and the pay received...The purpose of section 226 is to
27 *document the paid wages* to ensure the employee is fully informed regarding the calculation of
28 those wages.”) (Italics in original).

1 **8. PAGA Civil Penalties**

2 As a result of the foregoing Labor Code violations, Plaintiffs allege that Barlow is liable
3 for civil penalties under the PAGA. Blakely Decl., ¶ 24. Since Plaintiffs' PAGA claim is
4 derivative of Plaintiffs' underlying wage claims, Barlow asserts the PAGA claim would fail with
5 those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) ("Because the
6 underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Barlow further
7 maintains that, given its good faith defenses, this Court would exercise its discretion to
8 substantially reduce any PAGA penalties if it were to find Barlow liable for any of Plaintiffs'
9 claims. Blakely Decl., ¶ 24; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
10 *Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
11 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
12 (reducing PAGA penalties by over 82% in part because employer "not aware" of violations);
13 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
14 of just \$5 per pay period where employer made "good faith attempts" to comply with the law).

15 **C. DISCOVERY AND MEDIATION**

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

26 On June 22, 2022, the Parties participated in a full-day mediation with Jeffrey Ross, Esq.,
27 a well-respected wage and hour class action mediator. Blakely Decl., ¶ 13. During mediation, the
28 Parties vigorously debated their opposing legal positions, the likelihood of certification of

1 Plaintiffs’ claims, and the legal basis for the claims and defenses, as well as Barlow’s financial
2 condition. *Id.* The Parties did not reach a settlement at mediation. *Id.* In the months following
3 mediation, Barlow provided Plaintiffs’ counsel with its financial records and Plaintiffs, with the
4 help of their retained forensic accountant, reviewed the documents provided by Barlow to
5 evaluate Barlow’s financial condition. *Id.* Following an extensive review of Barlow’s financial
6 records, the Parties continued their discussions and ultimately agreed to a class-wide settlement.
7 *Id.*

8 During the months that followed, the Parties finalized the terms of the Settlement and
9 executed a long-form settlement agreement now before the Court. Blakely Decl., ¶ 14.

10 **III. THE PROPOSED SETTLEMENT**

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

12 If the Court preliminarily approves the Settlement, Barlow will pay a Gross Settlement
13 Amount (“GSA”) of \$1,174,200.00.³ *See* Settlement, § 3. Significantly, this Settlement is non-
14 reversionary, and no Settlement Class member will have to submit a claim form to receive a
15 Settlement Award. *Id.*, at §§ 3-4. Each Settlement Class member will automatically receive a
16 Settlement Award unless they affirmatively opt out of the Settlement. *Id.* The monetary terms of
17 the Settlement are summarized below:

18	• Gross Settlement Amount (“GSA”):	\$1,174,200.00
19	• Minus Court-approved attorneys’ fees:	\$391,400.00
20	• Minus Court-approved verified costs (up to):	\$50,000.00
21	• Minus Court-approved Enhancement Payments:	\$15,000.00
22	• Minus amount set aside as PAGA penalties:	\$50,000.00
23	• <u>Minus estimated settlement administration costs:</u>	<u>\$16,000.00</u>
24	Net Settlement Amount (“NSA”):	\$651,800.00

25 ³ Following Barlow’s representation of its financial condition, Barlow turned over its financial
26 records to Plaintiffs’ retained expert, Keith D. Messerschmidt, who is a forensic accountant and
27 has consulted or provided expert testimony in dozens of litigation and insurance matters. Blakely
28 Decl., ¶ 13. Mr. Messerschmidt opines that Barlow could not reasonably afford to pay more than
the Gross Settlement Amount and that the requested payment plan was necessary to avoid serious
interruptions to its business operations. Should the Court wish to review a declaration from Mr.
Messerschmidt attesting to these facts and Barlow’s financial condition, this declaration could
either be filed in *camera* or filed under seal, at the Court’s request.

- Plus 25% “PAGA Amount” to Settlement Class: \$12,500.00
- Total Amount Paid to Settlement Class Members: \$664,300.00**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative Enhancement Payments to Plaintiffs, the amount set aside as PAGA civil penalties, and settlement administration costs, the Settlement requires Barlow to pay a Net Settlement Amount (“NSA”) of at least \$651,800.00 to all Settlement Class members who do not timely opt-out. *See* Settlement, § 4(A). Eighty percent (80%) of the NSA shall be distributed to all participating Settlement Class members based on the proportionate number of workweeks each participating Settlement Class member worked during the Class Period. Settlement, ¶ 4(B)(i). Ten percent (10%) of the NSA shall be designated as the “Waiting Time Amount” and will be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment with Barlow at any time from February 15, 2018 to February 27, 2024. *Id.*, at ¶ 4(B)(ii). Ten percent (10%) of the NSA shall be designated as the “Wage Statement Amount” and will be paid to each participating Settlement Class member who worked for Barlow at any time from February 15, 2020 to February 27, 2024 based on the proportionate number of workweeks worked during that time period. *Id.*, at ¶ 4(B)(iii). Finally, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) shall be designated as the “PAGA Amount,” and shall be distributed to all Settlement Class members (regardless of whether they opt-out) proportionately based on the number of workweeks worked at any time from August 12, 2020 until February 27, 2024 (“PAGA Period”). *Id.*, at ¶ 4(B)(iv).

According to Barlow, there are approximately 1,163 Settlement Class members. Blakely Decl., ¶ 16. Therefore, the average Settlement Award from the NSA is projected to be approximately \$560.45. *Id.* There are also approximately 605 Aggrieved Employees during the PAGA Period who will each receive an average payment of approximately \$20.66 from the PAGA Amount. *Id.* Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 10(C)-(D). Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms

and will release all claims against Barlow included within the Settlement. *See Id.*, at § 2(B).

2. Attorneys' Fees and Costs, Enhancement Payments, and PAGA Payment

Plaintiffs will apply for Class Representative Enhancement Payments at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for each Plaintiff, for a total of \$15,000.00 for their services to the Settlement Class. *See Settlement*, §§ 3(D)(3), 6. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiffs’ requested Enhancement Payments are intended to recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of their claims, as well as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this case. *See Blakely Decl.*, ¶ 28; *see also Lopez Decl.*, ¶¶ 6-7; *Allison Decl.*, ¶¶ 6-8.

Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross Settlement Amount, which is currently estimated to be \$391,400.00, and up to \$50,000.00 in verified costs reimbursement. *See Settlement*, §§ 3(D)(4), 5; *Blakely Decl.*, ¶ 27. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiffs’ claims, conducting legal research, conducting extensive informal and formal discovery, meeting and conferring with Barlow regarding their discovery responses, analyzing Settlement Class members’ timekeeping and payroll records with the help of a retained expert, creating a comprehensive damages model, preparing for and attending mediation, reviewing Barlow’s financials with the help of a retained forensic accountant, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding

1 questions from Settlement Class members, preparing the Final Approval papers, and attending
2 the Final Approval hearing. *Id.*

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

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

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

26 **IV. ARGUMENT**

27 **A. PRELIMINARY APPROVAL IS WARRANTED**

28 California Rule of Court 3.769 conditions settlement of a class action on court approval,

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

13 **1. Standard for Preliminary Approval**

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

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

24 Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs
25 acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As
26 described above in section II.B., *supra*, Barlow presented multiple defenses to Plaintiffs’ claims,
27 both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to
28 litigate these 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 discovery prior to reaching the proposed
3 settlement, the Parties still had significant formal discovery to complete had the matter not been
4 settled. Blakely Decl., ¶ 26. This would have required the expenditure of substantial time and
5 resources by both Parties that would have very likely spanned several years. *Id.* Even if Plaintiffs
6 were to certify the classes, the Parties would incur considerably more attorneys' fees and costs
7 through a possible decertification motion, trial, and possible appeal, which would likely not be
8 beneficial to the Settlement class given Barlow's financial conditions. *Id.* This Settlement avoids
9 those risks and the accompanying expense. *Id.*

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

11 Plaintiffs had not yet filed their class certification motion, and as such, the extent to which
12 Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there
13 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
14 significantly smaller group of employees than the proposed Settlement Class, and the expected
15 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

17 The Settlement provides a positive recovery for the Settlement Class in the face of
18 disputed claims and Barlow's financial condition. Plaintiffs, with the help of their retained expert,
19 conducted a detailed analysis of alleged unpaid wages, meal and rest period premium payments
20 owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary
21 of the results of Plaintiffs' exposure analysis are discussed below:

22 Meal Period Violations: \$630,047

23 Plaintiffs allege that due to work demands imposed by Barlow, Barlow failed to provide
24 compliant meal periods to its non-exempt employees. Blakely Decl., ¶ 17. Based on Plaintiffs'
25 expert's review and extrapolation of the timekeeping records Barlow produced, there were
26 approximately 253,715 non-compliant meal periods. *Id.* Plaintiffs' expert also calculated the
27 average hourly rate of pay to be approximately \$35.63 per hour and determined that Barlow paid
28 approximately 1,100 meal period premium payments during the relevant time period. *Id.*

1 Therefore, Plaintiffs calculated Barlow’s maximum exposure for meal period violations at
2 approximately \$9,000,672 ([253,715 non-complaint meal periods – 1,100 meal period premiums]
3 * \$35.63 average meal period premium). *Id.*

4 However, as indicated above, Barlow contends that it maintained compliant meal period
5 policies throughout the Class Period and provided compliant meal periods in line with those
6 policies. Blakely Decl., ¶ 17. Barlow also asserts that under *Brinker* it is only required to
7 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that, as
8 described above, they have always done so, and that any non-complaint meal periods in the
9 timekeeping records were the result of lawful employee waiver or choice. *Id.* Barlow also
10 maintains that the meal period claim is not suited for class certification, since individual inquiries
11 would be needed to assess which employees took non-compliant meal periods or missed meal
12 periods, how many meal periods were non-compliant or missed, and the reasons why a particular
13 employee did not take a compliant meal period on a particular shift. *Id.* In light of these defenses,
14 Plaintiffs discounted Barlow’s maximum exposure by 65% for the risk of non-certification, and
15 an additional 80% to account for Barlow’s defenses on the merits or failure to recover the maximal
16 amount sought, to arrive at an estimated total of approximately \$630,047. *Id.*

17 Rest Period Violations: \$451,084

18 During the Class Period, Plaintiffs allege they were not authorized or permitted to take
19 off-duty rest period during their work shifts due to work demands imposed by Barlow. Blakely
20 Decl., ¶ 18. Moreover, Plaintiffs allege that Barlow failed to authorize and permit a full ten
21 minutes of “net rest” in an area appropriate for rest away from the workstation during rest periods.
22 *Id.* Based on Plaintiffs’ expert’s analysis and extrapolation of employee timekeeping records,
23 there were approximately 316,506 shifts in excess of 3.5 hours worked by Settlement Class
24 members during the Class Period. *Id.* Therefore, Plaintiffs estimated Barlow’s maximum
25 exposure for this claim at approximately \$11,277,109 (316,506 rest period eligible shifts * \$35.63
26 average rest period premium). *Id.*

27 However, in response, Barlow argues that it always maintained and enforced lawful rest
28 period policies and practices throughout the Class Period. Blakely Decl., ¶ 18. Barlow further

1 argues that Plaintiffs' rest period claim is not amenable to class treatment as individualized
2 inquiries would be required to determine which employees failed to take rest periods, and the
3 reasons why each employee failed to take a rest period on a particular shift. *Id.* These
4 considerations are particularly present with respect to rest periods, Barlow argues, as rest periods
5 are not—and need not be—recorded. *Id.* In light of these defenses, Plaintiffs discounted the
6 maximum amount that the class could potentially recover by 80% for risk of non-certification and
7 an additional 80% for risk of being unsuccessful on the merits or failure to recover the full amount
8 sought, to arrive at a projected exposure of \$451,084. *Id.*

9 **Failure to Pay Wages at Correct Rate: \$250.00**

10 Plaintiffs contend that Barlow failed to pay employees at the rates of pay indicated on
11 their wage statements resulting in employees being underpaid each pay period. Blakely Decl., ¶
12 21. Based on Plaintiffs' expert's review and extrapolation of employee payroll records, Barlow's
13 policy/practice of failing to pay employees at the correct rate only affected a limited amount pay
14 periods during the Class Period and only resulted in an underpayment of approximately \$250.00.
15 *Id.*

16 **Unpaid Wages Due to Rounding: No Value**

17 Plaintiffs allege Barlow rounded its employees' time entries in six-minute increments, and
18 that employees were underpaid as a result, resulting in unpaid minimum wages. Blakely Decl., ¶
19 20. However, based on Plaintiffs' expert's analysis of employee timekeeping records, Barlow's
20 time-rounding practice appears to be neutral and resulted in the overwhelming majority of
21 employees being overpaid during the Class Period. *Id.* Accordingly, and based on the case law
22 at the time the settlement was reached, Plaintiffs did not anticipate a realistic recovery on this
23 claim. *Id.*

24 **Waiting Time Penalties: \$93,377**

25 Barlow's records show approximately 364 Settlement Class members who separated their
26 employment with Barlow since February 15, 2018, and are therefore eligible for waiting time
27 penalties. Blakely Decl., ¶ 22. Based on an hourly rate of \$35.63, Plaintiffs estimated the average
28 waiting time penalty per former employee to be approximately \$8,551 (\$35.63 * 8 hours per day

1 * 30 days). *Id.* Therefore, Plaintiffs calculated Barlow’s maximum exposure for potential waiting
2 time penalties to be approximately \$3,112,564 (364 former employees * \$8,551 average penalty).
3 *Id.*

4 Barlow presented several defenses to this claim, most notably its assertion that because it
5 possessed good-faith defenses to the underlying claims, any failure to pay wages was not “willful”
6 as a matter of law. Blakely Decl., ¶ 22. Barlow further asserts that Plaintiffs’ waiting time penalty
7 exposure was grossly inflated as not every former employee experienced the alleged Labor Code
8 violations. *Id.* Moreover, because the waiting time claim is derivative of Plaintiffs’ underlying
9 wage claims, Plaintiffs would need to overcome Barlow’s defenses, both as to class certification
10 and on the merits, as to their underlying claims. *Id.* To account for Barlow’s defenses, Plaintiffs
11 discounted the maximum exposure by 80% for the risk of non-certification and an additional 85%
12 for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive
13 at an estimated exposure of approximately \$93,377. *Id.*

14 **Wage Statement Penalties: \$72,600**

15 Plaintiffs allege that Barlow is liable for wage statement penalties as a result of the unpaid
16 wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 23. Those penalties are
17 calculated as \$50 for each “initial” violation and \$100 for each “subsequent” violation, with a
18 maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Assuming each employee could
19 recover the \$4,000 maximum penalty, Plaintiffs calculated Barlow’s potential wage statement
20 exposure to be approximately \$2,420,000 (\$4,000 max. penalty * 605 employees). *Id.*

21 In light of Barlow’s arguments that no violations occurred, that employees suffered no
22 “injury,” that any alleged violations were not “knowing and intentional,” that the wage statements
23 always accurately reflected hours worked and amounts paid to employees, the risks associated
24 with Plaintiffs’ underlying claims discussed above, Plaintiffs discounted the maximum exposure
25 by 80% for risk of non-certification, and by an additional 85% for risk of being unsuccessful on
26 the merits, for an estimated realistic exposure of approximately \$72,600. Blakely Decl., ¶ 23.

27 **PAGA Penalties: \$129,905**

28 Plaintiffs estimated a maximum total PAGA exposure of approximately \$2,598,100

(25,981 pay periods * \$100 “initial” penalty). Blakely Decl., ¶ 24; *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 Barlow disputes vigorously. Blakely Decl., ¶ 24; *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). Barlow also asserts that the Court would drastically reduce any award of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 24; *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, Plaintiffs discounted the maximum figure by 75% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 80% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$129,905. Blakely Decl., ¶ 24.

Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential realistic recovery for the Settlement Class would be approximately \$1,377,263. Blakely Decl., ¶ 25. The proposed Settlement of \$1,174,200 represents approximately 85% 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 Plaintiffs’ 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 Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines

Decl.”), ¶¶ 2-8; Declaration of Alexandra R. McIntosh (“McIntosh Decl.”), ¶¶ 2-5; Declaration of Vincent C. Granberry (“Granberry Decl.”), ¶¶ 3-5. Class Counsel, with the help of a retained expert, conducted an in-depth review of Barlow’s timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs’ case. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

At this stage, 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 Manual for Complex Litigation* § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within the Range of Possible Approval

The proposed Settlement reflects approximately 85% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed 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*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“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”). Further, the average Settlement Award of approximately \$560.45 exceeds average payments achieved in other wage and hour class action

1 settlements.⁴ Thus, Plaintiffs submit that the proposed settlement is within the range of possible
2 approval, such that notice should be provided to the Settlement Class members so that they can
3 consider the Settlement. The Court will have the opportunity to again assess the reasonableness
4 of the Settlement after the Settlement Class members have had the opportunity to opt-out or
5 object.

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

7 The Settlement resulted from an exchange of substantial information, arm's-length
8 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
9 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
10 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
11 discussed above, Plaintiffs carefully vetted the claims at issue, reviewed extensive timekeeping
12 and payroll data, and conducted a detailed statistical analysis of the data with the help of a retained
13 expert to arrive at their estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 17-25. Thus,
14 this factor supports preliminary approval.

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

16 Preliminary approval of the Settlement is also warranted because there are no obvious
17

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 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
2 members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment,
3 and Plaintiffs’ Class Representative Enhancement Payments, are all reasonable and appropriate
4 based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
5 factor supports preliminary approval.

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

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

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

15 A class is “ascertainable” where the members “may be readily identified without
16 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
17 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
18 defined as all current and former non-exempt employees who worked for Barlow in California
19 during the Class Period. Therefore, Settlement Class members can be identified from Barlow’s
20 personnel and employment records. Barlow represents that the Settlement Class consists of
21 approximately 1,163 current and former non-exempt employees. *See* Blakely Decl., ¶ 16. It would
22 therefore be impracticable to bring all Settlement Class members before the Court or for each
23 Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class
24 satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class
25 representing 10 beneficiaries of a trust sufficiently numerous).

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

27 The focus in a certification dispute is not on the merits but rather on what types of
28 questions, “common or individual,” are likely to arise in the Action. *See Sav-On Drug Store, Inc.*

1 *v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated on,
2 among other issues, Barlow's uniform meal and rest period policies/practices. These types of
3 claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network*
4 *Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

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

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

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

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

1 and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8; McIntosh Decl.,
2 ¶¶ 2-5; Granberry Decl., ¶¶ 3-5.

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

4 This Court should order distribution to the Settlement Class of the proposed Class Notice
5 by U.S. Mail, postage prepaid, using the last known mailing address information provided by
6 Barlow. *See* Settlement, § 10. This manner of giving notice is the “best notice practicable” under
7 the circumstances because it provides “individual notice to all members who can be identified
8 through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the
9 Parties have agreed that the Settlement be administered by Apex Class Action LLC (“Apex”), an
10 experienced class action settlement administrator. *See generally* Declaration of Sean Hartranft
11 (“Hartranft Decl.”) and attached exhibits. Settlement Class members’ addresses will be
12 ascertainable through Barlow’s personnel and payroll records, which Barlow will provide to Apex
13 within thirty (30) calendar days of execution of the Settlement. *See* Settlement, § 10(A). Within
14 ten (10) business days of preliminary approval, Apex will run the names of all Settlement Class
15 members through the National Change of Address database to update addresses and mail the Class
16 Notice to all Settlement Class members. *Id.*, at § 10(B). To the extent that any notices are returned,
17 Apex will perform a “skip trace” to track any Settlement Class member’s current mailing address.
18 *Id.*, at § 10(F).

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

1 cost-effective method of reaching Settlement Class members.

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

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

6 **V. CONCLUSION**

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

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11 Dated: May 24, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

12
13 By:



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15 Sean M. Blakely
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