

1 **HAINES LAW GROUP, APC**
Paul K. Haines (SBN 248226)
2 phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
3 sblakely@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
4 amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
5 El Segundo, California 90245
Tel: (424) 292-2350
6 Fax: (424) 292-2355

7 Attorneys for Plaintiff

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF RIVERSIDE**

11 **RAMON PUENTE VASQUEZ**, as an
12 individual and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 vs.

16 **DECRA ROOFING SYSTEMS, INC.**, a
17 California Corporation; and **DOES 1** through
18 100,

19 Defendants.

Case No. CVRI2104302

*[Assigned for all purposes to Hon. Harold W.
Hopp, Dept. I]*

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

Date: February 23, 2024
Time: 8:30 a.m.
Dept.: 1

Reservation ID: 715108404820

Complaint Filed: September 21, 2021
Trial Date: None Set.

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
2 February 23, 2024, at 8:30 a.m. in Department 1 of the above-entitled Court, located at 4050 Main
3 Street, Riverside, California 92501, Plaintiff Ramon Puente Vasquez (“Plaintiff”), individually and
4 on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

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

8 All current and former non-exempt employees who worked for Defendant
9 Decra Roofing Systems, Inc. in California at any time from March 27,
10 2017, until the date of preliminary approval of the Settlement Agreement
(the “Class Period”).

- 11 3. Preliminary appointment of Plaintiff Ramon Puente Vasquez as Class Representative;
- 12 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R.
13 McIntosh of Haines Law Group, APC as Class Counsel;
- 14 5. The scheduling of a hearing to consider whether the Settlement should be finally
15 approved and to permit Class Representative Enhancement Payment to Plaintiff, civil
16 penalties payable to the LWDA, Settlement Administrator costs, and attorneys’ fees and
17 costs to Class Counsel;
- 18 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
19 Administrator for mailing notices;
- 20 7. Approval of the proposed Class Notice and an order that it be disseminated to the
21 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 Authorities,
2 the declaration of Paul K. Haines and exhibits attached thereto; the declarations of Sean M. Blakely
3 and Alexandra McIntosh; the declaration of Jodey Lawrence of Phoenix Settlement Administrators
4 and exhibits attached thereto; the declaration of Plaintiff Ramon Puente Vasquez; the declaration of
5 Ryan H. Crosner; the declaration of Alex Martinez; the Settlement Agreement; and on any further
6 oral or documentary evidence or argument presented at the time of hearing.

7
8 Dated: January 30, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ramon Puente Vasquez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) with Defendant Decra Roofing Systems, Inc. (“Defendant”). The
5 Settlement resolves this class and representative action pending against Defendant, in which
6 Plaintiff alleges that Defendant: (1) failed to pay all overtime and minimum wages; (2) failed to
7 provide all legally compliant meal periods; and (3) failed to authorize and permit all legally
8 compliant rest periods. Plaintiff further alleges that, as a result of these Labor Code violations,
9 Defendant failed to furnish accurate and compliant itemized wage statements and is liable for civil
10 penalties under the Private Attorneys General Act (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-
12 reversionary, common-fund class action settlement,¹ in which Defendant has agreed to pay Five
13 Hundred Thousand Dollars and Zero Cents (\$500,000.00) to the following Settlement Class, which
14 is estimated to consist of approximately 110 individuals:

15 All current and former non-exempt employees who worked for
16 Defendant Decra Roofing Systems, Inc. in California at any time from
17 March 27, 2017, until the date of preliminary approval of the
Settlement Agreement (the “Class Period”).

18 The \$500,000.00 Gross Settlement Amount represents a favorable result to Settlement Class
19 members who will be agreeing to a release of only those claims that were asserted in this litigation.
20 After deductions for Plaintiff’s requested Class Representative Enhancement Payment, settlement
21 administrator costs, the amount designated as PAGA civil penalties, the \$26,000.00 previously paid
22 to Settlement Class members (as discussed further below), and requested attorneys’ fees and costs
23 to Class Counsel, the remaining amount (the “Net Settlement Amount”) of approximately
24 \$212,333.33 will be distributed to all Settlement Class members who do not opt-out of the
25 Settlement based on the proportionate number of workweeks worked by each Settlement Class

26 _____
27 ¹ The Stipulation of Settlement (“Settlement”) is attached as **Exhibit A** to the Declaration of Paul
28 K. Haines filed concurrently with this Motion. The proposed Class Notice, Request for Exclusion
Form, and Objection Form are attached as **Exhibits 1, 2 and 3**, respectively, to the Settlement.

1 member during the Class Period and whether they have previously executed an individual release
2 agreement. PAGA Aggrieved Employees employed during the period of September 17, 2020, until
3 the date of preliminary approval (“PAGA Period”) will also be entitled to a share of the PAGA
4 Amount based on the proportionate number of workweeks worked during the PAGA Period.
5 Significantly, Settlement Class members do not need to file a claim form in order to receive a
6 Settlement Award, as all Settlement Class members will automatically receive a Settlement Award
7 unless they affirmatively opt-out. There are approximately 110 Settlement Class members, and the
8 average Settlement Award is projected to be approximately \$1,930.30.²

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

14 **II. SUMMARY OF THE LITIGATION**

15 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

16 Defendant designs and manufactures a variety of metal roofing products, including tiles,
17 shakes, and shingles. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 11. Plaintiff worked for
18 Defendant at its Corona, California facility as a non-exempt employee in its production department
19 since approximately 2012 but has been on a medical leave of absence since February 2022. *See*
20 Declaration of Plaintiff Ramon Puente Vasquez (“Vasquez Decl.”), ¶ 2.

21 On September 21, 2021, Plaintiff filed a Class Action Complaint in Riverside County
22 Superior Court, alleging that Defendant: (i) failed to pay all minimum wages; (ii) failed to pay all
23 overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and permit all
24 legally compliant rest periods; (v) failed to issue accurate, itemized wage statements; and (vi)
25 engaged in unfair competition in violation of California Business & Professions Code § 17200 *et*

26 _____
27 ² In addition to the \$1,930.30 average Settlement Award from the Net Settlement Amount,
28 Settlement Class members who worked during the PAGA Period will also receive a portion of
the PAGA Amount. Haines Decl., ¶ 24.

1 *seq.* Haines Decl., ¶ 12 . On September 17, 2021, Plaintiff sent his PAGA notice letter to the LWDA.
2 *Id.*, Exhibit B. On November 22, 2021, Plaintiff filed the operative First Amended Class and
3 Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the
4 PAGA. *Id.*

5 **B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

6 **1. Unpaid Wages Due to Unlawful Timekeeping Practices**

7 Plaintiff alleges that from September 17, 2017 through May 2, 2020, Defendant rounded its
8 employees’ timekeeping entries in a manner that consistently favored Defendant and that, as a result,
9 employees’ wages were underpaid. Haines Decl., ¶ 16.

10 Defendant argues that its rounding practices were lawful, since it was both neutral on its
11 face and resulted, over time, in employees being paid for all hours worked. Haines Decl., ¶ 16; *see*
12 *also See’s Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 901 (2012) (rounding policy
13 lawful if employer “applies a consistent rounding policy that, on average, favors neither
14 overpayment nor underpayment.”). Defendant further argues that just because an employee is
15 clocked in does not mean they are working. Haines Decl., ¶ 16. For example, much of the alleged
16 unpaid time was pre-shift (i.e., employees clocked in before the scheduled start of the shift), and
17 Defendant argues employees work as a group and that they do not begin performing work before
18 the start of their shift, and instead engage in personal activities like reading or talking with co-
19 workers before their shift. *Id.* Moreover, Defendant asserts the amount of unpaid time per shift is *de*
20 *minimis* and thus non-compensable. *Id.* Finally, Defendant asserts that Plaintiff would be unable to
21 certify this claim since its timekeeping policy is facially neutral and some employees were *overpaid*
22 due to rounding, and individualized inquiries would be necessary as to whether employees were in
23 fact underpaid or overpaid for each workday in question (including whether they were actually
24 working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

25 **2. Unpaid Overtime Based on Miscalculation of “Regular Rate”**

26 Plaintiff alleges that Defendant failed to pay all overtime wages to Plaintiff and other
27 Settlement Class members by failing to include the value of non-discretionary safety bonuses in its
28 calculation of the “regular rate” of pay for the purposes of overtime. Haines Decl., ¶ 17; 29 U.S.C.

207(e) (“regular rate” includes “all remuneration for employment”); *Huntington Mem’l Hosp. v. Superior Court*, 131 Cal.App.4th 893, 902-903 (2005) (payments included in calculation of regular rate are generally consistent under state and federal law).

Defendant argues that it properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Settlement Class members. Haines Decl., ¶ 17. Defendant contends that the safety bonuses are discretionary bonuses that do not need to be included in the regular rate for overtime purposes. *Id.*; 29 C.F.R. § 778.211 (discretionary bonuses need not be included in regular rate); *see also* 29 C.F.R. § 778.200(a)(1) (excluding from regular rate “sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.”). Defendant also contends that differences in the amount, type, and frequency of bonuses paid to different employees would require a series of mini-trials, which would render class certification of this claim inappropriate. Haines Decl., ¶ 17.

3. Meal Period Claims

Plaintiff alleges that Defendant failed to provide legally compliant first meal periods and second meal periods when Settlement Class members worked in excess of 10.0 hours. Haines Decl., ¶¶ 18-19. Specifically, Plaintiff alleges that first meal periods were often late (i.e., commencing after the completion of five hours of work) or short (i.e., less than 30 minutes) due to work demands imposed by Defendant. *Id.*, at ¶ 18. Furthermore, from the beginning of the Class Period until May 2020, Plaintiff alleges that Defendant did not record employee meal periods and automatically deducted 30-minutes each workday for a purported meal period regardless of whether a compliant first meal period was provided. *Id.*

Defendant counters that they have maintained compliant written meal period policies throughout the Class Period and have always provided employees the *opportunity* to take legally compliant meal periods, and that they are not required to “ensure” meal periods are taken. Haines Decl., ¶ 18; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers only have to “provide” employees the opportunity to take meal periods). Defendant also maintains that any short, missed, or late first meal periods were the

1 result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 18.
2 Additionally, Defendant maintains that employees voluntarily waived their second meal period
3 when they worked shifts in excess of 10.0 hours (but less than 12.0 hours), as they are entitled to do
4 under Labor Code § 512. *Id.*, at ¶ 19. Finally, Defendant argues that these claims are not suited for
5 class treatment, as individual inquiries would be needed to assess which employees took non-
6 compliant meal periods or missed meal periods, how many meal periods were non-compliant or
7 missed, and the reasons why a particular employee did not take a compliant meal period on a
8 particular shift. *Id.*, at ¶¶ 18-19.

9 4. Rest Period Claims

10 Plaintiff alleges that Defendant failed to authorize and permit its non-exempt employees to
11 take all required rest periods. Haines Decl., ¶ 20. Specifically, Plaintiff alleges that he and other
12 non-exempt employees regularly worked shifts in excess of 10.0 hours, but Defendant’s rest period
13 policies/practices failed to authorize and permit a third rest period for shifts of over 10.0 hours. *Id.*

14 In response, Defendant argues that they have always maintained and enforced lawful rest
15 period policies/practices during the Class Period, and have, in fact, authorized and permitted all
16 required rest periods to Settlement Class members, including third rest periods. Haines Decl., ¶ 20.
17 Furthermore, Defendant argues that Plaintiff’s rest period claim is not amenable to class treatment,
18 as individualized inquiries would be required to determine which employees failed to take rest
19 periods, and the reasons why each employee failed to take a rest period on a particular shift, as there
20 are no records of whether or not a rest period was authorized and permitted. *Id.*

21 5. Derivative Claims Under Labor Code § 226 and the PAGA

22 As a result of these alleged wage and hour violations, Plaintiff asserts that Defendant failed
23 to comply with its wage statement obligations, in violation of Labor Code § 226. Haines Decl., ¶
24 21. Finally, Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. *Id.*,
25 at ¶ 22.

26 Defendant contends that any alleged wage statement violations could not be shown to be
27 “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show he
28 or other employees “suffer[ed] injury” due to alleged wage statement violations, as required by Lab.

1 Code § 226(e), and that the wage statements always accurately reflected amounts *paid* to employees.
2 Haines Decl., ¶ 21; *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1337 (2018) (“The
3 purpose of section 226 is to ‘document the paid wages to ensure the employee is fully informed
4 regarding the calculation of those wages’”).

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

16 C. **THE LAWSUIT, DEFENDANT’S PICK-UP-STIX CAMPAIGN AND**
17 **RELEASES OBTAINED**

18 After Plaintiff initiated the Action, Defendant conducted a “*Pick-Up-Stix*” campaign in
19 which it offered individual settlement payments of \$500 to putative class members in exchange for
20 a release of claims. Haines Decl., ¶ 13. Defendant represents that approximately 52 out of 110
21 Settlement Class members signed a release and accepted the offered compensation for a total of
22 \$26,000. *Id.*

23 D. **DISCOVERY AND MEDIATION**

24 Prior to attending mediation, the Parties engaged in significant formal and informal
25 discovery, including Defendant’s production of a random sampling of timekeeping and payroll data
26 for approximately 57% of all putative Settlement Class members, including actual and rounded time-
27 punches. Haines Decl., ¶ 14. The Parties also completed a *Belaire-West* opt out process and
28 Plaintiff’s counsel was provided with the contact information for those Settlement Class member

1 who did not opt out of the *Belaire-West* process. *Id.* Thereafter, Plaintiff’s counsel interviewed
2 Settlement Class members regarding their work experiences with Defendant. *Id.* Defendant also
3 produced its relevant wage and hour policies and employee handbooks, and other relevant data and
4 information, including the total number of putative class members and the total number of
5 workweeks worked by putative class members during the Class Period. *Id.* Plaintiff hired a labor
6 economist with a Ph.D. in economics to conduct a comprehensive analysis and extrapolation of the
7 timekeeping and payroll data to calculate Defendant’s potential exposure for each of Plaintiff’s
8 claims. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the
9 chances of certification of Plaintiff’s claims, and Defendant’s potential defenses. *Id.*

10 On January 23, 2023, the Parties attended a full-day mediation with the Honorable Daniel
11 Buckley (Ret.), a preeminent wage and hour class action mediator. Haines Decl., ¶ 15. During
12 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
13 certification of Plaintiff’s claims, and the legal bases for Plaintiff’s claims and Defendant’s defenses.
14 *Id.* At the conclusion of mediation, Judge Buckley (Ret.) made a mediators’ proposal, which was
15 ultimately accepted by the Parties. *Id.* During the months that followed, the Parties negotiated and
16 formalized the terms of the Settlement and executed the long-form Settlement Agreement now
17 before the Court. *Id.*

18 **III. THE PROPOSED SETTLEMENT**

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

20 If the Court preliminarily approves this Settlement, Defendant will pay a Gross Settlement
21 Amount (“GSA”) of \$500,000.00. *See* Settlement, § 3. Significantly, this Settlement is non-
22 reversionary, and no Settlement Class member will have to submit a claim form to receive a
23 Settlement Award. *Id.*, at §§ 3-4. Each Settlement Class member will automatically receive a
24 Settlement Award unless they affirmatively opt out of the Settlement. *Id.*

25 The monetary terms of the Settlement are summarized below:

- | | | |
|----|--|--------------|
| 26 | • Gross Settlement Amount (“GSA”): | \$500,000.00 |
| 27 | • Minus Settlement Payments Previously Paid: | \$26,000.00 |
| 28 | • Minus Court-approved attorneys’ fees (1/3): | \$166,666.67 |
| | • Minus Court-approved verified costs (up to): | \$40,000.00 |

- Minus Court-approved Enhancement Payment: \$7,500.00
- Minus amount set aside as PAGA penalties: \$40,000.00
- Minus estimated settlement administration costs: \$7,500.00
- Net Settlement Amount (“NSA”): \$212,333.33
- PLUS 25% “PAGA Amount” to Settlement Class: \$10,000.00
- Total Amount Paid to Settlement Class members: \$222,333.33**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Plaintiff’s Class Representative Enhancement Payment, Settlement Administrator costs, and the amount designated as PAGA civil penalties, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of approximately \$212,333.33 to all Settlement Class members who do not timely opt out. *See* Settlement, § 4(A). The NSA shall be distributed to all participating Settlement Class members based on the participating Settlement Class member’s proportionate number of workweeks worked during the Class Period and whether the Settlement Class member previously executed an individual release agreement. *Id.*, at § 4(B)(i). In addition to the NSA, Ten Thousand Dollars and Zero Cents (\$10,000.00) has been designated as the “PAGA Amount,” and shall be distributed to PAGA Aggrieved Employees proportionally based on the number of workweeks worked for Defendant in California at any point from September 17, 2020, through the end of the Class Period (“PAGA Period”). *Id.*, at § 4(B)(ii).

Defendant’s share of employer-side payroll taxes will be paid by Defendant separate, and in addition to, the GSA. *See* Settlement, § 3(D). Any payment from the PAGA Amount shall be treated as 100% penalties; and any payment from the NSA to Settlement Class members shall be allocated as twenty percent (20%) wages, and eighty percent (80%) penalties and interest. *Id.*, at § 4(D). The Settlement Administrator will issue to Settlement Class members an IRS Form W-2 (for amounts paid was wages) and an IRS Form 1099 (for amounts paid as penalties and interest). *Id.* The Parties propose that any uncashed checks shall escheat to the California State Controller’s Office for deposit in the Unclaimed Property Fund in the name of the Settlement Class member who does not cash his/her check. *Id.*, at § 4(E).

According to Defendant’s records, there are approximately 110 total Settlement Class members. Haines Decl., ¶ 24. Therefore, the average Individual Settlement Award is projected to

1 be approximately \$1,930.30. *Id.* Based on the proposed allocations of the Net Settlement Amount,
2 the lowest potential Individual Settlement Award is projected to be approximately \$183.59, and the
3 highest potential Individual Settlement Award is estimated to be approximately \$3,977.71. *Id.* There
4 are also approximately 52 Aggrieved Employees who worked during the PAGA Period. *Id.*
5 Therefore, the average payment from the PAGA Amount is estimated at approximately \$192.31. *Id.*

6 Settlement Class members will have sixty (60) days to opt-out, submit a dispute, or object
7 to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying
8 the Settlement. *See* Settlement, §§ 9(C)-(E). Those Settlement Class members who do not opt-out
9 of the Settlement will be bound by its terms and will release all claims against Defendant included
10 within the Settlement. *See Id.*, at § 2(A).

11 **2. Attorneys' Fees, Costs, and Enhancement Payment**

12 Plaintiff will separately apply for Enhancement Payment at the time of seeking final approval
13 of the proposed Settlement in the amount of \$7,500, for his service to the Settlement Class. *See*
14 Settlement, §§ 3(C)(4), 6. "[I]ncentive awards are fairly typical in class action cases . . . and are
15 intended to compensate class representatives for work done on behalf of the class [and] to make up
16 for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination*
17 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval,
18 Plaintiff's requested Enhancement Payment is intended to recognize the time and effort Plaintiff
19 expended on behalf of the Settlement Class, including providing substantial factual information and
20 documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims
21 and theories at issue in the litigation, actively participating in the prosecution of his claims, as well
22 as the significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in this case
23 and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of California
24 Civil Code section 1542. *See generally*, Vasquez Decl.

25 Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is
26 currently estimated to be \$166,666.67, and up to \$40,000.00 in verified costs reimbursement. *See*
27 Settlement, §§ 3(C)(4), (5); Haines Decl., ¶ 26. Plaintiff submits the requested fee is fair
28 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely

1 contingent fee basis. Class Counsel has incurred substantial attorneys’ fees conducting pre-filing
2 investigation, analyzing Plaintiff’s claims, conducting legal research, engaging in formal and
3 informal discovery, interviewing Settlement Class members regarding their working experiences,
4 reviewing Defendant’s documents and policies, analyzing Settlement Class members’ relevant
5 records, working with a retained expert to create a comprehensive damages model, preparing for
6 and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing
7 this Motion, and otherwise litigating the case. *Id.* Class Counsel expect to expend additional attorney
8 time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
9 from Settlement Class members, preparing the final approval papers, and attending the Final
10 Approval hearing. *Id.*

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

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

23 **IV. ARGUMENT**

24 **A. PRELIMINARY APPROVAL IS WARRANTED**

25 California Rule of Court 3.769 conditions settlement of a class action on court approval,
26 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
27 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
28 (2012) (Rule 3.769 requires the trial court to determine “that the settlement is fair, reasonable and

adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by Class Counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard For Preliminary Approval

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

a. The Strength of Plaintiff’s Case

Class Counsel and its expert carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data and conducted a detailed analysis of the data to create a comprehensive damages model for Defendant’s potential class-wide liability. *See Haines Decl.*, ¶ 14. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described in section II.B., *supra*, Defendant 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.

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

2 Although the Parties engaged in significant informal and formal discovery in advance of
3 mediation, the Parties still had significant discovery to complete in formal litigation had the matter
4 not settled. Haines Decl., ¶ 25. This would have required expenditure of substantial time and
5 resources by both Parties that would have very likely spanned several years. *Id.* Even if Plaintiff
6 was to certify the classes, the Parties would incur considerably more attorneys' fees and costs
7 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those
8 risks and the accompanying expense. *Id.*

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

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

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

16 The Settlement provides a fair and reasonable monetary recovery for Settlement Class
17 members for hotly disputed claims. After analyzing the data provided by Defendant prior to
18 mediation, Plaintiff prepared a class-wide exposure model and forecasted the expected recovery for
19 each claim as follows:

20 Unpaid Wages: \$31,714

21 Plaintiff alleges that Defendant maintained an unlawful policy/practice of rounding
22 timekeeping entries, resulting in unpaid wages to Settlement Class members. Haines Decl., ¶ 16.
23 Based on Plaintiff's expert's review of employee timekeeping records, Plaintiff contends that
24 Defendant's timekeeping practices resulted in approximately 4,537 net hours of unpaid wages. *Id.*
25 Because employees generally worked shifts of at least 8.0 hours, Plaintiff contends that these unpaid
26 wages should be paid at an overtime rate of pay. *Id.* As a result, Plaintiff estimates that Defendant's
27 maximum exposure for this claim is approximately \$158,568 (4,537 hrs. * \$34.95 avg. overtime
28 rate). *Id.*

1 But as noted above, Defendant raised several defenses to this claim, including its argument
2 that it utilized an even-handed timekeeping system that, on balance, resulted in employees being
3 paid for all hours actually worked; that some employees were overpaid as a result of its rounding
4 practice; and that Plaintiff would be unable to certify this claim given the individualized inquiries
5 as to whether employees were in fact underpaid, or overpaid for each workday in question. Haines
6 Decl., ¶ 16. Based on these defenses, Plaintiff discounted the maximum exposure by 60% to account
7 for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the
8 merits, to arrive at an estimated exposure of approximately \$31,714. *Id.*

9 Unpaid Overtime Due to Regular Rate Miscalculation: \$24,611

10 Plaintiff alleges that Defendant failed to include safety bonuses in employees' regular rate
11 of pay and therefore underpaid employees' overtime compensation in pay periods where employees
12 received these types of compensation and also worked overtime. Haines Decl., ¶ 17. Based on
13 Plaintiff's expert's review and extrapolation of the timekeeping and payroll records produced by
14 Defendant, and assuming that every category of compensation at issue should have been
15 incorporated into the "regular rate," Plaintiff estimates that employees were underpaid by
16 approximately \$51,272. *Id.* But as noted above, Defendant argues that the bonuses in question were
17 discretionary, and therefore did not need to be included in the regular rate of pay pursuant to the
18 relevant regulations. *Id.* Defendant also argues that differences among employees in type, frequency,
19 and amount of bonuses would create individualized issues that would make a class unmanageable.
20 *Id.* Based on these defenses, Plaintiff discounted the maximum exposure by 20% for the risk of non-
21 certification, and by an additionally 40% for the risk of losing on the merits or failing to recover the
22 full amount sought, to arrive at an estimated exposure of approximately \$24,611. *Id.*

23 First Meal Period Violations: \$153,702

24 As indicated above, from the beginning of the Class Period through May 2020, Defendant
25 did not record employee meal periods and instead automatically deducted 30 minutes each workday
26 for a purported meal period. Haines Decl., ¶ 18. During this time period, there were approximately
27 38,986 shifts in excess of 6.0 hours which do not reflect any meal period. *Id.* Plaintiff assumed a
28 violation for each of these 38,986 shifts. *Id.* Plaintiff's analysis further revealed approximately 2,476

1 non-compliant first meal periods after May 2020 when Defendant began to record meal periods. *Id.*
2 In total, there are approximately 41,462 shifts that reflect a potential first meal period violation. *Id.*
3 Additionally, based on Defendant's records, Defendant has paid 233 meal period premiums. *Id.*
4 Therefore, Plaintiff estimates Defendant's maximum exposure for first meal period violations at
5 approximately \$960,636 (41,462 non-compliant first meal periods – 233 premiums paid * \$23.30
6 average meal period premium). *Id.*

7 However, Defendant contends that they have maintained compliant written meal period
8 policies throughout the Class Period and have always provided its employees the *opportunity* to take
9 legally compliant meal periods, and that it is not required to "ensure" meal periods are taken. Haines
10 Decl., ¶ 18. Defendant also argues this claim is not suited for class treatment, as 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.* Based on these defenses,
14 Plaintiff discounted the maximum amount by 60% for risk of non-certification, and an additional
15 60% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an
16 estimated exposure of approximately \$153,702. *Id.*

17 Second Meal Period Violations: \$87,753

18 Plaintiff's expert's analysis of the timekeeping data showed that during the Class Period,
19 there were approximately 23,539 shifts worked in excess of 10.0 hours where a second meal period
20 violation occurred without a first meal period violation. Haines Decl., ¶ 19; *see United Parcel*
21 *Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011) ("[E]mployees in this case may
22 recover up to two additional hours of pay on a single work day for meal period and rest period
23 violations – one for failure to provide a meal period and another for failure to provide a rest period").
24 Therefore, Plaintiff calculates Defendant's maximum exposure for second meal period violations at
25 approximately \$548,459 (23,539 second meal period violations * \$23.30 meal period premium).
26 Haines Decl., ¶ 19.

27 However, Plaintiff's theory of liability carried significant risks of both non-certification and
28 on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Defendant's argument

1 that it has maintained compliant written meal period policies throughout the Class Period, and
2 Settlement Class members voluntarily waived their second meal period on shifts in excess of 10.0
3 hours but less than 12.0 hours per Labor Code § 512. Haines Decl., ¶¶ 18-19. In light of these risks,
4 Plaintiff discounted the maximum amount that the class could potentially recover by 60% for a risk
5 of non-certification, and an additional 60% for a risk of losing on the merits, or having exposure
6 reduced due to Defendant's waiver arguments, to arrive at estimated exposure of approximately
7 \$87,753. *Id.*

8 **Rest Period Violations: \$167,794**

9 Plaintiff alleges that Defendant failed to authorize and permit its non-exempt employees
10 with all required third rest periods during shifts in excess of 10.0 hours. Haines Decl., ¶ 20.
11 Plaintiff's expert's analysis of the timekeeping data showed that during the Class Period, there were
12 approximately 45,009 shifts in excess of 10.0 hours worked by the non-exempt employees. *Id.*
13 Therefore, assuming a violation for each of these shifts, Plaintiff calculates Defendant's maximum
14 liability for rest period violations at approximately \$1,048,710 (45,009 violations * \$23.30 average
15 premium). *Id.*

16 However, Defendant argues that they have always maintained and enforced lawful rest
17 period policies/practices during the Class Period, and have, in fact, authorized and permitted all
18 required rest periods to Settlement Class members. Haines Decl., ¶ 20. Furthermore, Defendant
19 argues that Plaintiff's rest period claim is not amenable to class treatment as individualized inquiries
20 would be required to determine which employees failed to take rest periods, and the reasons why
21 each employee failed to take a rest period on a particular shift as there are no records of whether or
22 not a rest period was authorized and permitted. *Id.* Therefore, Plaintiff discounted Defendant's
23 maximum exposure by 60% to account for the risk of non-certification, and an additional 60% to
24 account for Defendant's defenses on the merits or failure to recover the full amount sought, to arrive
25 at an estimated exposure of approximately \$167,794. *Id.*

26 **Wage Statement Violations: \$49,770**

27 Plaintiff alleges that Defendant is liable for wage statement penalties as a result of its failure
28 to pay all wages owed and failure to pay all meal and rest period premiums. Haines Decl., ¶ 21.

1 Plaintiff's expert's analysis reflected that there were approximately 5,530 unique pay periods
2 worked by Settlement Class members within the one-year liability window under Labor Code § 226.
3 *Id.* In calculating Defendant's exposure, Plaintiff assumed he could recover the "initial" \$50 penalty
4 under Section 226(e) for each violation, for a total of \$276,500 (5,530 pay periods * \$50 "initial"
5 penalty) in potential penalties. *Id.*; see *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207
6 (2008) (finding "initial" violation rate applies until employer is notified it violated Labor Code);
7 *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2014) (citing *Amaral* and
8 applying "initial" \$50 penalty to all pay periods in calculating amount-in-controversy for wage
9 statement claim).

10 However, given Defendant's arguments that no violations occurred, that Settlement Class
11 members suffered no "injury," that any violations were not "knowing and intentional," as well as
12 risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the
13 maximum exposure by 55% for risk of non-certification, and by an additional 60% for risks on the
14 merits, for an estimated realistic exposure of approximately \$49,770. Haines Decl., ¶ 21.

15 **PAGA Civil Penalties: \$58,065**

16 The success of Plaintiff's PAGA claim is wholly dependent upon the success of his
17 underlying claims. Assuming that Plaintiff could prove at least one underlying Labor Code violation
18 in each pay period within the PAGA Period, Plaintiff estimates Defendant's maximum PAGA
19 exposure at \$553,000.00 (calculated from 5,530 pay periods * \$100 initial violation rate). Haines
20 Decl., ¶ 22; see also *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding
21 "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).
22 However, these penalties derived from the underlying wage and hour violations discussed above,
23 which Defendant vigorously disputes. See e.g., *Green v. Lawrence Service Co.* (C.D. Cal. 2013)
24 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits
25 of its underlying claims). Defendant also asserts that the Court would drastically reduce any award
26 of PAGA penalties as "confiscatory." Haines Decl., ¶ 22; see also *Thurman v. Bayshore Transit*
27 *Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties);
28 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming reduction of PAGA

1 penalties to \$5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No.
2 ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from \$2.8
3 million to \$500,000). Plaintiff therefore discounted the maximum figure by 65% for the risk of being
4 unable to proceed on a representative basis and risk of losing of the merits, and/or not recovering a
5 PAGA penalty in each and every pay period, and an additional 70% to account for the possibility of
6 this Court reducing penalties, to arrive at an estimated exposure of approximately \$58,065. Haines
7 Decl., ¶ 22.

8 Therefore, if Plaintiff was entirely successful at trial on all claims described above, Plaintiff
9 estimates the maximum total exposure to be approximately \$3,597,145. Haines Decl., ¶ 23.
10 However, taking into account Defendant's various defenses, both as to certification and merits
11 issues, difficulties of proof, and other risks described above, Plaintiff predicted that the potential
12 likely recovery for the Settlement Class at trial would be approximately \$573,409. *Id.* The proposed
13 settlement of \$500,000.00 therefore represents approximately 87.2% of the reasonably forecasted
14 recovery for the Settlement Class, while avoiding the further expense and serious risk of proceeding
15 towards class certification and trial. *Id.* Taking into account the risk of non-certification, failure to
16 prevail on the merits, and the Court's power to reduce the civil penalties, the proposed Settlement
17 falls well within the realm of being fair, reasonable, and adequate. *See e.g., Altamirano v. Shaw*
18 *Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour
19 class action settlement, stating, "[a]lthough 15% represents a modest fraction of the hypothetical
20 maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary
21 approval given the merits of Plaintiff's claims."). Preliminary approval is appropriate since the
22 Settlement will provide significant monetary relief to Settlement Class members without the
23 uncertainty, delay, and additional expense of further litigation.

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

25 "Parties represented by competent counsel are better positioned than courts to produce a
26 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises*
27 *Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent,
28 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour

1 class actions, and who have been appointed as class counsel in numerous cases alleging similar
2 claims. *See* Haines Decl., ¶¶ 2-8; Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6. Class
3 Counsel, with the help of their expert, conducted an in-depth review of Defendant’s relevant policies
4 and timekeeping and payroll records, and drew on their extensive experience in similar cases to
5 assess the strengths and weaknesses of Plaintiff’s case. *See* Haines Decl., ¶ 14. The Settlement was
6 also reached with the assistance of an experienced wage and hour class action mediator and a retired
7 Judge. *Id.*, at ¶ 15. This factor strongly supports preliminary approval of the Settlement. *See Kullar*,
8 *supra*, 168 Cal.App.4th at 130.

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

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

15 **a. The Settlement is Within the Range of Possible Approval**

16 The proposed settlement reflects approximately 87.2% of the estimated recovery the
17 Settlement Class could reasonably expect in light of the significant litigation risks, and will provide
18 tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability
19 exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass*
20 *v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving
21 settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459
22 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat’l*
23 *Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled
24 law that a proposed settlement may be acceptable even though it amounts to only a fraction of the
25 potential recovery that might be available to the Class Members at trial”). Further, the average
26 Settlement Award of \$1,930.30 far exceeds average payments achieved in other wage and hour class
27
28

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

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

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
8 months of additional negotiations. Thus, the Settlement is entitled to an initial presumption of
9 fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted
10 the claims at issue, reviewed extensive payroll and timekeeping data, and conducted a detailed
11 statistical analysis of the data to arrive at the estimated class-wide damages figures. *See Haines*
12 *Decl.*, ¶¶ 16-23. The parties attended a full-day mediation, and worked collaboratively in the
13 following months to finalize the Settlement. *Id.*, at ¶ 15. Thus, this factor supports preliminary
14 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 deficiencies. The Settlement will provide monetary relief to Settlement Class members. The
18 amounts proposed for Class Counsel's attorneys' fees and costs, the Enhancement Payment, and the

19
20 ³ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
21 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
22 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
23 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
24 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
25 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of
26 approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County
27 Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon,*
28 *Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of
approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-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 PAGA allocation are all reasonable and appropriate based on the facts of this case. Because the
2 Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

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

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

10 **1. The Proposed Class Is Ascertainable And Numerous**

11 A class is "ascertainable" where the members "may be readily identified without
12 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
13 *Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined
14 as all of Defendant's current and former non-exempt employees who worked for Defendant in
15 California at any time during the Class Period. *See* Settlement, § 1. Therefore, Settlement Class
16 members can be identified from Defendant's personnel and employment records. Defendant
17 represents that the Settlement Class consists of approximately 110 current and former non-exempt
18 employees. *See* Haines Decl., ¶ 24. It would therefore be impracticable to bring all Settlement Class
19 members before the Court, or for each Settlement Class member to bring an individual lawsuit. The
20 proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d
21 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

22 **2. Common Issues Of Law And Fact Predominate**

23 The focus in a certification dispute is not the merits, but rather on what types of questions,
24 "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
25 *Court (Rocher)*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated on, among other issues,
26 Defendant's allegedly unlawful timekeeping policies/practices, and allegedly unlawful meal and
27 rest period policies/practices. These types of claims are commonly held to be proper for class
28 certification. *See e.g., Williams v. Superior Court* 221 Cal.App.4th 1353, 1371 (2013) (certifying

1 class based on uncompensated work time); *Benton v. Telecom Network Specialists, Inc.*, 220
2 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3 **3. The Claims Of The Named Plaintiff Are Typical**

4 The typicality requirement is satisfied where class representatives have claims that are
5 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191
6 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named plaintiff purchased the
7 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of
8 those held by the members of the proposed Settlement Class. First, Plaintiff was employed by
9 Defendant during the Class Period as a non-exempt employee and was subject to Defendant's wage
10 and hour policies at issue in this case. *See Vasquez Decl.*, ¶ 2. Second, Plaintiff was injured by the
11 same challenged policies that allegedly injured the Settlement Class as a whole. For example,
12 Plaintiff asserts that he was deprived of all minimum and overtime wages due to Defendant's
13 unlawful timekeeping policies/practices. *Id.* Plaintiff also contends that Defendant failed to provide
14 legally compliant meal periods and failed to authorize and permit all rest periods. *Id.* Because
15 Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality
16 requirement is satisfied.

17 **4. Plaintiff And Class Counsel Will Fairly And Adequately Represent The**
18 **Class**

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

28 ///

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

2 This Court should order distribution to the Settlement Class of the proposed Class Notice in
3 English and Spanish by U.S. Mail, postage prepaid, using last known mailing address information
4 provided by Defendant. *See* Settlement, § 9. This manner of giving notice is the “best notice
5 practicable” under the circumstances because it provides “individual notice to all members who can
6 be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173
7 (1974). Here, Plaintiff proposes that the Settlement be administered by Phoenix Settlement
8 Administrators (“Phoenix”), an experienced class action settlement administrator. *See generally*
9 Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits.⁴ Settlement Class
10 members’ addresses will be ascertainable through Defendant’s personnel and payroll records, which
11 Defendant will provide to Phoenix within thirty (30) calendar days of preliminary approval of the
12 Settlement. *See* Settlement, § 9(A). Within ten (10) business days of receipt of the Settlement Class
13 members’ addresses, Phoenix will run the addresses through the National Change of Address
14 (“NCOA”) database (which provides updated addresses for any individual who has moved in the
15 previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the
16 Class Notice in both English and Spanish to all Settlement Class members. *See* Settlement, § 9(B).
17 To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any
18 Settlement Class member’s current mailing address. *Id.*, at § 9(F).

19 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because
20 it advises Settlement Class members of the nature of the claims, basic contentions and denials of the
21 parties and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement
22 and the procedures by which to do so, explains the recovery formula and expected recovery amount
23 for each Settlement Class member, and advises them that they will be bound by the terms of the
24 Settlement if they do not opt-out. *See* Haines Decl., Exhs. 1-3 to Exh. A. The proposed Class Notice
25 will also notify Settlement Class members of the final approval hearing date, provide the Settlement
26

27
28 ⁴ Phoenix’s proposed capped fee to administer this settlement is \$7,500.00. *See* Exh. B to Lawrence
Decl.

1 Class contact information for Class Counsel, and advise Settlement Class members that they may
2 enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies
3 California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching
4 Settlement Class members.

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

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

9 **V. CONCLUSION**

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

13
14 Dated: January 30, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

15
16 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff