

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
Jaime Castaneda (SBN 344833)
jcastaneda@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

BRUCE A. GARCIA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CP-CARRILLO, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 30-2021-01225816-CU-OE-CXC

*[Assigned for all purposes to the Hon. Peter J.
Wilson, Dept. CX-102]*

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

Date: December 22, 2022

Time: 2:00 p.m.

Dept.: CX-102

Complaint Filed: October 8, 2021

Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on December 22, 2022 at 2:00 p.m., or as soon thereafter as the matter may be heard in
3 Department CX-102 of the above-entitled Court, located at 751 West Santa Ana Boulevard, Santa
4 Ana, California 92701, Plaintiff Bruce A. Garcia ("Plaintiff") will, and hereby does, move this
5 Court for:

- 6 1. Preliminary approval of the proposed Stipulation of Settlement ("Settlement
7 Agreement") between Plaintiff and Defendant CP-Carrillo, Inc. ("CP-Carrillo" or
8 "Defendant");
- 9 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
10 certification, for settlement purposes only, of the proposed Settlement Class, defined
11 as follows:
12 All current and former non-exempt shop (production) employees who
13 worked for Defendant CP-Carrillo, Inc. in California from October 8, 2017
14 until the date of preliminary approval (the "Class Period").
- 15 3. Preliminary appointment of Plaintiff as Class Representative;
- 16 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R.
17 McIntosh of Haines Law Group, APC as Class Counsel;
- 18 5. The scheduling of a hearing to consider whether the Settlement should be finally
19 approved and to award an amount for an enhancement payment to the Class
20 Representative, attorneys' fees and costs to Class Counsel, settlement administration
21 costs, and the payment to the Labor & Workforce Development Agency ("LWDA")
22 for its share of civil penalties;
- 23 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
24 Administrator for mailing notices; and
- 25 7. Approval of the proposed Notice Packet, and an order that it be disseminated to the
26 proposed Settlement Class as provided in the Settlement Agreement.

27 ///

28 ///

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

8
9 Dated: November 18, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-
12 reversionary, common-fund class action settlement,² in which CP-Carrillo has agreed to pay a
13 Gross Settlement Amount of \$815,000.00 to the following Settlement Class, which is estimated
14 to consist of 315 individuals:

15 All current and former non-exempt shop (production) employees who
16 worked for CP-Carrillo in California from October 8, 2017 until the date of
preliminary approval (the “Class Period”).

17 The Settlement was only reached after extensive informal discovery, and a full-day
18 mediation with Steve G. Pearl, Esq., an experienced wage and hour class action mediator. In
19 connection with mediation, CP-Carrillo provided Plaintiff with payroll and timekeeping records
20 for a 20% sampling of putative class members, as well as applicable documents regarding CP-
21 Carrillo’s wage and hour policies, and other information. CP-Carrillo also provided Plaintiff with
22 relevant data points including the number of current and former non-exempt shop (production)
23 employees who worked during the Class Period, the number of workweeks during the Class

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

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

1 Period, as well as the total number of aggregate pay periods worked during the PAGA Period.
2 After extensive research and analysis, including a detailed evaluation of CP-Carrillo’s potential
3 exposure with the assistance of Plaintiff’s retained expert, the Parties attended a full-day
4 mediation on May 24, 2022, where the Parties were ultimately able to reach a classwide
5 settlement.

6 Significantly, Settlement Class members do not need to file a claim to reap the financial
7 benefits of the Settlement as Settlement Awards will be distributed to all Settlement Class
8 members who do not affirmatively opt out. After deductions for proposed settlement
9 administration costs, requested attorneys’ fees and costs, the amount set aside as PAGA civil
10 penalties, and the Class Representative Enhancement Payment, the Settlement requires CP-
11 Carrillo to pay a Net Settlement Amount (“NSA”) of at least \$448,833.34 to those Settlement
12 Class members who do not opt out. According to CP-Carrillo, there are approximately 315
13 Settlement Class members, and therefore, the average Settlement Award is estimated to be at least
14 \$1,424.87.³ This is an excellent result for Settlement Class members, who will be agreeing to a
15 release of only those claims that were asserted this litigation, especially given that virtually all of
16 the Settlement Class members signed enforceable arbitration agreements with class action
17 waivers, which significantly reduced the value of their claims given that it is highly unlikely that
18 they would be able to pursue their claims outside of individual arbitrations. For the reasons stated
19 herein, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
20 Settlement.

21 **II. SUMMARY OF THE LITIGATION**

22 **A. FACTUAL AND PROCEDURAL BACKGROUND**

23 Founded in 1963, CP-Carrillo is a manufacturer of pistons, rods, and other automotive
24 hardware and operates out of a 32,000 square foot manufacturing facility in Irvine, California.
25 See Declaration of Paul K. Haines (“Haines Decl.”), ¶ 11. Plaintiff worked for CP-Carrillo as a

26 ³ In addition to the \$1,424.87 average Settlement Award from the Net Settlement Amount, the
27 approximately 252 Settlement Class members who worked during the time period from March 8,
28 2020 through the date of preliminary approval (“PAGA Period”) will also receive a portion of the
\$12,500.00 PAGA Amount. Haines Decl., ¶ 16. The average share of the PAGA Amount is
estimated to be approximately \$49.60. *Id.*

1 non-exempt employee in the position of “Machine Operator” from September 2018 to
2 approximately May 28, 2021. *See* Declaration of Bruce A. Garcia (“Garcia Decl.”), ¶ 2.

3 On October 8, 2021, Plaintiff filed the instant action against CP-Carrillo, alleging claims
4 for failure to pay overtime wages, failure to authorize and permit rest periods, failure to provide
5 meal periods, failure to issue accurate itemized wage statements, failure to timely pay all final
6 wages, and unfair competition. Haines Decl., ¶ 12. On November 8, 2021, Plaintiff filed his
7 operative First Amended Class and Representative Action Complaint to add a cause of action for
8 PAGA civil penalties. *Id.*

9 **B. PLAINTIFF’S CLAIMS AND CP-CARRILLO’S DEFENSES**

10 **1. Arbitration Agreements**

11 CP-Carrillo asserts that nearly all Settlement Class members signed valid and enforceable
12 arbitration agreements with class action waivers. Haines Decl., ¶ 17. Setting aside any arguments
13 as to the merits of Plaintiff’s claims, CP-Carrillo contends that absent settlement, a classwide
14 recovery was not possible and that only PAGA civil penalties could potentially be recovered on
15 behalf of a subset of the Settlement Class members. *Id.* As such, CP-Carrillo contends that absent
16 its agreement not to raise the arbitration agreements as an affirmative defense, any recovery to
17 the Settlement Class members would be limited to only the employees’ potential 25% share of
18 the PAGA civil penalties *Id.*

19 **2. Meal Period Claims**

20 Plaintiff alleges that CP-Carrillo failed to provide him and other Settlement Class
21 members with legally-compliant meal periods. Haines Decl., ¶ 18. Specifically, Plaintiff alleges
22 that due to strict production schedules and work demands, first meal periods were regularly
23 provided after the completion of five hours of work, and occasionally not provided at all. *Id.*
24 Plaintiff also maintains that CP-Carrillo failed to provide legally-compliant second meal periods
25 during shifts in excess of 10.0 hours. *Id.*

26 CP-Carrillo contends that it maintained compliant written meal period policies throughout
27 the Class Period and provided all legally-compliant meal periods in line with those policies.
28 Haines Decl., ¶ 18. CP-Carrillo further argues that under *Brinker*, it was only required to

1 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; *Brinker*
2 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard).
3 CP-Carrillo also argues that any short, missed, or late first meal periods were the result of lawful
4 employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 18. With respect to
5 second meal periods, CP-Carrillo argues that second meal periods may lawfully be waived on
6 shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that employees
7 regularly did so. *Id.* Lastly, CP-Carrillo argues individualized inquiries would be needed to
8 determine why each meal period was taken late or short or missed by each employee, and whether
9 there was a valid waiver, making certification of the meal period claim unlikely. *Id.*

10 **3. Rest Period Claims**

11 Plaintiff alleges that CP-Carrillo failed to authorize and permit all legally-compliant off-
12 duty rest periods. Haines Decl., ¶ 19. Specifically, Plaintiff alleges that CP-Carrillo only
13 authorized and permitted a single 45-minute combined rest period and failed to authorize and
14 permit a second rest period during shifts of at least six (6) hours and/or a third rest period during
15 shifts of at least ten (10) hours. *Id.*; see also, *Rodriguez v. E.M.E., Inc.*, 246 Cal.App.4th 1027
16 (2016) (“[A] departure from the preferred schedule is permissible only when the departure (1)
17 will not unduly affect employee welfare and (2) is tailored to alleviate a material burden that
18 would be imposed on the employer by implementing the preferred schedule.”). Plaintiff further
19 alleges that CP-Carrillo failed to authorize and permit off-duty rest periods as a result of CP-
20 Carrillo’s policy and practice of requiring him and other employees to remain on company
21 premises during rest periods. Haines Decl., ¶ 19; *Augustus v. ABM Sec. Servs., Inc.*, 5 Cal.5th
22 257, 272 (2016) (during rest periods employers must “relieve their employees of all...employer
23 control...”).

24 CP-Carrillo counters that it has maintained compliant written rest period policies
25 throughout the Class Period and has always authorized and permitted employees a 10-minute rest
26 period for each four (4) hours worked, or major fraction thereof, as required under the Wage
27 Order, and that any failure to take rest periods was a result of employee choice, rather than any
28 CP-Carrillo policy and/or practice. Haines Decl., ¶ 19. With respect to Plaintiff’s allegation that

1 CP-Carrillo only provided one 45-minute combined rest period during the entirety of his shift,
2 CP-Carrillo produced its written rest period policies which provide for a 10-minute rest period
3 for each 4 hours worked, or major fraction thereof, and specifically informs employees that they
4 are entitled to three ten minute rest periods when they work a shift of ten hours or more. *Id.*
5 Further, CP-Carrillo maintains that it never required employees to remain on-premises during
6 their rest periods. *Id.* In fact, CP-Carrillo asserts that many employees would testify that they did,
7 in fact, leave the premises during rest periods. *Id.* CP-Carrillo further contends that, even if it (or
8 individual managers) had required employees to remain on premises, *Augustus* rejected Plaintiff's
9 "on premises" theory when it observed that "one would expect that employees will ordinarily
10 have to remain onsite or nearby. This constraint, which is of course common to all rest periods,
11 is not sufficient to establish employer control." *Augustus, supra*, 2 Cal.5th at 270. Finally, CP-
12 Carrillo argues that Plaintiff's rest period claim is not amenable to class treatment, since
13 individual inquiries would be required to determine which employees failed to take rest periods,
14 how many rest periods they failed to take, the reasons why each employee failed to take rest
15 period(s) on a particular shift, and whether each employee was in fact allowed to leave the
16 premises during each rest period. Haines Decl., ¶ 19. These manageability concerns are especially
17 present with respect to rest period claims, CP-Carrillo argues, given that rest periods are not
18 recorded. *Id.*

19 **4. Unpaid Overtime – Failure to Include All Renumeration Into Regular**
20 **Rate**

21 Plaintiff alleges that CP-Carrillo underpaid Settlement Class members' overtime wages
22 due to its failure to include all remuneration in the regular rate of pay for overtime purposes.
23 Haines Decl., ¶ 20; *see also* 29 U.S.C. § 207(e) (requiring overtime to be paid at 1.5 times the
24 "regular rate" of pay, which includes "all remuneration for employment paid to, or on behalf of,
25 the employee"); DLSE Manual at § 49.1.2 (California has "adopt[ed] the definition of 'regular
26 rate' set out in the [FLSA]"). Specifically, Plaintiff alleges CP-Carrillo paid its Settlement Class
27 members non-discretionary quarterly bonuses during the Class Period but did not include this
28 payment into Settlement Class members' regular rate of pay for overtime purposes, and thereby

1 miscalculated and underpaid Settlement Class members’ overtime wages. Haines Decl., ¶ 20.
2 However, CP-Carrillo contends that it has always correctly included quarterly bonuses in the
3 employees’ regular rate of pay for the purposes of overtime and provided Plaintiff with a
4 spreadsheet exhibiting all such payments. *Id.* CP-Carrillo further contends that it stopped paying
5 employees quarterly bonuses in 2020, thereby cutting off its liability for this claim for a significant
6 portion of the Class Period. *Id.*

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

8 As a result of these alleged wage and hour violations, Plaintiff asserts that CP-Carrillo
9 failed to comply with its final wage payment and wage statement obligations, in violation of
10 Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 21-22. Finally, Plaintiff seeks civil
11 penalties under the PAGA, based on the aforementioned claims. Haines Decl., ¶ 23.

12 CP-Carrillo asserts it has strong, good-faith defenses to Plaintiff’s underlying claims,
13 precluding imposition of waiting time penalties, which are only available for the “willful” failure
14 to pay wages. Haines Decl., ¶ 22; *see* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any
15 wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12
16 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting time
17 penalties). CP-Carrillo further contends that any alleged wage statement violations could not be
18 shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff
19 cannot show he or other employees “suffer[ed] injury” due to alleged wage statement violations,
20 as required by Lab. Code § 226(e); and that wage statements always accurately reflected amounts
21 *paid* to employees. Haines Decl., ¶ 21; *see Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
22 1308, 1337 (2018) (“The purpose of section 226 is to ‘document the paid wages to ensure the
23 employee is fully informed regarding the calculation of those wages’”).

24 Finally, CP-Carrillo contends that since Plaintiff’s PAGA claim is derivative of his
25 underlying wage claims, Plaintiff’s PAGA claim would fail with those claims. *See Price v.*
26 *Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action
27 fail, the derivative UCL and PAGA claims also fail”). CP-Carrillo further maintains that given its
28 good-faith defenses, the Court would substantially reduce any PAGA penalties awarded. Haines

Decl., ¶ 23; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, the Parties engaged in significant informal discovery, including CP-Carrillo’s production of timekeeping and payroll data for 20% of employees during the Class Period, its written policies in effect during the Class Period, as well as relevant data points including the number of non-exempt employees employed during the Class Period, the number of workweeks worked during the Class Period, and the number of pay periods and employees during the PAGA Period. Haines Decl., ¶ 13. Plaintiff hired a labor economist with a Ph.D in economics to assist Plaintiff in conducting a comprehensive analysis and extrapolation of the timekeeping and payroll data to calculate CP-Carrillo’s potential exposure for each of Plaintiff’s claims. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and CP-Carrillo’s potential defenses. *Id.*

On May 24, 2022, the Parties attended a full-day mediation with Seve G. Pearl, Esq., and experienced wage and hour class action mediator. Haines Decl., ¶ 14. During mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff’s claims, and the legal bases for the claims and defenses. *Id.* At the conclusion of mediation, Mr. Pearl issued a mediator’s proposal for a class-wide settlement, which was ultimately accepted by the Parties. *Id.* During the months that followed, the Parties negotiated and finalized the long-form Settlement now before the Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, CP-Carrillo will pay a non-reversionary Gross Settlement Amount

1 (“GSA”) of \$815,000.00. *See* Settlement, § 3. No Settlement Class member will need to file a
2 claim form as each Settlement Class member will automatically receive a Settlement Award
3 unless he or she affirmatively opts out. *Id.*, at § 4. The monetary terms of the Settlement are
4 summarized below:

5	• Gross Settlement Amount (“GSA”):	\$815,000.00
6	• Minus Court-approved attorneys’ fees (one-third):	\$271,666.66
7	• Minus Court-approved, verified costs (up to):	\$25,000.00
8	• Minus Court-approved Enhancement Payment:	\$7,500.00
9	• Minus Amount designated as PAGA penalties:	\$50,000.00
	• Minus estimated settlement administration costs:	\$12,000.00
	Net Settlement Amount (“NSA”):	\$448,833.34
	PLUS 25% of PAGA penalties (“PAGA Amount”)	\$12,500.00
	TOTAL Amount Paid to Settlement Class:	\$461,333.34

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

11 After deducting administration costs, enhancement payment to Plaintiff, the amount set
12 aside as PAGA civil penalties, and requested attorneys’ fees and costs, CP-Carrillo will pay a
13 NSA of at least \$448,833.34 to the Settlement Class. Haines Decl., ¶ 15; *see also* Settlement, §
14 3(C). According to CP-Carrillo, there are approximately 315 Settlement Class members. Haines
15 Decl., ¶ 16. Thus, the average Settlement Award from the NSA is estimated to be \$1,424.87. *Id.*
16 Further, CP-Carrillo states that there are approximately 252 employees who fall within the PAGA
17 Period. *Id.* Therefore, the average PAGA share is estimated to be \$49.60. *Id.*

18 The Net Settlement Amount (“NSA”) shall be distributed as follows: Eighty percent
19 (80%) of the NSA will be distributed to all participating Settlement Class members based on each
20 participating Settlement Class members’ proportionate workweeks worked during the Class
21 Period. *See* Settlement, § 4(B)(i). Ten Percent (10%) of the NSA shall be designated as the
22 “Waiting Time Amount” and shall be divided equally among all participating Settlement Class
23 members whose employment with CP-Carrillo ended at any time from October 8, 2018 to the
24 date of preliminary approval. *Id.*, at § 4(B)(ii). Ten percent (10%) of the Net Settlement Amount
25 shall be designated as the “Wage Statement Amount” and shall be distributed to each participating
26 Settlement Class member who was employed by CP-Carrillo at any time from October 8, 2020
27 to the date of preliminary approval proportionate to the number of workweeks that he or she
28 worked during the period from October 8, 2020 to the date of preliminary approval. *Id.*, at §

1 4(B)(iii). In addition to the NSA, each Settlement Class member who was employed by CP-
2 Carrillo at any time during the PAGA Period (including those who submit a valid and timely
3 Request for Exclusion from the class action settlement) shall receive a portion of the Twelve
4 Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount
5 that has been designated as the “PAGA Amount” proportionate to the number of workweeks that
6 he or she worked during the PAGA Period. *Id.*, at § 4(B)(iv). CP-Carrillo will pay employer-side
7 payroll taxes on the wage portion of each payment in addition to the GSA. *Id.*, § 3(D).

8 Settlement Class members will have 60 days from the mailing to opt-out or object, thereby
9 providing ample time to review the Settlement. Settlement, §§ 9(C)-(D). Settlement Class
10 members who do not opt out will be bound by the Settlement, and will release and discharge CP-
11 Carrillo from any and all claims that were alleged in the operative FAC, or which could have been
12 alleged based on the facts in the FAC. *Id.*, § 2(A). In addition, all Settlement Class members
13 (regardless of whether they opt out) who worked for CP-Carrillo during the PAGA Period will
14 release all claims for PAGA civil penalties based on those alleged violations. *Id.*

15 **2. Enhancement Payment, Attorneys’ Fees and Costs, and LWDA Payment**

16 Plaintiff will apply for a Class Representative Enhancement Payment at final approval in
17 the amount of \$7,500 for his services to the Settlement Class. Haines Decl., ¶ 27; *see also*
18 Settlement, § 6. “[I]ncentive awards are fairly typical in class action cases...and are intended to
19 compensate class representatives for work done on behalf of the class [and] to make up for
20 financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination*
21 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, the
22 requested Enhancement Payment is intended to recognize the substantial time and effort Plaintiff
23 expended on behalf of the Settlement Class, including providing factual information and
24 documents to counsel, identifying potential witnesses, attending meetings with counsel to discuss
25 the claims and theories at issue in the litigation, and otherwise actively participating in the
26 prosecution of his claims. Garcia Decl., ¶ 5. Plaintiff respectfully submits that this requested
27 payment is well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No.
28 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving

1 \$7,500 enhancement award to each of five named plaintiffs from \$505,058.60 settlement).

2 At final approval, Plaintiff's counsel will request an attorneys' fees award of one-third of
3 the GSA, and up to \$25,000 in verified costs. Haines Decl., ¶ 25; *see also* Settlement, § 5. Plaintiff
4 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
5 time-consuming litigation on a contingent basis. Plaintiff's counsel has expended significant time
6 conducting pre-filing investigation; legal research; analyzing Plaintiff's claims; analyzing
7 employee timekeeping and payroll records and other data and documents; engaging in informal
8 discovery; working with its expert to develop a comprehensive damages analysis and mediation
9 brief; preparing for and attending mediation; negotiating the Settlement; preparing this Motion;
10 and otherwise prosecuting this case. Haines Decl., ¶ 25. Counsel anticipates incurring additional
11 fees in appearing at the hearing on this Motion, supervising the Notice process, and preparing the
12 Final Approval motion and appearing at the Final Approval Hearing. *Id.*

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

18 Additionally, the parties have agreed to designate \$50,000.00 of the GSA as PAGA civil
19 penalties, of which \$37,500.00 (75%) will be paid to the LWDA, with the remaining \$12,500.00
20 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated
21 per Labor Code § 2699(i). *See* Settlement, § 3(C)(5). Plaintiff submits this allocation to the
22 LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*
23 (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment
24 of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*
25 (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of
26 \$7,500 to LWDA out of \$1.25 million common-fund settlement).

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28 ///

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

15 **1. Standard for Preliminary Approval**

16 To make a fairness determination, a court should consider several factors, including: “the
17 strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation,
18 the risk of maintaining class action status through trial, the amount offered in settlement, the
19 extent of discovery completed and the stage of the proceedings, [and] the experience and views
20 of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is
21 not exclusive and the Court is free to engage in a balancing and weighing of the factors depending
22 on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245
23 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of
24 these factors.

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

26 Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges there
27 were substantial risks and uncertainty in proceeding with class certification and eventual trial on
28 the merits. As described in section II.B., *supra*, CP-Carrillo presented multiple defenses to

1 Plaintiff's claims, both on the merits and with respect to class certification. While Plaintiff was
2 prepared to litigate his claims through class certification and ultimately trial, success was far from
3 certain.

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

5 Although the Parties engaged in significant informal discovery in advance of mediation,
6 the Parties still had substantial discovery to complete in formal litigation had the matter not
7 settled, which would have required the expenditure of substantial time and resources by all parties.
8 Haines Decl., ¶ 26. Even if Plaintiff obtained class certification, the Parties would incur
9 considerable attorneys' fees and costs through a possible decertification motion, trial, and
10 possible appeal. *Id.* The Settlement avoids those risks and the accompanying delay and expense,
11 and thus, this factor supports preliminary approval. *Id.*

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

13 Due to the fact that Settlement Class members were subject to arbitration agreements with
14 class action waivers, it is likely that absent settlement, there would not be a certified class at the
15 time of trial. Thus, this factor supports preliminary approval of the Settlement.

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

17 The Settlement provides a fair and reasonable monetary recovery for Settlement Class
18 members concerning heavily disputed claims where the law is in a state of frequent change. Based
19 on a review of the data produced by CP-Carrillo in connection with mediation, Plaintiff conducted
20 the following exposure analyses for each of Plaintiff's claims:

21 **Meal Period Premium Wages: \$401,724**

22 As stated above, Plaintiff alleges that CP-Carrillo routinely provided non-compliant first
23 meal periods to its non-exempt employees. Haines Decl., ¶ 18. Plaintiff further alleges that CP-
24 Carrillo failed to provide second meal periods on shifts over 10.0 hours. *Id.* Based on Plaintiff's
25 expert's review and extrapolation of employee timekeeping data, Plaintiff estimated
26 approximately 132,327 shifts reflected a non-compliant first meal period (i.e., late, short, or
27 missed first meal period(s)). *Id.* Additionally, there were approximately 17,458 non-complaint
28

1 second meal periods on shifts where there was no first meal period violation.⁴ *Id.* Therefore,
2 Plaintiff estimated there were a total of approximately 149,785 meal period violations during the
3 Class Period. *Id.* Further, the data produced by CP-Carrillo reflected an average hourly rate of
4 approximately \$17.88 for Settlement Class members during the Class Period. *Id.* Plaintiff
5 therefore estimated a maximum total exposure for this claim at approximately \$2,678,156
6 (149,785 non-compliant meal periods * \$17.88 average premium). *Id.*

7 However, as noted above, CP-Carrillo contends that it maintained compliant written meal
8 period policies throughout the Class Period, and provided legally-compliant meal periods in line
9 with those policies. Haines Decl., ¶ 18. CP-Carrillo also argues that under *Brinker*, it was only
10 required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken.
11 *Id.* CP-Carrillo also argues that any short, missed, or late first meal periods were the result of
12 lawful employee waiver or choice, thereby precluding liability. *Id.* Additionally, with respect to
13 second meal periods, CP-Carrillo argues that second meal periods may lawfully be waived on
14 shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that employees
15 regularly did so. *Id.* CP-Carrillo also argues individualized inquiries would be needed to
16 determine why each meal period was taken late or short or missed by each employee, and whether
17 there was a valid waiver, making certification of the meal period claim unlikely. *Id.* In light of
18 these defenses, as well as the risk that Plaintiff’s class claims could be precluded by the arbitration
19 agreements, Plaintiff discounted the maximum amount by 75% for risk of non-certification and
20 potential inability to proceed on a classwide basis due to the arbitration agreements, and an
21 additional 40% for risk of being unsuccessful on the merits or failure to recover the full amount
22 sought, to arrive at an estimated realistic exposure of approximately \$401,724. *Id.*

23 Rest Period Premium Wages: \$239,447

24 Plaintiff alleges that CP-Carrillo failed to authorize and permit off-duty rest periods,
25

26 ⁴ Plaintiff contends that CP-Carrillo can only be liable for one meal period premium each shift,
27 even on shifts where there is both a non-compliant first meal period and a non-compliant second
28 meal period. *See United Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011)
 (“[E]mployees in this case may recover up to two additional hours of pay on a single work day
 for meal period and rest period violations – one for failure to provide a meal period and another
 for failure to provide a rest period.”).

1 because CP-Carrillo required him and other employees to remain on company premises during
2 rest periods. Haines Decl., ¶ 19; *Augustus v. ABM Sec. Servs., Inc.*, 5 Cal.5th 257, 272 (2016)
3 (during rest periods employers must “relieve their employees of all...employer control...”).
4 Additionally, Plaintiff alleges that CP-Carrillo only allowed him and other employees to take a
5 single 45-minute combined rest period. Haines Decl., ¶ 19. Based on Plaintiff’s expert’s analysis
6 of employee timekeeping records, there were approximately 153,050 shifts of 3.5 hours or more
7 worked by Settlement Class members during the Class Period, thereby entitling them to at least
8 one rest period. *Id.* Thus, assuming a 100% violation rate for those shifts, Plaintiff estimated the
9 maximum potential exposure for this claim at approximately \$2,736,534 (153,050 rest period
10 violations * \$17.88 average premium). *Id.*

11 However, as discussed above, CP-Carrillo argues that it always maintained and enforced
12 lawful rest period policies and practices during the Class Period, and never required employees
13 to remain on premises during rest periods. Haines Decl., ¶ 19. In fact, CP-Carrillo asserts that
14 many employees would testify that they did, in fact, leave the premises during rest periods. *Id.*
15 CP-Carrillo further contends that its written rest period policy specifically informs employees that
16 they are entitled to three ten minute rest periods when they work ten hours or more and that these
17 rest periods should be taken in the middle of each four hour work period. *Id.* Finally, CP-Carrillo
18 argues that individual inquiries would be required to determine whether each employee was in
19 fact allowed to leave the premises during each rest period on each shift and/or whether they were
20 denied a legally compliant rest period, precluding class certification. *Id.* In light of these defenses,
21 as well as the risk that Plaintiff’s class claims could be precluded by the arbitration agreements,
22 Plaintiff discounted the maximum amount by 75% to account for the risk of non-certification and
23 potential inability to proceed on a classwide basis due to the arbitration agreements, and an
24 additional 65% for risk of being unsuccessful on the merits or failure to recover the full amount
25 sought, to arrive at an estimated realistic exposure of approximately \$239,447. *Id.*

26 Unpaid Overtime Wages - Miscalculation of Regular Rate: No Value

27 Plaintiff alleges that CP-Carrillo failed to include the value of quarterly non-discretionary
28 bonuses into the regular rate of pay, resulting in an underpayment of overtime wages to Settlement

1 Class members. Haines Decl., ¶ 20. However, as stated above, CP-Carrillo contends that it
2 properly included all forms of remuneration when calculating the regular rate of pay, and provided
3 Plaintiff with a spreadsheet illustrating how quarterly bonuses were incorporated into the
4 employees' regular rate of pay for the purposes of overtime. *Id.* Further, CP-Carrillo contends
5 that it did not pay employees quarterly bonuses in 2020 or 2021. *Id.* After reviewing the
6 spreadsheet and information provided by CP-Carrillo, Plaintiff believes that CP-Carrillo was
7 correctly calculating the regular rate of pay and Plaintiff did not believe there was a realistic
8 chance of recovery for this claim. *Id.* Accordingly, Plaintiff did not assign value to this claim. *Id.*

9 **Wage Statement Penalties: \$98,310**

10 Plaintiff's analysis reflected that there were approximately 13,108 pay periods worked by
11 Settlement Class members within the one-year liability window under Labor Code §226. Haines
12 Decl., ¶ 21. In calculating CP-Carrillo's exposure, Plaintiff assumed he could recover the "initial"
13 \$50 penalty under Section 226(e) for each violation, for a total of \$655,400 (13,108 pay periods
14 * \$50 "initial" penalty) in potential penalties. *Id.*; see *Amaral v. Cintas Corp. No. 2*, 163
15 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified
16 it violated Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal.
17 2014) (citing *Amaral* and applying "initial" \$50 penalty to all pay periods in calculating amount-
18 in-controversy for wage statement claim). However, given CP-Carrillo's arguments that no
19 violations occurred, that Settlement Class members suffered no "injury," that any violations were
20 not "knowing and intentional," as well as the risk that Plaintiff's class claims could be precluded
21 by the arbitration agreements discussed above, Plaintiff discounted the maximum exposure by
22 75% for risk of non-certification and potential inability to proceed on a classwide basis due to the
23 arbitration agreements, and by an additional 40% for risks on the merits, for an estimated realistic
24 exposure of approximately \$98,310. Haines Decl., ¶ 21.

25 **Waiting Time Penalties: \$83,675**

26 Based on data produced by CP-Carrillo, there are approximately 130 Settlement Class
27 members who separated their employment from CP-Carrillo at any time after October 8, 2020
28 and are therefore eligible for waiting time penalties. Haines Decl., ¶ 22. Plaintiff estimated an

1 average waiting time penalty of approximately \$4,291 (\$17.88/hr * 8 hrs * 30 days), and
2 calculated CP-Carrillo's maximum waiting time penalty exposure at approximately \$557,830
3 (130 former employees * \$4,291 average waiting time penalty). *Id.* However, CP-Carrillo asserts
4 it has strong, good-faith defenses to Plaintiff's underlying claims and thus, even if Plaintiff were
5 able to recover on his underlying claims, he would not be able to recover waiting time penalties.
6 *Id.* Moreover, Plaintiff would need to overcome CP-Carrillo's defenses, both as to class
7 certification and as to the merits, to his underlying claims. *Id.* Based on these defenses, as well as
8 the risk that Plaintiff's class claims could be precluded by the arbitration agreements, Plaintiff
9 discounted CP-Carrillo's maximum exposure by 75% for risk of non-certification and potential
10 inability to proceed on a classwide basis due to the arbitration agreements, and by an additional
11 40% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to
12 arrive at an estimated total of approximately \$83,675. *Id.*

13 **PAGA Civil Penalties: \$142,660**

14 Plaintiff estimated a maximum PAGA exposure of \$1,426,600 (14,266 pay periods during
15 PAGA Period * \$100 "initial" violation rate). Haines Decl., ¶ 23; *Amaral*, 163 Cal.App.4th at
16 1209 (finding "initial" violation rate applies until employer is notified that it is violating a Labor
17 Code provision). However, these penalties derive from Plaintiff's underlying claims, each of
18 which CP-Carrillo vigorously disputes. Haines Decl., ¶ 23. The PAGA also grants trial courts
19 discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and CP-Carrillo argued the
20 Court would reduce penalties significantly given its good-faith defenses. *Id.* Thus, Plaintiff
21 discounted the maximum figure by 60% for risk of losing on the merits and/or not recovering a
22 PAGA penalty for each and every pay period, and by an additional 75% for risk of the Court
23 reducing penalties, for an estimated exposure of approximately \$142,660. *Id.*; see also *Fleming*,
24 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30
25 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

26 Using these figures, Plaintiff estimated the realistic total recovery for the Settlement Class
27 would be approximately \$965,816. Haines Decl., ¶ 24. Thus, the proposed \$815,000 GSA
28 represents approximately 84.3% of Plaintiff's reasonably forecasted recovery. *Id.* Preliminary

approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiff's counsel believes could have been recovered had the case proceeded through trial.

e. The Experience and Views of Counsel.

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

2. The Preliminary Approval Standard Is Met

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

a. The Settlement Is Within the Range of Possible Approval

The Settlement reflects approximately 84.3% of the estimated recovery the Settlement Class could realistically expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed wage claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Plaintiff submits the Settlement is well within the range of possible approval, such that notice should be provided to the Settlement Class. The Court will have the opportunity to again

1 assess the reasonableness of the Settlement after the Settlement Class members have had the
2 opportunity to opt-out or object.

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

4 The Settlement is a result of extensive discovery, a full-day mediation, and months of
5 negotiations. Thus, it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.
6 Plaintiff carefully vetted the claims at issue, and conducted detailed data analyses to arrive at
7 estimated potential damages. Haines Decl., ¶¶ 18-24. The Parties then worked collaboratively in
8 the following months to finalize the Settlement. *Id.*, ¶ 14. This factor thus supports preliminary
9 approval.

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

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

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

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

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

21 A class is "ascertainable" where members "may be readily identified without unreason-
22 able expense or time by reference to...[business] records." *Sevidal v. Target*, 189 Cal.App.4th
23 905, 919 (2010). Here, the Settlement Class includes all current and former non-exempt shop
24 (production) employees who worked for CP-Carrillo in California during the Class Period. The
25 Settlement Class can therefore be identified from CP-Carrillo's personnel and employment
26 records. CP-Carrillo represents that there are approximately 315 Settlement Class members (see
27 Haines Decl., ¶ 16), making it impracticable to bring them all before the Court. Thus, numerosity
28 is satisfied.

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

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

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

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

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

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

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

21 **NOTICE**

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

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

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

17 **V. CONCLUSION**

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

21
22 Dated: November 17, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

23 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff