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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

AARON HALLUM and AMY RAMOS, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

FCA US, LLC, doing business as FIAT
CHRYSLER AUTOMOBILES, a Delaware
Corporation; and DOES 1-50, inclusive,
Defendants.

CASE NO. CIVDS1936782

*[Case assigned for all purposes to the Hon.
Joseph T. Ortiz, Dept. S17]*

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

Date: January 22, 2024
Time: 1:30 p.m.
Dept.: S17

Action Filed: December 5, 2019
Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on January 22, 2024 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department S-17 of the San Bernardino County Superior Court, located at 247 W. 3rd Street, San Bernardino, California 92415, Plaintiffs Aaron Hallum and Amy Ramos (“Plaintiffs”), as individuals and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed Joint Stipulation of Class Action Settlement (“Settlement Agreement”) in this lawsuit;
2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

All current and former non-exempt employees of Defendant FCA US, LLC (“Defendant”) who worked in California during the time period from December 5, 2015, through and including July 9, 2023 (the “Class Period”). Should any Settlement Class member be incompetent, deceased, or unavailable due to military service, the Settlement Class shall include that person’s legal representative or successor in interest evidenced by reasonable verification.

3. Preliminary appointment of Plaintiffs Aaron Hallum and Amy Ramos as the Class Representatives;
4. Preliminary appointment of James R. Hawkins and Christina M. Lucio of James Hawkins APLC, and Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Enhancement Payments, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.*, and Class Counsel’s attorneys’ fees and costs;
6. Appointment of Phoenix Settlement Administrators as the third-party settlement administrator (“Settlement Administrator”); and

1 7. Approval of the proposed Notice of Class Action Settlement (“Class Notice”) and the
2 Notice of Individual Settlement Award (collectively, the “Notice Packet”), and entry
3 of the proposed Order instructing the Notice Packet to be disseminated to the proposed
4 Settlement Class as provided in the Settlement Agreement.

5 This motion is based on this notice of motion, the attached memorandum of points and
6 authorities, the declarations of James R. Hawkins, Christina M. Lucio, Paul K. Haines, Fletcher
7 W. Schmidt, Matthew K. Moen, Susan J. Perez, Plaintiff Aaron Hallum, Plaintiff Amy Ramos,
8 and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the
9 pleadings and other papers filed in this action, and on any further oral or documentary evidence
10 or argument presented at the time of hearing.

11 Given the multiplicity of issues addressed herein, Plaintiffs’ memorandum of points and
12 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
13 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider
14 the entire Motion, which is 25 pages in length.

15
16 Dated: December 27, 2023

Respectfully Submitted,
HAINES LAW GROUP, APC

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18 By: 
19 Matthew K. Moen
20 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Aaron Hallum and Amy Ramos (“Plaintiffs”), as individuals and on behalf of
4 the proposed Settlement Class, respectfully request that this Court preliminarily approve the
5 proposed Joint Stipulation of Class Action Settlement (“Settlement Agreement” or
6 “Settlement”),¹ entered into by Plaintiffs and Defendant FCA US, LLC (“Defendant”)
7 (collectively, the “Parties”). Plaintiffs allege that Defendant failed to: (1) pay all wages owed;
8 (2) provide all lawful meal periods, or pay premium pay in lieu thereof; (3) authorize and permit
9 all lawful rest periods, or pay premium pay in lieu thereof; (4) provide complete, accurate, and/or
10 properly formatted wage statements; (5) pay all wages owed at separation of employment; (6) pay
11 all wages owed during employment; (7) maintain all required payroll and personnel records; (8)
12 reimburse all necessary business expenses related to personal cell phone use and purchase of
13 equipment, uniforms, and/or footwear; (9) violated California’s unfair competition laws; and (10)
14 is liable for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*
15 (“PAGA”).

16 Plaintiffs respectfully request that this Court preliminarily approve this non-reversionary,
17 \$3,825,000.00 class action settlement on behalf of the following Settlement Class:

18 All current and former non-exempt employees of Defendant who worked in
19 California during the time period from December 5, 2015, through and including
20 July 9, 2023 (the “Class Period”). Should any Settlement Class member be
21 incompetent, deceased, or unavailable due to military service, the Settlement Class
shall include that person’s legal representative or successor in interest evidenced
by reasonable verification.

22 Based upon the data provided by Defendant, there are approximately 254 potential
23 Settlement Class members. After Court-approved deductions for Plaintiffs’ Class Representative
24 Enhancement Awards, settlement administrator costs, the PAGA Payment to the Labor &
25 Workforce Development Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the
26

27 ¹ The Settlement Agreement is attached as Exhibit A to the Declaration of Matthew K. Moen (“Moen
28 Decl.”), filed concurrently herewith, and the Notice of Class Action Settlement (“Class Notice”) and the
Notice of Individual Settlement Award (collectively, the “Notice Packet”) are attached to the Moen Decl.
as Exhibit B.

1 remaining Net Settlement Amount (“NSA”) is estimated to be no less than \$2,388,750.00. This
2 results in average Individual Settlement Awards of approximately \$9,404.52, with the lowest
3 estimated Individual Settlement Award of \$43.83 (in the event a Settlement Class member worked
4 only one workweek during the Class Period) and the highest estimated Individual Settlement
5 Award of \$17,359 (in the event a Settlement Class member performed worked in every workweek
6 throughout the Class Period). Significantly, Settlement Class members do not need to file a claim
7 form in order to receive an Individual Settlement Award, and all Settlement Class members who
8 do not opt-out will automatically receive their share of the Settlement. This represents an
9 exceptional, fair and reasonable result for the Settlement Class members, who will be agreeing to
10 a release of only those claims that were actually asserted, or which could have been asserted based
11 on the facts alleged in the operative complaint in the lawsuit.

12 Further, given the tenet that aggrieved employees do not have the ability to opt-out of a
13 representative PAGA claim, all PAGA Aggrieved Employees,² regardless of whether they elect
14 to opt out from participating in the class action settlement or not, shall receive a portion of the
15 settlement monies designated as the PAGA Amount payable to the PAGA Aggrieved Employees
16 and shall release their claims for civil penalties under PAGA with respect to the underlying claims
17 pled in the operative complaint in the action or Plaintiffs’ PAGA notice letters to the LWDA, or
18 which could have been pled in the operative complaint in the action based on the factual
19 allegations therein, that arose during the PAGA Period. *See Robinson v. Southern Counties Oil*
20 *Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt–out mechanism for PAGA
21 claims and “nonparty employees as well as the government are bound by the judgment in an
22 action brought under [PAGA].”); *see also* Moen Decl., Exhibits C-E (Plaintiffs’ initial PAGA
23 notice letters and supplemental PAGA notice letter).

24 Prior to reaching this proposed Settlement, Defendant provided Plaintiffs with payroll
25 records for all putative class members spanning the putative class period and timekeeping records
26

27
28 ² Defined as “all current and former non-exempt employees of Defendant who worked in California during
the time period from December 5, 2018 through and including July 9, 2023 (the “PAGA Period”)”. *See*
Settlement, ¶ 2(A).

1 for all putative class members spanning the period November 30, 2018 through December 7,
2 2022, as well as policy documents and additional key data points. Plaintiffs then retained an expert
3 with a Ph.D. in economics to analyze the data and create a class-wide exposure model for the
4 claims at issue. On March 15, 2023, after extensive legal research and analysis, along with
5 Plaintiffs' and their expert's comprehensive review of the data, the Parties participated in a
6 mediation session with Steven G. Mehta, Esq., an experienced and respected wage and hour
7 mediator, who continued to assist the Parties in their settlement negotiations in the weeks
8 following mediation. After additional weeks of continued negotiations following mediation, Mr.
9 Mehta made a mediator's proposal for a class-wide resolution of all claims at issue that the Parties
10 ultimately accepted. Over the following months, the Parties negotiated and executed the long-
11 form Settlement Agreement that is now before this Court for preliminary approval.

12 This proposed Settlement is well within the range of possible approval in light of the
13 significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation,
14 and the monetary benefit to the Settlement Class members. For the reasons discussed herein,
15 Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

16 **II. SUMMARY OF THE LITIGATION**

17 **A. Factual And Procedural Background**

18 Defendant is an automaker that designs, manufactures, and sells or distributes vehicles
19 throughout the United States. Moen Decl., ¶ 9. Plaintiffs were employed by Defendant as non-
20 exempt warehouse workers at Defendant's Ontario, California warehouse location, and were
21 responsible for picking and sorting parts in the warehouse and loading parts onto trailers.
22 Declaration of Aaron Hallum ("Hallum Decl."), ¶ 2; Declaration of Amy Ramos ("Ramos
23 Decl."), ¶ 2. Like all Settlement Class members, Plaintiffs were employed by Defendant as non-
24 exempt employees during the Class Period and were subject to Defendant's allegedly unlawful
25 wage and hour policies and practices. Hallum Decl., ¶¶ 6-7; Ramos Decl., ¶¶ 2-4.

26 On December 5, 2019, Plaintiff Hallum filed the instant class action complaint, alleging
27 Defendant failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii)
28 provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) timely pay
all final wages upon separation; (vi) issue accurate itemized wage statements; and (vii) comply

1 with California’s Unfair Competition laws. Moen Decl., ¶ 10. On February 13, 2020, Plaintiff
2 Hallum filed a separate representative action complaint against Defendant (the “PAGA Action”),
3 asserting a single cause of action for civil penalties under PAGA based on the same underlying
4 Labor Code violations alleged in the instant action. *Id.*

5 On September 8, 2021, Plaintiff Ramos filed a separate class action complaint against
6 Defendant in San Bernardino County Superior Court, alleging Defendant failed to: (i) pay all
7 minimum wages owed; (ii) provide all lawful meal periods; (iii) authorize and permit all lawful
8 rest periods; (iv) issue accurate itemized wage statements; (v) timely pay all final wages upon
9 separation; and (vi) comply with California’s Unfair Competition laws. Moen Decl., ¶ 11. On
10 November 25, 2021, Plaintiff Ramos filed a first amended complaint, adding a cause of action for
11 civil penalties under PAGA premised upon the same underlying Labor Code violations. *Id.*

12 On March 20, 2023, Plaintiffs filed a consolidated First Amended Complaint in the instant
13 action, naming Plaintiff Ramos as an additional named plaintiff and consolidating all legal and
14 factual allegations in the two actions. Moen Decl., ¶ 12. On April 11, 2023, the Court dismissed
15 Plaintiff Ramos’ separate action in its entirety, without prejudice. *Id.*

16 As a material term of the Settlement, Plaintiffs sent a supplemental PAGA letter to the
17 LWDA on October 5, 2023, to clarify the scope of Plaintiffs’ PAGA cause of action and exhaust
18 administrative remedies for a claim pursuant to PAGA based on violations of Labor Code sections
19 204, 1174, and 2802 (the “Clarified Claims”). Moen Decl., ¶ 12. On December 27, 2023, after
20 exhausting their administrative remedies with the LWDA, the Parties filed a Stipulation for Leave
21 to File the Second Amended Complaint, incorporating all factual allegations and causes of action
22 alleged in the action and the PAGA Action, and additionally clarifying that Plaintiffs also seek to
23 recover for all unpaid amounts, statutory penalties, and civil penalties based on the Clarified
24 Claims. *Id.* Plaintiffs will file the Second Amended Complaint immediately upon entry of the
25 Court’s order granting leave to amend. *Id.*

26 **B. Plaintiffs’ Claims and Defendant’s Defenses**

27 **1. Unlawful Time Rounding Violations**

28 Plaintiffs assert that Defendant maintained an unlawful rounding practice that resulted in
Defendant systematically underpaying Plaintiffs and Settlement Class members all earned wages.

1 Moen Decl., ¶ 13; *see also* *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638 (holding
2 that “[I]f an employer...can capture and has captured the exact amount of time an employee has
3 worked during a shift, the employer must pay the employee for all the time worked” (Internal
4 quotations omitted)). Specifically, Plaintiffs claim Defendant records Plaintiffs’ and Settlement
5 Class members’ clock in and clock out timeclock punches to the minute via electronic time punch
6 upon entering the work facility, but rounds these timekeeping entries in an uneven manner to the
7 employees’ detriment, resulting in unpaid minimum and overtime wages. Moen Decl., ¶ 13; *see*
8 Labor Code §§ 510(a), 1197, and 1182.12.

9 In response, Defendant contends that its timekeeping practices are lawful and that
10 employees are paid for all time actually worked in accordance with company policies. Moen
11 Decl., ¶ 14. Instead, Defendant contends that it maintained a lawful grace-period policy. *Id.*; *see*
12 *Silva v. See’s Candy Shops, Inc.* (2016) 7 Cal.App.5th 235, 251 (“Instead, the grace-period policy
13 is a method that seeks to accurately count each employee’s actual work time. If the employee is
14 not working during the grace period, the calculation of the employee time from the employee’s
15 scheduled start time or end time is accurate.”). Defendant asserts that it did not require non-
16 exempt employees to perform any work off-the-clock, but instead permitted the employees to
17 enter the facility through the turnstiles during the grace periods, although they were not actually
18 performing any work during that time prior to the scheduled start of their shifts. Moen Decl., ¶
19 14. Moreover, Defendant contends that this claim is not amenable to class treatment, as it would
20 require individualized inquiries into whether an employee was actually performing compensable
21 work during the grace period or was engaged solely in personal activities on a day-by-day basis,
22 resulting in an unmanageable series of mini-trials. *Id.* Finally, because *Camp v. Home Depot*
23 *U.S.A., Inc.* has been granted review by the California Supreme Court, the decision is only
24 persuasive, not binding authority, and Plaintiffs face the risk that the *Camp* holding could be
25 reversed, rendering Plaintiffs’ reliance on *Camp* misplaced. *Id.*

26 **2. Off-the-Clock Violations**

27 Plaintiffs assert that, for a portion of the statutory period, Defendant failed to maintain
28 accurate records of the hours actually worked by Settlement Class members, resulting in unpaid

1 wages. Moen Decl., ¶ 15. Specifically, Plaintiffs allege that Defendant required Plaintiffs and
2 other non-exempt employees to undergo daily COVID-19 related temperature checks and
3 complete COVID-19 health questionnaires prior to being permitted to enter Defendant’s facility
4 and clock in at the start of their work shift. *Id.* Despite requiring Plaintiffs and other non-exempt
5 employees to undergo temperature checks and complete health questionnaires, Defendant failed
6 to pay Plaintiffs and other non-exempt employees for this time subject to the employers’ control.
7 *Id.*; see Wage Order 1, § 2(J) (“‘Hours Worked’ means the time during which an employee is
8 subject to the control of an employer...”); see also Labor Code §§ 1197 and 1182.12 (establishing
9 the right of employees to be paid minimum wages for all hours worked).

10 In response, Defendant maintains it accurately recorded all time worked by its non-exempt
11 employees and has properly paid all wages owed for all hours worked. Moen Decl., ¶ 16. Further,
12 Defendant asserts that this claim is not suitable for class treatment, as it requires individualized
13 inquiries into whether any employee underwent a COVID-19 related temperature check or
14 questionnaire and exactly how much time each employee purportedly spent while off-the-clock
15 on any given day, which is increasingly difficult since off-the-clock time is inherently not
16 recorded, resulting in an unmanageable series of mini-trials. *Id.*

17 **3. Meal Period Violations**

18 Plaintiffs further assert that Defendant failed to provide the Settlement Class members
19 with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled. Moen
20 Decl., ¶ 17; see Labor Code § 512(a); see also *Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
21 1041 (“We conclude that, absent waiver, section 512 requires a first meal period no later than the
22 end of an employee’s fifth hour of work...”). Specifically, Plaintiffs assert Defendant maintains
23 an unlawful meal period policy/practice that regularly provides unlawful first meal periods, and
24 fails to provide all second, duty-free, uninterrupted 30-minute meal periods commencing before
25 the end of the tenth hour of work. Moen Decl., ¶ 17. Further, Plaintiffs assert Defendant failed to
26 pay all meal period premiums owed during the relevant time period, which is itself a certifiable
27 issue. See, e.g., *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (certifying
28 UCL claim based on employer’s failure to pay premium wages under Labor Code section 226.7).

1 In response, Defendant contends it maintained lawful meal period policies/practices
2 throughout the Class Period, including scheduling timely, 30-minute meal periods for non-exempt
3 employees to ensure that lawful meal periods are always provided. Moen Decl., ¶ 18. Therefore,
4 Defendant asserts that if Settlement Class members did not take timely or duty-free meal periods,
5 this was solely the result of employee choice and not reflective of Defendant's policies and
6 practices. *Id.* Defendant also contends that Plaintiffs' meal period claim is not suited for class
7 certification as individual inquiries would be required to assess whether an employee chose to not
8 take an otherwise provided meal period, whether was an employee ever validly waived a meal
9 period, and whether a premium was paid on each shift in which a meal period was truly not
10 provided, resulting in an unmanageable series of mini-trials. *Id.*

11 **4. Rest Period Violations**

12 Plaintiffs further alleges that Defendant failed to authorize and permit the Settlement Class
13 members to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 19; *see* Labor
14 Code § 516. Specifically, Plaintiffs assert that Defendant maintained an unlawful rest period
15 policy/practice during the relevant time period that prohibits Plaintiffs and Settlement Class
16 members from leaving the company premises while on the clock, including during paid rest
17 periods, in violation of California law. Moen Decl., ¶ 19; *see Augustus v. ABM Security Services,*
18 *Inc.* (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods, employers must relieve their
19 employees of all duties and relinquish any control over how employees spend their break time.”).
20 Plaintiffs assert that Defendant's timekeeping system—which automatically clocks an employee
21 in or out every time they pass through a turnstile to enter or exit the facility—ensures that
22 whenever an employee leaves the warehouse premises they are automatically clocked out,
23 meaning that any employee who attempted to leave the premises during purported rest periods
24 would only be able to do so *unpaid*, in violation of California law. Moen Decl., ¶ 19. Plaintiffs
25 also allege that Defendant failed to pay any rest period premiums during the relevant time period.
26 *Id.*; Labor Code § 226.7; *Safeway, supra*, 238 Cal.App.4th at 1159.

27 Defendant maintains it authorized and permitted the Settlement Class members to take all
28 lawful rest periods to which they are entitled. Moen Decl., ¶ 20. Defendant asserts that employees

1 have always been permitted to leave the work premises during their rest periods if they chose to
2 do so, and maintained a practice known to all Settlement Class members that they could inform
3 their supervisor if they left the premises for a rest period, and the supervisor would adjust their
4 time records for that day to ensure the employee was paid for the time spent off-premises during
5 the rest period notwithstanding being clocked out after exiting through the turnstile timekeeping
6 system. *Id.* Further, Defendant asserts that this claim is unmanageable and not suited for class
7 certification, as it requires individualized inquiries into whether each employee was authorized
8 and permitted to take a lawful rest period and on which days, which Defendant argues will result
9 in an unmanageable series of mini-trials. *Id.*

10 **5. Failure to Reimburse Violations**

11 Plaintiffs further allege that Defendant failed to reimburse the Settlement Class members
12 for all necessary business expenses incurred, in violation of Labor Code § 2802. Moen Decl., ¶
13 21; *see* Labor Code § 2802. Specifically, Plaintiffs assert that Defendant required Plaintiffs and
14 other non-exempt employees to purchase and use their own equipment for work-related purposes,
15 as well as purchasing uniforms and required footwear, but did not reimburse Plaintiffs and other
16 non-exempt employees for their expenses. *Id.* Plaintiffs further assert that Defendant required
17 Plaintiffs and other non-exempt employees to use their personal cell phones for work-related
18 purposes, but did not reimburse Plaintiffs and other non-exempt employees for a reasonable
19 portion of their monthly cell phone bills. *Id.*; *see Cochran v. Schwan's Home Service, Inc.* (2014)
20 228 Cal.App.4th 1137, 1144 (“If an employee is required to make work-related calls on a personal
21 cell phone, then he or she is incurring an expense for purposes of section 2802.”).

22 In response, Defendant argues it maintained a policy to reimburse all reasonable and
23 necessary business expenditures and that, to the extent that any expenses were not reimbursed, it
24 was the result of Defendant’s employees failing to submit expense reimbursement requests. Moen
25 Decl., ¶ 22. Further, Defendant argues that Plaintiffs’ claim will fail on its merits, as Defendant
26 provided the Settlement Class members with all equipment they needed to perform their job
27 duties, did not require employees to purchase specified uniforms or footwear, and Settlement
28 Class members do not need to communicate through their cellular phones, as their supervisors,

managers, and coworkers are onsite, and no further communication with the employees is necessary once they clock out after their shifts. *Id.* Defendant also maintains that this claim is not suited for class certification, as it would require a series of mini-trials to determine which employees incurred expenses, if any, whether those expenses were reasonable and necessary, and why the employee had not previously submitted an expense reimbursement request. *Id.*

6. Wage Statement, Waiting Time, and PAGA Penalties

As a result of Defendant’s alleged failure to pay all overtime wages, minimum wages, and meal period and rest period premiums, Plaintiffs assert that Defendant also failed to maintain accurate payroll records, timely pay all wages during employment, issue accurate and itemized wage statements, and failed to timely pay all final wages at the time of separation. Moen Decl., ¶ 23; *see also* Labor Code §§ 203(a), 204, 226(a), and 1174. Further, Plaintiffs contend that Defendant issued facially non-compliant wage statements in violation of Labor Code § 226(a), which failed to include all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate, and the address of the legal entity that is the employer. Moen Decl., ¶ 23; *see* Labor Code § 226(a). As a result of these alleged Labor Code violations, Plaintiffs also seek PAGA civil penalties on behalf of all aggrieved employees. Moen Decl., ¶ 23; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 (“As we have explained, they [civil penalties under PAGA] are mandatory, not discretionary.”).

In response, Defendant argues that Plaintiffs’ underlying claims will fail and, as a result, these derivative claims will also fail. Moen Decl., ¶ 24; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains that Plaintiffs cannot show that the wage statement violations were “knowing and intentional,” or that the putative class members “suffer[ed] injury” as a result of the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement penalties. Moen Decl., ¶ 24; *see* Labor Code § 226(e)(1). Moreover, Defendant maintains that its good faith defenses to Plaintiffs’ underlying claims would preclude the recovery of waiting time penalties, which are only available for the “willful” failure to pay wages, and that this Court would exercise its discretion to substantially reduce any PAGA

penalties awarded. Moen Decl., ¶ 24; *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.”); Labor Code § 2699(e)(2); *Naranjo v. Spectrum Sec. Servs., Inc.*, 88 Cal.App.5th 937 (2023); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of exposure).

C. Discovery And Mediation

In connection with mediation, Defendant provided Plaintiffs with payroll records for all putative class members spanning the putative class period and timekeeping records for all putative class members spanning the period November 30, 2018 through December 7, 2022, as well as policy documents and additional key data points. Moen Decl., ¶ 25. Plaintiffs then retained an expert with a Ph.D. in economics to analyze the produced data and create a class-wide exposure model for the claims at issue. *Id.* On March 15, 2023, the Parties participated in a mediation session with Steven G. Mehta, Esq., an experienced and respected wage and hour mediator, during which the Parties exchanged divergent views on Defendant’s liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiffs’ claims. *Id.* Although the Parties adjourned mediation without reaching a settlement, they continued their settlement negotiations through Mr. Mehta throughout the following weeks. *Id.* After additional weeks of continued negotiations, Mr. Mehta made a mediator’s proposal that the Parties ultimately accepted. *Id.* Over the following months, the Parties finalized the terms of the proposed Settlement now before the Court for preliminary approval. *Id.*

III. THE PROPOSED SETTLEMENT

A. Essential Terms Of The Settlement

If the Court preliminarily approves this settlement, Defendant will pay a Maximum Settlement Amount (“MSA”) of \$3,825,000.00. Settlement, ¶ 3. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Awards unless they affirmatively opt-out. Settlement, ¶¶ 3.D; 4. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$3,825,000.00
Minus Court-approved attorneys' fees (1/3):	\$1,275,000.00
Minus Court-approved attorneys' costs (up to):	\$60,000.00
Minus Court-approved Enhancement Awards:	\$10,000.00 each
Minus settlement administrator costs (up to):	\$6,250.00
Minus PAGA Payment to the LWDA:	\$75,000.00
Net Settlement Amount:	\$2,388,750.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys' fees and costs, Plaintiffs' Class Representative Enhancement Awards, settlement administration costs, and the LWDA's share of PAGA penalties, the Settlement provides for an estimated NSA of no less than \$2,388,750.00. *See* Settlement, ¶¶ 3.D, 4.A. Individual Settlement Awards will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class members during the Class Period divided by the total number of workweeks worked by all participating Settlement Class members, as well as membership in various subclasses. *Id.*, ¶¶ 4.B.i-iv. Further, 25% of the PAGA Amount will be paid to all PAGA Aggrieved Employees, regardless of their election to opt-out from participating in the Settlement, based on the proportionate number of workweeks worked by the PAGA Aggrieved Employees during the PAGA Period, divided by the total number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period. *Id.*, ¶ 4.B.i.

According to Defendant's records, there are approximately 254 putative Settlement Class members. Settlement, ¶ 3.G. Based on the estimated NSA, average Individual Settlement Awards are projected to be approximately \$9,404.52, with the lowest possible estimated Individual Settlement Award of \$43.83 (in the event a Settlement Class member worked only one workweek during the Class Period) and the highest possible estimated Individual Settlement Award of \$17,359 (in the event a Settlement Class member performed worked in every workweek throughout the Class Period). Moen Decl., ¶ 28. Settlement Class members will have 60 calendar days from the date of the initial mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9.D-E. Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant as detailed in the Settlement.

1 *Id.*, ¶¶ 2.A, 9.D. Finally, should the Court ultimately grant final settlement approval, a notice of
2 the Court’s Final Judgment and Order will be posted on the Settlement Administrator’s website,
3 in compliance with CRC Rule 3.771(b). Moen Decl., ¶ 28.

4 **2. Attorneys’ Fees, Costs, and Plaintiffs’ Class Representative**
5 **Enhancement Awards**

6 At the time of seeking final settlement approval, Plaintiffs will apply for Class
7 Representative Enhancement Awards in the amount of \$10,000 each for their service to the
8 Settlement Class and general release of all claims. Moen Decl., ¶ 29; *see* Settlement ¶¶ 2.B, 3.D.3,
9 6. Plaintiffs’ requested class representative Enhancement Awards are intended to recognize the
10 significant time and effort that Plaintiffs expended on behalf of the Settlement Class, including
11 searching for relevant documents and providing them to Class Counsel for use in the lawsuit,
12 providing factual information to their attorneys, holding various phone calls with their attorneys
13 to discuss the claims in the lawsuit and Defendant’s policies and practices, reviewing the
14 Complaints, speaking with potential class members about their work experiences, assisting their
15 attorneys in preparing for mediation, making themselves available for the full-day mediation, and
16 participating in mediation to assist their attorneys in resolving factual disputes raised during the
17 day, discussing the case and general case strategy with their attorneys on many occasions,
18 reviewing the settlement documents, otherwise assisting their attorneys in moving the case
19 towards resolution, the significant risks Plaintiffs undertook by serving as the named plaintiffs,
20 and the fact that they agreed to a general release of all claims subject to a waiver of Civil Code §
21 1542. Moen Decl., ¶ 29; Hallum Decl., ¶¶ 12-14; Ramos Decl., ¶¶ 6-7; Settlement, ¶ 2.B.

22 Class Counsel will also apply for an attorneys’ fee award of up to one third of the MSA
23 (currently estimated at \$1,275,000), and up to \$60,000 in reimbursement for actual litigation
24 costs. Moen Decl., ¶ 30; *see* Settlement, ¶ 3.D.4. Plaintiffs submit that the requested fee is fair
25 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
26 purely contingent fee basis. Moen Decl., ¶ 30. Class Counsel has incurred substantial attorneys’
27 fees conducting pre-filing investigation, analyzing Plaintiffs’ claims, conducting legal research
28 and analysis, reviewing class documents and data produced by Defendant, extensively reviewing
and evaluating the produced timekeeping and payroll records with the assistance of a retained

1 expert to build a comprehensive damages model, preparing for and attending mediation,
2 negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement,
3 and Notice Packet documents, preparing this motion for preliminary approval, and otherwise
4 litigating the case. *Id.* Class Counsel will also expend future attorney time attending the hearing
5 on this Motion, overseeing the Notice process, drafting the Final Approval Motion and supporting
6 documents, attending the Final Approval hearing, and completing other tasks, such as fielding
7 questions from Settlement Class members. *Id.*

8 Both California and federal courts have recognized that an appropriate method for
9 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
10 as a result of the settlement. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506;
11 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. Historically, courts have
12 awarded percentage fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6 (4th
13 Ed. 2013). Class Counsel submits that the request for attorneys' fees is reasonable when viewed
14 as an overall percentage of the Settlement in light of the risks and work undertaken, the positive
15 results obtained for the class, and the efficiency with which the Parties have conducted the
16 litigation. Class Counsel will seek an award of attorneys' fees when seeking final approval.

17 **IV. ARGUMENT**

18 **A. Preliminary Approval Is Warranted**

19 California Rule of Court 3.769 conditions the settlement of a class action on court
20 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
21 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
22 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the
23 settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir.
24 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether
25 a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the
26 preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor*
27 *ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed
28 settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product

of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm's length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

The Court should consider the following factors when making a fairness determination: "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.* (1996) 48 Cal.App.4th 1794, 1801. "[T]he court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

a. The Strength of Plaintiffs' Case

Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member timekeeping and payroll data spanning the entire Class Period, reviewed all relevant policy documents, and created a comprehensive damages model for Defendant's liability. Moen Decl., ¶ 31. Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*, Defendant presented numerous defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Although they were prepared to litigate these claims through class certification and ultimately through trial, it was far from certain that Plaintiffs would be able to recover a greater amount should this matter proceed through trial. Thus, this factor supports preliminary approval.

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

Although the Parties engaged in substantial informal discovery and information exchange prior to mediation, the Parties had agreed to refrain from engaging in formal written and deposition discovery until after exhausting their settlement efforts at mediation. Moen Decl., ¶ 32. Absent settlement, the Parties will be required to expend substantial time and resources conducting extensive formal written and deposition discovery. *Id.* Moreover, Plaintiffs have not

1 yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of
2 appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment
3 ruling. *Id.* Even if Plaintiffs succeeded in certifying one or more classes, the Parties would incur
4 considerably more attorneys' fees and costs through a possible decertification motion, trial, and
5 possible appeal. *Id.* This Settlement avoids these considerable costs, risks, and the accompanying
6 burden of continued litigation on the Court. Thus, this factor supports preliminary approval.

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

8 At the time of the proposed Settlement, Plaintiffs had not filed their motion for class
9 certification. Moen Decl., ¶ 33. Had the Court certified any claims, Plaintiffs anticipated that
10 Defendant would seek decertification. *Id.* There was also a risk that Defendant would engage in
11 a *Pick-up-Stix* campaign that could either affect Plaintiffs' ability to maintain the numerosity
12 required to proceed as a class action, or significantly reduce the size of the putative class for a
13 fraction of what Settlement Class members are receiving through this Settlement. *Id.*; see
14 *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement,
15 there was a serious risk that Plaintiffs would be unable to move forward on a class-wide basis. *Id.*
16 Thus, this factor supports preliminary approval.

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

18 This proposed Settlement provides an exceptional and fair recovery for the Settlement
19 Class in the face of disputed claims. After analyzing Defendant's produced data, Class Counsel
20 conducted a class-wide exposure analysis, forecasting the total expected recovery as follows:

21 **Unlawful Time Rounding Violations: \$696,838**

22 Plaintiffs' expert's data analysis revealed that Defendant's rounding practice resulted in
23 the Settlement Class members being underpaid for an aggregate of 125,431 recorded hours of
24 work during the putative class period. Moen Decl., ¶ 34. Therefore, Plaintiffs calculated
25 Defendant's maximum potential exposure on this claim at \$3,063,025 (125,431 unpaid hours *
26 \$24.42 approximate average rate of pay). *Id.*

27 Defendant argues that it paid employees for all hours actually worked and that its grace
28 period practice is lawful. Moen Decl., ¶ 34. Moreover, because *Camp v. Home Depot* has been
granted review by the California Supreme Court, there is tangible risk that *Camp* will be

1 overturned, rendering Plaintiffs' damages analysis substantially overstated. *Id.* Plaintiffs therefore
2 discounted the maximum potential exposure by 35% for the risk of non-certification and 65% for
3 the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$696,838. *Id.*

4 **Off-the-Clock Violations: \$11,827**

5 Plaintiffs' data analysis determined that Settlement Class members worked an aggregate
6 total of 20,756 shifts during the relevant portion of the Class Period in which Defendant
7 implemented its COVID-19 temperature check policy. Moen Decl., ¶ 35. Plaintiffs estimate that
8 Settlement Class members were required to spend approximately 5 minutes per workday
9 undergoing COVID-19 related temperature checks and questionnaires before being able to clock
10 in for their scheduled shifts. *Id.* Accordingly, Plaintiffs calculated Defendant's maximum
11 potential exposure for off-the-clock wage violations at approximately \$42,238 (20,756 shifts * 5
12 minutes per shift * \$24.42 average rate of pay). *Id.*

13 Defendant, however, maintains that it has properly recorded and paid Settlement Class
14 members for all time worked during the Class Period, and argue that Plaintiffs and other non-
15 exempt employees underwent COVID-19 related temperature checks after clocking-in for their
16 shifts. Moen Decl., ¶ 36. Defendant also asserts that any time spent on temperature checks was
17 substantially less than 5 minutes. *Id.* Defendant also asserts this claim is unmanageable, as it
18 requires individualized inquiries into whether or not each individual employee was off-the-clock
19 during the temperature checks each day, resulting in an unmanageable series of mini-trials. *Id.*
20 Plaintiffs discounted the maximum exposure by 65% for the risk of non-certification, and by an
21 additional 20% for risk of losing on the merits, to arrive at an estimated exposure of \$11,827. *Id.*

22 **Meal Period Violations: \$1,728,360**

23 Plaintiffs' data analysis determined that Settlement Class members worked an aggregate
24 total of 241,408 shifts in excess of 5.0 hours during the Class Period that contained a facially
25 unlawful first or second meal period, whether by being missed, late and/or short, for which no
26 meal period premiums were paid. Moen Decl., ¶ 37. Accordingly, Plaintiffs calculated
27 Defendant's liability on this claim at \$5,237,455 (241,408 meal period violations * \$24.42
28 average premium). *Id.*

1 Defendant asserts, however, that it maintained a lawful meal period policy/practice at all
2 times during the Class Period, including scheduling meal periods in advance to ensure they are
3 timely taken, and that any failure by an employee to take a lawful meal period was the result of
4 employee choice rather than company policy, requiring individual inquiries into the reasons why
5 each non-compliant meal period was untimely or missed on any given day. Moen Decl., ¶ 38.
6 Defendant further asserts that Plaintiffs' damages calculations are grossly overstated, as they are
7 based on the time employees entered the facility through the turnstile timekeeping system, rather
8 than the actual shift start time after accounting for Defendant's grace period policy. *Id.* Given
9 these defenses, Plaintiffs discounted the maximum exposure by 45% for the risk of non-
10 certification, and by an additional 40% for risk of losing on the merits, to arrive at an estimated
11 exposure of \$1,728,360. *Id.*

12
13 **Rest Period Violations: \$1,139,001**

14 Plaintiffs' data analysis revealed that non-exempt employees worked an aggregate total
15 of 259,123 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 39. Plaintiffs
16 attribute a rest period violation for all work shifts in excess of 3.5 hours due to Defendant's
17 unlawful on-premises rest period policy. *Id.* Accordingly, Plaintiffs calculated Defendant's
18 maximum potential exposure on this claim at \$6,327,783 (259,123 rest period violations * \$24.42
19 average premium). *Id.*

20 However, Defendant argues it has always authorized and permitted duty-free rest periods
21 in accordance with California law, including scheduling rest periods in order to ensure that all
22 lawful rest periods are authorized and permitted. Moen Decl., ¶ 40. Further, Defendant asserts
23 that this claim is not amenable to class certification given the individual inquiries required to
24 determine whether and why each employee missed a rest period on any given shift, whether
25 employees voluntarily remained on Defendant's premises during rest periods, and whether each
26 employee requested a time adjustment from their supervisor after taking off-premises rest periods
27 on any given day, particularly given that rest periods were not recorded. *Id.* Given these defenses,
28 Plaintiffs discounted the maximum exposure by 60% for the risk of non-certification, and by an

1 additional 55% for risk of losing on the merits, to arrive at an estimated exposure of \$1,139,001.
2 *Id.*

3 Failure to Reimburse Violations: \$9,176

4 Plaintiffs estimate that they and the putative class members spent approximately \$50 each
5 to purchase equipment, uniforms and/or footwear for work purposes. Moen Decl., ¶ 41. Therefore,
6 Plaintiffs calculated Defendant's maximum potential exposure on this claim at \$12,700 (\$50 in
7 expenses * 254 non-exempt employees). *Id.*

8 Defendant maintains that, at all relevant times, it never required its employees to purchase
9 equipment, uniforms and/or footwear. Moen Decl., ¶ 41. Also, any failure to reimburse was the
10 result of an employee failing to submit an expense reimbursement request. *Id.* As such, Defendant
11 contends this claim is not certifiable since it would require a series of mini-trials to determine
12 which employees incurred expenses, whether those expenses were reasonable and necessary, and
13 why the employee had not submitted an expense reimbursement request. *Id.* Therefore, Plaintiffs
14 discounted the maximum potential exposure by 15% for the risk of non-certification and 15% for
15 the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$9,176. *Id.*

16 Wage Statement Penalties: \$376,870

17 According to the key data points provided by Defendant, approximately 223 Settlement
18 Class members are eligible for wage statement penalties, and a total of 31,954 wage statements
19 were issued during the relevant period. Moen Decl., ¶ 42. Since statutory wage statement penalties
20 are capped at \$4,000 per employee, Plaintiffs calculated Defendant's maximum possible wage
21 statement exposure as approximately \$892,000. *Id.* However, Defendant raised numerous
22 defenses, including that the alleged violations, if any, were not "knowing and intentional," and
23 that Plaintiffs could not show that the Settlement Class members "suffer[ed] injury" as a result of
24 any alleged violations. *Id.* Defendant further argued that Plaintiffs' underlying claims would fail,
25 and, therefore, their derivative wage statement claim would also fail. *Id.* Therefore, Plaintiffs
26 discounted the maximum exposure by 35% for the risk of non-certification of the underlying
27 claims and 35% for a risk of being unsuccessful on the merits, including failing to prove the
28 violations were "knowing and intentional," that the Settlement Class members "suffer[ed] injury,"

1 for an estimated recovery of \$376,870. *Id.*

2 Waiting Time Penalties: \$383,947

3 Based on data provided by Defendant, approximately 126 Settlement Class members
4 separated their employment during the relevant period applicable to this claim and were entitled
5 to recover waiting time penalties. Moen Decl., ¶ 43. Therefore, Plaintiffs calculated Defendant's
6 maximum potential exposure on this claim at \$738,360 (126 former employees * average waiting
7 time penalty of \$5,860 (\$24.42 average hourly rate * 8 hours * 30 days)). *Id.* Defendant maintains
8 that waiting time penalties are not appropriate because Plaintiffs' claims fail on the merits, and
9 given their good-faith defenses, Plaintiffs cannot show that any failure by Defendant to pay all
10 final wages was willful. *Id.* Plaintiffs discounted this claim by 35% for the risk of non-
11 certification and by an additional 20% for risk of being unsuccessful on the merits or failing to
12 establish willfulness, for an estimated recovery of \$383,947. *Id.*

13 PAGA Penalties: \$225,239

14 Plaintiffs allege that PAGA civil penalties would be recoverable for each pay period in
15 which they could prove an underlying Labor Code violation. Moen Decl., ¶ 44. According to
16 Plaintiffs' data analysis, the Settlement Class members worked a combined total of 32,177 pay
17 periods during the PAGA liability period in which at least one of Plaintiffs' alleged Labor Code
18 violations occurred. *Id.* Plaintiffs therefore calculate Defendant's maximum PAGA exposure at
19 \$3,217,700 (32,177 pay periods * \$100 per violation). *Id.*; *see also Amaral, supra*, 163
20 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it is
21 violating a Labor Code provision). However, these penalties are exclusively derivative of the
22 underlying violations that Defendant vigorously disputes, both as to certification and the merits.
23 Moen Decl., ¶ 44; *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D.
24 Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its
25 underlying claims). Plaintiffs also recognize that the Court has discretion to substantially reduce
26 any award of PAGA penalties. Moen Decl., ¶ 44; *see also* Labor Code § 2699(e)(2); *Fleming v.*
27 *Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug.
28 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiffs

discounted the maximum figure by 30% for the risk of losing on the merits of all underlying claims and by 90% for the likely possibility that this Court would reduce the PAGA penalties awarded, to arrive at an estimated exposure of \$225,239. Moen Decl., ¶ 44.

Using these estimated figures, Plaintiffs estimated that the potential reasonable recovery for the Settlement Class would be approximately \$4,571,258. Moen Decl., ¶ 45. Thus, the proposed recovery to the Settlement Class of \$3,825,000 represents approximately 83.67% of Plaintiffs' reasonably forecasted class-wide recovery, which is well within the range approved by courts as being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding towards class certification and trial. *Id.*; see, e.g., *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval..."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotations omitted). Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to the Settlement Class without the uncertainty, delay, and additional expense of further litigation.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent and experienced counsel who possesses extensive experience litigating wage and hour class actions from both the plaintiff and defense side, and who have been appointed as class counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-9; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-7; Declaration of Susan J. Perez ("S. Perez Decl."), ¶¶ 2-6; Declaration of James R. Hawkins ("Hawkins Decl."), ¶¶ 12-19; Declaration of Christina M. Lucio ("Lucio Decl."), ¶¶ 3-9. Class

Counsel conducted an extensive review and analysis of Defendant’s produced timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs’ case. Moen Decl., ¶ 25. It was only after the completion of this work that the Parties attended mediation and ultimately accepted a mediator’s proposal for a class-wide settlement of all claims at issue. *Id.* Thus, this factor strongly supports preliminary approval of the Settlement.

2. The Preliminary Approval Standard is Met

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

a. The Settlement is Within the Range of Possible Approval

The proposed Settlement reflects an exceptional recovery for the Settlement Class members in light of the significant risks of litigation. The proposed Settlement will provide compensation for contested claims, while only releasing the claims actually at issue in this litigation. Further, the average payment of \$9,404.52 *greatly* exceeds the average payments achieved in other wage and hour class action settlements that have been approved.³ Thus, the proposed Settlement is within the range of possible approval such that notice should be provided to the Settlement Class members to consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

³ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and *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”).

1 **b. The Settlement Resulted from Serious, Informed and Non-Collusive**
2 **Negotiations**

3 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
4 of the exchange of pertinent information, including all relevant policies, employee timekeeping
5 and payroll records, and key data points which were analyzed by Plaintiffs, their counsel and a
6 retained expert; arm's-length negotiations by counsel; mediation before an experienced wage and
7 hour class action mediator who made a mediator's proposal; and additional negotiations until the
8 terms of the long-form Settlement were agreed upon and finalized. Moen Decl., ¶ 25; *see also*
9 *Kullar, supra*, 168 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

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

11 The Settlement will provide tangible monetary relief to the Settlement Class members.
12 Moreover, the amounts proposed for Plaintiffs' class representative Enhancement Awards,
13 settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's
14 portion of PAGA civil penalties are all reasonable and appropriate. Because the Settlement is
15 devoid of obvious deficiencies, this final factor supports preliminary approval.

16 **B. The Court Should Certify the Settlement Class for Settlement Purposes**

17 The proposed Settlement Class satisfies the criteria for certification of a settlement class
18 under California law because: (1) the individuals in the Settlement Class are so numerous that
19 joinder would be impractical; (2) common questions of law and fact predominate over individual
20 questions such that class certification is the most efficient and desirable way to maintain this
21 litigation; (3) Plaintiffs' claims are typical of the claims of the absent Settlement Class members;
22 and (4) Plaintiffs and Plaintiffs' counsel will fairly and adequately represent the interests of the
23 absent Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

24 **1. The Proposed Class is Ascertainable and Numerous**

25 A class is "ascertainable" where the members "may be readily identified without
26 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
27 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
28 Class is defined as all non-exempt employees who were employed by Defendant in California at
any time during the Class Period. *See* Settlement, ¶ 1. Settlement Class members can be easily

1 identified using Defendant’s employment and payroll records. Moen Decl., ¶ 28. Defendant
2 represents that the Settlement Class consists of approximately 254 individuals, rendering it
3 impracticable to bring all Settlement Class members before the Court. *Id.* Thus, the proposed
4 Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

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

6 The focus in a certification dispute is not on the merits of the case, but rather on what
7 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*
8 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiffs’ claims are predicated
9 on Defendant’s alleged failures to pay all minimum and overtime wages owed, pay all meal and
10 rest period premiums, reimburse all necessary business expenses, furnish accurate and itemized
11 wage statements, and pay all final wages owed upon separation of employment. These types of
12 claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th
13 at 1032-34 (“The theory of liability—that Brinker has a uniform policy, and that that
14 policy...allegedly violates the law—is by its nature a common question eminently suited for class
15 treatment.”).

16 **3. The Claims of the Named Plaintiffs are Typical**

17 The typicality requirement is satisfied where class representatives have claims that are
18 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
19 Cal.App.3d 1341, 1347. Here, like other Settlement Class members, Plaintiffs were employed by
20 Defendant as non-exempt employees in California and were subject to Defendant’s allegedly
21 unlawful wage and hour policies/practices during the Class Period. Hallum Decl., ¶¶ 6-7; Ramos
22 Decl., ¶¶ 2-4. Plaintiffs were therefore impacted by the same challenged policies that allegedly
23 injured the Settlement Class as a whole and were subject to the same defenses forwarded by
24 Defendant as to the Settlement Class, and are therefore typical.

25 **4. Plaintiffs and Class Counsel are Adequate to Represent the Class**

26 The adequacy of representation requirement examines conflicts of interest between named
27 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
28 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiffs and Class Counsel will
adequately represent the Settlement Class members as there are no conflicts between the named

1 Plaintiffs and the Settlement Class members they seek to represent, and Plaintiffs possess claims
2 that are in line with those of the Settlement Class members. *See McGhee v. Bank of America*
3 (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the
4 plaintiff's counsel were not qualified and the plaintiff had no interests antagonistic to those of the
5 class). Class Counsel also has extensive experience in wage and hour class action litigation. *See*
6 Moen Decl., ¶¶ 2-7; Haines Decl., ¶¶ 2-9; Schmidt Decl., ¶¶ 2-7; Perez Decl., ¶¶ 2-6; Hawkins
7 Decl., ¶¶ 12-19; Lucio Decl., ¶¶ 3-9.

8 **C. The Court Should Order Distribution Of The Proposed Class Notice**

9 This Court should order distribution of the proposed Class Notice in English only to the
10 Settlement Class members by first class mail, postage prepaid, using the last known mailing
11 address information provided by Defendant. Defendant has represented that, based on the
12 demographics of the Settlement Class members, English-only notice is sufficient. This manner of
13 giving notice is the "best notice practicable" under the circumstances because it provides
14 "individual notice to all members who can be identified through reasonable effort." *See Eisen v.*
15 *Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. The Parties propose that the settlement be
16 administered by Phoenix Settlement Administrators ("Phoenix"), an experienced class action
17 settlement administrator. *See* Declaration of Jodey Lawrence. Settlement Class members'
18 addresses will be ascertainable through Defendant's personnel records, and Defendant will
19 provide all Settlement Class members' names, last known mailing addresses, phone numbers,
20 social security numbers, and workweek data to Phoenix within ten (10) business days after of the
21 Court signs an order preliminarily approving the Settlement. *See* Settlement, ¶ 9.A. Phoenix will
22 run the Settlement Class members' addresses through the National Change of Address database
23 and/or conduct skip traces to obtain current address information. *Id.*, ¶ 9.B-C.

24 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
25 because it advises the Settlement Class members' of the nature of the claims, basic contentions
26 and denials of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out
27 or object to the Settlement and the procedures by which to do so, explains the recovery formula
28 and expected recovery amount for each Settlement Class members, and advises them that they

1 will be bound by the terms of the Settlement if they do not request exclusion. *See* Moen Decl.,
2 Exhibit B. The proposed Class Notice will also notify the Settlement Class of the Final Approval
3 Hearing date, provide Class Counsel's contact information, and advise Settlement Class members
4 that they may enter an appearance through counsel if they so wish. *Id.* This manner of giving
5 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method
6 of reaching Settlement Class members. Additionally, because the proposed Settlement includes
7 settlement of Plaintiffs' representative PAGA claim, notice of the Settlement has been submitted
8 to the LWDA. *See id.*, ¶ 46, Exhibit F (LWDA Settlement Submission); Proof of Service.

9 **D. The Court Should Set A Final Approval Hearing**

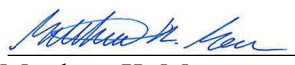
10 Finally, this Court should set a hearing for final approval of the Settlement on a date
11 appropriately scheduled to follow the deadline by which Settlement Class members must file
12 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

13 **V. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
15 approve the proposed Settlement, provisionally certify the Settlement Class for settlement
16 purposes, and enter the [Proposed] Order submitted concurrently herewith.

17
18 Dated: December 27, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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20 By: 
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22 Attorneys for Plaintiffs
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