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

9 **FOR THE COUNTY OF RIVERSIDE**

11 OLIVER SALAS MONDRAGON, as an  
12 individual and on behalf of all others similarly  
situated,

13 Plaintiff,

14 vs.

15 UFP RIVERSIDE, LLC, a California limited  
16 liability company; and DOES 1 through 100,

17 Defendants.  
18  
19

Case No. CVRI2104543

*[Case assigned for all purposes to the Hon.  
Harold Hopp; Department 1]*

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

Date: October 18, 2023

Time: 8:30 a.m.

Dept.: 1

Action Filed: October 5, 2021

Trial Date: No Date Set

1       **PLEASE TAKE NOTICE** that pursuant to Rule 3.769 of the California Rules of Court, on  
2 October 18, 2023 at 8:30 a.m. in Department 1 of the above-entitled Court, located at 4050 Main  
3 Street, Riverside, California 92501, Plaintiffs Oliver Salas Mondragon and Jesus Alberto Magana  
4 (“Plaintiffs”), individually and on behalf of a class of similarly situated individuals, will and hereby  
5 do move this Court for:

- 6       1. Preliminary approval of the proposed class settlement of this lawsuit;
- 7       2. Pursuant to section 382 of the California Code of Civil Procedure, provisional  
8       certification of the following Settlement Class defined as follows:  
9       All persons who have worked for Defendant UFP Riverside LLC as non-  
10       exempt employees in the State of California at any time during the time  
11       period of November 21, 2017 to October 10, 2022 (the “Class Period”).
- 12       3. Preliminary appointment of Plaintiffs Oliver Salas Mondragon and Jesus Alberto  
13       Magana as Class Representatives;
- 14       4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R.  
15       McIntosh of Haines Law Group, APC as Class Counsel;
- 16       5. The scheduling of a hearing to consider whether the Settlement should be finally  
17       approved and to permit enhancement payments to Plaintiffs, Settlement Administrator  
18       costs, civil penalties payable to the Labor & Workforce Development Agency  
19       (“LWDA”), and attorneys’ fees and costs to Class Counsel;
- 20       6. Appointment of Phoenix Settlement Administrators as the third-party Settlement  
21       Administrator for mailing notices; and
- 22       7. Approval of the proposed Class Notice and an order that it be disseminated to the  
23       proposed Settlement Class as provided in the Settlement Agreement.

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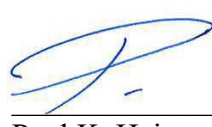
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1 This Motion is based on this notice of motion, the attached memorandum of points and  
2 authorities, the declarations of Paul K. Haines, Sean M. Blakely, Alexandra R. McIntosh, and Jodey  
3 Lawrence of Phoenix Settlement Administrators and the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

6  
7 Dated: September 26, 2023

Respectfully submitted,  
HAINES LAW GROUP, APC

8  
9 By:



Paul K. Haines  
Sean M. Blakely  
Attorneys for Plaintiffs

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|----|------------------------------------------------------------------------|----|
| 1  | <b><u>TABLE OF CONTENTS</u></b>                                        |    |
| 2  | I. INTRODUCTION .....                                                  | 1  |
| 3  | II. SUMMARY OF THE LITIGATION .....                                    | 2  |
| 4  | A. THE PARTIES AND BRIEF PROCEDURAL HISTORY .....                      | 2  |
| 5  | B. PLAINTIFFS’ CLAIMS AND UFP’S DEFENSES .....                         | 3  |
| 6  | 1. Unpaid Overtime Due to Regular Rate Miscalculation .....            | 3  |
| 7  | 2. Meal Period Claims .....                                            | 4  |
| 8  | 3. Rest Period Claims .....                                            | 5  |
| 9  | 4. Unlawful Deduction Claims .....                                     | 5  |
| 10 | 5. Derivative Claims Under Labor Code §§ 203, 226 and the PAGA .....   | 6  |
| 11 | C. DISCOVERY AND MEDIATION .....                                       | 7  |
| 12 | III. THE PROPOSED SETTLEMENT .....                                     | 7  |
| 13 | A. ESSENTIAL TERMS OF THE SETTLEMENT .....                             | 7  |
| 14 | 1. The Settlement Provides For Reasonable Monetary Payments .....      | 8  |
| 15 | 2. Attorneys’ Fees, Costs, And Enhancement Payments .....              | 9  |
| 16 | III. ARGUMENT .....                                                    | 10 |
| 17 | A. PRELIMINARY APPROVAL IS WARRANTED .....                             | 10 |
| 18 | 1. Standard For Preliminary Approval .....                             | 11 |
| 19 | a. The Strength of Plaintiffs’ Case .....                              | 11 |
| 20 | b. Risk, Expense, Complexity, and Duration of Further Litigation ..... | 11 |
| 21 | c. Risk of Maintaining Class Action Status .....                       | 12 |
| 22 | d. Amount Offered in Settlement Given Realistic Value of Claims .....  | 12 |
| 23 | e. The Experience and Views of Counsel .....                           | 17 |
| 24 | 2. The Preliminary Approval Standard Is Met .....                      | 17 |
| 25 | a. The Settlement is Within the Range of Possible Approval .....       | 17 |
| 26 | b. The Settlement Resulted from Serious, Informed Negotiations .....   | 18 |
| 27 | c. The Settlement is Devoid of Obvious Deficiencies .....              | 19 |
| 28 | B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS .....                 | 19 |

|   |                                                                      |    |
|---|----------------------------------------------------------------------|----|
| 1 | 1. The Proposed Class Is Ascertainable And Numerous.....             | 19 |
| 2 | 2. Common Issues Of Law And Fact Predominate .....                   | 19 |
| 3 | 3. The Claims Of The Named Plaintiffs Are Typical.....               | 20 |
| 4 | 4. Plaintiffs And Class Counsel Will Fairly And Adequately Represent |    |
| 5 | The Class .....                                                      | 20 |
| 6 | C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE.....            | 21 |
| 7 | D. THE COURT SHOULD SET A FINAL APPROVAL HEARING.....                | 22 |
| 8 | IV. CONCLUSION .....                                                 | 22 |

## TABLE OF AUTHORITIES

### Federal Cases

|                                                                                             |        |
|---------------------------------------------------------------------------------------------|--------|
| <i>Dunleavy v. Nadler</i> , 213 F.3d 454 (9th Cir. 2000).....                               | 18     |
| <i>Eisen v. Carlisle &amp; Jacquelin</i> , 417 U.S. 156 (1974).....                         | 21     |
| <i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998).....                        | 10, 11 |
| <i>In re Pacific Enterprises Securities Litigation</i> , 47 F.3d 373 (9th Cir. 1995).....   | 17     |
| <i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008).....                       | 10     |
| <i>Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004) ..... | 18     |

### State Cases

|                                                                                                        |            |
|--------------------------------------------------------------------------------------------------------|------------|
| <i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008).....                                 | 16         |
| <i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987).....                 | 20         |
| <i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013) .....                  | 20         |
| <i>Bowles v. Sup. Ct.</i> , 44 Cal.2d 574 (1955).....                                                  | 19         |
| <i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012) .....                       | 4          |
| <i>Capital People First v. State Dept. of Developmental Services</i> , 155 Cal.App.4th 676 (2007)..... | 20         |
| <i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996).....                                        | 11         |
| <i>Huntington Memorial Hospital v. Superior Court</i> , 131 Cal.App.4th 893 (2005) .....               | 3          |
| <i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010) .....                       | 9          |
| <i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008) .....                           | 11, 17, 18 |
| <i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016) .....                                | 11         |
| <i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308 (2018) .....                          | 6          |
| <i>McGhee v. Bank of America</i> , 60 Cal.App.3d 442 (1976).....                                       | 20         |
| <i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011) .....                                    | 6          |
| <i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....                           | 10         |
| <i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i> , 34 Cal.4th 319 (2004) .....                | 20         |
| <i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010) .....                                      | 19         |
| <i>Thurman v. Bayshore Transit Mgmt., Inc.</i> 203 Cal.App.4th 1112 (2012) .....                       | 6, 16      |

|    |                                                                            |       |
|----|----------------------------------------------------------------------------|-------|
| 1  | <i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001) .....   | 11    |
| 2  |                                                                            |       |
| 3  | <b><u>Federal Statutes and Rules</u></b>                                   |       |
| 4  | 29 C.F.R. § 778.208 .....                                                  | 4     |
| 5  | 29 U.S.C. § 207(e)(2) .....                                                | 4     |
| 6  |                                                                            |       |
| 7  | <b><u>State Statutes and Rules</u></b>                                     |       |
| 8  | 8 Cal. Code Regs. § 13520 .....                                            | 6     |
| 9  | Cal. Civ. Proc. § 382 .....                                                | 19    |
| 10 | Cal. Rule of Court 3.769 .....                                             | 22    |
| 11 | Lab. Code § 2699(e)(2) .....                                               | 6, 16 |
| 12 |                                                                            |       |
| 13 | <b><u>Unpublished Cases</u></b>                                            |       |
| 14 | <i>Aguirre v. Genesis Logistics</i>                                        |       |
| 15 | Case No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 (C.D. Cal. 2013) .....  | 6     |
| 16 | <i>Bercea v. AE Retail West</i>                                            |       |
| 17 | Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) ..... | 18    |
| 18 | <i>Doty v. Costco Wholesale Corp.</i>                                      |       |
| 19 | Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) .....                 | 18    |
| 20 | <i>Fleming v. Covidien Inc.</i>                                            |       |
| 21 | Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011) .....   | 16    |
| 22 | <i>Fleming v. Covidien Inc.</i>                                            |       |
| 23 | Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011) .....   | 6     |
| 24 | <i>Glass v. UBS Finan. Servs.</i>                                          |       |
| 25 | Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007) .....              | 17    |
| 26 | <i>Gomez v. Amadeus Salon, Inc.</i>                                        |       |
| 27 | Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) .....      | 18    |
| 28 |                                                                            |       |

|    |                                                                                 |    |
|----|---------------------------------------------------------------------------------|----|
| 1  | <i>Green v. Lawrence Service Co.</i>                                            |    |
| 2  | 2013 WL 3907506 (C.D. Cal. 2013).....                                           | 16 |
| 3  | <i>Lim v. Victoria’s Secret Stores, Inc.</i>                                    |    |
| 4  | Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) .....               | 18 |
| 5  | <i>Palencia v. 99 Cents Only Stores</i>                                         |    |
| 6  | Case No. 34-2010-00079619 (Sacramento County Super. Ct.) .....                  | 18 |
| 7  | <i>Ressler v. Federated Department Stores, Inc.</i>                             |    |
| 8  | Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) .....            | 18 |
| 9  | <i>Schiller v. David’s Bridal, Inc.</i>                                         |    |
| 10 | Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (E.D. Cal. June 11, 2012) ..... | 18 |
| 11 | <i>Sorenson v. PetSmart, Inc.</i>                                               |    |
| 12 | Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) .....                  | 18 |
| 13 | <i>Williams v. Centerplate, Inc.</i>                                            |    |
| 14 | Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC                                    |    |
| 15 | 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) .....                                 | 18 |
| 16 |                                                                                 |    |
| 17 | <b><u>Other Sources</u></b>                                                     |    |
| 18 | DLSE Manual § 49.1.2.4(3) .....                                                 | 4  |
| 19 | Manual for Complex Litigation § 30.41 (3rd Ed. 1995) .....                      | 17 |
| 20 | 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013) .....                      | 17 |
| 21 | 4 Newberg on Class Actions § 14.6 (4th Ed. 2013) .....                          | 10 |
| 22 | Wage Order 7 § 9 .....                                                          | 5  |
| 23 |                                                                                 |    |
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Oliver Salas Mondragon and Jesus Alberto Magana (“Plaintiffs”) seek preliminary  
4 approval of a class action settlement with Defendant UFP Riverside, LLC (“UFP”). Plaintiffs  
5 brought this class and representative action for various wage and hour violations on behalf of all  
6 persons who have worked for UFP as non-exempt employees in the State of California at any time  
7 during the time period of November 21, 2017 to October 10, 2022 (the “Class Period”). Plaintiffs’  
8 primary allegations are that UFP: (1) failed to pay all overtime wages; (2) failed to provide all legally  
9 compliant meal periods; (3) failed to authorize and permit all required rest periods; and (4) made  
10 unlawful deductions from earned wages. As a result of these violations, Plaintiffs also allege that  
11 UFP failed to issue accurate and compliant itemized wage statements, failed to pay all wages to  
12 UFP’s former employees, and are liable for civil penalties under the Private Attorneys General Act  
13 (“PAGA”).

14 Plaintiffs now respectfully request that this Court preliminarily approve this non-  
15 reversionary, common-fund class action settlement<sup>1</sup>, in which UFP has agreed to pay a Total  
16 Settlement Amount (“TSA”) of Six Hundred Twenty Thousand Dollars and Zero Cents  
17 (\$620,000.00) on behalf of the following Settlement Class:

18 All persons who have worked for defendant UFP Riverside LLC as non-  
19 exempt employees in the State of California at any time during the Class  
20 Period.

21 The \$620,000 TSA represents a substantial benefit to Class Members who will be agreeing  
22 to a release of only those claims that were asserted in this litigation. After deductions for Plaintiffs’  
23 requested enhancement payments, settlement administrator costs, the amount set aside as PAGA  
24 civil penalties, and attorneys’ fees and costs to Class Counsel, the remaining amount (the “Net

25 \_\_\_\_\_  
26 <sup>1</sup> The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Paul K. Haines as  
27 **Exhibit A**. The proposed Class Notice, Request for Exclusion Form, and Objection Form (together,  
28 the “Notice Packet”) are attached to the Settlement as Exhibits 1, 2 and 3, respectively, and are also  
attached to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement  
submitted with this motion. All defined terms in this motion have the same definition as that in the  
Settlement.

Settlement Amount”) of approximately \$316,333.34 will be distributed to all Class Members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Class Member. Significantly, Class Members do not need to file a claim form in order to receive a Settlement Award, as all Class Members will automatically receive a Settlement Award unless they affirmatively opt-out. There are approximately 415 Class Members, and the average Settlement Award is projected to be approximately \$762.25.<sup>2</sup>

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

## **II. SUMMARY OF THE LITIGATION**

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

UFP is a supplier of lumber for the manufactured housing industry and a leading producer of preservative-treated lumber and fencing. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 11. Plaintiffs and Class Members worked for UFP in California as non-exempt employees during the Class Period. *Id.*

On October 5, 2021, Plaintiff Mondragon filed the instant wage and hour class action in Riverside Superior Court alleging the following causes of action: (1) failure to pay all overtime wages; (2) meal period violations; (3) rest period violations; (4) waiting time penalties; (5) wage statement violations; (6) unlawful deductions from earned wages; (7) failure to reimburse all necessary business expenditures; and (8) unfair competition. Haines Decl., ¶ 12. On December 13, 2021, Plaintiff Mondragon filed a First Amended Complaint adding a ninth cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code

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<sup>2</sup> In addition to the \$762.25 average Settlement Award from the Net Settlement Amount, the approximately 258 Class Members who worked during the time period from October 5, 2020 to October 10, 2022 (“PAGA Period”) will also receive a portion of the PAGA Amount. Haines Decl., ¶ 23. The average PAGA Payment is estimated to be \$38.76. *Id.* The estimated high PAGA Payment is estimated to be \$43.00 and the estimated low PAGA Payment is estimated to be \$.80. *Id.*

1 § 2698, *et seq. Id.* The action was subsequently removed under the Class Action Fairness Act  
2 (“CAFA”) to the Central District of California, United States District Court. *Id.*

3 While the action was pending in District Court, the Parties agreed to attend a private  
4 mediation, and in connection with mediation, UFP produced the timekeeping and payroll records for  
5 all Class Members, a class list with Class Member’s dates of employment and rates of pay, as well  
6 as UFP’s relevant wage and hour policies. Haines Decl., ¶ 13. On July 11, 2022, the Parties attended  
7 private mediation with Steven G. Mehta, Esq., a well-respected wage and hour class action mediator,  
8 which ultimately resulted in a class-wide settlement in principle, subject to Court approval. *Id.* at ¶  
9 14.

10 On September 22, 2022, the Parties stipulated to the action being remanded for purposes of  
11 seeking settlement approval, given that the sole basis for removal was that there was over five  
12 million dollars in controversy under the Class Action Fairness Act (“CAFA”), and the agreed-upon  
13 settlement amount being less than the jurisdictional minimum required for subject matter  
14 jurisdiction under the CAFA. Haines Decl., ¶ 15. The District Court granted the Parties’ stipulation  
15 on October 13, 2022 and remanded the instant action to this Court. *Id.*

16 As part of the Settlement, the Parties further agreed for Plaintiffs to file a Second Amended  
17 Class and Representative Action Complaint (“SAC”) in this action to add Plaintiff Jesus Alberto  
18 Magana as a named plaintiff and proposed class representative. Haines Decl., ¶ 15. On or about June  
19 30, 2023, Plaintiffs filed the operative SAC. *Id.*

20 **B. PLAINTIFFS’ CLAIMS AND UFP’S DEFENSES**

21 **1. Unpaid Overtime Due to Regular Rate Miscalculation**

22 Plaintiffs allege that they and other Class Members worked in excess of eight (8) hours per  
23 workday and/or forty (40) hours per workweek but were not compensated at one and one-half times  
24 their regular rate of pay for such hours, as a result of UFP’s failure to include non-discretionary  
25 referral and incentive bonuses when calculating its employees’ regular rates of pay for the purposes  
26 of overtime. Haines Decl., ¶ 16; *see, e.g., Huntington Memorial Hospital v. Superior Court*, 131  
27 Cal.App.4th 893, 902-903 (2005) (discussing regular rate calculation requirements).

28 In response, UFP contends that at all relevant times the bonuses it paid to its non-exempt

employees were discretionary. Haines Decl., ¶ 16; *see also* DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and therefore excludable, if “both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly”). UFP further argues that the discretionary bonuses were not tied to employees’ hours worked and therefore do not need to be included in the regular rate on this basis as well. Haines Decl., ¶ 16; *see also* 29 U.S.C. § 207(e)(2) (payments which are not compensation for hours of employment need not be included in regular rate of pay); 29 C.F.R. § 778.208 (discretionary bonuses excludable from regular rate). UFP further argues that Class Members received different types of bonuses and other remuneration throughout the Class Period, creating substantive differences among Class Members with respect to the incentives received, making class certification unlikely. Haines Decl., ¶ 16.

## **2. Meal Period Claims**

Plaintiffs allege that UFP failed to provide Class Members with legally compliant first and second meal periods. Haines Decl., ¶ 17. Specifically, Plaintiffs allege that they and other non-exempt employees were unable to take timely first meal periods of at least 30 minutes before the end of their fifth hour of work due to work demands imposed by UFP’s supervisors. *Id.* Additionally, Plaintiffs allege that UFP failed to provide legally compliant second meal periods when Class Members worked shifts in excess of 10.0 hours. *Id.*

UFP counters that it has maintained compliant written meal period policies throughout the Class Period and has always provided employees with the *opportunity* to take legally compliant meal periods, and that it is not required to “*ensure*” that meal periods are taken. Haines Decl., ¶ 17; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers only have to “provide” employees the opportunity to take meal periods). UFP further argues that its compliant policies are reflected not only in the high percentage of shifts which reflect a compliant first meal period (approximately 85%), but also the fact that it has paid approximately \$350,348 in meal period premiums during the Class Period. Haines Decl., ¶ 17. UFP argues that for the majority of the Class Period it automatically paid its employees a meal

1 period premium when their time records reflected a non-compliant meal period. *Id.* Additionally,  
2 with respect to second meal periods, UFP maintains that employees voluntarily waived their second  
3 meal period when they worked shifts in excess of 10.0 hours (but less than 12.0 hours), as they are  
4 entitled to do under Labor Code § 512. *Id.* Finally, UFP argues that these claims are not suited for  
5 class treatment, as individual inquiries would be needed to assess which employees took non-  
6 compliant meal periods or missed meal periods, how many meal periods were non-compliant or  
7 missed, the reasons why a particular employee did not take a compliant meal period on a particular  
8 shift, and for second meal periods, whether there was a valid waiver. *Id.*

### 9                   **3. Rest Period Claims**

10           Plaintiffs allege that UFP failed to authorize and permit all legally required rest periods as  
11 Plaintiffs and other employees were often required to work through their rest periods in order to  
12 accommodate time sensitive shipments. Haines Decl., ¶ 18. UFP counters that it has always  
13 maintained compliant written rest period policies throughout the Class Period and that any failure  
14 to take rest periods was as a result of employee choice, rather than any policy or practice on the part  
15 of UFP. *Id.* UFP further argues that Plaintiffs' rest period claim is not amenable to class treatment,  
16 since individual inquiries would be required to determine which employees failed to take rest  
17 periods, how many rest periods they failed to take, and the reasons why each employee failed to  
18 take rest period(s) on a particular shift. *Id.* These manageability concerns are especially present with  
19 respect to rest period claims, UFP argues, given that rest periods are not recorded. *Id.*

### 20                   **4. Unlawful Deduction Claims**

21           Plaintiffs allege that UFP made unlawful deductions from Plaintiffs' and other non-exempt  
22 employees' wages for the cost of their uniforms in violation of Labor Code § 221. Haines Decl., ¶  
23 19. In response, UFP argues that the uniforms were optional and were not mandatory, and therefore,  
24 UFP is legally entitled to deduct from employees' pay checks the cost of the uniforms so long as the  
25 employees consent, which UFP contends employees did. *Id.*; see Wage Order 7 § 9 (requiring  
26 employers to maintain uniforms only if they are required.) UFP further argues that this claim is not  
27 suitable for class treatment, as it would require individualized determinations as to whether the  
28 uniforms were mandatory and whether each employee consented to the uniform deduction. Haines

Decl., ¶ 19.

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

As a result of the unpaid wages, meal and rest period violations, and unlawful deductions described above, Plaintiffs allege that UFP failed to comply with their final pay obligations set forth in Labor Code §§ 201-203, failed to issue accurate and compliant wage statements in violation of Labor Code § 226, and are liable for civil penalties under the PAGA. Haines Decl., ¶¶ 20-22.

UFP maintains that it possesses strong, good faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Haines Decl., ¶ 20; *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 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.”). UFP further contends any alleged wage statement violations could not be shown to be “knowing and intentional” given its good-faith defenses, and that Plaintiffs cannot show they or other employees “suffer[ed] injury,” as required by Labor Code § 226(e) for the imposition of penalties. Haines Decl., ¶ 21. UFP further argues that wage statements always accurately reflected hours worked and amounts paid to employees. *Id.*; *see Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received).

Additionally, since Plaintiff Mondragon’s PAGA claim is derivative of the underlying claims, UFP asserts the PAGA claim would fail with those claims. Haines Decl., ¶ 22; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). UFP also maintains that given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find UFP liable for any of Plaintiffs’ claims. Haines Decl., ¶ 22; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at \*4 (C.D. Cal. 2011) (reducing PAGA penalties from \$2.8 million to \$500,000); *Aguirre*

1 v. *Genesis Logistics*, Case No. SACV 12-00687 JVS (ANx), 2013 WL 10936035, at \* 2-3 (C.D.  
2 Cal. 2013) (reducing PAGA penalties from \$1.8 million to \$500,000).

3 **C. DISCOVERY AND MEDIATION**

4 In connection with mediation, UFP provided Plaintiffs with timekeeping and payroll data  
5 for the entire putative class. Haines Decl., ¶ 13. UFP also provided Plaintiffs with a class list that  
6 included putative class members' hire dates, termination dates (if applicable), and rates of pay, as  
7 well as its written wage and hour policies and procedures. *Id.* Plaintiffs hired a labor economist with  
8 a Ph.D. in economics to conduct a comprehensive analysis of the data produced by UFP to create a  
9 damages model for mediation. *Id.* This discovery allowed the Parties to assess the merits and value  
10 of Plaintiffs' claims, the chances of certification of Plaintiffs' claims, and UFP's potential defenses.  
11 *Id.*

12 On July 11, 2022, the Parties attended private mediation with Steven G. Mehta, Esq., a well-  
13 respected wage and hour class action mediator. Haines Decl., ¶ 14. During mediation, the Parties  
14 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims,  
15 and the legal basis for the claims and UFP's defenses. *Id.* At the conclusion of mediation, Mr. Mehta  
16 issued a mediator's proposal for a class-wide settlement, which was accepted by both sides. *Id.*  
17 During the months that followed, the Parties finalized the terms of the Settlement and executed the  
18 long-form Settlement Agreement now before the Court. *Id.* As part of the Settlement, the Parties  
19 agreed to file a Second Amended Class and Representative Action Complaint ("SAC") in this  
20 Action to add Plaintiff Jesus Alberto Magana as a named plaintiff and class representative. *Id.*, at ¶  
21 15. On or about June 30, 2023, Plaintiffs filed the SAC. *Id.*

22 **III. THE PROPOSED SETTLEMENT**

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

24 If the Court preliminarily approves this Settlement, UFP will pay a Total Settlement Amount  
25 ("TSA") of \$620,000.00. *See* Settlement, § 4. Significantly, this Settlement is non-reversionary, and  
26 no Class Member will have to submit a claim form to receive a Settlement Award. *Id.*, at §§ 4(C),  
27 5. Each Class Member will automatically receive a Settlement Award unless they affirmatively opt  
28 out of the Settlement. *See Id.*, at § 5.

The monetary terms of the Settlement are summarized below:

|                                                           |                     |
|-----------------------------------------------------------|---------------------|
| • Total Settlement Amount (“TSA”):                        | \$620,000.00        |
| • Minus Court-approved attorneys’ fees (1/3):             | \$206,666.66        |
| • Minus Court-approved verified costs (up to):            | \$30,000.00         |
| • Minus Court-approved Enhancement Payments:              | \$15,000.00         |
| • Minus Amount Set Aside as PAGA penalties:               | \$40,000.00         |
| • <u>Minus estimated settlement administration costs:</u> | <u>\$12,000.00</u>  |
| Net Settlement Amount (“NSA”):                            | \$316,333.34        |
| • PLUS 25% “PAGA Amount” to Settlement Class:             | \$10,000.00         |
| <b>Total Amount Paid to Class members:</b>                | <b>\$326,333.34</b> |

**1. The Settlement Provides For Reasonable Monetary Payments**

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Plaintiffs’ Class Representative Enhancement Payments, Settlement Administrator costs, and the amount designated as PAGA civil penalties, the Settlement requires UFP to pay a Net Settlement Amount (“NSA”) of approximately \$316,333.34 to all Class Members who do not timely opt out. *See* Settlement, § 5(A). The Net Settlement Amount shall be distributed to all participating Class Members based on the participating Class Member’s proportionate number of “qualified weeks” worked during the Class Period. *See* Settlement, §§ 5(B)(i)-(ii). Further, Ten Thousand Dollars and Zero Cents (\$10,000.00) has been designated the “PAGA Amount,” and shall be distributed to Class Members proportionally based on the number of workweeks worked from October 6, 2020 through October 10, 2022 (the “PAGA Period”). Settlement, §§ 4(C)(6); 5(B)(iii).

UFP’s share of employer-side payroll taxes will be paid by UFP separately and in addition to the TSA. *See* Settlement, § 4(D). The Parties propose that any uncashed checks after 180 days of mailing shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Class Member to whom the check was issued, until such time that they claim their property. Settlement, § 5(E).

According to UFP’s records, there are approximately 415 total Class Members. Haines Decl., ¶ 24. Thus, the average Settlement Award is projected to be approximately \$762.25. *Id.* The lowest potential Settlement Award is estimated to be approximately \$5.58. *Id.* The highest potential Settlement Award is estimated to be approximately \$1,422.66. *Id.*

Class Members will have sixty (60) days to opt-out or object to the Settlement, thereby

1 providing ample time to review the Class Notice without unduly delaying the Settlement. *See*  
2 Settlement, §§ 10(C)-(D). Those Class Members who do not opt-out of the Settlement will be bound  
3 by its terms and will release all claims against UFP included within the Settlement, for the Class  
4 Period. *See* Settlement, § 2(A).

## 5 **2. Attorneys' Fees, Costs, And Enhancement Payments**

6 Plaintiffs will separately apply for an enhancement payment at the time of seeking final  
7 approval of the proposed Settlement in the amount of \$10,000.00 for Plaintiff Mondragon and  
8 \$5,000.00 for Plaintiff Magana, for a total of \$15,000, for their services to the Settlement Class. *See*  
9 Settlement, §§ 4(C)(3); 7. "[I]ncentive awards are fairly typical in class action cases . . . and are  
10 intended to compensate class representatives for work done on behalf of the class [and] to make up  
11 for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination*  
12 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval,  
13 Plaintiffs' requested enhancement payments are intended to recognize the time and effort Plaintiffs  
14 expended on behalf of the Class Members, including providing substantial factual information and  
15 documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims  
16 and theories at issue in the litigation, actively participating in the prosecution of their claims, as well  
17 as the significant risks Plaintiffs undertook by agreeing to serve as named plaintiffs in this case and  
18 the fact that Plaintiffs agreed to a general release of all claims subject to a waiver of California Civil  
19 Code § 1542. Haines Decl., ¶ 27.

20 Class Counsel will also apply for an attorneys' fees award of one-third of the TSA, which is  
21 currently estimated to be \$206,666.66, and up to \$30,000.00 in verified costs reimbursement. *See*  
22 Settlement, §§ 4(C)(4); 6; *see also* Haines Decl., ¶ 26. Plaintiffs submit the requested fee is fair  
23 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely  
24 contingent fee basis. Class Counsel has incurred substantial attorneys' fees conducting pre-filing  
25 investigation, analyzing Plaintiffs' claims, conducting legal research, engaging in informal  
26 discovery, reviewing UFP's documents and policies, interviewing Class Members regarding their  
27 work experiences with UFP, analyzing Class Members' relevant records, working with a retained  
28 expert to create a comprehensive damages model, preparing for and attending a mediation,

1 negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and  
2 otherwise litigating the case. Haines Decl., ¶ 26. Class Counsel also expects to expend additional  
3 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding  
4 questions from Class Members, preparing the final approval papers, and attending the Final  
5 Approval hearing. *Id.*

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

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

### 18 **III. ARGUMENT**

#### 19 **A. PRELIMINARY APPROVAL IS WARRANTED**

20 California Rule of Court 3.769 conditions settlement of a class action on court approval,  
21 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal  
22 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337  
23 (2012) (Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and  
24 adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule  
25 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair,  
26 adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in  
27 complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008).  
28 The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken

1 as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of  
2 fairness where, as here, the Settlement was negotiated at arm's-length by experienced Class Counsel  
3 and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v.*  
4 *Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

### 5 **1. Standard For Preliminary Approval**

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

#### 15 **a. The Strength of Plaintiffs' Case**

16 Class Counsel and its expert carefully vetted the claims at issue, reviewed extensive  
17 timekeeping and payroll data and conducted a detailed analysis of the data to create a comprehensive  
18 damages model for UFP's potential class-wide liability. *See Haines Decl.*, ¶¶ 13, 16-22. Although  
19 Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there  
20 were substantial risks and uncertainty in proceeding with litigation. *Id.* As described in section II.B.,  
21 *supra*, UFP presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to  
22 class certification. *Id.* Thus, while Plaintiffs were prepared to litigate these claims through class  
23 certification, and ultimately trial, success was far from certain.

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

25 Although the parties engaged in extensive informal discovery in advance of mediation, the  
26 Parties still had significant discovery to complete in formal litigation had the matter not settled.  
27 *Haines Decl.*, ¶ 25. This would have required expenditure of substantial time and resources by both  
28 Parties that would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the

1 classes, the parties would incur considerably more attorney fees and costs through a possible  
2 decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the  
3 accompanying expense. *Id.*

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

5 Plaintiffs have not yet filed their class certification motion, and as such, the extent to which  
6 Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there was  
7 a risk that there would not be a certified class at the time of trial, or if there were, it would consist  
8 of a significantly smaller group of employees than the proposed Settlement Class, and the expected  
9 class-wide recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

11 The Settlement provides a fair and reasonable monetary recovery for Class Members for  
12 hotly disputed claims. After analyzing the data provided by UFP prior to mediation, Plaintiffs  
13 prepared a class-wide exposure model and forecasted the expected recovery for each claim as  
14 follows:

15 **Regular Rate Violations: \$24,534**

16 Plaintiffs allege that they and other Settlement Class members worked in excess of eight (8)  
17 hours per workday and/or forty (40) hours per workweek but were not compensated at one and one-  
18 half times their regular rate of pay for such hours, as a result of UFP's failure to include non-  
19 discretionary bonuses when calculating an employee's regular rate of pay. Haines Decl., ¶ 16. Based  
20 on Plaintiffs' expert's analysis of payroll and timekeeping data produced by UFP, Plaintiffs estimate  
21 that UFP's failure to include all remunerations in the regular rate of pay has resulted in a total  
22 overtime underpayment of approximately \$46,731. *Id.*

23 However, as stated above, UFP contends that it has paid its employees all overtime wages  
24 owed as the bonuses at issue are discretionary bonuses that do not need to be included when  
25 calculating the regular rate of pay. Haines Decl., ¶ 16. UFP further argues that the bonuses were not  
26 tied to employees' hours worked and therefore do not need to be included in the regular rate on this  
27 basis as well. *Id.* UFP further argues that Class Members received different types of bonuses and  
28 other remuneration throughout the Class Period, creating substantive differences among Class

1 Members with respect to the incentives received, making class certification unlikely. *Id.* Based on  
2 these defenses, Plaintiffs discounted the estimated maximum exposure by 25% for risk of non-  
3 certification, and by an additional 30% to account for risk of losing on the merits or failure to recover  
4 the maximal amount sought, to arrive at an estimated exposure of approximately \$24,534. *Id.*

5 Meal Period Violations: \$209,490

6 Plaintiffs allege that UFP failed to provide Plaintiffs and other non-exempt employees with  
7 legally compliant first meal periods before the fifth hour of work and second meal periods when  
8 they worked a shift in excess of 10.0 hours. Haines Decl., ¶ 17. Based on Plaintiffs' expert's review  
9 and analysis of UFP's timekeeping records, there are approximately 69,680 shifts that reflect a  
10 potential meal period violation. Haines Decl., ¶ 17. Plaintiffs' expert's review of UFP's payroll  
11 records further revealed that UFP paid approximately \$350,348 in meal period premiums during the  
12 Class Period. *Id.* Thus, based on an average hourly rate of \$18.39, Plaintiffs estimate UFP's total  
13 maximum exposure for meal period violations at approximately \$931,067 (69,680 non-compliant  
14 meal periods \* \$18.39 meal period premium - \$350,348 paid premiums). *Id.*

15 As noted above, UFP contends that it has maintained compliant written meal period policies  
16 throughout the Class Period and has always provided its employees the *opportunity* to take legally  
17 compliant meal periods, as reflected by the high percentage of shifts (85%) which show a compliant  
18 first meal period. Haines Decl., ¶ 17. UFP further argues that for the majority of the Class Period, it  
19 automatically paid employees a meal period premium when their time records reflected a non-  
20 compliant meal period. *Id.* Additionally, with regard to second meal periods, UFP argues that it has  
21 always allowed employees to take a second meal period but that Class Members voluntarily waived  
22 their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours per Labor Code  
23 § 512. *Id.* Lastly, UFP argues this claim is not suited for class treatment, as individual inquiries  
24 would be needed to assess which employees took non-compliant meal periods or missed meal  
25 periods, how many meal periods were non-compliant or missed, and the reasons why a particular  
26 employee did not take a compliant meal period on a particular shift. *Id.* Based on these defenses,  
27 Plaintiffs discounted the maximum amount by 50% for risk of non-certification, and an additional  
28 55% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an

1 estimated exposure of approximately \$209,490. *Id.*

2 Rest Period Violations: \$149,806

3 Plaintiffs allege that UFP failed to authorize and permit all legally compliant rest periods  
4 due to the work demands imposed on Plaintiffs and other non-exempt employees by UFP. Haines  
5 Decl., ¶ 18. Specifically, Plaintiffs allege that UFP frequently only provided them and other  
6 employees with one rest period during the entirety of their eight-hour shift. *Id.* Based on Plaintiffs'  
7 expert's analysis of the timekeeping records, Plaintiffs estimated there were approximately 217,228  
8 total shifts over 6.0 hours during the Class Period, entitling employees to two 10-minute rest periods.  
9 *Id.* Plaintiffs further estimated that Plaintiffs and other Class Members were only provided with one  
10 rest period on approximately 50% of shifts. *Id.* Plaintiffs therefore calculated UFP's potential  
11 maximum exposure for claim to be \$1,997,411 (\$18.39 rest period premium \* 217,228 shifts \* 50%  
12 violation rate). *Id.*

13 However, UFP argues that it has always maintained and enforced lawful rest period  
14 policies/practices during the Class Period, and has, in fact, authorized and permitted all required rest  
15 periods to Class Members. Haines Decl., ¶ 18. Furthermore, UFP argues that Plaintiffs' rest period  
16 claim is not amenable to class treatment as individualized inquiries would be required to determine  
17 which employees failed to take rest periods, and the reasons why each employee failed to take a rest  
18 period on a particular shift as there are no records of whether or not a rest period was authorized and  
19 permitted. *Id.* In light of these defenses, Plaintiffs discounted UFP's maximum exposure by 70% to  
20 account for the risk of non-certification, and an additional 75% to account for UFP's defenses on  
21 the merits, to arrive at an estimated exposure of approximately \$149,806. *Id.*

22 Unlawful Deductions: \$13,476

23 Plaintiffs allege that UFP unlawfully deducted approximately \$7.50 each pay period from  
24 Plaintiffs' and other non-exempt employees' wages for costs associated with uniforms. Haines  
25 Decl., ¶ 19. Based on Plaintiffs' expert's review of the data provided by UFP, Plaintiffs estimate  
26 UFP's maximum exposure on this claim at approximately \$29,947. *Id.* However, UFP argues that  
27 its practice of deducting wages from employees' wages was lawful in light of the fact that employees  
28 were not required to wear or purchase the uniforms and employees consented to the deductions. *Id.*

1 In light of these defenses, Plaintiffs discounted UFP's maximum exposure by 25% to account for  
2 the risk of non-certification, and an additional 40% to account for UFP's defenses on the merits, to  
3 arrive at an estimated exposure of approximately \$13,476. *Id.*

4 Waiting Time Penalties: \$125,534

5 Based on UFP's records, there are approximately 158 Class Members who have separated  
6 from their employment with UFP within the three-year statute of limitations period applicable to  
7 Labor Code § 203. Haines Decl., ¶ 20. Using an average waiting penalty of \$4,414 (\$18.39 \* 8 hours  
8 \* 30 days), Plaintiffs estimate UFP's maximum exposure for waiting time penalties at approximately  
9 \$697,412 (158 waiting time penalty class members \* \$4,414 avg. waiting time penalty). *Id.* As noted  
10 above, however, UFP maintains that it possesses strong, good faith defenses to Plaintiffs' underlying  
11 claims, thus precluding recovery of waiting time penalties, which are only available for the "willful"  
12 failure to pay wages. *Id.* UFP further asserts that Plaintiffs' waiting time penalty exposure was  
13 grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id.*  
14 Moreover, because the waiting time claim is derivative of Plaintiffs' underlying wage claims,  
15 Plaintiffs would need to overcome UFP's defenses, both as to class certification and on the merits,  
16 as to his underlying claims. *Id.* To account for UFP's defenses, Plaintiffs discounted the maximum  
17 exposure by 55% for the risk of non-certification, and an additional 60% for risk of losing on the  
18 merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of  
19 approximately \$125,534. *Id.*

20 Wage Statement Penalties: \$162,540

21 Plaintiffs' expert's analysis reflected that there were approximately 12,567 pay periods and  
22 258 unique employees within the one-year liability window under Labor Code § 226. Haines Decl.,  
23 ¶ 21. In calculating the potential exposure for this claim, utilizing the "initial" and "subsequent"  
24 violation rates resulted in a number greater than the \$4,000 cap per employee. *Id.* Therefore,  
25 Plaintiffs calculated UFP's maximum wage statement exposure under Labor Code § 226(e) by using  
26 the \$4,000 cap for each employee, for a total maximum exposure of \$1,032,000 (258 employees \*  
27 \$4,000 max. penalty). *Id.* However, given UFP's arguments that no violations occurred, that Class  
28 Members suffered no "injury," that any alleged violations were not "knowing and intentional," that

1 the wage statements always accurately reflected hours worked and amounts paid to employees, as  
2 well as risks associated with Plaintiffs' underlying claims discussed above, Plaintiffs discounted the  
3 maximum exposure by 55% for risk of non-certification, and by an additional 65% for risk of being  
4 unsuccessful on the merits, for an estimated realistic exposure of approximately \$162,540. Haines  
5 Decl., ¶ 21.

6 PAGA Civil Penalties: \$56,551

7 Plaintiffs estimated a maximum total PAGA exposure of approximately \$1,256,700, based  
8 on approximately 12,567 pay periods during the PAGA Period at the \$100 "initial" violation rate  
9 under Labor Code § 2699(f). Haines Decl., ¶ 22; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th  
10 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is  
11 violating a Labor Code provision). However, these penalties derive from the underlying wage and  
12 hour violations discussed above, which UFP disputes vigorously. Haines Decl., ¶ 22; *see e.g., Green*  
13 *v. Lawrence Service Co.* 2013 WL 3907506, \*5, n.5 (C.D. Cal. 2013) (explaining that a PAGA  
14 claim's success was determined by the merits of its underlying claims). UFP further argues that  
15 Plaintiffs would not be able to show a violation *every* pay period, and thus their damages estimate  
16 is inflated. Haines Decl., ¶ 22. PAGA also grants courts discretion to reduce PAGA civil  
17 penalties (Lab. Code § 2699(e)(2)), and UFP argues the Court would reduce penalties significantly  
18 given its good-faith defenses and efforts to comply with the law, including automatically paying  
19 meal period premiums. *Id.*; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th  
20 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.  
21 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at \*4 (reducing PAGA penalties  
22 from \$2.8 million to \$500,000). Given these defenses, Plaintiffs discounted the maximum figure by  
23 70% for the risk of losing on the merits and/or not recovering a PAGA penalty for every pay period,  
24 and an additional 85% to account for the possibility of this Court reducing penalties to arrive at an  
25 estimated exposure of approximately \$56,551. Haines Decl., ¶ 22.

26 Using these estimated figures for each of the claims described above, Plaintiffs predicted  
27 that the potential recovery for the Settlement Class would be approximately \$741,931. Haines Decl.,  
28 ¶ 23. The proposed Settlement of \$620,000 represents approximately 83.6% of the reasonably

1 forecasted recovery for the Class Members. *Id.* Preliminary approval is therefore appropriate as the  
2 Settlement will provide significant monetary relief to the Class Members, which is consistent with  
3 what Plaintiff's counsel believes could have been recovered had the case proceeded through trial.

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

5 "Parties represented by competent counsel are better positioned than courts to produce a  
6 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises*  
7 *Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by  
8 competent, experienced counsel who possess extensive experience prosecuting and defending wage-  
9 and-hour class actions, and who have been appointed as class counsel in numerous cases alleging  
10 similar claims. *See* Haines Decl., ¶¶ 2-7; Declaration of Sean M. Blakely ("Blakely Decl."), ¶¶ 2-6;  
11 Declaration of Alexandra R. McIntosh ("McIntosh Decl."), ¶¶ 2-5. Class Counsel, with the help of  
12 their expert, conducted an in-depth review of UFP's relevant policies and timekeeping and payroll  
13 records, and drew on their extensive experience in similar cases to assess the strengths and  
14 weaknesses of Plaintiffs' case. The Settlement was also reached with the assistance of an  
15 experienced wage and hour class action mediator. Haines Decl., ¶ 14. This factor strongly supports  
16 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

24 The proposed settlement reflects approximately 83.6% of the estimated recovery the  
25 Settlement Class could reasonably expect in light of the significant litigation risks, and will provide  
26 tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability  
27 exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass*  
28 *v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, \*4 (N.D. Cal. 2007) (approving

1 settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459  
2 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l*  
3 *Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled  
4 law that a proposed settlement may be acceptable even though it amounts to only a fraction of the  
5 potential recovery that might be available to the Class Members at trial”). Further, the average  
6 Settlement Award of \$762.25 is greater than the average payment achieved in other wage and hour  
7 class action settlements.<sup>3</sup> Thus, Plaintiffs submit that the proposed settlement is within the range of  
8 possible approval, such that notice should be provided to the Settlement Class so that they can  
9 consider the Settlement. The Court will have the opportunity to again assess the reasonableness of  
10 the Settlement after the Settlement Class has had the opportunity to opt-out or object.

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

12 The Settlement resulted from an exchange of substantial information, arm’s-length  
13 negotiations by counsel, and a full-day mediation before an experienced wage and hour mediator.  
14 Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168  
15 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims at issue, reviewed  
16 extensive payroll and timekeeping data, and conducted a detailed statistical analysis of the data to  
17 arrive at the estimated class-wide damages figures. *See Haines Decl.*, ¶¶ 13-14, 16-22. The parties  
18 attended a full day mediation, and worked collaboratively in the following months to finalize the

19  
20 <sup>3</sup> *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.  
21 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*  
22 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net  
23 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619  
24 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*  
25 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of  
26 approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County  
27 Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon,*  
28 *Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of  
approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.  
Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was  
approximately \$60); *Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL  
2117001 at \*17 (E.D. Cal. June 11, 2012) (“Class Members will receive an average of approximately  
\$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to  
liability; Plaintiff also notes several similar actions where the gross recoveries per class member  
were less than \$90...[T]he Court finds that the results achieved are good”); and *Williams v.*  
*Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D.  
Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 Settlement. *Id.*, at ¶ 14. Thus, this factor supports preliminary approval.

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

3 Preliminary approval of the Settlement is also warranted because there are no obvious  
4 deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed  
5 for Class Counsel’s attorneys’ fees and costs, the enhancement payments, and the PAGA allocation  
6 are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid  
7 of obvious deficiencies, this factor supports preliminary approval.

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

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

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

16 A class is “ascertainable” where the members “may be readily identified without  
17 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*  
18 *Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined  
19 as all of UFP’s current and former non-exempt employees who worked in California at any time  
20 during the Class Period. *See* Settlement, § 1. Therefore, Class Members can be identified from  
21 UFP’s personnel and employment records. According to UFP’s records, the Settlement Class  
22 consists of approximately 415 current and former non-exempt employees. *See* Haines Decl., ¶ 24.  
23 It would therefore be impracticable to bring all Class Members before the Court, or for each Class  
24 Member to bring an individual lawsuit. The proposed Settlement Class therefore satisfies  
25 numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10  
26 beneficiaries of a trust sufficiently numerous).

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

28 The focus in a certification dispute is not the merits, but rather on what types of questions,

1 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*  
2 *Court (Rocher)*, 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated on, among other issues,  
3 UFP’s allegedly unlawful meal and rest period policies/practices. These types of claims are  
4 commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists,*  
5 *Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

### 6 **3. The Claims Of The Named Plaintiffs Are Typical**

7 The typicality requirement is satisfied where class representatives have claims that are  
8 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191  
9 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named plaintiff purchased the  
10 same goods as the putative class in a consumer class action). Here, Plaintiffs’ claims are typical of  
11 those held by the members of the proposed Settlement Class. First, Plaintiffs were employed by  
12 UFP during the Class Period as non-exempt employees and were subject to UFP’s wage and hour  
13 policies at issue in this case. Haines Decl., ¶¶ 11, 16-22. Second, Plaintiffs were injured by the same  
14 challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiffs  
15 assert that they were deprived of all overtime wages due to UFP’s unlawful regular rate  
16 miscalculations, and also contend that UFP failed to provide them with legally compliant meal  
17 periods and failed to authorize and permit all rest periods. Because Plaintiffs have suffered the same  
18 injuries as the other Class Members, the typicality requirement is satisfied.

### 19 **4. Plaintiffs And Class Counsel Will Fairly And Adequately Represent**

#### 20 **The Class**

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

1 litigation. *See* Haines Decl., ¶¶ 2-7; Blakely Decl., ¶¶ 2-6; McIntosh Decl., ¶¶ 2-5.

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

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

19 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because  
20 it advises Class Members of the nature of the claims, basic contentions and denials of the parties  
21 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and  
22 the procedures by which to do so, explains the recovery formula and expected recovery amount for  
23 each Class Member, and advises them that they will be bound by the terms of the Settlement if they  
24 do not opt-out. *See* Haines Decl., ¶ 9, Exhs. 1-3. The proposed Class Notice will also notify Class  
25 Members of the final approval hearing date, provide the Settlement Class contact information for  
26 Class Counsel, and advise Class Members that they may enter an appearance through counsel if they

27 \_\_\_\_\_  
28 <sup>4</sup> Phoenix’s proposed capped fee to administer this settlement is \$11,975.00. *See* Exh. B to Lawrence Decl.

1 wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most  
2 reliable and cost-effective method of reaching Class Members.

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

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

7 **IV. CONCLUSION**

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

11  
12 Dated: September 26, 2023

Respectfully submitted,  
HAINES LAW GROUP, APC

13  
14 By:

  
\_\_\_\_\_  
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