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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

ROBERT LEWIS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

IMERYS FILTRATION MINERALS, INC., a
Delaware corporation; IMERYS
PERFORMANCE MINERALS AMERICAS,
INC., a Delaware corporation; and DOES 1
through 100,

Defendants.

Case No.: 22CV04874

*[Assigned for all purposes to the Hon. Jed
Beebe; Dept. 4]*

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

Date: April 20, 2023
Time: 8:30 a.m.
Dept.: 4

Action Filed: December 8, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on April 20, 2023, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 4 of the Santa Barbara County Court, Cook Division, located at 312 East Cook Street Building E, Santa Maria, CA 93454, Plaintiff Robert Lewis (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed 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 who worked for Defendants IMERYS Filtration Minerals, Inc. and IMERYS Performance Minerals Americas, Inc. in California at any time during November 12, 2017 to December 31, 2022.

3. Preliminary appointment of Plaintiff Robert Lewis as the Class Representative;
4. Preliminary appointment of 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 Service Award, 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 CPT Group, Inc. as the third-party settlement administrator; and
7. Approval of the proposed Notice of Class Action Settlement and Notice of Individual Settlement Award (collectively, the “Notice Packet”), and entry of the proposed Order instructing the Notice Packet to be disseminated to the proposed Settlement Class in English and Spanish, as provided in the Settlement Agreement.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Susan J. Perez, Plaintiff Robert Lewis, and Julie Green of CPT Group, Inc., and the exhibits attached

1 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
2 evidence or argument presented at the time of hearing.

3
4 Dated: March 24, 2023

Respectfully Submitted,
HAINES LAW GROUP, APC

5
6 By:



Matthew K. Moen
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Robert Lewis (“Plaintiff”), individually and on behalf of the proposed Settlement
4 Class, respectfully requests that this Court preliminarily approve the proposed Settlement
5 Agreement (“Settlement Agreement” or “Settlement”),¹ entered into by Plaintiff and Defendants
6 IMERYS Filtration Minerals, Inc. and IMERYS Performance Minerals Americas, Inc.
7 (collectively, “Defendants”) (Plaintiff and Defendants are referred to collectively herein as the
8 “Parties”). The operative Complaint alleges Defendants failed to: (i) pay all minimum wages; (ii)
9 pay all overtime wages owed; (iii) provide all lawful meal periods; (iv) authorize and permit all
10 lawful rest periods; (v) issue accurate and itemized wage statements; (vi) timely pay all final
11 wages upon separation; (vii) comply with California’s Unfair Competition laws; and (viii) are
12 liable for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*
13 (“PAGA”).

14 Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary,
15 \$750,000.00 class action settlement on behalf of the following Settlement Class:

16 All current and former non-exempt employees who worked for Defendants in
17 California at any time during November 12, 2017 to December 31, 2022 (the
18 “Class Period”).

19 Based upon the data provided by Defendants, there are approximately 192 potential Class
20 Members. After Court-approved deductions for Plaintiff’s Class Representative Service Award,
21 settlement administrator costs, the PAGA Payment to the Labor & Workforce Development
22 Agency (“LWDA”) and PAGA Employees, and attorneys’ fees and costs to Class Counsel, the
23 remaining Net Settlement Amount (“NSA”) is estimated to be no less than \$401,500.00. Further,
24 an additional \$50,000 from the Maximum Settlement Amount shall be designated as the PAGA
25 Payment, 25% of which (or \$12,500) will be payable to the PAGA Employees, i.e., Class

26
27 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Matthew K. Moen (“Moen
28 Decl.”), filed concurrently herewith, and the Notice of Class Action Settlement (“Class Notice”) and
Notice of Individual Settlement Award (collectively, the “Notice Packet”) are attached to the Moen Decl.
as Exhibit 2.

1 Members who worked as non-exempt employees for Defendants in California between November
2 12, 2020 through December 31, 2022 (the “PAGA Period”). This results in \$414,000 being
3 available for disbursement to the Class Members, with average Individual Settlement Awards of
4 approximately \$2,156.25. Significantly, Class Members do not need to file a claim form in order
5 to receive an Individual Settlement Award, and all Class Members who do not opt-out will
6 automatically receive their share of the Settlement. This represents a fair and reasonable result
7 for Class Members, who will be agreeing to a release of only those claims that were actually
8 asserted, or which could have been asserted based on the facts alleged in the operative Complaint
9 in the lawsuit.

10 Further, given the tenet that aggrieved employees do not have the ability to opt-out of a
11 representative PAGA claim, all PAGA Employees, regardless of whether they elect to opt out
12 from participating in the class action settlement or not, shall receive a portion of the settlement
13 monies designated as the PAGA Payment payable to the PAGA Employees and shall release their
14 claims for civil penalties under PAGA based on the Labor Code violations that were pled in the
15 operative Complaint in the action or Plaintiff’s November 12, 2021 PAGA Notice letter to the
16 LWDA, or which could have been pled in the operative Complaint in the action based on the
17 factual allegations therein, that arose during the PAGA Period. *See Robinson v. Southern Counties*
18 *Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt-out mechanism for
19 PAGA claims and “nonparty employees as well as the government are bound by the judgment in
20 an action brought under [PAGA].”); *see also* Moen Decl., Exhibit 3 (Plaintiff’s PAGA Notice
21 Letter and LWDA Confirmation of Receipt).

22 Prior to reaching this proposed Settlement, Defendants provided Plaintiff with
23 timekeeping and payroll data for a random sampling of approximately 25% of the Class Members
24 for the duration of the relevant time period, as well as policy documents and key data points.
25 Plaintiff then retained an expert with a Ph.D. in economics to analyze the data and create a class-
26 wide exposure model for the claims at issue. On September 28, 2022, after extensive legal
27 research and analysis, along with Plaintiff’s and his expert’s comprehensive review of the data,
28 the Parties participated in a mediation session with Steven G. Mehta, Esq. At the conclusion of

1 mediation, Mr. Mehta made a mediator’s proposal for a class-wide resolution of all claims at issue
2 that the Parties ultimately accepted. Over the following months, the Parties negotiated and
3 executed the long-form Settlement Agreement that is now before this Court for preliminary
4 approval.

5 This proposed Settlement is well within the range of possible approval in light of the
6 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
7 and the monetary benefit to the Class Members. For the reasons discussed herein, Plaintiff
8 respectfully requests that the Court grant preliminary approval of the Settlement.

9 **II. SUMMARY OF THE LITIGATION**

10 **A. Factual And Procedural Background**

11 Defendants operate mining facilities and processing plants in California. Moen Decl., ¶ 9.
12 Plaintiff was employed by Defendants as a non-exempt employee at Defendants’ Lompoc,
13 California location, from approximately October 2019 to February 5, 2020. *Id.*; Declaration of
14 Robert Lewis (“Lewis Decl.”), ¶ 2. Like all Class Members, Plaintiff contends he was subject to
15 Defendants’ wage and hour policies and practices. Moen Decl., ¶ 9.

16 On November 12, 2021, Plaintiff filed a class action complaint alleging Defendants failed
17 to: (i) pay all minimum wages owed; (ii) provide all lawful meal periods; (iii) authorize and permit
18 all lawful rest periods; (iv) timely pay all final wages upon separation; and (v) comply with
19 California’s Unfair Competition laws. Moen Decl., ¶ 10. On January 18, 2022, Plaintiff filed a
20 First Amended Complaint, adding a cause of action for civil penalties under PAGA, premised on
21 the same underlying Labor Code violations. *Id.* On February 4, 2022, Defendants removed the
22 action to federal court. *Id.* After the Parties entered into a tolling agreement applicable to all
23 claims pled by Plaintiff, the action was dismissed without prejudice on April 19, 2022. *Id.*

24 On September 28, 2022, the Parties participated in a full-day mediation before Steven G.
25 Mehta, Esq., a well-respected wage and hour class action mediator, who made a mediator’s
26 proposal for a class-wide resolution of all claims at issue that the Parties accepted, and which was
27 memorialized in a binding Memorandum of Understanding. Moen Decl., ¶ 11. Over the following
28 months, the Parties negotiated and executed the long-form Settlement Agreement that is now
before this Court for preliminary approval. *Id.* As a material term of the Parties’ Settlement

1 Agreement, Plaintiff filed the operative Complaint in this action on December 8, 2022, asserting
2 class-wide causes of action for Defendants' alleged failures to: (i) pay all minimum wages; (ii)
3 pay all overtime wages owed; (iii) provide all lawful meal periods; (iv) authorize and permit all
4 lawful rest periods; (v) issue accurate and itemized wage statements; (vi) timely pay all final
5 wages upon separation; (vii) comply with California's Unfair Competition laws; and (viii)
6 asserting a cause of action for civil penalties under PAGA. *Id.*

7 **B. Plaintiff's Claims and Defendants' Defenses**

8 **1. Off-the-Clock Violations**

9 Plaintiff asserts that, as a result of Defendants' uniform practices, Defendants failed to
10 maintain accurate records of the hours actually worked by Class Members, resulting in unpaid
11 wages throughout the Class Period. Moen Decl., ¶ 13. Specifically, Plaintiff alleges that
12 Defendants required Plaintiff and other non-exempt employees to spend approximately 10
13 minutes before their scheduled shifts each workday donning and preparing their equipment. *Id.*
14 Despite Defendants allegedly requiring Plaintiff and other non-exempt employees to perform
15 work outside of their scheduled shift times, Plaintiff contends he and other non-exempt employees
16 were not paid for this necessary pre-shift preparation time. *Id.*; see Wage Order 16, § 2(J); see
17 also Labor Code §§ 1197 and 1182.12 (establishing the right of employees to be paid minimum
18 wages for all hours worked); see also *Ribot v. Farmers Insurance Group*, Case No. CV 11-02404
19 DDP (FMOx), 2013 WL 3778784 (C.D. Cal. July 17, 2013) (certifying claim for failing to
20 compensate for pre-shift work).

21 In response, Defendants maintain they have accurately recorded and properly paid all
22 wages for all hours worked by the Class Members. Moen Decl., ¶ 14. First, Defendants argue that
23 most employees usually arrive at the work site wearing their uniforms and with their work
24 equipment ready, therefore any donning and doffing policy in the CBA is a union issue and is not
25 reflective of Defendants' policies and practices. *Id.* Next, Defendants argue any amount of unpaid
26 time per shift, should Plaintiff prevail on this claim, would be *de minimis*. *Id.* Further, Defendants
27 assert that this claim is not suitable for class treatment, as it requires individualized inquiries into
28 whether any employee performed work while off-the-clock on any given day, which is made
increasingly difficult since such work was allegedly not recorded, and exactly how much time

1 each employee purportedly worked off-the-clock each day, resulting in an unmanageable series
2 of mini-trials. *Id.*

3 **2. Meal Period Violations**

4 Plaintiff further asserts that Defendants failed to provide Class Members with all lawful
5 meal periods to which they were entitled. Moen Decl., ¶ 15. Specifically, Plaintiff claims
6 Defendants provided Plaintiff and other non-exempt employees with staggered meal periods
7 based on seniority so that at least one employee would remain performing work on Defendants'
8 equipment at all times. *Id.* However, the first, most-senior non-exempt employees were allegedly
9 provided with meal periods starting at exactly the fifth hour mark, which Plaintiff asserts resulted
10 in all other non-exempt employees being provided with first meal periods after the completion of
11 the fifth hour of work. *Id.* Plaintiff alleges this practice resulted in first meal periods routinely
12 being provided untimely. *Id.*; see Labor Code § 512(a); see also *Brinker v. Superior Court* (2012)
13 53 Cal.4th 1004, 1041 (“We conclude that, absent waiver, section 512 requires a first meal period
14 no later than the end of an employee’s fifth hour of work...”); *Benton v. Telecom Network*
15 *Specialists, Inc.* (2013) 220 Cal.App.4th 701, 728-29 (“[The wage order] imposes an affirmative
16 obligation on every employer to authorize and provide legally required meal and rest breaks; if it
17 fails to do so, it has violated the law and is liable.”).

18 Further, Plaintiff contends that Defendants required Plaintiff and other non-exempt
19 employees to carry radios on their persons and to respond to incoming radio calls at all times,
20 including during purported meal periods, in violation of California law. Moen Decl., ¶ 16; see
21 *Brinker, supra*, 53 Cal.4th at 1037 (“Employers must afford employees uninterrupted half-hour
22 periods in which they are ***relieved of any duty or employer control*** and are free to come and go
23 as they please.”) (Emphasis added). Further, Plaintiff asserts Defendants did not pay any meal
24 period premiums during the relevant time period, which is itself a certifiable issue. Moen Decl.,
25 ¶ 16; see, e.g., *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (certifying
26 UCL claim based on employer’s failure to pay premium wages under Labor Code section 226.7).

27 In response, Defendants contend they maintained lawful meal period policies/practices
28 throughout the Class Period. Moen Decl., ¶ 17. Specifically, Defendants contend they provided

1 all timely, duty-free meal periods and whether Class Members chose to refrain from taking a
2 compliant meal period on any given day is an individualized issue not reflective of Defendants’
3 policies and practices. *Id.* Defendants further argue employees were not instructed, nor required,
4 to carry and respond to radio calls during meal periods. *Id.* Defendants also maintain they properly
5 paid all meal period premiums when they were owed. *Id.* Defendants, therefore, contend that
6 Plaintiff’s meal period claim is not suited for class certification as individual inquiries would be
7 required to assess the reasons why a particular individual chose to take an untimely meal period
8 on a particular shift or if a particular individual chose to respond to radio calls during his or her
9 meal period, resulting in a series of mini-trials. *Id.*

10 **3. Rest Period Violations**

11 Plaintiff further alleges that Defendants failed to authorize and permit Class Members to
12 take all lawful rest periods to which they were entitled. Moen Decl., ¶ 18. Specifically, Plaintiff
13 contends Defendants maintain a facially unlawful rest period policy that prohibits its non-exempt
14 employees from leaving the company premises during rest breaks. *Id.*; see Labor Code § 516;
15 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260, 265 (requiring employers to
16 “relieve their employees of all duties and relinquish any control over how employees spend their
17 break time.”); *Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1199 (“The
18 onus is on the employer to *clearly communicate* the authorization and permission to its
19 employees.”) (emphasis added). Further, Plaintiff also alleges that Defendants required its non-
20 exempt employees to carry radios and respond to incoming radio calls at all times, including
21 during rest periods, in violation of California law. Moen Decl., ¶ 18; *Augustus, supra*, 2 Cal.5th
22 at 260, 265. Further, Plaintiff alleges that, on occasions when lawful rest periods were not
23 authorized and permitted, Defendants failed to pay rest period premiums as required by Labor
24 Code section 226.7; an issue which itself is certifiable. Moen Decl., ¶ 18; see Labor Code § 226.7;
25 *Safeway, supra*, 238 Cal.App.4th at 1159.

26 Defendants assert they have always authorized and permitted all required rest periods for
27 their non-exempt employees. Moen Decl., ¶ 19. Defendants argue they maintained lawful rest
28 period policies throughout the Class Period, and that company policy did not prohibit the

1 employees from leaving the premises. *Id.* Defendants further argue employees were not required
2 to carry and respond to radio calls during rest periods. *Id.* Further, Defendants assert that this
3 claim is unmanageable, as it requires individualized inquiries into whether each employee was
4 authorized and permitted to take a lawful rest period and on which days, which Defendants argue
5 Plaintiff will be unable to substantiate with any common, documentary evidence, as rest periods
6 are not required to be recorded. *Id.*

7 **4. Wage Statement, Waiting Time, and PAGA Penalties**

8 As a result of Defendants’ alleged failure to pay all overtime wages, minimum wages, and
9 meal period and rest period premiums, Plaintiff asserts that Defendants also failed to issue
10 accurate and itemized wage statements and failed to timely pay all final wages at the time of
11 separation. Moen Decl., ¶ 20; *see also* Labor Code §§ 203(a) and 226(a). As a result of these
12 alleged Labor Code violations, Plaintiff also seeks PAGA civil penalties on behalf of all aggrieved
13 employees. Moen Decl., ¶ 20; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th
14 1157, 1213 (“As we have explained, they [civil penalties under PAGA] are mandatory, not
15 discretionary.”).

16 In response, Defendants argue that Plaintiff’s underlying claims will fail and, as a result,
17 the derivative wage statement, waiting time, and PAGA claims will also fail. Moen Decl., ¶ 21;
18 *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes
19 of action fail, the derivative UCL and PAGA claims also fail.”). Defendants also maintain that
20 Plaintiff cannot show that the wage statement violations were “knowing and intentional,” or that
21 the putative class members “suffer[ed] injury” as a result of the alleged violations, as required by
22 Labor Code § 226(e) for the imposition of wage statement penalties. Moen Decl., ¶ 21; *see* Labor
23 Code § 226(e)(1). Moreover, Defendants maintain that their good faith defenses to Plaintiff’s
24 underlying claims would preclude the recovery of waiting time penalties, which are only available
25 for the “willful” failure to pay wages, and that this Court would exercise its discretion to
26 substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 21; *see also* 8 Cal. Code Regs.
27 § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time
28 penalties under Section 203.”); Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.*,

1 *Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30
2 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of exposure).

3 **C. Discovery And Mediation**

4 In connection with mediation, Defendants provided Plaintiff with electronic timekeeping
5 and payroll records for approximately 25% of the Class Members spanning the entire Class
6 Period, as well as key policy documents and data points. Moen Decl., ¶ 22. Plaintiff then retained
7 an expert with a Ph.D. in economics to analyze the produced data and create a class-wide exposure
8 model for the claims at issue. *Id.* On September 28, 2022, the Parties participated in a mediation
9 session with Steven G. Mehta, Esq., a well-respected wage and hour class action mediator, during
10 which the Parties exchanged divergent views on Defendants' liability and exposure valuations,
11 their legal positions, and the likelihood of certification of Plaintiff's claims. *Id.* At the conclusion
12 of mediation, Mr. Mehta made a mediator's proposal that the Parties ultimately accepted. *Id.* Over
13 the following months, the Parties finalized the terms of the proposed Settlement now before the
14 Court for preliminary approval. *Id.*

15 **III. THE PROPOSED SETTLEMENT**

16 **A. Essential Terms Of The Settlement**

17 If the Court preliminarily approves this settlement, Defendants will pay a Maximum
18 Settlement Amount ("MSA") of \$750,000.00. Moen Decl., ¶ 23; Settlement, ¶ 18. This Settlement
19 is non-reversionary, and Class Members will automatically receive their Individual Settlement
20 Awards unless they affirmatively opt-out. Settlement, ¶ 56.a. The monetary terms of the
21 Settlement are as follows:

Maximum Settlement Amount:	\$750,000.00
Minus Court-approved attorneys' fees (1/3):	\$250,000.00
Minus Court-approved attorneys' costs (up to):	\$30,000.00
Minus Court-approved Service Award:	\$10,000.00
Minus settlement administrator costs (up to):	\$8,500.00
Minus PAGA Payment:	\$50,000.00
Net Settlement Amount:	\$401,500.00

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

27 After deducting amounts for Court-approved attorneys' fees and costs, Plaintiff's Class
28 Representative Service Award, settlement administration costs, and the PAGA Payment, the

1 Settlement provides for an estimated NSA of no less than \$401,500. *See* Settlement, ¶ 19. Further,
2 the PAGA Employees will receive a portion of the 25% employees' share of the PAGA Payment.
3 *Id.*, ¶ 56.d. Individual Settlement Awards will be calculated based on the proportionate number
4 of eligible workweeks worked by each participating Class Member during the Class Period
5 divided by the total number of eligible workweeks worked by all participating Class Members,
6 as well as membership in various subclasses. *Id.*, ¶¶ 56.a.i.1-3. Further, 25% of the PAGA
7 Payment will be paid to all PAGA Employees, regardless of their election to opt-out from
8 participating in the Settlement, based on the proportionate number of workweeks worked by the
9 PAGA Employees during the PAGA Period, divided by the total number of workweeks worked
10 by all PAGA Employees during the PAGA Period. *Id.*, ¶¶ 24, 56.d.

11 Defendants represent that there were approximately 192 Class Members at the time of
12 mediation. Settlement, ¶ 55. Based on the estimated NSA and PAGA Payment, average Individual
13 Settlement Awards are projected to be approximately \$2,156.25. Moen Decl., ¶ 23. Class
14 Members will have 60 calendar days from the date of the initial mailing of the Notice Packet to
15 opt-out or object to the Settlement, thereby providing ample time to review the Class Notice
16 without unduly delaying the Settlement. *See* Settlement, ¶¶ 33; 53.c. Those Class Members who
17 do not opt-out of the Settlement will be bound by its terms and will release all claims against
18 Defendants as detailed in the Settlement. *Id.*, ¶ 52.a.

19 **2. Attorneys' Fees, Costs, and Plaintiff's Class Representative Service**
20 **Award**

21 At the time of seeking final settlement approval, Plaintiff will apply for a Class
22 Representative Service Award in the amount of \$10,000 for his service to the Settlement Class
23 and his general release of all claims. Moen Decl., ¶ 24; *see* Settlement ¶¶ 7, 56.b. Plaintiff's
24 requested class representative service award is intended to recognize the significant time and
25 effort that he expended on behalf of the Settlement Class, including gathering relevant documents
26 for use in the lawsuit and providing factual information to his attorneys, holding various phone
27 calls with his attorneys to discuss the claims in the lawsuit and Defendants' practices, assisting
28 his attorneys in preparing for mediation, and otherwise assisting his attorneys in moving the case
towards resolution, the significant risks Plaintiff undertook by serving as the named plaintiff, and

1 the fact that he agreed to a general release of all claims subject to a waiver of Civil Code § 1542.
2 Moen Decl., ¶ 24; Lewis Decl., ¶¶ 5-6; Settlement, ¶ 56.b.

3 Class Counsel will also apply for a Class Counsel Award of up to one third of the MSA
4 (currently estimated at \$250,000), and up to \$30,000 in reimbursement for actual litigation costs.
5 Moen Decl., ¶ 25; *see* Settlement, ¶ 56.c. Plaintiff submits that the requested fee is fair
6 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
7 purely contingent fee basis. Moen Decl., ¶ 26. Class Counsel has incurred substantial attorneys'
8 fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research
9 and analysis, reviewing class documents and data produced by Defendants, extensively reviewing
10 and evaluating the produced timekeeping and payroll records with the assistance of a retained
11 expert to build a comprehensive damages model, preparing for and attending mediation,
12 negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement,
13 and Notice Packet documents, preparing this motion for preliminary approval, and otherwise
14 litigating the case. *Id.* Class Counsel will also expend future attorney time attending the hearing
15 on this Motion, overseeing the Notice process, drafting the Final Approval Motion and supporting
16 documents, attending the Final Approval hearing, and completing other tasks, such as fielding
17 questions from Class Members. *Id.*

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

1 **IV. ARGUMENT**

2 **A. Preliminary Approval Is Warranted**

3 California Rule of Court 3.769 conditions the settlement of a class action on court
4 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
5 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
6 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine “that the
7 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d
8 1011, 1026 (9th Cir. 1998) (stating that Rule 23(e) requires the trial court to determine “whether
9 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
10 preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor*
11 *ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed
12 settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product
13 of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027.
14 There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s
15 length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

16 **1. Standard for Preliminary Approval**

17 The Court should consider the following factors when making a fairness determination:
18 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
21 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
22 “[T]he court is free to engage in a balancing and weighing of factors depending on the
23 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the
24 proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

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

26 Class Counsel carefully vetted the claims at issue, reviewed a representative sampling of
27 Class Member data and all relevant policy documents, and created a comprehensive damages
28 model for Defendants’ liability. Moen Decl., ¶ 26. Although Plaintiff steadfastly maintains that

1 his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty
2 in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*,
3 Defendants presented numerous defenses to Plaintiff's claims, both on the merits and with respect
4 to class certification. Although he was prepared to litigate these claims through class certification
5 and ultimately through trial, it was far from certain that Plaintiff would be able to recover a greater
6 amount should this matter proceed through trial. Thus, this factor supports preliminary approval.

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

8 Although the Parties engaged in substantial informal discovery and information exchange
9 prior to mediation, the Parties had agreed to refrain from engaging in formal written and
10 deposition discovery until after exhausting their settlement efforts at mediation. Moen Decl., ¶
11 26. Absent settlement, the Parties will be required to expend substantial time and resources
12 conducting extensive formal written and deposition discovery. *Id.* Moreover, Plaintiff has not yet
13 filed for class certification, and thus, absent settlement, the Parties would face the prospect of
14 appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment
15 ruling. *Id.* Even if Plaintiff succeeded in certifying one or more classes, the Parties would incur
16 considerably more attorneys' fees and costs through a possible decertification motion, trial, and
17 possible appeal. *Id.* This Settlement avoids these considerable costs, risks, and the accompanying
18 burden of continued litigation on the Court. Thus, this factor supports preliminary approval.

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

20 At the time of the proposed Settlement, Plaintiff had not filed his motion for class
21 certification. Moen Decl., ¶ 27. Had the Court certified any claims, Plaintiff anticipated that
22 Defendants would seek decertification. *Id.* There was also a risk that Defendants would engage
23 in a *Pick-up-Stix* campaign to significantly reduce the size of the putative class for a fraction of
24 what Class Members are receiving through this Settlement. *Id.*; see *Chindarah v. Pick Up Stix,*
25 *Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, there was a serious risk that
26 Plaintiff would be unable to move forward on a class-wide basis. *Id.* Thus, this factor supports
27 preliminary approval.

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

This proposed Settlement provides a fair and reasonable recovery for the Settlement Class

1 in the face of disputed claims. After analyzing Defendants' produced data, Class Counsel
2 conducted a class-wide exposure analysis, forecasting the total expected recovery as follows:

3 **Off-the-Clock Violations: \$62,260**

4 Plaintiff's data analysis determined that Class Members worked an aggregate total of
5 116,103 shifts during the Class Period. Moen Decl., ¶ 28. Plaintiff estimates that Class Members
6 were required to perform 10 minutes of pre-shift donning and necessary equipment preparation
7 before their scheduled shifts. *Id.* Accordingly, Plaintiff calculated Defendants' maximum
8 potential exposure for off-the-clock wage violations at approximately \$212,855. *Id.*

9 Defendants, however, maintain that they have properly recorded and paid Class Members
10 for all time worked during the Class Period, and argue that Plaintiff and other non-exempt
11 employees were never required to conduct off-the-clock work. Moen Decl., ¶ 29. Further,
12 Defendants assert that this claim is unmanageable, as it requires individualized inquiries into
13 whether or not each individual employee performed off-the-clock work on each day during the
14 Class Period, resulting in an unmanageable series of mini-trials. *Id.* Plaintiff discounted the
15 maximum exposure by 55% for the risk of non-certification, and by an additional 35% for risk of
16 losing on the merits, to arrive at an estimated exposure of \$62,260. *Id.*

17 **Meal Period Violations: \$345,402**

18 Plaintiff's data analysis determined that Class Members worked an aggregate total of
19 64,113 shifts in excess of 5.0 hours during the Class Period that contained an unlawful first or
20 second meal period, whether by being missed, late and/or short. Moen Decl., ¶ 30. Plaintiff's data
21 analysis further revealed that non-exempt employees received an average hourly rate of
22 approximately \$29.93 during the Class Period. *Id.* Accordingly, Plaintiff calculated Defendants'
23 liability on this claim at \$1,918,902 (64,113 meal period violations * \$29.93 average premium).
24 *Id.*

25 Defendants assert, however, that they maintained a lawful meal period policy/practice at
26 all times during the Class Period and that any failure by an employee to take a lawful meal period
27 was the result of employee choice rather than company policy, requiring individual inquiries into
28 the reasons why each non-compliant meal period was untimely or missed on any given day. Moen

Decl., ¶ 31. Given these defenses, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and by an additional 55% for risk of losing on the merits, to arrive at an estimated exposure of \$345,402. *Id.*

Rest Period Violations: \$301,325

Plaintiff's data analysis revealed that non-exempt employees worked an aggregate total of 115,059 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 32. Due to Defendants' unlawful rest period policy, Plaintiff alleges a rest period violation occurred during every shift in excess of 3.5 hours during the Class Period. *Id.* Accordingly, Plaintiff calculated Defendants' maximum potential exposure on this claim at \$3,443,715 (115,059 rest period violations * \$29.93 average premium). *Id.*

But as noted above, Defendants argues they have always authorized and permitted duty-free rest periods in accordance with California law, including permitting employees to leave company premises during their rest periods, and any failure to take a rest period is a result of individual employee choice, rather than company-wide policies or practices. Moen Decl., ¶ 33. Further, Defendants assert that this claim is not amenable to class certification given the individual inquiries required to determine whether and why each employee missed a rest period on any given shift, particularly given that rest periods were not recorded. *Id.* Given these defenses, Plaintiff discounted the maximum exposure by 75% for the risk of non-certification, and by an additional 65% for risk of losing on the merits, to arrive at an estimated exposure of \$301,325. *Id.*

Wage Statement Penalties: \$130,460

According to the key data points provided by Defendants, approximately 158 Class Members are eligible for wage statement penalties, and a total of 4,823 wage statements were issued during the relevant one-year statute of limitations period applicable to this claim. Moen Decl., ¶ 34. Plaintiff calculated Defendants' maximum possible wage statement exposure as approximately \$474,400 ((158 initial violations * \$50 per pay period) + (4,665 subsequent pay periods * \$100 per pay period)). *Id.* However, Defendants raised numerous defenses, including

1 that the alleged violations, if any, were not “knowing and intentional,” and that Plaintiff could not
2 show that the Class Members “suffer[ed] injury” as a result of any alleged violations. *Id.*
3 Defendants further argued that Plaintiff’s underlying claims would fail, and, therefore, his wholly
4 derivative wage statement claim would also fail. *Id.* Therefore, Plaintiff discounted the maximum
5 exposure by 50% for the risk of non-certification of the underlying claims and 45% for a risk of
6 being unsuccessful on the merits, including failing to prove the violations were “knowing and
7 intentional,” that the Class Members “suffer[ed] injury,” for an estimated recovery on this claim
8 of \$130,460. *Id.*

9 **Waiting Time Penalties: \$106,671**

10 Based on data provided by Defendants, approximately 60 Class Members separated their
11 employment during the Class Period. Moen Decl., ¶ 35. Assuming Plaintiff can prove that each
12 of these employees was owed wages that were not paid at the time of their separation, Plaintiff
13 calculated a maximum exposure of \$430,992 (60 former employees * average waiting time
14 penalty of \$7,183.20 (\$29.93 average hourly rate * 8 hours * 30 days)). *Id.* Defendants maintain
15 that waiting time penalties are not appropriate because Plaintiff’s claims fail on the merits, and
16 given their good-faith defenses, Plaintiff cannot show that any failure by Defendants to pay all
17 final wages was willful under 8 Cal. Code Regs. § 13520. *Id.* Thus, Plaintiff discounted this claim
18 by 55% for the risk of non-certification and by an additional 45% for risk of being unsuccessful
19 on the merits or failing to establish willfulness, for an estimated recovery of \$106,671. *Id.*

20 **PAGA Penalties: \$47,024**

21 Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in
22 which he could prove an underlying Labor Code violation. Moen Decl., ¶ 36. According to
23 Plaintiff’s data analysis, the Class Members worked a combined total of 4,823 pay periods during
24 the PAGA liability period in which at least one of Plaintiff’s alleged Labor Code violations
25 occurred. *Id.* Plaintiff therefore calculates Defendants’ maximum PAGA exposure at \$482,300
26 (4,823 pay periods * \$100 per violation). *Id.*; see also *Amaral, supra*, 163 Cal.App.4th at 1207
27 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code
28 provision). However, these penalties are almost exclusively derivative of the underlying

violations that Defendants vigorously dispute, both as to certification and the merits. Moen Decl., ¶ 36; *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D. Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to substantially reduce any award of PAGA penalties. Moen Decl., ¶ 36; *see also* Labor Code § 2699(e)(2); *Thurman, supra*, 203 Cal.App.4th at 1135; *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum figure by 35% to account for the risk that he would not prevail on the underlying claims, and by an additional 85% for the likely possibility that this Court would reduce the awarded PAGA penalties, to arrive at an estimated exposure of \$47,024. Moen Decl., ¶ 36.

Using these estimated figures, Plaintiff estimated that the potential reasonable recovery for the Settlement Class would be approximately \$993,142. Moen Decl., ¶ 37. Thus, the proposed recovery to the Settlement Class of \$750,000 represents approximately 75.52% of Plaintiff’s 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*, 213 F.3d 454, 459 (9th Cir. 2000) (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 Class Members 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

1 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
2 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
3 by competent and experienced counsel who possesses extensive experience litigating wage and
4 hour class actions from both the plaintiff and defense side, and who have been appointed as class
5 counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K.
6 Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶¶ 2-6;
7 and Declaration of Susan J. Perez (“Perez Decl.”), ¶¶ 2-6. Class Counsel conducted an extensive
8 review and analysis of Defendants’ produced timekeeping and payroll records and drew on their
9 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case.
10 Moen Decl., ¶¶ 22, 28-36. It was only after the completion of this work that the Parties attended
11 mediation and ultimately accepted a mediator’s proposal for a class-wide settlement of all claims
12 at issue. *Id.* Thus, this factor strongly supports preliminary approval of the Settlement.

13 **2. The Preliminary Approval Standard is Met**

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

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

20 The proposed Settlement reflects a fair and reasonable recovery for the Class Members in
21 light of the significant risks of litigation. The proposed Settlement will provide compensation for
22 contested claims, while only releasing the claims actually at issue in this litigation. Further, the
23 average payment of \$2,156.25 greatly exceeds the average payments achieved in other wage and
24 hour class action settlements that have been approved.² Thus, the proposed Settlement is within

25
26 ² *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9,
27 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case
28 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

1 the range of possible approval such that notice should be provided to the Class Members to
2 consider the Settlement. The Court will have the opportunity to again assess the reasonableness
3 of the Settlement after the Class Members have had the opportunity to opt-out or object.

4 **b. The Settlement Resulted from Serious, Informed and Non-Collusive**
5 **Negotiations**

6 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
7 of the exchange of pertinent information, including all relevant policies, employee timekeeping
8 and payroll records, and key data points which were analyzed by Plaintiff and his counsel; arm's-
9 length negotiations by counsel; mediation before an experienced wage and hour class action
10 mediator; and additional negotiations until the terms of the long-form Settlement were agreed
11 upon and finalized. Moen Decl., ¶ 22; *see also Kullar, supra*, 168 Cal.App.4th at 130. Thus, this
12 factor supports preliminary approval.

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

14 The Settlement will provide tangible monetary relief to the Class Members. Moreover, the
15 amounts proposed for Plaintiff's class representative service award, settlement administration
16 costs, attorneys' fees and costs to Class Counsel, and the LWDA's portion of PAGA civil
17 penalties are all reasonable and appropriate. Because the Settlement is devoid of obvious
18 deficiencies, this final factor supports preliminary approval.

19 **B. The Court Should Certify The Settlement Class**

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

27
28 actions where the gross recoveries per class member were less than \$90 . . . [T]he Court finds that the
results achieved are good").

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

2 A class is “ascertainable” where the members “may be readily identified without
3 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
4 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
5 Class is defined as all current and former non-exempt employees who worked for Defendants in
6 California at any time between November 12, 2017 to December 31, 2022. *See* Settlement, ¶¶ 5,
7 6. Class Members can be easily identified using Defendants’ employment and payroll records.
8 Moen Decl., ¶ 23. Defendants represent that the Settlement Class consists of approximately 192
9 individuals (as of the time of mediation), rendering it impracticable to bring all Class Members
10 before the Court. *Id.* Thus, the proposed Settlement Class satisfies numerosity. *See Collins v.*
11 *Rocha* (1972) 7 Cal.3d 232, 234.

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

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

22 **3. The Claims of the Named Plaintiff are Typical**

23 The typicality requirement is satisfied where class representatives have claims that are
24 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
25 Cal.App.3d 1341, 1347. Here, like other Class Members, Plaintiff was employed by Defendants
26 as a non-exempt employee in California and was subject to Defendants’ allegedly unlawful wage
27 and hour policies/practices during the Class Period. Lewis Decl., ¶¶ 5-6. Plaintiff was therefore
28 impacted by the same challenged policies that allegedly injured the Settlement Class as a whole
and was subject to the same defenses forwarded by Defendants as to the Settlement Class, and is

1 therefore typical.

2 **4. Plaintiff and Class Counsel are Adequate to Represent the Class**

3 The adequacy of representation requirement examines conflicts of interest between named
4 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
5 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will
6 adequately represent the Class Members as there are no conflicts between the named Plaintiff and
7 the Class Members he seeks to represent, and Plaintiff possesses claims that are in line with those
8 of the Class Members. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding
9 adequacy satisfied where there was no indication that the plaintiff's counsel were not qualified
10 and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel
11 also has extensive experience in wage and hour class action litigation. *See Moen Decl.*, ¶¶ 2-7;
12 *Haines Decl.*, ¶¶ 2-8; *Schmidt Decl.*, ¶¶ 2-6; *Perez Decl.*, ¶¶ 2-6.

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

14 This Court should order distribution of the proposed Class Notice in both English and
15 Spanish to the Class Members by first class mail, postage prepaid, using the last known mailing
16 address information provided by Defendants. This manner of giving notice is the “best notice
17 practicable” under the circumstances because it provides “individual notice to all members who
18 can be identified through reasonable effort.” *See Eisen v. Carlisle and Jacquelin*, 417 U.S. 156,
19 173 (1974). The Parties propose that the settlement be administered by CPT Group, Inc. (“CPT”),
20 an experienced class action settlement administrator. *See Declaration of Julie Green*. Class
21 Members’ addresses will be ascertainable through Defendants’ personnel records, and Defendants
22 will provide all Class Members’ full names, last known mailing addresses, social security
23 numbers, and workweek data to CPT within fifteen (15) calendar days after of the Court signs an
24 order preliminarily approving the Settlement. *See Settlement*, ¶¶ 4, 53.a-b. CPT will run the Class
25 Members’ addresses through the National Change of Address database and/or conduct skip traces
26 to obtain current address information. *Id.*, ¶ 53.b.

27 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
28 because it advises the Class Members of the nature of the claims, basic contentions and denials

1 of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out or object
2 to the Settlement and the procedures by which to do so, explains the recovery formula and
3 expected recovery amount for each Class Member, and advises them that they will be bound by
4 the terms of the Settlement if they do not request exclusion. *See* Moen Decl., Exhibit 2. The
5 proposed Class Notice will also notify the Settlement Class of the Final Approval Hearing date,
6 provide Class Counsel's contact information, and advise Class Members that they may enter an
7 appearance through counsel if they so wish. *Id.* This manner of giving notice satisfies California
8 Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.
9 Additionally, because the proposed Settlement includes settlement of Plaintiff's representative
10 PAGA claim, notice of the Settlement has been submitted to the LWDA. *See id.*, ¶ 38, Exhibit 4;
11 Proof of Service.

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

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

16 **V. CONCLUSION**

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

20
21 Dated: March 24, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

22
23 By:


Matthew K. Moen
Attorneys for Plaintiff