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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO

CRESCENCIO CRUZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HOLLAND AMERICA FLOWERS, LLC, a
California limited liability company; and DOES
1 through 100,

Defendants.

Case No.: 21CV-0620

*[Assigned for all purposes to Hon. Rita
Federman; Dept. 2]*

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

Date: April 27, 2023
Time: 9:00 a.m.
Dept.: 2

Action Filed: November 5, 2021
Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 27, 2023, at 9:00 a.m. in Department 2 of the above-entitled Court, located at 1050 Monterey Street, San Luis Obispo, California 93408, Plaintiff Crescencio Cruz (“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 class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

All current and former non-exempt employees who worked for Defendant Holland America Flowers, LLC in California from May 11, 2017, through the date of preliminary approval of the settlement (the “Class Period”).
3. Preliminary appointment of Plaintiff Crescencio Cruz as Class Representative;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Enhancement Payment to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class 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, Sean M. Blakely, Plaintiff Crescencio Cruz, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto; the pleadings and other papers filed in this action; and on any further oral or documentary evidence or argument presented at the time of hearing. Defendant does not intend to oppose this Motion

1 and given the multiplicity of issues addressed in this Motion, has indicated its approval of
2 Plaintiff's expressed need to exceed the 20-page limit set forth in California Rule of Court
3 3.764(c)(2). Therefore, the parties jointly request the Court's consideration of Plaintiff's
4 memorandum of points and authorities, which is 24 pages in length.

5
6 Respectfully submitted,

7 Dated: March 31, 2023

HAINES LAW GROUP, APC

8
9 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. THE PARTIES AND BRIEF PROCEDURAL HISTORY	2
B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES	3
1. Meal Period Claims.....	3
2. Failure to Pay All Wages Due to Unlawful Timekeeping Policies/Practices	4
3. Rest Period Claims.....	5
4. Claims Under Labor Code §§ 203 and 226	5
5. PAGA Civil Penalties	6
C. DISCOVERY AND MEDIATION.....	7
III. THE PROPOSED SETTLEMENT.....	8
A. ESSENTIAL TERMS OF THE SETTLEMENT	8
1. The Settlement Provides for Reasonable Monetary Payments	8
2. Attorneys’ Fees and Costs, Enhancement Payment, and PAGA Payment	9
IV. ARGUMENT.....	11
A. PRELIMINARY APPROVAL IS WARRANTED	11
1. Standard for Preliminary Approval.....	11
a. The Strength of Plaintiff’s Case.....	12
b. Risk, Expense, Complexity, and Duration of Further Litigation.....	12
c. Risk of Maintaining Class Action Status	12
d. Amount Offered in Settlement Given Realistic Value of Claims	13
e. The Experience and Views of Counsel	18
2. The Preliminary Approval Standard Is Met.....	18
a. The Settlement Is Within the Range of Possible Approval.....	19
b. The Settlement Resulted from Serious, Informed Negotiations	20
c. The Settlement Is Devoid of Obvious Deficiencies	20

1	B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS.....	20
2	1. The Proposed Class Is Ascertainable and Numerous	21
3	2. Common Issues of Law and Fact Predominate.....	21
4	3. The Claims of the Named Plaintiff Are Typical	21
5	4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the	
6	Class	22
7	C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE	22
8	D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	23
9	IV. CONCLUSION.....	24

TABLE OF AUTHORITIES

Federal Cases

<i>Dunleavy v. Nadler</i> , 213 F.3d 454 (9th Cir. 2000)	19
<i>Eisen v. Carlisle & Jacquelin</i> 417 U.S. 156 (1974).....	22
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	11
<i>In re Pacific Enterprises Securities Litigation</i> 47 F.3d 373 (9th Cir. 1995)	18
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	11
<i>Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	19
<i>Patel v. Nike Retail Svcs., Inc.</i> , 58 F.Supp.3d 1032 (N.D. Cal. 2004).....	16

State Cases

<i>AHMC Healthcare, Inc. v. Sup. Ct.</i> , 24 Cal.App.5th 1014 (2018)	4
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	16, 17
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> 191 Cal.App.3d 1341 (1987)	21
<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013).....	21
<i>Bowles v. Sup. Ct.</i> , 44 Cal.2d 574 (1955)	21
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012).....	3, 13
<i>Capital People First v. State Dept. of Developmental Services</i> 155 Cal.App.4th 676 (2007)	22
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	7
<i>Chindarah v. Pick Up Stix, Inc.</i> , 171 Cal.App.4th 796 (2009)	13
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	12
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	9
<i>Kao v. Joy Holiday</i> , 12 Cal.App.5th 947 (2017)	6
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	11, 18, 20
<i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016).....	10
<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)	22
<i>Price v. Starbucks Corp.</i> 192 Cal.App.4th 1136 (2011).....	7

1	<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....	11
2	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i> 34 Cal.4th 319 (2004).....	21
3	<i>See's Candy Shops, Inc. v. Sup. Ct.</i> , 210 Cal.App.4th 889 (2012).....	4
4	<i>Sevidal v. Target Corp.</i> 189 Cal.App.4th 905 (2010).....	21
5	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> 203 Cal.App.4th 1112 (2012).....	7, 17
6	<i>Troester v. Starbucks Corp.</i> , 5 Cal.5th 829 (2018).....	4
7	<i>United Parcel Service, Inc. v. Superior Court</i> , 196 Cal.App.4th 57 (2011).....	14
8	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th at 245 (2001).....	12

State Statutes and Rules

11	Cal. Civ. Proc. § 382.....	20
12	8 Cal. Code Regs. § 13520.....	6
13	Cal. Rule of Court 3.769.....	23
14	Lab. Code § 226(e)	16
15	Lab. Code § 2699(e)(2).....	7

Unpublished Cases

18	<i>Bercea v. AE Retail West</i>	
19	Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012)	19
20	<i>Chu v. Wells Fargo Investments, LLC</i>	
21	Case No. C 05-4526 MHP, 2011 WL 672645 (N.D. Cal. 2011).....	11
22	<i>Doty v. Costco Wholesale Corp.</i>	
23	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007)	19
24	<i>Fleming v. Covidien Inc.</i>	
25	Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	7, 17
26	<i>Glass v. UBS Finan. Servs.</i>	
27	Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007).....	19

1	<i>Gomez v. Amadeus Salon, Inc.</i>	
2	Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010)	19
3	<i>Green v. Lawrence Service Co.</i>	
4	2013 WL 3907506 (C.D. Cal. 2013).....	17
5	<i>Lazarin v. Pro Unlimited, Inc.</i>	
6	Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013).....	11
7	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
8	Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006).....	19
9	<i>Palencia v. 99 Cents Only Stores</i>	
10	Case No. 34-2010-00079619 (Sacramento County Super. Ct.).....	19
11	<i>Ressler v. Federated Department Stores, Inc.</i>	
12	Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009).....	19
13	<i>Schiller v. David's Bridal, Inc.</i>	
14	Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (E.D. Cal. June 11, 2012).....	19
15	<i>Sorenson v. PetSmart, Inc.</i>	
16	Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)	19
17	<i>Williams v. Centerplate, Inc.</i>	
18	Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC	
19	2013 WL 4525428 (S.D. Cal. Aug. 26, 2013)	19
20		
21	<u>Other Sources</u>	
22	Manual for Complex Litigation § 30.41(3rd Ed. 1995).....	19
23	4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013)	19
24	4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	10
25	Wage Order No. 16, § 7(A)(3).....	4
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Crescencio Cruz (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of current and former non-exempt
5 employees of Defendant Holland America Flowers, LLC (“Defendant”) who were employed in
6 California from May 11, 2017 through the date of preliminary approval of the Settlement (the
7 “Class Period”). Plaintiff’s primary allegations are that Defendant: (1) failed to provide legally-
8 compliant first and second meal periods; (2) failed to authorize and permit all legally required
9 rest periods; and (3) failed to pay all wages due to Defendant’s unlawful timekeeping
10 policies/practices. As a result of these alleged violations, Plaintiff also brought derivative claims
11 for Defendant’s alleged failure to pay all final wages owed, failure to issue accurate and compliant
12 wage statements, and for civil penalties under the Private Attorneys General Act (“PAGA”).¹

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which Defendant has agreed to pay Seven
15 Hundred Seventy-Five Thousand Dollars and Zero Cents (\$775,000.00) to the following
16 Settlement Class:

17 All current and former non-exempt employees who worked for Defendant
18 Holland America Flowers, LLC in California from May 11, 2017, through
the date of preliminary approval of the settlement (the “Class Period”).

19 If the Settlement is approved, Defendant will pay a non-reversionary Maximum
20 Settlement Amount of \$775,000.00. After deducting administration costs, Plaintiff’s requested
21 Class Representative Enhancement Payment, the payment to the Labor and Workforce
22

23 ¹ Plaintiff’s operative First Amended Class and Representative Action Complaint (“FAC”) alleges
24 the following causes of action: (1) Minimum Wage Violations; (2) Failure to Pay All Overtime
25 Wages; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6)
26 Waiting Time Penalties; (7) Unfair Competition; and (8) Civil Penalties Under the Private
Attorneys General Act, Labor Code § 2698 *et seq.*

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Paul K. Haines as
28 **Exhibit A**. The proposed Class Notice and Notice of Estimated Settlement Payment are attached
to the Settlement as Exhibits 1 and 2, respectively. All defined terms in this motion have the
same definition as that in the Settlement.

1 Development Agency (“LWDA”) for its share of civil penalties under the PAGA, and requested
2 attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately \$440,166.67 will
3 be distributed to all Settlement Class members who do not opt-out of the Settlement based on the
4 proportionate number of workweeks worked by each Settlement Class member during the Class
5 Period. Former employees with standing for waiting time penalties, and employees with standing
6 for wage statement and PAGA penalties will also receive additional consideration for their release
7 of these penalty claims.

8 Significantly, Settlement Class members do not need to file a claim to reap the financial
9 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
10 unless they affirmatively opt-out. There are approximately 750 Settlement Class members, and
11 the average payment to participating Settlement Class members is projected to be approximately
12 \$586.89.

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

18 **II. SUMMARY OF THE LITIGATION**

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

20 Defendant is a cut flower farming company and operates in Arroyo Grande, California.
21 *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10. Defendant grows a variety of flowers
22 and greens, including lilies, tulips, freesias, peonies, and sells to wholesalers, mass markets and
23 other retailers. *Id.* Plaintiff was employed by Defendant as a non-exempt employee from 2001
24 through approximately October 2021. *See* Declaration of Crescencio Cruz In Support of Approval
25 of Class Action Settlement (“Cruz Decl.”), ¶ 2.

26 On November 5, 2021, Plaintiff filed his Class Action Complaint in San Luis Obispo
27 County Superior Court, alleging causes of actions for: (i) minimum wage violations; (ii) failure
28 to pay all overtime wages; (iii) meal period violations; (iv) rest period violations; (v) wage

statement penalties; (vi) waiting time penalties; and (vii) unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Haines Decl., ¶ 11. On January 10, 2022, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) which added a cause of action for Civil Penalties Under the Private Attorneys General Act (“PAGA”). *Id.*

B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES

1. Meal Period Claims

Plaintiff alleges Defendant failed to provide legally-compliant first meal periods such that first meal periods were regularly late and/or less than 30-minutes. Haines Decl., ¶ 16. Specifically, Plaintiff alleges that Defendant rings a bell each workday at noon signaling the beginning of employees’ 30-minute meal period. *Id.* Plaintiff alleges that this practice resulted in “late” first meal periods as Settlement Class members regularly started working prior to 7:00 a.m. *Id.* Plaintiff further alleges that Settlement Class members were not required to clock out/in for their meal periods. *Id.* Rather, Plaintiff alleges that Defendant automatically deducted 30 minutes from employees’ daily hours worked for a meal period each workday, regardless of whether a 30-minute compliant first meal period was actually provided. *Id.* Plaintiff further alleges that Settlement Class members were not provided with second meal periods when they worked shifts in excess of 10.0 hours in a workday. *Id.*, at ¶ 17.

However, Defendant contends that it provided all legally-compliant meal periods to Settlement Class members throughout the Class Period. Haines Decl., ¶ 16. Defendant also argues that under *Brinker*, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers only have to “provide” employees the opportunity to take meal periods). Defendant also maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 16. With respect to Plaintiff’s claims that Defendant’s auto-deduct policies/practices were unlawful, Defendant maintains that all operations cease from 12:00 p.m. – 12:30 p.m., and therefore, Defendant need not record its employees’ meal periods. *Id.*; *see also*

Wage Order No. 16, § 7(A)(3) (“Meal periods during which, operations cease...need not be recorded.”). With respect to second meal periods, Defendant argues that second meal periods may lawfully be waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512. Haines Decl., ¶ 17. Lastly, Defendant argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, thereby making certification of this claim unlikely. *Id.*, at ¶¶ 16-17.

2. Failure to Pay All Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that Defendant’s timekeeping policies/practices fail to compensate Settlement Class members for all hours worked. Haines Decl., ¶ 18. Specifically, beginning in March 2019, Plaintiff alleges that despite Settlement Class member clocking in/out through an electronic timeclock, Defendant only compensated Settlement Class members for their scheduled hours, as opposed to all hours on the clock. *Id.* Plaintiff alleges that this timekeeping policy/practice resulted in a systematic underpayment of wages to Settlement Class members. *Id.*

Defendant counters that it utilizes a neutral time-rounding mechanism that results, over time, in employees being paid for all hours worked. Haines Decl., ¶ 18; *see also, See’s Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer “applies a consistent rounding policy that, on average, favors neither overpayment nor underpayment.”); *AHMC Healthcare, Inc. v. Sup. Ct.*, 24 Cal.App.5th 1014, 1027-28 (2018) (finding rounding policy lawful where policy was “neutral on its face” and resulted in employees being overpaid). Defendant also argues that any unpaid time could have only amounted to a few minutes per day, at most, and was thus *de minimis*. Haines Decl., ¶ 18. While Plaintiff points to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the California Supreme Court held California’s labor laws generally do not recognize a *de minimis* defense, Defendant argues *Troester* should be limited to its facts. (“[W]e decide only whether the *de minimis* rule is applicable to the facts of this case as described by the Ninth Circuit.” *Troester*, 5 Cal.5th at 829.). Defendant further argues that it simply allowed employees to clock-in prior to their scheduled

1 start of shift, however, it was not possible for employees to begin working prior to the scheduled
2 start of shift, and therefore, employees could not perform compensable work prior to the start of
3 their scheduled shift. Haines Decl., ¶ 18. Similarly, Defendant argues that it is not possible for
4 Settlement Class members to perform compensable work after the end of their scheduled shift.
5 *Id.* Finally, Defendant asserts that Plaintiff would be unable to certify this claim since its
6 timekeeping policy is facially neutral and some employees were *overpaid* due to rounding, and
7 individualized inquiries would be necessary as to whether employees were in fact underpaid or
8 overpaid for each workday in question (including whether they were actually working when they
9 were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

10 **3. Rest Period Claims**

11 Plaintiff further alleges that Defendant failed to authorize and permit all legally-compliant
12 off-duty rest periods. Haines Decl., ¶ 19. Specifically, Plaintiff alleges that Defendant failed to
13 authorize and permit a third rest period when employees worked shifts in excess of 10.0 hours.
14 *Id.*

15 Defendant counters that it has maintained compliant written rest period policies and has
16 always authorized and permitted employees a 10-minute rest period for each 4 hours worked, or
17 major fraction thereof, as required under the Wage Order, and that any failure to take rest periods
18 was as a result of employee choice, rather than any Defendant policy and/or practice. Haines
19 Decl., ¶ 19. Defendant further argues that Plaintiff's rest period claim is not amenable to class
20 treatment, since individual inquiries would be required to determine which employees failed to
21 take rest periods, how many rest periods they failed to take, and the reasons why each employee
22 failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially
23 present with respect to rest period claims, Defendant argues, given that rest periods are not
24 recorded. *Id.*

25 **4. Claims Under Labor Code §§ 203 and 226**

26 As a result of Defendant's alleged failure to pay all wages and all meal and rest period
27 premiums, Plaintiff asserts Defendant failed to comply with its final payment obligations set forth
28 in Labor Code § 203, and failed to issue accurate and compliant wage statements in violation of

1 Labor Code § 226. Haines Decl., ¶¶ 20-21. Plaintiff further alleges that Defendant issued facially
2 deficient wage statements that did not list the address of the legal entity of the employer in
3 violation of Labor Code § 226(a)(8). *Id.*, at ¶ 21. Specifically, Plaintiff alleges the wage statements
4 only listed the city, state, and zip code of Defendant, and did not list its street address. *Id.*

5 Defendant asserts it has strong, good-faith defenses to Plaintiff’s underlying claims,
6 precluding the imposition of waiting time penalties. Haines Decl., ¶ 20; *see also* 8 Cal. Code
7 Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting
8 time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith
9 dispute” precluded imposition of waiting time penalties). Moreover, because the waiting time
10 claim is derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome
11 Defendant’s defenses, both as to class certification and on the merits, as to his underlying claims.
12 Haines Decl., ¶ 20. Defendant further asserts Plaintiff’s waiting time penalty exposure was
13 grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id.*
14 Defendant further contends any alleged wage statement violations could not be shown to be
15 “knowing and intentional” given its good-faith defenses, and that Plaintiff cannot show he or
16 other employees “suffer[ed] injury,” as required by Labor Code § 226(e) for the imposition of
17 penalties. Haines Decl., ¶ 21. Defendant further argues that wage statements always accurately
18 reflected hours worked and amounts paid to employees. *Id.*; *see Maldonado v. Epsilon Plastics,*
19 *Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position
20 that the pay stubs were accurate in that they correctly reflected the hours worked and the pay
21 received). With respect to Plaintiff’s allegations that the wage statement did not list the full
22 address of the legal entity that is the employer, Defendant argues that employees’ paychecks
23 contain Defendant’s full address, including its street number. Haines Decl., ¶ 21. Moreover,
24 Defendant argues it revised its wage statements in March 2022 to list its full address on the wage
25 statement, thereby cutting off liability for this claim. *Id.*

26 **5. PAGA Civil Penalties**

27 As a result of the foregoing Labor Code violations, Plaintiff alleges that Defendant is
28 liable for civil penalties under the PAGA. Haines Decl., ¶ 22. Since Plaintiff’s PAGA claim is

1 derivative of Plaintiff’s underlying wage claims, Defendant asserts the PAGA claim would fail
2 with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because
3 the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant
4 further maintains that, given its good faith defenses, this Court would exercise its discretion to
5 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff’s
6 claims. Haines Decl., ¶ 22; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*
7 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
8 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
9 (reducing PAGA penalties by over 82% in part because employer “not aware” of violations);
10 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
11 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

12 C. DISCOVERY AND MEDIATION

13 Prior to mediation, the parties engaged in significant informal discovery, including
14 Defendant’s production of a random sampling of timekeeping and payroll data for the putative
15 class, all relevant wage and hour written policies, and other relevant data and information. Haines
16 Decl., ¶ 12. Defendant also produced a “class list” with Settlement Class members’ hire and
17 termination dates (if applicable). *Id.* Plaintiff hired a labor economist with a Ph.D. in economics
18 to analyze and extrapolate the data to assist Plaintiff in calculating Defendant’s potential exposure
19 for each of Plaintiff’s claims. *Id.* This discovery allowed the Parties to assess the merits and value
20 of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Defendant’s potential
21 defenses. *Id.*

22 On September 28, 2022, the parties participated in a full-day mediation with Jeffrey
23 Krivis, Esq., a well-respected wage and hour class action mediator. Haines Decl., ¶ 13. During
24 mediation, the parties vigorously debated their opposing legal positions, the likelihood of
25 certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* At the
26 conclusion of mediation, Mr. Krivis issued a mediator’s proposal for a class-wide settlement,
27 which was ultimately accepted by all parties and documented in a Memorandum of Understanding
28 (“MOU”). *Id.* During the months that followed, the parties negotiated and finalized the long-form

Settlement Agreement now before this Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Defendant will pay a Maximum Settlement Amount (“MSA”) of \$775,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Payment. *Id.*, at ¶ 4. Each Settlement Class member will automatically receive an Individual Settlement Payment unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

• Maximum Settlement Amount (“MSA”):	\$775,000.00
• Minus Court-approved attorneys’ fees:	\$258,333.33
• Minus Court-approved verified costs (up to):	\$25,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus payment to the LWDA:	\$30,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$14,000.00</u>
Net Settlement Amount (“NSA”):	\$440,166.67

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative Enhancement Payment to Plaintiff, the payment to the LWDA for its share of PAGA civil penalties, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of at least \$440,166.67 to all Settlement Class members who do not timely opt out. *See* Settlement, ¶ 4. Eighty percent (80%) of the NSA shall be distributed to all participating Settlement Class members based on each participating Settlement Class member’s proportionate number of workweeks worked during the Class Period. *See* Settlement, ¶ 4(B)(i). Fifteen percent (15%) of the NSA shall be designated as the “Waiting Time Amount” and shall be allocated in equal amounts to all participating Settlement Class members who separated their employment from Defendant at any time from May 11, 2018, through the date of preliminary approval of the Settlement. Settlement, ¶ 4(B)(ii). Five percent (5%) of the NSA shall be designated as the “Wage Statement Amount” and will be paid proportionally based on the number of workweeks worked from May 11, 2020, through the date of preliminary

1 approval of the Settlement. Settlement, ¶ 4(B)(iii). Additionally, Ten Thousand Dollars
2 (\$10,000.00) has been designated as the “PAGA Amount,” and shall be distributed to all
3 Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from
4 the class action settlement) employed from November 5, 2020, through the date of preliminary
5 approval of the Settlement (“PAGA Period”) proportionally based on the number of workweeks
6 worked during the PAGA Period. Settlement, ¶ 4(B)(iv).

7 According to Defendant, there are approximately 750 Settlement Class members. Haines
8 Decl., ¶ 15. Therefore, the average Individual Settlement Payment is projected to be
9 approximately \$586.89. *Id.* Settlement Class members will have sixty (60) calendar days from
10 the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample
11 time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(C),
12 (D). Those Settlement Class members who do not opt-out of the Settlement will be bound by its
13 terms and will release all claims against Defendant included within the Settlement. *See Id.*, at ¶
14 2(A).

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

16 Plaintiff will apply for Class Representative Enhancement Payment at the time of seeking
17 final approval of the proposed class action settlement in the amount of \$7,500, for his service to
18 the Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6; Haines Decl., ¶ 26. “[I]ncentive awards are
19 fairly typical in class action cases . . . and are intended to compensate class representatives for
20 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
21 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
22 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement
23 Payment is intended to recognize the time and effort Plaintiff expended on behalf of the
24 Settlement Class, including providing substantial factual information and documents to Class
25 Counsel, discussing the claims and theories at issue in the litigation, actively participating in the
26 prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve
27 as the named plaintiff in this case, and the fact that Plaintiff agreed to a general release of all
28 claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶ 2(C); Haines Decl., ¶ 26; *see*

1 *also Cruz Decl.*

2 Class Counsel will also apply for an attorneys' fees award of one-third of the Maximum
3 Settlement Amount, which is currently estimated to be \$258,333.33, and up to \$25,000.00 in
4 verified costs reimbursement. *See* Settlement, ¶ 5; Haines Decl., ¶ 25. Plaintiff submits the
5 requested fee is fair compensation for undertaking complex, risky, expensive, and time-
6 consuming litigation on a purely contingent fee basis. Haines Decl., ¶ 25. Class Counsel has
7 incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's
8 claims, conducting legal research, conducting extensive informal discovery, interviewing
9 Settlement Class members regarding their work experiences, analyzing Settlement Class
10 members' timekeeping and payroll records, working with its retained expert to create a
11 comprehensive damages model, preparing for and attending mediation, negotiating and preparing
12 the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.*
13 Class Counsel expect to expend additional attorney time in attending the hearing on this Motion,
14 overseeing the Notice process and fielding questions from Settlement Class members, preparing
15 the final approval papers, and attending the Final Approval hearing. *Id.*

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

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

1 Additionally, the parties have agreed to designate \$40,000.00 of the Maximum Settlement
2 Amount as PAGA civil penalties, of which \$30,000.00 (75%) will be paid to the LWDA, with
3 the remaining \$10,000.00 (25%) for distribution to Aggrieved Employees, as the PAGA requires
4 such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(5). Plaintiff
5 submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v.*
6 *Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal.
7 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
8 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
9 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
10 settlement).

11 **IV. ARGUMENT**

12 **A. PRELIMINARY APPROVAL IS WARRANTED**

13 California Rule of Court 3.769 conditions settlement of a class action on court approval,
14 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
15 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
16 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
17 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)
18 (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally
19 fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution,
20 particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101
21 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that
22 the agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an
23 initial presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by
24 class counsel and with the assistance of an experienced wage and hour class action mediator. *See*
25 *e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

26 **1. Standard for Preliminary Approval**

27 To make a fairness determination, the Court should consider several factors, including:
28 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further

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

a. The Strength of Plaintiff’s Case

Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above in section II.B., *supra*, Defendant presented multiple defenses to Plaintiff’s claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

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

Although the parties engaged in significant informal discovery prior to mediation, the parties still had significant formal discovery to complete had the matter not settled. Haines Decl., ¶ 24. This would have required expenditure of substantial time and resources by both parties that would have very likely spanned several years. *Id.* Even if Plaintiff was to certify the classes, the parties would incur considerably more attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

c. Risk of Maintaining Class Action Status

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class

certification, or through settlement agreements entered into by Defendant with individual class members by way of *Pick-up-Stix* type settlement agreements³), and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Settlement Class in the face of hotly disputed claims. With the assistance of a retained economist with a Ph.D. in economics, counsel for Plaintiff conducted an analysis of underpaid wages due to Defendant's alleged unlawful timekeeping policies/practices, potential meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

First Meal Period Violations: \$354,301

Based on Plaintiff's review of Defendant's timekeeping records, approximately 106,325 shifts during the Class Period reflected a non-compliant first meal period. Haines Decl., ¶ 16. Plaintiff further calculated that the average rate of pay for putative class members during the Class Period at approximately \$14.81. *Id.* Therefore, Plaintiff estimated total maximum damages for first meal period violations at approximately \$1,574,673 (106,325 non-compliant first meal periods * \$14.81 premium). *Id.*

As noted above, however, Defendant maintains that under *Brinker*, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that it has always done so. Haines Decl., ¶ 16. Defendant further maintains Plaintiff's meal period claim is not suited for class treatment, as individual inquiries would be needed as to which employees took non-compliant meal periods, how many meal periods were non-compliant, and why a

³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

particular employee did not take a compliant meal period on a particular shift. *Id.* Based on these defenses, Plaintiff discounted the maximum amount by 50% for risk of non-certification and an additional 55% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately \$354,301. *Id.*

Second Meal Period Violations: \$54,930

Plaintiff's analysis and extrapolation of the timekeeping data showed that during the Class Period there were approximately 29,672 shifts worked in excess of 10.0 hours that did not reflect a compliant second meal period. Haines Decl., ¶ 17. Therefore, Plaintiff calculates Defendant's maximum exposure for second meal period violations at approximately \$439,442 (29,672 second meal period violations * \$14.81 premium). *Id.*

However, Plaintiff's theory of liability carried significant risks, based on Defendant's arguments that it has always provided employees the opportunity for second meal periods and that Settlement Class members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours, as they are entitled to do under Labor Code § 512. Haines Decl., ¶ 17. Defendant further argues that Plaintiff's second meal period exposure is grossly inflated as Plaintiff already seeks a meal period premium for first meal period violations on many shifts, and Plaintiff cannot recover more than one meal period premium for each workday. *Id.*; *See United Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011) ("[E]mployees in this case may recover up to two additional hours of pay on a single work day for meal period and rest period violations – one for failure to provide a meal period and another for failure to provide a rest period."). In addition, as with first meal periods, Defendant argued this claim would not be certified as requiring individualized inquiries into both the merits and damages. Haines Decl., ¶ 17. In light of these risks, Plaintiff discounted the maximum amount that the class could potentially recover for second meal periods by 50% for a risk of non-certification, and an additional 75% for a risk of losing on the merits, or having exposure reduced due to Defendant's waiver argument, to arrive at an estimated exposure amount of approximately \$54,930. *Id.*

Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$78,471

Plaintiff alleges that beginning in March 2019, Defendant implemented a timekeeping

1 policy/practice that only compensated employees for their scheduled hours of work, as opposed
2 to all hours on the clock. Haines Decl., ¶ 18. Based on Plaintiff's analysis and extrapolation of
3 Defendant's time and payroll records, Plaintiff estimated that Defendant's timekeeping
4 policies/practices resulted in approximately 21,408 hours in unpaid wages over the Class Period.
5 *Id.* Therefore, Plaintiff estimates Defendant's maximum exposure for this claim at approximately
6 \$317,052 (21,408 unpaid hours * \$14.81 average hourly rate of pay). *Id.*

7 As noted above, Defendant argues that its timekeeping system is even-handed and facially
8 neutral, and compensated employees for all hours worked. Haines Decl., ¶ 18. Defendant further
9 argues that just because an employee is clocked in does not mean they are working. *Id.* Defendant
10 also asserts that Plaintiff would be unable to certify this claim given the individualized inquiry as
11 to whether employees were in fact underpaid, or potentially overpaid, for each workday in
12 question. *Id.* Based on these defenses, Plaintiff discounted the estimated maximum amount by
13 45% for risk of non-certification, and by an additional 55% to account for risk of losing on the
14 merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of
15 approximately \$78,471. *Id.*

16 Rest Period Violations: \$98,875

17 As indicated above, Plaintiff alleges that Defendant failed to authorize and permit
18 Settlement Class members a third rest period when they worked shifts in excess of 10.0 hours.
19 Haines Decl., ¶ 19. Based on Plaintiff's analysis and extrapolation of Defendant's timekeeping
20 records, Plaintiff estimated there were approximately 29,672 shifts over 10.0 hours during the
21 Class Period. *Id.* Therefore, Plaintiff estimated Defendant's maximum potential exposure for rest
22 period violations at approximately \$439,442 (29,672 rest period violations * \$14.81 premium).
23 *Id.*

24 However, Defendant contends it has maintained compliant rest period policies/practices
25 throughout the Class Period, and that it has always authorized and permitted employees at least
26 10-minute rest periods for each 4 hours worked, or major fraction thereof, including authorizing
27 and permitting a third rest period during shifts in excess of 10.0 hours. Haines Decl., ¶ 19.
28 Defendant further argues that Plaintiff's rest period claim is not amenable to class treatment, since

individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially present regarding rest periods, Defendant contends, since rest periods are not recorded. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 55% for risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately \$98,875. *Id.*

Wage Statement Penalties: \$64,950

Plaintiff's analysis reflected that there were approximately 365 unique employees and approximately 6,495 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. Haines Decl., ¶ 21. In calculating Defendant's exposure, Plaintiff gave Defendant the benefit of assuming that Plaintiff could only obtain the "initial" wage statement violation rate of \$50 per pay period, for a total of approximately \$324,750 (6,495 pay periods * \$50 "initial" penalty) in potential penalties. *Id.*; see also Labor Code § 226(e) (providing for \$50 penalty for "initial" violations); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (finding "initial" violation rate applies for civil penalties until employer has been notified it is violating the Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2004) (citing *Amaral* and applying "initial" \$50 penalty to all pay periods in calculating amount-in-controversy for wage statement claim).

But given Defendant's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 50% for risk of non-certification, and by an additional 60% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$64,950. Haines Decl., ¶ 21.

Waiting Time Penalties: \$170,805

Defendant's records reflected approximately 534 former Settlement Class members who

1 separated from their employment with Defendant and are therefore eligible for waiting time
2 penalties. Haines Decl., ¶ 20. Based on an hourly rate of \$14.81, Plaintiff estimated the average
3 waiting time penalty per former employee to be \$3,554 (\$14.81 * 8 hours per day * 30 days). *Id.*
4 Therefore, Plaintiff calculated Defendant's maximum exposure for potential waiting time
5 penalties to be approximately \$1,897,836 (534 former employees * \$3,554 average penalty). *Id.*

6 However, Defendant presented several defenses to this claim, most notably their assertion
7 that because they possessed good-faith defenses to the underlying claims, any failure to pay wages
8 was not "willful" as a matter of law. Haines Decl., ¶ 20. Defendant further asserts Plaintiff's
9 waiting time penalty exposure was grossly inflated as not every former employee experienced the
10 alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of
11 Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both
12 as to class certification and on the merits, as to his underlying claims. *Id.* To account for
13 Defendant's defenses, Plaintiff discounted the maximum exposure by 55% for the risk of non-
14 certification, and an additional 80% for risk of losing on the merits, and/or not receiving the
15 maximum penalties sought, to arrive at an estimated exposure of approximately \$170,805. *Id.*

16 PAGA Penalties: \$51,960

17 Plaintiff estimated a maximum total PAGA exposure at \$649,500 (6,495 pay periods *
18 \$100 "initial" penalty). Haines Decl., ¶ 22; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157,
19 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a
20 Labor Code provision). However, these penalties derive from the underlying wage and hour
21 violations discussed above, which Defendant vigorously disputes. Haines Decl., ¶ 22; *see e.g.*,
22 *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a
23 PAGA claim's success was determined by the merits of its underlying claims). Defendant also
24 asserts that given its good faith defenses, the Court would drastically reduce any award of PAGA
25 penalties as "confiscatory." Haines Decl., ¶ 22; *see also Thurman v. Bayshore Transit Mgmt.*,
26 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
27 *Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4
28 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the

1 maximum figure by 60% for risk of losing on the merits and manageability issues and/or not
2 recovering a PAGA penalty for each and every pay period, and an additional 80% to account for
3 the possibility of this Court reducing penalties, to arrive at an estimated exposure of
4 approximately \$51,960. Haines Decl., ¶ 22.

5 Using these estimated figures for each of the claims described above, Plaintiff predicted
6 that the potential recovery for the Settlement Class would be approximately \$874,292. Haines
7 Decl., ¶ 23. The proposed settlement of \$775,000.00 therefore represents approximately 88.6%
8 of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
9 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
10 which is consistent with what Plaintiff's counsel believes could have been recovered had the case
11 proceeded through trial.

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

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

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

26 At this stage, the Court can grant preliminary approval of the settlement and direct that
27 notice be given if the proposed settlement: (1) falls within the range of possible approval; (2)
28 appears to be the product of serious, informed and non-collusive negotiations; and (3) has no

obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within the Range of Possible Approval

The proposed settlement reflects approximately 88.6% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Further, the average Individual Settlement Payment of approximately \$586.89 is in line with average payments achieved in other wage and hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the

⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, 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 range of possible approval, such that notice should be provided to the Settlement Class members
2 so that they can consider the Settlement. The Court will have the opportunity to again assess the
3 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
4 opt-out or object.

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

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
8 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
9 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
10 discussed above, Plaintiff carefully vetted the claims at issue and reviewed extensive timekeeping
11 and payroll data, and conducted a detailed statistical analysis of the data to arrive at his estimated
12 classwide damages figures. *See Haines Decl.*, ¶¶ 16-23. Thus, this factor supports preliminary
13 approval.

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

15 Preliminary approval of the Settlement is also warranted because there are no obvious
16 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
17 members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment,
18 settlement administration costs, and Plaintiff's Class Representative Enhancement Payment, are
19 all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
20 obvious deficiencies, this factor supports preliminary approval.

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

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

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.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
5 defined as all current and former non-exempt employees employed by Defendant in California
6 during the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be
7 identified from Defendant’s personnel and employment records. Defendant represents that the
8 Settlement Class consists of approximately 750 current and former non-exempt employees. *See*
9 Haines Decl., ¶ 15. It would therefore be impracticable to bring all Settlement Class members
10 before the Court, or for each Settlement Class member to bring an individual lawsuit. The
11 proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d
12 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

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

14 The focus in a certification dispute is not the merits, but rather on what types of questions,
15 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
16 *Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on, among other
17 issues, Defendant’s timekeeping policies and/or practices, and meal and rest period policies
18 and/or practices. These types of claims are commonly held to be proper for class certification.
19 *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013)
20 (certifying meal and rest period claims).

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

22 The typicality requirement is satisfied where class representatives have claims that are
23 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
24 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
25 same goods as the putative class in a consumer class action). Here, Plaintiff’s claims are typical
26 of those held by the Settlement Class members. First, Defendant employed Plaintiff as a non-
27 exempt employee during the Class Period, and Plaintiff was subject to Defendant’s wage and hour
28 policies at issue in this case. *See* Cruz Decl., ¶ 2. Second, Plaintiff was injured by the same

1 challenged policies/practices that allegedly injured the Settlement Class as a whole. For example,
2 Plaintiff asserts that he was deprived of all wages and contends that he was deprived of all legally–
3 compliant meal and rest periods. Plaintiff further asserts that he did not receive accurate and
4 compliant wage statements, and did not receive all wages at the time of separation of employment.
5 *See generally*, Cruz Decl. Because Plaintiff has suffered the same injuries as the other members
6 of the Settlement Class, the typicality requirement is satisfied.

7 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
8 **Class**

9 The adequacy requirement examines conflicts of interest between named parties and the
10 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
11 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
12 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
13 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
14 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
15 indication that Class Counsel were not qualified and the named plaintiff had no interests
16 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
17 and hour class action litigation. *See Haines Decl.*, ¶¶ 2-8; *Blakely Decl.*, ¶¶ 2-6.

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

19 This Court should order distribution to the Settlement Class of the proposed Class Notice
20 and Notice of Estimated Settlement Payment by U.S. Mail, postage prepaid, using last known
21 mailing address information provided by Defendant. *See Settlement*, ¶ 9. This manner of giving
22 notice is the “best notice practicable” under the circumstances because it provides “individual
23 notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle &*
24 *Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be
25 administered by Phoenix Settlement Administrators (“Phoenix”), an experienced class action
26 settlement administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and
27 attached exhibits. Settlement Class members’ addresses will be ascertainable through Defendant’s
28 personnel and payroll records, which Defendant will provide to Phoenix within fifteen (15)

1 business days of preliminary approval of the Settlement. *See* Settlement, ¶ 9(A). Within ten (10)
2 business days of receipt of the Settlement Class members’ addresses, Phoenix will run the
3 addresses through the National Change of Address Database (which provides updated addresses
4 for any individual who has moved in the previous four years and has notified the U.S. Postal
5 Service of a forwarding address) and mail the Class Notice to all Settlement Class members. *See*
6 Settlement, ¶ 9(B). To the extent that any notices are returned, Phoenix will perform a “skip
7 trace” to track any Settlement Class member’s current mailing address. *Id.*, at ¶ 9(F).

8 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
9 because it advises Settlement Class members of the nature of the claims, basic contentions and
10 denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object
11 to the Settlement and the procedures by which to do so, explains the recovery formula and
12 expected recovery amount for each Settlement Class member, and advises them that they will be
13 bound by the terms of the Settlement if they do not opt-out. *See* Haines Decl., Exhs. 1, 2 to Exh.
14 A. The proposed Class Notice will also notify Settlement Class members of the final approval
15 hearing date and provides the Settlement Class contact information for Class Counsel, and advises
16 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
17 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
18 cost-effective method of reaching Settlement Class members.

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

20 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
21 appropriately scheduled to follow the deadline by which Settlement Class members must file
22 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

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1 **IV. CONCLUSION**

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

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6 Respectfully submitted,

7 Dated: March 31, 2023

HAINES LAW GROUP, APC

8
9 By:



10 Paul K. Haines
11 Sean M. Blakely
12 Attorneys for Plaintiff
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