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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

VERONICA LUCATERO TORRES, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

SOUTH COAST CIRCUITS, INC., a
California Corporation; ROYAL FLEX
CIRCUITS, INC., a California Corporation;
and DOES 1 through 100,

Defendants.

Case No. 30-2022-01244244-CU-OE-CXC

*[Assigned for all purposes to the Hon. Lon
F. Hurwitz, Dept. CX-103]*

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

Date: September 29, 2023

Time: 1:30 p.m.

Dept.: CX-103

Complaint Filed: February 4, 2022

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 September 29, 2023, at 1:30 p.m. in Department CX-103 of the above-entitled Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Veronica Lucatero Torres (“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 hourly-paid, non-exempt employees employed by Defendants South Coast Circuits, Inc. and Royal Flex Circuits, Inc. in the State of California at any time from February 4, 2018 through October 26, 2022 (the “Class Period”).
3. Preliminary appointment of Plaintiff Veronica Lucatero Torres 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 Class Representative Incentive 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;
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 Veronica Lucatero Torres, 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. Defendants do not intend to oppose this

1 Motion and given the multiplicity of issues addressed in this Motion, have indicated its approval
2 of 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 23 pages in length.

5
6 Dated: August 23, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:



9 Paul K. Haines
10 Sean M. Blakely
11 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Veronica Lucatero Torres (hereinafter “Plaintiff”) brought this class and
4 representative action for various wage and hour violations on behalf of current and former hourly-
5 paid, non-exempt employees of Defendants South Coast Circuits, Inc. and Royal Flex Circuits,
6 Inc. (collectively, “Defendants”) in the State of California at any time from February 4, 2018
7 through October 26, 2022 (the “Class Period”). Plaintiff’s primary allegations are that Defendants
8 failed to: (1) provide all required meal periods; (2) authorize and permit all required rest periods;
9 and (3) to pay all wages owed due to allegedly unlawful timekeeping policies/practices. Based on
10 these alleged wage and hour violations, Plaintiff also brought derivative claims for alleged waiting
11 time penalties, Defendants’ alleged failure to issue accurate and compliant wage statements, and
12 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 Defendants have agreed to pay
15 Five Hundred Ninety-Two Thousand Five Hundred Dollars and Zero Cents (\$592,500.00) to the
16 following Settlement Class:

17 All current and former hourly-paid, non-exempt employees employed by
18 Defendants South Coast Circuits, Inc. and Royal Flex Circuits, Inc. in the
19 State of California at any time from February 4, 2018 through October 26,
20 2022 (the “Class Period”).

21 If the Settlement is approved, Defendants will pay a non-reversionary Gross Settlement
22 Fund of \$592,500.00. After deducting administration costs, Plaintiff’s requested Class
23 Representative Incentive Payment, the amount designated as PAGA civil penalties, and requested

24 ¹ Plaintiff’s operative First Amended Class and Representative Action Complaint pleads the
25 following causes of action: (1) meal period violations; (2) rest period violations; (3) minimum
26 wage violations; (4) failure to pay all overtime wages; (5) waiting time penalties; (6) wage
statement penalties; (7) unfair competition; and (8) civil penalties under the PAGA.

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
28 Decl. (“Blakely Decl.”) as **Exhibit A**. The proposed Class Notice, Notice of Estimated Settlement
Payment, and Request for Exclusion Form are attached to the Settlement as **Exhibits 1, 2, and 3**,
respectively. All defined terms in this motion have the same definition as that in the Settlement.

attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately \$312,500.00 will be distributed to all Settlement Class members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 114 Settlement Class members, and the **average payment to participating Settlement Class members is projected to be approximately \$2,741.23**, an excellent result for Settlement Class members.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

In operation since 1982, Defendants manufacture various computer and electronic products, including prototype printed circuit boards ("PCBs") and provides other PCB services to the electronics industry. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Plaintiff worked for Defendants as a non-exempt "machine operator" from approximately March 2017 through approximately August 2021. *See* Declaration of Veronica Lucatero Torres in Support of Approval of Class Action Settlement ("Torres Decl."), ¶ 2.

On February 4, 2022, Plaintiff filed her Class Action Complaint in Orange County Superior Court, alleging causes of actions for: (1) meal period violations; (2) rest period violations; (3) minimum wage violations; (4) failure to pay all overtime wages; (5) waiting time penalties; (6) wage statement penalties; and (7) unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. On February 4, 2022, Plaintiff sent her PAGA notice letter to the LWDA. *Id.*; **Exhibit B**. Subsequently, on April 12, 2022,

Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq. Id.*

B. PLAINTIFF’S CLAIMS AND DEFENDANTS’ DEFENSES

1. Meal Period Claims

Plaintiff alleges that Defendants failed to maintain any written meal period policies, resulting in first meal period violations as first meal periods were consistently late (commencing after the fifth hour of work), and often not provided at all. Blakely Decl., ¶ 14. 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 ¶ 15.

Defendants contend that under *Brinker*, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. Blakely Decl., ¶ 14; *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). Defendants argue that throughout the Class Period it posted meal period schedules and requirements informing Settlement Class members of their right to take timely and duty-free meal periods. Blakely Decl., ¶ 14. Defendants also maintain that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. *Id.* With respect to second meal periods, Defendants argue that employees may waive second meal periods on shifts of more than 10.0 hours but less than 12.0 hours, under Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes, and that employees regularly did so. Blakely Decl., ¶ 15. Lastly, Defendants argue 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 class certification of this claim unlikely. *Id.*, ¶¶ 14-15.

2. Rest Period Claims

Plaintiff alleges that Defendant failed to authorize and permit all legally compliant off-duty rest periods. Blakely Decl., ¶ 16. Plaintiff alleges that employees were not informed of their right to an uninterrupted 10-minute rest period for every four hours of work, or major fraction

thereof, and due to work demands, Settlement Class members were only permitted to take one (1) 10-minute rest break per day, notwithstanding the fact that employees almost always worked shifts in excess of 6.0 hours, entitling them to at least two (2) off-duty rest periods per shift. *Id.*

Defendants argues that it has always maintained and enforced lawful rest period practices during the Class Period, and has, in fact, authorized and permitted all required rest periods to Settlement Class members. Blakely Decl., ¶ 16. Additionally, Defendants maintain that any failure to take a rest period was the result of employee choice, rather than any policy or practice of Defendants. *Id.* Defendants also assert this claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take a rest period, and the reasons why. *Id.* These manageability concerns are especially present with respect to rest period claims, Defendants argue, given that rest periods are not recorded. *Id.*

3. Unpaid Wages Due to Unlawful Rounding

Plaintiff alleges that Defendants utilized a timekeeping system that systematically underpaid wages through a process of unlawful rounding. Blakely Decl., ¶ 17. Plaintiff alleges that Defendants required Plaintiff and other non-exempt employees to clock in and out using a system that records hours worked to the minute; however, Defendants thereafter rounded the hours worked to the nearest quarter hour, which resulted in an under-payment of employee wages. *Id.*

Defendants counter that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 17. Defendants contend that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. *Id.* Moreover, Defendants argue that it was impossible for employees to begin working before the scheduled start of shift, and therefore, any time “worked” before the scheduled start was shift was not compensable. *Id.* Finally, Defendants assert that Plaintiff would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid, or potentially overpaid, for each workday in question (including whether they were actually working when they

1 were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

2 **4. Wage Statement Violations**

3 As a result of the unpaid wages and unpaid meal and rest period premium wages described
4 above, Plaintiff alleges that Defendants are liable for wage statement penalties. Blakely Decl., ¶
5 18. Defendants argue any alleged wage statement violations were not “knowing and intentional,”
6 and Plaintiff cannot show that she or other employees “suffer[ed] injury” due to the alleged wage
7 statement violations, as required by Labor Code § 226(e) for the imposition of penalties. *Id.*
8 Further, Defendants contends its wage statements always accurately reflected hours worked and
9 amounts paid as well as all other required information, precluding liability for wage statement
10 penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018)
11 (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they
12 correctly reflected the hours worked and the pay received...The purpose of section 226 is to
13 document the *paid wages* to ensure the employee is fully informed regarding the calculation of
14 those wages.”) (Italics in original). Blakely Decl., ¶ 18.

15 **5. Waiting Time Penalties**

16 As a further result of the unpaid wages and unpaid meal and rest period premium wages
17 described above, Plaintiff alleges that Defendants failed to comply with its final pay obligations
18 set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 19. Defendants argue that it possesses strong,
19 good-faith defenses to Plaintiff’s underlying claims, thus precluding recovery of waiting time
20 penalties, which are only available for the “willful” failure to pay wages. *Id.*; see also 8 Cal. Code
21 Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting
22 time penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when
23 an employer presents a defense, based in law or fact which, if successful, would preclude any
24 recovery on the part of the employee.”). Defendants further assert that Plaintiff’s waiting time
25 penalty exposure was grossly inflated as not every former employee experienced the alleged
26 Labor Code violations. Blakely Decl., ¶ 19.

27 **6. PAGA Civil Penalties**

28 As a result of the foregoing Labor Code violations, Plaintiff alleges that Defendants are

1 liable for civil penalties under the PAGA. Blakely Decl., ¶ 20. Since Plaintiff’s PAGA claim is
2 derivative of Plaintiff’s underlying wage claims, Defendants assert the PAGA claim would fail
3 with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because
4 the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendants
5 further maintain that, given its good-faith defenses, this Court would exercise its discretion to
6 substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiff’s
7 claims. Blakely Decl., ¶ 20; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
8 *Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
9 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
10 (reducing PAGA penalties by over 82% in part because employer “not aware” of violations);
11 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
12 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

13 **C. DISCOVERY AND MEDIATION**

14 In connection with mediation, the Parties engaged in extensive informal discovery.
15 Blakely Decl., ¶ 10. Defendants produced timekeeping and payroll records for *all* putative class
16 members. *Id.* Defendants also provided a detailed Class List, which included putative class
17 members’ date of hire, date of termination (if applicable), and hourly rate of pay. *Id.* Plaintiff
18 hired a labor economist with a Ph.D. in economics to analyze the data produced to assist in
19 calculating Defendants’ potential exposure for each of Plaintiff’s claims at issue. *Id.* This
20 discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of
21 certification of Plaintiff’s claims, and Defendants’ potential defenses.

22 On October 26, 2022, the Parties participated in a full-day mediation with Lisa Klerman,
23 Esq., a highly experienced wage and hour class action mediator. Blakely Decl., ¶ 11. 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, Ms. Klerman issued a mediator’s proposal for a class-wide settlement,
27 which was ultimately accepted by all Parties. *Id.* During the months that followed, the Parties
28 finalized the terms of the Settlement and executed the long-form Settlement Agreement now

before the court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Defendants will pay a Gross Settlement Fund of \$592,500.00. *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 ¶¶ 3-4. 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:

• Gross Settlement Fund:	\$592,500.00
• Minus Court-approved attorneys' fees:	\$197,500.00
• Minus Court-approved verified costs (up to):	\$30,000.00
• Minus Court-approved Incentive Payment:	\$5,000.00
• Minus amount set aside as PAGA penalties:	\$40,000.00
• <u>Minus estimated Settlement Administration costs:</u>	<u>\$7,500.00</u>
Net Settlement Amount ("NSA"):	\$312,500.00
• PLUS 25% "PAGA Amount" to Settlement Class:	\$10,000.00
Total Amount Paid to Settlement Class members:	\$322,500.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, the Class Representative Incentive Payment to Plaintiff, the amount designated as PAGA civil penalties, and Settlement Administrator's fees and expenses, the Settlement requires Defendants to pay a Net Settlement Amount ("NSA") of at least \$312,500.00 to all Settlement Class members who do not timely opt out. *See* Settlement, ¶ 4. The NSA shall be allocated among Settlement Class members (except those who submit a timely and valid Request for Exclusion) who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share of the NSA based upon the proportionate number of workweeks he/she worked during the Class Period. *See* Settlement, ¶ 4(B). Additionally, Ten Thousand Dollars (\$10,000.00) of the Gross Settlement Fund has been designated as the "PAGA Amount," and shall be distributed to those Settlement Class members (including those who submit a valid and timely Request for Exclusion from the class action settlement) who worked for Defendants

1 from October 28, 2020 through October 26, 2022 (“PAGA Period”) proportionally based on the
2 number of workweeks worked during the PAGA Period. Settlement, ¶ 4(C).

3 Based on information from Defendants, there are approximately 114 Settlement Class
4 members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Payment from the
5 NSA is projected to be approximately \$2,741.23. *Id.* There are approximately 95 PAGA
6 Aggrieved Employees who worked during the PAGA Period. *Id.* Therefore, the average payment
7 from the PAGA Amount is estimated to be approximately \$105.26. *Id.* Settlement Class members
8 will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to
9 the Settlement, thereby providing ample time to review the Class Notice without unduly delaying
10 the Settlement. *See* Settlement, ¶¶ 9(C)-(D). Settlement Class members who do not opt out of the
11 Settlement will be bound by its terms and will release all claims against Defendants included
12 within the Settlement. *See Id.*, at ¶ 2(A).

13 **2. Attorneys’ Fees and Costs, Incentive Payment, and PAGA Payment**

14 Plaintiff will apply for a Class Representative Incentive Payment at the time of seeking
15 final approval of the proposed class action settlement in the amount of \$5,000, for her service to
16 the Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6. “[I]ncentive awards are fairly typical in class
17 action cases . . . and are intended to compensate class representatives for work done on behalf of
18 the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In*
19 *re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully
20 briefed at the time of final approval, Plaintiff’s requested Incentive Payment is intended to
21 recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including
22 providing substantial factual information and documents to Class Counsel, discussing the claims
23 and theories at issue in the litigation, actively participating in the prosecution of her claims, as
24 well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this
25 case, and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil
26 Code § 1542. *See* Settlement, ¶¶ 2(E), 6; Blakely Decl., ¶ 24; *see also* Torres Decl., ¶¶ 4-6.

27 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
28 Settlement Fund, which is currently estimated to be \$197,500.00, and up to \$30,000.00 in verified

costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; Blakely Decl., ¶ 23. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 23. Class Counsel has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, conducting extensive informal discovery, interviewing Settlement Class members regarding their work experiences with Defendants, analyzing Settlement Class members’ timekeeping and payroll records and other data and documents with the help of a retained expert, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing. *Id.*

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

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

Additionally, the parties have agreed to designate \$40,000.00 of the Gross Settlement Fund as PAGA civil penalties, of which \$30,000.00 (75%) will be paid to the LWDA, with the

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

8 **IV. ARGUMENT**

9 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

23 **1. Standard for Preliminary Approval**

24 To make a fairness determination, the Court should consider several factors, including:
25 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
26 litigation, the risk of maintaining class action status through trial, the amount offered in
27 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
28 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).

1 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
2 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
3 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
4 reasonable in light of the overall balance of factors in this case.

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

6 Although Plaintiff steadfastly maintains that her claims are meritorious, she also
7 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
8 described above, Defendants presented multiple defenses to Plaintiff’s claims, both on the merits
9 and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims
10 through class certification, and ultimately trial, success was far from certain.

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

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

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

20 Absent settlement, there is a risk that the class would not be certified prior to trial, or, if it
21 were certified, a risk that the class definition would be narrowed and the value of the case
22 diminished accordingly. This would potentially be accomplished either due to a narrowing of the
23 class definition in a Court order on a contested motion for class certification, or through settlement
24 agreements entered into by Defendants with individual class members by way of *Pick-up-Stix*
25 type settlement agreements³, and the expected recovery could be significantly reduced, given the
26

27 ³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
28 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

1 settlement amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor,
2 too, supports preliminary approval of the settlement.

3 **d. Settlement Amount Is Realistic Valuation of Claims**

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

10 **First Meal Period Violations:** \$218,957

11 Based on Plaintiff's review of Defendants' timekeeping records, there were approximately
12 34,592 non-compliant first meal periods during the Class Period. Blakely Decl., ¶ 14. Plaintiff
13 further calculated that the average hourly rate of pay for Settlement Class members during the
14 Class Period at approximately \$16.23. *Id.* Therefore, treating each non-compliant meal period in
15 the timekeeping records as a violation, Plaintiff estimated total maximum damages for first meal
16 period violations at approximately \$561,428 (34,592 non-compliant first meal periods * \$16.23
17 average meal period premium). *Id.*

18 However, as noted above, Defendants argue that it maintained compliant meal period
19 practices throughout the Class Period and under *Brinker* it is only required to provide employees
20 the opportunity to take meal periods, not ensure that they are taken. Blakely Decl., ¶ 14; *see*
21 *Brinker, supra*, 53 Cal.4th at 1034 (rejecting "ensure" standard). Furthermore, Defendants argue
22 that Plaintiff's meal period claim is not suited for class treatment, as individual inquiries would
23 be needed as to which employees took non-compliant meal periods or missed meal periods, how
24 many meal periods were non-compliant or missed, and why a particular employee did not a take
25 compliant meal period on a particular shift. Blakely Decl., ¶ 14. Based on these defenses, Plaintiff

26 _____
27 in exchange for consideration. The Court further held that such settlements could preclude those
28 individual employees from recovery in class action litigation against the employer for the same
wage claims.

discounted the maximum amount by 35% for risk of non-certification and an additional 40% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately \$218,957. *Id.*

Second Meal Period Violations: \$51,239

Plaintiff's analysis of the timekeeping data showed that during the Class Period there were approximately 16,190 shifts worked in excess of 10.0 hours that did not reflect a compliant second meal period. Blakely Decl., ¶ 15. Therefore, Plaintiff calculates Defendants' maximum exposure for second meal period violations at approximately \$262,764 (16,190 non-compliant second meal periods * \$16.23 average meal period premium). *Id.*

However, Plaintiff's theory of liability carried significant risks, based on Defendants' arguments that they 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(a). Blakely Decl., ¶ 15. Defendants further argue that Plaintiffs' second meal period exposure is grossly inflated as Plaintiffs already seek a meal period premium for first meal period violations on the majority of all 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, Defendants argue this claim would not be certified as requiring individualized inquiries into both the merits and damages. Blakely Decl., ¶ 15. In light of these risks, Plaintiff discounted the maximum amount that the class could potentially recover for second meal periods by 35% for a risk of non-certification, and an additional 70% for a risk of losing on the merits, or having exposure reduced due to Defendants' waiver argument, to arrive at an estimated exposure amount of approximately \$51,239. *Id.*

Rest Period Violations: \$193,855

As indicated above, Plaintiff reports that employees were not informed of their right to an

1 uninterrupted 10-minute rest period for every four hours of work, or major fraction thereof, and
2 due to work demands, employees were only permitted to take one (1) 10-minute rest break per
3 day, notwithstanding the fact that employees almost always worked shifts in excess of 6.0 hours,
4 entitling them to at least two (2) off-duty rest periods per shift. Blakely Decl., ¶ 16. Based on
5 Plaintiff's expert's analysis of Defendants' timekeeping records, Plaintiff estimates there were
6 approximately 47,777 shifts over 6.0 hours during the Class Period. *Id.* Therefore, Plaintiff
7 estimates Defendants' maximum potential exposure for rest period violations at approximately
8 \$775,420 (47,777 shifts in excess of 6.0 hours * \$16.23 average rest period premium). *Id.*

9 However, Defendants contend that Plaintiff and Settlement Class members were provided
10 the opportunity for rest periods and that is maintained compliant rest period practices throughout
11 the Class Period. Blakely Decl., ¶ 16. Defendants further argue that Plaintiff's rest period claim
12 is not amenable to class treatment, since individual inquiries would be required to determine
13 which employees failed to take rest periods, how many rest periods they failed to take, and the
14 reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These
15 manageability concerns are especially present with respect to rest period claims, Defendants
16 argue, given that rest periods are not recorded. *Id.* Given these defenses, Plaintiff discounted this
17 maximum amount by 50% for risk of non-certification and an additional 50% for a risk of being
18 unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated
19 realistic exposure of approximately \$193,855. *Id.*

20 Unpaid Wages Due to Unlawful Rounding: \$12,680

21 Plaintiff alleges that Defendants utilized a timekeeping system that systematically
22 underpaid wages through a process of unlawful rounding. Blakely Decl., ¶ 17. Defendants
23 required Plaintiff and other non-exempt employees to clock in and out using a system that records
24 hours worked to the minute; however, Defendants thereafter rounded the hours worked to the
25 nearest quarter hour. *Id.* Plaintiff's analysis of the timekeeping and payroll data reveals that
26 Defendants underpaid employees approximately 2,140 hours of unpaid time. *Id.* Therefore, and
27 treating potential damages as unpaid minimum wages, Plaintiff estimates Defendants' potential
28 exposure at approximately \$50,718 in unpaid minimum wages (2,140 unpaid hrs * \$11.85/hr avg.

1 min. wage * 2 (liquidated damages under Labor Code § 1194.2)). *Id.*

2 However, Defendants argue that its timekeeping policies/practices complied with
3 California law and that it compensated Settlement Class members for all hours actually worked.
4 Blakely Decl., ¶ 17. Defendants also assert that Plaintiff would be unable to certify this claim
5 since its timekeeping policies/practices are facially neutral and individualized inquiries would be
6 necessary as to whether employees were in fact underpaid for each workday in question (including
7 whether they were actually working when they were clocked in), resulting in an unmanageable
8 series of mini-trials. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 50%
9 for risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits
10 or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of
11 approximately \$12,680. *Id.*

12 Wage Statement Penalties: \$65,988

13 Plaintiff alleges that Defendants face derivative wage statement liability as a result of its
14 failure to pay all wages as well as its failure to pay all meal and rest period premium wages.
15 Blakely Decl., ¶ 18. Those penalties are calculated as \$50 for each “initial” violation and \$100
16 for each “subsequent” violation, with a maximum of \$4,000 per employee. *See* Labor Code §
17 226(e). *Id.* Plaintiff, therefore, calculated potential wage statement exposure at approximately
18 \$274,950 (95 initial violations * \$50 per pay period) + (2,702 subsequent pay periods * \$100 per
19 pay period). *Id.*; *see also* Labor Code § 226(e). *Id.*

20 In light of Defendants’ arguments that no violations occurred, that employees suffered no
21 “injury,” that any alleged violations were not “knowing and intentional,” that the wage statements
22 always accurately reflected hours worked and amounts paid to employees, as well as the risks
23 associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted the maximum
24 exposure by 40% for risk of non-certification, and by an additional 60% for risk of being
25 unsuccessful on the merits, for an estimated realistic exposure of approximately \$65,988. Blakely
26 Decl., ¶ 18.

27 Waiting Time Penalties: \$39,262

28 Defendants’ records reflected approximately 42 former Settlement Class members

1 separated from their employment and are therefore eligible for waiting time penalties. Blakely
2 Decl., ¶ 19. Based on an hourly rate of \$16.23, Plaintiff estimated the average waiting time penalty
3 per former employee to be \$3,895 ($\$16.23 \times 8 \text{ hours per day} \times 30 \text{ days}$). *Id.* Therefore, Plaintiff
4 calculated Defendants' maximum exposure for potential waiting time penalties to be
5 approximately \$163,590 (42 separated employees * \$3,895 average waiting time penalty). *Id.*

6 Defendants presented several defenses to this claim, most notably their assertion that
7 because they possessed good-faith defenses to the underlying claims, any failure to pay wages
8 was not "willful" as a matter of law. Blakely Decl., ¶ 19. Defendants further assert 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 these defenses, both as to
12 class certification and on the merits, as to his underlying claims. *Id.* To account for these defenses,
13 Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an
14 additional 60% for risk of losing on the merits, and/or not receiving the maximum penalties
15 sought, to arrive at an estimated exposure of approximately \$39,262. *Id.*

16 PAGA Penalties: \$56,297

17 Plaintiff estimated a maximum total PAGA exposure at approximately \$321,700 (3,217
18 "initial" violations * \$100 "initial" penalty). Blakely Decl., ¶ 20; *Amaral v. Cintas Corp. No. 2*,
19 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is
20 notified that it is violating a Labor Code provision). However, these penalties derive from the
21 underlying wage and hour violations discussed above, which Defendants vigorously disputes. *Id.*;
22 *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining
23 that a PAGA claim's success was determined by the merits of its underlying claims). Defendant
24 also asserts the Court would drastically reduce any award of PAGA penalties as "confiscatory."
25 Blakely Decl., ¶ 20; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112,
26 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011)
27 Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
28 \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum figure by 50% for risk

1 of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and
2 an additional 65% to account for the possibility of this Court reducing penalties, to arrive at an
3 estimated exposure of approximately \$56,297. *Id.*

4 Using these estimated figures for each of the claims described above, Plaintiff predicted
5 that the potential recovery for the Settlement Class would be approximately \$638,278. Blakely
6 Decl., ¶ 21. The proposed Settlement of \$592,500 therefore represents approximately 92.8% of
7 the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
8 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
9 which is consistent with what Plaintiff's counsel believes could have been recovered had the case
10 proceeded through trial.

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

12 "Parties represented by competent counsel are better positioned than courts to produce a
13 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
14 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
15 by competent, experienced counsel who possess extensive experience prosecuting and defending
16 wage-and-hour class actions, and who have been appointed as class counsel in numerous cases
17 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines ("Haines
18 Decl."), ¶¶ 2-8. With the assistance of a retained expert, Class Counsel conducted an in-depth
19 review of Defendants' timekeeping and payroll records and drew on their extensive experience
20 in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely Decl., ¶¶
21 14-21. The Settlement was also reached with the assistance of an experienced and respected wage-
22 and-hour class action mediator. This factor strongly supports preliminary approval of the
23 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

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

25 At this stage, the Court can grant preliminary approval of the settlement and direct that
26 notice be given if the proposed settlement: (1) falls within the range of possible approval; (2)
27 appears to be the product of serious, informed and non-collusive negotiations; and (3) has no
28 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 92.8% 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 \$2,741.23 significantly exceeds average payments achieved in other wage and hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class

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 members so that they can consider the Settlement. The Court will have the opportunity to again
2 assess the reasonableness of the Settlement after the Settlement Class members have had the
3 opportunity to opt-out or object.

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

5 The Settlement resulted from an exchange of substantial information, arm's-length
6 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
7 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
8 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
9 discussed above, Plaintiff carefully vetted the claims at issue and reviewed extensive timekeeping
10 and payroll data and conducted a detailed statistical analysis of the data to arrive at her estimated
11 classwide damages figures. *See Blakely Decl.*, ¶¶ 14-21. Thus, this factor supports preliminary
12 approval.

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

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

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

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

28 ///

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 hourly paid, non-exempt employees employed by Defendants
6 in California during the Class Period. *See Settlement*, ¶ 1. Therefore, Settlement Class members
7 can be identified from Defendants’ personnel and employment records. Based on information
8 provided by Defendants, the Settlement Class consists of approximately 114 current and former
9 non-exempt employees. *See Blakely Decl.*, ¶ 13. It would therefore be impracticable to bring all
10 Settlement Class members before the Court, or for each Settlement Class member to bring an
11 individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g.,*
12 *Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust
13 sufficiently numerous).

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

15 The focus in a certification dispute is not the merits, but rather on what types of questions,
16 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
17 *Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on, among other
18 issues, Defendants’ uniform timekeeping policies and/or practices, and meal and rest period
19 policies and/or practices. These types of claims are commonly held to be proper for class
20 certification. *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726
21 (2013) (certifying meal and rest period claims).

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.* 191
25 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
26 same goods as the putative class in a consumer class action). Here, Plaintiff’s claims are typical
27 of those held by the Settlement Class members. First, Defendants employed Plaintiff as a non-
28 exempt employee during the Class Period, and Plaintiff was subject to Defendants’ wage and hour

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

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

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

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

20 This Court should order distribution to the Settlement Class of the proposed Class Notice,
21 Notice of Estimated Settlement Payment, and Request for Exclusion Form (the “Notice Packet”)
22 by U.S. Mail, postage prepaid, in English and Spanish, using last known mailing address
23 information provided by Defendants. *See* Settlement, ¶ 9. This manner of giving notice is the
24 “best notice practicable” under the circumstances because it provides “individual notice to all
25 members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417
26 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by
27 Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement
28 administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached

exhibits. Settlement Class members' addresses will be ascertainable through Defendants' personnel and payroll records, which Defendants will provide to Phoenix within ten (10) business days of preliminary approval of the Settlement. *See* Settlement, ¶ 9(A). Within ten (10) business days from receipt of this information, the Settlement Administrator will run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members, and mail a Notice Packet to each Settlement Class Member in English and Spanish at his or her last known address. *See* Settlement, ¶ 9(B). To the extent that any notices are returned, Phoenix will perform a "skip trace" to track any Settlement Class member's current mailing address. *Id.*, at ¶ 9(F).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1, 2, and 3 to Exh. A; Settlement, ¶¶ 9(C)-(D). The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provides the Settlement Class contact information for Class Counsel and advises Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

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1 **V. 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 Dated: August 23, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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8 By:



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