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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOHN LEDBETTER, ROBERT AARON, ANTONIO SEGOVIA, JOSEPH HICKS, WILLIAM SHEARER, DAVID LAMOUNT GAYLES, and JOSUE BUENROSTRO on behalf of themselves and all others similarly situated, Plaintiffs, v. CJ LOGISTICS AMERICA, LLC, an Illinois Limited Liability Company; and DOES 1-50, inclusive, Defendant.	Case No.: CIVSB2207118 [*Assigned for all purposes to the Hon. David E. Driscoll, Dept. S22*] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: April 24, 2025 Time: 8:30 a.m. Dept.: S22 Action Filed: April 7, 2022 Removal Date: June 10, 2022 Remand Date: December 19, 2024 Trial Date: None Set

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PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on April 24, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department S-22 of the San Bernardino County Superior Court, located at 247 W. 3rd Street, San Bernardino, California 92415, Plaintiffs John Ledbetter, Robert Aaron, Antonio Segovia, Joseph Hicks, William Shearer, David Lamount Gayles, and Josue Buenrostro (collectively, "Plaintiffs"), as individuals and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement") in this lawsuit, entered into between Plaintiffs and Defendant CJ Logistics America, LLC ("Defendant");
2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

   > All persons who were employed by Defendant CJ Logistics America, LLC, within the State of California as hourly, non-exempt employees at any time from October 7, 2020 to the date of the Court's order granting preliminary approval of the Settlement (the "Class Period").

3. Preliminary appointment of Plaintiffs John Ledbetter, Robert Aaron, Antonio Segovia, Joseph Hicks, William Shearer, David Lamount Gayles, and Josue Buenrostro as the Class Representatives;
4. Preliminary appointment of Haines Law Group, APC, Bokhour Law Group, P.C., Falakassa Law, P.C., The Gould Law Firm, Lavi & Ebrahimian, LLP, and James Hawkins APLC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Enhancement Awards, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.*, and Class Counsel's attorneys' fees and costs;

6. Appointment of Phoenix Settlement Administrators as the third-party settlement administrator ("Settlement Administrator"); and
7. Approval of the proposed Notice of Proposed Class Action Settlement ("Class Notice") and entry of the proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class in English and Spanish, as provided in the Settlement Agreement.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Mehrdad Bokhour, Joshua Falakassa, Michael A. Gould, Alexander J. Aroeste, and James R. Hawkins, Plaintiffs John Ledbetter, Robert Aaron, Antonia Segovia, Joseph Hicks, William Shearer, David Lamount Gayles, and Josue Buenrostro, and Jodey Lawrence of Phoenix Settlement Administrators, 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.

Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and authorities necessitates exceeding the 20-page limit set forth in California Rule of Court 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider the entire Motion, which is 23 pages in length.

Dated: April 2, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: Matthew K. Moen
Matthew K. Moen
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs John Ledbetter, Robert Aaron, Antonio Segovia, Joseph Hicks, William Shearer, David Lamount Gayles, and Josue Buenrostro ("Plaintiffs"), as individuals and on behalf of the proposed Settlement Class, respectfully request that this Court preliminarily approve the proposed Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement" or "Settlement"),[1] entered into by Plaintiffs and Defendant CJ Logistics America, LLC ("Defendant") (together with Plaintiffs, the "Parties"). Plaintiffs respectfully request that this Court preliminarily approve this non-reversionary, $2,150,000.00 class action settlement on behalf of the following Settlement Class:

> All persons who were employed by Defendant CJ Logistics America, LLC, within the State of California as hourly, non-exempt employees at any time from October 7, 2020 to the date of the Court's order granting preliminary approval of the Settlement (the "Class Period").

Based upon the data provided by Defendant, there are approximately 2,008 potential Settlement Class members. After Court-approved deductions for Plaintiffs' Class Representative Enhancement Awards, settlement administrator costs, the PAGA Payment to the Labor & Workforce Development Agency ("LWDA"), the PAGA amount attributed to aggrieved employees, and attorneys' fees and costs to Class Counsel, the remaining Net Settlement Value ("NSV") is estimated to be no less than $1,197,333.33. This results in average Class Member Payments of approximately $596.28, with the highest possible estimated Class Member Payment of $2,533.64 (in the event a Settlement Class member performed work in every workweek during the Class Period). Moen Decl., ¶ 11. Further, an additional $25,000.00 will be paid to all persons who were employed by Defendant within the State of California as hourly, non-exempt employees at any time from April 6, 2021, and the date of the Court's order granting preliminary approval (the "PAGA Period") (collectively, the "PAGA Group") for the release of claims under PAGA.

[1] The Settlement Agreement is attached as Exhibit A to the Declaration of Matthew K. Moen ("Moen Decl."), filed concurrently herewith, and the Notice of Proposed Class Action Settlement ("Class Notice") is attached to the Moen Decl. as Exhibit B.

See Settlement, ¶¶ 21-22, 63. Significantly, Settlement Class members do not need to file a claim form in order to receive a Class Member Payment, and all Settlement Class members who do not opt-out will automatically receive their share of the Settlement. This represents a fair and reasonable result for the Settlement Class members, who will be agreeing to a release of only those claims that were actually asserted, or which could have been asserted based on the facts alleged in the operative complaint.

Further, given the tenet that aggrieved employees do not have the ability to opt-out of a representative PAGA claim, all PAGA Group members, regardless of whether they elect to opt out from participating in the class action settlement or not, shall receive a portion of the settlement monies designated as the PAGA Amount payable to the PAGA Group and shall release all claims for PAGA penalties that were alleged, or reasonably could have been alleged in the operative complaint, Plaintiffs' PAGA Notice letters to the LWDA. *See Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt–out mechanism for PAGA claims and "nonparty employees as well as the government are bound by the judgment in an action brought under [PAGA]."); *see also* Moen Decl., Exhibit C (Plaintiffs' PAGA Letters).

Prior to reaching this proposed Settlement, Defendant, through a comprehensive informal exchange, provided Plaintiffs with timekeeping and payroll records for a representative sample of the putative class members spanning the putative class period, as well as policy documents and employee handbooks. Plaintiffs then retained an expert with a Ph.D. in economics to analyze the data and create a class-wide exposure model for the claims at issue. On August 23, 2023, after extensive legal research and analysis, along with Plaintiffs' expert's comprehensive review of the data, the Parties participated in a mediation session with Jeffrey Ross, Esq., an experienced and well-respected mediator, who, although mediation adjourned without the Parties reaching a resolution of this action, continued to assist the Parties in their settlement negotiations in the months following mediation. After additional months of continued negotiations, Mr. Ross made a mediator's proposal for a class-wide resolution of all claims at issue that the Parties ultimately accepted. Over the following months, the Parties negotiated and executed the long-form Settlement Agreement that is now before this Court for preliminary approval.

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

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendant provides transportation, warehousing, and other supply chain solutions for businesses across California and the United States. Moen Decl., ¶ 12. Like all Settlement Class members, Plaintiffs were employed by Defendant as non-exempt employees in California during the Class Period and were subject to Defendant's allegedly unlawful wage and hour policies and practices. *Id.*; *see also* Declaration of John Ledbetter ("Ledbetter Decl."); Declaration of Robert Aaron ("Aaron Decl."); Declaration of Antonio Segovia ("Segovia Decl."), ¶¶ 2-4; Declaration of Joseph Hicks ("Hicks Decl."), ¶ 2; Declaration of William Shearer ("Shearer Decl."), ¶¶ 3-5, 7; Declaration of David Lamount Gayles ("Gayles Decl."), ¶ 2; Declaration of Josue Buenrostro ("Buenrostro Decl."), ¶ 2.

On April 7, 2022, Plaintiff Ledbetter initiated the instant action, alleging Defendant failed to: (i) pay all overtime wages owed; (ii) pay all sick time; (iii) pay all vested vacation time; (iv) provide all lawful meal periods; (v) provide all lawful rest periods; (vi) issue accurate itemized wage statements; (vii) timely pay all final wages upon separation; and (viii) comply with California's Unfair Competition laws. Moen Decl., ¶ 13. On June 9, 2022, Defendant removed this action to federal court, and on December 13, 2024, this action was remanded back to San Bernardino County Superior Court. *Id*.

On July 15, 2022, Plaintiff Segovia filed a separate class action complaint, Case No. CIVSB2215492 (the "*Segovia Action*"), alleging the same and/or similar causes of action against Defendant as in the instant action. Moen Decl., ¶ 14. On October 6, 2022, Defendant removed the *Segovia Action* to federal court. *Id*. On December 14, 2022, Plaintiffs filed the First Amended Class Action and PAGA Complaint in the instant action, adding Plaintiffs Aaron and Segovia as named plaintiffs in the instant action, consolidating all causes of action and factual allegations in the *Segovia Action* into this action, and adding additional causes of action for minimum wage violations and PAGA penalties. *Id*.

On December 2, 2022, Plaintiff Hicks filed a separate class action complaint, Case No. CVRI22052222 (the "*Hicks Action*"), alleging the same and/or similar causes of action against Defendant as in the instant action. Moen Decl., ¶ 15. On January 5, 2023, Defendant removed the *Hicks Action* to federal court. *Id*. On August 2, 2024, Plaintiffs filed the Second Amended Class Action and PAGA Complaint in the instant action, adding Plaintiff Joseph Hicks as a named plaintiffs in the instant action and consolidating all causes of action and factual allegations in the *Hicks Action* into this action. *Id*.

On September 11, 2024, Plaintiff Shearer filed a separate class action complaint, Case No. CIVRI2405129 (the "*Shearer Action*"), alleging the same and/or similar causes of action against Defendant as in the instant action. Moen Decl., ¶ 16. On September 17, 2024, Plaintiffs Gayles and Buenrostro filed a separate class action complaint, Case No. CVRI2405251 (the "*Gayles Action*"), alleging the same and/or similar causes of action against Defendant as in the instant action. *Id*. On March 17, 2025, Plaintiffs filed the operative Third Amended Class Action and PAGA Complaint, adding Plaintiffs Shearer, Gayles and Buenrostro as named plaintiffs in the instant action and consolidating all causes of action and factual allegations in the *Shearer Action* and the *Gayles Action* into this action. *Id*.

B. Plaintiffs' Claims and Defendant's Defenses

1. Regular Rate Miscalculations

Plaintiffs assert that Defendant paid Plaintiffs and other non-exempt employees non-discretionary bonuses and shift premiums, but failed to correctly include the value of this incentive pay when calculating the employees' respective regular rates of pay for purposes of paying sick pay wages, instead paying sick pay at the base hourly rate. Moen Decl., ¶ 18; *see also* Labor Code § 246(l)(1).

In response, Defendant argues that any bonus payments made were purely discretionary, and therefore are properly excluded from the regular rate of pay. *See e.g., Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184, 1190 (E.D. Cal. 2017); Moen Decl., ¶ 18. As such, Defendant contends that Plaintiffs' claim fails on the merits. *Id*. Further, Defendant asserts that this claim is unmanageable, as it requires individualized inquiries into whether each bonus payment made by Defendant was discretionary or non-discretionary, resulting in an unmanageable series of mini-trials. *Id*.

2. <u>Meal Period Violations</u>

Plaintiffs further assert that Defendant failed to provide the Settlement Class members with all duty-free, uninterrupted 30-minute meal periods commencing before the end of the fifth hour of work, or all second, duty-free, uninterrupted 30-minute meal periods commencing before the end of the tenth hour of work on days in which the employee worked more than 10.0 hours. Moen Decl., ¶ 19; *see* Labor Code § 512(a); *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour of work…"). Specifically, Plaintiffs assert that when Settlement Class members did take a meal period, this meal period was often interrupted by Defendant, where Settlement Class members were required to respond to phone calls and/or text messages from their supervisors regarding job related tasks. Moen Decl., ¶ 19. Further, Plaintiffs assert that Defendant paid meal period premiums at the employees' respective base rates of pay, rather than at the regular rate of pay. *Id*.; *see Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

In response, Defendant contends it maintained lawful meal period policies/practices during the Class Period. Moen Decl., ¶ 20. Defendant asserts that it provided all employees with all timely meal periods to which they were entitled, and allowed employees leeway and discretion on when to take their meal, such that decisions to delay or interrupt their meal period were not done at the direction of Defendant, but rather by employee choice. *Id*. Defendant further asserts that employees signed second meal period waivers for shifts shorter than 12.0 hours in length, and therefore anytime an employee worked in excess of 10.0 hours without taking a second meal period it was due to employee choice and waiver. *Id*. Defendant also contends that Plaintiffs' meal period claim is not suited for class certification as individual inquiries would be required to assess whether employees chose to work through meal periods, which could be dependent on their location, job title, and manager resulting in an unmanageable series of mini-trials. *Id*.

3. <u>Rest Period Violations</u>

Plaintiffs further allege that Defendant failed to authorize and permit the Settlement Class members to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 21. Specifically, Plaintiffs assert that Defendant's production demands required that Plaintiffs and other Settlement Class members regularly work through their rest periods. *Id*. Further, Plaintiffs allege that Defendant maintains an unlawful rest period policy/practice that prohibits Settlement Class members from leaving the company premises during rest breaks. *See* Labor Code § 516; *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257; *Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1199 ("The onus is on the employer to clearly communicate the authorization and permission to its employees"). Plaintiffs also allege that Defendant failed to pay any rest period premiums during the relevant time period. Moen Decl., ¶ 21; Labor Code § 226.7; *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159.

Defendant maintains it authorized and permitted the Settlement Class members to take all lawful rest periods to which they are entitled throughout the Class Period. Moen Decl., ¶ 22. Defendant further asserts it does not require employees to remain on premises during their rest periods, and that Plaintiffs were relying on an out of date policy that had been discontinued prior to the start of the liability period. *Id*. Defendant also asserts that this claim is unmanageable and not suited for class certification, as it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days, which Defendant argues Plaintiffs will be unable to substantiate with any common, documentary evidence, as rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials. *Id*.

4. <u>Off-The-Clock Violations</u>

Plaintiffs further allege that Defendant failed to pay the Settlement Class for all minimum and overtime wages owed due to its unlawful timekeeping policies/practices that resulted in the Settlement Class members not being compensated for all hours actually worked and/or subject to the employer's control. Moen Decl., ¶ 23; *see* Labor Code §§ 1197 and 1182.12 (establishing the right of employees to be paid minimum wages for all hours worked). Specifically, Plaintiffs assert that Defendant required Plaintiffs and other Settlement Class members to undergo COVID-19 temperature checks while off the clock prior to entering Defendant's facility to clock in at the start of their shifts, resulting in unpaid minimum and overtime wages owed. Moen Decl., ¶ 23.

Defendant maintains that its COVID-19 temperature check policy was lawful and did not result in any unpaid minimum and overtime wages. Moen Decl., ¶ 24. Specifically, Defendant asserts that it was an early adopter of COVID-19 protection measures and, at all times while its COVID-19 policies were in place, it ensured that timeclocks were located in an area where employees could clock in before undergoing a temperature check. *Id*. Defendant also asserts that this claim is unmanageable and not suited for class certification, as it requires individualized inquiries into whether each employee was permitted to and/or required to clock in before undergoing temperature checks, which Defendant argues Plaintiffs will be unable to substantiate with any common evidence, resulting in an unmanageable series of mini-trials. *Id*.

5. <u>Wage Statement, Waiting Time, and PAGA Penalties</u>

As a result of Defendant's alleged failure to pay all wages, including sick pay, overtime and minimum wages, and meal and rest period premiums, Plaintiffs assert that Defendant also failed to maintain accurate payroll records, timely pay all wages during employment, issue accurate and itemized wage statements, and failed to timely pay all final wages at the time of separation. Moen Decl., ¶ 25; *see also* Labor Code §§ 203(a), 204, 226(a), and 1174. As a result of these alleged Labor Code violations, as well as Defendant's alleged failures to pay all sick pay wages at the regular rate of pay, Plaintiffs also seek PAGA civil penalties on behalf of all aggrieved employees. Moen Decl., ¶ 25; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 ("[Civil penalties under PAGA] are mandatory, not discretionary.").

In response, Defendant argues that Plaintiffs' underlying claims will fail and, as a result, these derivative claims will also fail. Moen Decl., ¶ 26; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant also maintains that Plaintiffs cannot show that the wage statement violations were "knowing and intentional," or that the putative class members "suffer[ed] injury" as a result of the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement penalties. Moen Decl., ¶ 26; *see* Labor Code § 226(e)(1). Moreover, Defendant maintains that its good faith defenses to Plaintiffs' underlying claims would preclude the recovery of waiting time penalties, which are only available for the "willful" failure to pay wages, and that this Court would exercise its discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 26; *see also* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203."); Labor Code § 2699(e)(2); *Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th 937; *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties).

C. Discovery And Mediation

The Parties engaged in substantial informal document exchanges prior to attending mediation. Moen Decl., ¶ 27. Defendant provided Plaintiffs with timekeeping and payroll records for a representative sample of the putative class members spanning the putative class period, as well as policy documents and employee handbooks. *Id*. Plaintiffs then retained an expert with a Ph.D. in economics to analyze the produced data and create a class-wide exposure model for the claims at issue. *Id*. On August 23, 2023, the Parties participated in a mediation session with Jeffrey Ross, Esq., an experienced and well-respected wage and hour mediator, during which the Parties exchanged divergent views on Defendant's liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiffs' claims. *Id*. Although the Parties adjourned mediation without reaching a settlement, they continued their settlement negotiations through Mr. Ross. *Id*. After additional months of continued negotiations, Mr. Ross made a mediator's proposal that the Parties ultimately accepted. *Id*. Over the following months, the Parties finalized the terms of the proposed Settlement now before the Court for preliminary approval. *Id*.

III. THE PROPOSED SETTLEMENT

A. Essential Terms of The Settlement

If the Court preliminarily approves this settlement, Defendant will pay a Gross Settlement Value ("GSV") of $2,150,000.00. Settlement, ¶ 14. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Class Member Payments unless they affirmatively opt-out. Settlement, ¶¶ 16; 52; 60. The monetary terms of the Settlement are as follows:

Gross Settlement Value:	**$2,150,000.00**
Minus Court-approved attorneys' fees (1/3):	$716,666.67
Minus Court-approved attorneys' costs (up to):	$60,000.00

Minus Court-approved Enhancement Awards:	$55,000.00 total
Minus settlement administrator costs (up to):	$21,000.00
Minus PAGA Amount:	$100,000.00
Net Settlement Value:	**$1,197,333.33**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys' fees and costs, Plaintiffs' Class Representative Enhancement Awards, settlement administration costs, the LWDA's share of PAGA penalties, and the PAGA Group's share of PAGA penalties, the Settlement provides for an estimated NSV of no less than $1,197,333.33. *See* Settlement, ¶¶ 43(a)-(f). Class Member Payments will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period. *Id*., ¶¶ 48(a)-(b). Further, 25% of the PAGA Amount will be paid to all PAGA Group, regardless of their election to opt-out from participating in the class action portion of the Settlement, based on the proportionate number of pay periods worked by the PAGA Group during the PAGA Period. *Id*., ¶¶ 47(a)-(b). For tax purposes, each Class Member Payment will be allocated as 10% wages (subject to applicable withholdings), 80% penalties (not subject to withholdings), and 10% as interest (not subject to withholdings). *Id*., ¶ 45(a). The PAGA Amount payable to the PAGA Group shall be allocated as 100% penalties. *Id*., ¶ 45(c). Further, Defendant will pay the employer's share of payroll taxes separate and apart from, and in addition to, the GSV. *Id*., ¶ 45(e).

According to Defendant's records, there are approximately 2,008 putative Settlement Class members. Settlement, ¶ 17. Based on the estimated NSV, average Class Member Payments are projected to be approximately $596.28. Moen Decl., ¶ 11. Settlement Class members will have 60 calendar days from the date of the initial mailing of the Settlement Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Settlement, ¶ 52. Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant as detailed in the Settlement. *Id*., ¶¶ 62, 63. Settlement Class members will have 180 days from the date the Class Member Payments are mailed to cash their checks. *Id*., ¶ 61. In the event that there are any uncashed checks remaining after 180 days, any remaining funds will be transferred to Working Wardrobes, the Parties' agreed-upon *cy pres* designee. *Id*. This distribution method ensures that no portion of the GSV will be "unpaid…unclaimed or abandoned," as required for C.C.P. § 384 to apply, and the Court may approve this distribution without running afoul of C.C.P. § 384.

2. Attorneys' Fees, Costs, and Plaintiffs' Class Representative Enhancement Awards

At the time of seeking final settlement approval, Plaintiffs will apply for Class Representative Enhancement Awards in the amount of $10,000 for the named plaintiffs John Ledbetter, Robert Aaron, Joseph Hicks, and Antonio Segovia, and $5,000.00 for the named plaintiffs Willliam Shearer, David Lamount Gayles, and Josue Buenrostro for their service to the Settlement Class and general release of all claims. Moen Decl., ¶ 29; *see* Settlement ¶¶ 37, 62 - 65. Plaintiffs' requested class representative Enhancement Awards are intended to recognize the significant time and effort that Plaintiffs expended on behalf of the Settlement Class, including searching for and gathering relevant documents and providing them to their attorneys for use in the lawsuit, providing factual information to their attorneys, holding various phone calls with their attorneys to discuss the claims in the lawsuit and Defendant's policies and practices, assisting their attorneys to help prepare for mediation, making themselves available during mediation to assist and answer questions posed by the mediator, reviewing and providing input regarding the settlement in this case, and otherwise assisting their attorneys in moving this case towards resolution, the significant risks Plaintiffs undertook by serving as the named plaintiffs, and the fact that they agreed to a general release of all claims subject to a waiver of Civil Code § 1542. Moen Decl., ¶ 29; Ledbetter Decl.; Aaron Decl.; Segovia Decl., ¶¶ 5-7; Hicks Decl., ¶¶ 3-9; Shearer Decl., ¶¶ 4-9; Gayles Decl., ¶¶ 3-8; Buenrostro Decl., ¶¶ 3-8; Settlement, ¶ 65.

Class Counsel will also apply for an attorneys' fee award of up to one third of the GSV (currently estimated at $716,666.67),[2] and up to $60,000.00 in reimbursement for actual litigation costs. Moen Decl., ¶ 30; *see* Settlement, ¶ 36. Plaintiffs submit that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Moen Decl., ¶ 30. Class Counsel has incurred substantial attorneys'

[2] Class Counsel have entered into a written fee-splitting agreement. Plaintiffs were fully notified of the fee-splitting agreement in writing and consented to the fee-splitting agreement in writing, in compliance with California Rules of Professional Conduct, Rule 1.5.1. Moen Decl., ¶ 30.

fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research and analysis, reviewing class documents and data produced by Defendant, extensively reviewing and evaluating the produced timekeeping and payroll records with the assistance of a retained expert to build a comprehensive damages model, preparing for and attending mediation, months of continued settlement negotiations following the adjournment of mediation, negotiating and drafting the long-form Settlement Agreement and Class Notice documents, preparing this motion for preliminary approval, and otherwise litigating the case. *Id*. Class Counsel will also expend future attorney time attending the hearing on this Motion, overseeing the Notice process, drafting the Final Approval Motion and supporting documents, attending the Final Approval hearing, and completing other tasks, such as fielding questions from Settlement Class members. *Id*.

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

IV. ARGUMENT

A. Preliminary Approval Is Warranted

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

1. <u>Standard for Preliminary Approval</u>

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

a. <u>The Strength of Plaintiffs' Case</u>

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

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the Parties engaged in substantial informal discovery and exchange prior to mediation, the Parties had not yet completed their formal discovery and deposition efforts at the time the Parties reached the Settlement. Moen Decl., ¶ 31. Absent settlement, the Parties will be required to expend substantial time and resources conducting additional formal written and deposition discovery. *Id*. Moreover, Plaintiffs have not yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment ruling. *Id*. Even if Plaintiffs succeeded in certifying one or more classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids these considerable costs, risks, and the accompanying burden of continued litigation on the Court. Thus, this factor supports preliminary approval.

c. <u>Risk of Maintaining Class Action Status</u>

At the time of the proposed Settlement, Plaintiffs had not filed their motion for class certification. Moen Decl., ¶ 32. Had the Court certified any claims, Plaintiffs anticipated that Defendant would seek decertification. *Id*. There was also a risk that Defendant would engage in a *Pick-up-Stix* campaign that could either affect Plaintiffs' ability to maintain the numerosity required to proceed as a class action, or significantly reduce the size of the putative class for a fraction of what Settlement Class members are receiving through this Settlement. *Id*.; *see Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, there was a serious risk that Plaintiffs would be unable to move forward on a class-wide basis. Moen Decl., ¶ 32. Thus, this factor supports preliminary approval.

d. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

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

<u>Regular Rate Miscalculations</u>: **$59,543**

Plaintiffs' expert's data analysis determined that Settlement Class members were underpaid approximately $82,412 as a result of Defendant's failure to properly include the value of non-discretionary bonus payments and shift premiums when calculating the employees' respective regular rates of pay for sick pay purposes. Moen Decl., ¶ 33.

Defendant, however, argues that the bonuses in question were discretionary, and therefore did not need to be included in the regular rate of pay. Moen Decl., ¶ 33. Defendant also argues that this claim is unmanageable, as it requires individualized inquiries into whether each bonus payment was discretionary or non-discretionary. *Id.* Plaintiff therefore discounted the maximum exposure by 15% for the risk of non-certification, and by an additional 15% for the risk of losing on the merits, to arrive at a reasonable exposure of approximately $59,543. *Id.*

Meal Period Violations: **$459,768**

Plaintiffs' expert's data analysis determined that Settlement Class members worked an aggregate total of 60,681 shifts during the Class Period that contained a facially unlawful first or second meal period, whether late, short or missed, for which no meal premiums were paid. Moen Decl., ¶ 34. Accordingly, Plaintiffs calculated Defendant's liability on this claim at $1,194,202 (60,681 meal period violations * $19.68 average premium)). *Id*.

Defendant asserts, however, that it maintained lawful meal period policies/practices at all times during the Class Period, including paying meal period premiums to employees when meal periods were not provided. Moen Decl., ¶ 34. Defendant further asserts that Plaintiffs' meal period claim is not suited for class certification as individual inquiries would be required to assess whether employees chose to work through meal periods or otherwise waived them, resulting in an unmanageable series of mini-trials. *Id*. Given these defenses, Plaintiffs discounted the maximum exposure by 30% for the risk of non-certification, and by an additional 45% for risk of losing on the merits, to arrive at a reasonable exposure of $459,768. *Id*.

Rest Period Violations: **$453,939**

Plaintiffs' expert's data analysis determined that non-exempt employees worked an aggregate total of 262,114 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 35. Plaintiffs asserted that they were not authorized or permitted to take a lawful rest period on approximately 40% of all shifts in excess of 3.5 hours (approximately two per workweek). *Id*. Accordingly, Plaintiffs calculated Defendant's maximum potential exposure on this claim at $2,063,361 (262,114 rest-eligible shifts * 40% violation rate * $19.68 average premium). *Id*.

However, Defendant argues it has always authorized and permitted rest periods in accordance with California law, and disputes Plaintiffs' factual allegation that non-exempt employees were regularly required to work through their rest periods. Moen Decl., ¶ 35. Further, Defendant asserts that this claim is not amenable to class certification given the individual inquiries required to determine whether each employee was authorized and permitted to take a lawful rest period and on which days, particularly given that rest periods were not recorded. *Id*. Given these defenses, Plaintiffs discounted the maximum exposure by 60% for the risk of non-certification, and by an additional 45% for risk of losing on the merits, to arrive at an estimated exposure of $453,939. *Id*.

<u>Off-The-Clock Wage Violations</u>: **$47,696**

Plaintiffs' data analysis determined that Settlement Class members worked an aggregate total of 186,428 shifts during the relevant time period in which Defendant implemented a COVID-19 temperature check policy. Moen Decl., ¶ 36. Plaintiffs estimate that Settlement Class members were required to spend approximately 3 minutes per shift undergoing COVID-19 related temperature checks and security checks before being able to clock in for their scheduled shifts. *Id*. Accordingly, Plaintiffs calculated Defendant's maximum potential exposure for this claim at approximately $183,445 (186,428 shifts * 3 minutes per shift * $19.68 average rate of pay). *Id*.

Defendant maintains that its COVID-19 temperature checking policy was lawful and did not result in any unpaid minimum and overtime wages. Moen Decl., ¶ 36. Specifically, Defendant asserts that it ensured that timeclocks were located in an area where employees could clock in before undergoing a temperature check. *Id*. Defendant also asserts this claim is unmanageable, as it requires individualized inquiries into whether any employee underwent a security screening or COVID-19 related temperature check and exactly how much time each employee purportedly spent while off-the-clock on any given day. *Id*. Plaintiffs therefore discounted the maximum exposure by 60% for the risk of non-certification, and by an additional 35% for risk of losing on the merits, to arrive at a reasonable exposure of $47,696. *Id*.

<u>Wage Statement Penalties</u>: **$475,200**

According to Plaintiffs' expert's data analysis, approximately 1,484 Settlement Class members were issued a total of 32,422 wage statements during the relevant period. Moen Decl., ¶ 37. Plaintiffs calculated Defendant's maximum possible wage statement exposure as approximately $3,168,000. *Id*. However, Defendant raised numerous defenses, including that the alleged violations, if any, were not "knowing and intentional," and that Plaintiffs could not show that the Settlement Class members "suffer[ed] injury" as a result of any alleged violations. *Id*.; *see also Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065 (holding that a reasonable, good faith belief that employer was in compliance with wage and hour laws precludes imposition of wage statement penalties). Defendant further argued that Plaintiffs' underlying claims would fail, and, therefore, their derivative wage statement claim would also fail. *Id*. Therefore, Plaintiffs discounted the maximum exposure by 25% for the risk of non-certification of the underlying claims and 80% for a risk of being unsuccessful on the merits, including failing to prove the violations were "knowing and intentional," that the Settlement Class members "suffer[ed] injury," or that the Court would find that Defendant had a reasonable, good faith belief that of compliance with wage and hour laws precluding the imposition of wage statement penalties, for an estimated reasonable recovery of $475,200. *Id*.

Waiting Time Penalties: **$818,968**

Plaintiffs' expert's data analysis determined that 1,020 Settlement Class members separated their employment during the relevant period applicable to this claim and were entitled to recover waiting time penalties. Moen Decl., ¶ 38. Therefore, Plaintiffs calculated Defendant's maximum potential exposure on this claim at $4,817,460 (1,020 former employees * average waiting time penalty of $4,723 ($19.68 average hourly rate * 8 hours * 30 days)). *Id*. Defendant maintains that waiting time penalties are not appropriate because Plaintiffs' claims fail on the merits, and given their good-faith defenses, Plaintiffs cannot show that any failure by Defendant to pay all final wages was willful. *Id*.; *see also Naranjo, supra*, 15 Cal.5th at 1065 (recognizing that good faith dispute over whether any wages are due will preclude imposition of waiting time penalties). Plaintiffs discounted this claim by 15% for the risk of non-certification and by an additional 80% for risk of being unsuccessful on the merits, failing to establish willfulness, or that the Court would find a reasonable, good faith dispute over whether any wages are due precluding the imposition of waiting time penalties, for an estimated recovery of $818,968. *Id*.

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PAGA Penalties: **$178,321**

Plaintiffs allege that PAGA civil penalties would be recoverable for each pay period in which they could prove an underlying Labor Code violation. Moen Decl., ¶ 39. According to Plaintiffs' expert's data analysis, the Settlement Class members worked a combined total of 32,422 pay periods during the PAGA liability period in which at least one of Plaintiffs' alleged Labor Code violations occurred. *Id*. Plaintiffs therefore calculate Defendant's maximum PAGA exposure at $3,242,200 (32,422 pay periods * $100 per violation). *Id*.; *see also Amaral, supra*, 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties are exclusively derivative of the underlying violations that Defendant vigorously dispute, both as to certification and the merits. Moen Decl., ¶ 39; *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiffs also recognize that the Court has discretion to substantially reduce any award of PAGA penalties. Moen Decl., ¶ 39; *see also* Labor Code § 2699(e)(2); *Fleming v. Covidien Inc*., Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiffs discounted the maximum figure by 45% for the risk of losing on the merits of all underlying claims and by 90% for the likely possibility that this Court would reduce the PAGA penalties awarded, to arrive at an estimated exposure of $178,321. Moen Decl., ¶ 39.

Using these estimated figures, Plaintiffs estimated that the potential reasonable recovery for the Settlement Class would be approximately $2,493,435. Moen Decl., ¶ 40. Thus, the proposed recovery to the Settlement Class of $2,150,000 represents approximately 86.23% of Plaintiffs' reasonably forecasted class-wide recovery, which is well within the range approved by courts as being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding towards class certification and trial. *Id*.; *see, e.g.*, *Altamirano v. Shaw Industries, Inc*, 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval...."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotations omitted). Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to the Settlement Class without the uncertainty, delay, and additional expense of further litigation.

e. <u>The Experience and Views of Counsel</u>

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent and experienced counsel who possesses extensive experience litigating wage and hour class actions from both the plaintiff and defense side, and who have been appointed as class counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-14; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9; Declaration of Mehrdad Bokhour ("Bokhour Decl."), ¶¶ 4-14; Declaration of Joshua Falakassa ("Falakassa Decl."), ¶¶ 4-10; Declaration of Michael A. Gould ("Gould Decl."), ¶¶ 3-6; Declaration of Alexander J. Aroeste ("Aroeste Decl."), ¶ 3; Declaration of James R. Hawkins ("Hawkins Decl."), ¶¶ 4-6. Class Counsel conducted an extensive analysis of Defendant's timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. Moen Decl., ¶¶ 27, 31-39. It was only after the completion of this work that the Parties attended mediation and ultimately accepted a mediator's proposal for a class-wide settlement of all claims. *Id*. This factor supports preliminary approval.

2. <u>The Preliminary Approval Standard is Met</u>

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

a. The Settlement is Within the Range of Possible Approval

The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class members given the significant risks of litigation. The Settlement will provide compensation for contested claims, while only releasing the claims actually at issue in this litigation. Further, the average payments of $596.28 exceed average payments achieved in other wage and hour class action settlements that have been approved.[3] Thus, the proposed Settlement is within the range of possible approval such that notice should be provided to the Settlement Class members to consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

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

This proposed Settlement is entitled to an initial presumption of fairness as it is the result of the exchange of pertinent information, including all relevant policies, a representative sample of employee timekeeping and payroll records which were analyzed by Plaintiffs, their counsel and a retained expert; arm's-length negotiations by counsel; mediation before an experienced wage and hour class action mediator who made a mediator's proposal; and additional negotiations until the terms of the long-form Settlement were agreed upon and finalized. Moen Decl., ¶ 27; *see also Kullar*, *supra*, 168 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

c. The Settlement is Devoid of Obvious Deficiencies

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

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[3] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); and *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately 198.70 . . . [T]his is a substantial recovery where Defendant 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").

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

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

1. The Proposed Class is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined all persons who were employed by Defendant within the State of California as hourly, non-exempt employees at any time during the Class Period. *See* Settlement, ¶ 18. Settlement Class members can be easily identified using Defendant's employment and payroll records. Moen Decl., ¶ 11. Defendant represents that the Settlement Class consists of approximately 2,008 individuals, rendering it impracticable to bring all Settlement Class members before the Court. *Id.*; Settlement, ¶ 17. Thus, the proposed Settlement Class satisfies numerosity.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiffs' claims are predicated on Defendant's alleged failures to pay all minimum and overtime wages owed, pay all sick time wages, provide all lawful meal periods, authorize and permit all lawful rest periods, issue accurate itemized wage statements, timely pay all final wages upon separation, and comply with California's Unfair Competition laws. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra,* 53 Cal.4th at 1032-34 ("The theory of liability—that Brinker has a uniform policy, and that that policy…allegedly violates the law—is by its nature a common question eminently suited for class treatment.").

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

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Here, like other Settlement Class members, Plaintiffs were employed by Defendant as non-exempt employees in California and were subject to Defendant's allegedly unlawful wage and hour policies/practices during the Class Period. Ledbetter Decl.; Aaron Decl.; Segovia Decl., ¶¶ 2-4; Hicks Decl., ¶ 2; Shearer Decl., ¶¶ 3-5, 7; Gayles Decl., ¶ 2; Buenrostro Decl., ¶ 2. Plaintiffs were therefore impacted by the same challenged policies that allegedly injured the Settlement Class as a whole and were subject to the same defenses forwarded by Defendant as to the Settlement Class, and are therefore typical.

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

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiffs and Class Counsel will adequately represent the Settlement Class members as there are no conflicts between the named Plaintiffs and the Settlement Class members they seek to represent, and Plaintiffs possess claims that are in line with those of the Settlement Class members. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the plaintiff's counsel were not qualified and the plaintiff had no interests antagonistic to those of the class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Moen Decl., ¶¶ 2-7; Haines Decl., ¶¶ 2-14; Schmidt Decl., ¶¶ 2-9; Bokhour Decl., ¶¶ 4-8; Falakassa Decl., ¶¶ 4-10; Gould Decl., ¶¶ 3-6; Aroeste Decl., ¶ 3; Hawkins Decl., ¶¶ 4-6.

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

This Court should order distribution of the proposed Class Notice in English and Spanish to the Settlement Class members by first class mail, postage prepaid, using the last known mailing address information provided by Defendant. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. The Parties propose that the settlement be administered by Phoenix Settlement

Administrators ("Phoenix"), an experienced class action settlement administrator. *See* Declaration of Jodey Lawrence. Settlement Class members' addresses will be ascertainable through Defendant's personnel records, and Defendant will provide all Settlement Class members' names, last known addresses, phone numbers, social security numbers, and workweek data to Phoenix within thirty (30) calendar days after of the Court signs an order preliminarily approving the Settlement. *See* Settlement, ¶ 28. Phoenix will run the Settlement Class members' addresses through the National Change of Address database and/or conduct skip traces to obtain current address information. *Id*., ¶ 50.

The content of the proposed Settlement Notice satisfies California Rule of Court 3.766(d) because it advises the Settlement Class members' of the nature of the claims, basic contentions and denials of the Parties, the key terms of the Settlement, the uniform 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 members, and advises them that they will be bound by the terms of the Settlement if they do not request exclusion. *See* Moen Decl., Exhibit B. The proposed Class Notice will also notify the Settlement Class of the Final Approval Hearing date, provide Class Counsel's contact information, and advise Settlement Class members that they may enter an appearance through counsel if they so wish. *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. Additionally, because the proposed Settlement includes settlement of Plaintiffs' representative PAGA claim, notice of the Settlement has been submitted to the LWDA. *See id.*, ¶ 41, Exhibit D (LWDA Settlement Submission); Proof of Service.

D. <u>The Court Should Set A Final Approval Hearing</u>

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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V. <u>**CONCLUSION**</u>

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

Dated: April 2, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

By: [signature]
Matthew K. Moen
Attorneys for Plaintiffs