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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARLON VIRUETE, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

JON K TAKATA CORPORATION dba
RESTORATION MANAGEMENT COMPANY,
a California Corporation; and DOES 1-100,

Defendants.

Case No.: 20STCV36412

*[Assigned for all purposes to the Hon.
Lawrence P. Riff; Dept. SSC-7]*

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

Date: January 19, 2023
Time: 10:00 a.m.
Dept.: SSC-7

Action Filed: September 23, 2020
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 January 19, 2023, at 10:00 a.m. in Department SSC-7 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Marlon Viruete (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

All current and former non-exempt technicians who are or were employed by Defendant Jon K. Takata Corporation dba Restoration Management Company in the State of California at any time between April 6, 2016 and the date of preliminary approval of the Settlement (the “Class Period”).
3. Preliminary appointment of Plaintiff Marlon Viruete as Class Representative;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Neil Larsen 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 Enhancement Payment to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices;
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.

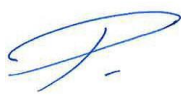
This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Paul K. Haines, Sean M. Blakely, Neil M. Larsen, Plaintiff Marlon Viruete, Marc L. Jacuzzi, Jon K. Takata, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached 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

1 hearing. Defendant does not intend to oppose this Motion and given the multiplicity of issues
2 addressed in this Motion, has indicated its approval of Plaintiff's expressed need to exceed the
3 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, the parties jointly
4 request the Court's consideration of Plaintiff's memorandum of points and authorities, which is
5 26 pages in length.

6
7 Dated: October 21, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By:



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

2 **I. INTRODUCTION**

3 Plaintiff Marlon Viruete (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of current and former non-exempt
5 technicians of Defendant Jon K. Takata Corporation dba Restoration Management Company
6 (“RMC”) who were employed in the State of California between April 6, 2016 through the date
7 of preliminary approval of the Settlement (the “Class Period”). Plaintiff’s primary allegations are
8 that RMC: (1) failed to pay all minimum and overtime wages by virtue of its unlawful
9 timekeeping policies/practices; (2) failed to provide all legally-compliant first and second meal
10 periods; (3) failed to authorize and permit all legally required rest periods; and (4) failed to
11 reimburse employees for all necessary business expenses. As a result of these alleged violations,
12 Plaintiff brought derivative claims for RMC’s alleged failure to pay all final wages owed, failure
13 to issue accurate and compliant wage statements, and for civil penalties under the Private
14 Attorneys General Act (“PAGA”).¹

15 Plaintiff now respectfully requests that this Court preliminarily approve this non-
16 reversionary, common-fund class action settlement,² in which RMC has agreed to pay One
17 Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00) to the following
18 Settlement Class:

19 All current and former non-exempt technicians who are or were employed
20 by Defendant Jon K. Takata Corporation dba Restoration Management
21 Company in the State of California at any time between April 6, 2016 and
the date of preliminary approval of the Settlement (the “Class Period”).

22 ¹ Plaintiff’s operative First Amended Class and Representative Action Complaint (“FAC”) alleges
23 the following causes of action: (1) Failure to Pay All Overtime Wages; (2) Minimum Wage
24 Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Waiting Time Penalties;
25 (6) Failure to Indemnify All Necessary Business Expenditures; (7) Violation of Business &
26 Professions Code § 17200, *et seq.*; (8) Wage Statement Violations; and (9) Civil Penalties Under
the Private Attorneys Generals Act, Labor Code § 2698 *et seq.*

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

1 If the Settlement is approved, RMC will pay a non-reversionary Gross Settlement Fund
2 of \$1,500,000.00. After deducting administration costs, Plaintiff’s requested Class Representative
3 Enhancement Payment, the amount designated as PAGA civil penalties, and requested attorneys’
4 fees and costs, the Net Settlement Amount (“NSA”) of approximately \$917,500.00 will be
5 distributed to all Settlement Class members who do not opt-out of the Settlement based on the
6 proportionate number of workweeks worked by each Settlement Class member during the Class
7 Period.

8 Significantly, Settlement Class members do not need to file a claim to reap the financial
9 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
10 unless they affirmatively opt-out. There are approximately 350 Settlement Class members, and
11 the average payment to participating Settlement Class members is projected to be approximately
12 \$2,621.43.

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

18 **II. SUMMARY OF THE LITIGATION**

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

20 RMC is a restoration and remediation service provider to residential and commercial
21 customers throughout California. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10. RMC
22 provides restoration services for water damage, fire and smoke damage, mold remediation, and
23 lead and asbestos removal. *Id.* Plaintiff was employed by RMC as a non-exempt technician from
24 approximately March 2015 until approximately March 2019. *See* Declaration of Marlon Viruete
25 in Support of Approval of Class Action Settlement (“Viruete Decl.”), ¶ 2.

26 On September 23, 2020, Plaintiff filed his Class Action Complaint in Los Angeles County
27 Superior Court, alleging causes of actions for: (i) failure to pay all overtime wages; (ii) minimum
28 wage violations; (3) meal period violations; (4) rest period violations; (5) waiting time penalties;

(6) failure to indemnify all necessary business expenses; and (7) unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Haines Decl., ¶ 11. As part of the Settlement, the Parties stipulated to the filing of a First Amended Class and Representative Action Complaint (“FAC”), which added causes of action for wage statement violations and civil penalties under the PAGA. *Id.* On July 18, 2022, Plaintiff filed the operative FAC. *Id.*

B. PLAINTIFF’S CLAIMS AND RMC’S DEFENSES

1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that RMC utilized a timekeeping policy/practice that resulted in a systematic underpayment of wages through a process of unlawful time-shaving and/or rounding of hours worked. Haines Decl., ¶ 16. Specifically, Plaintiff alleges that RMC instructed Settlement Class members to record their pre-scheduled shifts times as their hours worked on handwritten timesheets, rather than the actual start and end times of Settlement Class members’ shifts. *Id.* On other occasions, Plaintiff alleges that RMC’s supervisors would record Settlement Class members’ hours worked in whole-hour or half-hour increments, and failed to accurately record the actual hours worked by Settlement Class members. *Id.* Plaintiff alleges that RMC’s timekeeping policies/practices were not neutral nor even-handed, and resulted in an underpayment of wages to Settlement Class members. *Id.*

RMC counters that its timekeeping policies/practice complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Haines Decl., ¶ 16. RMC further argues that Settlement Class members were required to accurately record their time worked for RMC, and that RMC paid Settlement Class members for all hours reported on Settlement Class members’ timesheets. *Id.* Moreover, RMC contends that Settlement Class members did not work off-the-clock and that RMC’s policies specifically disavow such off-the-clock work. *Id.* Finally, RMC asserts 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 for each workday in question, resulting in an unmanageable series of mini-trials. *Id.*

///

1 **2. “On-Call” Pay / Reporting Time Claims**

2 Plaintiff alleges that RMC failed to pay all reporting time wages owed as a result of its
3 failure to pay its on-call employees reporting time wages on those occasions when employees
4 were required to work on-call shifts but were not called in to work or were furnished with less
5 than half of their usual or scheduled day’s work. Haines Decl., ¶ 17. *see also* Wage Order 16 § 5
6 (“Each workday that an employee is required to report to the work site and does report, but is not
7 put to work or is furnished less than half of his/her usual or scheduled day’s work, the employer
8 shall pay him/her for half the usual scheduled day’s work, but in no event for less than two (2)
9 hours nor more than four (4) hours at the employee’s regular rate of pay”); *see also Ward v. Tilly’s*
10 *Inc.*, 31 Cal.App.5th 1167 (2019) (finding that employers are liable for reporting time pay when
11 employees are required to call their employer to determine whether they need to report to work).

12 However, RMC contends that employees were rarely, if ever, required to be “on-call,”
13 and that RMC’s “on-call” policies complied with California law and that many technicians,
14 including Plaintiff, were not subject to RMC’s “on-call” policy. Haines Decl., ¶ 17. RMC further
15 contends that it always paid Settlement Class members at least the minimum wage for all hours
16 worked, including for any hours spent on controlled standby. *Id.* RMC further contends that
17 Plaintiff would be unable to certify this claim as individualized inquiries would be necessary as
18 to whether employees were required to be on-call for each workday in question, or at all, and
19 whether those employees were furnished with less than half of their scheduled day’s work on
20 those shifts, resulting in an unmanageable series of mini-trials. *Id.*

21 **3. Meal Period Claims**

22 Plaintiff alleges RMC failed to provide legally compliant first meal periods such that first
23 meal periods were regularly late and/or less than 30-minutes. Haines Decl., ¶ 18. Specifically,
24 Plaintiff alleges that from the beginning of the Class Period through July 2018, RMC failed to
25 maintain a compliant written meal period policy. *Id.* Plaintiff alleges that RMC’s employee
26 handbook during this time period merely provided, “The timing and duration of lunch and other
27 breaks will be determined by the supervisor and the employee in accordance with the Company
28 policy and applicable state and federal employment laws. At the time of hire, your supervisor will

1 explain your work schedule to you, including you break and lunch periods. Rest and meal periods
2 must be taken as assigned.” *Id.* Plaintiff alleges that due to work demands and the nature of
3 providing restoration/remediation services, meal periods were regularly provided after the
4 completion of five hours of work. *Id.* Plaintiff further alleges that RMC failed to provide
5 Settlement Class members with second meal periods when they worked shifts in excess of 10.0
6 hours in a workday. *Id.*, at ¶ 19.

7 RMC argues that it has maintained compliant meal period policies/practices throughout
8 the Class Period, including a compliant policy set forth in its Employee Handbook, and that it has
9 always provided compliant first and second meal periods in line with those policies/practices.
10 Haines Decl., ¶ 18. RMC further contends that it always *provided* employees the opportunity to
11 take meal periods and is not required to *ensure* they are taken. *Id.*; *see, Brinker Restaurant*
12 *Corporation v. Superior Court*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus,
13 RMC argues, any noncompliant meal periods were the result of lawful employee choice, rather
14 than any policy and/or practice of RMC. Haines Decl., ¶ 18. RMC further points to its timesheets,
15 which are filled out by Settlement Class members, which show that RMC provided employees
16 with timely, full 30-minute meal periods. *Id.* As for second meal periods, RMC asserts many
17 employees choose to waive their second meal periods on shifts over 10.0 hours but less than 12.0
18 hours, as they may do under Labor Code § 512(a), so that they do not need to stay at work for an
19 extra unpaid 30 minutes. *Id.*, at ¶ 19. Finally, RMC maintains Plaintiff’s meal period claim is not
20 suited for class certification, since individual inquiries would be needed to assess which
21 employees, if any, took non-compliant or missed meal periods, how many meal periods were non-
22 compliant or missed, the reasons why a particular employee did not take a meal period on a
23 particular shift, and (for second meals) whether they waived the meal period. *Id.*, at ¶¶ 18-19.

24 **4. Rest Period Claims**

25 Plaintiff alleges that RMC failed to authorize and permit all legally compliant off-duty
26 rest periods. Haines Decl., ¶ 20. Specifically, from the beginning of the Class Period through
27 approximately July 2018, RMC’s written rest period policy only provided for two (2) rest periods
28 per shift, irrespective of shift length, and did not authorize a third rest period during shifts in

1 excess of 10.0 hours. *Id.*

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

12 **5. Failure to Reimburse for Necessary Business Expenses**

13 Plaintiff alleges that RMC required Settlement Class members to use their personal
14 cellular phones for work-related purposes, including communicating with RMC's supervisors
15 regarding job assignments, responding to on-call issues, communicating with clients, and for GPS
16 applications to direct them to their various job sites. Haines Decl., ¶ 21. Despite requiring Plaintiff
17 and Settlement Class members to incur these expenses on a daily basis, Plaintiff alleges that RMC
18 failed to reimburse Settlement Class members for these necessary business expenses, in violation
19 of Labor Code § 2802(a) ("An employer shall indemnify his or her employee for all necessary
20 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
21 her duties."); *see also Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014)
22 (holding employer must reimburse use of personal cell phone, even where employee already has
23 "unlimited" plan).

24 RMC maintains that Settlement Class members were not required to use their personal
25 cellular phones as part of their job. Haines Decl., ¶ 21. RMC further argues that any expenses
26 incurred by Settlement Class members were extremely minimal, given the wide availability of
27 low-cost cellular phone plans. *Id.* RMC further contends that this claim would require individual
28 inquiries into whether Settlement Class members actually used their personal cellular phones for

1 work purposes, how much expense they incurred, whether they submitted a request for
2 reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*;
3 *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) (“In calculating
4 the reimbursement amount due under section 2802, the employer may consider not only the actual
5 expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’
6 which in turn depends on the reasonableness of the employee’s choices”).

7 **6. Wage Statement Violations**

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

21 **7. Waiting Time Penalties**

22 As a further result of the unpaid wages and unpaid meal and rest period premium wages
23 described above, Plaintiff alleges that RMC failed to comply with its final pay obligations set
24 forth in Labor Code §§ 201-203. Haines Decl., ¶ 23. Because the waiting time claim is derivative
25 of Plaintiff’s underlying wage claims, RMC argues that Plaintiff would need to overcome its
26 defenses as to class certification and as to the merits. *Id.* RMC further argues that it possesses
27 strong, good faith defenses to Plaintiff’s underlying claims, thus precluding recovery of waiting
28 time penalties, which are only available for the “willful” failure to pay wages. *Id.*; *see also* 8 Cal.

Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.”).

8. PAGA Civil Penalties

As a result of the foregoing Labor Code violations, Plaintiff alleges that RMC is liable for civil penalties under the PAGA. Haines Decl., ¶ 24. Since Plaintiff’s PAGA claim is derivative of Plaintiff’s underlying wage claims, RMC asserts the PAGA claim would fail with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). RMC further maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find RMC liable for any of Plaintiff’s claims. Haines Decl., ¶ 24; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, the Parties engaged in extensive informal discovery. RMC produced a 15% sampling of timekeeping and payroll records, as well as its relevant wage and hour written policies/procedures and a detailed Class List which included Settlement Class members’ hire date, termination date (if applicable), and rates of pay. Haines Decl., ¶ 12. Plaintiff’s Counsel hired a labor economist with a Ph.D. in economics to analyze and extrapolate the data produced by RMC to calculate RMC’s potential exposure for each of Plaintiff’s claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and RMC’s potential defenses. *Id.*

On March 29, 2022, the Parties participated in a full-day mediation with David A. Lowe,

Esq., a well-respected wage and hour class action mediator. Haines Decl., ¶ 13. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* At the conclusion of the mediation, Mr. Lowe issued a mediator’s proposal for a classwide settlement, which was ultimately accepted by both sides. *Id.* During the months that followed, the parties 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, RMC will pay a Gross Settlement Fund of \$1,500,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Award. *Id.*, at ¶¶ 3-4. Each Settlement Class member will automatically receive an Individual Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

• Gross Settlement Fund:	\$1,500,000.00
• Minus Court-approved attorneys’ fees:	\$500,000.00
• Minus Court-approved verified costs (up to):	\$25,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus amount set aside as PAGA penalties:	\$40,000.00
• <u>Minus estimated Settlement Administration costs:</u>	<u>\$10,000.00</u>
Net Settlement Amount (“NSA”):	\$917,500.00
• PLUS 25% “PAGA Amount” to Settlement Class:	\$10,000.00
Total Amount Paid to Settlement Class members:	\$927,500.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, the Class Representative Enhancement Payment to Plaintiff, the amount designated as PAGA civil penalties, and Settlement Administrator’s fees and expenses, the Settlement requires RMC to pay a Net Settlement Amount (“NSA”) of at least \$917,500.00 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

1 the Class Period, as follows: each participating Settlement Class member shall receive a
2 proportionate settlement share of the NSA based upon the proportionate number of workweeks
3 he/she worked as a non-exempt employee during the Class Period. *See* Settlement, ¶ 4(B)(i).
4 Additionally, Ten Thousand Dollars (\$10,000.00) of the Gross Settlement Fund has been
5 designated as the “PAGA Amount,” and shall be distributed to those Settlement Class members
6 (including those who submit a valid and timely Request for Exclusion from the class action
7 settlement) who worked from April 1, 2021 through the date of preliminary approval (“PAGA
8 Period”) proportionally based on the number of workweeks worked during the PAGA Period.
9 Settlement, ¶ 4(C).

10 Based on information from RMC, Plaintiff understands that there are approximately 350
11 Settlement Class members. Haines Decl., ¶ 15. Therefore, the average Individual Settlement
12 Award is projected to be approximately \$2,621.43. *Id.* Settlement Class members will have sixty
13 (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement,
14 thereby providing ample time to review the Class Notice without unduly delaying the Settlement.
15 *See* Settlement, ¶¶ 9(D), (E). Settlement Class members who do not opt-out of the Settlement will
16 be bound by its terms and will release all claims against RMC included within the Settlement. *See*
17 *Id.*, at ¶ 2(A).

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

20 Plaintiff will apply for a Class Representative Enhancement Payment at the time of
21 seeking final approval of the proposed class action settlement in the amount of \$7,500, for his
22 service to the Settlement Class. *See* Settlement, ¶¶ 3(D)(3), 6. “[I]ncentive awards are fairly
23 typical in class action cases . . . and are intended to compensate class representatives for work
24 done on behalf of the class [and] to make up for financial or reputational risk undertaken in
25 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
26 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement
27 Payment is intended to recognize the time and effort Plaintiff expended on behalf of the
28 Settlement Class, including providing substantial factual information and documents to Class

1 Counsel, discussing the claims and theories at issue in the litigation, actively participating in the
2 prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve
3 as the named plaintiff in this case, and the fact that Plaintiff agreed to a general release of all
4 claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 2(C), 6; Haines Decl., ¶ 27;
5 *see also* Viruete Decl.

6 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
7 Settlement Fund, which is currently estimated to be \$500,000.00, and up to \$25,000.00 in verified
8 costs reimbursement. *See* Settlement, ¶ 5; Haines Decl., ¶ 26. Plaintiff submits the requested fee
9 is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on
10 a purely contingent fee basis. *Id.* Class Counsel has incurred substantial attorneys’ fees
11 conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research,
12 conducting extensive formal and informal discovery, interviewing Settlement Class members
13 regarding their work experiences at RMC, analyzing Settlement Class members’ timekeeping and
14 payroll records and other data and documents with the help of a retained expert, creating a
15 comprehensive damages model, preparing for and attending mediation, negotiating and preparing
16 the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.*
17 Class Counsel expect to expend additional attorney time in attending the hearing on this Motion,
18 overseeing the Notice process and fielding questions from Settlement Class members, preparing
19 the final approval papers, and attending the Final Approval hearing. *Id.*

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

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

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions 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*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (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. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1 **1. Standard for Preliminary Approval**

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

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

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

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

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

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

26 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which
27 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there
28 was a risk that there would not be a certified class at the time of trial, or if there were, it would

1 consist of a significantly smaller group of employees than the proposed Settlement Class (either
2 due to a narrowing of the class definition in a Court order on a contested motion for class
3 certification, or through settlement agreements entered into by RMC with individual class
4 members by way of *Pick-up-Stix* type settlement agreements³), and the expected recovery could
5 be significantly reduced, given the settlement amounts that are typically offered through the *Pick-*
6 *up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

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

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

14 **Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$236,426**

15 Plaintiff alleges that RMC utilized a timekeeping policy/practice that resulted in a
16 systematic underpayment of wages. Haines Decl., ¶ 16. Based on Plaintiff's analysis, Plaintiff
17 estimates that RMC failed to compensate each employee by approximately 12.5 minutes per shift,
18 which Plaintiff believes is a conservative estimate. *Id.* Because Settlement Class members
19 generally worked shifts of at least eight (8) hours, the underpaid wages should have been paid at
20 an overtime rate of pay. *Id.* Therefore, Plaintiff estimates RMC's potential exposure for this claim
21 at approximately \$1,477,659 (12.5 minutes per shift * \$21.99 average rate of pay * 1.5 overtime
22 rate * 215,030 shifts). *Id.*

23 As noted above, RMC argues that its timekeeping policies/practices are even-handed and
24

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

1 facially neutral, and compensated employees for all hours worked. Haines Decl., ¶ 16. RMC also
2 argues that any unpaid time could have only amounted to a few minutes per day, at most, and was
3 thus *de minimis*. *Id.* Additionally, RMC asserts that Plaintiff would be unable to certify this claim
4 since its timekeeping policies are facially neutral and employees were required, and did,
5 accurately record their hours worked, resulting in an unmanageable series of mini-trials. *Id.* Based
6 on these defenses, Plaintiff discounted the maximum amount by 60% for risk of non-certification
7 and an additional 60% for risk of losing on the merits or failing to recover the full amount sought,
8 to arrive at an estimated exposure of approximately \$236,426. *Id.*

9 Failure to Compensate for “On-Call” Time / Reporting Time Violations: \$80,594

10 Plaintiff alleges that RMC failed to pay all reporting time wages owed as a result of its
11 failure to pay its on-call employees reporting time wages on those occasions when employees
12 were required to work on-call shifts, but were not called in to work or were furnished with less
13 than half of their usual or scheduled day’s work. Haines Decl., ¶ 17. Plaintiff estimates that at
14 least twenty (20) employees are assigned to work an on-call shift per day, and therefore estimates
15 the total number of on-call shifts to be approximately 43,200. *Id.* Assuming that employees were
16 not called into work for approximately half of these shifts, Plaintiff calculates RMC’s liability for
17 this claim at approximately \$503,712 (43,200 shifts / 2 * 2 hours * \$11.66 hr. weighted minimum
18 wage). *Id.*

19 However, RMC contends that employees were rarely, if ever, required to be “on-call,”
20 and that RMC’s “on-call” policies complied with California law. Haines Decl., ¶ 17. RMC further
21 contends that it always paid Settlement Class members at least the minimum wage for all hours
22 worked, including for any hours spent on controlled stand-by. *Id.* RMC further contends that
23 Plaintiff would be unable to certify this claim since as individualized inquiries would be necessary
24 as to whether employees were required to be on-call for each workday in question, or at all, and
25 whether those employees were furnished with less than half of their scheduled day’s work on
26 those shifts, resulting in an unmanageable series of mini-trials. *Id.* Based on these defenses,
27 Plaintiff discounted the maximum amount by 60% for risk of non-certification and an additional
28 60% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an

1 estimated exposure of approximately \$80,594. *Id.*

2 First Meal Period Violations: \$327,684

3 Based on Plaintiff's review and extrapolation of RMC's timekeeping records, there were
4 approximately 141,919 first meal period violations, including "late" meal periods (commencing
5 after the end of the fifth hour of work), and/or "short" meal period (less than 30 full minutes).
6 Haines Decl., ¶ 18. Plaintiff further calculated that the average rate of pay for putative class
7 members during the Class Period at approximately \$21.99. *Id.* Therefore, Plaintiff estimated total
8 maximum damages for first meal period violations at approximately \$3,120,798 (141,919 first
9 meal period violations * \$21.99 premium). *Id.*

10 However, as noted above, RMC argues that it maintained compliant meal period
11 policies/practices throughout the Class Period. Haines Decl., ¶ 18. RMC further contends that it
12 always *provided* employees with the opportunity to take meal periods and is not required to *ensure*
13 they are taken. *Id.*; see *Brinker, supra*, 53 Cal.4th at 1034 (rejecting "ensure" standard). Thus,
14 RMC argues any missed or short meal periods were the result of lawful employee choice, rather
15 than any policy and/or practice of RMC. Haines Decl., ¶ 18. RMC further maintains Plaintiff's
16 meal period claim is not suited for class treatment, as individual inquiries would be needed as to
17 which employees took non-compliant meal periods or missed meal periods, how many meal
18 periods were non-compliant or missed, and why a particular employee did not a take compliant
19 meal period on a particular shift. *Id.* Based on these defenses, Plaintiff discounted the maximum
20 amount by 70% for risk of non-certification and an additional 65% for risk of losing on the merits
21 or failing to recover the full amount sought, to arrive at an estimated exposure of approximately
22 \$327,684. *Id.*

23 Second Meal Period Violations: \$274,488

24 Plaintiff's analysis and extrapolation of the timekeeping data showed that during the Class
25 Period there were approximately 92,462 shifts worked in excess of 10.0 hours that did not reflect
26 a compliant second meal period. Haines Decl., ¶ 19. Therefore, Plaintiff calculates RMC's
27 maximum exposure for second meal period violations at approximately \$2,033,239 (92,462
28 second meal period violations * \$21.99 premium). *Id.*

1 However, Plaintiff's theory of liability carried significant risks, based on RMC's
2 arguments that it has always provided employees the opportunity for second meal periods and
3 that Settlement Class members voluntarily waived their second meal period on shifts in excess of
4 10.0 hours but less than 12.0 hours, as they are entitled to do under Labor Code § 512(a). Haines
5 Decl., ¶ 19. In addition, as with first meal periods, RMC argued this claim would not be certified
6 as requiring individualized inquiries into both the merits and damages. *Id.* In light of these risks,
7 Plaintiff discounted the maximum amount that the class could potentially recover for second meal
8 periods by 70% for a risk of non-certification, and an additional 55% for a risk of losing on the
9 merits, or having exposure reduced due to RMC's waiver argument, to arrive at an estimated
10 exposure amount of approximately \$274,488. *Id.*

11 Rest Period Violations: \$190,515

12 As indicated above, Plaintiff alleges that RMC had a facially invalid rest period policy
13 from April 6, 2016, through approximately July 2018, and as a result, RMC failed to authorize
14 and permit all legally compliant off-duty rest periods. Haines Decl., ¶ 20. Specifically, RMC's
15 written rest period policy during this time period fails to authorize and permit a third rest period
16 when its non-exempt employees worked in excess of 10.0 hours. *Id.* Therefore, Plaintiff focused
17 his rest period analysis on shifts over 10.0 hours. *Id.* Based on Plaintiff's analysis and
18 extrapolation of RMC's timekeeping records, Plaintiff estimates there were approximately 34,655
19 shifts over 10.0 hours during the time period from April 6, 2016, through approximately July
20 2018. *Id.* Therefore, Plaintiff estimates RMC's maximum potential exposure for rest period
21 violations at approximately \$762,063 (34,655 rest period violations * \$21.99 premium). *Id.*

22 However, RMC contends it has maintained and enforced compliant written rest period
23 policies/practices and has always authorized and permitted employees a 10-minute rest period for
24 each 4 hours worked, or major fraction thereof, as required under the Wage Order, and that any
25 failure to take rest periods was as a result of employee choice, rather than any RMC policy and/or
26 practice. Haines Decl., ¶ 20. RMC further argues that Plaintiff's rest period claim is not amenable
27 to class treatment, since individual inquiries would be required to determine which employees
28 failed to take rest periods, how many rest periods they failed to take, and the reasons why each

1 employee failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are
2 especially present with respect to rest period claims, RMC argues, given that rest periods are not
3 recorded. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 50% for risk of
4 non-certification and an additional 50% for a risk of being unsuccessful on the merits or of failing
5 to recover the full amount sought, to arrive at an estimated realistic exposure of approximately
6 \$190,515. *Id.*

7 Failure to Reimburse Business Expenses: \$100,386

8 Plaintiff alleges that RMC failed to reimburse Plaintiff and other Settlement Class
9 members for necessary business expenditures, including the use of their personal cellular phones
10 for work activities, as required under Labor Code § 2802(a). Haines Decl., ¶ 21. Based on
11 Plaintiff's analysis and extrapolation of RMC's records, Plaintiff estimates that Settlement Class
12 members have worked a total of approximately 10,296 months during the Class Period. *Id.* Using
13 a conservative estimate of \$25 per month in reasonable work-related personal cellular phone use,
14 Plaintiff calculates RMC's maximum exposure for this claim at approximately \$257,400
15 (\$25/month * 10,296 months). *Id.*

16 As noted above, RMC maintains that Settlement Class members were not required to use
17 their personal cellular phones as part of their job. Haines Decl., ¶ 21. RMC further argues that
18 any expenses incurred by Settlement Class members were minimal, given the wide availability of
19 low-cost cellular phone plans. *Id.* RMC further argues that this claim would require individual
20 inquiries into whether Settlement Class members actually used their personal cellular phones for
21 work purposes, how much expense they incurred, whether they submitted a request for
22 reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*
23 Based on these defenses, Plaintiff discounted the estimated maximum amount by 40% for risk of
24 non-certification, and by an additional 35% to account for risk of losing on the merits or failure
25 to recover the maximal amount sought, to arrive at an estimated exposure of approximately
26 \$100,386. *Id.*

27 Wage Statement Penalties: \$178,400

28 Plaintiff's analysis reflected that there were approximately 223 unique employees and

1 approximately 19,285 weekly pay periods worked during the liability period applicable to
2 Plaintiff's wage statement claim. Haines Decl., ¶ 22. Those penalties are calculated as \$50 for
3 each "initial" violation and \$100 for each "subsequent" violation, with a maximum of \$4,000 per
4 employee. See Labor Code § 226(e). *Id.* Plaintiff, therefore, calculated RMC's potential wage
5 statement exposure, using the maximum of \$4,000 per employee at approximately \$892,000 (223
6 Employees * \$4,000 max. penalty). *Id.*; see also Labor Code § 226(e).

7 In light of RMC's arguments that no violations occurred, that employees suffered no
8 "injury," that any alleged violations were not "knowing and intentional," that the wage statements
9 always accurately reflected hours worked and amounts paid to employees, and that not every
10 employee would be entitled to the maximum penalties of \$4,000, as well as risks associated with
11 Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by
12 50% for risk of non-certification, and by an additional 60% for risk of being unsuccessful on the
13 merits, for an estimated realistic exposure of approximately \$178,400. Haines Decl., ¶ 22.

14 Waiting Time Penalties: \$142,506

15 RMC's records reflected approximately 135 former Settlement Class members separated
16 from their employment with RMC and are therefore eligible for waiting time penalties. Haines
17 Decl., ¶ 23. Based on an hourly rate of \$21.99, Plaintiff estimated the average waiting time penalty
18 per former employee to be \$5,278 (\$21.99 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff
19 calculated RMC's maximum exposure for potential waiting time penalties to be approximately
20 \$712,530 (135 former employees * \$5,278 average penalty). *Id.*

21 RMC presented several defenses to this claim, most notably their assertion that because
22 they possessed good-faith defenses to the underlying claims, any failure to pay wages was not
23 "willful" as a matter of law. Haines Decl., ¶ 23. RMC further asserts Plaintiff's waiting time
24 penalty exposure was grossly inflated as not every former employee experienced the alleged
25 Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of Plaintiff's
26 underlying wage claims, Plaintiff would need to overcome RMC's defenses, both as to class
27 certification and on the merits, as to his underlying claims. *Id.* To account for RMC's defenses,
28 Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an

1 additional 60% for risk of losing on the merits, and/or not receiving the maximum penalties
2 sought, to arrive at an estimated exposure of approximately \$142,506. *Id.*

3 PAGA Penalties: \$107,460

4 Plaintiff estimated a maximum total PAGA exposure at approximately \$1,074,600
5 (10,746 weekly pay periods * \$100 “initial” penalty). Haines Decl., ¶ 24; *Amaral v. Cintas Corp.*
6 No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer
7 is notified that it is violating a Labor Code provision). However, these penalties derive from the
8 underlying wage and hour violations discussed above, which RMC vigorously disputes. Haines
9 Decl., ¶ 24; see e.g., *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013)
10 (explaining that a PAGA claim’s success was determined by the merits of its underlying claims).
11 RMC also asserts the Court would drastically reduce any award of PAGA penalties as
12 “confiscatory.” Haines Decl., ¶ 24; see also *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
13 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
14 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing
15 PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum
16 figure by 60% for risk of losing on the merits and/or not recovering a PAGA penalty for every
17 pay period, and an additional 75% to account for the possibility of this Court reducing penalties,
18 to arrive at an estimated exposure of approximately \$107,460. Haines Decl., ¶ 24.

19 Using these estimated figures for each of the claims described above, Plaintiff predicted
20 that the potential recovery for the Settlement Class would be approximately \$1,638,459. Haines
21 Decl., ¶ 25. The proposed Settlement of \$1,500,000.00 therefore represents approximately 91.5%
22 of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
23 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
24 which is consistent with what Plaintiff’s counsel believes could have been recovered had the case
25 proceeded through trial.

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

27 “Parties represented by competent counsel are better positioned than courts to produce a
28 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*

1 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
2 by competent, experienced counsel who possess extensive experience prosecuting and defending
3 wage-and-hour class actions, and who have been appointed as class counsel in numerous cases
4 alleging similar claims. *See* Haines Decl., ¶¶ 3-7; *see also* Declaration of Sean M. Blakely
5 (“Blakely Decl.”), ¶¶ 2-6; Declaration of Neil M. Larsen, ¶¶ 2-4 (“Larsen Decl.”). With the
6 assistance of a retained expert, Class Counsel conducted an in-depth review of RMC’s
7 timekeeping and payroll records and drew on their extensive experience in similar cases to assess
8 the strengths and weaknesses of Plaintiff’s case. *See* Haines Decl., ¶ 12. The Settlement was also
9 reached with the assistance of an experienced and respected wage-and-hour class action mediator.
10 This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168
11 Cal.App.4th at 130.

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

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

18 **a. The Settlement Is Within the Range of Possible Approval**

19 The proposed settlement reflects approximately 91.5% of the estimated recovery the
20 Settlement Class could reasonably expect in light of the significant litigation risks, and will
21 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
22 percentage of the liability exposure recovered in this case far exceeds percentages routinely
23 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
24 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
25 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
26 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
27 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
28 be acceptable even though it amounts to only a fraction of the potential recovery that might be

1 available to the Settlement Class members at trial”). Further, the average Individual Settlement
2 Award of approximately \$2,621.43 significantly exceeds average payments achieved in other
3 wage and hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is
4 within the range of possible approval, such that notice should be provided to the Settlement Class
5 members so that they can consider the Settlement. The Court will have the opportunity to again
6 assess the reasonableness of the Settlement after the Settlement Class members have had the
7 opportunity to opt-out or object.

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

9 The Settlement resulted from an exchange of substantial information, arm’s-length
10 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
11 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
12 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
13 discussed above, Plaintiff carefully vetted the claims at issue and reviewed extensive timekeeping
14 and payroll data and conducted a detailed statistical analysis of the data to arrive at his estimated
15 classwide damages figures. *See Haines Decl.*, ¶¶ 12, 16-25. Thus, this factor supports preliminary
16 approval.

17
18 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
19 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
20 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
21 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
22 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
23 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
24 of approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange
25 County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
26 *Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
27 recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
28 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 **c. The Settlement Is Devoid of Obvious Deficiencies**

2 Preliminary approval of the Settlement is also warranted because there are no obvious
3 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
4 members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment,
5 and Plaintiff’s Class Representative Enhancement Payment, are all reasonable and appropriate
6 based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
7 factor supports preliminary approval.

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

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

16 **1. The Proposed Class Is Ascertainable and Numerous**

17 A class is “ascertainable” where the members “may be readily identified without
18 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
19 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
20 defined as all current and former non-exempt technicians employed by RMC in California during
21 the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be identified from
22 RMC’s personnel and employment records. Based on information provided by RMC, Plaintiff
23 understands that the Settlement Class consists of approximately 350 current and former non-
24 exempt technicians. *See* Haines Decl., ¶ 15. It would therefore be impracticable to bring all
25 Settlement Class members before the Court, or for each Settlement Class member to bring an
26 individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g.,*
27 *Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust
28 sufficiently numerous).

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

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

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

10 The typicality requirement is satisfied where class representatives have claims that are
11 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
12 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
13 same goods as the putative class in a consumer class action). Here, Plaintiff’s claims are typical
14 of those held by the Settlement Class members. First, RMC employed Plaintiff as a non-exempt
15 technician during the Class Period, and Plaintiff was subject to RMC’s wage and hour policies at
16 issue in this case. *See Viruete Decl.*, ¶ 2. Second, Plaintiff was injured by the same challenged
17 policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff
18 asserts that he was deprived of all wages and contends that he was deprived of all legally–
19 compliant meal and rest periods. Plaintiff further asserts that he did not receive accurate and
20 compliant wage statements and did not receive all wages at the time of separation of employment.
21 *See generally*, Viruete Decl. Because Plaintiff has suffered the same injuries as the other members
22 of the Settlement Class, the typicality requirement is satisfied.

23 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
24 **Class**

25 The adequacy requirement examines conflicts of interest between named parties and the
26 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
27 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
28 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,

1 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
2 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
3 indication that Class Counsel were not qualified and the named plaintiff had no interests
4 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
5 and hour class action litigation. *See Haines Decl.*, ¶¶ 2-7; *Blakely Decl.*, ¶¶ 2-6.

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

7 This Court should order distribution to the Settlement Class of the proposed Class Notice
8 and Notice of Estimated Settlement Award (the “Notice Packet”) by U.S. Mail, postage prepaid,
9 using last known mailing address information provided by RMC. *See Settlement*, ¶ 9. This manner
10 of giving notice is the “best notice practicable” under the circumstances because it provides
11 “individual notice to all members who can be identified through reasonable effort.” *See Eisen v.*
12 *Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement
13 be administered by Phoenix Settlement Administrators (“Phoenix”), an experienced class action
14 settlement administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and
15 attached exhibits. Settlement Class members’ addresses will be ascertainable through RMC’s
16 personnel and payroll records, which RMC will provide to Phoenix within five (5) business days
17 of preliminary approval of the Settlement. *See Settlement*, ¶ 9(A). Within ten (10) business days
18 from receipt of this information, the Settlement Administrator will run the names of all Settlement
19 Class members through the National Change of Address (“NCOA”) database to determine any
20 updated addresses for Settlement Class members, and mail a Notice Packet to each Settlement
21 Class Member at his or her last known address. *See Settlement*, ¶ 9(B). To the extent that any
22 notices are returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s
23 current mailing address. *Id.*, at ¶ 9(C).

24 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
25 because it advises Settlement Class members of the nature of the claims, basic contentions and
26 denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object
27 to the Settlement and the procedures by which to do so, explains the recovery formula and
28 expected recovery amount for each Settlement Class member, and advises them that they will be

1 bound by the terms of the Settlement if they do not opt-out. *See* Haines Decl., Exhs. 1, 2 to Exh.
2 A. The proposed Class Notice will also notify Settlement Class members of the final approval
3 hearing date and provides the Settlement Class contact information for Class Counsel and advises
4 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
5 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
6 cost-effective method of reaching Settlement Class members.

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

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

11 **V. CONCLUSION**

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

15
16 Dated: October 21, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

17
18 By:



19 Paul K. Haines
20 Sean M. Blakely
21 Attorneys for Plaintiff
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