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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OCTAVIO A. FLORES, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

TWIN EAGLES, INC., a California
corporation; DOMETIC CORPORATION, a
Delaware corporation; and DOES 1 through
100,

Defendants.

Case No.: 22STCV14710

*[Assigned for all purposes to the Hon. Stuart
M. Rice, Dept. 1]*

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

Date: April 30, 2024
Time: 10:30 a.m.
Dept.: 1

Action Filed: May 3, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 30, 2024 at 10:30 a.m. in Department 1 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Octavio A. Flores, Jose Calles, Kelvin Mondragon Contreras, Israel Garcia, and Elenilson Guido (“Plaintiffs”) individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:
All current and former non-exempt employees who worked for Defendants Twin Eagles, Inc. and Dometic Corporation in California from May 3, 2018 through August 11, 2023 (the “Class Period”).
3. Preliminary appointment of Plaintiffs as Class Representatives;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh 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 Payments to Plaintiffs, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
2 Authorities; the supporting declarations of Sean M. Blakely, Paul K. Haines, Alexandra R.
3 McIntosh, Plaintiffs Octavio A. Flores, Jose Calles, Kelvin Mondragon Contreras, Israel Garcia,
4 and Elenilson Guido, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits
5 attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or
6 documentary evidence or argument presented at the time of the hearing.

7
8 Respectfully submitted,

9 Dated: March 19, 2024

HAINES LAW GROUP, APC

10
11 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Octavio A. Flores, Jose Calles, Kelvin Mondragon Contreras, Israel Garcia, and
4 Elenilson Guido (hereinafter “Plaintiffs”) brought this class and representative action for various
5 wage and hour violations on behalf of current and former non-exempt employees who worked for
6 Defendants Twin Eagles, Inc. and Dometic Corporation (collectively referred to as “Defendants”)
7 in California from May 3, 2018 through August 11, 2023 (the “Class Period”). The primary issues
8 in this case pertain to Defendants’ alleged failure to pay all minimum and overtime wages due to
9 its timekeeping policies/practices, and its unlawful meal and rest period policies/practices. As a
10 result of these alleged violations, Plaintiffs contend Defendants are liable for wage statement
11 penalties, waiting time penalties, and civil penalties under the Private Attorneys’ General Act
12 (“PAGA”).¹

13 Plaintiffs now respectfully request that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which Defendants have agreed to pay
15 Five Hundred Fifty Thousand Dollars and Zero Cents (\$550,000.00) to the following Settlement
16 Class:

17 All current and former non-exempt employees who worked for Defendants
18 Twin Eagles, Inc. and Dometic Corporation in California from May 3,
2018 through August 11, 2023 (the “Class Period”).

19 If the Settlement is approved, Defendants will pay a non-reversionary Gross Settlement
20 Amount (“GSA”) of \$550,000.00. After deducting administration costs, Plaintiffs’ requested
21 Class Representative Enhancement Payments, the amount set aside as PAGA civil penalties, and
22

23 ¹ Plaintiffs’ operative Second Amended Class and Representative Action Complaint (“SAC”)
24 pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
25 wages; (3) unlawful deductions from wages; (4) meal period violations; (5) rest period violations;
26 (6) wage statement violations; (7) waiting time penalties; (8) unfair competition in violation of
Cal. Business & Professions Code § 17200, *et seq.*; and (9) civil penalties under the PAGA.

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

requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately \$274,166.67 will be distributed to all Settlement Class members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period. Employees with standing for PAGA civil penalties (subject to a one-year statute of limitations) will also receive additional consideration for their PAGA claims.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 271 Settlement Class members, and **the average payment to participating Settlement Class members is projected to be approximately \$1,011.68.** This is an excellent result for Settlement Class members, who will be releasing only those claims alleged in the Action.

The proposed Settlement is 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 tangible monetary benefits to be received by Plaintiffs and the Settlement Class. For the reasons discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendant Twin Eagles designed and manufactured high-end outdoor kitchen equipment, including freestanding and built-in barbeque grills, side burners, outdoor sinks and refrigerators. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. In February 2021, Defendant Twin Eagles was acquired by Defendant Dometic Corporation, a leading designer and manufacturer of outdoor living products, including coolers, drinkware, car camping equipment and RV and van products and appliances. *Id.* Defendants employed Plaintiff Flores in the non-exempt job position of "Assembler" from approximately 2012 until approximately February 11, 2022. *See* Declaration of Octavio A. Flores In Support of Approval of Class Action Settlement ("Flores Decl."), ¶ 2. Plaintiff Calles worked for Defendants as a non-exempt employee during the relevant time period until approximately February 2022. *See* Declaration of Jose Calles In Support of Approval of

1 Class Action Settlement (“Calles Decl.”), ¶ 2. Plaintiff Contreras worked for Defendants in the
2 non-exempt job position of “Welder/Machine Operator” from approximately 2014 through
3 approximately January 6, 2022. *See* Declaration of Kelvin Mondragon Contreras In Support of
4 Approval of Class Action Settlement (“Contreras Decl.”), ¶ 2. Plaintiff Garcia worked in the non-
5 exempt job position of “Assembler” from approximately 2016 through February 2022. *See*
6 Declaration of Israel Garcia In Support of Approval of Class Action Settlement (“Garcia Decl.”),
7 ¶ 2. Plaintiff Guido worked for Defendants as a non-exempt employee during the relevant time
8 period until approximately February 2022. *See* Declaration of Elenilson Guido In Support of
9 Approval of Class Action Settlement (“Guido Decl.”), ¶ 2.

10 On May 3, 2022, Plaintiff Flores filed his Class Action Complaint in Los Angeles County
11 Superior Court, alleging that Defendants: (i) failed to pay all minimum wages; (ii) failed to pay
12 all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and
13 permit all legally compliant rest periods; (v) failed to issue accurate, itemized wage statements;
14 (vi) failed to pay all wages owed upon termination; and (vii) engaged in unfair competition in
15 violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. That same
16 day, Plaintiff Flores sent his PAGA notice letter to the LWDA. *Id.*; **Exhibit B** (LWDA Letter).
17 Subsequently, on July 11, 2022, Plaintiff Flores filed the First Amended Class and Representative
18 Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private
19 Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq.* *Id.* As part of the Settlement,
20 the Parties agreed and stipulated to the filing of a Second Amended Class and Representative
21 Action Complaint (“SAC”) which adds Jose Calles, Kelvin Mondragon Contreras, Israel Garcia,
22 and Elenilson Guido as named plaintiffs and class representatives and adds a cause of action for
23 unlawful deductions from wages. *Id.*, at ¶ 10. The SAC was subsequently filed on March 18,
24 2024. *Id.*

25 **B. PLAINTIFFS’ CLAIMS AND DEFENDANTS’ DEFENSES**

26 **1. Arbitration Agreements**

27 As an initial matter, Defendants assert that Plaintiffs and the overwhelming majority of
28 Settlement Class members signed valid and enforceable arbitration agreements with class action

1 waivers. Blakely Decl., ¶ 15. Setting aside any arguments as to the merits of Plaintiffs’ claims,
2 Defendants contend that absent settlement, a class-wide recovery for all Settlement Class
3 members was not possible given that a majority of Settlement Class members signed valid and
4 enforceable arbitration agreements with class action waivers. *Id.* As such, Defendants contend
5 that absent its agreement to not raise the arbitration agreements as an affirmative defense, any
6 recovery to the Settlement Class members would be limited to only the employees’ potential 25%
7 share of PAGA civil penalties. *Id.*

8 **2. Unpaid Wages Due to Rounding**

9 Plaintiffs contend that Defendants underpaid Settlement Class members due to its
10 allegedly unlawful rounding policies/practices. Blakely Decl., ¶ 16. Plaintiffs contend that
11 although Defendants’ timekeeping system recorded hours worked to the minute, Defendants
12 rounded all time-punches, resulting in an underpayment of wages to Settlement Class members.
13 *Id.*

14 However, Defendants argue that their rounding policies/practices were lawful, since it was
15 both neutral on its face and resulted, over time, in employees being paid for all hours worked.
16 Blakely Decl., ¶ 16. Defendants also contend that multiple Courts of Appeal have found rounding
17 mechanisms to be lawful under similar circumstances. *See, e.g., Ferra v. Loews Hollywood Hotel,*
18 *LLC*, 40 Cal.App.5th 1239, 1254 (2019) (review granted on other grounds) (affirming summary
19 judgment for employer on rounding claim where employees were underpaid on 54.6% of shifts,
20 finding that such facts do not establish that employees were “systematically
21 undercompensate[d]”); *AHMC Healthcare, Inc. v. Superior Court*, 24 Cal.App.5th 1014, 1028
22 (2018) (affirming summary judgment for employer where “bare majority” of employees were
23 underpaid due to rounding). Additionally, Defendants assert Plaintiffs would be unable to certify
24 a rounding class given the individualized inquiries as to whether Settlement Class members were
25 in fact underpaid, or potentially overpaid, for each workday in question (including whether they
26 were actually working when they were clocked in). Blakely Decl., ¶ 16.

27 **3. Meal Period Claims**

28 Plaintiffs allege that Defendants failed to provide legally compliant first meal periods due

1 to their meal period policies/practices, which frequently resulted in late (commencing after the
2 fifth hour of work) and/or short (i.e., less than a full 30 minutes) first meal periods. Blakely Decl.,
3 ¶ 17. Moreover, Plaintiffs allege that at least during a portion of the Class Period, Defendants did
4 not require Plaintiffs and other Settlement Class members to record their meal periods, instead,
5 Defendants automatically deducted 30 minutes from the daily hours worked for each shift
6 regardless of whether the employee took a full 30-minute compliant meal period. *Id.* Plaintiffs
7 further allege that Settlement Class members were not provided with second meal periods when
8 they worked shifts in excess of 10.0 hours in a workday. *Id.*, at ¶ 18.

9 Defendants counter they have maintained compliant written meal period policies
10 throughout the Class Period and have always provided compliant meal periods in line with those
11 policies. Blakely Decl., ¶ 17. Defendants further contend that they always provide employees the
12 opportunity to take meal periods and are not required to *ensure* they are taken. *Id.*; *see Brinker*
13 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus,
14 Defendants argue that any non-compliant meal periods resulted from lawful employee waiver or
15 choice, rather than any policy and/or practice of Defendants. *Id.* With respect to second meal
16 periods, Defendants assert that many employees choose to waive their second meal periods on
17 shifts over 10.0 hours and under 12.0 hours, as they may do under Labor Code § 512(a), so that
18 they do not need to stay at work for an extra unpaid 30 minutes. *Id.*, at ¶ 18. Finally, Defendants
19 maintain Plaintiffs’ meal period claim is not suited for class certification since individual inquiries
20 would be needed to assess which employees, if any, took non-compliant or missed meal periods,
21 how many meal periods were non-compliant or missed, the reasons why a particular employee
22 did not take a meal period on a particular shift, and for second meal periods, whether they waived
23 the meal period. *Id.*, ¶¶ 17-18.

24 **4. Rest Period Claims**

25 Plaintiffs allege that Defendants failed to authorize and permit all legally compliant off-
26 duty rest periods as Plaintiffs allege Defendants required its non-exempt employees to remain on-
27 premises during rest periods, thereby failing to relinquish all control over employees during off-
28 duty rest periods. Blakely Decl., ¶ 19; *see Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th 257,

260 (2016) (“During required rest periods, employers must relieve their employees of all work duties and relinquish any control over how employees spending their break time...”).

Defendants counter that they have maintained compliant written rest period policies throughout the Class Period and have always authorized and permitted employees a 10-minute rest period for each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was a result of employee choice, rather than any Defendants policy and/or practice. Blakely Decl., ¶ 19. Defendants further contend that even if it or individual managers required employees to remain on-premises during off-duty rest periods, *Augustus* rejected Plaintiffs’ “on-premises” theory when it observed that “one would expect that employees will ordinarily have to remain onsite or nearby. *Id.* This constraint, which is of course common to all rest periods, is not sufficient to establish employer control.” *Id.*; see *Augustus*, *supra*, 2 Cal.5th at 270. Defendants also argue that Plaintiffs’ rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, whether they were allowed to leave the premises during rest periods, and the reasons why each employee failed to take rest period(s) on a particular shift. Blakely Decl., ¶ 19. These manageability concerns are especially present with respect to rest period claims, Defendants argue, given that rest periods are not recorded. *Id.*

5. Waiting Time Penalties

As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiffs allege that Defendants failed to comply with their final pay obligations set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 20.

Defendants argue that they possess strong, good faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Blakely Decl., ¶ 20; 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

1 the employee.”). Defendants further assert that Plaintiffs’ waiting time penalty exposure was
2 grossly inflated as not every former employee experienced the alleged Labor Code violations.
3 Blakely Decl., ¶ 20. Moreover, because the waiting time claim is derivative of Plaintiffs’
4 underlying wage claims, Plaintiffs would need to overcome Defendants’ defenses, both as to class
5 certification and on the merits, as to their underlying claims. *Id.*

6 **6. Wage Statement Claims**

7 As a further result of the unpaid wages and unpaid meal and rest period premium wages
8 described above, Plaintiffs allege that Defendants are liable for wage statement penalties. Blakely
9 Decl., ¶ 21. Defendants argue any alleged wage statement violations were not “knowing and
10 intentional,” and Plaintiffs cannot show they or other employees “suffer[ed] injury” due to the
11 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
12 penalties. *Id.* Further, Defendants contend their wage statements always accurately reflected
13 hours worked and amounts paid as well as all other required information, precluding liability for
14 wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-
15 37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in
16 that they correctly reflected the hours worked and the pay received...The purpose of section 226
17 is to *document the paid wages* to ensure the employee is fully informed regarding the calculation
18 of those wages.”) (Italics in original).

19 **7. PAGA Civil Penalties**

20 As a result of the foregoing Labor Code violations, Plaintiffs allege that Defendants are
21 liable for civil penalties under the PAGA. Blakely Decl., ¶ 22. Since Plaintiffs’ PAGA claim is
22 derivative of Plaintiffs’ underlying wage claims, Defendants assert the PAGA claim would fail
23 with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because
24 the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendants
25 further maintain that, given their good faith defenses, this Court would exercise its discretion to
26 substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiffs’
27 claims. Blakely Decl., ¶ 22.; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
28 *Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*

1 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
2 (reducing PAGA penalties by over 82% in part because employer “not aware” of violations);
3 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
4 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

5 **C. DISCOVERY AND MEDIATION**

6 In connection with mediation, the Parties engaged in extensive informal discovery.
7 Blakely Decl., ¶ 11. Defendants produced a 20% sampling of timekeeping and payroll records for
8 non-exempt employees during the Class Period, as well as its relevant written wage and hour
9 policies/procedures. *Id.* Defendants also provided relevant data points such as the total number of
10 workweeks in the Class Period and the total number of Settlement Class members employed by
11 Defendants in California during the Class Period. *Id.* Plaintiffs hired a labor economist with a
12 Ph.D. in economics to assist Plaintiffs in conducting a comprehensive analysis and extrapolation
13 of the payroll and timekeeping data produced by Defendants to create a detailed exposure analysis
14 for all claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of
15 Plaintiffs’ claims, the chances of certification of Plaintiffs’ claims, and Defendants’ potential
16 defenses. *Id.*

17 On June 12, 2023, the Parties participated in a full-day mediation with Jeffrey Krivis, Esq.,
18 a well-respected wage and hour class action mediator. Blakely Decl., ¶ 12. During mediation, the
19 Parties vigorously debated their opposing legal positions, the likelihood of certification of
20 Plaintiffs’ claims, and the legal basis for the claims and defenses. *Id.* At the conclusion of
21 mediation, Mr. Krivis issued a mediator’s proposal for a class-wide settlement, which was
22 ultimately accepted by all Parties. *Id.* During the months that followed, the Parties finalized the
23 terms of the Settlement and executed the long-form Settlement Agreement now before the Court.
24 *Id.*

25 **III. THE PROPOSED SETTLEMENT**

26 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

27 If the Court preliminarily approves the Settlement, Defendants will pay a Gross Settlement
28 Amount (“GSA”) of \$550,000.00. *See* Settlement, § 3. Significantly, this Settlement is non-

1 reversionary, and no Settlement Class member will have to submit a claim form to receive an
2 Individual Settlement Payment. *Id.*, at §§ 3-4. Each Settlement Class member will automatically
3 receive an Individual Settlement Payment unless they affirmatively opt out of the Settlement. *Id.*
4 The monetary terms of the Settlement are summarized below:

5	• Gross Settlement Amount (“GSA”):	\$550,000.00
6	• Minus Court-approved attorneys’ fees:	\$183,333.33
7	• Minus Court-approved verified costs (up to):	\$35,000.00
8	• Minus Court-approved Enhancement Payments:	\$27,500.00
9	• Minus amount set aside as PAGA penalties:	\$20,000.00
10	• <u>Minus estimated settlement administration costs:</u>	<u>\$10,000.00</u>
11	Net Settlement Amount (“NSA”):	\$274,166.67
12	• Plus 25% “PAGA Amount” to Settlement Class:	\$5,000.00
13	Total Amount Paid to Settlement Class Members:	\$279,166.67

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

15 After deducting amounts for the Court-approved attorneys’ fees and costs, Class
16 Representative Enhancement Payments to Plaintiffs, the amount set aside as PAGA civil
17 penalties, and settlement administration costs, the Settlement requires Defendants to pay a Net
18 Settlement Amount (“NSA”) of at least \$274,166.67 to all Settlement Class members who do not
19 timely opt-out. *See* Settlement, § 4(A). The NSA shall be distributed to participating Settlement
20 Class members as follows: The NSA shall be distributed to each participating Settlement Class
21 member based on their proportionate number of workweeks worked during the Class Period. *See*
22 Settlement, § 4(B)(i). Additionally, Five Thousand Dollars (\$5,000.00) of the Gross Settlement
23 Amount has been designated as the “PAGA Amount” and shall be distributed to the Aggrieved
24 Employees (including those who submit a valid and timely Request for Exclusion from the class
25 action settlement) who were employed at any time from May 3, 2021 through August 11, 2023
26 (“PAGA Period”) proportionally based on the number of workweeks worked during that time
27 period. *Id.*, at §§ 2(B); 4(B)(ii).

28 According to Defendants, there are approximately 271 Settlement Class members.
Blakely Decl., ¶ 14. Therefore, the average Individual Settlement Payment from the NSA is
projected to be approximately \$1,011.68. *Id.* There are also approximately 125 Aggrieved
Employees during the PAGA Period who will each receive an average payment of approximately

1 \$40.00 from the PAGA Amount. *Id.* Settlement Class members will have sixty (60) calendar days
2 from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing
3 ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement,
4 §§ 9(C)-(D). Those Settlement Class members who do not opt-out of the Settlement will be bound
5 by its terms and will release all claims against Defendants included within the Settlement. *See Id.*,
6 at § 2(A).

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

8 Plaintiffs will apply for Class Representative Enhancement Payments at the time of
9 seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for
10 Plaintiff Flores and \$5,000.00 each to Plaintiffs Calles, Contreras, Garcia, and Guido, for a total
11 of \$27,500.00 for their services to the Settlement Class. *See* Settlement, §§ 3(D)(3), 6; Blakely
12 Decl., ¶ 26. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to
13 compensate class representatives for work done on behalf of the class [and] to make up for
14 financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination*
15 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final
16 approval, Plaintiffs’ requested Enhancement Payments are intended to recognize the time and
17 effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial
18 factual information and documents to Class Counsel, discussing the claims and theories at issue
19 in the litigation, actively participating in the prosecution of their claims, as well as the significant
20 risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this case. *See* Blakely
21 Decl., ¶ 26; *see also* Flores Decl., ¶¶ 4-6; Calles Decl., ¶¶ 4-6; Contreras Decl., ¶¶ 4-6; Garcia
22 Decl., ¶¶ 4-6; Guido Decl., ¶¶ 4-6.

23 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
24 Settlement Amount, which is currently estimated to be \$183,333.33, and up to \$35,000.00 in
25 verified costs reimbursement. *See* Settlement, §§ 3(D)(4), (5); Blakely Decl., ¶ 25. Plaintiffs
26 submit the requested fee is fair compensation for undertaking complex, risky, expensive, and
27 time-consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred
28 substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiffs’ claims,

conducting legal research, conducting extensive informal discovery, analyzing Settlement Class members' timekeeping and payroll records with the help of a retained expert, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the Final Approval papers, and attending the Final Approval hearing. *Id.*

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

Class Counsel submit that 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 \$20,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which \$15,000.00 (75%) will be paid to the LWDA, with the remaining \$5,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(D)(5). Plaintiffs submit 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.

1 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
2 settlement).

3 **IV. ARGUMENT**

4 **A. PRELIMINARY APPROVAL IS WARRANTED**

5 California Rule of Court 3.769 conditions settlement of a class action on court approval,
6 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
7 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
8 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
9 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
10 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
11 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
12 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
13 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
14 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
15 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
16 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
17 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

18 **1. Standard for Preliminary Approval**

19 To make a fairness determination, the Court should consider several factors, including:
20 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
21 litigation, the risk of maintaining class action status through trial, the amount offered in
22 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
23 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
24 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
25 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
26 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
27 reasonable in light of the overall balance of factors in this case.

1 **a. The Strength of Plaintiffs' Case**

2 Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs
3 acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As
4 described above in section II.B., *supra*, Defendants presented multiple defenses to Plaintiffs'
5 claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were
6 prepared to litigate these claims through class certification and ultimately trial, success was far
7 from certain.

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

9 Although the Parties engaged in significant informal discovery prior to mediation, the
10 Parties still had significant formal discovery to complete had the matter not been settled. Blakely
11 Decl., ¶ 24. This would have required the expenditure of substantial time and resources by both
12 Parties that would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the
13 classes, the Parties would incur considerably more attorneys' fees and costs through a possible
14 decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the
15 accompanying expense. *Id.*

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

17 Due to the facts that Plaintiffs and the majority of the Settlement Class were subject to
18 arbitration agreements with class action waivers, it is likely that absent this settlement, there
19 would not be a certified class at the time of trial. Indeed, Defendants only agreed to waive their
20 right to assert the arbitration agreements as a defense in connection with this Settlement. Thus,
21 this factor, too, supports preliminary approval of the settlement.

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

23 The Settlement provides a positive recovery for the Settlement Class in the face of
24 disputed claims. Plaintiffs, with the help of their retained expert, conducted a detailed analysis of
25 alleged unpaid wages, meal and rest period premium payments owing, wage statement penalties,
26 waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure
27 analysis are discussed below:

28 Unpaid Wages Due to Rounding: \$27,971

1 Based on Plaintiffs' review and extrapolation of employee timekeeping records,
2 Defendants' rounding practices resulted in approximately 6,323 hours of unpaid wages. Blakely
3 Decl., ¶ 16. Therefore, Plaintiffs estimate that Defendants' maximum exposure for this claim at
4 approximately \$169,520 (6,323 unpaid hrs. * \$26.81 average weighted overtime rate). *Id.*

5 However, Defendants raised several defenses to this claim, including their argument that
6 they utilized an even-handed timekeeping system that, on balance, resulted in employees being
7 paid for all hours actually worked, and that Plaintiffs would be unable to certify this claim given
8 the individualized inquiries as to whether employees were in fact underpaid, or overpaid for each
9 workday in question. Blakely Decl., ¶ 16. Based on these defenses, as well as the risk that
10 Plaintiffs' estimated exposure could be reduced by the existence of arbitration agreements,
11 Plaintiffs discounted the maximum exposure by 70% to account for the risk of non-certification,
12 and an additional 45% to account for Defendants' defenses on the merits, to arrive at an estimated
13 exposure of approximately \$27,971. *Id.*

14 **First Meal Period Violations: \$146,515**

15 Plaintiffs allege that Defendants failed to provide compliant first meal periods to their
16 non-exempt employees. Blakely Decl., ¶ 17. As stated above, for a portion of the Class Period,
17 Defendants did not require employees to record their meal periods and Defendants automatically
18 deducted 30 minutes each workday for a purported meal period. *Id.* Based on Plaintiffs' expert's
19 review and extrapolation of the timekeeping records Defendants produced, there were
20 approximately 45,500 auto-deduct shifts in the data. *Id.* Moreover, Plaintiffs' expert's analysis
21 and extrapolation revealed that there were approximately 15,233 non-compliant first meal periods
22 when employees were actually recording their meal periods. *Id.* Plaintiffs also calculated the
23 average hourly rate of pay to be approximately \$17.87 per hour. *Id.* Therefore, Plaintiffs
24 calculated Defendants' maximum exposure for first meal period violations at approximately
25 \$1,085,299 ([45,500 auto-deduct shifts * \$17.87 average meal period premium] + [15,233 non-
26 complaint first meal periods * \$17.87 average meal period premium]). *Id.*

27 However, as noted above, Defendants contend that they maintained compliant meal period
28 policies throughout the Class Period and provided compliant meal periods in line with those

1 policies. Blakely Decl., ¶ 17. Defendants also assert that under *Brinker* they are only required to
2 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that, as
3 described above, they have always done so, and that any non-complaint first meal periods in the
4 timekeeping records were the result of lawful employee waiver or choice. *Id.* Defendants also
5 maintain that the first meal period claim is not suited for class certification, since individual
6 inquiries would be needed to assess which employees took non-compliant meal periods or missed
7 meal periods, how many meal periods were non-compliant or missed, and the reasons why a
8 particular employee did not take a compliant meal period on a particular shift. *Id.* In light of these
9 defenses and arguments, as well as the risk that Plaintiffs’ estimated exposure could be reduced
10 by the existence of arbitration agreements, Plaintiffs discounted Defendants’ maximum exposure
11 by 70% for the risk of non-certification, and an additional 55% to account for Defendants’
12 defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total
13 of approximately \$146,515. *Id.*

14 **Second Meal Period Violations: \$15,075**

15 Plaintiffs’ expert’s analysis and extrapolation of the timekeeping data revealed that there
16 were approximately 6,249 shifts in excess of 10.0 hours during the Class Period without a
17 compliant second meal period. Blakely Decl., ¶ 18. Plaintiffs therefore calculated Defendants’
18 maximum exposure for second meal period violations at approximately \$111,670 (6,249 non-
19 compliant second meal periods * \$17.87 average premium). *Id.*

20 However, Plaintiffs’ theory of liability carried significant risks of both non-certification
21 and on the merits if Plaintiffs were able to certify this claim, based on, *inter alia*, Defendants’
22 argument that they have maintained compliant written meal period policies throughout the Class
23 Period, and that Settlement Class members voluntarily waived their second meal period on shifts
24 in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶ 18. As
25 with Plaintiffs’ first meal period claim, Defendants argue that individualized inquiries would
26 preclude class certification for this claim as well. *Id.* In light of these risks, as well as the risk that
27 Plaintiffs’ estimated exposure could be reduced by the existence of arbitration agreements,
28 Plaintiffs discounted the maximum amount that the class could potentially recover by 70% for

1 the risk of non-certification and an additional 55% for the risk of losing on the merits, or having
2 exposure reduced due to Defendants's waiver arguments, to arrive at estimated exposure of
3 \$15,075. *Id.*

4 **Rest Period Violations: \$228,657**

5 During the Class Period, Plaintiffs allege that they and other non-exempt employees were
6 not authorized and permitted to take all legally compliant rest periods as Defendants prohibited
7 employees from leaving the premises during off-duty rest periods. Blakely Decl., ¶ 19. Based on
8 Plaintiffs' expert's analysis and extrapolation of employee timekeeping records, there were
9 approximately 106,630 shifts in excess of 3.5 hours worked by Settlement Class members during
10 the Class Period. *Id.* Therefore, Plaintiffs estimated Defendants' maximum exposure for this
11 claim at approximately \$1,905,478 (106,630 rest period eligible shifts * \$17.87 average
12 premium). *Id.*

13 However, as discussed above, Defendants argue that they always maintained and enforced
14 lawful rest period policies and practices during the Class Period. Blakely Decl., ¶ 19. Defendants
15 further argue that Plaintiffs' rest period claim is not amenable to class treatment as individualized
16 inquiries would be required to determine which employees failed to take rest periods, whether
17 they were entitled to leave the premises during rest periods, and the reasons why each employee
18 failed to take a rest period on a particular shift. *Id.* These considerations are particularly present
19 with respect to rest periods, Defendants argue, as rest periods are not—and need not be—
20 recorded. *Id.* In light of these defenses, as well as the risk that Plaintiffs' estimated exposure could
21 be reduced by the existence of arbitration agreements, Plaintiffs discounted the maximum amount
22 that the class could potentially recover by 70% for risk of non-certification, and discounted an
23 additional 60% for risk of being unsuccessful on the merits or failure to recover the full amount
24 sought, to arrive at a projected exposure of \$228,657. *Id.*

25 **Waiting Time Penalties: \$110,592**

26 Defendants' records show approximately 191 Settlement Class members who separated
27 their employment with Defendants since May 3, 2019, and are therefore eligible for waiting time
28 penalties. Blakely Decl., ¶ 20. Based on an hourly rate of \$17.87, Plaintiffs estimated the average

1 waiting time penalty per former employee to be approximately \$4,289 (\$17.87 * 8 hours per day
2 * 30 days). *Id.* Therefore, Plaintiffs calculated Defendants' maximum exposure for potential
3 waiting time penalties to be approximately \$819,199 (191 former employees * \$4,289 average
4 penalty). *Id.*

5 Defendants presented several defenses to this claim, most notably their assertion that
6 because they possessed good-faith defenses to the underlying claims, any failure to pay wages
7 was not "willful" as a matter of law. Blakely Decl., ¶ 20. Defendants further assert that Plaintiffs'
8 waiting time penalty exposure was grossly inflated as not every former employee experienced the
9 alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of
10 Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Defendants' defenses, both
11 as to class certification and on the merits, as to their underlying claims. *Id.* To account for
12 Defendants' defenses, as well as the risk that Plaintiffs' estimated exposure could be reduced by
13 the existence of arbitration agreements, Plaintiffs discounted the maximum exposure by 70% for
14 the risk of non-certification and an additional 55% for the risk of losing on the merits and/or not
15 receiving the maximum penalties sought, to arrive at an estimated exposure of approximately
16 \$110,592. *Id.*

17 Wage Statement Penalties: \$67,500

18 Plaintiffs allege that Defendants are liable for wage statement penalties as a result of the
19 unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 21. Those penalties
20 are calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with
21 a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiffs' expert's analysis
22 reflected that there were approximately 125 unique employees and approximately 7,376 pay
23 periods worked during the liability period applicable to Plaintiffs' wage statement claim. *Id.*
24 Plaintiffs, therefore, assumed the maximum \$4,000.00 penalty for each employee and calculated
25 Defendants' potential wage statement exposure at approximately \$500,000 (125 employees *
26 \$4,000 maximum penalty)]. *Id.*; *see also* Labor Code § 226(e).

27 In light of Defendants' arguments that no violations occurred, that employees suffered no
28 "injury," that any alleged violations were not "knowing and intentional," that the wage statements

1 always accurately reflected hours worked and amounts paid to employees, the risks associated
2 with Plaintiffs' underlying claims discussed above, as well as the risk that Plaintiffs' estimated
3 exposure could be reduced by the existence of arbitration agreements, Plaintiffs discounted the
4 maximum exposure by 70% for risk of non-certification, and by an additional 55% for risk of
5 being unsuccessful on the merits, for an estimated realistic exposure of approximately \$67,500.
6 Blakely Decl., ¶ 21.

7 **PAGA Penalties: \$36,880**

8 Plaintiffs estimated a maximum total PAGA exposure of approximately \$737,600 (7,376
9 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 22; *Amaral v. Cintas Corp. No. 2*, 163
10 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified
11 that it is violating a Labor Code provision). However, these penalties derive from the underlying
12 wage and hour violations discussed above, which Defendants dispute vigorously. Blakely Decl.,
13 ¶ 22; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013)
14 (explaining that a PAGA claim's success was determined by the merits of its underlying claims).
15 Defendants also assert that the Court would drastically reduce any award of PAGA penalties as
16 "confiscatory." Blakely Decl., ¶ 22; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203
17 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
18 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing
19 PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiffs discounted the maximum
20 figure by 75% for the risk of losing on the merits and/or not recovering a PAGA penalty for each
21 and every pay period, and an additional 80% to account for the possibility of this Court reducing
22 penalties, to arrive at an estimated exposure of approximately \$36,880. Blakely Decl., ¶ 22.

23 Using these estimated figures for each of the claims described above, Plaintiffs predicted
24 that the potential realistic recovery for the Settlement Class would be approximately \$633,190.
25 Blakely Decl., ¶ 23. The proposed Settlement of \$550,000.00 represents approximately 86.9% of
26 the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
27 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
28 which is consistent with what Plaintiffs' counsel believes could have been recovered had the case

proceeded through trial.

///

e. The Experience and Views of Counsel

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

2. The Preliminary Approval Standard Is Met

At this stage, the Court can grant preliminary approval of the Settlement and direct that 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 approximately 86.9% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL

221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Further, the average Individual Settlement Payment of approximately \$1,011.68 exceeds average payments achieved in other wage and hour class action settlements.³ Thus, Plaintiffs submit that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so that they can 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 Negotiations

The Settlement resulted from an exchange of substantial information, arm’s-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is

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 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good”); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data with the help of a retained expert to arrive at their estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 15-22. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

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

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is 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 absent Settlement Class members; and (4) Plaintiffs and their counsel will fairly and adequately represent Settlement Class members’ interest. *See Cal. 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.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees who worked for Defendants in California during the Class Period. Therefore, Settlement Class members can be identified from Defendants’ personnel and employment records. Defendants represent that the Settlement Class consists of approximately 271 current and former non-exempt employees. *See Blakely Decl.*, ¶ 14. It would

1 therefore be impracticable to bring all Settlement Class members before the Court or for each
2 Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class
3 satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class
4 representing 10 beneficiaries of a trust sufficiently numerous).

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

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

12 **3. The Claims of the Named Plaintiffs Are Typical**

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

1 **4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the**
2 **Class**

3 The adequacy requirement examines conflicts of interest between named parties and the
4 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
5 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the
6 Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class,
7 and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v.*
8 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
9 indication that Class Counsel were not qualified and the named plaintiff had no interests
10 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
11 and hour class action litigation. *See Blakely Decl.*, ¶¶ 2-6; *Haines Decl.*, ¶¶ 2-8; *McIntosh Decl.*,
12 ¶¶ 2-5.

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

14 This Court should order distribution to the Settlement Class of the proposed Class Notice
15 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address
16 information provided by Defendants. *See Settlement*, § 9. This manner of giving notice is the
17 “best notice practicable” under the circumstances because it provides “individual notice to all
18 members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417
19 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by
20 Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement
21 administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached
22 exhibits. Settlement Class members’ addresses will be ascertainable through Defendants’
23 personnel and payroll records, which Defendants will provide to Phoenix within ten (10) business
24 days of preliminary approval of the Settlement. *See Settlement*, § 9(A). Within ten (10) business
25 days of receipt of the Settlement Class members’ addresses, Phoenix will run the names of all
26 Settlement Class members through the National Change of Address database to update addresses
27 and mail the Class Notice to all Settlement Class members. *Id.*, at § 9(B). To the extent that any
28 notices are returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s

1 current mailing address. *Id.*, at § 9(F).

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

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

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

17 **V. CONCLUSION**

18 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
19 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
20 Proposed Order submitted concurrently herewith.

21
22 Dated: March 19, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

23
24 By:



25 Paul K. Haines
26 Sean M. Blakely
27 Attorneys for Plaintiffs
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