

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiffs

[Additional Counsel listed on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ERICA MONIZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SERVICE KING, INC. a California
corporation; SERVICE KING PAINT &
BODY, LLC, a Texas limited liability
company; and DOES 2 through 100,

Defendants.

Case No. 18CV335706

*[Assigned to the Hon. Theodore C. Zayner,
Department 19]*

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

Date: May 22, 2024
Time: 1:30 p.m.
Dept.: 19

Complaint Filed: September 25, 2018
Trial Date: None Set

LAW OFFICES OF ERIC A. BOYAJIAN, APC

Eric A. Boyajian (SBN 236335)
Kevin M. Grigorian (SBN (SBN 340448))
450 N. Brand Blvd., Suite 600
Glendale, California 91203
Tel: (818) 839-5969
Fax: (818) 296-9230
eric@loeab.com
kevin@loeab.com

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley, Esq. (SBN 174156)
Kiley L. Grombacher, Esq. (SBN 245960)
Taylor L. Emerson, Esq. (SBN 225303)
2815 Townsgate Road, Suite 130
Westlake Village, California 91361
Tel: (805) 270-7100
Fax: (805) 270-7589
mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com
temerson@bradleygrombacher.com

LAW OFFICE OF DONALD POTTER

Donald Potter (SBN 192735)
dp@donpotterlaw.com
155 North Lake Avenue, Suite 800
Pasadena, California 91101
Telephone: 626.744.1555

Additional Counsel for Plaintiffs

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 22, 2024 at 1:30 p.m., or as soon thereafter as the matter may be heard in Department 19 of the above-entitled Court, located at 191 N. First Street, San Jose, California 95113, Plaintiffs Erica Moniz, Hugo Gutierrez, Hagop Ajemyan, Philip Gabriel, Adolfo Chavez, and Manuel Ramirez (collectively, "Plaintiffs") will, and hereby do, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement;
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:

All current and former non-exempt employees of Defendant Service King Paint & Body, LLC in the State of California who held the job title(s) of Service Advisor, Painter, and/or Body Technician during the Class Period and thereby received various forms of productivity/commission pay. The Class Period means September 25, 2014 through January 31, 2023, except that all persons who participated in the class action settlement in the case of *Roman v. Service King Paint & Body, LLC*, No. CIVDS16002618 ("*Roman*"), the Class Period shall begin on December 9, 2016 and run through January 31, 2023.
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; Eric A. Boyajian from the Law Offices of Eric A. Boyajian APC; Marcus J. Bradley from Bradley/Grombacher, LLP; and Donald Potter from the Law Office of Donald Potter;
5. Appointment of Phoenix Settlement Administrators as the Settlement Administrator;
6. Approval of the proposed Class Notice, entitled "Court Approved Notice of Class Action Settlement And Hearing Date For Final Court Approval", and an order that the Class Notice be disseminated to the Settlement Class; and
7. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award an amount for Class Representative Service Payments to Plaintiffs, settlement administration costs, and attorneys' fees and costs to Class Counsel.

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, Alexandra R. McIntosh, Eric

1 A. Boyajian, Marcus J. Bradley, Donald Potter, and exhibits attached thereto; the declaration of
2 Jodey Lawrence of Phoenix Settlement Administrators and exhibits attached thereto; the
3 declarations of Plaintiffs; the pleadings and other papers filed in this action; and on any further
4 oral or documentary evidence or argument presented at the time of hearing.

5 Dated: April 19, 2024

HAINES LAW GROUP, APC

6
7 

8 Paul K. Haines
9 Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Erica Moniz, Hugo Gutierrez, Hagop Ajemyan, Philip Gabriel, Adolfo Chavez,
4 and Manuel Ramirez (“Plaintiffs”) seek preliminary approval of a class action settlement
5 agreement (“Settlement”) with Defendant Service King Paint & Body, LLC (“Service King” or
6 “Defendant”). The Settlement resolves a class and representative action pending before this Court
7 (the “Action”), in which Plaintiffs allege that Service King (i) failed to pay all minimum wages;
8 (ii) failed to pay all overtime wages; (iii) failed to authorize and permit legally compliant rest
9 periods; (vi) failed to provide meal periods and pay meal period premiums at the correct rate of
10 pay; (v) failed to reimburse employees for all business expenses; and (vi) failed to provide paid
11 sick leave. Plaintiffs further allege that, as a result of these violations, Service King violated
12 California’s unfair competition law, failed to issue accurate itemized wage statements, failed to
13 timely pay all final wages and wages during employment, and is liable for civil penalties under
14 the Labor Code Private Attorneys General Act (“PAGA”).

15 Plaintiffs now respectfully request that this Court preliminarily approve this non-
16 reversionary, common-fund class action Settlement,¹ in which Service King has agreed to pay a
17 Gross Settlement Amount (“GSA”) of \$4,750,000.00 to the following Settlement Class, which is
18 estimated to consist of approximately 1,250 individuals:

19 All current and former non-exempt employees of Defendant Service King Paint
20 & Body, LLC in the State of California who held the job title(s) of Service
21 Advisor, Painter, and/or Body Technician during the Class Period and thereby
22 received various forms of productivity/commission pay. The Class Period
23 means September 25, 2014 through January 31, 2023, except that all persons
24 who participated in the class action settlement in the case of *Roman v. Service*
25 *King Paint & Body, LLC*, No. CIVDS16002618 (“*Roman*”), the Class Period
26 shall begin on December 9, 2016 and run through January 31, 2023.

24 The Settlement was reached after the parties engaged in extensive discovery, and after
25 they attended mediation with Mark S. Rudy, an experienced wage and hour class action mediator.
26 Over the course of both formal discovery and informal discovery, Service King provided

27 _____
28 ¹ The Settlement is attached as Exhibit A to the Haines Declaration and the Class Notice is attached
as Exhibit B to the Haines Declaration.

1 Plaintiffs’ counsel with classwide data, including contact information, timekeeping data, and
2 payroll records for 15% of non-exempt employees who held the position of Service Advisor,
3 Painter, and/or Body Technician; the total number of class members; the total number of
4 workweeks; and other relevant data. Service King also produced its relevant wage and hour
5 policies and compensation plans. Plaintiffs took a full-day deposition of Service Kings’ 30(B)(6)
6 witness on several topics and Service King took the depositions of Plaintiffs Erica Moniz, Hagop
7 Ajemyan, Hugo Gutierrez, and Philip Gabriel. Defendants also took the deposition of numerous
8 putative class members.

9 On November 20, 2020, while the case was pending in federal court, Plaintiffs filed their
10 Motion for Class Certification Under Fed. R. Civ. Proc. 23, which the court denied without
11 prejudice on February 10, 2022. On May 2, 2022, Plaintiffs filed a renewed Motion for Class
12 Certification in an effort to address the Court’s concerns raised in its February 10, 2022 Order.
13 After Plaintiffs’ Renewed Motion was fully briefed but prior to the federal court issuing a ruling,
14 the Parties were able to reach the class-wide Settlement now before this Court.

15 Pursuant to the terms of the Settlement, Settlement Class members are not required to
16 submit a claim to receive a payment (“Individual Class Payment”) from the Settlement. After
17 deductions for proposed claims administrator costs, attorneys’ fees and costs, Plaintiffs’ service
18 payments, and the amount allocated as PAGA civil penalties, the average Individual Class
19 Payment is estimated to be at least \$2,258.53.² For the reasons discussed herein, Plaintiffs
20 respectfully requests that the Court grant preliminary approval of the Settlement.

21 **II. SUMMARY OF THE LITIGATION**

22 **A. FACTUAL AND PROCEDURAL BACKGROUND**

23 Service King is one of the leading auto body collision and repair shops in the country,
24 operating approximately 39 locations in California during the Class Period. *See* Declaration of
25 Paul K. Haines (“Haines Decl.”), ¶ 10. Plaintiffs and Settlement Class members are non-exempt

26
27 ² In addition to the \$2,258.53 average Individual Class Payment from the Net Settlement Amount,
28 Settlement Class members who worked during the time period from December 21, 2017 until
January 31, 2023 (“PAGA Period”) will also receive a portion of the PAGA Amount. Haines
Decl., ¶ 17.

employees who worked for Service King in California during the Class Period. *Id.*

On September 25, 2018, Plaintiff Moniz filed the instant wage and hour class action in Santa Clara Superior Court alleging various causes of action under the California Labor Code against Service King, Inc. Haines Decl., ¶ 11. On October 23, 2018, Plaintiff Moniz filed a First Amended Complaint adding Service King Paint & Body LLC as a named defendant. *Id.* The action was subsequently removed under the Class Action Fairness Act (“CAFA”) to the Northern District of California, United States District Court. *Id.* On May 13, 2019, Plaintiff Moniz filed a Second Amended Class and Representative Action Complaint, which consolidated the claims and the parties from two additional class actions that were pending against Service King in United States District Court for the Central District of California, which were entitled: *Hagop Ajemyan, et al. v. Service King Paint & Body, LLC*, Case No. 19-cv-00644-DSF-KS and *Philip Gabriel v. Service King, Inc.*, Case No. 19-cv-00556-DSF-KS. *Id.*

On September 13, 2019, the Parties participated in a full day mediation with experienced wage and hour class action mediator, Mark S. Rudy but were not able to reach a resolution at the mediation. Haines Decl., ¶ 12.

Following the unsuccessful mediation, Plaintiffs conducted extensive formal discovery, including: reviewing all of Service King’s applicable wage and hour policies and procedures concerning the claims at issue; interviewing dozens of putative class members and obtaining declarations; reviewing and analyzing timekeeping and payroll records for a sampling of the putative class members with the assistance of an expert who holds a Ph.D. in economics. Haines Decl., ¶ 13. Plaintiffs also took a Fed. R. Civ. Proc. 30(b)(6) deposition and Service King deposed Plaintiffs Moniz, Ajemyan, Gutierrez, and Gabriel, as well as numerous putative class members. *Id.*

On November 20, 2020, Plaintiffs filed their Motion for Class Certification. Haines Decl., ¶ 14. On February 10, 2022, the court issued an order denying Plaintiffs’ Motion for Class Certification without prejudice and set a deadline for Plaintiffs to file a renewed motion should they choose to do so. *Id.* On May 2, 2022, Plaintiffs filed their Renewed Motion for Class Certification. *Id.* After Plaintiffs’ Renewed Motion for Class Certification was fully briefed, but

1 before the court issued a ruling, the Parties, with the help of Mr. Rudy, reached a tentative class-
2 wide settlement, subject to Court approval. *Id.* Thereafter, the Parties stipulated to the action being
3 remanded for purposes of seeking settlement approval, given that the sole basis for removal was
4 that there was over five million dollars in controversy under the Class Action Fairness Act
5 (“CAFA”), and the agreed-upon settlement amount being less than the jurisdictional minimum
6 required for subject matter jurisdiction under the CAFA. *Id.* The District Court granted the
7 Parties’ stipulation on March 9, 2023 and remanded the instant action to this Court. *Id.*

8 As a condition of the Parties’ Settlement, Plaintiffs agreed to file the operative Third
9 Amended Class and Representative Action Complaint (“TAC”), which added Plaintiffs Adolfo
10 Chavez and Manuel Ramirez as Class Representatives as well as a cause of action for failure to
11 reimburse for all business expenses and for failure to pay paid sick leave. Haines Decl., ¶ 15. The
12 operative TAC alleges the following causes of action: (1) minimum wage violations, (2) failure
13 to pay all overtime wages, (3) rest period violations, (4) meal period violations, (5) waiting time
14 penalties, (6) wage statement violations, (7) civil penalties under the Private Attorneys General
15 Act (“PAGA”), (8) unfair competition, (9) failure to reimburse for all business expenses, and (10)
16 failure to provide for paid sick leave. *Id.*

17 **B. PLAINTIFFS’ CLAIMS AND SERVICE KING’S DEFENSES**

18 **1. Unpaid Wages**

19 Plaintiffs contend that Service King paid its non-exempt employees pursuant to unlawful
20 piece-rate and/or commission compensation structures that did not separately compensate them
21 or other Service Advisors, Painters, and/or Body Technicians for rest periods and non-productive
22 time as required by California law. Haines Decl., ¶ 18. Specifically, Plaintiffs contend that Service
23 King’s compensation structures violate *Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864, 872 (2013)
24 (“*Bluford*”) and *Vaquero v. Stoneledge*, 9 Cal.App.5th 98, 108-115 (2017) (“*Stoneledge*”), which
25 require piece-rate and commission employees to be separately compensated for rest periods. *Id.*;
26 *Bluford*, 216 Cal.App.4th at 872 (“a piece-rate compensation formula that does not compensate
27 separately for rest periods does not comply with California minimum wage law.”); *Stoneledge*, 9
28 Cal.App.5th at 108-115 (holding that commissioned employees must be separately compensated

1 for rest periods). Plaintiffs also contend that Service King’s pay structures are unlawful as they
2 failed to compensate Plaintiffs and other Service Advisors, Painters, and/or Body Technicians for
3 “non-productive time” worked, including time spent attending team meetings. Haines Decl., ¶ 18;
4 *see Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36, 46, 53 (2013) (“DTLA”).

5 In response, Service King argues that it does not compensate its employees pursuant to
6 piece-rate and/or commission pay plans but rather Plaintiffs and other non-exempt employees
7 were paid an hourly rate with the opportunity to receive a productivity bonus. Haines Decl., ¶ 19.
8 On this basis, Service King argues that it was not required to separately compensate for rest
9 periods or non-productive time. *Id.* Service King further argues that to the extent it was required
10 to pay separately for non-productive time, employees worked little to no “non-productive time”
11 since all of their work time was directly related to their piece-rate/commission-earning activities.
12 *Id.* Service King further denies it failed to properly compensate overtime or to calculate the
13 regular rate of pay for purposes of calculating overtime compensation. *Id.*

14 **2. Rest Period Violations**

15 As stated above, Plaintiffs allege that Service King paid them and other Service Advisors,
16 Painters, and/or Body Technicians pursuant to unlawful piece-rate/commission pay plans that
17 failed to separately pay them for rest periods. Haines Decl., ¶ 20. Due to this failure, Plaintiffs
18 allege that Service King is not only liable for unpaid wages for the time spent taking rest periods
19 but also rest period premiums for each work day that it failed to permit and authorize its
20 employees to take a *paid* rest period. *Id.*; *see also Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864,
21 872 (2013) (“[U]nder the rule of *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 323 (2005), rest
22 periods must be separately compensated in a piece-rate system.”); *see also* Labor Code § 226.7(c).

23 In response, Service King maintains that it does not compensate its employees pursuant
24 to piece-rate and/or commission pay plans but rather Plaintiffs and other non-exempt employees
25 were paid an hourly rate with the opportunity to receive a productivity bonus, and thus were not
26 underpaid for rest breaks. Haines Decl., ¶ 21. Service King further maintains any liability for its
27 alleged failure to separately compensate employees working on a piece-rate/commission basis for
28 rest periods would be limited to back-pay for the rest periods themselves (*i.e.* pay for the 10

minutes of rest) as opposed to the rest period penalties under Labor Code section 226.7. *Id.* Service King further contends that Plaintiffs will be unable to certify this claim because individualized inquires would be required to determine whether an employee actually took each rest period he was legally entitled to and if he did not, his reasons for doing so. *Id.* Finally, Service King denies it failed to authorize and permit employees to take lawful, duty-free rest periods. *Id.*

3. Meal Period Violations

Plaintiffs allege that Service King failed to pay its employees all meal period premiums owed as a result of its failure to pay meal period premiums at the correct regular rate of compensation. Haines Decl., ¶ 22. Specifically, Plaintiffs allege that in instances where Service King paid its employees a meal period premium, Service King incorrectly paid the meal period premium at the employees' base hourly rate of pay rather than the employees' "regular rates of compensation", which were higher due to their receipt of commissions and non-discretionary bonuses (hereinafter "incentive pay"). *See* Labor Code Section 226.7(c) ("if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law..., the employer shall pay the employee one additional hour of pay at the employee's *regular rate of compensation* for each workday that the meal or rest or recovery period is not provided.") (Italics added.); Haines Decl., ¶ 22.

In response, Service King argues it has always maintained legally-compliant meal period policies and communicated those policies to its employees. Haines Decl., ¶ 23. Service King further argues that under *Brinker*, it was only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. *Id.*; *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Moreover, Service King argues that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 23. Service King further contends that in instances where employees were not able to take a compliant meal period, its payroll system paid the employee a meal period premium and that it is not required to incorporate bonuses in its calculation of the regular rate of pay. *Id.* Finally, Service King contends that Plaintiffs' meal period claim is not manageable on a class-wide basis because individual inquiries would be required to assess whether employees were even entitled

1 to a meal period premium in the first place, which would entail determining whether employees
2 received non-compliant meal periods or missed second meal periods, how many meal periods
3 were non-compliant or missed, and the reasons why a particular individual recorded a non-
4 compliant meal period or missed a meal period on a particular shift. *Id.* Service King argues that
5 this would need to be done first before even reaching the question on whether the meal period
6 premium were paid at the correct rate. *Id.*

7 **4. Unreimbursed Business Expenses**

8 Plaintiffs contend that Service King required Service Advisors, Painters, and/or Body
9 Technicians Painters and/or Body Technicians to use their personal tools, including cellphones,
10 to complete repairs and that despite this requirement, Service King failed to reimburse its
11 employees for these expenses incurred in violation of Labor Code §§ 2802 and 2804 (“An
12 employer shall indemnify his or her employer for all necessary expenditures or losses incurred by
13 the employee in direct consequences of the discharge of his or her duties.”). Haines Decl., ¶ 24.

14 In response, Service King contends that it properly reimbursed employees for all
15 necessary business expenditures throughout the Class Period, including use of their personal
16 tools. Haines Decl. ¶ 25. Service King further contends that it was not necessary for employees
17 to use their own tools for business purposes as Service King provided employees with all
18 necessary tools to complete their job duties. *Id.* Accordingly, Service King argues any tool
19 expenses would not have been reasonable or necessary. *See Gattuso v. Harte-Hanks Shoppers,*
20 *Inc.*, 42 Cal.4th 554, 568 (2007) (“In calculating the reimbursement amount due under section
21 2802, the employer may consider not only the actual expenses that the employee incurred, but
22 also whether each of those expenses was ‘necessary,’ which in turn depends on the reasonableness
23 of the employee's choices”); *Grissom v. Vons Cos., Inc.*, 1 Cal.App.4th 52, 58 (1991)
24 (“ascertaining what was a necessary expenditure will require an inquiry into what was reasonable
25 under the circumstances.”); Haines Decl., ¶ 25. Service King further contends that Service
26 Advisors, Painters and/or Body Technicians often received more than double the minimum wage,
27 which provides a further defense, as those earning such wages may provide and maintain hand
28 tools and equipment customarily required by the trade or craft. *Id.* Service King further maintains

1 that any alleged failure to reimburse business expenses were not experienced on a class-wide
2 basis, and that every reimbursement request would have to be reviewed on a case-by-case basis
3 (as to whether, among other things, the expense was “reasonable”), making this claim unsuitable
4 for certification. *Id.*

5 **5. Sick Pay Claims**

6 Plaintiffs contend that Service King failed to properly provide and/or compensate Service
7 Advisors, Painters, and/or Body Technicians with paid sick leave, including failing to provide
8 paid sick leave at the correct rate of pay. Haines Decl., ¶ 26. In response, Service King contends
9 that it properly compensated employees for paid sick leave. *Id.* Service King further maintains
10 that any alleged failure to provide paid sick leave is unsuitable for certification as there is no
11 private right of action for a failure to pay paid sick leave. *Id.* Instead, Service King argues that
12 damages for any alleged failure to pay sick leave is limited to waiting time penalties and/or civil
13 penalties under PAGA. *Id.*; *Wood v. Kaiser Foundation Hospitals*, 88 Cal.App.5th 742, 758
14 (2023) (finding that there is no private right of action to bring a sick pay claim under Labor Code
15 section 248.5(e)).

16 **6. Claims Under Lab. Code §§ 203, 226, and the PAGA**

17 As a result of Service King’s alleged failure to pay all wages owed, including sick leave
18 at the correct rate, as well as meal and rest period premiums Plaintiffs assert Service King failed
19 to comply with its final payment, timely payment, and wage statement obligations, in violation
20 of Labor Code §§ 203, 204, 226, and 226.2. Haines Decl., ¶¶ 27-28. Finally, Plaintiffs seek PAGA
21 civil penalties based on the above claims. *Id.*, ¶ 29.

22 Service King argues Plaintiffs’ derivative claims fail for the same reasons as their
23 underlying claims. *See* Haines Decl., ¶¶ 27-29. Service King further asserts it has strong, good-
24 faith defenses to Plaintiffs’ underlying claims, precluding waiting time penalties, which are only
25 available for the “willful” failure to pay wages. *See* Haines Decl., ¶¶ 27-28; *see also* 8 Cal. Code
26 Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting
27 time penalties”); *Naranjo v. Spectrum Security Services, Inc.* (“*Naranjo IP*”), 88 Cal.App.5th 937,
28 948 (2023) (holding that defenses presented in “good faith” precluded waiting time penalties);

1 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded
2 imposing waiting time penalties). Service King also argues any alleged wage statement violations
3 could not be shown to be “knowing and intentional,” particularly given its good-faith defenses;
4 that Plaintiffs cannot show they or other employees “suffer[ed] injury” due to alleged violations,
5 as required by Lab. Code § 226(e); and that wage statements always accurately reflected amounts
6 *paid* to employees. *See* Haines Decl., ¶ 27; *Naranjo II*, *supra*, 88 Cal.App.5th at 951 (holding that
7 “a good faith dispute over whether an employer is in compliance with section 226 precludes a
8 finding of a knowing and intentional violation”); *Maldonado v. Epsilon Plastics, Inc.*, 22
9 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to *document* the *paid wages* to
10 ensure the employee is fully informed regarding the calculation of those wages.”).

11 Finally, Service King contends the PAGA claim fails because the underlying claims fail.
12 Haines Decl., ¶ 29; *see, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011)
13 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
14 Service King further maintains that given its good-faith defenses, the Court would substantially
15 reduce PAGA penalties even if Plaintiffs prevailed on their underlying claims. Haines Decl., ¶
16 29; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties); *Thurman v.*
17 *Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA
18 penalties because “the evidence showed...defendants took their obligations...seriously and
19 attempted to comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx),
20 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because
21 employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529
22 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith
23 attempts” to comply with the law).

24 **C. DISCOVERY AND MEDIATION**

25 In preparation for mediation, the parties engaged in extensive formal and informal
26 discovery, including Service King’s production of its relevant wage and hour policies;
27 timekeeping records, payroll records, contact information, and other records for a significant
28 sampling of the putative class, and other documents and information. Haines Decl., ¶ 12.

1 Plaintiffs' counsel, with the help of their retained expert, conducted an analysis of this data and
2 created a damages model based on that analysis. *Id.* This discovery allowed the parties to assess
3 the merits of Plaintiffs' claims, the potential value of those claims, and Service King's defenses.
4 *Id.*

5 On September 13, 2019, the parties attended a full-day mediation with Mark S. Rudy,
6 Esq., a preeminent wage and hour class action mediator. Haines Decl., ¶ 12. The parties did not
7 reach resolution at mediation, but they continued their settlement discussions with Mr. Rudy's
8 assistance. *Id.* In addition, after mediation the parties engaged in significant formal discovery and
9 motion practice, with both sides propounding and responding to formal written discovery,
10 meeting and conferring over the other's responses, and providing supplemental discovery
11 responses and documents. Haines Decl., ¶ 13. Service King also took Plaintiffs Moniz, Ajemyan,
12 Gutierrez, and Gabriel's depositions, as well as the depositions of Plaintiffs' declarants who
13 submitted declarations in support of Plaintiffs' Motion for Class Certification. *Id.* Plaintiffs
14 deposed Service King's corporate witnesses on dozens of topics. *Id.* Service King also produced
15 contact information for putative class members who did not object to their contact information
16 being provided to Plaintiffs' counsel, as well as timekeeping and payroll information for 15% of
17 putative class members. *Id.* In total, the parties produced over 5,000 pages of documents. *Id.*
18 Plaintiffs also filed a Motion for Class Certification as well as a Renewed Motion for Class
19 Certification. *Id.* at ¶ 14.

20 After engaging in this extensive discovery and after Plaintiffs' Renewed Motion for Class
21 Certification was fully briefed, and after further negotiations through Mr. Rudy, the parties
22 eventually reached a classwide settlement, which has been memorialized in the Settlement now
23 before this Court. Haines Decl., ¶ 14.

24 **III. THE PROPOSED SETTLEMENT**

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

26 Under the Settlement, Service King will pay a non-reversionary Gross Settlement Amount
27 ("GSA") of \$4,750,000.00, with no claims process required for Settlement Class members to
28 receive payment. *See* Settlement, ¶¶ 1.25, 3.1. The monetary terms of the Settlement are

summarized below:

• Gross Settlement Amount (“GSA”):	\$4,750,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$1,583,333.33
• Minus Court-approved verified costs (up to):	\$150,000.00
• Minus Court-approved Service Payments:	\$75,000.00
• Minus Amount Set Aside as PAGA penalties:	\$100,000.00
• Minus estimated settlement administration costs:	\$18,500.00
Net Settlement Amount (“NSA”):	\$2,823,166.67
• PLUS 25% “PAGA Amount” to Settlement Class:	\$25,000.00
Total Amount Paid to Settlement Class members:	\$2,848,166.67

1. The Settlement Provides for Reasonable Monetary Payments

After deducting administration costs, Class Representative Service Payments to Plaintiffs, the amount set aside as PAGA civil penalties, and requested attorneys’ fees and costs, Service King will pay a NSA of at least \$2,823,166.67 to the Settlement Class, which according to Service King consists of approximately 1,250 Settlement Class members. Haines Decl., ¶ 17; *see also* Settlement, ¶¶ 3.1-3.2, 4.1. Thus, the average Individual Settlement Payment from the NSA is estimated to be approximately \$2,258.53. Haines Decl., ¶ 17.. Further, as of October 11, 2022, Service King estimates that there were approximately 1,001 employees who fall within the PAGA Period. *Id.* Therefore, the average PAGA payment to each Aggrieved Employee is estimated to be approximately \$24.98. *Id.*

Individual Class Payments will be calculated as follows: (i) 15% of the NSA shall be designated as the “Waiting Time Penalty Fund” and shall be distributed in equal, pro-rata shares to each Settlement Class Member who separated their employment with Service King at any time between September 25, 2015 through January 31, 2023; (ii) 10% of the NSA shall be designated as the “Wage Statement Penalty Fund” and each Settlement Class Member who was employed by Service King at any time from December 21, 2017 through January 31, 2023 (“Wage Statement Period”), shall receive a portion of the Wage Statement Penalty Fund proportionate to the number of workweeks that he or she worked during the Wage Statement Period; and (iii) the remainder (75%) of the NSA will be distributed to each Settlement Class Member based on the proportionate number of workweeks worked during the Class Period. *See* Settlement, ¶ 3.2.4. Finally, in addition to the NSA, \$25,000 of the PAGA Penalties will be distributed to all Settlement Class members (regardless whether they opt out) who worked for Service King at any

time from December 21, 2017 through January 31, 2023 (“PAGA Period”), based on the number of workweeks worked for Service King during the PAGA Period. *Id.* at ¶ 3.2.5.

Settlement Class Members will have 60 days from the Notice mailing to object, request to opt-out, or submit disputes, thereby providing ample time to review the Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 7.5.1, 7.6, 7.7.2. Participating Class Members will be bound by the Settlement, and will release all claims that were alleged, or reasonably could have been alleged, based on the Class Period factual allegations and primary rights stated in the Operative Complaint and any amendments thereto, and ascertained in the course of the Actions, including, *e.g.*, any and all claims for 1) unpaid wages, 2) unpaid overtime and double time, 3) failure to provide meal periods and properly calculate the rate of compensation on premiums paid, 4) failure to provide rest periods and properly calculate the rate of compensation on premiums paid, 5) failure to provide recovery periods and properly calculate the rate of compensation on premiums paid, 6) failure to pay wages during employment and upon termination, 7) failure to provide accurate itemized wage statements, 8) failure to reimburse expenses, 9) failure to provide or properly compensate paid sick leave, and 10) violations of California’s unfair competition law (Business and Profession Code 17200, *et seq.*) (“Release By Participating Class Members”). *See* Settlement, ¶ 5.2. In addition, all Settlement Class members (whether or not they opt out) who worked for Service King during the PAGA Period will release all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period factual allegations and primary rights stated in the Operative Complaint and any amendments thereto, the PAGA Notices, and ascertained in the course of the Actions, including, *e.g.*, any and all claims for 1) unpaid wages, 2) unpaid overtime and double time, 3) failure to provide meal periods and properly calculate the rate of compensation on premiums paid, 4) failure to provide rest periods and properly calculate the rate of compensation on premiums paid, 5) failure to provide recovery periods and properly calculate the rate of compensation on premiums paid, 6) failure to pay wages during employment and upon termination, 7) failure to provide accurate itemized wage statements, 8) failure to reimburse expenses, 9) failure to provide or properly compensate paid sick leave, and 10) failure to maintain accurate records. (“Release by Aggrieved Employees”).

1 *Id.*, ¶ 5.3. Plaintiffs have also agreed to a general release of claims, including a waiver of Cal.
2 Civil Code § 1542. *Id.*, ¶¶ 5.1, 5.1.1.

3 Individual Settlement Payments will be valid for 180 days after issuance. *See* Settlement,
4 ¶ 4.4.1. After 180 days, funds from uncashed checks will escheat to the California Controller's
5 Unclaimed Property Fund, in the name of the Participating Class Member to whom the check was
6 issued, until such time that they claim their property. *Id.* at ¶ 4.4.3.

7 **2. Attorneys' Fees and Costs, Class Representative Service Payments, and**
8 **PAGA Payment**

9 At final approval, Plaintiffs will apply for Class Representative Service Payments in the
10 amount of \$15,000 each to Plaintiffs Moniz, Ajemyan, Gutierrez, and Gabriel, and \$7,500 each
11 to Plaintiffs Chavez and Ramirez. *See* Settlement, ¶ 3.2.1. "[I]ncentive awards are fairly typical
12 in class action cases...and are intended to compensate class representatives for work done on
13 behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the
14 action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will
15 be fully briefed at final approval, Plaintiffs' requested service payments are in recognition of the
16 time and effort they expended on behalf of the Settlement Class, including providing factual
17 information and documents to counsel, identifying potential witnesses, attending meetings with
18 counsel to discuss the claims and theories at issue in the litigation, responding to written
19 discovery, preparing for and attending their depositions, and otherwise actively participating in
20 the prosecution of this case. Haines Decl., ¶ 32. Plaintiffs respectfully submit that these requested
21 service payments are well within the range of permissible approval. *See, e.g., Bell v. Farmers Ins.*
22 *Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs
23 for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294
24 (N.D. Cal. 1995) (approving \$50,000 service payment).

25 The parties have also designated \$100,000 of the GSA as PAGA penalties, of which
26 \$75,000 (75%) will be paid to the LWDA (*see* Settlement, ¶ 3.2.5.), consistent with the
27 requirements of Labor Code § 2699(i). Plaintiffs submit this allocation to the LWDA is
28 appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells*

1 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving
2 PAGA payment of \$7,500 to LWDA from \$6.9 million settlement).

3 At final approval, Plaintiffs' counsel will request attorneys' fees of one-third of the GSA
4 (estimated at \$1,583,333.33), and up to \$150,000 in litigation costs. *See* Settlement, ¶ 3.2.2.
5 Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, time-
6 consuming, and expensive litigation on a contingent basis. Counsel have incurred substantial
7 attorneys' fees conducting pre-filing investigation; analyzing Plaintiffs' claims; conducting legal
8 research; propounding and responding to written discovery, and meeting and conferring and
9 reviewing supplemental responses and document productions; preparing for and attending
10 depositions; engaging in Motion practice, including a Motion for Class Certification and a
11 Renewed Motion for Class Certification; analyzing timekeeping and other data to create a
12 comprehensive damages model at multiple points throughout the litigation; interviewing putative
13 class members; preparing for and attending mediation; negotiating and preparing the Settlement;
14 preparing this Motion; and otherwise prosecuting this case. Haines Decl., ¶ 31. Further, Counsel
15 will incur significant future fees in overseeing the Notice process, preparing the Final Approval
16 Motion and supporting documents, and appearing at the Final Approval Hearing. *Id.*

17 It is appropriate to award attorneys' fees as a percentage of the "common fund" created
18 by the settlement. *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding "the percentage
19 of fund method survives in California class action cases"). Counsel's request for fees of one-third
20 of the GSA (the same percentage approved in *Laffitte*) is well within the range of reasonableness
21 and is typical for common fund settlements. *See Newberg on Class Actions* § 14.6 (4th Ed. 2013)
22 (historically, courts have awarded percentage fees in the range of 20% to 50%). As will be fully
23 briefed at final approval, counsel submit their request for fees is reasonable in light of the
24 substantial risks and significant work undertaken, the results obtained, and the efficiency with
25 which counsel conducted the litigation.

26 **IV. ARGUMENT**

27 **A. PRELIMINARY APPROVAL IS WARRANTED**

28 California Rule of Court 3.769 conditions class action settlements on court approval,

1 which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
2 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
3 “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*,
4 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed
5 settlement is fundamentally fair, adequate, and reasonable”). The Court’s role is to ensure the
6 settlement agreement taken as a whole is fair and within the range of reasonableness. *Id.* at 1027.
7 There is a presumption of fairness when a settlement is negotiated at arm’s length by counsel,
8 with the assistance of a neutral mediator. *See, e.g., Kullar v. Foot Locker Retail, Inc.*, 168
9 Cal.App.4th 116, 130 (2008).

10 **1. Standard for Preliminary Approval**

11 To make a fairness determination, the Court should consider several factors, including:
12 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
13 litigation, the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
15 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
16 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
17 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
18 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
19 and reasonable in light of the overall balance of factors in this case.

20 **a. The Strength of Plaintiffs’ Case**

21 Although they maintain their claims are meritorious, Plaintiffs acknowledge there were
22 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
23 merits. As described in section II.B., *supra*, Service King presented multiple defenses to
24 Plaintiffs’ claims, both on the merits and with respect to class certification. While Plaintiffs were
25 prepared to litigate their claims through class certification and ultimately trial, success was far
26 from certain.

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

28 Although the parties engaged in significant discovery before reaching the settlement, the

1 parties had not yet completed formal written and deposition discovery, which would have required
2 the expenditure of substantial time and resources by all parties. Haines Decl., ¶ 34. The Settlement
3 also avoids the attorneys' fees and costs associated with moving for summary judgment, and
4 ultimately, trial, as well as the risks and the accompanying burden of continued litigation on the
5 Court. *Id.* Thus, this factor supports preliminary approval.

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

7 Plaintiffs had not yet received a ruling on their Renewed Motion for Class Certification,
8 and as such, the extent to which Plaintiffs' proposed classes were certifiable is somewhat
9 speculative. Absent settlement, there was a risk there would not be a certified class at trial, or if
10 there were, that it would consist of a significantly smaller group of employees than the proposed
11 Settlement Class, and the expected recovery would be significantly reduced. Thus, this factor
12 supports preliminary approval.

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

14 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
15 for disputed claims. With the assistance of a retained economist with a Ph.D., Plaintiffs conducted
16 an analysis of potential damages due to Service King's allegedly unlawful policies and practices.
17 Plaintiffs' analyses of realistic expected recoveries for each theory of liability are set forth below:

18 **Unpaid Wages for Non-Productive Time: \$203,791**

19 Plaintiffs contend that Service King failed to pay its Service Advisors, Painters, and Body
20 Technicians for "non-productive time," including time spent attending meetings when they were
21 paid solely on a piece-rate and/or commission basis. Haines Decl., ¶ 18. Based on witness
22 testimony, Plaintiffs estimated that Settlement Class members worked on average 30-minutes per
23 week of non-productive time. *Id.* Plaintiffs' expert further calculated that Settlement Class
24 members were paid on a piece-rate and/or commission basis approximately 70.3% of the time
25 and that the average regular rate of pay for Service Advisors, Painters, and Body Technicians is
26 approximately \$36.05. *Id.* Accordingly, Plaintiffs calculated Service King's liability for failure to
27 pay non-productive time as \$2,037,906 (160,825 workweeks * .703 * .5 * \$36.05 average rate of
28 pay). *Id.*

1 However, as stated above, Service King argues that its compensation system is not a piece-
2 rate and/or commission pay plan and therefore, it did not need to compensate its employees
3 separately for non-productive time. Haines Decl., ¶ 19. Service King further argues that even
4 assuming its compensation plan was a piece-rate/commission pay plan, all work performed by
5 employees was “directly related” to piece-rate and/or commission-based activities and need not
6 be separately compensated. *Id.* Service King also contends that this claim is not amenable to class
7 treatment because the majority of supposed non-productive activities are not logged or recorded
8 in any way and production meetings varied by department. *Id.* On this basis, Service King argues
9 that Plaintiffs would need to conduct an unmanageable series of mini-trials to determine whether
10 a given activity was “directly related” to the piece-rate work, and if not, how much time was spent
11 on each activity for each employee and how often. *Id.* In light of these defenses, Plaintiffs
12 discounted Service King’s potential liability by 75% for a risk of non-certification, and by an
13 additional 60% for risk of being unsuccessful on the merits, for a projected total of \$203,791. *Id.*,
14 ¶ 19.

15 Rest Period Violations: \$4,075,812

16 As a result of Service King’s unlawful pay plans, which Plaintiffs contend failed to pay
17 them and other Service Advisors, Painters, and/or Body Technicians separately and hourly for
18 rest periods, Plaintiffs allege that Service King owes each employee a rest period premium for
19 each shift that it failed to permit and authorize a *paid* rest period. Haines Decl., ¶ 20. Based on
20 Plaintiffs expert’s review of Service King’s payroll records, Service King paid Plaintiffs and other
21 Service Advisors, Painters, and/or Body Technicians on a piece-rate and/or commission basis on
22 approximately 70.3% of workweeks. *Id.* Plaintiffs’ expert further determined that employees on
23 average worked over 3.5 hours on at least 4 shifts per week. *Id.* Accordingly, Plaintiffs calculate
24 Service King’s liability for its alleged failure to pay separately and hourly for rest periods at
25 approximately \$16,303,247 (160,825 workweeks * .703 * \$36.05 average rate of pay * 4 shifts).
26 *Id.*

27 However, Service King maintains that its pay plans are lawful and that it is not required
28 to separately and hourly compensate its employees for rest periods, and that, even if it were, it

1 would only liable for the unpaid rest period minutes themselves, since it is undisputed that it
2 authorized and permitted employees to take rest periods at their discretion. Haines Decl., ¶ 21.
3 On this basis, Service King argues that Plaintiffs’ estimated liability for this claim should be
4 reduced by at least two-thirds. *Id.* Service King also argues that individualized inquiries would be
5 necessary to determine whether certain rest periods were actually taken by employees on each
6 shift, posing a serious obstacle to certification. *Id.* Plaintiffs accordingly discounted Service
7 King’s potential liability by 50% for a risk of non-certification, and by an additional 50% for the
8 risk that Service King could prevail on the merits outright, or at least succeed in establishing lower
9 damages, for a projected total of approximately \$4,075,812 *Id.*

10 **Meal Period Violations: \$271,406**

11 Plaintiffs allege that Service King provided missed, late and/or short first meal periods to
12 its non-exempt employees and failed to provide second meal periods on shifts over 10.0 hours.
13 Haines Decl., ¶ 22. Plaintiffs further allege that despite Service King’s failure to provide full, 30-
14 minute first meal periods commencing before the end of the fifth hour of work as well as second
15 meal periods to employees who worked shifts in excess of 10.0 hours, during a portion of the
16 Class Period, Service King only paid employees a meal period premium at the employees’ base
17 rate of pay, rather than their regular rate of pay, which was much higher due to the employees
18 regularly earning productivity pay. *Id.* Based on Plaintiffs’ expert’s review and extrapolation of
19 employee timekeeping data, Plaintiffs estimated Service King’s exposure for failure to pay meal
20 periods at the regular rate of pay to be approximately \$822,443. *Id.*

21 But as discussed *supra*, Service King presented several defenses to this claim, including
22 that it has always “provided” lawful meal periods and communicated to employees their right to
23 take lawful meal periods; that under *Brinker* it need not “ensure” meal periods are taken; that any
24 missed, short, or late meal periods reflected in the time records are the result of employee choice
25 rather than any Service King policy or practice; that employees voluntarily choose to waive their
26 second meal periods; and that this claim is not amenable to class certification, given the individual
27 inquiries needed to assess whether each employee did not take a compliant meal period on each
28 shift, why they didn’t, and (for second meal periods) whether the second meal period was waived.

1 Haines Decl., ¶ 23. Based on these defenses, Plaintiffs discounted the maximum amount by 45%
2 for risk of non-certification, and by an additional 40% for risk of losing on the merits or failure
3 to recover the full amount sought, to arrive at a realistic exposure of approximately \$271,406. *Id.*

4 Unreimbursed Business Expenses: \$52,500

5 Plaintiffs allege Service King failed to adequately reimburse its Service Advisors,
6 Painters, and/or Body Technicians for use of their personal cell phones/data and personal tools.
7 Haines Decl., ¶ 24. Plaintiffs estimate that each Painter and/or Body Technician was required to
8 purchase at least one tool during their employment with Service King and that on average these
9 tools cost approximately \$1,500. *Id.* Based on the data provided by Service King, Plaintiffs further
10 calculate that there are approximately 875 Body Technicians and/or Painters employed during the
11 Class Period, who they contend require such tools. *Id.* Therefore, Plaintiffs calculate Service
12 King's maximum exposure for this claim at \$1,312,500 (\$1,500 * 875 employees). *Id.* However,
13 Service King contends that it properly reimbursed employees for all necessary business
14 expenditures, including cell phones/data and tool expenses. *Id.* Service King further contends that
15 Plaintiffs' claim for unreimbursed expenses is unfounded because Service King provides
16 employees with all necessary tools to complete their work, and does not require the use of
17 personal cell phones for work. *Id.* Service King also argues Painters and/or Body Technicians
18 often received more than double the minimum wage, which provides a complete defense to this
19 claim. *Id.* Service King also argues that this claim is not suitable for class treatment, as it would
20 require individualized determinations as to the reasonableness of the expense incurred by the
21 employee, whether each employee was properly reimbursed for his or her expenses, and if they
22 were under-reimbursed, by how much. *Id.* Therefore, in light of these arguments, Plaintiffs
23 discounted this maximum amount by 80% for risk of non-certification and an additional 80% for
24 a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive
25 at an estimated realistic exposure of approximately \$52,500. *Id.*

26 Wage Statement Violations: \$152,480

27 Plaintiffs' analysis of data from Service King reflected that there were approximately
28 76,240 unique pay periods worked within the one-year liability window under Labor Code § 226

1 and 226.2 where Service King’s employees were paid by piece-rate and/or commission. Haines
2 Decl., ¶ 27. In calculating Service King’s exposure, Plaintiffs assumed they could recover the
3 “initial” wage statement penalty of \$50 for each violation, for a total of \$3,812,000 in potential
4 penalties. *Id.*; *see also* Lab. Code § 226(e) (providing \$50 penalty for “initial” violations); *Amaral*
5 *v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies
6 until employer has been notified it violated the Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58
7 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2014) (citing *Amaral* and applying “initial” \$50 penalty to
8 all pay periods in calculating amount-in-controversy for wage statement claim). However, given
9 Service King’s arguments that any alleged violations were not “knowing and intentional”; no
10 violations occurred; that Settlement Class members suffered no “injury”; that Plaintiffs would not
11 be able to show a penalty in every pay period; as well as the risks associated with Plaintiffs’
12 underlying claims as to both certification and the merits, Plaintiffs discounted the maximum
13 exposure by 80% for risk of non-certification, and by an additional 80% for risk of being
14 unsuccessful on the merits or failure to recover the full amount sought, for an estimated realistic
15 exposure of approximately \$152,480. *Id.*

16 **Waiting Time Penalties: \$321,508**

17 Based on data provided by Service King, there are approximately 929 Settlement Class
18 members who have separated their employment with Service King since September 25, 2015, and
19 are therefore eligible for waiting time penalties. Haines Decl., ¶ 28. Using an estimated average
20 waiting time penalty of \$8,652 (\$36.05/hr. * 8 hours * 30 days), Plaintiffs estimated Service
21 King’s maximum potential waiting time penalty exposure as \$8,037,708 (929 former employees
22 * \$8,652 average waiting time penalty). *Id.* As noted above, however, Service King asserts it has
23 strong, good-faith defenses to Plaintiffs’ underlying claims and therefore, pursuant to the “good-
24 faith” test adopted by the Court of Appeals in *Naranjo II*, Plaintiffs are unlikely to be able to
25 prove that the any failure to pay all wages at the time of termination was willful. *Id.*; *Naranjo II*,
26 88 Cal.App.5th at 948. Service King further argues, not every former employee suffered every
27 single alleged wrong, and therefore if Plaintiffs only certified or prevailed on some but not all of
28 their claims, the size of any potential waiting time claim would be reduced. Haines Decl., ¶ 28.

1 Based on these defenses, Plaintiffs discounted Service King’s maximum exposure by 80% for
2 risk of non-certification and by an additional 80% for risk of being unsuccessful on the merits or
3 failure to recover the full amount sought, to arrive at an estimated realistic exposure of
4 approximately \$321,508. *Id.*

5 **PAGA Civil Penalties: \$381,200**

6 Plaintiffs estimated a maximum PAGA exposure of \$7,624,000, based on approximately
7 76,240 pay periods during the PAGA Period at the \$100 “initial” violation rate under Lab. Code
8 § 2699(f). Haines Decl., ¶ 29; *Amaral, supra*, 163 Cal.App.4th at 1209. However, these penalties
9 derive from Plaintiffs’ underlying claims, each of which Service King vigorously disputes. Haines
10 Decl., ¶ 29. Service King further argues Plaintiffs would not be able to show a violation in *every*
11 pay period, and thus their damages estimate is inflated. *Id.* The PAGA also grants courts discretion
12 to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Service King argues the Court
13 would reduce penalties significantly given its good-faith defenses. *Id.* Thus, Plaintiffs discounted
14 the maximum figure by 75% for risk of losing on the merits and/or failure to recover a penalty in
15 each and every pay period, and by an additional 80% for risk of the Court reducing penalties, to
16 arrive at an estimated exposure of approximately \$381,200. *Id.*; *see also Thurman*, 203
17 Cal.App.4th at 1135-36 (affirming reduction of PAGA civil penalties); *Fleming*, 2011 WL
18 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529
19 (affirming PAGA civil penalty of just \$5 per pay period).

20 Using these estimated figures, Plaintiffs predicted the realistic total recovery for the
21 Settlement Class would be approximately \$5,458,697. Haines Decl., ¶ 30. Thus, the proposed
22 settlement of \$4,750,000 represents approximately 87% of Plaintiffs’ reasonably forecasted
23 classwide recovery. *Id.* Preliminary approval is therefore appropriate as the Settlement will
24 provide significant monetary relief to the Settlement Class.

25 **e. Allocation for Tax Purposes Is Fair**

26 The Parties determined that the proposed allocation of 80% for penalties and interest, and
27 20% for wages is fair based on Plaintiffs’ evaluation of Service King’s exposure for these claims.
28 *See Settlement*, ¶¶ 3.2.4.1-3.2.4.2. As outlined above, Plaintiffs calculated their maximum

1 recovery for unpaid wages on a class basis at a total of \$2,037,906 for Service King’s failure to
2 pay for non-productive time. Haines Decl., ¶ 18. Plaintiffs further predicted their maximum
3 recovery on a class basis for meal and rest period penalties at \$17,125,690 and calculated the
4 remaining penalty and non-wage claims (ie., expense reimbursement, wage statement, waiting
5 time penalties, and PAGA) at a total of \$20,786,208 in exposure. Haines Decl., ¶¶ 18-29.
6 Therefore, the combined total of the predicted unpaid wages and meal and rest period penalties
7 comprised approximately 48% of the total maximum recovery. However, at the time that the
8 settlement was being negotiated, there was still ambiguity with respect to the treatment of meal
9 and rest period penalties as penalties or wages (*compare Murphy v. Kenneth Cole Prods., Inc.*, 40
10 Cal.4th 1094, 1114 (2007) (holding that meal and rest period premium payments are “wages”)
11 *with Kirby v. Immoos*, 53 Cal.4th 1244, 1251-1260 (2012) (holding that meal and rest premium
12 payments are not “wages” for purposes of determining the applicability of the one-way fee
13 shifting provision of Labor Code § 218.5)) and if the Supreme Court in *Naranjo v. Spectrum*
14 *Security Services, Inc.*, 13 Cal. 5th 93 (2022) held that meal and rest period premiums were not
15 wages, the maximum recovery for unpaid wages would only be 5% of the total maximum
16 recovery. Plaintiffs therefore believe that the 20% allocation to “wages” for tax purposes is
17 appropriate, and the 80% allocation to interest and penalties is justified given that the remainder
18 is a combination of interest and penalties. This allocation also comports with Plaintiffs’ counsel’s
19 experience in wage and hour class actions as a standard allocation of penalties, interest, and wages
20 in the contest of a common-fund settlement, where there has been no determination on the merits
as to any particular claim.

21 **f. The Experience and Views of Counsel**

22 “Parties represented by competent counsel are better positioned than courts to produce a
23 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter.*
24 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
25 litigating wage and hour class actions from both the plaintiff and defense side, and have been
26 appointed class counsel in numerous cases alleging similar claims. *See* Haines Decl., ¶¶ 3-8;
27 Declaration of Sean M. Blakely, ¶¶ 2-6; Declaration of Alexandra R. McIntosh, ¶¶ 2-6;
28 Declaration of Marcus J. Bradley, ¶¶ 8-13; Declaration of Eric Boyajian, ¶¶ 2-8; Declaration of

Donald Potter, ¶¶ 6-17. Class Counsel, with the help of their expert, conducted an in-depth review of Service King’s policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiffs’ claims. The Settlement was also reached with the assistance of Mr. Rudy, an experienced wage and hour class action mediator. Haines Decl., ¶¶ 12, 14. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

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

a. The Settlement Is Within the Range of Possible Approval

As noted, the Settlement reflects about 87% of the realistic estimated recovery on Plaintiffs’ claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiffs submit the Settlement is within the range of possible approval.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, extensive discovery and motion practice, arm’s-length negotiations, and a full-day mediation with an experienced mediator. Thus, the Settlement is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiffs carefully vetted the claims at issue, and conducted a detailed analysis of the relevant data and information. Haines Decl., ¶¶ 12-14, 18-29. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is warranted because there are no obvious deficiencies. The Settlement provides tangible monetary relief to the Settlement Class, and the amounts proposed for attorneys’ fees, costs, Plaintiffs’ service payments, settlement administration fees, and PAGA penalties 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.

1 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

2 The proposed Settlement Class satisfies the criteria for certification of a settlement class
3 under California law because: 1) the Settlement Class is ascertainable and numerous; 2) common
4 questions predominate; 3) Plaintiffs' claims are typical of the Settlement Class; and 4) Plaintiffs
5 and counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

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

7 A class is "ascertainable" where members "may be readily identified without unreason-
8 able expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189
9 Cal.App.4th 905, 919 (2010). The Settlement Class includes all non-exempt employees who
10 worked for Service King who held the job title(s) of Service Advisor, Painter, and/or Body
11 Technician in California during the Class Period. Thus, they can be readily identified from Service
12 King's records. Service King represents there are approximately 1,250 Settlement Class
13 members, rendering it impracticable to bring them all before the Court. Haines Decl., ¶ 17.
14 Numerosity is thus satisfied.

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

16 The focus on certification is on what types of questions, "common or individual," are
17 likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004).
18 Plaintiffs' claims are predicated primarily on allegedly unlawful pay plans and allegedly unlawful
19 meal and rest period practices. Such claims are commonly held proper for class certification. *See*,
20 *e.g., Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying
21 meal and rest period claims).

22 **3. The Named Plaintiffs' Claims Are Typical**

23 The typicality requirement is satisfied where class representatives have claims that are
24 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191
25 Cal.App.3d 1341, 1347 (1987). Here, Plaintiffs' claims are typical of those held by Settlement
26 Class members. Plaintiffs were employed by Service King as non-exempt Service Advisors,
27 Painters, and/or Body Technicians in California during the Class Period, and they were injured
28 by the same challenged policies that allegedly injured the Settlement Class. *See* Declaration of

Erica Moniz, ¶¶ 2-3; Declaration of Hagop Ajemyan, ¶¶ 2-8; Declaration of Hugo Gutierrez, ¶¶ 2-6; Declaration of Philip Gabriel, ¶¶ 2-7; Declaration of Adolfo Chavez, ¶¶ 4-9; Declaration of Manuel Ramirez, ¶¶ 4-8. Typicality is thus satisfied.

4. Plaintiffs and Class Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiffs or their counsel and the Settlement Class. *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff’s counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Plaintiffs’ counsel also have extensive experience in wage and hour class action litigation, as noted above.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

This Court should order distribution to the Settlement Class of the proposed Class Notice by U.S. Mail, postage prepaid, using last known mailing address information provided by Service King. *See Settlement*, ¶¶ 1.10, 1.12, 1.13, 7.4. This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Here, Plaintiffs propose that the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits. Settlement Class members’ addresses will be ascertainable through Service King’s personnel and payroll records, which Service King will provide to Phoenix within thirty (30) calendar days of preliminary approval of the Settlement. *See Settlement*, ¶ 4.2. Within fourteen (14) calendar days of receipt of the Class Members’ addresses, Phoenix will run the addresses through the National Change of Address (“NCOA”) database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice in English to all Class Members. *See Settlement*, ¶ 7.4.2. To the extent

1 that any notices are returned, Phoenix will perform a Class Member Address Search to track any
2 Class Member's current mailing address. *Id.*, at ¶¶ 1.12, 7.4.3.

3 The Notice satisfies Cal. Rule of Court 3.766(d) because it advises the Settlement Class
4 of the nature of the claims; the parties' basic contentions; the key terms of the Settlement; the 60-
5 day deadline to opt out, object, or submit a dispute and procedures by which to do so; the recovery
6 formula and expected recovery amount for each Settlement Class member; and the release of
7 claims. *See* Haines Decl., Exh. B. The Notice also includes the final approval hearing date and
8 time and provides contact information for Class Counsel and the administrator if Settlement Class
9 members have any questions. *Id.* This satisfies Cal. Rule of Court 3.766(e) as the most reliable
10 and cost-effective method of reaching Settlement Class members.

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

12 Finally, the Court should set a hearing for final approval of the settlement on a date
13 appropriately scheduled to follow Settlement Class members' response deadline. *See* Cal. Rule
14 of Court 3.769.

15 **V. CONCLUSION**

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

19
20 Dated: April 19, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

21
22 By:



Paul K. Haines
Attorneys for Plaintiffs