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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JUAN DAVID ARREOLA CARRILLO, as
an individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

KPS GLOBAL, LLC, a Delaware
corporation; and DOES 1 through 100,

Defendants.

CASE NO. 22STCV19527

*[Case assigned for all purposes to the Hon.
Kenneth R. Freeman, Dept. 14]*

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

Date: February 1, 2024

Time: 10:00 a.m.

Dept.: 14

Action Filed: June 15, 2022

Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on February 1, 2024 at 10:00 a.m. in Department 14 of the above-entitled Court, located at 312
3 North Spring Street, Los Angeles, CA 90012, Plaintiff Juan David Arreola Carrillo, individually
4 and on behalf of a class of similarly situated individuals, will and hereby does move this Court
5 for:

- 6 1. Preliminary approval of the proposed Settlement of this lawsuit;
- 7 2. Pursuant to California Code of Civil Procedure § 382, provisional certification of the
8 Settlement Class defined as follows:

9 **Settlement Class** – all current and former nonexempt employees of
10 KPS Global, LLC in California who worked at any time between June
11 15, 2018, and the date of preliminary approval (the “Class Period”).

- 12 3. Preliminary appointment of Juan David Arreola Carrillo as Class Representative;
- 13 4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, Andrew J.
14 Rowbotham, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
- 15 5. The scheduling of a hearing to consider whether the Settlement should be finally
16 approved and to award amounts for the Class Representative Service Payment,
17 Settlement Administrator costs, payment to the LWDA for its 75% share of Private
18 Attorneys General Act civil penalties, as well as attorneys’ fees and costs to Class
19 Counsel;
- 20 6. Appointment of CPT Group, Inc. as the third-party Settlement Administrator for
21 mailing notices; and
- 22 7. Approval of the proposed Class Notice and entry of the proposed Order instructing the
23 Class Notice to be disseminated to the proposed Settlement Class as provided in the
24 Settlement.

1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the declarations of Fletcher W. Schmidt, Paul K. Haines, Andrew J. Rowbotham,
3 Susan J. Perez, Juan David Arreola Carrillo, Julie Green, and the exhibits attached thereto, the
4 pleadings and other papers filed in this action, and on any further oral or documentary evidence
5 or argument presented at the time of hearing.

6
7 Dated: January 2, 2024

Respectfully Submitted,
HAINES LAW GROUP, APC

8 By:



9 Fletcher W. Schmidt
10 Attorneys for Plaintiff
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TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES	3
B. DISCOVERY AND MEDIATION.....	6
III. THE PROPOSED SETTLEMENT	7
A. ESSENTIAL TERMS OF THE SETTLEMENT	7
1. The Settlement Provides for Reasonable Monetary Payments	7
2. Attorneys’ Fees, Costs, and Class Representative Service Payment	8
IV. ARGUMENT.....	10
A. PRELIMINARY APPROVAL IS WARRANTED	10
1. Standard for Preliminary Approval.....	10
a. The Strength of Plaintiff’s Case	10
b. Risk, Expense, Complexity, and Duration of Further Litigation	11
c. Risk of Maintaining Class Action Status	11
d. Amount Offered in Settlement Given Realistic Value of Claims	11
e. The Experience and Views of Counsel	16
2. The Preliminary Approval Standard is Met	16
a. The Settlement is Within the Range of Possible Approval	16
b. The Settlement Resulted from Serious, Informed, and Non-Collusive Negotiations	17
c. The Settlement is Devoid of Obvious Deficiencies	17
B. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS	17
1. The Proposed Class is Ascertainable and Numerous.....	18
2. Common Issues of Law and Fact Predominate.....	18
3. The Claims of the Named Plaintiff Are Typical.....	18
4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class.....	19
C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED CLASS NOTICE	19

1	D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	20
2	V. CONCLUSION	20

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLES OF AUTHORITIES

Federal Cases

<i>Eisen v. Carlisle and Jacquelin</i> 417 U.S. 156 (1974).....	19
<i>Hanlon v. Chrysler Corp.</i> 150 F.3d 1011 (9th Cir. 1998)	10
<i>In re Pacific Enterprises Securities Litigation</i> 47 F.3d 373 (9th Cir. 1995)	15-16
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State Cases

<i>Amaral v. Cintas Corp.</i> (2008) 163 Cal. App. 4th 1157	6, 14
<i>Augustus v. ABM Security Services, Inc.</i> (2016) 2 Cal.5th 257	5
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	18
<i>Bluford v. Safeway Inc.</i> (2013) 216 Cal.App.4th 864	18
<i>Bradley v. Networkers Int'l, LLC</i> (2012) 211 Cal.App.4th 1129	18
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 54 Cal.4th 1004	4, 5, 12, 18
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<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	8

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2	(2018) 29 Cal.App.5th 778	4
3	<i>Kullar v. Foot Locker Retail, Inc.</i>	
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5	<i>Laffitte v. Robert Half Int'l Inc.</i>	
6	(2016) 1 Cal.5th 480	9
7	<i>McGhee v. Bank of America</i>	
8	(1976) 60 Cal.App.3d 442	19
9	<i>Reed v. United Teachers Los Angeles</i>	
10	(2012) 208 Cal.App.4th 322	10
11	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
12	(2004) 34 Cal.4th 319	18
13	<i>Sevidal v. Target Corp.</i>	
14	(2010) 189 Cal.App.4th 905	18
15	<i>Wershba v. Apple Computer, Inc.</i>	
16	(2001) 91 Cal.App.4th 224	9
17	<u>State Statues and Rules</u>	
18	8 Cal. Code Regs. § 13520.....	6
19	Cal. Code Civ. Proc. § 382	17
20	California Rule of Court 3.769	20
21	<u>Unpublished Cases</u>	
22	<i>Altamirano v. Shaw Industries, Inc</i>	
23	(N.D. Cal. 2015) 2015 WL 4512372	15
24	<i>Bercea v. AE Retail West</i>	
25	Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012)	16
26	<i>Fleming v. Covidien, Inc.</i>	
27	(C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx)	
28	2011 WL 7563047	15
	<i>Green v. Lawrence Service Co.</i>	
	(C.D. Cal. 2013) 2013 WL 3907506.....	14-15
	<i>Kennedy v. Arm Strong Towing Services, Inc.</i>	
	2017 WL 9486773	15
	<i>Ressler v. Federated Department Stores, Inc.</i>	
	Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009)	16

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6 4 Newberg on Class Actions § 14.6 (4th Ed. 2013)..... 9

7 Manual for Complex Litigation § 30.41(3rd Ed. 1995)..... 16

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Juan David Arreola Carrillo (“Plaintiff”) filed this putative class action (the
4 “Lawsuit”) on behalf of all current and former nonexempt employees of KPS Global, LLC
5 (“Defendant”) in California who worked at any time between June 15, 2018, and the date of
6 preliminary approval (the “Class Period”). Plaintiff and Defendant will be referred to collectively
7 herein as the “Parties.”

8 Through this Motion, Plaintiff respectfully requests that this Court preliminarily approve
9 this non-reversionary class action settlement (“Settlement”),¹ which will fully resolve the
10 Lawsuit.² Based upon the data received from Defendant, there are approximately 350 potential
11 Settlement Class members who worked approximately 23,000 combined workweeks during the
12 Class Period. Defendant will pay a Gross Settlement Amount (“GSA”) of \$995,000.00. This
13 represents a significant result for Settlement Class members who will only release those claims
14 that were actually asserted, or which could have been asserted based on the same set of operative
15 facts alleged in the Lawsuit or Plaintiff’s letter to the California Labor and Workforce
16 Development Agency (“LWDA”) dated June 15, 2022. After deductions for Plaintiff’s Service
17 Award, Settlement Administrator costs, the Private Attorneys General Act (“PAGA”) Payment,
18 and attorneys’ fees and costs to Class Counsel, the remaining amount (the “Net Settlement
19 Amount”) of approximately \$582,583.33 will be distributed to the Settlement Class.
20 Significantly, Class Members do not need to file a claim form in order to receive their share of
21

22 ¹ The Class Action and PAGA Settlement Agreement (“Settlement Agreement”) (based off of this Court’s
23 model agreement of the same name) is attached to the Declaration of Fletcher W. Schmidt as Exhibit 1
24 and the proposed Notice of Proposed Class Action Settlement (“Class Notice”) is attached as Exhibit A to
the Settlement Agreement.

25 ² The Settlement also includes a release of PAGA civil penalties on behalf of all current and former
26 nonexempt employees of Defendant in California who worked at any time between June 15, 2021, and the
27 date of preliminary approval (the PAGA Period”). These individuals are referred to herein as “Aggrieved
28 Employees.” See Settlement § 1.4. The Aggrieved Employees’ release includes all claims, demands, rights,
liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal
theories pled in the Lawsuit (or Plaintiff’s letter to the LWDA dated June 15, 2022), or which could have
been alleged based on the factual allegations therein, that arose during the PAGA Period. *Id.*, § 6.3; see
also Schmidt Decl., Exhibit 2 (Plaintiff’s LWDA Letter).

1 the Settlement, and all Class Members who do not opt-out will automatically receive an Individual
2 Settlement Payment. The highest Individual Settlement Payment is estimated to be \$7,446.93 and
3 the average payment is estimated to be \$1,664.52.

4 Prior to reaching this proposed Settlement, Defendant provided Plaintiff with timekeeping
5 and payroll records for putative class members who worked any of the representative 14-month
6 sampling of the Class Period (25% of the total months at the time). Plaintiff's counsel and his
7 retained expert then analyzed these records to construct a comprehensive damages model.
8 Defendant also produced relevant data points, policies, handbooks, and bonus plans in effect
9 during the Class Period. After extensive legal research and analysis along with a comprehensive
10 review of the data performed by Plaintiff and his expert, the Parties participated in a mediation
11 session with Jeffrey Krivis, Esq., a respected wage and hour class action mediator, and were able
12 to reach a class-wide settlement at the conclusion of mediation. Over the following months, the
13 Parties finalized and executed the long-form Settlement Agreement that is now before this Court
14 for preliminary approval.

15 This proposed Settlement is well within the range of possible approval in light of the
16 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
17 and the substantial monetary benefits to the Settlement Class. For the reasons discussed herein,
18 Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

19 **II. SUMMARY OF THE LITIGATION**

20 Defendant manufactures and installs insulated panel systems, aftermarket parts, and
21 replacement equipment along with custom walk-in coolers, walk-in freezers and industrial cold
22 storage applications in San Dimas, California. Declaration of Fletcher W. Schmidt ("Schmidt
23 Decl."), ¶ 8. Plaintiff was employed by Defendant as a non-exempt "Assembler" and "Machine
24 Operator" from approximately May 2017 until approximately December 2021. Declaration of
25 Juan David Arreola Carrillo ("Carrillo Decl."), ¶ 2. Like all Settlement Class members, Plaintiff
26 was subject to Defendant's wage and hour policies and practices. *Id.*

27 On June 15, 2022, Plaintiff filed the initial Complaint in this action, alleging Defendant
28 failed to: (i) pay all overtime wages; (ii) pay all minimum wages; (iii) provide all meal periods;

(iv) authorize and permit all rest periods; (v) provide accurate, itemized wage statements; (vi) timely pay all final wages upon separation of employment; and (vii) comply with California's Unfair Competition law. Schmidt Decl. ¶ 9. On August 22, 2022, Plaintiff filed the operative First Amended Complaint ("FAC"), adding a cause of action for civil penalties under PAGA. *Id.* These theories of liability along with Defendant's defenses are discussed below.

A. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

Plaintiff asserts that Defendant paid Class Members non-discretionary incentive pay, but failed to correctly include the value of the incentive pay when calculating the employees' respective regular rates of pay for overtime purposes, which resulted in Defendant underpaying Plaintiff and the Class Members for earned wages earned during the Class Period. Schmidt Decl., ¶ 10; *see* Labor Code § 510(a); *see also* *Huntington Memorial Hosp. v. Sup. Ct.* (2005) 131 Cal.App.4th 893, 902-03 ("[I]n determining what payments are to be included in or excluded from the calculation of the regular rate of pay, California will adhere to the standards adopted by the U.S. Department of Labor."); *see also* 29 C.F.R. § 778.211(c) ("Bonuses which are announced to employees to induce them to work more steadily or more rapidly ... are regarded as part of the regular rate of pay. Most attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work ... must be included in the regular rate of pay."). Specifically, Plaintiff alleges that Defendant rewarded Plaintiff and other Class Members with safety and attendance bonuses as well as an additional bonus when the plant reached a specific efficiency target for the month (these bonuses are referred to collectively as "Incentive Pay"). Schmidt Decl., ¶ 10. Plaintiff's expert confirmed that Defendant did not accurately incorporate this Incentive Pay into the Class Members' regular rate of pay when computing overtime. *Id.*

Defendant contends that the Incentive Pay payments were completely discretionary and were based on various and changing criteria. Schmidt Decl., ¶ 11. As a result, Defendant asserts that this claim is unmanageable, as it requires individualized inquiries into each payment to determine the terms by which each bonus could be earned, whether each employee met those terms, whether the communication of the bonus to employees meets the criteria necessary for a non-discretionary payment, and whether there was actually any underpayment of overtime on any

1 given week due to the bonus. *Id.* Each of these steps would result in an unmanageable series of
2 mini-trials. *Id.*

3 Plaintiff asserts that Defendant is also liable for meal period premium wages due to its
4 failure to provide uninterrupted, 30-minute meal periods commencing before the end of the fifth
5 hour of work. *See Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 799
6 (“The remedy for an employer violation of the [failure to provide a 30-minute meal period] is the
7 hour of premium pay provided under section 226.7.”) Plaintiff also alleges Defendant failed to
8 provide second meal periods on shifts over 10.0 hours. Schmidt Decl., ¶ 12. Due to the time-
9 sensitive nature of working with adhesives, Plaintiff and other employees were regularly unable
10 to stop their work and take a meal period prior to the glue setting and becoming unusable. *Id.*
11 Instead, Plaintiff and other employees were expected to either clock out and continue working
12 through part of their meal period, eat lunch later in the afternoon, or forego a meal period
13 altogether depending on the workload and materials being used. *Id.*

14 Defendant argues it maintains a legally-compliant written meal period policy, that it has
15 always provided meal periods consistent with that policy, and that it is only required to “provide”
16 the opportunity to take meal periods, not “ensure” meal periods are taken. *Brinker Restaurant*
17 *Corp. v. Superior Court*, 54 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding
18 employers only have to “provide” employees the opportunity to take meal periods). Defendant
19 further maintains that any meal period violations reflected in timekeeping records were the result
20 of employee choice, not Defendant’s policies, thereby precluding liability. Schmidt Decl. ¶ 13.
21 Defendant further contends that employees validly waived second meal periods on shifts over 10
22 hours. *Id.* Defendant also argues individualized inquiries will be required to determine why meal
23 periods are late, short, or missed, whether there was a valid waiver, and whether a premium was
24 paid on each such shift, thereby precluding class certification of this claim. *Id.*

25 Plaintiff alleges Defendant failed to authorize and permit all rest periods throughout the
26 workday due to the reality of working with adhesives and other time-sensitive materials. Schmidt
27 Decl. ¶ 14. Plaintiff contends that employees were regularly required to delay or forego their rest
28 periods so as to ensure that materials were not wasted (by setting incorrectly). *Id.* Plaintiff

1 maintains that Defendant’s practice violates California law, which requires employers to
2 authorize and permit rest periods for every four hours worked, or major fraction thereof. *See*
3 *Brinker, supra*, 53 Cal.4th at 1029 (“Employees are entitled to 10 minutes’ rest for shifts from
4 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
5 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on”). Additionally,
6 Plaintiff contends that, even in instances where a 10 minute rest period was authorized, employees
7 were not permitted to leave the facility, a violation of California law. *See Augustus v. ABM*
8 *Security Services, Inc.* (2016) 2 Cal.5th 257, 273 (“During required rest periods, employers must
9 relieve their employees of all work duties and relinquish any control over how employees spend
10 their break time,” just as an employer must relinquish control over how employees spend their
11 time during meal periods.) Restricting employees to the company premises — i.e., controlling
12 where an employee must physically spend his or her rest period — is a form of employer control,
13 just as the California Supreme Court in *Brinker* found that an employer impermissibly exerts
14 control over an employee during a meal period when it restricts the employee to the employer’s
15 premises. *Brinker, supra*, 54 Cal.4th at 1036 (agreeing with DLSE that employees must be “free
16 to leave the premises” during meal periods).

17 Defendant argues it maintains a facially compliant written rest period policy, and that it
18 has always authorized and permitted rest periods in compliance with that policy. Schmidt Decl.
19 ¶ 15. Defendant also denies that it has a policy requiring employees to remain inside the facility
20 during rest periods. *Id.* As a result, Defendant argues the rest period claim is not amenable to class
21 treatment, as individual inquiries would be required to determine whether the employee was
22 authorized to take rest periods on each particular shift based on their schedule, resulting in an
23 unmanageable series of mini-trials. *Id.* This manageability concern is especially present for the
24 rest period claim as rest periods are not recorded. *Id.*

25 As a result of these alleged substantive violations, Plaintiff contends that Defendant is
26 liable for derivate wage statement violations, waiting time penalties and civil penalties under the
27 PAGA. Schmidt Decl., ¶ 16. Defendant argues that the alleged wage statement violations were
28 not “knowing and intentional,” and that Plaintiff could not show he “suffer[ed] injury,” as

required by Labor Code § 226(e) for imposition of penalties. *See Amaral v. Cintas Corp.* (2008) 163 Cal. App. 4th 1157, 1201. Defendant further contends that it possesses strong, good faith defense to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties (which are only available for the "willful" failure to pay wages). *See* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203...A good-faith dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.") Defendant also maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's underlying claims. *Id.*

B. DISCOVERY AND MEDIATION

In connection with mediation, Defendant provided Plaintiff with timekeeping and payroll records for putative class members who worked any of the representative 14-month sampling of the Class Period (25% of the total months at the time).³ Schmidt Decl., ¶ 21. Defendant also provided the employee handbook and other relevant policies, including bonus policies, in effect during the Class Period. *Id.* Plaintiff, with the help of his expert who holds a Ph.D. in economics, conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim. *Id.*

On March 2, 2023, the Parties participated in a mediation with Jeffrey Krivis, Esq., a highly respected wage and hour class action mediator. Schmidt Decl., ¶ 22. During mediation, the Parties exchanged divergent views on Defendant's liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiff's claims. *Id.* With the help of Mr. Krivis, the Parties ultimately reached a class-wide settlement at the conclusion of mediation. *Id.* Over the following months, the Parties negotiated and executed the Settlement now before the Court for preliminary approval. *Id.*⁴

³ Plaintiff has provided additional detail as to how the sample was selected and the statistical reliability of the sampling methodology in the Schmidt Declaration at ¶ 21.

⁴ Plaintiff provided the LWDA with the Settlement Agreement along with all moving papers associated with this Motion. *See* Schmidt Decl.; Exhibit 3 (LWDA Submission Confirmation)

1 **III. THE PROPOSED SETTLEMENT**

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

3 If the Court preliminarily approves this settlement, Defendant will pay a Gross Settlement
4 Amount of \$995,000.00. See Settlement § 3.1. This Settlement is non-reversionary and
5 Settlement Class members will automatically receive their Individual Settlement Payment unless
6 they affirmatively opt-out of the Settlement. *Id.*

7 Defendant will fund the GSA within 30 days of the Effective Date – which means the date
8 by which all of the following have occurred: (a) the Court enters a Judgment on its Order Granting
9 Final Approval of the Settlement; and (b) the Judgement becomes “Final”, meaning the last of
10 the following dates, as applicable: (1) if no Settlement Class member objects to the Settlement,
11 the day the Court enters Judgment; and (2) if one or more Settlement Class members objects to
12 the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a
13 timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment
14 without material modification and issues a remittitur. *See* Settlement §§ 1.18, 4.3.

15 The monetary terms of the Settlement are further broken down as follows:

16	Gross Settlement Amount:	\$995,000.00
17	Minus attorneys’ fees (one-third):	\$331,666.67
18	Minus attorneys’ costs (up to):	\$30,000.00
19	Minus Class Representative Service Payment:	\$5,000.00
	Minus LWDA PAGA Payment:	\$37,500.00
	Minus Settlement Administrator costs:	\$8,250.00
	Net Settlement Amount:	\$582,583.33

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

21 After deducting amounts for court-approved attorneys’ fees and costs, the Class
22 Representative Service Payment, costs of settlement administration, and the LWDA’s 75% share
23 of PAGA penalties, the remaining Net Settlement Amount of approximately \$582,583.33 will be
24 distributed to the Settlement Class members. *See* Settlement §§ 1.28, 3.2. 1/3 of each Individual
25 Settlement Payment will be classified as wages and 2/3 will be classified as interest and penalties.
26 *Id.* at 3.2.4.1. 100% of payments to Aggrieved Employees for PAGA civil penalties will be
27 classified as penalties. *Id.* at 3.2.5.2.

28 Defendant’s records indicate that there are approximately 350 Settlement Class members

1 who worked during the Class Period. Schmidt Decl., ¶ 23. Based on the allocations of the Net
2 Settlement Amount, participating employees will receive, on average, a payment of
3 approximately \$1,664.52. *Id.* Settlement Class members will have 60 calendar days from the
4 mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time
5 to review the Class Notice without unduly delaying the Settlement. *See* Settlement § 8.5.1. Those
6 individuals who do not opt-out of the Settlement will be bound by its terms and will release any
7 and all claims that were asserted or could have been asserted based on the facts alleged in the
8 Lawsuit or Plaintiff's letter to the LWDA dated June 15, 2022. *Id.*, § 6.2.

9 **2. Attorneys' Fees, Costs, and Class Representative Service Payment**

10 As part of the Settlement, Plaintiff will apply for a service payment at the time of seeking
11 final approval of the Settlement in the total amount of \$5,000.00 for his service to the Settlement
12 Class and his general release of all claims (known or unknown) against Defendant. *See* Settlement
13 §§ 3.2.1, 6.1.1. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to
14 compensate class representatives for work done on behalf of the class [and] to make up for
15 financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination*
16 *Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested service payment is intended
17 to recognize the significant benefits conferred upon the Settlement Class due to the time and effort
18 that Plaintiff expended on behalf of the Settlement Class. Some of the activities Plaintiff
19 completed in order to help procedure the Settlement include providing factual information and
20 documents to his attorneys, identifying potential witnesses, participating in multiple meetings
21 with his attorneys to discuss the claims and theories at issue in the litigation, and making himself
22 available the entire day of mediation Carrillo Decl., ¶ 4. Additionally, Plaintiff undertook
23 significant risks by agreeing to serve as the named plaintiff in this case (as potential employers
24 can now search his name and determine he has previously sued an employer), as well as the fact
25 that Plaintiff agreed to a general release of all claims subject to a waiver of California Civil Code
26 § 1542. Schmidt Decl., ¶ 24.

27 Class Counsel will also apply for an attorneys' fee award of \$331,666.67 (one-third of the
28 GSA), and up to \$30,000.00 in verified costs. *See* Settlement, § 3.2.2. Plaintiff submits that the

1 requested fee is fair compensation for undertaking complex, risky, expensive, and time-
2 consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial
3 attorneys' fees conducting pre-filing investigation, retaining an expert and analyzing Plaintiff's
4 claims, conducting legal research and analysis, reviewing documents and data produced by
5 Defendant, building a comprehensive damages model, preparing for and attending mediation,
6 negotiating and preparing the long-form Settlement Agreement, preparing this motion for
7 preliminary approval, and otherwise litigating the case. Schmidt Decl., ¶ 25. Class Counsel will
8 also expend future attorney time in attending the hearing on this Motion, overseeing the Notice
9 process, drafting the final approval motion and supporting documents, and attending the final
10 approval hearing, among other tasks. *Id.*

11 Both California and federal courts have recognized that an appropriate method for
12 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
13 as a result of the settlement. *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506 ("the
14 percentage of fund method survives in California class action cases..."); *Wershba v. Apple*
15 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery"
16 and "lodestar/multiplier" methods). Historically, courts have awarded percentage fees in the range
17 of 20% to 50%, depending on the circumstances of the case. *See 4 Newberg on Class Actions*
18 § 14.6 (4th Ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of
19 a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
20 common fund in order to assure that the fees do not consume a disproportionate part of the
21 recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

22 Class Counsel submits that the request for attorneys' fees is reasonable when viewed as
23 an overall percentage of the settlement (one-third) in light of the substantial risks and the
24 significant work undertaken, the extremely positive results obtained for the class, and the
25 efficiency with which the Parties conducted the litigation. Should the Court grant preliminary
26 approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the
27 time of seeking final approval of the Settlement.
28

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions the settlement of a class action on court
4 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
5 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
6 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine “that the
7 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir.
8 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
9 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
10 preferred means of dispute resolution, particularly in complex class action litigation. *See In re*
11 *Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a
12 proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not
13 the product of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150
14 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was
15 negotiated at arm’s length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168
16 Cal.App.4th 116, 130.

17 **1. Standard for Preliminary Approval**

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

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

28 Class Counsel, with the help of a retained expert who holds a Ph.D. in economics,

carefully vetted the claims at issue, reviewed a significant number of timekeeping and payroll records as well as relevant policy documents, and conducted a detailed analysis of that data to create a comprehensive damages model for Defendant's liability. *See* Schmidt Decl., ¶¶ 21-22. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.A., *supra*, Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. Although Plaintiff was prepared to litigate these claims through class certification and, ultimately, through trial, given the amount offered in settlement, Plaintiff predicted that it was unlikely that further litigation would result in a substantially more beneficial result for the Settlement Class. Thus, this factor supports preliminary approval of the Settlement.

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

This Settlement was reached after a significant informal exchange of timekeeping and payroll records and other relevant information for mediation purposes. *See* Schmidt Decl., ¶ 21. Absent settlement, the Parties would need to spend substantial time and resources to complete formal written and deposition discovery and prepare the case for class certification, summary judgment or adjudication, and trial. This Settlement avoids the considerable attorneys' fees and costs associated with conducting formal discovery, moving for class certification and summary judgment or adjudication, and ultimately, trial, as well as the risks and the accompanying burden of continued litigation on the Court.

c. Risk of Maintaining Class Action Status

Prior to reaching the Settlement, Plaintiff had not yet filed his motion for class certification. Considering Defendant's arguments and defenses against certification, there was a legitimate risk that the Court may deny certification of one or more of Plaintiff's claims, preventing the matter from continuing on a classwide basis. Thus, this factor supports preliminary approval of the Settlement.

d. Amount Offered in Settlement Given Realistic Value of Claims

This proposed Settlement provides a fair and reasonable monetary recovery for the

1 Settlement Class in the face of disputed claims. After analyzing the data provided by Defendant
2 prior to mediation, Plaintiff prepared a class-wide exposure analysis and forecasted the Settlement
3 Class expected recovery for each claim as follows:

4 **Unpaid Wages: \$36,112**

5 As described above, Defendant paid numerous non-discretionary bonuses to Plaintiff and
6 Class Members throughout the Class Period. Plaintiff's expert reviewed the timekeeping and
7 payroll data and determined the Class Members were underpaid an aggregate amount of \$64,199
8 in overtime wages due to Defendant's failure to include the value of these bonuses in the regular
9 rate of pay when computing overtime wages. Schmidt Decl., ¶ 10. Defendant asserts that each of
10 the bonuses at issue were ultimately non-discretionary, that the requirements to earn each bonus
11 were various and changing, that bonuses were not paid to all Class Members, and that Defendant
12 accurately calculated wages for employees throughout the Class Period. *Id.*, ¶ 11. Further,
13 Defendant asserts that this claim is unmanageable, as it requires individualized inquiries into each
14 specific bonus to determine whether the bonus was actually non-discretionary, resulting in an
15 unmanageable series of mini-trials. *Id.* Given these potential defenses, Plaintiff discounted the
16 maximum exposure by 25% for the risk of non-certification and 25% for the risk of being
17 unsuccessful on the merits, to arrive at an estimated exposure of \$36,112. *Id.*, ¶ 10.

18 **Meal Period Violations: \$319,148**

19 Plaintiff contends that Defendant failed to provide legally-compliant meal periods
20 resulting in meal periods that were late (commencing after the fifth hour of work), and/or short
21 (less than 30 minutes), or not provided at all. *See* Schmidt Decl. ¶ 12. Plaintiff also alleges that
22 Defendant failed to provide second meal periods on shifts over 10.0 hours. *Id.* Based on Plaintiff's
23 expert's analysis of Defendant's records, and giving credit for meal period premiums already
24 paid, Plaintiff calculated Defendant's potential exposure for meal periods at \$1,276,592 (36,546
25 first meal violations + 26,155 second meal violations x \$20.36 average meal premium). *Id.*
26 However, Defendant maintains that it provided all legally compliant meal periods to employees
27 and that any missed or non-compliant meal periods were the result of employee choice, not
28 Defendant's policy. *See Brinker, supra*, 53 Cal.4th at 1040 (holding that where employees were

1 “provided” the opportunity to take compliant breaks, whether they took a break or not was
2 immaterial). Defendant also contends that employees waived second meal periods on shifts over
3 10 hours. *See* Schmidt Decl., ¶ 13. Lastly, Defendant argues Plaintiff’s meal period claim is not
4 suited for class certification, since Defendant enforces its legally-compliant written meal period
5 policy and individualized inquiries will be required to determine why each meal period was late,
6 short, or missed, whether there was a valid waiver, and whether a premium was paid on each such
7 shift, thereby precluding class certification of this claim. *Id.* Given these potential defenses,
8 Plaintiff discounted Defendant’s maximum exposure by 50% for the risk of non-certification and
9 50% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at
10 an estimated exposure of \$319,148. *Id.*, ¶ 12.

11 **Rest Period Violations: \$268,630**

12 Plaintiff alleges that Defendant regularly failed to authorize and permit 10-minute rest
13 periods for every 4 hours worked, or major fraction thereof. *See* Schmidt Decl., ¶ 14. Plaintiff’s
14 expert’s review of the payroll data reveals that there were 105,552 shifts worked in excess of 3.5
15 hours. *Id.* Given Plaintiff’s contention that Class Members were not permitted to leave the facility
16 during breaks, Plaintiff determined that every shift in excess of 3.5 hours would incur a rest period
17 violation. *Id.* Plaintiff therefore calculated Defendant’s potential exposure for rest periods at
18 \$2,149,039 (105,552 shifts x \$20.36 average premium). *Id.* However, Defendant argues it
19 maintains a facially compliant written rest period policy, that Class Members are encouraged to
20 spend rest periods as they see fit (including leaving the facility if they choose), and that Defendant
21 has always authorized and permitted rest periods in compliance with that policy. *Id.*, ¶ 15.
22 Defendant also argues this claim is not amenable to class treatment, as individual inquiries would
23 be required to determine whether each employee was in fact authorized and permitted all rest
24 periods based on their schedule, resulting in an unmanageable series of mini-trials. *Id.*
25 Additionally, since rest periods are not recorded this claim faces additional hurdles due to the lack
26 of common evidence in Defendant’s records. *Id.* Based on these defenses, Plaintiff discounted
27 Defendant’s maximum exposure by 75% for risk of non-certification and 50% for risk of being
28 unsuccessful on the merits, to arrive at an estimated exposure of \$268,630. *Id.*, ¶ 14.

1 Wage Statement Violations: \$291,600

2 Based on the data provided by Defendant for mediation, 248 employees received 7,900
3 wage statements during the 1-year time period associated with wage statement penalties. Schmidt
4 Decl., ¶ 17. Plaintiff therefore calculated Defendant's maximum wage statement exposure at
5 \$777,600 (248 "initial" violations x \$50 + 7,652 "subsequent" violations x \$100). *Id.* Defendant
6 contends that employees could not show they "suffer[ed] injury" as a result of the alleged
7 violations, as required by Labor Code § 226(e). *Id.*, ¶ 16. Considering this argument as well as
8 the potential inability to prove that the violations were "knowing and intentional," Plaintiff
9 discounted the value of this claim by 25% for the risk of non-certification of the underlying claims
10 and discounted 50% for a risk of being unsuccessful on the merits, for an estimated exposure of
11 \$291,600. *Id.*, ¶ 17.

12 Waiting Time Penalties: \$144,760

13 Based on the data provided by Defendant for mediation, 237 employees separated their
14 employment with Defendant during the 3-year time period associated with waiting time penalties.
15 Schmidt Decl., ¶ 18. Plaintiff therefore calculated Defendant's maximum waiting time penalty
16 exposure at \$1,158,077 (237 former employees x \$20.36 average hourly rate x 8 hours per day x
17 30 days). *Id.* Defendant contends it attempted to pay its employees all final wages owed in good
18 faith upon their separation, therefore precluding a finding of wilfulness which is necessary to
19 obtain waiting time penalties under 8 Cal. Code Regs. § 13520. *Id.*, ¶ 16. Additionally, because
20 this claim is entirely derivative of Plaintiff's underlying wage claims, Defendant contends the
21 waiting time penalty claim will fail with those claims. *Id.* Plaintiff discounted the value of this
22 claim by 50% for the risk of non-certification of the underlying claims, and 75% for a risk of
23 being unsuccessful on the merits (including a failure to establish wilfulness), for an estimated
24 recovery on this claim of \$144,760. *Id.*, ¶ 18.

25 PAGA Penalties: \$148,125

26 Assuming that Plaintiff could prove at least one underlying Labor Code violation in each
27 pay period within the PAGA Period, Plaintiff calculates Defendant's maximum PAGA exposure
28 at \$790,000 (7,900 pay periods at \$100 per violation). *See Amaral, supra*, 163 Cal.App.4th at

1 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor
2 Code provision). However, these penalties derived from the underlying wage and hour violations
3 discussed above, which Defendant disputes. *See e.g., Green v. Lawrence Service Co.* (C.D. Cal.
4 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim’s success was determined by
5 the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to
6 reduce any award of PAGA penalties where it views them as duplicative. *See Carrington v.*
7 *Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to \$5
8 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-
9 01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from \$2.8 million to
10 \$500,000); *Kennedy v. Arm Strong Towing Services, Inc.*, 2017 WL 9486773, at *3 (Cal.Super.)
11 (reducing PAGA penalties to \$1,000 per aggrieved employee – a reduction in excess of 70% from
12 the maximum civil penalty). Plaintiff discounted the maximum figure by 25% for the risk of the
13 scope of the PAGA claim being narrowed due to manageability concerns and an additional 75%
14 to account for the likelihood of this Court reducing penalties, to arrive at an estimated exposure
15 of \$148,125. Schmidt Decl., ¶ 19.

16 Using these estimated figures for each of the claims described above, Plaintiff predicts
17 that a projected potential recovery for the Settlement Class would be approximately
18 \$1,208,374.44. Schmidt Decl., ¶ 20. The Gross Settlement Amount of \$995,000.00 represents
19 approximately 82.34% of Plaintiff’s projected potential recovery, while avoiding the further
20 expense and risk of proceeding towards class certification and trial. *Id.* Considering the risk of
21 non-certification, failure to prevail on the merits, and the Court’s power to reduce civil penalties,
22 the proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See*
23 *e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily
24 approving wage and hour class action settlement, stating, “[a]lthough 15% represents a modest
25 fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for
26 the Court to grant preliminary approval given the merits of Plaintiff’s claims.”). Preliminary
27 approval is appropriate since the Settlement will provide significant monetary relief to Settlement
28 Class members without the uncertainty, delay, and additional expense of further litigation.

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

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
4 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented
5 by competent and experienced counsel who possess extensive experience litigating wage and hour
6 class actions from both the plaintiff and defense side and have been appointed as class counsel in
7 numerous cases alleging similar claims. *See* Schmidt Decl., ¶¶ 2-6. Class Counsel, with the help
8 of their retained expert, conducted an extensive review of Defendant’s records produced for
9 mediation as well as relevant policies in effect during the Class Period. *Id.*, ¶ 21. Class Counsel
10 also drew on their extensive experience in similar cases to assess the strengths and weaknesses of
11 Plaintiff’s case. *Id.* The Settlement was also reached with the input and assistance of Jeffrey
12 Krivis, Esq., an experienced and highly respected neutral wage and hour class action mediator.
13 *Id.*, ¶ 22. This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*,
14 168 Cal.App.4th at 130.

15 **2. The Preliminary Approval Standard is Met**

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

21 **a. The Settlement is Within the Range of Possible Approval**

22 The proposed Settlement reflects an excellent recovery for the Settlement Class members
23 in light of the significant risks of litigation. The proposed Settlement will provide substantial
24 compensation for contested claims and derivative penalties, and the estimated average payment
25 of \$1,664.52 greatly exceeds the average payment achieved in other wage and hour class action
26 settlements. *See e.g., Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012
27 WL 2117001, at *17 (E.D. Cal. June 11, 2012) (\$198.70 gross recovery per class member
28 considered substantial recovery). Plaintiff submits that the proposed Settlement is within the

1 range of possible approval, such that notice should be provided to the Settlement Class members
2 so they can consider the Settlement. The Court will have the opportunity to again assess the
3 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
4 opt-out or object.

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

6 This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar,*
7 *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial information,
8 including timekeeping and payroll data which was analyzed by Plaintiff's counsel and an expert
9 with a Ph.D. in economics, arm's length negotiations by counsel; mediation before an experienced
10 wage and hour class action mediator; and additional months of negotiating and finalizing the
11 terms of the long-form Settlement Agreement. *See* Schmidt Decl., ¶¶ 21-22. Thus, the proposed
12 settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at
13 130.

14 **c. The Settlement is Devoid of Obvious Deficiencies**

15 The Settlement will provide substantial monetary relief to Settlement Class members.
16 Moreover, the amounts proposed for Plaintiff's Service Payment, settlement administration costs,
17 attorneys' fees and costs to Class Counsel, and the LWDA's share of PAGA penalties are all
18 reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this final
19 factor supports preliminary approval.

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

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

1 **1. The Proposed Class is Ascertainable and Numerous**

2 A class is “ascertainable” where the members “may be readily identified without
3 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
4 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
5 Class is defined as all current and former nonexempt employees of Defendant in California who
6 worked at any time during the Class Period. According to Defendant’s records, the Settlement
7 Class consists of approximately 350 individuals, rendering it impracticable to gather all the
8 Settlement Class members and bring them before the Court. *See* Schmidt Decl., ¶ 23. Thus, the
9 proposed Settlement Class satisfies the numerosity requirement.

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

11 The focus in a certification dispute is not on the merits of the case, but rather on what
12 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*
13 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff’s claims are predicated
14 on uniform company policies, principally revolving around Defendant’s overtime and minimum
15 wage policies and practices, as well as meal and rest period policies and practices. These types of
16 claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th
17 at 1032-34 (“The theory of liability—that Brinker has a uniform policy, and that that
18 policy...allegedly violates the law—is by its nature a common question eminently suited for class
19 treatment.”); *Bradley v. Networkers Int’l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying
20 meal and rest period claims); *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th 864, 871-873
21 (reversing denial for certification of rest period claim).

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

23 The typicality requirement is satisfied where class representatives have claims that are
24 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
25 Cal.App.3d 1341, 1347. Here, Plaintiff’s claims are typical of those held by the members of the
26 proposed Settlement Class. Like other Settlement Class members, Plaintiff was employed by
27 Defendant in California during the Class Period. Carrillo Decl., ¶ 2. Plaintiff received various
28 bonuses during his employment and was expected to delay or shorten his meal periods when

1 working with time-sensitive materials. *Id.* When Plaintiff worked a shift over 10.0 hours, he was
2 not provided a second meal period. *Id.* Plaintiff was also regularly not authorized and permitted
3 to take rest periods during his shift. *Id.* Plaintiff was therefore impacted by the same challenged
4 policies that allegedly injured the Settlement Class as a whole and were subject to the same
5 defenses forwarded by Defendant as to the Settlement Class and is therefore typical.

6 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
7 **Class**

8 The adequacy of representation requirement examines conflicts of interest between named
9 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
10 *Developmental Services* (2007)155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will
11 adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the
12 Settlement Class he seeks to represent, and Plaintiff possesses claims that are in line with those
13 of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy
14 satisfied where there was no indication that the plaintiff's counsel were not qualified and the
15 named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also
16 has extensive experience in wage and hour class action litigation. *See Schmidt Decl.*, ¶¶ 2-6;
17 *Haines Decl.*, ¶¶ 2-8; *Rowbotham Decl.*, ¶¶ 2-6; *Perez Decl.* ¶¶ 2-5.

18 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
19 **CLASS NOTICE**

20 This Court should order distribution of the proposed Class Notice to the Settlement Class
21 by first class mail, postage prepaid, using the last known mailing address information provided
22 by Defendant This manner of giving notice is the “best notice practicable” under the
23 circumstances because it provides “individual notice to all members who can be identified through
24 reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff
25 proposes that the settlement be administered by CPT Group, Inc. (“CPT”), an experienced class
26 action settlement administrator. *See generally* Declaration of Julie Green. Settlement Class
27 members’ addresses will be ascertainable through Defendant’s personnel and payroll records,
28 which Defendant will provide to CPT within ten (10) business days after preliminary approval.

1 See Settlement § 4.2. Prior to mailing the Class Notice packets, CPT will search for updated
2 addresses using the National Change of Address database (“NCOA”). *Id.*, § 4.4.2. To the extent
3 that any notices are returned, CPT will search for a more current address for the Class Member
4 and re-mail the Class Notice Packet to the Class Member. *Id.* The content of the proposed Class
5 Notice satisfies California Rule of Court 3.766(d) because it advises putative Settlement Class
6 members of the nature of the claims, basic contentions and denials of the parties, the key terms of
7 the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the
8 procedure by which to do so, explains the recovery formula and expected recovery amount for
9 each Settlement Class Member, and advises them that they will be bound by the terms of the
10 Settlement if they do not opt-out. See Settlement Agreement, Exhibit A (Class Notice). The
11 proposed Class Notice will also notify Settlement Class members of the final approval hearing
12 date and provide the Settlement Class contact information for Class Counsel and advise
13 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
14 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
15 cost-effective method of reaching Settlement Class members.⁵

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

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

20 **V. CONCLUSION**

21 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
22 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
23 proposed order submitted concurrently herewith.

24 Dated: January 2, 2024

HAINES LAW GROUP, APC

25 By:


26 Fletcher W. Schmidt
Attorneys for Plaintiff

27
28 ⁵ The Parties propose posting the final judgment on the Settlement Administrator’s website. The URL will be included with Class Member’s Individual Settlement Payments.