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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOSE ESTRADA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TOP-SHELF FIXTURES, LLC, a California
limited liability company; and DOES 1
through 100,

Defendants.

Case No. CIVSB2214983

*[Assigned for all purposes to the Hon. Jessica
Morgan, Courtroom S-26]*

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

Date: December 18, 2023

Time: 8:30 a.m.

Dept.: S-26

Complaint Filed: July 14, 2022

Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on December 18, 2023, at 8:30 a.m. in Department S-26 of the above-entitled Court, located at 247 W. Third Street, San Bernardino, California 92415, Plaintiff Jose Estrada (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:
All current and former non-exempt employees employed by Defendant Top-Shelf Fixtures, LLC in the State of California at any time from July 14, 2018 through the date of preliminary approval (the “Class Period”).
3. Preliminary appointment of Plaintiff Jose Estrada as Class Representative;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Service Award to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices;
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the declarations of Paul K. Haines, Sean M. Blakely, Plaintiff Jose Estrada, and
3 Anthony Rogers of ILYM Group, Inc., and the exhibits attached thereto, the pleadings and other
4 papers filed in this action, and on any further oral or documentary evidence or argument presented
5 at the time of hearing.

6
7 Dated: October 20, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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

2 **I. INTRODUCTION**

3 Plaintiff Jose Estrada (hereinafter “Plaintiff”) brought this class and representative action
4 for various wage and hour violations on behalf of current and former non-exempt employees of
5 Defendant Top-Shelf Fixtures, LLC (“Top-Shelf”) in the State of California at any time from July
6 14, 2018 through the date of preliminary approval (the “Class Period”). Plaintiff’s primary
7 allegations are that Top-Shelf: (1) failed to pay all minimum and overtime wages due to its
8 allegedly unlawful timekeeping policies/practices; (2) failed to provide all legally compliant meal
9 periods; and (3) failed to authorize and permit all legally compliant rest periods. Based on these
10 alleged wage and hour violations, Plaintiff also brought derivative claims for alleged waiting time
11 penalties, Top-Shelf Fixtures’ alleged failure to issue accurate and compliant wage statements,
12 and for civil penalties under the Private Attorneys General Act (“PAGA”).¹

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which Top-Shelf has agreed to pay Five
15 Hundred Ninety-Five Thousand Dollars and Zero Cents (\$595,000.00) to the following
16 Settlement Class:

17 All current and former non-exempt employees employed by Defendant
18 Top-Shelf Fixtures, LLC in the State of California at any time from July
14, 2018 through the date of preliminary approval (the “Class Period”).

19 If the Settlement is approved, Top-Shelf will pay a non-reversionary Gross Settlement
20 Amount of \$595,000.00. After deducting estimated administration costs, Plaintiff’s requested
21 Class Representative Service Award, the amount designated as PAGA civil penalties, and
22 requested attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately
23

24 ¹ Plaintiff’s operative First Amended Class and Representative Action Complaint (“FAC”) pleads
25 the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
26 wages; (3) meal period violations; (4) rest period violations; (5) wage statement penalties; (6)
waiting time penalties; (7) unfair competition; and (8) civil penalties under the PAGA.

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

1 \$318,666.67 will be distributed to all Settlement Class members who do not opt-out of the
2 Settlement based on the proportionate number of workweeks worked by each Settlement Class
3 member during the Class Period.

4 Significantly, Settlement Class members do not need to file a claim to reap the financial
5 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
6 unless they affirmatively opt-out. There are approximately 252 Settlement Class members, and
7 the average payment to participating Settlement Class members is projected to be approximately
8 \$1,264.55.

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

14 **II. SUMMARY OF THE LITIGATION**

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

16 Top-Shelf designs and manufactures various shelving products, including wire shelving,
17 retail fixtures, and front-end merchandisers. *See* Declaration of Sean M. Blakely (“Blakely
18 Decl.”), ¶ 8. Top-Shelf manufactures most of its components in its Chino, California facility. *Id.*
19 Plaintiff worked for Top-Shelf as a non-exempt “general laborer” from approximately September
20 2010 until approximately May 4, 2022. *See* Declaration of Jose Estrada in Support of Approval
21 of Class Action Settlement (“Estrada Decl.”), ¶ 2.

22 On July 14, 2022, Plaintiff filed his Class Action Complaint in San Bernardino Superior
23 Court, alleging causes of actions for: (1) minimum wage violations; (2) failure to pay all overtime
24 wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6)
25 waiting time penalties; and (7) unfair competition in violation of California Business &
26 Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. On July 14, 2022, Plaintiff sent his PAGA
27 notice letter to the LWDA. *Id.*; **Exhibit B**. Subsequently, on September 19, 2022, Plaintiff filed
28 the operative First Amended Class and Representative Action Complaint (“FAC”) adding a cause

of action for civil penalties under the Private Attorneys' General Act of 2004, Labor Code Section 2698, *et seq. Id.*

B. PLAINTIFF'S CLAIMS AND TOP-SHELF'S DEFENSES

1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that Top-Shelf utilized a timekeeping system that systematically underpaid wages to Settlement Class members. Blakely Decl., ¶ 14. Plaintiff alleges that Top-Shelf required Plaintiff and other non-exempt employees to clock in and out using a system that recorded hours worked to the minute; however, Plaintiff alleges that Top-Shelf only compensated Settlement Class members for their scheduled hours of work, as opposed to all hours on the clock. *Id.* Plaintiff alleges that although Settlement Class members clocked in and performed compensable work prior to their scheduled start of shift, Settlement Class members were not compensated for this time as Top-Shelf only compensated Settlement Class members based on their scheduled start of shift. *Id.*

Top-Shelf counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 14. Top-Shelf contends that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. *Id.* Top-Shelf contends that although Settlement Class members may have clocked-in prior to their scheduled start time, it was not possible for Settlement Class members to perform any compensable work prior to the scheduled start of shift. *Id.* Top-Shelf further argues that it changed its timekeeping policies in April 2022 and began to compensate Settlement Class members to the minute. *Id.* Finally, Top-Shelf asserts that Plaintiff would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

2. Meal Period Claims

Plaintiff alleges that Top-Shelf automatically deducted 30-minutes for a purported meal

1 period each workday whether a compliant first meal period was provided or not, and that this was
2 done even though all operations do not cease for meal periods, which is the only condition upon
3 which an employer is permitted to not keep records of the beginning and ending of employee
4 meal periods. Blakely Decl., ¶ 15; see Wage Order 1, § 7(A)(3). Plaintiff further alleges that Top-
5 Shelf failed to provide for second meal periods during shifts in excess of 10.0 hours during the
6 Class Period. Blakely Decl., ¶ 15.

7 Top-Shelf contends that under *Brinker*, it is only required to “provide” the opportunity to
8 take meal periods, not “ensure” meal periods are taken. Blakely Decl., ¶ 15; see *Brinker*
9 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard
10 and holding employers only have to “provide” employees the opportunity to take meal periods).
11 Top-Shelf also maintains that any short, missed, or late first meal periods were the result of lawful
12 employee waiver or choice, thereby precluding liability. Blakely Decl., ¶ 15. With respect to
13 second meal periods, Top-Shelf argues that employees may waive second meal periods on shifts
14 of more than 10.0 hours but less than 12.0 hours, under Labor Code § 512(a), so that they do not
15 need to stay at work for an extra unpaid 30 minutes, and that employees regularly did so. *Id.*
16 Lastly, Top-Shelf argues that individualized inquiries will be required to determine why each
17 meal period was taken late or short or missed by each employee, and whether there was a valid
18 waiver, thereby making class certification of this claim unlikely. *Id.*

19 3. **Rest Period Claims**

20 Plaintiff alleges that Top-Shelf failed to provide all legally-required off-duty rest periods.
21 Blakely Decl., ¶ 16. Plaintiff alleges that Top-Shelf failed to provide employees with a 10 minute
22 rest period for every four hours of work, but instead provided employees with a single combined
23 30-minute rest period two or three hours after their meal period. *Id.*; see *Rodriguez v. E.M.E.,*
24 *Inc.*, 246 Cal.App.4th 1027 (2016) (holding that in a shift with a single meal period, the preferred
25 schedule requires the provision of a rest period in the middle of each “work period” before and
26 after the meal break, and that “a departure from the preferred schedule is permissible only when
27 the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a material
28 burden that would be imposed on the employer by implementing the preferred schedule.”).

Top-Shelf argues that it has always maintained and enforced lawful rest period practices during the Class Period, and has, in fact, authorized and permitted all required rest periods to Settlement Class members. Blakely Decl., ¶ 16. Top-Shelf further argues that its departure from the preferred rest period schedule was lawful because Settlement Class members overwhelming preferred to take a longer 30-minute rest period in the afternoon and this was necessary to alleviate a material burden which would be imposed on Top-Shelf if it implemented the preferred rest period scheduled for 8-hour shifts. *Id.* Top-Shelf also asserts this claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take a rest period, and the reasons why. *Id.* These manageability concerns are especially present with respect to rest period claims, Top-Shelf argues, given that rest periods are not recorded. *Id.*

4. Wage Statement Violations

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

5. Waiting Time Penalties

Plaintiff alleges that as a further result of its failure to pay all wages earned, as well as its failure to pay all meal and rest period premiums, Top-Shelf is liable for waiting time penalties pursuant to Labor Code §§ 201-203. Blakely Decl., ¶ 18. Top-Shelf argues that it possesses strong,

1 good-faith defenses to Plaintiff's underlying claims, thus precluding recovery of waiting time
2 penalties, which are only available for the "willful" failure to pay wages. *Id*; see *also* 8 Cal. Code
3 Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting
4 time penalties under Section 203 . . . A 'good faith' dispute that any wages are due occurs when
5 an employer presents a defense, based in law or fact which, if successful, would preclude any
6 recovery on the part of the employee."). Top-Shelf further asserts that Plaintiff's waiting time
7 penalty exposure was grossly inflated as not every former employee experienced the alleged
8 Labor Code violations. Blakely Decl., ¶ 18.

9 6. **PAGA Civil Penalties**

10 As a result of the foregoing Labor Code violations, Plaintiff alleges that Top-Shelf is liable
11 for civil penalties under the PAGA. Blakely Decl., ¶ 19. Since Plaintiff's PAGA claim is
12 derivative of Plaintiff's underlying wage claims, Top-Shelf asserts the PAGA claim would fail
13 with those claims. *Id*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) ("Because
14 the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Top-Shelf
15 further maintains that, given its good-faith defenses, this Court would exercise its discretion to
16 substantially reduce any PAGA penalties if it were to find Top-Shelf liable for any of Plaintiff's
17 claims. Blakely Decl., ¶ 19; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
18 *Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
19 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
20 (reducing PAGA penalties by over 82% in part because employer "not aware" of violations);
21 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
22 of just \$5 per pay period where employer made "good faith attempts" to comply with the law).

23 C. **DISCOVERY AND MEDIATION**

24 In connection with mediation, the Parties engaged in extensive informal discovery.
25 Blakely Decl., ¶ 10. Top-Shelf produced timekeeping and payroll records for *all* putative class
26 members, including time-punches, which enabled Plaintiff to conduct a timekeeping analysis. *Id*.
27 Top-Shelf also provided a detailed Class List, which included putative class members' date of
28 hire, date of termination (if applicable), and hourly rate of pay, as well as its written wage and

hour policies. *Id.* Plaintiff conducted a comprehensive analysis of the data produced by Top-Shelf to calculate class-wide damages for each of Plaintiff's claims. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Top-Shelf's potential defenses. *Id.*

On March 21, 2023, the Parties participated in a full-day mediation with Steven G. Mehta, Esq., a highly experienced wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* The Parties were not able to reach a settlement at mediation, however, the Parties continued negotiations through Mr. Mehta over the following months. *Id.* Mr. Mehta ultimately issued a mediator's proposal for a class-wide settlement, which was accepted by all Parties. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Top-Shelf will pay a Gross Settlement Amount of \$595,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Award. *Id.*, at ¶¶ 3-4. Each Settlement Class member will automatically receive an Individual Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount:	\$595,000.00
• Minus Court-approved attorneys' fees:	\$198,333.33
• Minus Court-approved verified costs (up to):	\$20,000.00
• Minus Court-approved Service Award:	\$10,000.00
• Minus amount set aside as PAGA penalties:	\$40,000.00
• <u>Minus estimated Settlement Administration costs:</u>	<u>\$8,000.00</u>
Net Settlement Amount ("NSA"):	\$318,666.67
• PLUS 25% "PAGA Amount" to Settlement Class:	\$10,000.00
Total Amount Paid to Settlement Class members:	\$328,666.67

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

2 After deducting amounts for the Court-approved attorneys’ fees and costs, the Class
3 Representative Service Award to Plaintiff, the amount designated as PAGA civil penalties, and
4 Settlement Administrator’s fees and expenses, the Settlement requires Top-Shelf to pay a Net
5 Settlement Amount (“NSA”) of at least \$318,666.67 to all Settlement Class members who do not
6 timely opt out. *See* Settlement, ¶ 4. The NSA shall be allocated among Settlement Class members
7 (except those who submit a timely and valid Request for Exclusion) based on each participating
8 Settlement Class member’s proportionate workweeks worked during the Class Period. *See*
9 Settlement, ¶ 4(B)(i). Additionally, Ten Thousand Dollars (\$10,000.00) of the Gross Settlement
10 Amount has been designated as the “PAGA Amount,” and shall be distributed to those Settlement
11 Class members (including those who submit a valid and timely Request for Exclusion from the
12 class action settlement) who worked for Top-Shelf from July 14, 2021 through the date of
13 preliminary approval (“PAGA Period”) proportionally based on the number of workweeks
14 worked during the PAGA Period. Settlement, ¶ 4(B)(ii).

15 Based on information from Top-Shelf, there are approximately 252 Settlement Class
16 members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Amount from the
17 NSA is projected to be approximately \$1,264.55. *Id.* There are approximately 162 PAGA
18 Aggrieved Employees who worked during the PAGA Period. *Id.* Therefore, the average payment
19 from the PAGA Amount is estimated to be approximately \$61.73. *Id.*

20 Settlement Class members will have sixty (60) calendar days from the mailing of the
21 Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the
22 Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(C), (D). Settlement
23 Class members who do not opt out of the Settlement will be bound by its terms and will release
24 all claims against Top-Shelf included within the Settlement. *See Id.*, at ¶ 2(A).

25 **2. Attorneys’ Fees and Costs, Service Award, and PAGA Payment**

26 Plaintiff will apply for a Class Representative Service Award at the time of seeking final
27 approval of the proposed class action settlement in the amount of \$10,000, for his service to the
28 Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6. “[I]ncentive awards are fairly typical in class

1 action cases . . . and are intended to compensate class representatives for work done on behalf of
2 the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In*
3 *re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully
4 briefed at the time of final approval, Plaintiff’s requested Service Award is intended to recognize
5 the time and effort Plaintiff expended on behalf of the Settlement Class, including providing
6 substantial factual information and documents to Class Counsel, discussing the claims and
7 theories at issue in the litigation, actively participating in the prosecution of his claims, as well as
8 the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case,
9 and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil
10 Code § 1542. *See* Settlement, ¶¶ 2(C), 6; Blakely Decl., ¶ 23; *see also* Estrada Decl., ¶¶ 4-6.

11 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
12 Settlement Amount, which is currently estimated to be \$198,333.33, and up to \$20,000.00 in
13 verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; Blakely Decl., ¶ 22. Plaintiff submits
14 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
15 consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 22. Class Counsel has
16 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s
17 claims, conducting legal research, conducting extensive informal discovery, interviewing
18 Settlement Class members regarding their work experiences with Top-Shelf, analyzing
19 Settlement Class members’ timekeeping and payroll records and other data and documents,
20 creating a comprehensive damages model, preparing for and attending mediation, negotiating and
21 preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating
22 the case. *Id.* Class Counsel expect to expend additional attorney time in attending the hearing on
23 this Motion, overseeing the Notice process and fielding questions from Settlement Class
24 members, preparing the final approval papers, and attending the Final Approval hearing. *Id.*

25 California courts recognize an appropriate method for awarding attorneys’ fees in class
26 actions is to award a percentage of the “common fund” created as a result of a settlement. *See*
27 *e.g., Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of fund
28 method survives in California class action cases”). Class Counsel’s request for fees of one-third

of the Gross Settlement Amount is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* Newberg on Class Actions § 14.6 (4th Ed. 2013).

Class Counsel submit their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking final approval.

Additionally, the parties have agreed to designate \$40,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which \$30,000.00 (75%) will be paid to the LWDA, with the remaining \$10,000.00 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(5). Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly

1 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
2 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
3 agreement taken as a whole is fair. See e.g., *Hanlon*, supra, 150 F.3d at 1027. There is an initial
4 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
5 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*,
6 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

7 **1. Standard for Preliminary Approval**

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

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

18 Although Plaintiff steadfastly maintains that his claims are meritorious, he also
19 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
20 described above, Top-Shelf presented multiple defenses to Plaintiff’s claims, both on the merits
21 and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims
22 through class certification, and ultimately trial, success was far from certain.

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

24 Although the Parties engaged in significant informal discovery prior to mediation, the
25 Parties still had significant formal discovery to complete had the matter not settled. Blakely Decl.,
26 ¶ 21. This would have required expenditure of substantial time and resources by both Parties that
27 would have very likely spanned several years. *Id.* Even if Plaintiff was to certify the classes, the
28 Parties would incur considerably more attorneys’ fees and costs through a possible decertification

1 motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying
2 expense. *Id.*

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

4 Absent settlement, there is a risk that the class would not be certified prior to trial, or, if it
5 were certified, a risk that the class definition would be narrowed and the value of the case
6 diminished accordingly. This would potentially be accomplished either due to a narrowing of the
7 class definition in a Court order on a contested motion for class certification, or through settlement
8 agreements entered into by Top-Shelf with individual class members by way of *Pick-up-Stix* type
9 settlement agreements³, and the expected recovery could be significantly reduced, given the
10 settlement amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor,
11 too, supports preliminary approval of the settlement.

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

13 The Settlement provides a positive recovery for the Settlement Class in the face of hotly
14 disputed claims. Plaintiff conducted an analysis of underpaid wages due to Top-Shelf's alleged
15 unlawful timekeeping policies/practices, potential meal and rest period premiums owing, wage
16 statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results
17 of Plaintiff's exposure analysis are discussed below:

18 **Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$86,036**

19 Based on Plaintiff's review of employee timekeeping and payroll records, Plaintiff
20 estimates that Top-Shelf's timekeeping practices have resulted in approximately 12,116 hours of
21 unpaid wages. Blakely Decl., ¶ 14. Because employees generally worked shifts of at least 8.0
22 hours, Plaintiff contends that these unpaid wages should be paid at an overtime rate of pay,
23 calculating maximum potential exposure for this claim at approximately \$286,786 (12,116 hours
24

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

1 underpaid * \$23.67 average overtime rate). *Id.*

2 However, as argued above, Top-Shelf argues that its timekeeping policies/practices
3 complied with California law and that it compensated Settlement Class members for all hours
4 actually worked. Blakely Decl., ¶ 14. Top-Shelf also asserts that Plaintiff would be unable to
5 certify this claim since its timekeeping policies/practices are facially neutral and individualized
6 inquiries would be necessary as to whether employees were in fact underpaid for each workday
7 in question (including whether they were actually working when they were clocked in), resulting
8 in an unmanageable series of mini-trials. *Id.* Given these defenses, Plaintiff discounted this
9 maximum amount by 40% for risk of non-certification and an additional 50% for a risk of being
10 unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated
11 realistic exposure of approximately \$86,036. *Id.*

12 Meal Period Violations: \$186,743

13 Based on Plaintiff's review of Top-Shelf's timekeeping records, there were approximately
14 84,530 meal period eligible shifts worked during the Class Period. Blakely Decl., ¶ 15. Due to
15 Top-Shelf's auto-deduct practices, Plaintiff assumed a meal period violation for each meal period
16 eligible shift. *Id.* Plaintiff further calculated that the average hourly rate of pay for Settlement
17 Class members during the Class Period at approximately \$15.78. *Id.* Therefore, Plaintiff estimated
18 total maximum damages for meal period violations at approximately \$1,333,883 (84,530 non-
19 compliant meal periods * \$15.78 average meal period premium). *Id.*

20 However, as noted above, Top-Shelf argues that it maintained compliant meal period
21 practices throughout the Class Period and under *Brinker* it is only required to provide employees
22 the opportunity to take meal periods, not ensure that they are taken. Blakely Decl., ¶ 15; *see*
23 *Brinker, supra*, 53 Cal.4th at 1034 (rejecting "ensure" standard). Furthermore, Top-Shelf argues
24 that Plaintiff's meal period claim is not suited for class treatment, as individual inquiries would
25 be needed as to which employees took non-compliant meal periods or missed meal periods, how
26 many meal periods were non-compliant or missed, and why a particular employee did not a take
27 compliant meal period on a particular shift. *Id.* Based on these defenses, Plaintiff discounted the
28 maximum amount by 60% for risk of non-certification and an additional 65% for risk of losing

1 on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of
2 approximately \$186,743. *Id.*

3 Rest Period Violations: \$163,401

4 As indicated above, Plaintiff alleges that Top-Shelf failed to provide its employees with
5 compliant rest periods due to its policy/practice of providing a single combined rest period after
6 employees' meal periods. Blakely Decl., ¶ 16. Based on Plaintiff's analysis of Top-Shelf's
7 timekeeping records, Plaintiff estimates there were approximately 84,530 shifts in excess of 6.0
8 hours during the Class Period. *Id.* Therefore, Plaintiff estimates Top-Shelf's maximum potential
9 exposure for rest period violations at approximately \$1,333,883 (84,530 shifts in excess of 3.5
10 hours * \$15.78 average rest period premium). *Id.*

11 However, Top-Shelf contends that Plaintiff and Settlement Class members were provided
12 the opportunity for rest periods and that is maintained compliant rest period practices throughout
13 the Class Period. Blakely Decl., ¶ 16. Top-Shelf further argues that its departure from the
14 preferred rest period schedule was lawful because Settlement Class members overwhelming
15 preferred to take a longer 30-minute rest period in the afternoon and this was necessary to alleviate
16 a material burden which would be imposed on Top-Shelf if it implemented the preferred rest
17 period scheduled for 8-hour shifts. *Id.* Top-Shelf further argues that Plaintiff's rest period claim
18 is not amenable to class treatment, since individual inquiries would be required to determine
19 which employees failed to take rest periods, how many rest periods they failed to take, and the
20 reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These
21 manageability concerns are especially present with respect to rest period claims, Top-Shelf
22 argues, given that rest periods are not recorded. *Id.* Given these defenses, Plaintiff discounted this
23 maximum amount by 65% for risk of non-certification and an additional 65% for a risk of being
24 unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated
25 realistic exposure of approximately \$163,401. *Id.*

26 Wage Statement Penalties: \$90,720

27 Plaintiff alleges that Top-Shelf faces derivative wage statement liability as a result of its
28 failure to pay all wages as well as its failure to pay all meal and rest period premium wages.

1 Blakely Decl., ¶ 17. Those penalties are calculated as \$50 for each “initial” violation and \$100
2 for each “subsequent” violation, with a maximum of \$4,000 per employee. *See* Labor Code §
3 226(e). *Id.* In calculating potential exposure for this claim, utilizing the “initial” and “subsequent”
4 violation rates resulted in a number greater than the \$4,000 cap per employee. *Id.* Plaintiff,
5 therefore, calculated potential wage statement exposure at approximately \$648,000 (162
6 employees * \$4,000 max. penalty). *Id.*; *see also* Labor Code § 226(e). *Id.*

7 In light of Top-Shelf’s arguments that no violations occurred, that employees suffered no
8 “injury,” that any alleged violations were not “knowing and intentional,” that the wage statements
9 always accurately reflected hours worked and amounts paid to employees, as well as risks
10 associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted the maximum
11 exposure by 60% for risk of non-certification, and by an additional 65% for risk of being
12 unsuccessful on the merits, for an estimated realistic exposure of approximately \$90,720. Blakely
13 Decl., ¶ 17.

14 Waiting Time Penalties: \$68,923

15 Top-Shelf’s records reflected approximately 130 former Settlement Class members
16 separated from their employment and are therefore eligible for waiting time penalties. Blakely
17 Decl., ¶ 18. Based on an hourly rate of \$15.78, Plaintiff estimated the average waiting time penalty
18 per former employee to be \$3,787 (\$15.78 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff
19 calculated Top-Shelf’s maximum exposure for potential waiting time penalties to be
20 approximately \$492,310 (130 separated employees * \$3,787 average waiting time penalty). *Id.*

21 Top-Shelf presented several defenses to this claim, most notably its assertion that because
22 they possessed good-faith defenses to the underlying claims, any failure to pay wages was not
23 “willful” as a matter of law. Blakely Decl., ¶ 18. Top-Shelf further asserts Plaintiff’s waiting time
24 penalty exposure was grossly inflated as not every former employee experienced the alleged
25 Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of Plaintiff’s
26 underlying wage claims, Plaintiff would need to overcome these defenses, both as to class
27 certification and on the merits, as to his underlying claims. *Id.* To account for these defenses,
28 Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and an

1 additional 65% for risk of losing on the merits, and/or not receiving the maximum penalties
2 sought, to arrive at an estimated exposure of approximately \$68,923. *Id.*

3 PAGA Penalties: \$55,659

4 Plaintiff estimated a maximum total PAGA exposure at approximately \$636,100 (6,361
5 violations * \$100 “initial” penalty). Blakely Decl., ¶ 19; *Amaral v. Cintas Corp. No. 2*, 163
6 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified
7 that it is violating a Labor Code provision). However, these penalties derive from the underlying
8 wage and hour violations discussed above, which Top-Shelf vigorously disputes. Blakely Decl.,
9 ¶ 19; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013)
10 (explaining that a PAGA claim’s success was determined by the merits of its underlying claims).
11 Top-Shelf also asserts the Court would drastically reduce any award of PAGA penalties as
12 “confiscatory.” Blakely Decl., ¶ 19; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203
13 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
14 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing
15 PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum
16 figure by 65% for risk of losing on the merits and/or not recovering a PAGA penalty for each and
17 every pay period, and an additional 75% to account for the possibility of this Court reducing
18 penalties, to arrive at an estimated exposure of approximately \$55,659. *Id.*

19 Using these estimated figures for each of the claims described above, Plaintiff predicted
20 that the potential recovery for the Settlement Class would be approximately \$651,482. Blakely
21 Decl., ¶ 20. The proposed Settlement of \$595,000.00 therefore represents approximately 91.3%
22 of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
23 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
24 which is consistent with what Plaintiff’s counsel believes could have been recovered had the case
25 proceeded through trial.

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

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

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

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

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

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

17 The proposed settlement reflects approximately 91.3% of the estimated recovery the
18 Settlement Class could reasonably expect in light of the significant litigation risks, and will
19 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
20 percentage of the liability exposure recovered in this case far exceeds percentages routinely
21 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
22 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
23 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
24 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
25 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
26 be acceptable even though it amounts to only a fraction of the potential recovery that might be
27 available to the Settlement Class members at trial”). Further, the average Individual Settlement
28 Payment of approximately \$1,264.55 exceeds average payments achieved in other wage and hour

1 class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the range
2 of possible approval, such that notice should be provided to the Settlement Class members so that
3 they can consider the Settlement. The Court will have the opportunity to again assess the
4 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
5 opt-out or object.

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

7 The Settlement resulted from an exchange of substantial information, arm's-length
8 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
9 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
10 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
11 discussed above, Plaintiff carefully vetted the claims at issue and reviewed extensive timekeeping
12 and payroll data and conducted a detailed statistical analysis of the data to arrive at his estimated
13 classwide damages figures. *See Blakely Decl.*, ¶¶ 14-20. Thus, this factor supports preliminary
14 approval.

15 **c. The Settlement Is Devoid of Obvious Deficiencies**

16 Preliminary approval of the Settlement is also warranted because there are no obvious
17

18 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
19 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
20 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
21 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
22 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
23 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
24 of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
25 County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
26 *Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
27 recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
28 DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average
recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-
SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an
average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted
compelling defenses to liability; Plaintiff also notes several similar actions where the gross
recoveries per class member were less than \$90...[T]he Court finds that the results achieved are
good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC,
2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
2 members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment,
3 and Plaintiff’s Class Representative Service Award, are all reasonable and appropriate based on
4 the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports
5 preliminary approval.

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

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

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

15 A class is “ascertainable” where the members “may be readily identified without
16 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
17 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
18 defined as all current and former non-exempt employees employed by Top-Shelf in California
19 during the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be
20 identified from Top-Shelf’s personnel and employment records. Based on information provided
21 by Top-Shelf, the Settlement Class consists of approximately 252 current and former non-exempt
22 employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement
23 Class members before the Court, or for each Settlement Class member to bring an individual
24 lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup.*
25 *Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently
26 numerous).

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

28 The focus in a certification dispute is not the merits, but rather on what types of questions,

“common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on, among other issues, Top-Shelf’s uniform timekeeping policies and/or practices, and meal and rest period policies and/or practices. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Claims of the Named Plaintiff Are Typical

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

4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class

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

1 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
2 indication that Class Counsel were not qualified and the named plaintiff had no interests
3 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
4 and hour class action litigation. *See* Haines Decl., ¶¶ 2-8; Blakely Decl., ¶¶ 2-6.

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

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

23 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
24 because it advises Settlement Class members of the nature of the claims, basic contentions and
25 denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object
26 to the Settlement and the procedures by which to do so, explains the recovery formula and
27 expected recovery amount for each Settlement Class member, and advises them that they will be
28 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1 and 2 to

1 Exh. A; Settlement, ¶¶ 9(C)-(D). The proposed Class Notice will also notify Settlement Class
2 members of the final approval hearing date and provides the Settlement Class contact information
3 for Class Counsel and advises Settlement Class members that they may enter an appearance
4 through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court
5 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

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

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

10 **V. CONCLUSION**

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

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15 Dated: October 20, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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17 By:



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19 Sean M. Blakely
20 Attorneys for Plaintiff
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