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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ARTURO VELASCO, as an individual and on behalf of all others similarly situated, Plaintiff, vs. PACIFIC SHORES MASONRY, INC., a California Corporation; and DOES 1 through 100, Defendants.	Case No. CVRI2204698 [*Assigned for all purposes to Hon. Harold W. Hopp, Dept. 1*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: June 26, 2025 Time: 8:30 a.m. Dept.: 1 Reservation ID: 800297128209 Action Filed: October 28, 2022 Trial Date: None Set.

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 26, 2025, at 8:30 a.m. in Department 1 of the above-entitled Court, located at 4050 Main Street, Riverside, California 92501, Plaintiff Arturo Velasco ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

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

   > All current and former non-exempt employees who worked for Defendant Pacific Shores Masonry, Inc. in the State of California at any time from October 28, 2018, through the date of preliminary approval of the settlement (the "Class Period").

3. Preliminary appointment of Plaintiff Arturo Velasco 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 Enhancement Payment to Plaintiff, civil penalties payable to the Labor & Workforce Development Agency ("LWDA"), Settlement Administrator costs, and attorneys' fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice, Request for Exclusion Form, and Objection Form (collectively, the "Notice Packet") and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declaration of Sean M. Blakely and Paul K. Haines and the exhibits attached thereto; the declaration of Anthony Rogers of ILYM Group, Inc. and exhibits attached thereto; the declaration of Plaintiff Arturo Velasco; the Settlement Agreement; and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: May 29, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

By: Sean Blakely

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Arturo Velasco ("Plaintiff") seeks preliminary approval of a class action settlement ("Settlement") with Defendant Pacific Shores Masonry, Inc. ("Pacific Shores"). The Settlement resolves this class and representative action pending against Pacific Shores, in which Plaintiff alleges that Pacific Shores: (1) failed to pay all overtime and minimum wages; (2) failed to provide all legally compliant meal periods; (3) failed to authorize and permit all legally compliant rest periods; and (4) failed to reimburse for all necessary business expenditures. Plaintiff further alleges that, as a result of these Labor Code violations, Pacific Shores failed to furnish accurate and compliant itemized wage statements, failed to pay all wages owed at the time of separation of employment, and is liable for civil penalties under the Private Attorneys General Act ("PAGA").[1]

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement,[2] in which Pacific Shores has agreed to pay Five Hundred Seventy Thousand Dollars and Zero Cents ($570,000.00) to the following Settlement Class, which is estimated to consist of approximately 365 individuals:

> All current and former non-exempt employees who worked for Defendant Pacific Shores Masonry, Inc. in the State of California at any time from October 28, 2018, through the date of preliminary approval of the settlement (the "Class Period").

The $570,000.00 Gross Settlement Amount represents a favorable result to Class Members who will be agreeing to a release of only those claims that were asserted in this litigation. After deductions for Plaintiff's requested Class Representative Enhancement Payment, settlement administrator costs, the amount designated as PAGA civil penalties, and requested attorneys' fees

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[1] Plaintiff's operative First Amended Class and Representative Action Complaint pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) failure to indemnify for all necessary business expenditures; (8) unfair competition; and (9) civil penalties under the PAGA.

[2] The Stipulation of Settlement ("Settlement") is attached as **Exhibit A** to the Declaration of Sean M. Blakely filed concurrently with this Motion. The proposed Class Notice, Request for Exclusion Form, and Objection Form are attached as **Exhibits 1, 2** and **3**, respectively, to the Settlement.

and costs to Class Counsel, the remaining amount (the "Net Settlement Amount") of approximately $311,000.00 will be distributed to all Class Members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Class Member during the Class Period. Significantly, Class Members do not need to file a claim form in order to receive a Settlement Payment, as all Class Members will automatically receive a Settlement Payment unless they affirmatively opt-out. There are approximately 365 Class Members, and the average Settlement Payment is projected to be approximately $852.05.[3]

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Pacific Shores is a residential and commercial builder specializing in constructing free-standing walls, decorative walls, and masonry walls. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 9. Plaintiff was employed by Pacific Shores in the non-exempt job position of "Assistant/General Laborer" from approximately 2021 until approximately August 2022. *See* Declaration of Plaintiff Arturo Velasco ("Velasco Decl."), ¶ 2. On October 28, 2022, Plaintiff filed a Class Action Complaint in Riverside County Superior Court, alleging that Pacific Shores: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and permit all legally compliant rest periods; (v) failed to issue accurate, itemized wage statements; (vi) failed to timely pay all wages due or final wages due; (vii) failed to indemnify for all necessary business expenditures; and (viii) engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 10. On

[3] In addition to the $852.05 average Settlement Payment from the Net Settlement Amount, Class Members who worked during the PAGA Period (i.e., October 28, 2021 through the date of preliminary approval) will also receive a portion of the $5,000 PAGA Amount.

October 28, 2022, Plaintiff sent his PAGA notice letter to the LWDA. *Id.*, **Exhibit B**. On March 14, 2025, Plaintiff filed the operative First Amended Class and Representative Action Complaint ("FAC") adding a cause of action for civil penalties under the PAGA. *Id.*

B. PLAINTIFF'S CLAIMS AND PACIFIC SHORES' DEFENSES

1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that Pacific Shores utilized a timekeeping policy/practice that resulted in a systematic underpayment of wages through a process of unlawful time-shaving and/or rounding of hours worked. Blakely Decl., ¶ 13. Specifically, Plaintiff alleges that although employees recorded their hours worked through an application on their cellular phones, ExakTime, Pacific Shores only compensated employees for their scheduled hours of work, as opposed to all hours on the clock, resulting in unpaid wages. *Id.*

Pacific Shores argues that its timekeeping policies/practices complied with California law and that it has always compensated Class Members for all hours worked throughout the Class Period. Blakely Decl., ¶ 13. Pacific Shores further argues that just because an employee is clocked in does not mean they are working. *Id*. For example, much of the alleged unpaid time was pre-shift (i.e., employees clocked in before the scheduled start of the shift), and Pacific Shores argues employees work as a group and that they do not begin performing work before the start of their shift, and instead engage in personal activities like reading or talking with co-workers before their shift. *Id*. Finally, Pacific Shores asserts that Plaintiff would be unable to certify this claim as individualized inquiries would be necessary as to whether employees were in fact underpaid or overpaid 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 Pacific Shores failed to provide legally compliant first meal periods and second meal periods when Class Members worked in excess of 10.0 hours. Blakely Decl., ¶ 14. Specifically, Plaintiff alleges that first meal periods were often late (i.e., commencing after the completion of five hours of work), or short (i.e., less than 30 minutes) due to work demands imposed by Pacific Shores. *Id.*, at ¶ 14. In addition, for a significant portion of the Class Period, Plaintiff alleges that Pacific Shores did not record employee meal periods and automatically deducted 30-minutes each workday for a purported meal period regardless of whether a compliant first meal period was provided. *Id*.

Pacific Shores counters that they have maintained compliant written meal period policies throughout the Class Period and have always provided employees the *opportunity* to take legally compliant meal periods, and that they are not required to "ensure" meal periods are taken. Blakely Decl., ¶ 14; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Pacific Shores also maintains that any short, missed, or late meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Blakely Decl., ¶ 14. Additionally, Pacific Shores maintains that employees voluntarily waived their second meal period when they worked shifts in excess of 10.0 hours (but less than 12.0 hours), as they are entitled to do under Labor Code § 512. *Id.* Finally, Pacific Shores argues that these claims are not suited for class treatment, as individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id.*

3. <u>Rest Period Claims</u>

Plaintiff alleges that Pacific Shores failed to authorize and permit its non-exempt employees to take all required rest periods. Blakely Decl., ¶ 15. Specifically, Plaintiff was not authorized and permitted to take separate rest periods throughout the workday and was only authorized and permitted a single 15 or 20-minute combined rest period at approximately 1:00 p.m. during his 8-hour shifts, in violation of California law. *Id.*; *see Rodriguez v. E.M.E., Inc.* 246 Cal.App.4th 1027 (2016) (holding that in a shift with a single meal period, the preferred schedule requires the provision of a rest period in the middle of each "work period" before and after the meal break, and that "a departure from the preferred schedule is permissible only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a material burden that would be imposed on the employer by implementing the preferred schedule.").

In response, Pacific Shores argues that they have always maintained and enforced lawful rest period policies/practices during the Class Period, and have, in fact, authorized and permitted all required rest periods to Class Members. Blakely Decl., ¶ 15. Pacific Shores further argues that its departure from the preferred rest period schedule was lawful because Class Members overwhelming preferred to take one 15-20 minute rest period to eat. *Id; see e.g., Rodriguez, supra*, 246 Cal.App.4th at 1041-42 (combined rest period practice was "popular among employees because it gave them an opportunity to eat their main meal, which occurred in the morning, and secure a better rest."). Pacific Shores further argued that its practice of combining rest periods into one 20-minute rest period was implemented to alleviate material economic losses which would be imposed on Pacific Shores if it implemented the preferred rest period schedule for 8-hour shifts. Blakely Decl., ¶ 15. Furthermore, Pacific Shores argues that Plaintiff's rest period claim is not amenable to class treatment, as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift, as there are no records of whether or not a rest period was authorized and permitted. *Id.*

4. <u>Unreimbursed Business Expenses</u>

Plaintiff alleges that Pacific Shores failed to reimburse him and other putative class members for all reasonable and necessary work expenditures, including personal cellular phone expenses. Blakely Decl., ¶ 16. Specifically, Pacific Shores required Plaintiff and other non-exempt employees to use their personal cellular phones to clock in and out of their work shifts using an application called "ExakTime," and to communicate with managers and/or supervisors, however, Pacific Shores failed to reimburse Plaintiff and other non-exempt employees for the costs associated with their cellular phones. *Id*. Furthermore, Plaintiff alleges Pacific Shores required Plaintiff and other non-exempt employees to use their own vehicles in the performance of their job duties, however, Pacific Shores failed to reimburse Plaintiff and other non-exempt employees for these business expenses. *Id*.

In response, Pacific Shores maintains that Class Members were not required to use their personal cellular phones or vehicles as part of their job. Blakely Decl., ¶ 16. Pacific Shores further argues that any expenses incurred by Class Members were extremely minimal, given the wide availability of low-cost cellular phone plans. *Id*. Pacific Shores further contends that this claim would require individual inquiries into whether Class Members actually used their personal cellular phones or vehicles for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*; *see also*, *e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices").

5. Claims Under Labor Code §§ 203, 226 and the PAGA

As a result of these alleged wage and hour violations, Plaintiff asserts that Pacific Shores failed to comply with its wage statement obligations, in violation of Labor Code § 226. Blakely Decl., ¶ 17. Plaintiff also alleges that the wage statements issued by Pacific Shores were facially deficient in that the wage statements failed to list Pacific Shores' address in violation of Labor Code § 226(a)(8). *Id.*

In addition, as a result of the unpaid wages and unpaid meal and rest period premiums alleged above, Plaintiff asserts that Pacific Shores failed to pay all wages owed at the time of his separation of employment with Pacific Shores. Blakely Decl., ¶ 18. Finally, Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. *Id.*, at ¶ 19.

Pacific Shores contends that any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiff cannot show he or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e) for the imposition of penalties, and that the wage statements always accurately reflected amounts *paid* to employees. Blakely Decl., ¶ 17; *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1337 (2018) ("The purpose of section 226 is to 'document the paid wages to ensure the employee is fully informed regarding the calculation of those wages'"). With respect to Plaintiff's allegation that the wage statements did not list Pacific Shores' address, Pacific Shores argues that the address appears on the paycheck itself, and therefore, met the requirements of Labor Code § 226(a)(8). Blakely Decl., ¶ 17.

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

Finally, Pacific Shores contends that since Plaintiff's PAGA claim is derivative of his underlying wage claims, Plaintiff's PAGA claim would fail with those claims. Blakely Decl., ¶ 19; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail"). Pacific Shores further maintains that given its good-faith defenses, the Court would substantially reduce any PAGA penalties awarded. Blakely Decl., ¶ 19; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. <u>DISCOVERY AND MEDIATION</u>

Prior to attending mediation, the Parties engaged in significant formal and informal discovery. Blakely Decl., ¶ 11. Plaintiff served formal discovery seeking the contact information for the putative class. *Id*. After extensive meet and confer efforts, Plaintiff was provided with the contact information for the putative class and Plaintiff's counsel interviewed Class Members regarding their work experiences with Pacific Shores. *Id*. In connection with mediation, Pacific Shores produced a sampling of time and pay records for the putative class, its Employee Handbook utilized during the Class Period, a Class List with each Class Member's hire and terminate date (if applicable), as well as other documents and information. *Id*. Plaintiff conducted a detailed analysis and extrapolation of the records produced to create a detailed exposure analysis for all claims at issued. *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 Pacific Shores' potential defenses. *Id.*

On July 23, 2024, the Parties attended a full-day mediation with the Honorable Glenda Sanders (Ret.), a preeminent wage and hour class action mediator. Blakely Decl., ¶ 12. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal bases for Plaintiff's claims and Pacific Shores' defenses. *Id*. The Parties did not reach a settlement at mediation. *Id.* In the months following mediation, Pacific Shores provided Plaintiff's counsel with its financial records and Plaintiff, with the help of its retained forensic accountant, reviewed the documents provided by Pacific Shores. *Id.* After an exhaustive review of Pacific Shores' financial records, the Parties continued their settlement discussions and ultimately reached a classwide settlement. *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 this Settlement, Pacific Shores will pay a Gross Settlement Amount ("GSA") of $570,000.00.[4] *See* Settlement, § 3. Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive a Settlement Payment. *Id.,* at §§ 3-4. Each Class Member will automatically receive a Settlement Payment unless they affirmatively opt out of the Settlement. *Id.*

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[4] Following Pacific Shores' representation of its financial condition, Pacific Shores turned over its financial records to Plaintiff's retained expert, Keith D. Messerschmidt, who is a forensic accountant and has consulted or provided expert testimony in dozens of litigation and insurance matters. Blakely Decl., ¶ 12. Mr. Messerschmidt opines that Pacific Shores could not reasonably afford to pay more than the Gross Settlement Amount, and that the requested payment schedule was necessary for Pacific Shores to remain in business without dramatically impacting its operations. Should the Court wish to review a declaration from Mr. Messerschmidt attesting to these facts and Pacific Shores' financial condition, this declaration could either be filed in *camera* or filed under seal, at the Court's request.

The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	$570,000.00
• Minus Court-approved attorneys' fees (1/3):	$190,000.00
• Minus Court-approved verified costs (up to):	$30,000.00
• Minus Court-approved Enhancement Payment:	$10,000.00
• Minus amount set aside as PAGA penalties:	$20,000.00
• Minus estimated settlement administration costs:	$9,000.00
Net Settlement Amount ("NSA"):	$311,000.00
• PLUS 25% "PAGA Amount" to Settlement Class:	$5,000.00
Total Amount Paid to Class Members:	**$316,000.00**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and verified costs, Plaintiff's Class Representative Enhancement Payment, Settlement Administrator costs, and the amount designated as PAGA civil penalties, the Settlement requires Pacific Shores to pay a Net Settlement Amount ("NSA") of approximately $311,000.00 to all Class Members who do not timely opt out. *See* Settlement, § 4(A). The NSA shall be distributed to all participating Class Members based on the participating Class Member's proportionate number of workweeks worked during the Class Period. *Id*., at § 4(B)(i). In addition to the NSA, Five Thousand Dollars and Zero Cents ($5,000.00) has been designated as the "PAGA Amount," and shall be distributed to PAGA Aggrieved Employees proportionally based on the number of pay periods worked for Pacific Shores in California at any point from October 28, 2021, through the date of preliminary approval of the Settlement ("PAGA Period"). *Id*., at § 4(B)(ii).

Pacific Shores' share of employer-side payroll taxes will be paid by Pacific Shore separately, and in addition to, the GSA. *See* Settlement, § 3(D). Any payment from the PAGA Amount shall be treated as 100% penalties; and any payment from the NSA to Class Members shall be allocated as twenty percent (20%) wages, and eighty percent (80%) as penalties and interest. *Id*., at § 4(D). The Settlement Administrator will issue to Class Members an IRS Form W-2 (for amounts paid was wages) and an IRS Form 1099 (for amounts paid as penalties and interest). *Id*. The Parties propose that any uncashed checks shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund in the name of the Class Member who does not cash his/her check. *Id*., at § 4(E).

According to Pacific Shores' records, there are approximately 365 total Class Members. Blakely Decl., ¶ 21. Therefore, the average individual Settlement Payment is projected to be approximately $852.05. *Id.* Based on the proposed allocations of the Net Settlement Amount, the lowest potential individual Settlement Payment is projected to be approximately $15.55, and the highest potential individual Settlement Payment is estimated to be approximately $4,671.68. *Id*. There are also approximately 146 Aggrieved Employees who worked during the PAGA Period. *Id*. Therefore, the average payment from the PAGA Amount is estimated at approximately $34.25. *Id*.

Class Members will have forty-five (45) calendar days to opt-out, submit a dispute, or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 9(C)-(E). Those Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Pacific Shores included within the Settlement. *See Id*., at § 2(A).

2. Attorneys' Fees, Costs, Enhancement Payment, and PAGA Payment

Plaintiff will separately apply for Enhancement Payment at the time of seeking final approval of the proposed Settlement in the amount of $10,000.00, for his service to the Settlement Class. *See* Settlement, §§ 3(C)(3), 6. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff's requested Enhancement Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, actively participating in the prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in this case and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of California Civil Code section 1542. *See generally*, Velasco Decl.

Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be $190,000.00, and up to $30,000.00 in verified costs reimbursement. *See*

Settlement, §§ 3(C)(4), (5); Blakely Decl., ¶ 23. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, engaging in formal and informal discovery, interviewing Class Members regarding their working experiences, reviewing Pacific Shores' documents and policies, analyzing Class Members' relevant records and creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Class Members, preparing the final approval papers, and attending the Final Approval hearing. *Id.*

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

Class Counsel submit 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 excellent 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 litigation costs when seeking final approval.

Additionally, the Parties have agreed to designate $20,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $15,000.00 (75%) will be paid to the LWDA, with the remaining $5,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(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 the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by Class Counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard For Preliminary Approval

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

a. <u>The Strength of Plaintiff's Case</u>

Class Counsel carefully vetted the claims at issue, reviewed extensive data and conducted a detailed analysis of the data to create a comprehensive damages model for Pacific Shores' potential class-wide liability. *See* Blakely Decl., ¶ 11. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described in section II.B., *supra*, Pacific Shores presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

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

c. <u>Risk of Maintaining Class Action Status</u>

Plaintiff has not yet filed his class certification motion, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class, and the expected class-wide recovery would be significantly reduced. Thus, this factor supports preliminary approval.

d. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

The Settlement provides a fair and reasonable monetary recovery for Settlement Class members for hotly disputed claims. After analyzing the data provided by Pacific Shores prior to mediation, Plaintiff prepared a class-wide exposure model and forecasted the expected recovery for each claim as follows:

Unpaid Wages Due to Timekeeping Policies/Practices: $107,185

Based on Plaintiff's review of employee records, Plaintiff contends that Pacific Shores' timekeeping practices resulted in employees not being compensated for approximately fifteen (15) minutes per shift. Blakely Decl., ¶ 13. Accordingly, Plaintiff calculates Pacific Shores' maximum exposure for this claim at approximately $680,540 (15 minutes per shifts * 92,685 shifts * $29.37 average overtime rate of pay). *Id.*

But as noted above, Pacific Shores raised several defenses to this claim, including its argument that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked; that some employees were overpaid as a result of its rounding practice; and that Plaintiff would be unable to certify this claim given the individualized inquiries as to whether employees were in fact underpaid, or overpaid for each workday in question. Blakely Decl., ¶ 13. Based on these defenses, Plaintiff discounted the maximum exposure by 55% to account for the risk of non-certification, and an additional 65% to account for Pacific Shores' defenses on the merits and/or failure to recover the full amount sought, to arrive at an estimated exposure of approximately $107,185. *Id.*

First Meal Period Violations: $217,773

Based upon a review and extrapolation of Pacific Shores' timekeeping records, Plaintiff estimates there were approximately 92,685 shifts in excess of 5.0 hours entitling employees to a first meal period. Blakely Decl., ¶ 14. As indicated above, for the vast majority of the Class Period, Pacific Shores did not record employee meal periods and automatically deducted thirty (30) minutes for a purported meal period each shift. *Id.* Assuming each auto-deduct shift represents a violation, Plaintiff estimates Pacific Shores' maximum meal period exposure at approximately $1,814,773 (92,685 non-compliant meal periods * $19.58 average premium). *Id.*

However, Pacific Shores contends that they have maintained compliant written meal period policies throughout the Class Period and have always provided its employees the *opportunity* to take legally compliant meal periods, and that it is not required to "ensure" meal periods are taken. Blakely Decl., ¶ 14. Pacific Shores also argues this claim is not suited for class treatment, as individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id.* Based on these defenses, Plaintiff discounted the maximum amount by 60% for risk of non-certification, and an additional 70% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $217,773. *Id*.

<u>Rest Period Violations:</u> $113,423

Based on Plaintiff's review of Pacific Shores' records, there have been approximately 92,685 shifts worked over 3.5 hours, entitling non-exempt employees to at least one (1) off-duty rest period. Blakely Decl., ¶ 15. Therefore, assuming a violation for each of these shifts, Plaintiff calculates Pacific Shores' maximum liability for rest period violations at approximately $1,814,773 (92,685 non-compliant rest periods * $19.58 premium). *Id*.

However, Pacific Shores argues that they have always maintained and enforced lawful rest period policies/practices during the Class Period, and have, in fact, authorized and permitted all required rest periods to Class Members. Blakely Decl., ¶ 15. Furthermore, Pacific Shores argues that Plaintiff's rest period claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift as there are no records of whether or not a rest period was authorized and permitted. *Id.* Therefore, Plaintiff discounted Pacific Shores' maximum exposure by 75% to account for the risk of non-certification, and an additional 75% to account for Pacific Shores' defenses on the merits or failure to recover the full amount sought, to arrive at an estimated exposure of approximately $113,423. *Id.*

<u>Unreimbursed Business Expenses</u>: $33,367

Plaintiff alleges that Pacific Shores failed to reimburse him and other putative class members for all reasonable and necessary work expenditures, including mileage incurred in using their personal vehicles for work purposes and personal cellular phone expenses. Blakely Decl., ¶ 16. Assuming that employees are owed approximately $2.50 per weekly pay period for cellular phone usage, Plaintiff estimates Pacific Shores' maximum liability for its failure to reimburse employees for usage of their personal cellular phones at approximately $46,343 (18,537 weekly pay periods * $2.50 per pay period). *Id*. In addition, Plaintiff alleges Pacific Shores required Plaintiff and other putative class members to use their personal vehicles to travel between various locations once a week and that employees generally traveled approximately 10 miles each week. *Id*. Accordingly, Plaintiff calculates Pacific Shores' maximum liability for failure to pay for mileage at approximately $120,491 (18,537 shifts * 10 miles * $0.65 IRS mileage rate). *Id*. Therefore, Plaintiff contends that Pacific Shores is liable for approximately $166,834 in unreimbursed business expenses. *Id*.

As noted above, Pacific Shores maintains that Class Members were not required to use their personal cellular phones or vehicles as part of their job. Blakely Decl., ¶ 16. Pacific Shores further argues that any cellular phone expenses incurred by Class Members were minimal, given the wide availability of low-cost cellular phone plans. *Id*. Pacific Shores further argues that this claim would require individual inquiries into whether Class Members actually used their personal cellular phones or vehicles for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id*. Based on these defenses, Plaintiff discounted the estimated maximum amount by 50% for risk of non-certification, and by an additional 60% to account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately $33,367. *Id*.

<u>Wage Statement Violations</u>: $81,760

Based on the data produced, there are 146 putative class members and 9,030 unique weekly pay periods worked within the one-year liability window relevant to Labor Code § 226. Blakely Decl., ¶ 17. Section 226 provides for a $50 penalty for each "initial" violation and $100 for each "subsequent" violation, with a cap of $4,000 per employee. *See* Labor Code § 226(e). Calculating an "initial" $50 penalty for each employee and "subsequent" $100 penalties for every subsequent pay period would result in an amount greater than the $4,000 maximum for each employee. Blakely Decl., ¶ 17. Therefore, Plaintiff calculated Pacific Shores' maximum wage statement exposure at approximately $584,000 (146 employees * $4,000 maximum penalty). *Id*.

However, given Pacific Shores' arguments that no violations occurred, that Class Members suffered no "injury," and that any violations were not "knowing and intentional," Plaintiff discounted the maximum exposure by 60% for risk of non-certification, and by an additional 65% for risks on the merits, for an estimated realistic exposure of approximately $81,760. Blakely Decl., ¶ 17.

Waiting Time Penalties: $81,216

Pacific Shores' records reflected approximately 144 former Class Members separated from their employment with Pacific Shores and are therefore eligible for waiting time penalties. Blakely Decl., ¶ 18. Based on an hourly rate of $19.58, Plaintiff estimated the average waiting time penalty per former employee to be $4,700 ($19.58 * 8 hours per day * 30 days). *Id*. Therefore, Plaintiff calculated Pacific Shores' maximum exposure for potential waiting time penalties to be approximately $676,800 (144 separated employees * $4,700 average penalty). *Id*.

Pacific Shores presented several defenses to this claim, most notably their assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. Blakely Decl., ¶ 18. Pacific Shores further asserts Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id*. Moreover, because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Pacific Shores' defenses, both as to class certification and on the merits, as to his underlying claims. *Id*. To account for Pacific Shores defenses, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and an additional 70% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately $81,216. *Id*.

PAGA Civil Penalties: $33,862

The success of Plaintiff's PAGA claim is wholly dependent upon the success of his underlying claims. Assuming that Plaintiff could prove at least one underlying Labor Code violation in each pay period within the PAGA Period, Plaintiff estimates Pacific Shores' maximum PAGA exposure at $903,000 (calculated from 9,030 pay periods * $100 initial violation rate). Blakely Decl., ¶ 19; *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

However, these penalties derived from the underlying wage and hour violations discussed above, which Pacific Shores vigorously disputes. Blakely Decl., ¶ 19*; see e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Pacific Shores also asserts that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 19; *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming reduction of PAGA penalties to $5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from $2.8 million to $500,000). Plaintiff therefore discounted the maximum figure by 75% for the risk of being unable to proceed on a representative basis and risk of losing of the merits, and/or not recovering a PAGA penalty in each and every pay period, and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $33,862. Blakely Decl., ¶ 19.

Therefore, if Plaintiff was entirely successful at trial on all claims described above, Plaintiff estimates the maximum total exposure to be approximately $6,640,720. Blakely Decl., ¶ 20. However, taking into account Pacific Shores' various defenses, both as to certification and merits issues, difficulties of proof, and other risks described above, Plaintiff predicted that the potential likely recovery for the Settlement Class at trial would be approximately $668,586. *Id.* The proposed settlement of $570,000.00 therefore represents approximately 85.3% of the reasonably forecasted recovery for the Settlement Class, while avoiding the further expense and serious risk of proceeding towards class certification and trial. *Id.* Taking into account the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce the civil penalties, the proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See e.g., Altamirano v. Shaw Industries, Inc*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action settlement, stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's claims."). Preliminary approval is appropriate since the

Settlement will provide significant monetary relief to Class Members without the uncertainty, delay, and additional expense of further litigation.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation,* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. Class Counsel conducted an in-depth review of Pacific Shores' relevant policies and records, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely Decl., ¶ 11. The Settlement was also reached with the assistance of an experienced wage and hour class action mediator and a retired Judge. *Id.,* at ¶ 12. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

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

a. The Settlement is Within the Range of Possible Approval

The proposed settlement reflects approximately 85.3% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l*

Rural Telecomm. Coop. v. DirecTV, Inc., 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial"). Further, the average Settlement Award of $852.05 is in line with average payments achieved in other wage and hour class action settlements.[5] Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and months of additional negotiations. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive data, and conducted a detailed statistical analysis of the data to arrive at the estimated class-wide damages figures. *See* Blakely Decl., ¶¶ 13-20. The Parties attended a full-day mediation, and worked collaboratively in the following months to finalize the Settlement. *Id.*, at ¶ 12. Thus, this factor supports preliminary approval.

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

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

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, the Enhancement Payment, settlement administration costs, and the PAGA allocation are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

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

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

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

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all of Pacific Shores' current and former non-exempt employees who worked for Pacific Shores in California at any time during the Class Period. *See* Settlement, § 1. Therefore, Class Members can be identified from Pacific Shores' personnel and employment records. Pacific Shores represents that the Settlement Class consists of approximately 365 current and former non-exempt employees. *See* Blakely Decl., ¶ 21. It would therefore be impracticable to bring all Class Members before the Court, or for each Class Member to bring an individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

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

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, Pacific Shores' allegedly unlawful timekeeping policies/practices and its meal and rest period policies/practices. These types of claims are commonly held to be proper for class certification. *See e.g.*, *Williams v. Superior Court* 221 Cal.App.4th 1353, 1371 (2013) (certifying class based on uncompensated work time); *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 members of the proposed Settlement Class. First, Plaintiff was employed by Pacific Shores during the Class Period as a non-exempt employee and was subject to Pacific Shores' wage and hour policies at issue in this case. *See* Velasco Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he was deprived of all minimum and overtime wages due to Pacific Shores' unlawful timekeeping policies/practices. *Id.,* at ¶ 3. Plaintiff also contends that Pacific Shores failed to provide legally compliant meal periods and failed to authorize and permit all rest periods. *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. Bank of America,* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Haines Decl., ¶¶ 2-8; Blakely Decl., ¶¶ 2-6.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

This Court should order distribution to the Settlement Class of the proposed Notice Packet in English and Spanish by U.S. Mail, postage prepaid, using last known mailing address information provided by Pacific Shores. *See* Settlement, § 9. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Here, Plaintiff proposes that the Settlement be administered by ILYM Group, Inc. ("ILYM"), an experienced class action settlement administrator. *See generally* Declaration of Anthony Rogers ("Rogers Decl.") and attached exhibits.[6] Class Members' addresses will be ascertainable through Pacific Shores' personnel and payroll records, which Pacific Shores will provide to ILYM within fifteen (15) business days of preliminary approval of the Settlement. *See* Settlement, § 9(A). Within ten (10) business days of receipt of the Class Members' addresses, ILYM will run the addresses through the National Change of Address ("NCOA") database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice in both English and Spanish to all Class Members. *See* Settlement, § 9(B). To the extent that any notices are returned, ILYM will perform a "skip trace" to track any Class Member's current mailing address. *Id*., at § 9(F).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the Parties and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for

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[6] ILYM Group, Inc.'s proposed fee to administer this settlement is $8,950. See Exh. C to Rogers Decl.

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

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

V. CONCLUSION

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

Dated: May 29, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

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