

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

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ALEXANDRO MORA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

PRIME TECH CABINETS, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 30-2022-01289157-CU-OE-CXC

*[Assigned for all purposes to the Hon. Melissa
R. McCormick, Dept. CX104]*

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

Date: June 20, 2024

Time: 2:00 p.m.

Dept.: CX104

Reservation Number: 74243045

Complaint Filed: October 31, 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 June 20, 2024, at 2:00 p.m. in Department CX104 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Alexandro Mora (“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 who worked for Defendant Prime Tech Cabinets, Inc. in California from October 31, 2018 until the date of preliminary approval of the settlement (“Class Period”).
3. Preliminary appointment of Plaintiff Alexandro Mora 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 administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices;
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.

///

///

///

///

///

///

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 Alexandro Mora, and
3 Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the
4 pleadings and other papers filed in this action, and on any further oral or documentary evidence
5 or argument presented at the time of hearing.

6
7 Dated: March 7, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By: 
10 Paul K. Haines
11 Sean M. Blakely
12 Attorneys for Plaintiff
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. THE PARTIES AND BRIEF PROCEDURAL HISTORY	2
B. PLAINTIFF’S CLAIMS AND PTC’S DEFENSES	3
1. Meal Period Claims.....	3
2. Rest Period Claims.....	4
3. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices.....	4
4. Wage Statement Violations.....	5
5. Waiting Time Penalties.....	5
6. PAGA Civil Penalties	6
C. DISCOVERY AND MEDIATION.....	6
III. THE PROPOSED SETTLEMENT.....	7
A. ESSENTIAL TERMS OF THE SETTLEMENT	7
1. The Settlement Provides for Reasonable Monetary Payments	8
2. Attorneys’ Fees and Costs, Enhancement Payment, and PAGA Payment.....	9
IV. ARGUMENT.....	11
A. PRELIMINARY APPROVAL IS WARRANTED	11
1. Standard for Preliminary Approval.....	11
a. The Strength of Plaintiff’s Case.....	12
b. Risk, Expense, Complexity, and Duration of Further Litigation.....	12
c. Risk of Maintaining Class Action Status	12
d. Amount Offered in Settlement Given Realistic Value of Claims.....	13
e. The Experience and Views of Counsel	18
2. The Preliminary Approval Standard Is Met.....	18
a. The Settlement Is Within the Range of Possible Approval.....	19
b. The Settlement Resulted from Serious, Informed Negotiations	20

1	c. The Settlement Is Devoid of Obvious Deficiencies.....	20
2	B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS.....	20
3	1. The Proposed Class Is Ascertainable and Numerous	20
4	2. Common Issues of Law and Fact Predominate.....	21
5	3. The Claims of the Named Plaintiff Are Typical	21
6	4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the	
7	Class	22
8	C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE	22
9	D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	23
10	V. CONCLUSION.....	24

TABLE OF AUTHORITIES

Federal Cases

<i>Bowles v. Sup. Ct.</i> , 44 Cal.2d 574 (1955)	21
<i>Dunleavy v. Nadler</i> , 213 F.3d 454 (9th Cir. 2000)	19
<i>Eisen v. Carlisle & Jacquelin</i> 417 U.S. 156 (1974).....	22
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	11
<i>In re Pacific Enterprises Securities Litigation</i> 47 F.3d 373 (9th Cir. 1995)	18
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	11
<i>Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	19

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	17
<i>Augustus v. ABM Security Svcs., Inc.</i> , 2 Cal.5th 257 (2016)	4, 15
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> 191 Cal.App.3d 1341 (1987)	21
<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013).....	21
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012)	3, 13
<i>Capital People First v. State Dept. of Developmental Services</i> 155 Cal.App.4th 676 (2007)	22
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018).....	6
<i>Chindarah v. Pick Up Stix, Inc.</i> , 171 Cal.App.4th 796 (2009)	12, 13
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	11
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	9
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	11, 18, 20
<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016)	10
<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308 (2018)	5
<i>McGhee v. Bank of America</i> 60 Cal.App.3d 442 (1976)	22
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	6
<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....	11
<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i> 34 Cal.4th 319 (2004).....	21

1	<i>Sevidal v. Target Corp.</i> 189 Cal.App.4th 905 (2010).....	21
2	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012).....	6, 17
3	<i>United Parcel Service, Inc. v. Superior Court</i> , 196 Cal.App.4th 57 (2011).....	14
4	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001).....	11
5		
6	<u>State Statutes and Rules</u>	
7	Cal. Civ. Proc. § 382.....	20
8	8 Cal. Code Regs. § 13520.....	6
9	Cal. Lab. Code § 2699(e)(2)	6
10	Cal. Rule of Court 3.769	23
11		
12	<u>Unpublished Cases</u>	
13	<i>Bercea v. AE Retail West</i>	
14	Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012)	19
15	<i>Chu v. Wells Fargo Investments, LLC</i>	
16	Case No. C 05-4526 MHP, 2011 WL 672645 (N.D. Cal. 2011).....	10
17	<i>Doty v. Costco Wholesale Corp.</i>	
18	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007)	19
19	<i>Fleming v. Covidien Inc.</i>	
20	Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	6, 17
21	<i>Glass v. UBS Finan. Servs.</i>	
22	Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007).....	19
23	<i>Gomez v. Amadeus Salon, Inc.</i>	
24	Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010)	19
25	<i>Green v. Lawrence Service Co.</i>	
26	2013 WL 3907506 (C.D. Cal. 2013).....	17
27	<i>Lazarin v. Pro Unlimited, Inc.</i>	
28	Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013).....	10

1	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
2	Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006).....	19
3	<i>Palencia v. 99 Cents Only Stores</i>	
4	Case No. 34-2010-00079619 (Sacramento County Super. Ct.).....	19
5	<i>Ressler v. Federated Department Stores, Inc.</i>	
6	Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009).....	19
7	<i>Schiller v. David's Bridal, Inc.</i>	
8	Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (E.D. Cal. June 11, 2012).....	19
9	<i>Sorenson v. PetSmart, Inc.</i>	
10	Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)	19
11	<i>Williams v. Centerplate, Inc.</i>	
12	Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC	
13	2013 WL 4525428 (S.D. Cal. Aug. 26, 2013)	19
14		
15	<u>Other Sources</u>	
16	Manual for Complex Litigation § 30.41(3rd Ed. 1995).....	18
17	4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013)	18
18	4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alexandro Mora (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of current and former non-exempt
5 employees who worked for Defendant Prime Tech Cabinets, Inc. (“PTC”) in California at any
6 time from October 31, 2018 through the date of preliminary approval (the “Class Period”).
7 Plaintiff’s primary allegations are that PTC: (1) failed to pay all wages due to its allegedly
8 unlawful timekeeping policies and 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, PTC’s alleged failure to issue accurate and compliant wage statements, and for civil
12 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 PTC has agreed to pay One Million
15 Six Hundred Thousand Dollars and Zero Cents (\$1,600,000.00) to the following Settlement Class:
16 All current and former non-exempt employees who worked for Defendant
17 Prime Tech Cabinets, Inc. in California from October 31, 2018 until the
18 date of preliminary approval of the settlement (“Class Period”).

19 If the Settlement is approved, PTC will pay a non-reversionary Gross Settlement Amount
20 of \$1,600,000.00. After deducting estimated administration costs, Plaintiff’s requested Class
21 Representative Enhancement Payment, the amount designated as PAGA civil penalties, and
22 requested attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately
23 \$962,166.67 will be distributed to all Settlement Class members who do not opt out of the

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

28 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
as **Exhibit A**. The proposed Class Notice and Request for Exclusion Form 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 Settlement based on the proportionate number of workweeks worked by each Settlement Class
2 member during the Class Period. Former employees eligible for waiting time penalties and
3 employees eligible for wage statement and PAGA civil penalties will receive additional
4 consideration for these penalty claims.

5 Significantly, Settlement Class members do not need to file a claim to reap the financial
6 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
7 unless they affirmatively opt-out. There are approximately 540 Settlement Class members, and
8 the average payment to participating Settlement Class members is projected to be approximately
9 \$1,781.79.

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

15 **II. SUMMARY OF THE LITIGATION**

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

17 Founded in 1988, PTC is a manufacturer and installer of high-end custom cabinetry, and
18 operates out of its factory in Santa Ana, California. *See* Declaration of Sean M. Blakely (“Blakely
19 Decl.”), ¶ 8. PTC has employed various non-exempt positions throughout the Class Period,
20 including production or “shop” employees (who manufacture the cabinets), installers (who install
21 cabinets at single-family residences and apartments), “shipping” employees, “pick-up”
22 employees (who put finishing touches on cabinets after installation), as well as sales and office
23 staff. *Id.* Plaintiff worked for PTC as a non-exempt “Machine Operator” from 2002 until
24 approximately August 2022. *See* Declaration of Alexandro Mora in Support of Approval of Class
25 Action Settlement (“Mora Decl.”), ¶ 2.

26 On October 31, 2022, Plaintiff filed a Class Action Complaint against PTC in Orange
27 County Superior Court, alleging causes of actions for: (1) failure to pay all overtime wages; (2)
28 failure to pay all minimum wages; (3) meal period violations; (4) rest period violations; (5) wage

statement violations; (6) waiting time penalties; and (7) unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. On November 1, 2022, Plaintiff sent his PAGA notice letter to the LWDA. *Id.*; **Exhibit B**. Subsequently, on January 6, 2023, Plaintiff filed 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 PTC’S DEFENSES

1. Meal Period Claims

Plaintiff alleges that PTC failed to provide all compliant meal periods to its non-exempt employees. Blakely Decl., ¶ 14. Specifically, Plaintiff alleges that PTC regularly provided Plaintiff and other non-exempt employees with first meal periods after the completion of five hours of work. *Id.* Plaintiff alleges that PTC’s written policies scheduled meal periods to take place after the fifth hour of work, with “shop” employees, for example, scheduled to start their shifts at 5:30 a.m. and not scheduled to take their first meal period until 11:20 a.m. *Id.* Plaintiff also alleges that PTC failed to provide for second meal periods during shifts in excess of 10.0 hours during the Class Period. *Id.*, ¶ 15.

PTC argues that it maintained compliant written meal period policies throughout the Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 14. PTC further contends that under *Brinker*, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; *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). PTC also maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Blakely Decl., ¶ 14. With respect to second meal periods, PTC argues that employees may waive second meal periods on shifts of more than 10.0 hours but less than 12.0 hours, under Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes, and that employees regularly did so. *Id.*, ¶ 15. Lastly, PTC argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by

each employee, and whether there was a valid waiver, thereby making class certification of this claim unlikely. *Id.*, ¶ 14. This is especially true here, PTC argues, given that employees worked in a variety of different departments with varying job responsibilities, duties and work schedules. *Id.*

2. Rest Period Claims

Plaintiff alleges that PTC failed to authorize and permit all legally-required off-duty rest periods. Blakely Decl., ¶ 16. Specifically, Plaintiff alleges that PTC required its non-exempt employees to remain on-premises during rest periods, thereby failing to relinquish all control over employees during off-duty rest periods. Blakely Decl., ¶ 16; *see Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th 257, 260 (2016) (“During required rest periods, employers must relieve their employees of all work duties and relinquish any control over how employees spending their break time...”).

PTC argues that it has always maintained and enforced lawful rest period policies and practices during the Class Period, and has, in fact, authorized and permitted all required rest periods to Settlement Class members. Blakely Decl., ¶ 16. PTC further contends that even if it or individual managers required employees to remain on premises during off-duty rest periods, *Augustus* rejected Plaintiff’s “on-premises” theory when it observed that “one would expect that employees will ordinarily have to remain onsite or nearby. *Id.* This constraint, which is of course common to all rest periods, is not sufficient to establish employer control.” *Id.*; *see Augustus, supra*, 2 Cal.5th at 270. PTC 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. Blakely Decl., ¶ 16. These manageability concerns are especially present with respect to rest period claims, PTC argues, given that rest periods are not recorded. *Id.*

3. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that PTC utilized a timekeeping system that systematically underpaid wages to Settlement Class members. Blakely Decl., ¶ 17. Plaintiff alleges that PTC required Plaintiff and other non-exempt employees to clock in and out using a system that recorded hours

1 worked to the minute; however, Plaintiff alleges that PTC rounded timekeeping entries resulting
2 in a failure to compensate for all hours actually worked. *Id.*

3 PTC argues that its timekeeping policies/practices complied with California law and that
4 it has always properly compensated Settlement Class members for all hours worked throughout
5 the Class Period. Blakely Decl., ¶ 17. PTC contends that it utilized an even-handed timekeeping
6 system that, on balance, resulted in employees being paid for all hours actually worked. *Id.* PTC
7 contends that although Settlement Class members may have clocked-in prior to their scheduled
8 start time, it was not possible for Settlement Class members to perform any compensable work
9 prior to the scheduled start of shift. *Id.* Finally, PTC asserts that Plaintiff would be unable to
10 certify this claim since its timekeeping policies/practices are facially neutral and individualized
11 inquiries would be necessary as to whether employees were in fact underpaid for each workday
12 in question (including whether they were actually working when they were clocked in), resulting
13 in an unmanageable series of mini-trials. *Id.*

14 **4. Wage Statement Violations**

15 Plaintiff alleges that as a result of the unpaid minimum and overtime wages, as well as the
16 unpaid meal and rest period premium wages described above, PTC is liable for wage statement
17 penalties. Blakely Decl., ¶ 18. PTC argues that any alleged wage statement violations were not
18 “knowing and intentional,” and Plaintiff cannot show that he or other employees “suffer[ed]
19 injury” due to the alleged wage statement violations, as required by Labor Code § 226(e) for the
20 imposition of penalties. *Id.* Further, PTC contends its wage statements always accurately reflected
21 hours worked and amounts paid as well as all other required information, precluding liability for
22 wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-
23 37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in
24 that they correctly reflected the hours worked and the pay received...The purpose of section 226
25 is to *document the paid wages* to ensure the employee is fully informed regarding the calculation
26 of those wages.”) (Italics in original). Blakely Decl., ¶ 18.

27 **5. Waiting Time Penalties**

28 Plaintiff alleges that as a further result of its failure to pay all wages earned, as well as its

1 failure to pay all meal and rest period premiums, PTC is liable for waiting time penalties pursuant
2 to Labor Code §§ 201-203. Blakely Decl., ¶ 19. PTC argues that it possesses strong, good-faith
3 defenses to Plaintiff’s underlying claims, thus precluding recovery of waiting time penalties,
4 which are only available for the “willful” failure to pay wages. *Id*; see also 8 Cal. Code Regs. §
5 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time
6 penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an
7 employer presents a defense, based in law or fact which, if successful, would preclude any
8 recovery on the part of the employee.”). PTC further asserts that Plaintiff’s waiting time penalty
9 exposure was grossly inflated as not every former employee experienced the alleged Labor Code
10 violations. Blakely Decl., ¶ 19.

11 **6. PAGA Civil Penalties**

12 As a result of the foregoing Labor Code violations, Plaintiff alleges that PTC is liable for
13 civil penalties under the PAGA. Blakely Decl., ¶ 20. Since Plaintiff’s PAGA claim is derivative
14 of Plaintiff’s underlying wage claims, PTC asserts the PAGA claim would fail with those claims.
15 *Id*.; see *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
16 causes of action fail, the derivative UCL and PAGA claims also fail.”). PTC further maintains
17 that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce
18 any PAGA penalties if it were to find PTC liable for any of Plaintiff’s claims. Blakely Decl., ¶
19 20; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112,
20 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED
21 CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties
22 by over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*,
23 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where
24 employer made “good faith attempts” to comply with the law).

25 **C. DISCOVERY AND MEDIATION**

26 In connection with mediation, the Parties engaged in extensive informal discovery.
27 Blakely Decl., ¶ 10. PTC produced timekeeping and payroll records for approximately 21% of
28 putative class members, including raw time-punches, which enabled Plaintiff to conduct a

rounding analysis. *Id.* PTC also provided relevant data points, such as the number of putative class members, the aggregate number of workweeks worked during the Class Period, and other data points. *Id.* PTC also produced its relevant written wage and hour policies as well as its employee handbook utilized during the Class Period. *Id.* Plaintiff hired a labor economist with a Ph.D. in economics to assist Plaintiff in conducting a comprehensive analysis and extrapolation of the data produced by PTC 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 PTC's potential defenses. *Id.*

On July 12, 2023, the Parties participated in a full-day mediation with the Hon. S. James Otero (Ret.), 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.* At the conclusion of mediation, Judge Otero 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, PTC will pay a Gross Settlement Amount of \$1,600,000. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.*, at ¶¶ 3-4. Each Settlement Class member will automatically receive a 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:	\$1,600,000.00
• Minus Court-approved attorneys' fees:	\$533,333.33
• Minus Court-approved verified costs (up to):	\$35,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus amount set aside as PAGA penalties:	\$50,000.00
• <u>Minus estimated Settlement Administration costs:</u>	<u>\$12,000.00</u>

Net Settlement Amount (“NSA”):	\$962,166.67
• PLUS 25% “PAGA Amount” to Settlement Class:	\$12,500.00
Total Amount Paid to Settlement Class members:	\$974,666.67

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, the Class Representative Enhancement Payment to Plaintiff, the amount designated as PAGA civil penalties, and Settlement Administrator’s fees and expenses, the Settlement requires PTC to pay a Net Settlement Amount (“NSA”) of at least \$962,166.67 to all Settlement Class members who do not timely opt out. *See* Settlement, ¶ 4. The NSA shall be allocated among Settlement Class members as follows: Eighty-Five percent (85%) of the NSA shall be distributed to all Settlement Class members (except those who submit a timely and valid Request for Exclusion) based on each participating Settlement Class member’s proportionate workweeks worked during the Class Period. *See* Settlement, ¶ 4(B)(i). Ten percent (10%) of the NSA shall be designated as the “Waiting Time Amount” and will be divided equally among all participating Settlement Class members whose employment with PTC ended at any time from October 31, 2019 through the date of preliminary approval. *See* Settlement, ¶ 4(B)(ii). Five percent (5%) of the NSA shall be designated as the “Wage Statement Amount” and will be distributed to all participating Settlement Class members who worked for PTC from October 31, 2021 through the date of preliminary approval based on the proportionate number of workweeks worked during that time period. *See* Settlement, ¶ 4(B)(iii). Additionally, Twelve Thousand Five Hundred Dollars (\$12,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount,” and shall be distributed to those Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) who worked for PTC from November 1, 2021 through the date of preliminary approval (“PAGA Period”) proportionally based on the number of workweeks worked during the PAGA Period. *See* Settlement, ¶¶ 2(B), 4(C).

Based on information from PTC, there are approximately 540 Settlement Class members. *Blakely Decl.*, ¶ 13. Therefore, the average Settlement Amount from the NSA is projected to be approximately \$1,781.79. *Id.* There are approximately 312 Aggrieved Employees who worked during the PAGA Period. *Id.* Therefore, the average payment from the PAGA Amount is

1 estimated to be approximately \$40.06. *Id.*

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

7 **2. Attorneys' Fees and Costs, Enhancement Payment, and PAGA**
8 **Payment**

9 Plaintiff will apply for a Class Representative Enhancement Payment at the time of
10 seeking final approval of the proposed class action settlement in the amount of \$7,500, for his
11 service to the Settlement Class. *See* Settlement, ¶¶ 3(D)(3), 6. “[I]ncentive awards are fairly
12 typical in class action cases . . . and are intended to compensate class representatives for work
13 done on behalf of the class [and] to make up for financial or reputational risk undertaken in
14 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
15 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement
16 Payment is intended to recognize the time and effort Plaintiff expended on behalf of the
17 Settlement Class, including providing substantial factual information and documents to Class
18 Counsel, discussing the claims and theories at issue in the litigation, actively participating in the
19 prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve
20 as the named plaintiff in this case, and the fact that Plaintiff agreed to a general release of all
21 claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 2(C), 6; Blakely Decl., ¶ 24;
22 *see also* Mora Decl., ¶¶ 4-6.

23 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
24 Settlement Amount, which is currently estimated to be \$533,333.33, and up to \$35,000.00 in
25 verified costs reimbursement. *See* Settlement, ¶¶ 3(D)(4), 5; Blakely Decl., ¶ 23. Plaintiff submits
26 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
27 consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 23. Class Counsel has
28 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s

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

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

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

21 Additionally, the parties have agreed to designate \$50,000.00 of the Gross Settlement
22 Amount as PAGA civil penalties, of which \$37,500.00 (75%) will be paid to the LWDA, with
23 the remaining \$12,500.00 (25%) for distribution to the Settlement Class, as the PAGA requires
24 such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(D)(5). Plaintiff
25 submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v.*
26 *Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal.
27 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
28 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 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 at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

///

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

2 Although Plaintiff steadfastly maintains that his claims are meritorious, he also
3 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
4 described above, PTC presented multiple defenses to Plaintiff’s claims, both on the merits and
5 with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims
6 through class certification, and ultimately trial, success was far from certain.

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

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

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

16 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which
17 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there is
18 a risk that the class would not be certified prior to trial, or, if it were certified, a risk that the class
19 definition would be narrowed and the value of the case diminished accordingly. This would
20 potentially be accomplished either due to a narrowing of the class definition in a Court order on
21 a contested motion for class certification, or through settlement agreements entered into by PTC
22 with individual class members by way of *Pick-up-Stix* type settlement agreements³, and the
23 expected recovery could be significantly reduced, given the settlement amounts that are typically
24

25 _____
26 ³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
27 employer may enter into pre-certification settlement agreements with individual putative class
28 members in which the putative class members release claims for past unpaid wages and penalties
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 offered through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of
2 the settlement.

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

4 The Settlement provides a positive recovery for the Settlement Class in the face of hotly
5 disputed claims. Plaintiff, with the help of his retained expert, conducted an analysis of underpaid
6 wages due to PTC's alleged unlawful timekeeping policies/practices, potential meal and rest
7 period premiums owing, wage statement penalties, waiting time penalties, and PAGA civil
8 penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

9 **First Meal Period Violations: \$795,679**

10 Based on Plaintiff's expert's review and extrapolation of PTC's timekeeping records,
11 there were approximately 100,272 non-compliant first meal periods reflected in the data. Blakely
12 Decl., ¶ 14. Plaintiff further calculated that the average hourly rate of pay for Settlement Class
13 members during the Class Period at approximately \$17.44. *Id.* Therefore, assuming each non-
14 compliant first meal period represents a meal period violation, Plaintiff estimated total maximum
15 damages for first meal period violations at approximately \$1,748,744 (100,272 non-compliant
16 meal periods * \$17.44 average meal period premium). *Id.*

17 However, as noted above, PTC argues that it maintained compliant meal period policies
18 and practices throughout the Class Period and under *Brinker* it is only required to provide
19 employees the opportunity to take meal periods, not ensure that they are taken. Blakely Decl., ¶
20 14; *see Brinker, supra*, 53 Cal.4th at 1034 (rejecting "ensure" standard). Furthermore, PTC argues
21 that Plaintiff's meal period claim is not suited for class treatment, as individual inquiries would
22 be needed as to which employees took non-compliant meal periods or missed meal periods, how
23 many meal periods were non-compliant or missed, and why a particular employee did not a take
24 compliant meal period on a particular shift. Blakely Decl., ¶ 14. This is especially true here, PTC
25 argues, given that employees worked in a variety of different departments with varying job
26 responsibilities, duties and work schedules. *Id.* Based on these defenses, Plaintiff discounted the
27 maximum amount by 30% for risk of non-certification and an additional 35% for risk of losing
28 on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of

1 approximately \$795,679. *Id.*

2 Second Meal Period Violation: \$39,276

3 Plaintiff's analysis and extrapolation of the timekeeping data showed that during the Class
4 Period there were approximately 11,699 shifts worked in excess of 10.0 hours that did not reflect
5 a compliant second meal period. Blakely Decl., ¶ 15. Therefore, Plaintiff calculates PTC's
6 maximum exposure for second meal period violations at approximately \$204,030 (11,699 non-
7 compliant second meal periods * \$17.44 average meal period premium). *Id.*

8 However, Plaintiff's theory of liability carried significant risks, based on PTC's arguments
9 that they provided employees the opportunity for second meal periods and that Settlement Class
10 members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less
11 than 12.0 hours, as they are entitled to do under Labor Code § 512(a). Blakely Decl., ¶ 15. PTC
12 further argues that Plaintiff's second meal period exposure is grossly inflated as Plaintiff already
13 seeks a meal period premium for first meal period violations on the majority of all shifts, and
14 Plaintiff cannot recover more than one meal period premium for each workday. *Id.*; see *United*
15 *Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011) ("[E]mployees in this case
16 may recover up to two additional hours of pay on a single work day for meal period and rest
17 period violations – one for failure to provide a meal period and another for failure to provide a
18 rest period.'). In addition, as with first meal periods, PTC argues this claim would not be certified
19 as requiring individualized inquiries into both the merits and damages. Blakely Decl., ¶ 15. In
20 light of these risks, Plaintiff discounted the maximum amount that the class could potentially
21 recover for second meal periods by 45% for a risk of non-certification, and an additional 65% for
22 a risk of losing on the merits, or having exposure reduced due to PTC's waiver arguments, to
23 arrive at an estimated exposure amount of approximately \$39,276. *Id.*

24 Rest Period Violations: \$548,682

25 As indicated above, Plaintiff alleges that PTC failed to authorize and permit compliant
26 rest periods due to its policy/practice of prohibiting employees from leaving the premises during
27 off-duty rest periods. Blakely Decl., ¶ 16. Based on Plaintiff's expert's analysis of PTC's
28 timekeeping records, Plaintiff estimates there were approximately 174,784 shifts in excess of 3.5

1 hours during the Class Period, entitling employees to at least one (1) rest period. *Id.* Therefore,
2 Plaintiff calculates PTC's maximum potential exposure for rest period violations at approximately
3 \$3,048,233 (174,784 shifts in excess of 3.5 hours * \$17.44 average rest period premium). *Id.*

4 However, PTC contends that Plaintiff and Settlement Class members were provided the
5 opportunity for rest periods and that it maintained compliant rest period policies and practices
6 throughout the Class Period. Blakely Decl., ¶ 16. PTC further contends that even if it or individual
7 managers required employees to remain on premises during off-duty rest periods, *Augustus*
8 rejected Plaintiff's "on-premises" theory when it observed that "one would expect that employees
9 will ordinarily have to remain onsite or nearby. *Id.* This constraint, which is of course common
10 to all rest periods, is not sufficient to establish employer control." *Id.*; see *Augustus, supra*, 2
11 Cal.5th at 270. PTC further argues that Plaintiff's rest period claim is not amenable to class
12 treatment, since individual inquiries would be required to determine which employees failed to
13 take rest periods, how many rest periods they failed to take, and the reasons why each employee
14 failed to take rest period(s) on a particular shift. Blakely Decl., ¶ 16. These manageability
15 concerns are especially present with respect to rest period claims, PTC argues, given that rest
16 periods are not recorded. *Id.* Given these defenses, Plaintiff discounted this maximum amount by
17 55% for risk of non-certification and an additional 60% for a risk of being unsuccessful on the
18 merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure
19 of approximately \$548,682. *Id.*

20 Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$50,895

21 Based on Plaintiff's expert's review and extrapolation of employee timekeeping and
22 payroll records, Plaintiff estimates that PTC's timekeeping practices have resulted in
23 approximately 6,485 hours of unpaid wages. Blakely Decl., ¶ 17. Because employees generally
24 worked shifts of at least 8.0 hours, Plaintiff contends that these unpaid wages should be paid at
25 an overtime rate of pay, calculating maximum potential exposure for this claim at approximately
26 \$169,648 (6,485 hours underpaid * \$26.16 average overtime rate). *Id.*

27 However, as noted above, PTC argues that its timekeeping policies/practices complied
28 with California law and that it compensated Settlement Class members for all hours actually

1 worked. Blakely Decl., ¶ 17. PTC also asserts that Plaintiff would be unable to certify this claim
2 since its timekeeping policies/practices are facially neutral and individualized inquiries would be
3 necessary as to whether employees were in fact underpaid for each workday in question (including
4 whether they were actually working when they were clocked in), resulting in an unmanageable
5 series of mini-trials. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 40%
6 for risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits
7 or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of
8 approximately \$50,895. *Id.*

9 Wage Statement Penalties: \$99,414

10 Plaintiff alleges that PTC faces derivative wage statement liability as a result of its failure
11 to pay all wages as well as its failure to pay all meal and rest period premium wages. Blakely
12 Decl., ¶ 18. Based on the records and information produced, there are 312 Settlement Class
13 members and 6,468 unique pay periods worked, within the one-year liability window relevant to
14 Labor Code § 226. *Id.* Section 226 provides for a \$50 penalty for each “initial” violation and \$100
15 for each “subsequent” violation, with a cap of \$4,000 per employee. *Id.* Plaintiff therefore
16 calculated PTC’s potential wage statement exposure under Labor Code § 226(e) at approximately
17 \$631,200 ((312 “initial” violations * \$50) + (6,156 “subsequent” violations * \$100)). *Id.*

18 In light of PTC’s arguments that no violations occurred, that employees suffered no
19 “injury,” that any alleged violations were not “knowing and intentional,” that the wage statements
20 always accurately reflected hours worked and amounts paid to employees, as well as risks
21 associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted the maximum
22 exposure by 55% for risk of non-certification, and by an additional 65% for risk of being
23 unsuccessful on the merits, for an estimated realistic exposure of approximately \$99,414. Blakely
24 Decl., ¶ 18.

25 Waiting Time Penalties: \$167,272

26 PTC’s records reflected approximately 296 former Settlement Class members separated
27 from their employment and are therefore eligible for waiting time penalties. Blakely Decl., ¶ 19.
28 Based on an hourly rate of \$17.44, Plaintiff estimated the average waiting time penalty per former

1 employee to be approximately \$4,186 (\$17.44 * 8 hours per day * 30 days). *Id.* Therefore,
2 Plaintiff calculated PTC's maximum exposure for potential waiting time penalties to be
3 approximately \$1,239,056 (296 separated employees * \$4,186 average waiting time penalty). *Id.*

4 PTC presented several defenses to this claim, most notably its assertion that because they
5 possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful"
6 as a matter of law. Blakely Decl., ¶ 19. PTC further asserts Plaintiff's waiting time penalty
7 exposure was grossly inflated as not every former employee experienced the alleged Labor Code
8 violations. *Id.* Moreover, because the waiting time claim is derivative of Plaintiff's underlying
9 wage claims, Plaintiff would need to overcome these defenses, both as to class certification and
10 on the merits, as to his underlying claims. *Id.* To account for these defenses, Plaintiff discounted
11 the maximum exposure by 55% for the risk of non-certification, and an additional 70% for risk
12 of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an
13 estimated exposure of approximately \$167,272. *Id.*

14 PAGA Penalties: \$64,680

15 Plaintiff estimated a maximum total PAGA exposure at approximately \$646,800 (6,468
16 violations * \$100 "initial" penalty). Blakely Decl., ¶ 20; *Amaral v. Cintas Corp. No. 2*, 163
17 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified
18 that it is violating a Labor Code provision). However, these penalties derive from the underlying
19 wage and hour violations discussed above, which PTC vigorously disputes. Blakely Decl., ¶ 20;
20 *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining
21 that a PAGA claim's success was determined by the merits of its underlying claims). PTC also
22 asserts that given its good faith defenses, the Court would drastically reduce any award of PAGA
23 penalties as "confiscatory." Blakely Decl., ¶ 20; *see also Thurman v. Bayshore Transit Mgmt.,*
24 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
25 *Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4
26 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the
27 maximum figure by 60% for risk of losing on the merits and/or not recovering a PAGA penalty
28 for each and every pay period, and an additional 75% to account for the possibility of this Court

1 reducing penalties, to arrive at an estimated exposure of approximately \$64,680. *Id.*

2 Using these estimated figures for each of the claims described above, Plaintiff predicted
3 that the potential recovery for the Settlement Class would be approximately \$1,765,898. Blakely
4 Decl., ¶ 21. The proposed Settlement of \$1,600,00.00 therefore represents approximately 90.6%
5 of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
6 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
7 which is consistent with what Plaintiff's counsel believes could have been recovered had the case
8 proceeded through trial.

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

10 "Parties represented by competent counsel are better positioned than courts to produce a
11 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
12 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
13 by competent, experienced counsel who possess extensive experience prosecuting and defending
14 wage-and-hour class actions, and who have been appointed as class counsel in numerous cases
15 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines ("Haines
16 Decl."), ¶¶ 2-8. Class Counsel, with the help of a retained expert, conducted an in-depth review
17 of PTC's timekeeping and payroll records and drew on their extensive experience in similar cases
18 to assess the strengths and weaknesses of Plaintiff's case. The Settlement was also reached with
19 the assistance of an experienced and respected wage-and-hour class action mediator. This factor
20 strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at
21 130.

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

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

28 ///

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

2 The proposed settlement reflects approximately 90.6% of the estimated recovery the
3 Settlement Class could reasonably expect in light of the significant litigation risks, and will
4 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
5 percentage of the liability exposure recovered in this case far exceeds percentages routinely
6 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
7 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
8 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
9 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
10 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
11 be acceptable even though it amounts to only a fraction of the potential recovery that might be
12 available to the Settlement Class members at trial”). Further, the average Settlement Payment of
13 approximately \$1,781.79 exceeds average payments achieved in other wage and hour class action
14 settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the range of possible
15 approval, such that notice should be provided to the Settlement Class members so that they can
16 consider the Settlement. The Court will have the opportunity to again assess the reasonableness
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 of the Settlement after the Settlement Class members have had the opportunity to opt-out or
2 object.

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

4 The Settlement resulted from an exchange of substantial information, arm's-length
5 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
6 additional months of negotiating the Settlement. Thus, the Settlement is entitled to an initial
7 presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff
8 carefully vetted the claims at issue and reviewed extensive timekeeping and payroll data and
9 conducted a detailed statistical analysis of the data with the help of a retained expert to arrive at
10 his estimated classwide damages figures. *See Blakely Decl.*, ¶¶ 14-21. Thus, this factor supports
11 preliminary approval.

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

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

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

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

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

28 A class is "ascertainable" where the members "may be readily identified without

unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees employed by PTC in California during the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be identified from PTC’s personnel and employment records. Based on information provided by PTC, the Settlement Class consists of approximately 540 current and former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the Court, or for each Settlement 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, PTC’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, PTC employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff was subject to PTC’s wage and hour policies at issue in this case. *See* Mora 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 PTC’s timekeeping policies/practices and

1 contends that he was deprived of all legally compliant meal and rest periods. *See generally*, Mora
2 Decl. Plaintiff further asserts that he did not receive accurate and compliant wage statements and
3 did not receive all wages at the time of separation of employment. *Id.* Because Plaintiff has
4 suffered the same injuries as the other members of the Settlement Class, the typicality requirement
5 is satisfied.

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

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

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

18 This Court should order distribution to the Settlement Class of the proposed Class Notice
19 and Request for Exclusion Form (the “Notice Packet”) by U.S. Mail, postage prepaid, in English
20 and Spanish, using last known mailing address information provided by PTC. *See Settlement*, ¶
21 9. This manner of giving notice is the “best notice practicable” under the circumstances because
22 it provides “individual notice to all members who can be identified through reasonable effort.”
23 *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that
24 the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an
25 experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence
26 (“Lawrence Decl.”) and attached exhibits. Settlement Class members’ addresses will be
27 ascertainable through PTC’s personnel and payroll records, which PTC will provide to the
28 Settlement Administrator within ten (10) business days of preliminary approval of the Settlement.

1 See Settlement, ¶ 9(A). Within ten (10) business days from receipt of this information, the
2 Settlement Administrator will run the names of all Settlement Class members through the
3 National Change of Address (“NCOA”) database to determine any updated addresses for
4 Settlement Class members, and mail a Notice Packet to each Settlement Class member in English
5 and Spanish at his or her last known address. See Settlement, ¶ 9(B). To the extent that any notices
6 are returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s current
7 mailing address. *Id.*, at ¶ 9(F).

8 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
9 because it advises Settlement Class members of the nature of the claims, basic contentions and
10 denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object
11 to the Settlement and the procedures by which to do so, explains the recovery formula and
12 expected recovery amount for each Settlement Class member, and advises them that they will be
13 bound by the terms of the Settlement if they do not opt-out. See Blakely Decl., Exhs. 1 and 2 to
14 Exh. A; Settlement, ¶¶ 9(C)-(D). The proposed Class Notice will also notify Settlement Class
15 members of the final approval hearing date and provides the Settlement Class contact information
16 for Class Counsel and advises Settlement Class members that they may enter an appearance
17 through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court
18 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **V. CONCLUSION**

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

5
6 Dated: March 7, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:



9 Paul K. Haines
10 Sean M. Blakely
11 Attorneys for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28