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

HEATHER-ANN MONTERO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

BISCO INDUSTRIES, INC., an Illinois
corporation; and DOES 1 through 100,
inclusive

Defendant.

Case No.: 23STCV00918

*[Case Assigned for all purposes to the Hon.
William F. Highberger; Dept. SSC-10]*

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

Date: February 3, 2025
Time: 2:00 p.m.
Dept.: SSC-10

Action Filed: January 13, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on February 3, 2025 at 2:00 9.m., or as soon thereafter as the matter may be heard, in Department SSC-10 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Heather-Ann Sisson (née Montero) (“Plaintiff”), as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement Agreement”) in this lawsuit, entered into between Plaintiff and Defendant Bisco Industries, Inc. (“Defendant”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

All current and former employees of Defendant in California who worked at any time between January 13, 2019, and August 31, 2024 (the “Class Period”).
3. Preliminary appointment of Plaintiff Heather-Ann Sisson (née Montero) as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Enhancement Payment, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.*, and Class Counsel’s attorneys’ fees and costs;
6. Appointment of CPT Group, Inc. as the third-party settlement administrator (“CPT” or “Settlement Administrator”); and
7. Approval of the proposed Notice of Class Action Settlement (“Class Notice”) and the Notice of Individual Settlement Payment (collectively, the “Notice Packet”), and entry of the proposed Order instructing the Notice Packet to be disseminated to the proposed Settlement Class in English, 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, Fletcher W. Schmidt, Andrew J. Rowbotham,
3 Plaintiff Heather-Ann Sisson, and Julie Green of CPT Group, Inc., and the exhibits attached
4 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
5 evidence or argument presented at the time of hearing.

6 Given the multiplicity of issues addressed herein, Plaintiff's memorandum of points and
7 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
8 3.764(c)(2). As this Motion is unopposed, Plaintiff respectfully request that the Court consider
9 the entire Motion, which is 27 pages in length.

10
11 Dated: November 14, 2024

Respectfully Submitted,
HAINES LAW GROUP, APC

12
13 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Heather-Ann Sisson (“Plaintiff”), as an individual and on behalf of the proposed
4 Settlement Class, respectfully requests that this Court preliminarily approve the proposed
5 Stipulation of Settlement (“Settlement Agreement” or “Settlement”),¹ entered into by Plaintiff
6 and Defendant Bisco Industries, Inc. (“Defendant”) (collectively, the “Parties”). Plaintiff
7 respectfully requests that this Court preliminarily approve this non-reversionary, \$7,500,000.00
8 class action settlement on behalf of the following Settlement Class:

9 All current and former employees of Defendant in California who worked at any
10 time between January 13, 2019, and August 31, 2024 (the “Class Period”).

11 Based upon the data provided by Defendant, there are approximately 475 potential
12 Settlement Class members. After Court-approved deductions for Plaintiff’s Class Representative
13 Enhancement Payment, settlement administrator costs, the PAGA Payment to the Labor &
14 Workforce Development Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the
15 remaining Net Settlement Amount (“NSA”) is estimated to be no less than \$4,742,500.00. This
16 results in average Individual Settlement Payments of approximately \$9,984.21, which is inclusive
17 of the \$62,500.00 allocated to all current and former employees who worked for Defendant in
18 California between January 13, 2022, and August 31, 2024 (the “PAGA Period”) (collectively,
19 the “Allegedly Aggrieved Employees”) for the release of claims under PAGA. *See Settlement, ¶¶*
20 *1.31, 3.2.5.* Significantly, Settlement Class members do not need to file a claim form in order to
21 receive an Individual Settlement Payment, and all Settlement Class members who do not opt-out
22 will automatically receive their share of the Settlement. This represents an exceptional result for
23 the Settlement Class members, who will be agreeing to a release of only those claims that were
24 actually asserted, or which could have been asserted based on the facts alleged in the operative
25 complaint.

26 _____
27 ¹ The Settlement Agreement is attached as Exhibit A to the Declaration of Fletcher W.
28 Schmidt (“Schmidt Decl.”), filed concurrently herewith, and the Notice of Class Action
Settlement (“Class Notice”) and the Notice of Individual Settlement Payment
(collectively, the “Notice Packet”) are attached to the Schmidt Decl. as Exhibit B.

1 Further, given the tenet that aggrieved employees do not have the ability to opt-out of a
2 representative PAGA claim, all Allegedly Aggrieved Employees, regardless of whether they elect
3 to opt out from participating in the class action settlement or not, shall receive a portion of the
4 settlement monies designated as the PAGA Amount payable to the Allegedly Aggrieved
5 Employees and shall release all claims for PAGA penalties that were alleged, or reasonably could
6 have been alleged in the operative complaint, Plaintiff Sisson’s January 13, 2023 PAGA Notice
7 to the LWDA, or which could have been pled in the operative complaints in the Action based on
8 the factual allegations therein. *See Robinson v. Southern Counties Oil Company* (2020) 53
9 Cal.App.5th 476, 482 (holding that there is no opt-out mechanism for PAGA claims and
10 “nonparty employees as well as the government are bound by the judgment in an action brought
11 under [PAGA].”); *see also* Schmidt Decl., Exhibits C-D.

12 Prior to reaching this proposed Settlement, Defendant voluntarily provided Plaintiff with
13 timekeeping and payroll records for substantially all putative class members spanning the putative
14 class period through February 2024, as well as policy documents and employee handbooks.
15 Schmidt Decl., ¶ 25. Plaintiff’s counsel also interviewed approximately 40 Settlement Class
16 members who contacted Plaintiff’s counsel regarding the litigation. *Id.* Plaintiff then retained an
17 expert with a Ph.D. in labor economics to analyze the data and create a class-wide exposure model
18 for the claims at issue. *Id.* On April 5, 2024, after extensive legal research and analysis, along
19 with a comprehensive review of the data by Plaintiff’s counsel and their retained expert, the
20 Parties participated in a mediation session with Eve Wagner, Esq., an experienced and respected
21 wage and hour mediator, who assisted the Parties in reaching a tentative settlement agreement.
22 *Id.* Over the following months, the Parties negotiated and executed the long-form Settlement
23 Agreement that is now before this Court for preliminary approval. *Id.*

24 This proposed Settlement is well within the range of possible approval in light of the
25 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
26 and the monetary benefit to the Settlement Class members. For the reasons discussed herein,
27 Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.
28

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendant is a supplier and distributor of fasteners, hardware, and electronic components for aerospace, communication, and military applications, among others. Schmidt Decl., ¶ 10. Plaintiff, like all Settlement Class members, Plaintiff was employed by Defendant during the Class Period and was effectively treated as an exempt employee with no overtime pay and no bona fide timekeeping system. Declaration of Heather-Ann Sisson (née Montero) (“Sisson Decl.”), ¶ 3. On January 13, 2023, Plaintiff initiated the instant action, alleging Defendant failed to: (i) pay all overtime wages owed; (ii) provide all lawful meal periods; (iii) provide all lawful rest periods; (iv) reimburse necessary business expenses; (v) issue accurate itemized wage statements; (vi) timely pay all final wages upon separation; and (vii) comply with California’s Unfair Competition laws. Schmidt Decl., ¶ 11. On March 20, 2023, Plaintiff filed a First Amended Complaint, adding an eighth cause of action for civil penalties under the Private Attorneys General Act, Labor Code section 2698, *et seq.* (PAGA), based on the same underlying Labor Code violations. *Id.*

Prior to mediation and unbeknownst to Plaintiff, in approximately February 2024 Defendant began extending individual settlement offers to substantially all Settlement Class Members, offering a live check for \$500 to each employee along with a release of liability that would become effective upon the cashing of the check.² Schmidt Decl., ¶ 12. However, shortly after this process began, Plaintiff (who was a former employee at that time) was personally informed of the *Pick-Up-Stix* campaign and immediately alerted her counsel to the ongoing process. *Id.* Over the subsequent weeks, due in large part to the personal connections that Plaintiff had with her former co-workers and their word-of-mouth organization efforts, Plaintiff’s counsel

² Concurrently, Defendant was also seeking to enter into arbitration agreements with all of its employees by providing each employee a separate live check for \$200 that stated that the cashing of the check would be treated as acceptance of the terms of the arbitration agreement. Schmidt Decl., ¶ 13. However, no employees are being excluded from the Settlement Class on the basis of any arbitration agreements. *Id.*

1 was contacted by approximately 40 employees, the majority of whom expressed their solidarity
2 with the lawsuit and their willingness to help in any way possible. *Id.* It was during this process
3 that Plaintiff's counsel discovered that the core issue in the lawsuit (misclassification of non-
4 exempt employees as exempt employees) was not limited to sales employees as Plaintiff
5 originally believed, but in fact extended to *all* of Defendant's employees including those in the
6 warehouse, supply-chain, human resources, and accounting departments. *Id.*

7 Based on information provided by Defendant, a total of 307 employees (referred to herein
8 as the *Pick-Up-Stix* Class members") ultimately cashed their checks, which could have potentially
9 resulted in the *Pick-Up-Stix* Class members being excluded from any potential certified class in
10 the future if this matter had not been resolved. Schmidt Decl., ¶ 14. Defendant represents that it
11 paid a total of \$153,500 through this process to the *Pick-Up-Stix* Class Members, but, as described
12 below in further detail, the parties agreed to include all employees, regardless of whether they did
13 or did not cash the *Pick-Up-Stix* check, in the proposed Settlement and will treat the \$153,500³
14 as a pre-payment towards the Gross Settlement Amount. In order to place all Settlement Class
15 members on equal footing, the proposed Settlement calls for each Settlement Class Member who
16 did *not* accept the original *Pick-Up-Stix* offer to be paid a baseline of \$500 each prior to
17 calculating their proportionate share of the Net Settlement Amount based on their weeks worked
18 during the Class Period. *See* Settlement at ¶¶ 1.37, 2.4, 3.2.4.

19 **B. Plaintiff's Claims and Defendant's Defenses**

20 **1. Overtime Violations**

21 Plaintiff asserts that Defendant failed to maintain accurate records of the hours actually
22 worked by Settlement Class members, resulting in unpaid overtime wages. Schmidt Decl., ¶ 15.
23 Specifically, throughout the Class Period, Defendant treated all of its employees as though they
24 were exempt employees, despite the fact that few, if any, actually qualified for any recognized
25 exemptions under the Labor Code or applicable Wage Order. *Id.* Defendant explicitly instructed
26

27 ³ This amount does **not** include any of the amounts paid in connection with the purported
28 arbitration agreements, which are not being credited towards the Gross Settlement Amount.
Schmidt Decl., ¶ 14.

1 its employees to self-report eight hours worked per day, regardless of their actual hours worked,
2 and Plaintiff's expert confirmed that the payroll data showed no evidence of any overtime wages
3 ever having been paid at all. *Id.* Based on Plaintiff's counsel's conversations with approximately
4 40 employees who worked in various departments, positions, and locations during the class
5 period, Plaintiff believes that there were a significant amount of overtime hours worked which
6 could be proven through evidence such as records from the "Anita" software platform used by
7 substantially all Settlement Class members, facility entrance records, e-mail records, and security
8 camera footage, given that Defendant did not maintain any bona fide timekeeping records. *Id.*

9 In response, Defendant argues that certain employees may have qualified for certain
10 exemptions, such as the administrative exemption, or the inside sales exemption. Schmidt Decl.,
11 ¶ 16. Furthermore, Defendant argues that overtime hours were not required, and that many
12 employees worked little, if any, overtime hours, such that even assuming Plaintiff's overtime
13 claim was certified, the damages would fall significantly short of Plaintiff's projections. *Id.*
14 Defendant would also have the ability to rely on the arbitration agreements and/or *Pick-Up-Stix*
15 releases, which applied to 71% and 38% of current and former employees, respectively, and
16 covered approximately 55% of all workweeks, to dramatically shrink the size of any potential
17 class in the event that the matter proceeded through litigation. *Id.*

18 **2. Meal Period Violations**

19 Plaintiff further asserts that Defendant failed to provide the Settlement Class members
20 with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled, and
21 maintained no records of employee meal periods. Schmidt Decl., ¶ 17. Based on Plaintiff's
22 counsel's conversations with the Settlement Class members, Plaintiff acknowledges that Bisco
23 did maintain a policy of providing an hour-long meal period each shift, that typically took place
24 from 12:00 p.m. to 1:00 p.m. *Id.* However, this policy was not in writing (Defendant maintained
25 no employee handbook or other relevant written employment policies) and numerous sales
26 employees stated that generally one member from each sales team would stay behind to cover the
27 phones and would take their meal period from 1:00 p.m. to 2:00 p.m., meaning that the meal
28 period for those employees would be late on any day that they began work prior to 8:00 a.m.,

1 which was not out of the ordinary. *Id.* Similarly, warehouse employees reported needing to arrive
2 early on certain occasions which resulted in their regularly scheduled meal periods occurring after
3 the end of the fifth hour of work. *Id.* Additionally, many employees were given certain work
4 quotas by their managers, which could lead to an environment where employees felt pressured to
5 work through or interrupt their meal periods to conduct work activities. *Id.*

6 In response, Defendant contends that it provided all employees with an hour-long meal
7 period that was informally scheduled at the four-hour mark or earlier and allowed employees
8 leeway and discretion on when to take their meal, such that decisions to delay or interrupt their
9 meal period were not done at the direction of Defendant. Schmidt Decl., ¶ 18. Defendant contends
10 that Plaintiff's meal period claim is not suited for class certification as individual inquiries would
11 be required to assess whether employees voluntarily chose to arrive early or work through meal
12 periods, which could be dependent on their location, job title, and manager, resulting in an
13 unmanageable series of mini-trials. *Id.* Even if the meal period claim was certified, Defendants
14 contend that the damages would not be as high as Plaintiff projected given that compliant meal
15 periods were provided for almost all shifts, and late or missed meal periods were the exception.
16 *Id.* Defendant also intended to enforce the arbitration agreements and *Pick-Up-Stix* releases to
17 limit the scope of any class if the matter proceeded through litigation. *Id.*

18 **3. Rest Period Violations**

19 Plaintiff further alleges that Defendant failed to authorize and permit the Settlement Class
20 members to take all lawful rest periods to which they were entitled. Schmidt Decl., ¶ 19. Based
21 on Plaintiff's conversations with Settlement Class members, Plaintiff acknowledges that
22 Defendant had an informal policy of authorizing two 15-minute rest periods per shift, in the
23 morning and afternoon, but contends that this policy was not clearly communicated to all
24 employees and that rest periods would be the first thing to go when employees became busy with
25 work demands. *Id.* Some employees reported that they felt that they could not take any rest periods
26 whenever their manager was on-site, or that their team maintained a culture of skipping rest
27 periods. *Id.*

1 In defense, Defendant maintains that it authorizes all employees to take two 15-minute
2 rest periods during each shift, and allows employees complete freedom and discretion to choose
3 when to take their rest periods and never required any employees to return to work if they
4 indicated that they were taking their rest period. Schmidt Decl., ¶ 20. Defendant also asserts that
5 this claim is unmanageable and not suited for class certification, as it requires individualized
6 inquiries into whether an employee's manager placed any explicit or implicit pressure on the
7 employee to skip rest periods, and that, similar to the meal period claim, formal discovery and
8 depositions would prove that most employees suffered few, if any, rest period violations. *Id.*
9 Defendant also intended to enforce the arbitration agreements and *Pick-Up-Stix* releases to limit
10 the scope of any class if the matter proceeded through litigation. *Id.*

11 **4. Failure to Reimburse Violations**

12 Plaintiff alleges that Defendant required Plaintiff and other Settlement Class members to
13 use their personal cell phones to receive calls from clients and finalize sales but failed to reimburse
14 the Settlement Class members for these necessary business expenses. Schmidt Decl., ¶ 21; *see*
15 Labor Code § 2802. Moreover, during a portion of the relevant time period, Defendant required
16 Plaintiff and other Settlement Class members to work from home and use their home computers
17 and internet to conduct essential company business without compensating Plaintiff and other
18 Settlement Class members for any portion of these expenses. *Id.*

19 In response, Defendant argues that it maintains a policy to reimburse all reasonable and
20 necessary business expenditures and that, to the extent that any expenses were not reimbursed,
21 they were not reasonably incurred. Schmidt Decl., ¶ 22. Defendant maintains that at all times
22 during the relevant time period, it provided all necessary telephones and computers and that the
23 decision to work from home was always optional, and that to the extent an employee chose to
24 work from home for their own convenience, any expenses incurred were not "necessary." *Id.* This
25 claim faces similar obstacles towards certification as Plaintiff's other claims, particularly that it
26 would require a series of mini-trials to determine which employees were actually required to use
27 their cell phone or internet for business purposes and in which pay periods such expenses were
28

1 allegedly incurred. *Id.* Defendant also intended to enforce the arbitration agreements and *Pick-*
2 *Up-Stix* releases to limit the scope of any class if the matter proceeded through litigation. *Id.*

3 **5. Wage Statement, Waiting Time, and PAGA Penalties**

4 As a result of Defendant’s alleged failure to pay all overtime wages and meal and rest
5 period premiums, Plaintiff asserts that Defendant also failed to maintain accurate payroll records,
6 timely pay all wages during employment, issue accurate and itemized wage statements, and failed
7 to timely pay all final wages at the time of separation. Schmidt Decl., ¶ 23; *see also* Labor Code
8 §§ 203(a), 204, 226(a), and 1174. As a result of these alleged Labor Code violations, Plaintiff
9 also seeks PAGA civil penalties on behalf of all aggrieved employees, which Plaintiff maintains
10 would not be impacted by any arbitration agreements and/or *Pick-Up-Stix* releases. *Id.*

11 In response, Defendant argues that Plaintiff would be unable to prove any Labor Code
12 violations in many pay periods, or for certain employees, and that it would be able to use the
13 arbitration agreements and/or *Pick-Up-Stix* releases to preclude wage statement and waiting time
14 penalties such that these penalties would not be recoverable in all pay periods or for all employees.
15 Schmidt Decl., ¶ 24. Defendant also argues that to the extent it prevailed in showing minimal or
16 lesser damages at trial, the PAGA penalties would similarly be reduced so as not to be “unjust,
17 arbitrary and oppressive, or confiscatory.” *Id.*

18 **C. Discovery And Mediation**

19 Prior to reaching this mediation, Defendant voluntarily provided Plaintiff with payroll
20 records for substantially all putative class members spanning the putative class period through
21 February 2024, along with all relevant data points including a breakdown of employees and
22 workweeks by position, and by whether the employee had entered into an arbitration agreement
23 and/or release. Schmidt Decl., ¶ 25. Plaintiff’s counsel also communicated with approximately
24 40 putative class members who spanned all locations and departments. *Id.* Plaintiff then retained
25 an expert with a Ph.D. in labor economics to analyze the data and create a class-wide exposure
26 model for the claims at issue, based in part on estimates derived from the extensive conversations
27 with putative class members given the lack of timekeeping records. *Id.* On April 5, 2024, after
28 extensive legal research and analysis, the Parties participated in a mediation session with Eve

Wagner, Esq., an experienced and respected wage and hour mediator, who assisted the Parties in reaching a tentative settlement agreement. *Id.* Over the following months, the Parties negotiated and executed the long-form Settlement Agreement that is now before this Court for preliminary approval. *Id.*

III. THE PROPOSED SETTLEMENT

A. Essential Terms Of The Settlement

If the Court preliminarily approves this settlement, Defendant will pay a Gross Settlement Amount (“GSA”) of \$7,500,000.00.⁴ Settlement, ¶ 3.1. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Payments unless they affirmatively opt-out. Settlement, ¶¶ 3.1; 4.2. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$7,500,000.00
Minus Court-approved attorneys’ fees (1/3):	\$2,500,000.00
Minus Court-approved attorneys’ costs (up to):	\$50,000.00
Minus Court-approved Enhancement Payment:	\$10,000.00
Minus settlement administrator costs (up to):	\$10,000.00
Minus PAGA Payment to the LWDA:	\$187,500.00
Net Settlement Amount:	\$4,742,500.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys’ fees and costs, Plaintiff’s Class Representative Enhancement Payment, settlement administration costs, and the LWDA’s share of PAGA penalties, the Settlement provides for an estimated NSA of no less than \$4,742,500.00. *See* Settlement, ¶ 1.29. In order to place all Settlement Class Members on equal footing, individual Settlement Payments will be calculated by first awarding each Participating Class Member who

⁴ This will include \$7,346,500.00 in “new money,” in addition to the \$153,500.00 that has already been paid to the Settlement Class members through the *Pick-Up-Stix* process. Schmidt Decl., ¶ 26.

1 is not a *Pick-Up-Stix* Class Member \$500 from the NSA. Additionally, the 25% of the PAGA
2 Amount payable to the Allegedly Aggrieved Employees (\$62,500.00), will be allocated to the
3 Allegedly Aggrieved Employees based on their proportionate number of pay periods worked
4 during the PAGA Period. Finally, the remainder of the NSA will be allocated to all Participating
5 Class Members based on their proportionate number of workweeks worked during the Class
6 Period. *Id.*, ¶¶ 3.2.4.1-2, 3.2.5.1. For tax purposes, each Individual Settlement Payment will be
7 allocated as 20% wages (subject to applicable withholdings), and 80% interest and penalties (not
8 subject to withholdings). *Id.*, ¶ 3.2.4.3. The PAGA Amount payable to the Allegedly Aggrieved
9 Employees shall be allocated as 100% penalties and will be paid regardless of whether the
10 employee opts out of the Settlement Class. *Id.*, ¶ 3.2.5.1 Further, Defendant will pay the
11 employer's share of payroll taxes separate and apart from, and in addition to, the GSA. *Id.*, ¶ 3.1.

12 According to Defendant's records, there are approximately 475 putative Settlement Class
13 members. Schmidt Decl., ¶ 27. Based on the estimated NSA, average Individual Settlement
14 Payments are projected to be approximately \$9,984.21. *Id.* Settlement Class members will have
15 60 calendar days from the date of the initial mailing of the Notice Packet to opt-out or object to
16 the Settlement, thereby providing ample time to review the Class Notice without unduly delaying
17 the Settlement. *See* Settlement, ¶¶ 1.45, 7.5.4. Settlement Class members who do not opt-out of
18 the Settlement will be bound by its terms and will release all claims against Defendant as detailed
19 in the Settlement. *Id.*, ¶ 7.6.4. Settlement Class members will have 180 days from the date the
20 Individual Settlement Payments are mailed to cash their checks. *Id.*, ¶ 4.2.1. In the event that there
21 are any uncashed checks remaining after 180 days, any remaining funds will be transferred to the
22 State Controller Unclaimed Property Fund. *Id.*, ¶ 4.2.4. This distribution method ensures that no
23 portion of the GSA will be "unpaid...unclaimed or abandoned," as required for C.C.P. § 384 to
24 apply, and the Court may approve the proposed distribution method without running afoul of
25 C.C.P. § 384.

26 **2. Attorneys' Fees, Costs, and Plaintiff's Class Representative**

27 **Enhancement Payment**

28 At the time of seeking final settlement approval, Plaintiff will apply for Class

1 Representative Enhancement Payment in the amount of \$10,000 for her service to the Settlement
2 Class and general release of all claims. Schmidt Decl., ¶ 28; *see* Settlement ¶¶ 1.13, 3.2.1.
3 Plaintiff's requested class representative Enhancement Payment is intended to recognize the
4 significant time and effort that Plaintiff expended on behalf of the Settlement Class, including
5 acting quickly to alert her counsel of the ongoing *Pick-Up-Stix* process, and spending substantial
6 time communicating with other employees about their rights and options in the lawsuit. Sisson
7 Decl., ¶ 8. Plaintiff's efforts were instrumental in facilitating communication between her counsel
8 and approximately 40 Settlement Class members, which not only blunted the effects of the *Pick-*
9 *Up-Stix* campaign, but also placed Plaintiff's counsel in an advantageous situation at mediation.
10 *Id.* Furthermore, it was as a direct result of these efforts that Plaintiff's counsel discovered that
11 the misclassification issues extended to all employees including the warehouse and supply chain
12 departments, beyond the sales employees that the case was initially focused on. *Id.* Plaintiff has
13 also undertaken significant reputational risks by serving as the named plaintiff, and has agreed to
14 a general release of all claims subject to a waiver of Civil Code § 1542. Schmidt Decl., ¶ 28;
15 Sisson Decl., ¶ 7; Settlement, ¶ 5.1.

16 Class Counsel will also apply for an attorneys' fee award of up to one third of the GSA
17 (currently estimated at \$2,500,000.00), and up to \$50,000.00 in reimbursement for actual
18 litigation costs. Schmidt Decl., ¶ 29; *see* Settlement, ¶ 3.2.2. Plaintiff submits that the requested
19 fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation
20 on a purely contingent fee basis. Schmidt Decl., ¶ 29. Class Counsel has incurred substantial
21 attorneys' fees conducting pre-filing investigation, conducting legal research and analysis,
22 interviewing approximately 40 employees, reviewing and evaluating the payroll records with the
23 assistance of a retained expert to build a comprehensive damages model, preparing for and
24 attending mediation, negotiating and drafting the Memorandum of Understanding, long-form
25 Settlement Agreement, and Notice Packet documents, preparing this motion for preliminary
26 approval, and otherwise litigating the case. *Id.* Class Counsel will also expend future attorney
27 time attending the hearing on this Motion, overseeing the Notice process, drafting the Final
28 Approval Motion and supporting documents, attending the Final Approval hearing, and

1 completing other tasks, such as fielding questions from Settlement Class members. *Id.*

2 Both California and federal courts have recognized that an appropriate method for
3 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
4 as a result of the settlement. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506;
5 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. Historically, courts have
6 awarded percentage fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6 (4th
7 Ed. 2013). Class Counsel submits that the request for attorneys' fees is reasonable when viewed
8 as an overall percentage of the Settlement in light of the risks and work undertaken, the positive
9 results obtained for the class, and the efficiency with which the Parties have conducted the
10 litigation. Class Counsel will seek an award of attorneys' fees when seeking final approval.

11 **IV. ARGUMENT**

12 **A. Preliminary Approval Is Warranted**

13 California Rule of Court 3.769 conditions the settlement of a class action on court
14 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
15 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
16 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the
17 settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir.
18 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether
19 a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the
20 preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor*
21 *ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed
22 settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product
23 of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027.
24 There is an initial presumption of fairness when the settlement agreement was negotiated at arm's
25 length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

26 **1. Standard for Preliminary Approval**

27 The Court should consider the following factors when making a fairness determination:
28 "the strength of plaintiff' case, the risk, expense, complexity and likely duration of further

1 litigation, the risk of maintaining class action status through trial, the amount offered in
2 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
3 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
4 “[T]he court is free to engage in a balancing and weighing of factors depending on the
5 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the
6 proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

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

8 Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member
9 payroll data spanning substantially the entire Class Period, interviewed approximately 40
10 employees, and created a comprehensive damages model for Defendant’s liability. Schmidt Decl.,
11 ¶ 30. Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff
12 acknowledges that there were substantial risks and uncertainty in proceeding with class
13 certification and trial, particularly in light of Defendant’s *Pick-Up-Stix* and arbitration agreement
14 campaign. As explained in detail in Section II.B., *supra*, Defendant presented numerous defenses
15 to Plaintiff’s claims, both as to damages and with respect to class certification. Although she was
16 prepared to litigate these claims through class certification and ultimately through trial, it is far
17 from certain that Plaintiff would be able to recover a greater amount should this matter proceed
18 through trial. Thus, this factor supports preliminary approval.

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

20 The Parties engaged only in voluntary information exchange prior to mediation. Should
21 preliminary approval be denied, the Parties would need to proceed to formal discovery, including
22 taking corporate witness depositions and depositions of numerous putative class members, which
23 had not yet commenced at the time the Parties reached the Settlement. Schmidt Decl., ¶ 31. Absent
24 settlement, the Parties will likely engage in motion practice related to the enforceability of the
25 *Pick-Up-Stix* releases and arbitration agreements before conducting formal written and deposition
26 discovery. *Id.* Moreover, Plaintiff has not yet filed for class certification, and thus, absent
27 settlement, the Parties would face the prospect of appeals in the wake of a disputed class
28 certification ruling and/or an adverse summary judgment ruling. *Id.* Even if Plaintiff succeeded

1 in certifying one or more classes, the Parties would incur considerably more attorneys' fees and
2 costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement
3 avoids these considerable costs, risks, and the accompanying burden of continued litigation on
4 the Court. Thus, this factor supports preliminary approval.

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

6 At the time of the proposed Settlement, Plaintiff had not filed her motion for class
7 certification. Schmidt Decl., ¶ 32. Had the Court certified any claims, Plaintiff anticipated that
8 Defendant would seek decertification. *Id.* Defendant also contends that, with a substantial number
9 of putative class members having signed *Pick-Up-Stix* agreements, Plaintiff faced serious risks of
10 inability to maintain the numerosity required to proceed as a class action, or a significant reduction
11 in the size of the putative class for a fraction of what Settlement Class members are receiving
12 through this Settlement. *Id.*; see *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796.
13 Therefore, absent the Settlement, there was a serious risk that Plaintiff would be unable to move
14 forward on a class-wide basis. Schmidt Decl., ¶ 32. Thus, this factor supports preliminary
15 approval.

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

17 This proposed Settlement provides a fair and reasonable recovery for the Settlement Class
18 in the face of disputed claims. After analyzing Defendant's produced data, Class Counsel and
19 Plaintiff's expert conducted a class-wide exposure analysis, forecasting the total expected
20 recovery as follows:

21 **Overtime Wage Violations: \$3,434,548**

22 Settlement Class members worked an aggregate total of 50,277 weeks during the relevant
23 time period, throughout which Defendant paid no overtime wages and maintained no bona fide
24 timekeeping records. Schmidt Decl., ¶ 33. Given the lack of records, Plaintiff was forced to rely
25 on anecdotal evidence from approximately 40 Settlement Class members, who spanned all
26 departments and locations at issue, to estimate the realistic amount of overtime hours actually
27 worked. *Id.* Based on Plaintiff's interviews, it was near-universal that all employees worked some
28 amount of overtime hours during the relevant time period, but this ranged from minutes on the

low end to five to ten hours per week on the high end, with most employees attesting that overtime hours would come in waves when work demands peaked, with far fewer or no overtime hours during slower periods. *Id.* Plaintiff also recognized that there was a risk of skewed anecdotal evidence due to employees who had been forced to work more overtime hours without compensation being more likely to leave the company feeling disgruntled and cooperate with Plaintiff's counsel. *Id.* Based upon her investigation, Plaintiff estimates that a fair average across all workweeks would be approximately 2.5 overtime hours per week. *Id.* Accordingly, Plaintiff calculated Defendant's estimated potential exposure at approximately \$6,869,095 (50,277 workweeks * 2.5 hours per week * \$54.65 average overtime rate of pay). *Id.*

Defendant, however, maintains that some of these workweeks could be properly categorized as exempt under either the administrative exemption or the inside sales exemption. Schmidt Decl., ¶ 34. Additionally, approximately 28,000 of these workweeks (approximately 56%) were subject to *Pick-Up-Stix* releases. *Id.* Therefore, applying only a 50% discount on the merits to account for the enforceability of the *Pick-Up-Stix* releases and **no discounts** for a risk of non-certification, Plaintiff estimated a reasonable exposure of \$3,434,548. *Id.*

Meal Period Violations: \$973,033

Based on Plaintiff's conversations with approximately 40 employees, Plaintiff found that in almost all cases, employees confirmed the existence of an hour-long meal period during each shift. Schmidt Decl., ¶ 35. However, some employees reported that they felt pressured to skip the meal period under certain circumstances, with varying degrees of employer coercion, while others reported full autonomy to take their meal period as they saw fit. *Id.* Additionally, numerous employees corroborated Plaintiff's account of at least one employee on each team needing to delay their meal period to cover the phones while the rest of the team took their meal, which could sometimes, but not always, result in a late meal period. *Id.* Based on all the available evidence, Plaintiff predicted that she would be able to prove an approximate 25% violation rate across all workweeks. *Id.* Accordingly, Plaintiff calculated Defendant's liability on this claim at \$2,289,489 (50,277 workweeks * 1.25 violations per week * \$36.43 average premium). *Id.*

Defendant asserts, however, that it always maintained lawful meal period

1 policies/practices (including providing a full hour, rather than only 30 minutes) and never
2 prevented an employee from taking a duty-free meal period. Schmidt Decl., ¶ 36. Defendant
3 maintains that it was not legally required to maintain a written meal period policy, and the absence
4 of a common written policy posed an obstacle to class certification since individual meal period
5 experiences were highly dependent on the employee's direct supervisor and team, which was
6 somewhat corroborated by Plaintiff's investigation. *Id.* Additionally, approximately 56% of
7 workweeks were subject to *Pick-Up-Stix* releases. *Id.* Given these defenses, Plaintiff discounted
8 the maximum exposure by 15% for the risk of non-certification, and by an additional 50% in light
9 of the *Pick-Up-Stix* releases, to arrive at a projected exposure of \$973,033. *Id.*

10 **Rest Period Violations: \$572,372**

11 Based on Plaintiff's conversations with approximately 40 employees, Plaintiff found that
12 most employees acknowledged an awareness of one 15-minute rest period in the morning and one
13 15-minute rest period in the afternoon. Schmidt Decl., ¶ 37. However, Plaintiff found that there
14 was a greater variance in employee experiences with respect to rest periods than there was with
15 meal periods, with some employees stating that they were only vaguely aware of rest periods but
16 did not experience them in practice, and others attesting that they always took their rest periods
17 and that they were free to take longer rest periods and never faced any consequences for doing
18 so. *Id.* Many employees were somewhere in between and attested that they were free to take rest
19 periods but when they became busy, rest periods became an afterthought due to their focus being
20 on helping their team meet its quotas. *Id.* Based on all of this evidence, Plaintiff predicted that at
21 best, she would be able to prove an approximate 50% violation rate for rest periods across all
22 workweeks. *Id.* Accordingly, Plaintiff calculated Defendant's maximum potential exposure on
23 this claim at \$4,578,978 (50,277 workweeks * 2.5 violations per week * \$36.43 average
24 premium). *Id.*

25 However, as with meal periods, Defendant argues that it always authorized and permitted
26 the Settlement Class members to take two 15-minute rest periods each shift (longer than required
27 by law), and never prevented or impeded any employees from doing so. Schmidt Decl., ¶ 38.
28 Defendant argues that the absence of a common written policy posed an obstacle to class

1 certification since individual rest period experiences would also be highly dependent on the
2 employee's direct supervisor and team, which was corroborated by Plaintiff's investigation. *Id.*
3 Additionally, approximately 56% of workweeks were subject to *Pick-Up-Stix* releases. *Id.* Given
4 these defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-
5 certification, and by an additional 75% in light of the *Pick-Up-Stix* releases and to account for the
6 possibility that some of the alleged violations could be found to be the result of employee choice,
7 to arrive at a projected exposure of \$572,372. *Id.*

8 **Unreimbursed Business Expenses: \$58,000**

9 Based on her conversations with approximately 40 employees, Plaintiff concluded that it
10 was common for employees to report using their cell phones for work purposes, but that in some
11 cases it appeared that employees chose to do so for their own convenience. Schmidt Decl., ¶ 39.
12 Employees also reported that they were required to work from home for at least a portion of 2020
13 during the COVID-19 pandemic, which required them to use their own home computer and
14 internet connection. *Id.* However, the exact duration of the period for which employees worked
15 from home varied based on location, and some employees stated that they were aware that it
16 would have been possible for them to continue to work in-office if they preferred to. *Id.* It was
17 also unclear whether Defendant would have reimbursed employees for these expenses if any
18 reimbursement had been requested, as there was no evidence of any requests having been made.
19 *Id.* Based on all of this investigation, Plaintiff estimates that under a best-case scenario, she would
20 be able to prove an overall average of approximately \$50 per month on cell phone and internet
21 expenses that could be attributable to work purposes. *Id.* Therefore, Plaintiff calculated
22 Defendant's maximum potential exposure on this claim at \$580,000 (11,600 work-months
23 (equivalent to 50,277 workweeks) * \$50 per month). *Id.*

24 However, Defendant contends that any personal expenses incurred for cell phone or
25 internet expenses were purely for the convenience of the employees and were not required by
26 Defendant, given that all employees had access to computers and phones at Defendant's offices.
27 Schmidt Decl., ¶ 40. Furthermore, Defendant argues that it would likely have granted any
28 reasonable requests for reimbursement if they had been submitted, and that it maintains a policy

1 to reimburse all reasonable and necessary business expenditures. *Id.* Defendant argues that at best,
2 Plaintiff's claim would be limited to the period of the state-wide stay at home order in 2020, and
3 that class certification would be unlikely for any other period of time. *Id.* Lastly, the *Pick-Up-Stix*
4 releases could be used to extinguish approximately 56% of the liability. *Id.* Based on all of this
5 evidence, Plaintiff discounted the maximum potential exposure by 80% for the risk of non-
6 certification or certification of a limited time period, and 50% for the risk of being unsuccessful
7 on the merits, to arrive at an estimated exposure of \$58,000. *Id.*

8 **Wage Statement Penalties: \$686,000**

9 According to Plaintiff's expert's data analysis, there are approximately 343 Settlement
10 Class members who are eligible for wage statement penalties, and received a total of 23,553 wage
11 statements during the 1-year statute of limitations period for wage statement penalties. Schmidt
12 Decl., ¶ 41. Since statutory wage statement penalties are capped at \$4,000 per employee, Plaintiff
13 calculated Defendant's maximum possible wage statement exposure as approximately
14 \$1,372,000. *Id.* Assuming a 100% likelihood of class certification and applying only a 50%
15 discount on the merits to account for the *Pick-Up-Stix* releases, Plaintiff estimated the wage
16 statement exposure at approximately \$686,000. *Id.*

17 **Waiting Time Penalties: \$826,214**

18 Plaintiff expert's data analysis determined that 189 Settlement Class members separated
19 their employment during the 3-year statute of limitations period for waiting time penalties.
20 Schmidt Decl., ¶ 42. Therefore, Plaintiff calculated Defendant's maximum potential exposure on
21 this claim at \$1,652,427 (189 former employees * average waiting time penalty of \$8,743 (\$36.43
22 hourly rate * 8 hours * 30 days)). *Id.* Assuming a 100% likelihood of class certification and
23 applying only a 50% discount on the merits to account for the *Pick-Up-Stix* releases, Plaintiff
24 estimated the waiting time penalty exposure at approximately \$826,214. *Id.*; *see also Naranjo v.*
25 *Spectrum Security* (2023) 88 Cal.App.5th 937, 945 (recognizing that good faith dispute over
26 whether any wages are due will preclude imposition of waiting time penalties).

27 **PAGA Penalties: \$883,238**

28 Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in

1 which she could prove an underlying Labor Code violation. Schmidt Decl., ¶ 43. According to
2 Plaintiff's expert's data analysis, the Settlement Class members worked a combined total of
3 23,553 pay periods during the PAGA liability period. *Id.* Assuming that Plaintiff was successful
4 in proving at least one Labor Code violation in each of these pay periods and recovered an
5 additional \$50 per pay period, Plaintiff calculates Defendant's PAGA exposure at \$1,177,650
6 (23,553 pay periods * \$50). *Id.* However, Plaintiff acknowledged that there was a chance that
7 there would be certain pay periods, particularly during slower periods of work, where it was
8 conceivable that no Labor Code violations could be proven. *Id.* Plaintiff also recognizes that the
9 Court has discretion to reduce any award of PAGA penalties. *Id.*; *see also* Labor Code §
10 2699(e)(2); *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL
11 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000).
12 Therefore, applying only a 25% reduction for the chance of not proving violations in all pay
13 periods and/or the Court reducing the penalties, Plaintiff estimates Defendant's realistic PAGA
14 exposure at approximately \$883,238. Schmidt Decl., ¶ 43.

15 Using these estimated figures, Plaintiff estimated that the potential reasonable recovery
16 for the Settlement Class would be approximately \$7,433,405. Schmidt Decl., ¶ 44. Thus, the
17 proposed recovery to the Settlement Class of \$7,500,000 represents approximately slightly *more*
18 than 100% of Plaintiff's reasonably forecasted class-wide recovery, which is well within the range
19 approved by courts as being fair, reasonable and adequate, while also avoiding further expense
20 and risk of proceeding towards class certification and trial. *Id.*; *see, e.g., Altamirano v. Shaw*
21 *Industries, Inc.*, 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest
22 fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for
23 the Court to grant preliminary approval..."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454,
24 459 (approving settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular*
25 *Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement
26 may only amount to a fraction of the potential recovery does not, in and of itself, mean that the
27 proposed settlement is grossly inadequate and should be disapproved.") (internal quotations
28 omitted). Preliminary approval is appropriate since the Settlement will provide tangible monetary

1 relief to the Settlement Class without the uncertainty, delay, and additional expense of further
2 litigation.

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

4 “Parties represented by competent counsel are better positioned than courts to produce a
5 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
6 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented
7 by competent and experienced counsel who possesses extensive experience litigating wage and
8 hour class actions from both the plaintiff and defense side, and who have been appointed as class
9 counsel in numerous cases alleging similar claims. Schmidt Decl., ¶¶ 2-8; Declaration of Paul K.
10 Haines (“Haines Decl.”), ¶¶ 2-11; Declaration of Andrew J. Rowbotham (“Rowbotham Decl.”),
11 ¶¶ 2-8. Class Counsel interviewed approximately 40 Settlement Class members, conducted an
12 extensive review and analysis of Defendant’s payroll data and drew on their extensive experience
13 in similar cases to assess the strengths and weaknesses of Plaintiff’s case. Schmidt Decl., ¶¶ 12,
14 29, 32-44. It was only after the completion of this work that the Parties attended mediation and
15 ultimately reached a class-wide settlement of all claims at issue. *Id.* Thus, this factor supports
16 preliminary approval.

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

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

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

24 The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class
25 members in light of the significant risks of litigation. The proposed Settlement will provide
26 compensation for contested claims, while only releasing the claims actually at issue in this
27 litigation. Further, the average payment of \$9,352.63 (plus an additional \$500 to each of the 168
28 Non-Pick-Up-Stix Class members) greatly exceeds the average payments achieved in other wage

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

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

8 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
9 of the exchange of pertinent information, including interviews with approximately 40 employees,
10 employee payroll records which were analyzed by a retained expert; arm's-length negotiations by
11 counsel; and mediation before an experienced wage and hour class action mediator. Schmidt
12 Decl., ¶ 25; *see also Kullar, supra*, 168 Cal.App.4th at 130. Thus, this factor supports preliminary
13 approval.

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

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

20 **B. The Court Should Certify the Settlement Class for Settlement Purposes**

21 The proposed Settlement Class satisfies the criteria for certification of a settlement class
22

23 ⁵ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County
24 Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v.*
25 *Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 2,
26 2009) (average net recovery of approximately \$90); and *Schiller v. David's Bridal, Inc.*,
27 Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012)
28 ("Class Members will receive an average of approximately 198.70 . . . [T]his is a
substantial recovery where Defendant 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").

under California law because: (1) the individuals in the Settlement Class are 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 the absent Settlement Class members; and (4) Plaintiff and Plaintiff's counsel will fairly and adequately represent the interests of the absent Settlement Class members. *See* Cal. Code 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.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all current and former employees of Defendant in California who worked at any time during the Class Period. *See* Settlement, ¶ 1.4. Settlement Class members can be easily identified using Defendant's employment and payroll records. Schmidt Decl., ¶ 27. Defendant represents that the Settlement Class consists of approximately 475 individuals, rendering it impracticable to bring all Settlement Class members before the Court. *Id.* Thus, the proposed Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated primarily on Defendant's company-wide policy of treating all employees as exempt and not maintaining any bona fide timekeeping records or formal meal or rest period policies. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1032-34 ("The theory of liability—that Brinker has a uniform policy, and that that policy...allegedly violates the law—is by its nature a common question eminently suited for class treatment.").

3. The Claims of the Named Plaintiff are Typical

The typicality requirement is satisfied where class representatives have claims that are

1 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
2 Cal.App.3d 1341, 1347. Here, like other Settlement Class members, Plaintiff was employed by
3 Defendant in California and was subject to Defendant's unlawful wage and hour policies and
4 practices during the Class Period. Sisson Decl., ¶¶ 3-6. Plaintiff was therefore impacted by the
5 same challenged policies that allegedly injured the Settlement Class as a whole and was subject
6 to the same defenses forwarded by Defendant as to the Settlement Class and is therefore typical.

7 **4. Plaintiff and Class Counsel are Adequate to Represent the Class**

8 The adequacy of representation requirement examines conflicts of interest between named
9 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
10 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel have
11 and will continue to adequately represent the Settlement Class members as there are no conflicts
12 between the named Plaintiff and the Settlement Class members she seeks to represent, and
13 Plaintiff possesses claims that are in line with those of the Settlement Class members. *See McGhee*
14 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was
15 no indication that the plaintiff's counsel were not qualified and the plaintiff had no interests
16 antagonistic to those of the class). Class Counsel also has extensive experience in wage and hour
17 class action litigation. *See Schmidt Decl.*, ¶¶ 2-8; *Haines Decl.*, ¶¶ 2-11; *Rowbotham Decl.*, ¶¶ 2-
18 8.

19 **C. The Court Should Order Distribution Of The Proposed Class Notice**

20 This Court should order distribution of the proposed Class Notice in English to the
21 Settlement Class members by first class mail, postage prepaid, using the last known mailing
22 address information provided by Defendant. This manner of giving notice is the "best notice
23 practicable" under the circumstances because it provides "individual notice to all members who
24 can be identified through reasonable effort." *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S.
25 156, 173. The Parties propose that the settlement be administered by CPT Group, Inc. ("CPT"),
26 an experienced class action settlement administrator. *See Declaration of Julie Green.* Settlement
27 Class members' addresses will be ascertainable through Defendant's personnel records, and
28 Defendant will provide all Settlement Class members' names, last known addresses, phone

1 numbers, social security numbers, and workweek data to CPT within ten (10) business days after
2 of the Court signs an order preliminarily approving the Settlement. *See* Settlement, ¶ 4.1. CPT
3 will run the Settlement Class members' addresses through the National Change of Address
4 database and/or conduct skip traces to obtain current address information. *Id.*, ¶ 4.2.1-2.

5 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
6 because it advises the Settlement Class members of the nature of the claims, basic contentions
7 and denials of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out
8 or object to the Settlement and the procedures by which to do so, explains the recovery formula
9 and expected recovery amount for each Settlement Class members, and advises them that they
10 will be bound by the terms of the Settlement if they do not request exclusion. *See* Schmidt Decl.,
11 Exhibit B. The proposed Class Notice will also notify the Settlement Class of the Final Approval
12 Hearing date, provide Class Counsel's contact information, and advise Settlement Class members
13 that they may enter an appearance through counsel if they so wish. *Id.* This manner of giving
14 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method
15 of reaching Settlement Class members. Additionally, because the proposed Settlement includes
16 settlement of Plaintiff's representative PAGA claim, notice of the Settlement has been submitted
17 to the LWDA. *See id.*, ¶ 45, Exhibit D (LWDA Settlement Submission); Proof of Service.

18 **D. The Court Should Set A Final Approval Hearing**

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

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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 for settlement
4 purposes, and enter the [Proposed] Order submitted concurrently herewith.

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6 Dated: November 14, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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8 By:



9 Fletcher W. Schmidt
10 Attorneys for Plaintiff
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