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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

RUBEN HERNANDEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

NEOVIA LOGISTICS SERVICES, LLC, a
Delaware Limited Liability Company;
NEOVIA LOGISTICS DISTRIBUTION, LP,
a Delaware Limited Partnership; and DOES 1
through 100,

Defendants.

Case No.: CIVSB2305867

*[Assigned for all purposes to the Hon. Tony
Raphael, Dept. S36]*

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

Date: September 11, 2024
Time: 8:30 a.m.
Dept.: S36

Action Filed: March 2, 2023
Trial Date: None Set

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PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on September 11, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department S-36 of the San Bernardino County Superior Court, located at 247 W. 3rd Street, San Bernardino, California 92415, Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno (“Plaintiffs”), as individuals and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement Agreement”) in this lawsuit, entered into between Plaintiffs and Defendants Neovia Logistics Services, LLC and Neovia Logistics Distribution, LP (“Defendants”);
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 non-exempt employees who worked for either and/or both Defendants in California between October 28, 2018 and December 27, 2023 (the “Class Period”).
3. Preliminary appointment of Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno as the Class Representatives;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC, Kashif Haque and Jessica L. Campbell of Aegis Law Firm, PC, and Marcus Bradley of Bradley Grombacher, LLP, 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 Payments, 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 Apex Class Action Administration as the third-party settlement administrator (“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

1 of the proposed Order instructing the Notice Packet to be disseminated to the proposed
2 Settlement Class in English and Spanish, as provided in the Settlement Agreement.

3 This motion is based on this notice of motion, the attached memorandum of points and
4 authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Jessica
5 L. Campbell, Marcus Bradley, Plaintiff Ruben Hernandez, Plaintiff Patrick Joseph Neims,
6 Plaintiff Arturo Ramirez, Plaintiff Miguel Moreno, and Sean Hartranft of Apex Class Action
7 Administration, and the exhibits attached thereto, the pleadings and other papers filed in this
8 action, and on any further oral or documentary evidence or argument presented at the time of
9 hearing.

10 Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and
11 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
12 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider
13 the entire Motion, which is 25 pages in length.

14
15 Dated: August 19, 2024

Respectfully Submitted,
HAINES LAW GROUP, APC

16
17 By:


Matthew K. Moen
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno
4 (“Plaintiffs”), as individuals and on behalf of the proposed Settlement Class, respectfully request
5 that this Court preliminarily approve the proposed Stipulation of Settlement (“Settlement
6 Agreement” or “Settlement”),¹ entered into by Plaintiffs and Defendants Neovia Logistics
7 Services, LLC and Neovia Logistics Distribution, LP (“Defendants”) (collectively, the “Parties”).
8 Plaintiffs respectfully request that this Court preliminarily approve this non-reversionary,
9 \$2,950,000.00 class action settlement on behalf of the following Settlement Class:

10 All current and former non-exempt employees who worked for either and/or both
11 Defendants in California between October 28, 2018 and December 27, 2023 (the
12 “Class Period”).

13 Based upon the data provided by Defendants, there are approximately 1,934 potential
14 Settlement Class members. After Court-approved deductions for Plaintiffs’ Class Representative
15 Enhancement Payments, settlement administrator costs, the PAGA Payment to the Labor &
16 Workforce Development Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the
17 remaining Net Settlement Amount (“NSA”) is estimated to be no less than \$1,753,676.67. This
18 results in average Individual Settlement Payments of approximately \$906.76, with the lowest
19 possible estimated Individual Settlement Payment of \$14.52 (in the event a Settlement Class
20 member worked only one workweek during the Class Period) and the highest possible estimated
21 Individual Settlement Payment of \$3,905.88 (in the event a Settlement Class member performed
22 work in every workweek during the Class Period). Moen Decl., ¶ 26. Further, an additional
23 \$25,000.00 will be paid to all current and former non-exempt employees who worked for either
24 and/or both Defendants in California between October 28, 2021 and December 27, 2023 (the
25 “PAGA Period”) (collectively, the “Allegedly Aggrieved Employees”) for the release of claims
26

27 ¹ The Settlement Agreement is attached as Exhibit A to the Declaration of Matthew K. Moen (“Moen
28 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 Moen Decl.
as Exhibit B.

1 under PAGA. *See* Settlement, ¶¶ 1.B, 3.C.5, 4.B.i. Significantly, Settlement Class members do
2 not need to file a claim form in order to receive an Individual Settlement Payment, and all
3 Settlement Class members who do not opt-out will automatically receive their share of the
4 Settlement. This represents an exceptional, fair and reasonable result for the Settlement Class
5 members, who will be agreeing to a release of only those claims that were actually asserted, or
6 which could have been asserted based on the facts alleged in the operative complaint.

7 Further, given the tenet that aggrieved employees do not have the ability to opt-out of a
8 representative PAGA claim, all Allegedly Aggrieved Employees, regardless of whether they elect
9 to opt out from participating in the class action settlement or not, shall receive a portion of the
10 settlement monies designated as the PAGA Amount payable to the Allegedly Aggrieved
11 Employees and shall release all claims for PAGA penalties that were alleged, or reasonably could
12 have been alleged in the operative complaint, Plaintiff Hernandez’s March 2, 2023 PAGA Notice
13 to the LWDA, Plaintiff Hernandez’s November 2, 2023 Supplemental Notice to the LWDA, and
14 Plaintiff Moreno’s September 20, 2023 Notice to the LWDA, or which could have been pled in
15 the operative complaints in the Action based on the factual allegations therein. *See Robinson v.*
16 *Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt–
17 out mechanism for PAGA claims and “nonparty employees as well as the government are bound
18 by the judgment in an action brought under [PAGA].”); *see also* Moen Decl., Exhibits C-D.

19 Prior to reaching this proposed Settlement, Defendants, through formal discovery,
20 provided Plaintiffs with timekeeping and payroll records for all putative class members spanning
21 the putative class period, as well as policy documents and employee handbooks. Plaintiffs further
22 took the deposition of Defendants’ Rule 30(b)(6)² corporate witness. Plaintiffs then retained an
23 expert with a Ph.D. in economics to analyze the data and create a class-wide exposure model for
24 the claims at issue. On November 27, 2023, after extensive legal research and analysis, along with
25 Plaintiffs’ and their expert’s comprehensive review of the data, the Parties participated in a
26 mediation session with Steven G. Mehta, Esq., an experienced and respected wage and hour
27

28

² At the time of this deposition, this action was venued in federal court, Central District of California.

mediator, who continued to assist the Parties in their settlement negotiations in the weeks following mediation. After additional weeks of continued negotiations following mediation, Mr. Mehta made a mediator's proposal for a class-wide resolution of all claims at issue that the Parties ultimately accepted. Over the following months, the Parties negotiated and executed the long-form Settlement Agreement that is now before this Court for preliminary approval.

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

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendants operate logistics warehouses across California, providing storage and transportation services. Moen Decl., ¶ 9. Plaintiffs were employed by Defendants as non-exempt employees in California during the Class Period. Declaration of Ruben Hernandez ("Hernandez Decl."), ¶ 2; Declaration of Patrick Joseph Neims ("Neims Decl."), ¶ 3; Declaration of Arturo Ramirez ("Ramirez Decl."), ¶ 3; Declaration of Miguel Moreno ("Moreno Decl."), ¶ 3. Like all Settlement Class members, Plaintiffs were employed by Defendants as non-exempt employees during the Class Period and were subject to Defendants' allegedly unlawful wage and hour policies and practices. Hernandez Decl., ¶¶ 2-4; Neims Decl., ¶¶ 3-5, 7; Ramirez Decl., ¶¶ 3-5, 7; Moreno Decl., ¶¶ 3-5.

On March 2, 2023, Plaintiff Hernandez initiated the instant action, alleging Defendants failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii) provide all lawful meal 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. Moen Decl., ¶ 10. On May 23, 2023, Plaintiff Hernandez 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.* On June 23, 2023, Defendants removed the action to federal court, and on January 4, 2024, the action was remanded back to San Bernardino County Superior Court. *Id.*

On October 28, 2022, Plaintiff Neims filed a separate class action complaint, Case No. CIVSB2224879 (the “*Neims Action*”), alleging the same and/or similar causes of action against Defendants as in the instant action. Moen Decl., ¶ 11. On October 13, 2023, Defendants removed the *Neims Action* to federal court. *Id.* On August 17, 2023, Plaintiff Ramirez filed a separate class action complaint, Case No. CIVSB2320935 (the “*Ramirez Action*”), alleging the same and/or similar causes of action against Defendants as in the instant action. *Id.* On October 13, 2023, Defendants removed the *Ramirez Action* to federal court. *Id.* On September 21, 2023, Plaintiff Moreno filed a separate class action complaint, Case No. CIVSB2323010 (the “*Moreno Action*”), alleging the same and/or similar causes of action against Defendants as in the instant action. *Id.* On December 1, 2023, Plaintiff Moreno filed a Representative Action Complaint under PAGA, Case No. CIVSB2328743. *Id.*

As a material term of the Settlement, Plaintiff Hernandez will file a Second Amended Complaint in this action, adding Plaintiffs Neims, Ramirez, and Moreno as named plaintiffs, consolidating all causes of action and factual allegations in the *Neims Action*, *Ramirez Action*, and *Moreno Action* into this action, and consolidating all claims under the PAGA based on the facts alleged in Plaintiff Hernandez’s March 2, 2023 PAGA Notice to the LWDA and November 2, 2023 Supplemental Notice, and Plaintiff Moreno’s September 20, 2023 PAGA Notice to the LWDA, into this action. Moen Decl., ¶ 12; Settlement Agreement, p. 2. On August 2, 2024, the Parties filed a Stipulation for Leave to File the Second Amended Complaint, which remains pending with the Court. *Id.* Plaintiffs will file the Second Amended Complaint immediately upon entry of the Court’s order granting leave to amend. *Id.*

B. Plaintiffs’ Claims and Defendants’ Defenses

1. Off-the-Clock Violations

Plaintiffs assert that Defendants failed to maintain accurate records of the hours actually worked by Settlement Class members, resulting in unpaid wages. Moen Decl., ¶ 13. Specifically, Defendants required Plaintiffs and other non-exempt employees to undergo daily COVID-19 related temperature checks and pass through security checkpoints prior to being permitted to enter Defendants’ facility to clock in at the start of their work shift. *Id.* However, Defendants failed to pay Plaintiffs and other non-exempt employees for this pre-shift time. *Id.*; see Wage Order 9, §

2(H) (“‘Hours Worked’ means the time during which an employee is subject to the control of an employer...”); Labor Code §§ 1197 and 1182.12 (establishing the right of employees to be paid minimum wages for all hours worked).

In response, Defendants maintain their timekeeping policies/practices comply with California law, and that they properly compensate Settlement Class members for all hours worked. Moen Decl., ¶ 14. Further, Defendants assert that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee underwent a security screening or COVID-19 related temperature check at all, which Defendants contend was not required at all of its six California facilities, and exactly how much time each employee purportedly spent while off-the-clock on any given day, which is increasingly difficult since Defendants assert temperature checks took extremely minimal periods of time and off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id.*

2. Regular Rate Miscalculations

Plaintiffs assert that Defendants miscalculated Plaintiffs’ and other non-exempt employees’ regular rates of pay for overtime purposes by paying Plaintiffs and other non-exempt employees incentive bonus payments and hourly shift premium pay for working certain shifts, but failing to include the value of this earned incentive pay when calculating the regular rate of pay. Moen Decl., ¶ 15; *see also* Labor Code § 510(a); *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902-03 (payments included in the calculation of the regular rate are generally consistent under state and federal law).

In response, Defendants argue that any bonus payments made were purely discretionary, and therefore are properly excluded from the regular rate of pay. *See e.g., Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184, 1190 (E.D. Cal. 2017); Moen Decl., ¶ 15. As such, Defendants contend that Plaintiffs’ claim fails on the merits. *Id.* Further, Defendants assert that this claim is unmanageable, as it requires individualized inquiries into whether each bonus payment made by Defendants was discretionary or non-discretionary, resulting in an unmanageable series of mini-trials. *Id.*

3. Meal Period Violations

Plaintiffs further assert that Defendants failed to provide the Settlement Class members

1 with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled. Moen
2 Decl., ¶ 16; *see* Labor Code § 512(a); *see also* *Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
3 1041 (“We conclude that, absent waiver, section 512 requires a first meal period no later than the
4 end of an employee’s fifth hour of work...”). Specifically, Plaintiffs assert Defendants maintained
5 an unlawful written meal period policy that fails to provide for the timing or duration of meal
6 periods, and in practice, failed to provide at least 30 minutes of “net rest” during meal periods in
7 an area suitable for resting as required by Section 12(B) of the Wage Order. Moen Decl., ¶ 16.
8 Instead, Defendants instructed their non-exempt employees to clock-in after *exactly* 30 minutes
9 for a meal period, which did not account for travel time between the timeclocks and break rooms,
10 resulting in short meal periods. *Id.* Further, Plaintiffs assert that Defendants paid meal period
11 premiums at the employees’ respective base rates of pay, rather than at the regular rate of pay.
12 *Id.*; *see also* *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 863.

13 In response, Defendants contend it maintained lawful meal period policies/practices
14 throughout the Class Period. Moen Decl., ¶ 17. Defendants assert that Plaintiffs’ “net rest” theory
15 will fail on the merits because employees are not required to limit their meal periods to exactly
16 30 minutes in length, and timeclocks are located within 15-20 feet of all breakrooms at each of
17 Defendants’ facilities, meaning that employees are factually able to spend a full 30 minutes in the
18 breakroom between clocking out and clocking in. *Id.* Defendants also contends that Plaintiffs’
19 meal period claim is not suited for class certification as individual inquiries would be required to
20 assess the amount of time it took each employee to walk between Defendants’ timeclocks and
21 breakrooms, which differed at each facility, for every meal period taken, resulting in an
22 unmanageable series of mini-trials. *Id.*

23 **4. Rest Period Violations**

24 Plaintiffs further allege that Defendants failed to authorize and permit the Settlement Class
25 members to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 18.
26 Specifically, Plaintiffs assert that Defendants failed to authorize and permit a “net” rest period of
27 10-minutes beginning when the employee reaches a rest area away from his or her workstation,
28 instead only providing exactly 10 minute rest periods beginning the moment an employee leaves

1 their workstation and ending the moment the employee returns to their workstation, without
2 accounting for the time required for the employee to walk to and from the designated breakroom
3 from their workstation, including passing through security checkpoints. *Id.*; see DLSE Manual §
4 45.3.3; *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE
5 Manual § 45.3.3 for the proposition that “the rest period begins when the employee reaches an
6 area away from the work station that is appropriate for rest”); *Augustus v. ABM Security Services,*
7 *Inc.* (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods, employers must relieve their
8 employees of all duties and relinquish any control over how employees spend their break time.”).
9 Plaintiffs also allege that Defendants failed to pay any rest period premiums during the relevant
10 time period. Moen Decl., ¶ 18; Labor Code § 226.7; *Safeway, Inc. v. Superior Court* (2015) 238
11 Cal.App.4th 1138, 1159.

12 Defendants maintain they authorized and permitted the Settlement Class members to take
13 all lawful rest periods to which they are entitled. Moen Decl., ¶ 19. Defendants assert that
14 employees are not required to go to the breakrooms for rest periods, and are authorized and
15 permitted to take 10-minute rest periods wherever they choose. *Id.* Further, Defendants assert
16 that employees at certain of its facilities did not start their rest periods until arriving at the
17 breakrooms, and therefore Plaintiffs claim will fail on the merits. *Id.* Defendants also assert that
18 this claim is unmanageable and not suited for class certification, as it requires individualized
19 inquiries into whether each employee was authorized and permitted to take a lawful rest period
20 and on which days, which Defendants argue Plaintiff will be unable to substantiate with any
21 common, documentary evidence, as rest periods are not required to be recorded, resulting in an
22 unmanageable series of mini-trials. *Id.*

23 **5. Failure to Reimburse Violations**

24 Plaintiffs further allege that Defendants required Plaintiffs and other non-exempt
25 employees to purchase and wear protective masks as part of Defendants’ COVID-19 policy, but
26 failed to reimburse the Settlement Class members for these necessary business expenses. Moen
27 Decl., ¶ 20; see Labor Code § 2802. In response, Defendants argue it never required employees
28 to purchase their own protective masks, and instead Defendants provided masks for the employees

1 to use as part of their COVID-19 safety policies/practices. Moen Decl., ¶ 20. Further, Defendants
2 maintain that this claim is not suited for class certification, as only one of its facilities required
3 masks to be worn to begin with, and individual issues would predominate to determine which, if
4 any, individual supervisors at that facility told employees they needed to buy their own masks
5 and which employees, if any, chose not to use the masks provided by Defendants, resulting in an
6 unmanageable series of mini-trials. *Id.*

7 **6. Wage Statement, Waiting Time, and PAGA Penalties**

8 As a result of Defendants’ alleged failure to pay all wages, including overtime and
9 minimum wages, and meal and rest period premiums, Plaintiffs assert that Defendants also failed
10 to maintain accurate payroll records, timely pay all wages during employment, issue accurate and
11 itemized wage statements, and failed to timely pay all final wages at the time of separation. Moen
12 Decl., ¶ 21; *see also* Labor Code §§ 203(a), 204, 226(a), and 1174. Further, Plaintiffs contend
13 that Defendants issued facially non-compliant wage statements in violation of Labor Code §
14 226(a), which failed to include all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate. Moen Decl., ¶ 21; *see* Labor Code §
16 226(a). As a result of these alleged Labor Code violations, as well as Defendants’ alleged failures
17 to pay all sick pay wages at the regular rate of pay or to minimize excessive heat in the working
18 environment, Plaintiffs also seek PAGA civil penalties on behalf of all aggrieved employees.
19 Moen Decl., ¶ 21; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213
20 (“As we have explained, they [civil penalties under PAGA] are mandatory, not discretionary.”).

21 In response, Defendants argue that Plaintiffs’ underlying claims will fail and, as a result,
22 these derivative claims will also fail. Moen Decl., ¶ 22; *see Price v. Starbucks Corp.* (2011) 192
23 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and
24 PAGA claims also fail.”). Defendants also maintain that Plaintiffs cannot show that the wage
25 statement violations were “knowing and intentional,” or that the putative class members
26 “suffer[ed] injury” as a result of the alleged violations, as required by Labor Code § 226(e) for
27 the imposition of wage statement penalties. Moen Decl., ¶ 22; *see* Labor Code § 226(e)(1).
28 Moreover, Defendants maintain that their good faith defenses to Plaintiffs’ underlying claims

1 would preclude the recovery of waiting time penalties, which are only available for the “willful”
2 failure to pay wages, and that this Court would exercise its discretion to substantially reduce any
3 PAGA penalties awarded. Moen Decl., ¶ 22; *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith
4 dispute that any wages are due will preclude imposition of waiting time penalties under Section
5 203.”); Labor Code § 2699(e)(2); *Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th
6 937; *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington*
7 *v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties).

8 **C. Discovery And Mediation**

9 The Parties engaged in significant formal written and deposition discovery prior to
10 attending mediation. Moen Decl., ¶ 23. Through formal discovery, Defendants provided Plaintiffs
11 with timekeeping and payroll records for all putative class members spanning the putative class
12 period, as well as policy documents and employee handbooks. *Id.* Plaintiffs also took the
13 deposition of Defendants’ corporate witness under Federal Rule of Civil Procedure 30(b)(6), and
14 conducted a site inspection at one of Defendants’ facilities. *Id.* Plaintiffs then retained an expert
15 with a Ph.D. in economics to analyze the produced data and create a class-wide exposure model
16 for the claims at issue. *Id.* On November 27, 2023, the Parties participated in a mediation session
17 with Steven G. Mehta, Esq., an experienced and respected wage and hour mediator, during which
18 the Parties exchanged divergent views on Defendants’ liability and exposure valuations, their
19 legal positions, and the likelihood of certification of Plaintiffs’ claims. *Id.* Although the Parties
20 adjourned mediation without reaching a settlement, they continued their settlement negotiations
21 through Mr. Mehta throughout the following weeks. *Id.* After additional weeks of continued
22 negotiations, Mr. Mehta made a mediator’s proposal that the Parties ultimately accepted. *Id.* Over
23 the following months, the Parties finalized the terms of the proposed Settlement now before the
24 Court for preliminary approval. *Id.*

25 **III. THE PROPOSED SETTLEMENT**

26 **A. Essential Terms Of The Settlement**

27 If the Court preliminarily approves this settlement, Defendants will pay a Maximum
28 Settlement Amount (“MSA”) of \$2,950,000.00. Settlement, ¶ 3. This Settlement is non-
reversionary, and Settlement Class members will automatically receive their Individual

Settlement Payments unless they affirmatively opt-out. Settlement, ¶¶ 3.C; 4. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$2,950,000.00
Minus Court-approved attorneys' fees (1/3):	\$983,333.33
Minus Court-approved attorneys' costs (up to):	\$100,000.00
Minus Court-approved Enhancement Payments:	\$5,000.00 each
Minus settlement administrator costs (up to):	\$17,990.00
Minus PAGA Payment to the LWDA:	\$75,000.00
Net Settlement Amount:	\$1,753,676.67

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys' fees and costs, Plaintiffs' Class Representative Enhancement Payments, settlement administration costs, and the LWDA's share of PAGA penalties, the Settlement provides for an estimated NSA of no less than \$1,753,676.67. *See* Settlement, ¶ 4.A. Individual Settlement Payments will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period, as well as membership in various subclasses. *Id.*, ¶¶ 4.B.ii-iv. Further, 25% of the PAGA Amount will be paid to all Allegedly Aggrieved Employees, regardless of their election to opt-out from participating in the class action portion of the Settlement, based on the proportionate number of workweeks worked by the Allegedly Aggrieved Employees during the PAGA Period. *Id.*, ¶ 4.B.i. For tax purposes, each Individual Settlement Payment will be allocated as 20% wages (subject to applicable withholdings), and 80% interest and penalties (not subject to withholdings). *Id.*, ¶ 4.D. The PAGA Amount payable to the Allegedly Aggrieved Employees shall be allocated as 100% penalties. *Id.* Further, Defendants will pay the employer's share of payroll taxes separate and apart from, and in addition to, the MSA. *Id.*, ¶ 3.E.

According to Defendants' records, there are approximately 1,934 putative Settlement Class members. Settlement, ¶ 3.F. Based on the estimated NSA, average Individual Settlement Payments are projected to be approximately \$906.76. Moen Decl., ¶ 26. Settlement Class members will have 60 calendar days from the date of the initial mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9.D-E. Settlement Class members

1 who do not opt-out of the Settlement will be bound by its terms and will release all claims against
2 Defendants as detailed in the Settlement. *Id.*, ¶¶ 2.A, 9.D. Settlement Class members will have
3 180 days from the date the Individual Settlement Payments are mailed to cash their checks. *Id.*,
4 ¶ 4.E. In the event that there are any uncashed checks remaining after 180 days, any remaining
5 funds will be transferred to Working Wardrobes, the Parties' agreed-upon *cy pres* designee. *Id.*
6 This distribution method ensures that no portion of the MSA will be "unpaid...unclaimed or
7 abandoned," as required for C.C.P. § 384 to apply, and the Court may approve the proposed
8 distribution method without running afoul of C.C.P. § 384.

9 **2. Attorneys' Fees, Costs, and Plaintiffs' Class Representative**
Enhancement Payments

10 At the time of seeking final settlement approval, Plaintiffs will apply for Class
11 Representative Enhancement Payments in the amount of \$5,000 each for their service to the
12 Settlement Class and general release of all claims. Moen Decl., ¶ 27; *see* Settlement ¶¶ 2.C, 3.C.3,
13 6. Plaintiffs' requested class representative Enhancement Payments are intended to recognize the
14 significant time and effort that Plaintiffs expended on behalf of the Settlement Class, including
15 searching for relevant documents for use in the lawsuit, providing factual information to their
16 attorneys, holding various phone calls with their attorneys to discuss the claims in the lawsuit and
17 Defendants' policies and practices, assisting their attorneys to help prepare for mediation, making
18 themselves available during mediation to assist and answer factual questions posed by the
19 mediator, reviewing and providing input regarding the settlement in this case, and otherwise
20 assisted their attorneys in moving this case towards resolution, the significant risks Plaintiffs
21 undertook by serving as the named plaintiffs, and the fact that they agreed to a general release of
22 all claims subject to a waiver of Civil Code § 1542. Moen Decl., ¶ 27; Hernandez Decl., ¶¶ 5-6;
23 Neims Decl., ¶ 8; Ramirez Decl., ¶ 8; Moreno Decl., ¶¶ 4-11; Settlement, ¶ 2.C.

24 Class Counsel will also apply for an attorneys' fee award of up to one third of the MSA
25 (currently estimated at \$983,333.33), and up to \$100,000.00 in reimbursement for actual litigation
26 costs. Moen Decl., ¶ 28; *see* Settlement, ¶ 3.C.4. Plaintiffs submit that the requested fee is fair
27 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
28 purely contingent fee basis. Moen Decl., ¶ 28. Class Counsel has incurred substantial attorneys'

1 fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research
2 and analysis, engaging in substantial formal written and deposition discovery, reviewing class
3 documents and data produced by Defendants, extensively reviewing and evaluating the produced
4 timekeeping and payroll records with the assistance of a retained expert to build a comprehensive
5 damages model, preparing for and attending mediation, negotiating and drafting the
6 Memorandum of Understanding, long-form Settlement Agreement, and Notice Packet
7 documents, preparing this motion for preliminary approval, and otherwise litigating the case. *Id.*
8 Class Counsel will also expend future attorney time attending the hearing on this Motion,
9 overseeing the Notice process, drafting the Final Approval Motion and supporting documents,
10 attending the Final Approval hearing, and completing other tasks, such as fielding questions from
11 Settlement Class members. *Id.*

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

21 **IV. ARGUMENT**

22 **A. Preliminary Approval Is Warranted**

23 California Rule of Court 3.769 conditions the settlement of a class action on court
24 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
25 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
26 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the
27 settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir.
28 1998) 150 F.3d 1011, 1026 (stating that 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. *In re Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

The Court should consider the following factors when making a fairness determination: “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.* (1996) 48 Cal.App.4th 1794, 1801. “[T]he court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

a. The Strength of Plaintiffs’ Case

Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member timekeeping and payroll data spanning the entire Class Period, reviewed all relevant policy documents, engaged in substantial formal written discovery, took the deposition of Defendants’ corporate witness, and created a comprehensive damages model for Defendants’ liability. Moen Decl., ¶ 29. Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*, Defendants presented numerous defenses to Plaintiffs’ claims, both on the merits and with respect to class certification. Although they were prepared to litigate these claims through class certification and ultimately through trial, it was far from certain that Plaintiffs would be able to recover a greater amount should this matter proceed through trial. Thus, this factor supports preliminary approval.

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

2 Although the Parties engaged in substantial formal discovery and information exchange
3 prior to mediation, the Parties had not yet completed their discovery efforts, including additional
4 scheduled site inspections and additional corporate witness depositions that had not yet been
5 completed at the time the Parties reached the Settlement. Moen Decl., ¶ 30. Absent settlement,
6 the Parties will be required to expend substantial time and resources conducting additional formal
7 written and deposition discovery. *Id.* Moreover, Plaintiffs have not yet filed for class certification,
8 and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a
9 disputed class certification ruling and/or an adverse summary judgment ruling. *Id.* Even if
10 Plaintiffs succeeded in certifying one or more classes, the Parties would incur considerably more
11 attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*
12 This Settlement avoids these considerable costs, risks, and the accompanying burden of continued
13 litigation on the Court. Thus, this factor supports preliminary approval.

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

15 At the time of the proposed Settlement, Plaintiffs had not filed their motion for class
16 certification. Moen Decl., ¶ 31. Had the Court certified any claims, Plaintiffs anticipated that
17 Defendants would seek decertification. *Id.* Defendants also contend that a substantial portion of
18 the putative class members had entered into arbitration agreements with class-action waivers, and
19 there was also a risk that Defendants would engage in a *Pick-up-Stix* campaign that could either
20 affect Plaintiffs' ability to maintain the numerosity required to proceed as a class action, or
21 significantly reduce the size of the putative class for a fraction of what Settlement Class members
22 are receiving through this Settlement. *Id.*; see *Chindarah v. Pick Up Stix, Inc.* (2009) 171
23 Cal.App.4th 796. Therefore, absent the Settlement, there was a serious risk that Plaintiffs would
24 be unable to move forward on a class-wide basis. Moen Decl., ¶ 31. Thus, this factor supports
25 preliminary approval.

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

27 This proposed Settlement provides a fair and reasonable recovery for the Settlement Class
28 in the face of disputed claims. After analyzing Defendants' produced data, Class Counsel
conducted a class-wide exposure analysis, forecasting the total expected recovery as follows:

1 Off-The-Clock Wage Violations: \$13,103

2 Plaintiffs' data analysis determined that Settlement Class members worked an aggregate
3 total of 45,855 shifts during the relevant time period in which Defendants implemented a COVID-
4 19 temperature check policy. Moen Decl., ¶ 32. Plaintiffs estimate that Settlement Class members
5 were required to spend approximately 3 minutes per shift undergoing COVID-19 related
6 temperature checks and security checks before being able to clock in for their scheduled shifts.
7 *Id.* Accordingly, Plaintiffs calculated Defendants' maximum potential exposure for this claim at
8 approximately \$43,676 (45,855 shifts * 3 minutes per shift * \$19.05 average rate of pay). *Id.*

9 Defendants, however, maintain that they properly compensated Settlement Class members
10 for all time worked, and assert that any time spent on temperature checks was substantially less
11 than 3 minutes. Moen Decl., ¶ 33. Defendants also assert this claim is unmanageable, as it requires
12 individualized inquiries into whether any employee underwent a security screening or COVID-
13 19 related temperature check and exactly how much time each employee purportedly spent while
14 off-the-clock on any given day. *Id.* Plaintiffs therefore discounted the maximum exposure by 60%
15 for the risk of non-certification, and by an additional 25% for risk of losing on the merits, to arrive
16 at a reasonable exposure of \$13,103. *Id.*

17 Regular Rate Miscalculations: \$25,829

18 Plaintiffs' expert's data analysis determined that Settlement Class members were
19 underpaid approximately \$49,199 as a result of Defendants' failure to properly include the value
20 of non-discretionary bonus payments and shift premiums when calculating the employees'
21 respective regular rates of pay for overtime purposes. Moen Decl., ¶ 34.

22 Defendants, however, argues that the bonuses in question were discretionary, and
23 therefore did not need to be included in the regular rate of pay. Moen Decl., ¶ 34. Defendants also
24 argue that this claim is unmanageable, as it requires individualized inquiries into whether each
25 bonus payment was discretionary or non-discretionary. *Id.* Plaintiff therefore discounted the
26 maximum exposure by 30% for the risk of non-certification, and by an additionally 25% for the
27 risk of losing on the merits, to arrive at a reasonable exposure of approximately \$25,829. *Id.*

28 ///

1 Meal Period Violations: \$251,279

2 Plaintiffs' expert's data analysis determined that Settlement Class members worked an
3 aggregate total of 40,209 shifts in excess of 5.0 hours during the Class Period that contained a
4 facially unlawful meal period, whether late, short or missed. Moen Decl., ¶ 35. Further, Plaintiffs'
5 expert's data analysis also found that Defendants only paid 5,948 meal period premium payments
6 during the putative class period. *Id.* Accordingly, Plaintiffs calculated Defendants' liability on
7 this claim at \$652,672 ((40,209 meal period violations – 5,948 premiums paid) * \$19.05 average
8 premium). *Id.*

9 Defendants assert, however, that they maintained lawful meal period policies/practices at
10 all times during the Class Period, including paying meal period premiums to employees when
11 meal periods were not provided. Moen Decl., ¶ 36. Defendants further assert that Plaintiffs' meal
12 period claim is not suited for class certification as individual inquiries would be required to assess
13 the amount of time it took each employee to walk between Defendants' timeclocks and
14 breakrooms, which differed at each facility, for every meal period taken, resulting in an
15 unmanageable series of mini-trials. *Id.* Given these defenses, Plaintiffs discounted the maximum
16 exposure by 45% for the risk of non-certification, and by an additional 30% for risk of losing on
17 the merits, to arrive at a reasonable exposure of \$251,279. *Id.*

18 Rest Period Violations: \$1,561,312

19 Plaintiffs' expert's data analysis determined that non-exempt employees worked an
20 aggregate total of 585,419 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 37.
21 Plaintiffs attribute a rest period violation for all work shifts in excess of 3.5 hours due to
22 Defendants' unlawful rest period policy/practice that failed to authorize and permit 10-minutes
23 "net rest". *Id.* Accordingly, Plaintiffs calculated Defendants' maximum potential exposure on this
24 claim at \$11,152,231 (585,419 rest period violations * \$19.05 average premium). *Id.*

25 However, Defendants argue they have always authorized and permitted rest periods in
26 accordance with California law, and dispute Plaintiffs' factual allegation that employees' rest
27 periods did not begin once the employee arrived at the breakroom. Moen Decl., ¶ 38. Further,
28

Defendants assert that this claim is not amenable to class certification given the individual inquiries required to determine whether and why each employee missed a rest period on any given shift, whether the employee chose to take a rest period at an area other than the provided breakroom, and for how long each and every rest period lasted for every employee on any given day throughout the entire Class Period, particularly given that rest periods are not recorded. *Id.* Given these defenses, Plaintiffs discounted the maximum exposure by 60% for the risk of non-certification, and by an additional 65% for risk of losing on the merits, to arrive at an estimated exposure of \$1,561,312. *Id.*

Failure to Reimburse Violations: \$2,512

Plaintiffs estimate that they and the putative class members spent approximately \$15 each to purchase PPE safety equipment for work purposes. Moen Decl., ¶ 39. Therefore, Plaintiffs calculated Defendants' maximum potential exposure on this claim at \$6,090 (\$15 in expenses * 406 affected employees). *Id.*

Defendants maintain that, at all relevant times, it never required its employees to purchase masks or other COVID-19 PPE safety equipment, and instead provided masks for the employees. Moen Decl., ¶ 39. Also, Defendants contend this claim is not certifiable since it would require a series of mini-trials to determine which, if any, individual employees thought they needed to buy their own masks and which employees, if any, chose not to use the masks provided by Defendants. *Id.* Therefore, Plaintiffs discounted the maximum potential exposure by 45% for the risk of non-certification and 25% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$2,512. *Id.*

Wage Statement Penalties: \$500,720

According to Plaintiffs' expert's data analysis, approximately 1,138 Settlement Class members are eligible for wage statement penalties, and a total of 54,022 wage statements were issued during the relevant period. Moen Decl., ¶ 40. Since statutory wage statement penalties are capped at \$4,000 per employee, Plaintiffs calculated Defendants' maximum possible wage statement exposure as approximately \$4,552,000. *Id.* However, Defendants raised numerous

1 defenses, including that the alleged violations, if any, were not “knowing and intentional,” and
2 that Plaintiffs could not show that the Settlement Class members “suffer[ed] injury” as a result of
3 any alleged violations. *Id.* Defendants further argued that Plaintiffs’ underlying claims would fail,
4 and, therefore, their derivative wage statement claim would also fail. *Id.* Therefore, Plaintiffs
5 discounted the maximum exposure by 45% for the risk of non-certification of the underlying
6 claims and 80% for a risk of being unsuccessful on the merits, including failing to prove the
7 violations were “knowing and intentional,” that the Settlement Class members “suffer[ed] injury,”
8 or that the Court would find that Defendants had a reasonable, good faith belief that of compliance
9 with wage and hour laws precluding the imposition of wage statement penalties, for an estimated
10 reasonable recovery of \$500,720. *Id.*; *see also Naranjo v. Spectrum Security Services, Inc.* (2024)
11 15 Cal.5th 1056, 1065 (holding that a reasonable, good faith belief that employer was in
12 compliance with wage and hour laws precludes imposition of wage statement penalties).

13 **Waiting Time Penalties: \$634,685**

14 Plaintiffs’ expert’s data analysis determined that 1,262 Settlement Class members
15 separated their employment during the relevant period applicable to this claim and were entitled
16 to recover waiting time penalties. Moen Decl., ¶ 41. Therefore, Plaintiffs calculated Defendants’
17 maximum potential exposure on this claim at \$5,769,864 (1,262 former employees * average
18 waiting time penalty of \$4,572 (\$19.05 average hourly rate * 8 hours * 30 days)). *Id.* Defendants
19 maintain that waiting time penalties are not appropriate because Plaintiffs’ claims fail on the
20 merits, and given their good-faith defenses, Plaintiffs cannot show that any failure by Defendants
21 to pay all final wages was willful. *Id.* Plaintiffs discounted this claim by 45% for the risk of non-
22 certification and by an additional 80% for risk of being unsuccessful on the merits, failing to
23 establish willfulness, or that the Court would find a reasonable, good faith dispute over whether
24 any wages are due precluding the imposition of waiting time penalties, for an estimated recovery
25 of \$634,685. *Id.*; *see also Naranjo, supra*, 15 Cal.5th at 1065 (recognizing that good faith dispute
26 over whether any wages are due will preclude imposition of waiting time penalties).

27 **PAGA Penalties: \$405,165**

28 Plaintiffs allege that PAGA civil penalties would be recoverable for each pay period in

1 which they could prove an underlying Labor Code violation. Moen Decl., ¶ 42. According to
2 Plaintiffs’ expert’s data analysis, the Settlement Class members worked a combined total of
3 54,022 pay periods during the PAGA liability period in which at least one of Plaintiffs’ alleged
4 Labor Code violations occurred. *Id.* Plaintiffs therefore calculate Defendants’ maximum PAGA
5 exposure at \$5,402,200 (54,022 pay periods * \$100 per violation). *Id.*; *see also Amaral, supra*,
6 163 Cal.App.4th at 1207 (finding “initial” violation rate applies until employer is notified that it
7 is violating a Labor Code provision). However, these penalties are exclusively derivative of the
8 underlying violations that Defendants vigorously dispute, both as to certification and the merits.
9 Moen Decl., ¶ 42; *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D.
10 Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its
11 underlying claims). Plaintiffs also recognize that the Court has discretion to substantially reduce
12 any award of PAGA penalties. Moen Decl., ¶ 42; *see also* Labor Code § 2699(e)(2); *Fleming v.*
13 *Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug.
14 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiffs
15 discounted the maximum figure by 25% for the risk of losing on the merits of all underlying
16 claims and by 90% for the likely possibility that this Court would reduce the PAGA penalties
17 awarded, to arrive at an estimated exposure of \$405,165. Moen Decl., ¶ 42.

18 Using these estimated figures, Plaintiffs estimated that the potential reasonable recovery
19 for the Settlement Class would be approximately \$3,394,606. Moen Decl., ¶ 43. Thus, the
20 proposed recovery to the Settlement Class of \$2,950,000 represents approximately 86.90% of
21 Plaintiffs’ reasonably forecasted class-wide recovery, which is well within the range approved by
22 courts as being fair, reasonable and adequate, while also avoiding further expense and risk of
23 proceeding towards class certification and trial. *Id.*; *see, e.g., Altamirano v. Shaw Industries, Inc.*,
24 2015 WL 4512372, *9 (N.D. Cal. 2015) (“Although 15% represents a modest fraction of the
25 hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to
26 grant preliminary approval...”); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
27 settlement of “roughly one-sixth of the potential recovery”); *Linney v. Cellular Alaska*
28 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“The fact that a proposed settlement may only

1 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
2 settlement is grossly inadequate and should be disapproved.”) (internal quotations omitted).
3 Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to
4 the Settlement Class without the uncertainty, delay, and additional expense of further litigation.

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

6 “Parties represented by competent counsel are better positioned than courts to produce a
7 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
8 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented
9 by competent and experienced counsel who possesses extensive experience litigating wage and
10 hour class actions from both the plaintiff and defense side, and who have been appointed as class
11 counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K.
12 Haines (“Haines Decl.”), ¶¶ 2-11; Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶¶ 2-9;
13 Declaration of Jessica L. Campbell (“Campbell Decl.”), ¶¶ 3-14; Declaration of Marcus Bradley
14 (“Bradley Decl.”), ¶¶ 3-8. Class Counsel conducted an extensive review and analysis of
15 Defendants’ produced timekeeping and payroll records and drew on their extensive experience in
16 similar cases to assess the strengths and weaknesses of Plaintiffs’ case. Moen Decl., ¶¶ 23, 29,
17 32-43. It was only after the completion of this work that the Parties attended mediation and
18 ultimately accepted a mediator’s proposal for a class-wide settlement of all claims at issue. *Id.*
19 Thus, this factor supports preliminary approval.

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

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

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

27 The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class
28 members in light of the significant risks of litigation. The proposed Settlement will provide

1 compensation for contested claims, while only releasing the claims actually at issue in this
2 litigation. Further, the average payment of \$906.76 greatly exceeds the average payments
3 achieved in other wage and hour class action settlements that have been approved.³ Thus, the
4 proposed Settlement is within the range of possible approval such that notice should be provided
5 to the Settlement Class members to consider the Settlement. The Court will have the opportunity
6 to again assess the reasonableness of the Settlement after the Settlement Class members have had
7 the opportunity to opt-out or object.

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

10 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
11 of the exchange of pertinent information, including all relevant policies, employee timekeeping
12 and payroll records which were analyzed by Plaintiffs, their counsel and a retained expert; arm's-
13 length negotiations by counsel; mediation before an experienced wage and hour class action
14 mediator who made a mediator's proposal; and additional negotiations until the terms of the long-
15 form Settlement were agreed upon and finalized. Moen Decl., ¶ 23; *see also Kullar, supra*, 168
16 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

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

18 The Settlement will provide tangible monetary relief to the Settlement Class members.
19 Moreover, the amounts proposed for Plaintiffs' class representative Enhancement Payments,
20 settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's
21 portion of PAGA civil penalties are all reasonable and appropriate. Because the Settlement is
22 devoid of obvious deficiencies, this final factor supports preliminary approval.
23
24

25 ³ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9,
26 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case
27 No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and
28 *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").

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

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

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

10 A class is "ascertainable" where the members "may be readily identified without
11 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
12 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
13 Class is defined as all current and former non-exempt employees who worked for either and/or
14 both Defendants in California at any time during the Class Period. *See* Settlement, ¶ 1. Settlement
15 Class members can be easily identified using Defendants' employment and payroll records. Moen
16 Decl., ¶ 26. Defendants represent that the Settlement Class consists of approximately 1,934
17 individuals, rendering it impracticable to bring all Settlement Class members before the Court.
18 *Id.*; Settlement, ¶ 3.F. Thus, the proposed Settlement Class satisfies numerosity. *See Collins v.*
19 *Rocha* (1972) 7 Cal.3d 232, 234.

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

21 The focus in a certification dispute is not on the merits of the case, but rather on what
22 types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug*
23 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiffs' claims are predicated
24 on Defendants' alleged failures to pay all minimum and overtime wages owed, pay all meal and
25 rest period premiums, reimburse all necessary business expenses, furnish accurate and itemized
26 wage statements, and pay all final wages owed upon separation of employment. These types of
27 claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th
28 at 1032-34 ("The theory of liability—that Brinker has a uniform policy, and that that

1 policy...allegedly violates the law—is by its nature a common question eminently suited for class
2 treatment.”).

3 **3. The Claims of the Named Plaintiffs are Typical**

4 The typicality requirement is satisfied where class representatives have claims that are
5 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
6 Cal.App.3d 1341, 1347. Here, like other Settlement Class members, Plaintiffs were employed by
7 Defendants as non-exempt employees in California and were subject to Defendants’ allegedly
8 unlawful wage and hour policies/practices during the Class Period. Hernandez Decl., ¶¶ 2-4;
9 Neims Decl., ¶¶ 3-5, 7; Ramirez Decl., ¶¶ 3-5, 7; Moreno Decl., ¶¶ 3-5. Plaintiffs were therefore
10 impacted by the same challenged policies that allegedly injured the Settlement Class as a whole
11 and were subject to the same defenses forwarded by Defendants as to the Settlement Class, and
12 are therefore typical.

13 **4. Plaintiffs and Class Counsel are Adequate to Represent the Class**

14 The adequacy of representation requirement examines conflicts of interest between named
15 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
16 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiffs and Class Counsel will
17 adequately represent the Settlement Class members as there are no conflicts between the named
18 Plaintiffs and the Settlement Class members they seek to represent, and Plaintiffs possess claims
19 that are in line with those of the Settlement Class members. *See McGhee v. Bank of America*
20 (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the
21 plaintiff’s counsel were not qualified and the plaintiff had no interests antagonistic to those of the
22 class). Class Counsel also has extensive experience in wage and hour class action litigation. *See*
23 *Moen Decl.*, ¶¶ 2-7; *Haines Decl.*, ¶¶ 2-11; *Schmidt Decl.*, ¶¶ 2-9; *Campbell Decl.*, ¶¶ 3-14;
24 *Bradley Decl.*, ¶¶ 3-8.

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

26 This Court should order distribution of the proposed Class Notice in English and Spanish
27 to the Settlement Class members by first class mail, postage prepaid, using the last known mailing
28 address information provided by Defendants. This manner of giving notice is the “best notice
practicable” under the circumstances because it provides “individual notice to all members who

1 can be identified through reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S.
2 156, 173. The Parties propose that the settlement be administered by Apex Class Action
3 Administration (“Apex”), an experienced class action settlement administrator. *See* Declaration
4 of Sean Hartranft. Settlement Class members’ addresses will be ascertainable through
5 Defendants’ personnel records, and Defendants will provide all Settlement Class members’
6 names, last known addresses, phone numbers, social security numbers, and workweek data to
7 Apex within fifteen (15) business days after of the Court signs an order preliminarily approving
8 the Settlement. *See* Settlement, ¶ 9.A. Apex will run the Settlement Class members’ addresses
9 through the National Change of Address database and/or conduct skip traces to obtain current
10 address information. *Id.*, ¶ 9.B-C.

11 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
12 because it advises the Settlement Class members’ of the nature of the claims, basic contentions
13 and denials of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out
14 or object to the Settlement and the procedures by which to do so, explains the recovery formula
15 and expected recovery amount for each Settlement Class members, and advises them that they
16 will be bound by the terms of the Settlement if they do not request exclusion. *See* Moen Decl.,
17 Exhibit B. The proposed Class Notice will also notify the Settlement Class of the Final Approval
18 Hearing date, provide Class Counsel’s contact information, and advise Settlement Class members
19 that they may enter an appearance through counsel if they so wish. *Id.* This manner of giving
20 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method
21 of reaching Settlement Class members. Additionally, because the proposed Settlement includes
22 settlement of Plaintiffs’ representative PAGA claim, notice of the Settlement has been submitted
23 to the LWDA. *See id.*, ¶ 44, Exhibit E (LWDA Settlement Submission); Proof of Service.

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

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

28 ///

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request 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.

5 Dated: August 19, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

7 By:



8 Matthew K. Moen
9 Attorneys for Plaintiffs