

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JAVIER MARTINEZ

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
JAVIER MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JAVIER MARTINEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SCHLAGE LOCK COMPANY, LLC, a
Delaware limited liability company, and DOES
1 through 100, inclusive,

Defendants.

Case No. CIVSB2218620

*[Assigned for all purposes to Hon. Joseph T. Ortiz,
Department S-17]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: September 6, 2023

Time: 8:30 a.m.

Dept.: S-17

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 September 6, 2023 at 8:30 a.m. in Department S-17 of the above-entitled Court, located at 247 West
4 Third Street, San Bernardino, California 92415, Plaintiff Javier Martinez (“Plaintiff”), individually and
5 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former non-exempt employees of Defendant Schlage Lock
10 Company, LLC who worked at any time in California during the Class Period.

- 11 3. For purposes of the Settlement, the “Class Period” shall mean the time period between
12 January 8, 2019 and either: June 17, 2023 or the date of preliminary approval by the Court
13 of this Settlement Agreement, whichever is sooner.
14 4. Permission for Plaintiff to file the proposed First Amended Complaint attached as Exhibit 1
15 to the Declaration of Scott M. Lidman, filed concurrently herewith;
16 5. Preliminary appointment of Plaintiff Javier Martinez as Class Representative;
17 6. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
18 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
19 7. The scheduling of a hearing to consider whether the Settlement should be finally approved
20 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
21 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
22 costs to Class Counsel;
23 8. Appointment of Phoenix Settlement Administrators (“Phoenix”) as the third-party
24 Settlement Administrator for mailing notices; and
25 9. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
26 Class Action and Proposed Settlement and Notice of Individual Settlement Award) and an
27 order that it be disseminated to the proposed Settlement Class Members as provided in the
28 Settlement Agreement.

1 This Motion is based on this notice of motion, the memorandum of points and authorities, the
2 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Javier
3 Martinez, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto,
4 the pleadings and other papers filed in this action, and on any further oral or documentary evidence or
5 argument presented at the time of hearing.

6
7 Dated: June 30, 2023

Respectfully submitted,
LIDMAN LAW, APC

8
9
10 By:



Scott M. Lidman
Attorneys for Plaintiff
JAVIER MARTINEZ

TABLE OF CONTENTS

I.	INTRODUCTION	8
II.	SUMMARY OF THE LITIGATION	9
A.	THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS	9
1.	The Parties	9
2.	Procedural History	9
3.	Discovery	9
4.	Arms-Length Negotiations.....	10
III.	ARGUMENT	10
A.	CLASS CERTIFICATION FOR SETTLEMENT PURPOSES.....	10
1.	Numerosity is Satisfied.	11
2.	Commonality is Satisfied.....	11
3.	Typicality is Satisfied.	12
4.	Adequacy is Satisfied.....	12
B.	THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE	13
1.	The Preliminary Approval Standard is Met	13
a.	The Strength of Plaintiff's Case.....	14
b.	Risk, Expenses, Complexity, and Duration of Further Litigation	14
c.	Risk of Maintaining Class Action Status	14
d.	Overview of the Settlement Agreement.....	14
e.	The Parties Engaged in Fair and Honest Negotiations.	16
f.	Amount Offered in Settlement Given Realistic Value of Claims	17
g.	The Settlement Is Within the Range of Possible Approval	21
h.	The Experience and Views of Counsel	22
i.	Attorneys' Fees and Costs	23
j.	Administration Costs	24
k.	Class Representative Service Award	24
l.	PAGA Civil Penalties	24
m.	Payroll Taxes	25
n.	Uncashed Funds	25
C.	SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES	25
D.	THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE TO SETTLEMENT CLASS MEMBERS.....	25
E.	THE COURT SHOULD SET A FINAL APPROVAL HEARING.....	26
IV.	CONCLUSION.....	27

TABLE OF AUTHORITIES

Federal Cases

Dunleavy v. Nadler

213 F.3d 454 (9th Cir. 2000)22

Eisen v. Carlisle & Jacquelin

417 U.S. 156 (1974).....25

Fleming v. Covidien Inc.

Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)21

Glass v. UBS Finan. Servs.

Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007).....22

Hanlon v. Chrysler Corp.

150 F.3d 1011 (9th Cir. 1998)10, 13

Hopson v. Hanesbrands, Inc.

No. CV 08-0844 EDL, 2008 WL 3385452 (S.D. Cal. Apr. 13, 2009)25

In re M.L. Stern Overtime Litig.

No. CV 07-0118 BTM (JMAx), 2009 WL 995864 (S.D. Cal. Apr. 13, 2009).....24

In re Pacific Enterprises Securities Litigation

47 F.3d 373 (9th Cir. 1995)22

In re Syncor ERISA Litig.

516 F.3d 1095 (9th Cir. 2008)13

Jones v. Spherion Staffing

No. LA-CV-11-06462-JAK(JCx) 2012 WL 3264081 (C.D. Cal. 2012)20

Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.

221 F.R.D. 523 (C.D. Cal. 2004).....22

State Cases

Amaral v. Cintas Corp. No. 2

163 Cal.App.4th 1157 (2008)21

1	<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i>	
2	191 Cal.App.3d 1341 (1987)	12
3	<i>Benton v. Telecom Network Specialists, Inc.</i>	
4	220 Cal.App.4th 701 (2013)	12
5	<i>Bowles v. Sup. Ct.</i>	
6	44 Cal.2d 574 (1955)	11
7	<i>Brinker Restaurant Corp. v. Superior Court</i>	
8	53 Cal. 4th 1004 (2012)	19
9	<i>Capital People First v. State Dept. of Developmental Services</i>	
10	155 Cal.App.4th 676 (2007)	12
11	<i>Dunk v. Ford Motor Co.</i>	
12	48 Cal.App.4th 1794 (1996)	13
13	<i>In re Cellphone Fee Termination Cases</i>	
14	186 Cal.App.4th 1380 (2010)	24
15	<i>Kao v. Joy Holiday</i>	
16	12 Cal.App.5th 947 (2017)	21
17	<i>Kullar v. Foot Locker Retail, Inc.</i>	
18	168 Cal.App.4th 116 (2008)	13, 17, 22
19	<i>Laffitte v. Robert Half Int’l, Inc.</i>	
20	1 Cal.5th 480 (2016)	23
21	<i>McGhee v. Bank of America</i>	
22	60 Cal.App.3d 442 (1976)	13
23	<i>Nordstrom Comm’n Cases</i>	
24	186 Cal. App. 4th 576 (2010)	25
25	<i>Price v. Starbucks Corp.</i>	
26	192 Cal.App.4th 1136 (2011)	21
27	<i>Reed v. United Teachers Los Angeles</i>	
28	208 Cal.App.4th 322 (2012)	10

1	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i>	
2	34 Cal.4th 319 (2004)	11
3	<i>Sevidal v. Target Corp.</i>	
4	189 Cal.App.4th 905 (2010)	11
5	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
6	203 Cal.App.4th 1112 (2012)	21
7	<i>Wershba v. Apple Computer, Inc.</i>	
8	91 Cal.App.4th at 245 (2001)	13
9		
10	Federal Statutes and Rules	
	F.R.C.P. Rule 23	10
11	State Statutes and Rules	
12	Cal. Civ. Code § 1542.....	24
13	Cal. Civ. Proc. § 382.....	11
14	Cal. Lab. Code § 226(e).....	20
15	Cal. Lab. Code § 2699(e)(2)	21
16	C.R.C. Rule 3.766(d)	26
17	C.R.C. Rule 3.766(e).....	26
18		
19	Regulations	
20	8 Cal. Code Regs. § 13520.....	20
21	Other Authorities	
22	4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	23
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Javier Martinez (“Plaintiff”) brought this class and representative action against Defendant Schlage Lock Company, LLC (hereinafter referred to as “Schlage Lock” or “Defendant”) alleging various wage and hour violations. Plaintiff’s primary allegations are that Schlage Lock: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages upon separation of employment; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,¹ in which Defendant have agreed to pay Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to the following Settlement Class:

All current and former non-exempt employees of Defendant Schlage Lock Company, LLC who worked at any time in California during the Class Period.

For purposes of the Settlement, the “Class Period” shall mean the time period between January 8, 2019 and either: June 17, 2023 or the date of preliminary approval by the Court of this Settlement Agreement, whichever is sooner.

Settlement Class members do not need to file a claim and will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees and costs, and PAGA civil penalties, the remaining Net Settlement Amount (“NSA”) of approximately \$159,005.00 will be distributed to all Settlement Class members who do not opt-out. With approximately 76 Settlement Class members, the average payment to each Settlement Class member is currently expected to be approximately \$2,092.17, which does not include the \$2,500.00 PAGA Amount to the approximate 51 PAGA Employees.

This proposed Settlement is well-within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible

¹ The Stipulation of Class Action and PAGA Settlement (“Settlement”) is attached to the Declaration of Scott M. Lidman as Exhibit 2. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award) is attached to the Settlement as Exhibit B. All defined terms in this motion have the same definitions as used in the Settlement.

monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS

1. The Parties

Schlage Lock manufactures security products, including without limitation, metal security doors and locks. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a former non-exempt employee, was employed by Schlage Lock from approximately 1999 to approximately September 2, 2020. *See* Declaration of Javier Martinez (“Martinez Decl.”), ¶ 2.

2. Procedural History²

On August 25, 2022, Plaintiff filed a putative class action complaint against Defendant in San Bernardino County Superior Court. Lidman Decl., ¶ 10. On April 25, 2023, in conjunction with effectuating the terms of the settlement agreement, Plaintiff submitted a letter to the California Labor Workforce Development Agency (“LWDA”) and Schlage Lock regarding Defendant’s alleged Labor Code violations and Plaintiff’s intent to bring a claim for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). *See* Settlement, Exh. A. Now, pursuant to effectuating the terms of the settlement agreement and after his administrative remedies exhaust on June 29, 2023, Plaintiff seeks to file a First Amended Class and Representative Action Complaint. Lidman Decl., ¶ 10, Exh. 1. Plaintiff’s operative complaint alleges that Schlage Lock: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages upon separation of employment; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the PAGA. *Id.*

3. Discovery

After agreeing to participate in early mediation, Schlage Lock informally produced documents

² To note, there was a prior class action lawsuit, *Saul Benavides v. Allegion*, Case No. BC678135, Los Angeles Superior Court, Judge Elihu M. Berle presiding. In the lawsuit, the settlement class is defined as “all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period of October 3, 2013 through January 7, 2019. Given that this settlement covers the claims alleged in the present case, Plaintiff’s action has a slightly truncated class period beginning on January 8, 2019.

1 and information relevant to the claims alleged in advance of mediation, including without limitation
2 timekeeping and payroll data for a 20% sampling of the putative class. Lidman Decl., ¶ 11.
3 Additionally, Schlage Lock produced information and data points needed for a fruitful mediation,
4 including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal
5 and rest period policies and procedures, and payroll policies. After a review and analysis of the
6 documents and information produced by Schlage Lock, Class Counsel drew on their extensive
7 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery
8 allowed the parties to assess the merits and value of Plaintiff's claims and Schlage Lock's defenses
9 thereto, if a settlement could not be reached.

10 **4. Arms-Length Negotiations**

11 On April 18, 2023, a mediation was held with Steve Pearl, a well-respected wage and hour class
12 action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing
13 legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and
14 defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution that included Plaintiff filing an
15 amended complaint adding causes of action for wage statement penalties and civil penalties under the
16 PAGA. In the weeks that followed, the parties finalized the terms of settlement and executed the
17 Stipulation of Class Action and PAGA Settlement ("Settlement"). *Id.*

18 **III. ARGUMENT**

19 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

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

25 As explained below, the Settlement Class satisfies the criteria for certification of a settlement
26 class under California law because: (1) the Settlement Class is so numerous that joinder would be
27 impractical; (2) common questions of law and fact predominate over individual questions such that
28 class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims
are typical of the claims of absent Settlement Class Members; and (4) Plaintiff and his counsel will

1 fairly and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

2 **1. Numerosity is Satisfied.**

3 Here, there are approximately 76 Settlement Class Members. Therefore, numerosity is satisfied.
4 *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing
5 10 beneficiaries of a trust sufficiently numerous).

6 Further, a class is “ascertainable” where the members “may be readily identified without
7 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
8 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class
9 is defined as “All current and former non-exempt employees of Defendant Schlage Lock Company,
10 LLC who worked at any time in California during the Class Period.” For purposes of this Settlement
11 Agreement, the “Class Period” shall mean the time period between January 8, 2019 and either: June
12 17, 2023 or the date of preliminary approval by the Court of this Settlement Agreement, whichever is
13 sooner. Lidman Decl., ¶ 14.

14 In addition, PAGA Employees is defined as: “All current and former non-exempt employees of
15 Defendant Schlage Lock Company, LLC who worked at any time in California during the PAGA
16 Period.” For purposes of this Settlement Agreement, the “PAGA Period” shall mean the time period
17 between August 25, 2021 and either: June 17, 2023 or the date of preliminary approval by the Court of
18 this Settlement Agreement, whichever is sooner. *Id.*

19 **2. Commonality is Satisfied.**

20 The focus in a certification dispute is not the merits, but rather on what types of questions,
21 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
22 *Court (Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members' claims arise from
23 Schlage Lock's common, uniform policies and practices that applied to Plaintiff and Settlement Class
24 Members during the class period. Lidman Decl., ¶ 15. As a result of the common and uniform policies
25 and practices that applied to all Settlement Class Members, their claims involve common questions of
26 law and fact, including but not limited to:

- 27 1. Whether Schlage Lock properly paid all minimum wages;
- 28 2. Whether Schlage Lock properly paid all overtime wages;
3. Whether Schlage Lock provided all legally compliant meal periods;

4. Whether Schlage Lock authorized and permitted all legally required rest periods;
5. Whether Schlage Lock failed to furnish accurate, itemized wage statements;
6. Whether Schlage Lock failed to timely pay all wages owed upon separation; and
7. Whether Schlage Lock's conduct constituted unlawful and/or unfair business practices.

These alleged practices result in common questions as to the affected Settlement Class Members. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

3. Typicality is Satisfied.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff was employed by Schlage Lock during the Class Period as a non-exempt employee and was subject to Defendant's wage and hour policies at issue in this case. *See* Martinez Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies that injured the Settlement Class as a whole. For example, Plaintiff asserts that she, like the Settlement Class, was not paid all legally required minimum wages and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal or rest periods, was not provided with accurate, itemized wage statements, and was not paid all of his wages owed upon separation of employment. *Id.* Given that Defendant's policies and practices applied to all non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

4. Adequacy is Satisfied.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697.

Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he seeks to represent. *See* Martinez Decl., ¶ 11. Indeed, Plaintiff's interests are aligned with those of the

1 Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *Id.*
2 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See*
3 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was
4 no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic
5 to those of the proposed class).

6 Further, Class Counsel also have extensive experience in wage and hour class action litigation
7 and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Elizabeth Nguyen
8 (“Nguyen Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of Milan
9 Moore (“Moore Decl.”), ¶¶ 2-4.

10 **B. THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE,**
11 **AND REASONABLE**

12 Settlement is the preferred means of dispute resolution, particularly in complex class action
13 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
14 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
15 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
16 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an
17 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008)
18 168 Cal.App.4th 116, 130.

19 **1. The Preliminary Approval Standard is Met**

20 To make a fairness determination, the Court should consider several factors, including: “the
21 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the
22 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
23 discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”
24 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the
25 court is free to engage in a balancing and weighing of the factors depending on the circumstances of
26 each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. The Settlement is fair,
adequate, and reasonable in light of the overall balance of factors in this case for the following reasons.

27 //

28 //

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

2 Although Plaintiff maintains that his claims are meritorious, he acknowledges there were
3 substantial risks and uncertainty in proceeding with litigation. As described below, Schlage Lock
4 presented multiple defenses to Plaintiff’s claims, both on the merits and class certification. Thus, while
5 Plaintiff was prepared to litigate these claims through certification and trial, success was not certain.

6 **b. Risk, Expenses, Complexity, and Duration of Further Litigation**

7 Although the parties engaged in informal discovery throughout this action, the parties still had
8 significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 32.
9 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
10 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
11 Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur
12 considerably more attorneys’ fees and costs through a possible decertification motion, trial, and possible
13 appeal. *Id.* This Settlement avoids those risks and the accompanying expense. Thus, this factor
14 supports preliminary approval.

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

16 Plaintiff had not yet filed his motion for class certification and as such, the extent to which
17 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there was a
18 risk that there would not be a certified class at the time of trial.

19 **d. Overview of the Settlement Agreement**

20 If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount (“GSA”)
21 of \$300,000.00.³ Lidman Decl., ¶ 13, Exh. 1 (Settlement, ¶ 5). Significantly, this Settlement is **non-**
22 **reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement
23 Award. *Id.* (Settlement, ¶ 5). Each Settlement Class member will automatically receive a Settlement
24 Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the
25 Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$300,000.00
---	---------------------

26 ³ Defendant represents that there are an estimated 8,011 workweeks worked by Settlement Class members during the Class
27 Period. If the number of workweeks worked by Settlement Class members during the Class Period is more than 10% greater
28 than this figure, Defendant has the sole option to either: (i) increase the Gross Settlement Amount on a proportional basis
(i.e., if there was an 11% increase in the number of workweeks worked by the Settlement Class members during the Class
Period, Defendant would agree to increase the Gross Settlement Amount by 11%); or (ii) alter the definition of the Class
Period such that it would commence on the date where the total workweek count during the Class Period would be no greater
than 8,812 workweeks. See Settlement ¶ 5.E.

1	Minus Court-approved attorneys' fees (1/3 of GSA):	\$100,000.00
2	Minus Court-approved, verified costs (up to):	\$20,000.00
3	Minus Court-approved Class Representative Service Award (up to):	\$5,000.00
4	Minus Settlement Administration Costs:	\$5,995.00
5	Minus PAGA civil penalties:	\$10,000.00
6	Net Settlement Amount ("NSA"):	\$159,005.00

7 The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund
8 set up by the Settlement Administrator for the benefit of participating Settlement Class members and
9 PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount and the required
10 employer-side taxes with the Settlement Administrator within thirty (30) calendar days after the
11 "Effective Date" which is defined as the latter of: (a) the Court's final approval of the settlement if no
12 objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has
13 expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final
14 resolution of any appeal that has been filed. Lidman Decl., ¶ 13, Exh. 1 Settlement ¶ 5.B.

15 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service
16 Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the Settlement
17 requires Defendant to pay a Net Settlement Amount ("NSA") of at least **\$159,005.00** to all Settlement
18 Class Members who do not timely opt out. This amount does not include the \$2,500.00 PAGA Amount
19 to be paid to the PAGA Employees. Lidman Decl., ¶ 13, Exh. 2 (Settlement ¶ 6.A).

20 The Individual Settlement Awards shall be determined as follows:

- 21 i. The Net Settlement Amount shall be allocated to Settlement Class members who worked
22 during the Class Period, as follows: each participating Settlement Class member shall
23 receive a proportionate settlement share based upon the number of weeks worked as a
24 non-exempt employee during the Class Period, the numerator of which is the Settlement
25 Class member's total weeks worked as a non-exempt employees during the Class Period,
and the denominator of which is the total weeks worked as non-exempt employees by
all Settlement Class members (who do not opt out) who worked during the Class Period.
See Settlement, ¶ 6.B.i.
- 26 ii. PAGA Amount: In addition, Two Thousand Five Hundred Dollars and Zero Cents
27 (\$2,500.00) of the Gross Settlement Amount has been designated as the "PAGA
28 Amount" as described above. Each PAGA Employee shall receive a portion of the
PAGA Amount proportionate to the number of pay periods that he or she worked during
this PAGA Period which will be calculated by multiplying the PAGA Amount by a

fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099. *See* Settlement, ¶ 6.C..

According to Defendant, there are approximately 76 total Settlement Class Members (who worked a total of approximately 8,000 workweeks during the relevant time period). *Lidman Decl.*, ¶ 14. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is projected to be approximately **\$2,092.17, exclusive of any PAGA civil penalties, which is approximately \$19.88 per workweek** (\$159,005.00/8,000). *Id.*

Additionally, there are approximately 51 PAGA Employees (who worked a total of approximately 1,215 pay periods during the relevant time period). *Id.* Thus, the average individual portion of PAGA Amount is approximately **\$49.02, which is approximately 2.06 per pay period** (\$2,500/1,215 pay periods).

Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶ 11.D. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement, for the period between January 8, 2019 and either: June 17, 2023 or the date of preliminary approval by the Court of this Settlement Agreement, whichever is sooner. *See* Settlement, ¶ 3. Settlement Class Members who opt-out of Settlement will still receive a portion of the PAGA Amount if they are a PAGA Employee during the PAGA Period.

As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not opt-out. *See* Settlement, ¶ 5.C.

e. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of a mediator. After the detailed review of the information, data and other documents and policies produced by Schlage Lock, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Lidman Decl.*, ¶ 11. This discovery allowed the

1 parties to assess the merits and value of Plaintiff's claims and Schlage Lock's defenses thereto, if a
2 settlement could not be reached. *Id.*

3 On April 18, 2023, the parties participated in mediation with Steve Pearl, a preeminent wage
4 and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated
5 their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis
6 for the claims and defenses. Ultimately, the parties agreed in principle on a class-wide resolution. *Id.*
7 *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Settlement.
8 Lidman Decl., ¶ 12, Exhibit 1.

9 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result
10 of: factual investigation and data analysis; the exchange of substantial information and class data,
11 including timekeeping and payroll records; wage and hour policies and practices; arm's length
12 negotiations by counsel; and mediation before an experienced wage and hour class action mediator.
13 See Lidman Decl., ¶¶ 11-12; See *Kullar, supra*, 168 Cal.App.4th at 130. Thus, these factors support
14 preliminary approval.

15 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
16 treatment to the class representative or segments of the class, and is within the range of possible
17 approval, as discussed in detail below. The Settlement will provide monetary relief to Settlement Class
18 Members. The amounts proposed for Class Counsel's attorneys' fees and costs, and service award are
19 all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
20 obvious deficiencies, this factor supports preliminary approval.

21 **f. Amount Offered in Settlement Given Realistic Value of Claims**

22 Unlawful Rounding/Off-the-Clock: Plaintiff alleges that Defendant failed to compensate its
23 non-exempt employees for all time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges that
24 Defendant would keep track of Plaintiff's time worked and would unlawfully round/shave time worked
25 such that Plaintiff would not be fully paid for all time worked. *Id.* This time-shaving and/or rounding
26 practice utilized by Defendant was not even-handed over time and would almost exclusively round and
27 shave in Defendant's favor such that Plaintiff was routinely underpaid for all his time worked. *Id.*
28 Additionally, during the most recent portion of Plaintiff's employment with Defendant, Defendant

1 required Plaintiff and other non-exempt employees to be subjected to temperature checks and screening
2 questionnaires due to the COVID-19 pandemic. *Id.* Despite being under Defendant's direction and
3 control, Defendant failed to compensate its non-exempt employees for such time. As a result,
4 Defendant failed to pay Plaintiff and other non-exempt employees for all minimum and overtime wages
5 owed. *Id.* Accordingly, based on 5 minutes of unpaid time each shift beginning in March 2020 for
6 COVID-19 screenings and based on Plaintiff's expert calculated unpaid wages due to rounding at
7 approximately \$1,084, Plaintiff estimates Defendant's exposure at a total of \$78,089 ((Approx. 5,583
8 workweeks (March 2020-present) x .42 per workweek x \$32.84 (average OT rate) = \$77,005) +
9 \$1,084). *Id.*

10 Schlage Lock contends that it compensated Settlement Class members for all of their time
11 worked, that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-
12 compensable. Lidman Decl., ¶ 17. Schlage Lock further asserts that Plaintiff would be unable to certify
13 a rounding class given the individualized inquiries that would be required, and also that Schlage Lock
14 rounding mechanism was, according to it, allegedly facially neutral. Further, Schlage Lock contends
15 that Plaintiff's assessment of the claim at the overtime rate is incorrect. In light of these defenses,
16 Plaintiff discounted the maximum exposure by 35% for the risk of non-certification, and an additional
17 40% to account for Defendant's defenses on the merits to arrive at an estimated exposure of
18 approximately \$30,454.71.

19 Meal Period Violations: Plaintiff alleges that he and Settlement Class Members were not
20 provided with all legally-required meal periods in compliance with California law due to Defendant's
21 unlawful meal period policies/practices. Lidman Decl., ¶ 18. Due to work demands, Plaintiff was often
22 prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which
23 were at least 30 minutes in length. Additionally, Schlage Lock did not require its employees to track the
24 start and stop time of meal periods when they remained on the work premises, which resulted in Schlage
25 Lock unlawfully automatically deducting 30 minutes from its employees' work time for purported meal
26 periods. *Id.* Therefore, based on a review of the time punch data and payroll records, Plaintiff calculated
27 Defendant's maximum exposure for the alleged meal period violations for (1) late first lunch; (2) missed
28 first meal period; (3) short first meal break; (4) first meal period with automatic deduction of 30 minutes;

1 and (5) missed second meal break on shifts over 10 hours at approximately \$811,153. *Id.*

2 Schlage Lock counters that it has always provided non-exempt employees with an opportunity
3 to take legally compliant meal periods, and any non-compliant meal periods reflected in employee
4 timekeeping records were solely the result of employee choice, rather than any policy or practice of
5 Schlage Lock. Lidman Decl., ¶ 19. Schlage Lock also points out that under *Brinker Restaurant Corp.*
6 *v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal
7 periods, not “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53
8 Cal.4th at 1038 (rejecting “ensure” standard). Schlage Lock also contends that because its production
9 stops during meal periods, it does not have to keep track of meal periods. Finally, Schlage Lock contends
10 Plaintiff’s meal period claim is not suited for class certification and individual inquiries would be
11 required to assess which employees took non-compliant meal periods, how many meal periods were
12 non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period
13 or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum
14 exposure by 50% for the risk of non-certification, and an additional 55% to account for Schlage Lock’s
15 defenses on the merits to arrive at an estimated exposure of \$182,509.43. *Id.*

16 Rest Period Violations: Plaintiff alleges that he and other Settlement Class Members were not
17 authorized and permitted to take all required rest periods due to Schlage Lock’s rest period
18 policies/practices which fail to authorize and permit all rest periods for every four hours worked, *or*
19 *major fraction thereof*. Lidman Decl., ¶ 20. Specifically, Plaintiff worked shifts in excess of 3.5 hours,
20 but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period
21 worked, *or major fraction thereof* as a result of the work demands imposed by Defendant and
22 understaffing. *Id.* Based on Plaintiff’s review of the timekeeping data produced in connection with
23 mediation, there were 34,100 shifts worked in excess of 3.5 hours during the relevant time period.
24 Accordingly, Plaintiff calculated Defendant’s maximum exposure at approximately \$857,527. *Id.*

25 Schlage Lock contends it has always maintained and enforced lawful rest period policies and
26 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
27 periods in compliance with California law. Lidman Decl., ¶ 21. Schlage Lock argues that Plaintiff’s
28 rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry

1 into whether each Settlement Class member was in fact authorized and permitted to take a compliant
2 rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
3 discounted the maximum exposure by 55% for the risk of non-certification, and an additional 45% to
4 account for Defendant's defenses on the merits to arrive at an estimated exposure of \$212,237.93. *Id.*

5 Wage Statement Violations: Plaintiff further alleges that Schlage Lock issued inaccurate wage
6 statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest
7 period premium wages described above. Lidman Decl., ¶ 22. Specifically, Plaintiff contends that this
8 conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members
9 did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff
10 calculated Schlage Lock's maximum exposure for wage statement violations based on the 1,215 wage
11 statements issued during the relevant time period and applying \$50/\$100 at approximately \$118,950. *Id.*

12 Schlage Lock argued that meal and rest period claims could not support a claim for wage
13 statement penalties. Lidman Decl., ¶ 23. Schlage Lock further argues that its alleged wage statement
14 violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or
15 any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required
16 by Lab. Code § 226(e) for imposition of penalties. *Id.* As such, Plaintiff discounted the calculated
17 exposure by 35% for a risk of non-certification and an additional 40% for a risk of being unsuccessful
18 on the merits to arrive at an estimated total of \$46,390.50. *Id.*

19 Waiting Time Penalties: Plaintiff alleges that Schlage Lock is also liable for waiting time
20 penalties under Labor Code section 203 as a result of its failure to pay all wages upon separation of
21 employment. Lidman Decl., ¶ 24. Based on the data provided by Schlage Lock, there were
22 approximately 31 Settlement Class Members who have separated their employment with Defendant
23 during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff
24 calculated Schlage Lock's maximum exposure for waiting time penalties at approximately \$175,750.
25 *Id.*

26 Schlage Lock asserts it has strong defenses to the waiting time claim because there exist good-
27 faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶
28 25. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude

1 imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding
2 that “good faith dispute” over whether employee was exempt precluded imposition of waiting time
3 penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by
4 45% for the risk of non-certification, and an additional 45% to account for Schlage Lock’s defenses on
5 the merits to arrive at an estimated exposure of approximately \$53,164.38. *Id.*

6 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
7 foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. Plaintiff calculated Schlage Lock’s
8 exposure at approximately \$508,200 based on each unique Labor Code violation for failure to pay all
9 wages due, meal period violations, rest period violations, and wage statement violations that occurred
10 during the PAGA Period. *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207
11 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code
12 provision).

13 Schlage Lock argues that Plaintiff’s PAGA claim will fail for the same reasons that his
14 underlying claims will fail. Lidman Decl., ¶ 27; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
15 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
16 fail.”). Schlage Lock also maintains that, given its good faith defenses, this Court would exercise its
17 discretion to substantially reduce any PAGA penalties if it were to find Schlage Lock liable for any of
18 Plaintiff’s claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
19 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
20 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
21 \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 45%
22 for a risk of being unsuccessful on the merits, and an additional 40% to account for the possibility of
23 this Court reducing penalties, to arrive at an estimated exposure of approximately \$167,706.00. *Id.*

24 **g. The Settlement Is Within the Range of Possible Approval**

25 Using these estimated figures for each of the claims described above, Plaintiff predicted the
26 realistic total recovery for the Settlement Class would be approximately \$692,462.94. Lidman Decl., ¶
27 28. The proposed settlement of \$300,000.00 therefore represents approximately 43% of the reasonably
28 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement

1 will provide tangible monetary relief to Settlement Class Members, and will still provide an average
2 recovery to Settlement Class Members of over \$2,000.00.

3 The proposed settlement reflects approximately 43% of the estimated recovery the Settlement
4 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
5 monetary compensation for disputed claims. Indeed, the percentage of the liability exposure recovered
6 in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*
7 (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing
8 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
9 settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v.*
10 *DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement
11 may be acceptable even though it amounts to only a fraction of the potential recovery that might be
12 available to the Settlement Class members at trial"). Thus, Plaintiff submits the settlement is within
13 the range of possible approval, such that notice should be provided to the Settlement Class so that they
14 can consider the Settlement. The Court will have the opportunity to again assess the reasonableness
15 of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

16 **h. The Experience and Views of Counsel**

17 "Parties represented by competent counsel are better positioned than courts to produce a
18 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises*
19 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
20 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
21 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See;*
22 *Nguyen Decl.*, ¶¶ 2-8; *Lidman Decl.*, ¶¶ 2-8; *Haines Decl.*, ¶¶ 2-8. Class Counsel conducted an in-
23 depth review of Defendant's policies and timekeeping and payroll records and drew on their extensive
24 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See Lidman*
25 *Decl.*, ¶¶ 10-27. The Settlement was also reached with the assistance of an experienced and respected
26 wage and hour class action mediator. *Id.* This factor strongly supports preliminary approval of the
27 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

28 //

1
2 **i. Attorneys' Fees and Costs**

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

10 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
11 is currently estimated to be \$100,000, and up to \$20,000 in verified costs reimbursement. *See*
12 Settlement, ¶ 7; Lidman Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for
13 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
14 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman
15 Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
16 analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's documents and policies,
17 analyzing Settlement Class Members' timekeeping data and payroll records, preparing for and attending
18 mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise
19 litigating the case. Lidman Decl., ¶ 31. Class Counsel expect to expend additional attorney time in
20 attending the hearing on this Motion, overseeing the Notice process and fielding questions from
21 Settlement Class Members, preparing the final approval papers and attending the Final Approval
22 hearing. *Id.*

23 Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an
24 overall percentage of the settlement in light of the substantial risks, significant work undertaken, the
25 extremely positive results obtained for the class, and the efficiency with which the Parties conducted
26 the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of
27 attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which
28 will include a lodestar analysis.

1
2 **j. Administration Costs**

3 Phoenix Settlement Administrator's fees and expenses are estimated not to exceed \$5,995.00.
4 See Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed
5 concurrently herewith ("Lawrence Decl."). This includes sending the Notice in English only due to the
6 nature of Defendant's workforce. This request is reasonable in light of the proposed class size of
7 approximately 76 Settlement Class Members and the costs and expenses associated with administering
8 the notices in English and distributing the awards.

9 **k. Class Representative Service Award**

10 "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
11 class representatives for work done on behalf of the class [and] to make up for financial or reputational
12 risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
13 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the
14 time of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for
15 his services to the Settlement Class. Lidman Decl., ¶ 31; Settlement, ¶ 5.3.C; Martinez Decl., ¶¶ 3-12.
16 As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to
17 recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing
18 substantial factual information and documents to Class Counsel, attending multiple meetings with Class
19 Counsel to discuss the claims and theories at issue in the litigation, participating in the mediation, as
20 well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case,
21 the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code §
22 1542. See Lidman Decl., ¶ 31; Martinez Decl., ¶¶ 3-11; Settlement ¶ 3.E.

23 **l. PAGA Civil Penalties**

24 The parties have agreed to a PAGA award of \$10,000.00 and in accordance with California
25 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
26 – or \$7,500.00. Settlement ¶ 5.C.5. This \$10,000.00 represents roughly 3.33% of the \$300,000.00
27 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved
28 by Courts. See, e.g., *In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or

1 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal.
2 Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
3 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
4 claims and PAGA claims under which no money was allocated to the PAGA claims).

5 **m. Payroll Taxes**

6 The Settlement provides that the employer’s share of payroll taxes shall be paid separately from,
7 and in addition to, the Gross Settlement Amount. Settlement ¶ 5.D.

8 **n. Uncashed Funds**

9 The Settlement provides that Settlement Class Members with 180 days from the date the
10 Settlement Administrator mails the checks and any funds remaining after 180 days escheat to the
11 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
12 of the Settlement Class member. Settlement ¶ 6.F. As all settlement funds will be distributed to the
13 Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

14 **C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

15 Preliminary approval of the Settlement is also warranted because there are no obvious
16 deficiencies. The Settlement will provide monetary relief to participating Settlement Class Members.
17 The amounts proposed for Class Counsel’s attorneys’ fees and costs, and service award are all
18 reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious
19 deficiencies, this factor supports preliminary approval.

20 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
21 **NOTICE TO SETTLEMENT CLASS MEMBERS**

22 Before the final approval hearing, the Court requires adequate notice of the settlement be given
23 to all class members. This Court should order distribution to the Settlement Class of the proposed
24 Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement
25 and Notice of Individual Settlement Award) by first-class regular U.S. Mail, postage prepaid, using
26 last known mailing address information provided by Defendant. *See* Settlement, ¶ 11, Exh. B. The
27 Notice Packet will be mailed in both English only due to the nature of Defendant’s workforce.

28 This manner of giving notice is the “best notice practicable” under the circumstances because
it provides “individual notice to all members who can be identified through reasonable effort.” *See*
Eisen v. Carlisle & Jacquelin (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement

1 be administered by Phoenix, an experienced class action settlement administrator. *See generally*
2 Lawrence Decl. and attached exhibits. Class Data will be ascertainable through Defendant's personnel
3 and payroll records, which Defendant will provide to Phoenix within 15 calendar days of preliminary
4 approval of the Settlement. *See* Settlement ¶ 11.A. Within 10 business days of receipt of the Settlement
5 Class Members' addresses, Phoenix will run the names of all Settlement Class Members through the
6 United States Postal Service Notice of Change of Address database (which provides updated addresses
7 for any individual who has moved in the previous four years and has notified the U.S. Postal Service
8 of a forwarding address), calculate the estimated Settlement Award for each Settlement Class member,
9 and mail the notices to Settlement Class Members. *See* Settlement ¶ 11.B. To the extent that any
10 notices are returned, Phoenix will perform a "skip trace" to track any Class Member's current mailing
11 address. *See* Settlement ¶ 11.C.

12 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because
13 it advises Settlement Class Members of the nature of the claims, basic contentions and denials of the
14 parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement
15 and the procedures by which to do so, explains the recovery formula and expected recovery amount
16 for each Settlement Class member, provides them the opportunity to contest their total workweeks
17 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
18 do not opt-out. *See* Lidman Decl., Exh. 1 (Settlement, Exh. A). The proposed Notice Packet will also
19 notify Settlement Class Members of the final approval hearing date and provides Settlement Class
20 Members the contact information for Class Counsel, and advises Settlement Class Members that they
21 may enter an appearance through counsel if they wish to.

22 Additionally, as stated in the proposed Notice Packet, any changes to the Final Approval
23 hearing date, time, or location will be posted on the Settlement Administrator's website. *Id.*
24 Furthermore, the Settlement Administrator will post the notice of final judgment on its website. *Id.*
25 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-
26 effective method of reaching Settlement Class Members.

27 **E. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

28 Finally, this Court should set a hearing for final approval of the Settlement on a date

1 appropriately scheduled to follow the deadline by which Settlement Class Members must file
2 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

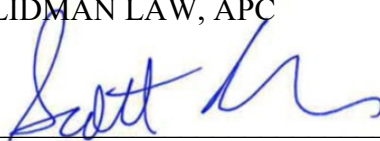
3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve
5 the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order
6 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

7
8 Dated: June 30, 2023

Respectfully submitted,
LIDMAN LAW, APC

9
10 By:



Scott M. Lidman
Attorneys for Plaintiff
JAVIER MARTINEZ