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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KEILA SANCHEZ and CARYL LYRA ENCABO, as individuals and on behalf of all others similarly situated,

Plaintiffs,

v.

PHENOMENEX, INC., a California Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23STCV00761 (Related to Case No. 23STCV09140)

[*Assigned to the Hon. Laura A. Seigle Dept. 17*]

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

Date: November 7, 2025
Time: 9:00 a.m.
Dept.: 17

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

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on November 7, 2025, at 9:00 a.m. in Department 17 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Keila Sanchez and Caryl Lyra Encabo ("Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

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

   > All persons employed by Defendant Phenomenex, Inc. in California as non-exempt employees from January 13, 2019 through February 17, 2025 ("Class Period"), excluding those who signed severance agreements.

3. Preliminary appointment of Plaintiffs Keila Sanchez and Caryl Lyra Encabo as Class Representatives;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Joel M. Gordon of Haines Law Group, APC, and Joseph Lavi, Vincent C. Granberry, James Clark, and Matthew J. Gustin of Lavi & Ebrahimian, LLP as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Service Payments to Plaintiffs, civil penalties payable to the Labor & Workforce Development Agency ("LWDA"), settlement administration costs, and attorneys' fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that is to be disseminated to the proposed Settlement Class as provided in the Class Action and PAGA Settlement Agreement.

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This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of Paul K. Haines, Sean M. Blakely, Joel M. Gordon, James Clark, Plaintiff Keila Sanchez, Plaintiff Caryl Lyra Encabo, and Anthony Rodgers of ILYM Group, Inc., and the exhibits attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

Dated: October 6, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________

Paul K. Haines
Sean M. Blakely
Joel M. Gordon
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Keila Sanchez and Caryl Lyra Encabo (hereinafter "Plaintiffs") brought this class and representative action for various wage and hour violations on behalf of current and former non-exempt employees who worked for Defendant Phenomenex, Inc. ("Phenomenex") in California from January 13, 2019 through February 17, 2025 (the "Class Period"). Plaintiffs' primary allegations are that Phenomenex failed to pay all minimum and overtime wages, failed to provide all legally compliant meal periods, and failed to authorize and permit all required rest periods. As a result of these alleged violations, Plaintiffs also brought derivative claims for Phenomenex's alleged failure to issue accurate and compliant wage statements, its failure to pay all final wages owed, and for civil penalties under the Private Attorneys' General Act ("PAGA").[1]

Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary, common-fund class action settlement,[2] in which Phenomenex has agreed to pay Four Hundred Ninety Thousand Dollars and Zero Cents ($490,000.00) to the following Settlement Class:

> All persons employed by Defendant Phenomenex, Inc. in California as non-exempt employees from January 13, 2019 through February 17, 2025 ("Class Period"), excluding those who signed severance agreements.

If the Settlement is approved, Phenomenex will pay a non-reversionary Gross Settlement

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[1] The operative Third Amended Consolidated Class and Representative Action Complaint ("TAC") pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to pay all accrued and vested vacation/PTO wages; (6) wage statement violations; (7) waiting time penalties; (8) unfair competition in violation of Cal. Business & Professions Code § 17200, *et seq*.; and (9) civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698 *et seq*. ("PAGA").

[2] The Class Action and PAGA Settlement Agreement and Class Notice ("Settlement") is attached to the Declaration of Sean M. Blakely as **Exhibit A**. The proposed Class Notice is attached to the Settlement as **Exhibit 1**. All defined terms in this motion have the same definition as that in the Settlement. The red-lined version of the LASC Model Class Action and PAGA Settlement Agreement, showing modifications that were made in drafting the Settlement Agreement is attached to the Declaration of Sean M. Blakely as **Exhibit C**.

Amount of $490,000.00. After deducting administration costs, Plaintiffs' requested Class Representative Service Payments, the amount set aside as PAGA civil penalties, and requested attorneys' fees and costs, the Net Settlement Amount of approximately $243,816.67 will be distributed to all Class Members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Class Member during the Class Period. Additionally, all non-exempt employees who worked for Phenomenex in California from January 13, 2022 through February 17, 2025 (the "PAGA Period") will also receive a portion of the $7,500.00 PAGA Payment based on the proportionate number of pay periods worked during the PAGA Period.

Significantly, Class Members do not need to file a claim to reap the financial benefits of the Settlement, as all Class Members will automatically receive a payment unless they affirmatively opt out. There are approximately 425 Class Members, and the average payment to Participating Class Members is projected to be approximately $573.69.

The proposed Settlement is 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 tangible monetary benefits to be received by Plaintiffs and the Settlement Class. For the reasons discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement.

II. <u>SUMMARY OF THE LITIGATION</u>

A. <u>THE PARTIES AND BRIEF PROCEDURAL HISTORY</u>

In operation for over 40 years, Phenomenex is in the business of developing analytical chemistry solutions. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Phenomenex manufacturers consumables which are used in applications such as clinical testing, environmental and food safety products, and pharmaceutical discovery and development. *Id.* Plaintiff Sanchez worked for Phenomenex as a non-exempt "production technician / laboratory technician" from June 2021 until approximately October 28, 2022. *See* Declaration of Keila Sanchez ("Sanchez Decl."), ¶ 2. Plaintiff Encabo worked for Phenomenex as a non-exempt employee from May 2019 until approximately October 2022. *See* Declaration of Caryl Lyra Encabo. ("Encabo Decl."), ¶ 3.

On January 13, 2023, Plaintiff Sanchez filed this class action asserting various causes of action under the California Labor Code. Blakely Decl., ¶ 9. On that same day, Plaintiff Sanchez sent her PAGA notification letter to the Labor & Workforce Development Agency ("LWDA"). *Id.*; **Exhibit B** (Sanchez LWDA Letter). Subsequently, on March 20, 2023, Plaintiff Sanchez filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the PAGA. Blakely Decl., ¶ 9.

On April 25, 2023, Plaintiff Encabo filed a wage and hour class action complaint against Phenomenex in the matter entitled *Caryl Lyra Encabo v. Phenomenex, Inc.,* Los Angeles Superior Court Case No. 23STCV09140 (the "*Encabo* Action"), in the above-captioned Court, alleging overlapping claims and putative classes as those alleged in Plaintiff Sanchez's case. *See* Declaration of James Clark ("Clark Decl."), ¶ 4. On that same day, Plaintiff Encabo sent her PAGA notification letter to the LWDA. *Id.*, **Exhibit 1** (Encabo LWDA Letter). *Id.*

On June 2, 2023, the Court related the *Sanchez* and *Encabo* Actions, and designated the *Sanchez* Action the lead case. Blakely Decl., ¶ 9. On June 30, 2023, Plaintiff Encabo filed another case entitled *Caryl Lyra Encabo v. Phenomenex, Inc.*, Los Angeles Superior Court Case No. 23STCV15424, alleging a single cause of action under the PAGA. Clark Decl., ¶ 5. On June 3, 2024, Plaintiffs filed the Second Amended Consolidated Class and Representative Action ("SAC"), alleging causes of action for: (1) minimum wage violations, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) failure to pay all accrued and vested vacation/PTO wages, (6) wage statement violations, (7) waiting time penalties, (8) unfair competition, and (9) civil penalties under the PAGA. Blakely Decl., ¶ 9. On September 2, 2025, Plaintiff Encabo dismissed her PAGA-only case without prejudice. Clark Decl., ¶ 5. On September 29, 2025, Plaintiff filed the operative Third Amended Complaint ("TAC"), adding all claims and factual allegations alleged in Plaintiff Encabo's PAGA-only complaint that were not included in the SAC. Blakely Decl., ¶ 9.

B. PLAINTIFFS' CLAIMS AND PHENOMENEX'S DEFENSES

1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiffs contend that for at least a portion of the Class Period, Phenomenex utilized a timekeeping system that systematically underpaid wages to Class Members. Blakely Decl., ¶ 14.

Specifically, Plaintiffs contend that although Phenomenex's timekeeping system recorded hours worked to the minute, Phenomenex rounded employee punches, resulting over time in Phenomenex's systematic underpayment of wages. *Id.*

However, Phenomenex counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Class Members for all hours worked throughout the Class Period. Blakely Decl., ¶ 14. Phenomenex contends that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. *Id*. Phenomenex contends that no pre-shift work was actually being performed, and therefore, any rounded time is not compensable. *Id*. Phenomenex also argues that it stopped its rounding policies/practices in approximately October 2022, thereby cutting off any liability for this claim. *Id*. Finally, Phenomenex asserts that Plaintiffs would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

2. <u>Meal Period Claims</u>

Plaintiffs allege that Phenomenex failed to provide Plaintiffs and other non-exempt employees with 30-minute meal periods commencing before the end of the fifth hour of work. Blakely Decl., ¶ 15.

Phenomenex counters that it maintained compliant meal period policies throughout the Class Period and that the company always provided compliant meal periods in line with those policies. Blakely Decl., ¶ 15. Phenomenex further contends that it always provided employees the opportunity to take meal periods and is not required to ensure they are taken. *Id*.; *see Brinker Rest. Corp. v. Sup. Ct*., 53 Cal.4th 1004, 1034 (2012) (rejecting "ensure" standard). Thus, Phenomenex argues that any missed, late or short meal periods resulted from lawful employee choice rather than any policy and/or practice of Phenomenex. Blakely Decl., ¶ 15. Phenomenex also argues that it paid meal period premiums for any facially non-compliant meal periods. *Id*. Finally, Phenomenex argues that these claims are not suited for class treatment, as individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id*.

3. **Rest Period Claims**

Plaintiffs also allege that Phenomenex failed to provide 10-minute periods of "net rest" to Class Members. Blakely Decl., ¶ 16. Specifically, Plaintiffs allege that Class Members were not provided with off-duty rest periods due to work demands imposed by Phenomenex. *Id*.

Phenomenex counters that it maintained and enforced lawful rest period policies/practices during the Class Period, and has, in fact, authorized and permitted all required rest periods to Class Members. Blakely Decl., ¶ 16. Furthermore, Phenomenex argues that Plaintiffs' rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to receive full 10-minute rest periods, how many 10-minute rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id*. These manageability concerns are especially pertinent with respect to rest period claims, Phenomenex argues, given that rest periods are not recorded. *Id*.

4. **Regular Rate Claims**

Plaintiffs allege that Phenomenex failed to pay Class Members all overtime wages owed as a result of its failure to include the value of all non-discretionary bonuses into the "regular rate" of pay, including payments denoted as "Icp pay" and "VP gift card." Blakely Decl., ¶ 17; *See* Labor Code § 510(a) (requiring overtime to be paid at "one and one-half times the regular rate of pay"); *see, e.g., Huntington Memorial Hospital v. Superior Court*, 131 Cal.App.4th 893, 902-903 (2005) (discussing regular rate calculation requirements).

Phenomenex argues that it properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members. Blakely Decl., ¶ 17. Phenomenex contends the vast majority of additional payments at issue are discretionary bonuses and thus need not be included in the regular rate. *Id*.; *see also* 29 C.F.R. § 778.211 (discretionary bonuses need not be included in regular rate); 29 C.F.R. § 778.200(a)(1) (excluding from regular rate "sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency”). Phenomenex further argues that Class Members received different types of bonuses throughout the Class Period, creating substantive differences among the Class Members with respect to the incentives received, making class certification unlikely. Blakely Decl., ¶ 18

5. Wage Statement Claims

As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiffs allege that Phenomenex is liable for wage statement penalties pursuant to Labor Code § 226. Blakely Decl., ¶ 18.

Phenomenex argues any alleged wage statement violations were not “knowing and intentional,” and Plaintiffs cannot show that they or other employees “suffer[ed] injury” due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. Blakely Decl., ¶ 18. Further, Phenomenex contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received…The purpose of section 226 is to *document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.”) (Italics in original). Blakely Decl., ¶ 18.

6. Waiting Time Penalties

As a further result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiffs allege that Phenomenex failed to comply with its final pay obligations set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 19.

Phenomenex argues that it possesses strong, good-faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Blakely Decl., ¶ 19.; *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under

Section 203 . . . A 'good faith' dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee"). Phenomenex further asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Blakely Decl., ¶ 19.

7. PAGA Civil Penalties

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

C. DISCOVERY AND MEDIATION

Prior to reaching the Settlement, the Parties engaged in extensive formal discovery. Blakely Decl., ¶ 10. Phenomenex provided Plaintiffs' counsel with timekeeping and payroll records for all of the non-exempt employees during the Class Period, as well as Plaintiffs' complete personnel files, Phenomenex's written policies, and other information. *Id*. In advance of mediation, Phenomenex also provided relevant data points such as the total number of putative class members and the number of aggregate workweeks worked by putative class members during the Class Period. *Id*. With the help of a retained expert, Plaintiffs conducted a comprehensive analysis of the payroll and timekeeping data produced by Phenomenex to create a detailed exposure analysis for all claims at issue. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims, the chances of certification of Plaintiffs' claims, and Phenomenex's potential defenses. *Id*.

On March 5, 2024, the Parties participated in a full-day mediation with the Honorable Amy D. Hogue, a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Id*. The case did not settle at mediation, and the Parties resumed formal discovery. *Id.* After several more months, the Parties resumed their settlement discussions and ultimately reached a class-wide settlement, eventually finalizing the terms of the Settlement and executed the long-form Class Action and PAGA Settlement Agreement and Class Notice now before the court. *Id*., Exhibit A (Class Settlement Action and PAGA Settlement Agreement and Class Notice).

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Phenomenex will pay a Gross Settlement Amount of $490,000.00. *See* Settlement, §§ 1.22, 3.1. Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Class Payment. *Id*., at § 3.1. Each Class Member will automatically receive an Individual Class Payment unless they affirmatively opt out of the Settlement. *Id*. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount:	$490,000.00
• Minus Court-approved attorneys' fees:	$163,333.33
• Minus Court-approved verified costs (up to):	$30,000.00
• Minus Court-approved Service Payments:	$15,000.00 (total)
• Minus amount set aside as PAGA payments:	$30,000.00
• Minus estimated settlement administration costs:	$7,850.00
Net Settlement Amount:	$243,816.67
• Plus 25% "PAGA Payment" to Settlement Class:	$7,500.00
Total Amount Paid to Class Members:	**$251,316.67**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Payments to Plaintiffs, the amount set aside as PAGA civil penalties, and settlement administration costs, the Settlement requires Phenomenex to pay a Net Settlement Amount of at least $243,816.67 to all Class Members who do not timely opt-out. *See* Settlement, §§ 1.28, 3.2.4. The Net Settlement Amount shall be distributed to Participating Class Members based on each Participating Class Member's proportionate workweeks worked during the Class Period, which will be calculated by dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members during the Class Period, and then multiplying the result by each Participating Class Member's workweeks. *Id.*, at § 3.2.4. In addition to the Net Settlement Amount, each Class Member who was employed by Phenomenex at any time during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a portion of the Gross Settlement Amount that has been designated as the "PAGA Payment" proportionate to the number of PAGA Pay Periods worked during the PAGA Period. *Id.*, at § 3.2.5.1.

According to Phenomenex, there are approximately 425 Class Members. Blakely Decl., ¶ 13. Therefore, the average Individual Class Payment from the Net Settlement Amount is projected to be approximately $573.69. *Id*. There are also approximately 315 Aggrieved Employees during the PAGA Period who will each receive an average of approximately $23.81 from the PAGA Payment. *Id*.

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, §§ 1.43, 7.5.1, 7.7.2. Those Class Members who do not opt out of the Settlement will be bound by its terms and will release all claims against Phenomenex included within the Settlement. *See Id.*, at § 5.2.

2. Attorneys' Fees and Costs, Service Payments, and PAGA Payment

Plaintiffs will apply for Class Representative Service Payments at the time of seeking final approval of the proposed class action settlement in the amount of $7,500.00 each ($15,000.00

total) for their service to the Settlement Class. *See* Settlement, §§ 1.14, 3.2.1; Blakely Decl., ¶ 24. "[I]ncentive Payments are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases,* 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiffs' requested Service Payments are intended to recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, responding to formal written discovery, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of their claims, as well as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this case. *See* Blakely Decl., ¶ 24; *see also* Sanchez Decl., ¶¶ 4-6; Encabo Decl., ¶¶ 6-8.

Class Counsel will also apply for an attorneys' fees award of one-third of the Gross Settlement Amount, which is currently estimated to be $163,333.33, and up to $30,000.00 in verified costs reimbursement. *See* Settlement, §§ 1.7, 3.2.2; Blakely Decl., ¶ 23. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 23. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, conducting extensive formal and informal discovery, analyzing Class Members' timekeeping and payroll records, creating a comprehensive damages model with the assistance of a retained damages expert, preparing for and attending mediation, negotiating and preparing the long-form Class Action and PAGA Settlement and Class Notice, preparing this Motion, and otherwise litigating the case. *Id*. Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the Final Approval papers, and attending the Final Approval hearing. *Id*.

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

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

Additionally, the parties have agreed to designate $30,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $22,500.00 (75%) will be paid to the LWDA, with the remaining $7,500.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3.2.5. Plaintiffs submit this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See* e.g., *Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

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

a. The Strength of Plaintiffs' Case

Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As described above, Phenomenex presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class certification and ultimately trial, success was far from certain.

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

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

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

Plaintiffs have not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through individual settlements entered into by Phenomenex with class members by way of *Pick Up Stix* type settlement agreements[3]), and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick Up Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

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

The Settlement provides a positive recovery for the Settlement Class in the face of disputed claims. With the assistance of a retained expert, Plaintiffs conducted a detailed analysis of alleged unpaid wages, meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure analysis is discussed below:

<u>Unpaid Wages Due to Unlawful Timekeeping Policies/Practices</u>: $30,615

Plaintiffs allege that from the beginning of the Class Period until approximately October 2022, Phenomenex underpaid wages to Class Members due to its timekeeping policies/practices. Blakely Decl., ¶ 14. Based on Plaintiffs' analysis of Phenomenex's timekeeping and payroll data,

[3] In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

Plaintiffs estimate that Class Members were underpaid by approximately 4,626 hours during the Class Period. *Id*. Based on an average overtime rate of pay for Class Members of $33.09, Plaintiffs calculated Phenomenex's maximum exposure on this claim at approximately $153,074 (4,626 unpaid hours * $33.09 average overtime rate of pay). *Id*.

As noted above, however, Phenomenex contends that it maintained lawful timekeeping policies and/or practices and compensated Class Members for all hours actually worked. Blakely Decl., ¶ 14. Phenomenex also asserts that this claim is not amenable to class certification as individualized inquiries would be required to determine whether each Class Member performed pre-shift work on a particular shift, and whether Phenomenex was aware that such work was being performed. *Id*. In light of Phenomenex's arguments and defenses, Plaintiffs discounted the maximum recovery on this claim by 50% to account for the risk of non-certification and an additional 60% to account for being unsuccessful on the merits or failure to recover the full amount sought, for a projected total of approximately $30,615. *Id*.

<u>Meal Period Violations</u>: $189,691

Based on Plaintiffs' review of the timekeeping records Phenomenex produced, there were approximately 60,628 facial meal period violations during the Class Period. Blakely Decl., ¶ 15. Phenomenex represents that it paid approximately 6,032 meal period premiums during the Class Period. *Id*. Therefore, Plaintiffs calculated Phenomenex's maximum exposure for facial meal period violations at approximately $1,204,388 ([60,628 non-compliant first meal periods - 6,032 premiums paid] * $22.06 average meal period premium). *Id*.

However, as noted above, Phenomenex argues that it maintained compliant meal period policies throughout the Class Period and that the company always provided compliant meal periods in line with those policies. Blakely Decl., ¶ 15. Phenomenex further contends that it always provided employees the opportunity to take meal periods and is not required to ensure they are taken, that any missed, late or short meal periods resulted from lawful employee choice rather than any policy and/or practice of Phenomenex, and that these claims are not suited for class treatment, as individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id*. In light of these defenses and arguments, Plaintiffs discounted Phenomenex's maximum exposure by 55% for the risk of non-certification, and an additional 65% to account for Phenomenex's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $189,691. *Id.*

Rest Period Violations: $250,542

Based on Plaintiffs' analysis of employee timekeeping records, there were approximately 283,933 shifts in excess of 3.5 hours worked by Class Members during the Class Period. Blakely Decl., ¶ 16. As such, Plaintiffs calculate Phenomenex's maximum exposure for rest period violations at $6,263,562 (283,933 rest period eligible shifts * $22.06 average premium). *Id*.

However, Phenomenex contends it has maintained and enforced compliant written rest period policies/practices and has always authorized and permitted employees a 10-minute rest period for every four hours worked, or major fraction thereof, and that any failure to take rest periods was as a result of employee choice, rather than any Phenomenex policy and/or practice. Blakely Decl., ¶ 16. Phenomenex further argues that Plaintiffs' rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially present with respect to rest period claims, Phenomenex argues, given that rest periods are not recorded. *Id*. Given these defenses, Plaintiffs discounted this maximum amount by 80% for risk of non-certification, and an additional 80% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $250,542.

Regular Rate Claims: $15,914

Plaintiffs allege that Phenomenex failed to pay all overtime wages owed by not including the value of all non-discretionary remuneration into the regular rate of pay. Blakely Decl., ¶ 17. Based on a review of payroll records by Plaintiffs' expert, overtimes wages owed due to the failure to include various payments into the regular rate were approximately $48,964. *Id.*

However, as stated above, Phenomenex contends that it properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members. Blakely Decl., ¶ 17. Phenomenex further argues that Class Members received different types of bonuses throughout the Class Period, creating substantive differences among the Class Members with respect to the incentives received, making class certification unlikely. *Id*. In light of these defenses, Plaintiffs discounted the maximum amount that the class could potentially recover by 35% for risk of non-certification and discounted an additional 50% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately $15,914. *Id*.

<u>Wage Statement Penalties</u>: $50,400

Plaintiffs allege that Phenomenex is liable for wage statement penalties as a result of the unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 18. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. *See* Labor Code § 226(e). *Id*. Plaintiffs' analysis reflected that there were approximately 315 unique employees and approximately 14,185 pay periods worked during the liability period applicable to Plaintiffs' wage statement claim. *Id*. Plaintiffs, therefore, assumed the maximum $4,000.00 penalty for each employee and calculated Phenomenex's potential wage statement exposure at approximately $1,260,000.00 (315 employees * $4,000 maximum penalty]). *Id*.; *see also* Labor Code § 226(e).

In light of Phenomenex's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiffs' underlying claims discussed above, Plaintiffs discounted the maximum exposure by 80% for risk of non-certification, and by an additional 80% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately $50,400. Blakely Decl., ¶ 18.

<u>Waiting Time Penalties</u>: $25,623

Phenomenex's records show approximately 121 Class Members who are eligible for waiting time penalties. Blakely Decl., ¶ 19. Based on an hourly rate of $22.06, Plaintiffs estimated the average waiting time penalty per former employee to be approximately $5,294 ($22.06 * 8 hours per day * 30 days). *Id*. Therefore, Plaintiffs calculated Phenomenex's maximum exposure for potential waiting time penalties to be approximately $640,574 (121 former employees * $5,294 average penalty). *Id*.

However, Phenomenex presented several defenses to this claim, most notably their assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. Blakely Decl., ¶ 19. Phenomenex further asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id*. Moreover, because the waiting time claim is derivative of Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Phenomenex's defenses, both as to class certification and on the merits, as to his underlying claims. *Id*. To account for Phenomenex's defenses, Plaintiffs discounted the maximum exposure by 80% for the risk of non-certification and an additional 80% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately $25,623. *Id*.

<u>PAGA Penalties</u>: $42,555

Plaintiffs estimated a maximum total PAGA exposure of approximately $1,418,500.00 (14,185 pay periods * $100 "initial" penalty). Blakely Decl., ¶ 20; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Phenomenex disputes vigorously. Blakely Decl., ¶ 20; *see e.g.*, *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Phenomenex also asserts that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 20; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL

7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiffs discounted the maximum figure by 80% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $42,555. Blakely Decl., ¶ 20.

Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential realistic recovery for the Settlement Class would be approximately $605,340. Blakely Decl., ¶ 21. The proposed Settlement of $490,000.00 represents approximately 81% of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiffs' counsel believes could have been recovered had the case proceeded through trial.

e. The Experience and Views of Counsel

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

2. The Preliminary Approval Standard Is Met

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

a. The Settlement Is Within the Range of Possible Approval

The proposed Settlement reflects approximately 81% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered here far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Further, the average Individual Class Payment of approximately $573.69 is in line with average payments achieved in other wage and hour class action settlements.[4] Thus, Plaintiffs submit that the proposed settlement is within the range of

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[4] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately $80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately $60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately $198.70…[T]his is a substantial recovery where Defendants asserted

possible approval, such that notice should be provided to Class Members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

b. <u>The Settlement Resulted from Serious, Informed Negotiations</u>

The Settlement resulted from extensive formal and informal discovery, a full-day mediation, and months of additional negotiations. Thus, it is entitled to a presumption of fairness *See Kullar*, *supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and with the help of a retained expert conducted a detailed statistical analysis of the data to arrive at their estimated class-wide damages figures. *See* Blakely Decl., ¶¶ 14-21. Thus, this factor supports preliminary approval.

c. <u>The Settlement Is Devoid of Obvious Deficiencies</u>

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

B. <u>THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS</u>

The Settlement Class satisfies the criteria for certification because: (1) it is sufficiently numerous; (2) common questions of law and fact predominate; (3) Plaintiffs' claims are typical; and (4) Plaintiffs and their counsel will adequately represent them. Cal. Code Civ. Proc. § 382.

1. <u>The Proposed Class Is Ascertainable and Numerous</u>

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is

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compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than $90…[T]he Court finds that the results achieved are good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately $108).

defined as all persons employed by Phenomenex in California as a non-exempt employee during the Class Period, excluding those who signed severance agreements. *See* Settlement, § 1.5. Therefore, Class Members can be identified from Phenomenex's personnel and employment records. Phenomenex represents that the Settlement Class consists of approximately 425 current and former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Class Members before the Court or for each Class Member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits but rather on what types of questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated on, among other issues, Phenomenex's uniform meal and rest period policies/practices. These types of claims are commonly held to be proper for class certification. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Claims of the Named Plaintiffs Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiffs' claims are typical of those held by the Class Members. First, Phenomenex employed Plaintiffs as non-exempt employees during the Class Period, and Plaintiffs were subject to Phenomenex's wage and hour policies at issue in this case. *See* Sanchez Decl., ¶ 2; Encabo, ¶ 2. Second, Plaintiffs were injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiffs assert that they were deprived of all wages and contends that they were deprived of all legally compliant meal and rest periods. *See* Sanchez Decl., ¶¶ 2-3; Encabo, ¶ 5.

Plaintiffs further assert that they did not receive accurate and compliant wage statements and did not receive all wages at the time of separation of employment. *Id.* Because Plaintiffs have suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the Class

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

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

This Court should order distribution to the Settlement Class of the proposed Class Notice by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address information provided by Phenomenex. *See* Settlement, §§ 1.11, 7.4. This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, Plaintiffs propose the settlement be administered by ILYM Group, Inc. (“ILYM”), an experienced class action settlement administrator. *See* Declaration of Anthony Rodgers (“Rodgers Decl.”) and attached exhibits. Class Members’ addresses will be ascertainable through Phenomenex’s personnel and payroll records, which Phenomenex will provide to ILYM within fifteen (15) days of preliminary approval of the Settlement. *See* Settlement, § 4.2. Within fourteen (14) days of receipt of the Class Members’ addresses, ILYM will run the names of all Class Members through the National Change of Address database to update addresses and mail the Class Notice to all Class Members. *Id.*, at § 7.4.2. To the extent that any notices are returned, ILYM will perform a "skip trace" to track any Class Member's current mailing address. *Id*., at § 7.4.3.

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

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

V. CONCLUSION

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

Dated: October 6, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

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