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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

RONALD FIGUEROA, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

SOLAR TURBINES INCORPORATED, a
Delaware corporation; and DOES 1
through 100,

Defendants.

CASE NO. 37-2023-00016512-CU-OE-CTL

*[Case assigned for all purposes to the Hon.
Gregory W. Pollack, Department C-71]*

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

Date: January 24, 2025
Time: 9:30 a.m.
Dept.: C-71

Action Filed: April 20, 2023
Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on January 24, 2025, at 9:30 a.m. in Department C-71 of the above-entitled Court, located at 330
3 W Broadway, San Diego, CA 92101, Plaintiff Ronald Figueroa, individually and on behalf of a
4 class of similarly situated individuals, will and hereby does move this Court for:

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

8 **Settlement Class** – all current and former nonexempt employees of
9 Solar Turbines Incorporated in California who worked at any time
10 between February 3, 2022, and June 2, 2024 (the “Class Period”).

- 11 3. Preliminary appointment of Ronald Figueroa as Class Representative;
- 12 4. Preliminary appointment of Fletcher W. Schmidt and Andrew J. Rowbotham of
13 Haines Law Group, APC as Class Counsel;
- 14 5. The scheduling of a hearing to consider whether the Settlement should be finally
15 approved and to award amounts for the Class Representative Service Award,
16 Settlement Administrator costs, payment to the LWDA for its 75% share of Private
17 Attorneys General Act civil penalties, as well as attorneys’ fees and costs to Class
18 Counsel;
- 19 6. Appointment of Apex Class Action Administration as the third-party Settlement
20 Administrator for mailing notices; and
- 21 7. Approval of the proposed Notice of Class Action Settlement (the “Class Notice”) and
22 entry of the Proposed Order instructing the Class Notice to be disseminated to the
23 proposed Settlement Class as provided in the Settlement.

24 ///

25 ///

26 ///

1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the declarations of Andrew J. Rowbotham, Fletcher W. Schmidt, Ronald Figueroa,
3 Sean Hartranft, and the exhibits attached thereto, the pleadings and other papers filed in this
4 action, and on any further oral or documentary evidence or argument presented at the time of
5 hearing.

6
7 Dated: December 30, 2024

Respectfully Submitted,
HAINES LAW GROUP, APC

8
9 By:



Andrew J. Rowbotham
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ronald Figueroa (“Plaintiff”) filed this putative class action (the “Action”) on
4 behalf of all current and former nonexempt employees of Solar Turbines Incorporated
5 (“Defendant”) in California who worked at any time between February 3, 2022, and June 2, 2024
6 (the “Class Period”). Plaintiff and Defendant will be referred to collectively herein as the
7 “Parties.”

8 Through this Motion, Plaintiff respectfully requests that this Court preliminarily approve
9 this non-reversionary class and PAGA action settlement (“Settlement”),¹ which will fully resolve
10 the Action.² Based upon the data received from Defendant, there are approximately 1,687
11 potential Settlement Class members who worked approximately 135,147 combined workweeks
12 during the Class Period. Defendant will pay a Maximum Settlement Amount (“MSA”) of
13 \$2,800,000.00. This represents a significant result for Settlement Class members who will only
14 release those claims that were actually asserted, or which could have been asserted based on the
15 same set of operative facts alleged in the Action or Plaintiff’s letter to the California Labor and
16 Workforce Development Agency (“LWDA”). After deductions for Plaintiff’s Service Award,
17 Settlement Administrator costs, the Private Attorneys General Act (“PAGA”) Payment, and
18 attorneys’ fees and costs to Class Counsel, the remaining amount (the “Net Settlement
19 Amount”) of approximately \$1,707,176.67 will be distributed to the Settlement Class.

20
21 ¹ The Joint Stipulation of Class Action and Private Attorney General Act Settlement and Release
22 (“Settlement Agreement”) is attached to the Declaration of Andrew J. Rowbotham as Exhibit 1
23 and the proposed Notice of Proposed Class Action Settlement (“Class Notice”) is attached as
Exhibit A to the Settlement Agreement.

24 ² The Settlement also includes a release of PAGA civil penalties on behalf of all current and
25 former nonexempt employees of Defendant in California who worked at any time between April
26 20, 2022, and June 2, 2024 (the PAGA Period”). These individuals are referred to herein as
27 “PAGA Employees.” See Settlement § I.S. The Aggrieved Employees’ release includes all PAGA
28 penalty claims alleged in Plaintiff’s PAGA letter as well as his First Amended Complaint along
with any other claims for PAGA penalties that could have been plead based on the facts alleged
in the Action that arose during the PAGA Period. *Id.*, § III.I.3; see also Rowbotham Decl., Exhibit
2 (Plaintiff’s LWDA Letter).

1 Significantly, Class Members do not need to file a claim form in order to receive their share of
2 the Settlement, and all Class Members who do not opt-out will automatically receive an Individual
3 Settlement Payment. The highest Individual Settlement Payment is estimated to be \$1,541.10 and
4 the average payment is estimated to be \$1,011.96.

5 This proposed Settlement is well within the range of possible approval in light of the
6 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
7 and the substantial monetary benefits to the Settlement Class. For the reasons discussed herein,
8 Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

9 **II. SUMMARY OF THE LITIGATION**

10 Defendant designs and manufactures industrial gas turbines for onshore and offshore
11 electrical power generation. Declaration of Andrew J. Rowbotham (“Rowbotham Decl.”), ¶ 10.
12 Defendant’s union employees are members of the International Association of Machinists and
13 Aerospace Workers. *Id.* Plaintiff was employed by Defendant as a non-union “Welder” off and
14 on beginning in approximately 2014. Declaration of Ronald Figueroa (“Figueroa Decl.”), ¶ 2.
15 Plaintiff was most recently rehired on August 7, 2017, and his last day of work was approximately
16 January 18, 2023. *Id.* Like all Settlement Class members, Plaintiff was subject to Defendant’s
17 wage and hour policies and practices. *Id.*

18 On April 20, 2023, Plaintiff filed the initial Complaint in this action, alleging Defendant:
19 (i) failed to pay all overtime wages; (ii) failed to pay all minimum wages; (iii) failed to provide
20 all meal periods; (iv) failed to issue accurate, itemized wage statements; (v) failed to pay all wages
21 owed upon separation of employment; and (vi) violated California’s Unfair Competition law.
22 Rowbotham Decl. ¶ 11. On June 27, 2023, Plaintiff filed the operative First Amended Complaint,
23 adding a cause of action for civil penalties under PAGA. *Id.* These theories of liability along with
24 Defendant’s defenses are discussed below.

25 Prior to engaging in protracted formal discovery, the Parties agreed to an informal
26 exchange of documents and data in advance of private mediation with Tripper Ortman, Esq., a
27 respected wage and hour class action mediator. Rowbotham Decl., ¶ 12. On March 15, 2024, with
28 the help of a mediator’s proposal from Mr. Ortman, the Parties were able to reach a class-wide

1 resolution of all claims. *Id.* Over the following months, the Parties finalized and executed the
2 long-form Settlement Agreement that is now before this Court for preliminary approval. *Id.*

3 **A. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

4 **1. Unpaid Wages – Rounding**

5 Plaintiff asserts that, throughout the Class Period, Defendant maintained an unlawful
6 rounding practice that resulted in Defendant systematically underpaying Plaintiff and other
7 Settlement Class Members’ earned wages. Rowbotham Decl., ¶ 13; *see also Camp v. Home Depot*
8 *U.S.A., Inc.* (2022) 84 Cal.App.5th 638 (holding that “[I]f an employer... can capture and has
9 captured the exact amount of time an employee has worked during a shift, the employer must pay
10 the employee for all the time worked.” (Internal quotations omitted))³. Specifically, Plaintiff
11 claims that Defendant recorded Plaintiff and other Settlement Class Members’ timeclock punches
12 to the minute, but modified Plaintiff and other Settlement Class Members’ timekeeping entries to
13 conform to their scheduled shift time (or even 6 minutes after their scheduled time if the employee
14 was late), not the actual time employees began working. Rowbotham Decl., ¶ 13. Plaintiff asserts
15 that this rounding practice was consistently applied in an uneven manner to the employees’
16 detriment and resulted in unpaid wages. *Id.*; *see also* Wage Order 1, § 3-4; Labor Code §§ 510(a),
17 1197, and 1182.12.

18 In response, Defendant contends that its timekeeping and rounding practices are neutral
19 and operate in an even-handed way, which Defendant asserts is lawful under the ruling in *See’s*
20 *Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Rowbotham Decl., ¶ 14; *see*
21 *also AHMC Healthcare, Inc. v. Superior Ct.* (2018) 24 Cal.App.5th 1014, 1027-29 (finding
22 employer’s time-rounding policy lawful where it was neutral “on its face” and “in practice”).
23 Further, Defendant argues that it maintains explicit policies that prohibit its employees from
24 working outside of their scheduled hours without prior authorization, and that its records would
25 reflect adherence to that policy. Rowbotham Decl., ¶ 14. As a result, Defendant contends this
26

27 ³ The *Camp* matter was granted review and is not fully briefed before the California Supreme
28 Court. The issue presented is, “Under California law, are employers permitted to use neutral time-
rounding practices to calculate employees’ work time for payroll purposes?”

claim is unmanageable, as it requires individualized inquiries into each employee’s payroll records to determine whether the application of its rounding policy was facially neutral. *Id.* Each of these inquiries would result in an unmanageable series of mini-trials. *Id.* Additionally, Defendant argues that this claim (as it relates to overtime violations) on behalf of union employees is completely preempted due to the applicable CBA and Labor Code § 514 (certain overtime provisions “do not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the [1] wages, [2] hours of work, and [3] working conditions of the employees, and if the agreement provides [4] premium wage rates for all overtime hours worked and a [5] regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.” (numbering not in original)).

2. Meal Period Violations

Plaintiff asserts that Defendant is also liable for meal period premium wages due to its failure to provide uninterrupted, 30-minute meal periods commencing before the end of the fifth hour of work. Rowbotham Decl., ¶ 15; *see also Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 799 (“The remedy for an employer violation of the [failure to provide a 30-minute meal period] is the hour of premium pay provided under section 226.7.”) Plaintiff also alleges Defendant failed to provide second meal periods on shifts over 10.0 hours. Rowbotham Decl., ¶ 15. Plaintiff asserts that Defendant only required Settlement Class Members to record their start and end times for each workday. *Id.* Defendant would then automatically insert meal period punches at pre-scheduled times to account for a meal period, whether one was actually provided at the scheduled time or not. *Id.* Plaintiff asserts that Defendant’s automatic 30-minute meal deduction also provided a guise for Defendant’s regular failure to provide a net 30-minutes of uninterrupted rest during meal breaks – as employees were required to be back from their meal exactly 30 minutes after it commenced however it took multiple minutes to reach and return from the rest areas. *Id.*

Defendant argues it maintains a legally-compliant written meal period policy, that it has always provided meal periods consistent with that policy, and that it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. Rowbotham Decl.,

¶ 16; *Brinker Restaurant Corp. v. Superior Court*, 54 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers only have to “provide” employees the opportunity to take meal periods). Defendant further maintains that any meal period violations reflected in timekeeping records were the result of employee choice, not Defendant’s policies, thereby precluding liability. Rowbotham Decl. ¶ 16. Defendant further contends that employees validly waived second meal periods on shifts over 10 hours. *Id.* Defendant also argues individualized inquiries will be required to determine why meal periods are late, short, or missed, whether there was a valid waiver, and whether a premium was paid on each such shift, thereby precluding class certification of this claim. *Id.* Additionally, as to union employees, Defendant argues that the applicable CBA included a clear and unmistakable waiver of Labor Code § 512’s meal period protections, thereby precluding liability for this claim. *See Ehret v. WinCo Foods, LLC* (2018) 26 Cal.App.5th 1, 6 (holding that meal period protections may be waived through CBA when the waiver is clear and unmistakable).

3. Regular Rate Miscalculation – Sick Pay

Plaintiff asserts that Defendant paid Class Members non-discretionary shift differentials for working the second and third shift as well as weekly “recognition bonuses” for working 7 days a week, but failed to correctly include the value of this pay when calculating the employees’ respective regular rates of pay for sick pay purposes. Rowbotham Decl., ¶ 17; *see* Labor Code § 510(a); *see also Huntington Memorial Hosp. v. Sup. Ct.* (2005) 131 Cal.App.4th 893, 902-03 (“[I]n determining what payments are to be included in or excluded from the calculation of the regular rate of pay, California will adhere to the standards adopted by the U.S. Department of Labor.”) Plaintiff contends that this claim acts as a catalyst for waiting time penalties.

Defendant contends that this additional compensation was completely discretionary and based on various and changing criteria. Rowbotham Decl., ¶ 18. As a result, Defendant asserts that this claim is unmanageable, as it requires individualized inquiries into each payment to determine the terms by which each bonus could be earned, whether each employee met those terms, whether the communication of the bonus to employees meets the criteria necessary for a non-discretionary payment, and whether there was actually any underpayment of sick pay on any

1 given week due to the bonus. *Id.* Each of these steps would result in an unmanageable series of
2 mini-trials. *Id.* Additionally, even if sick wages were underpaid, Defendant argues that Labor
3 Code § 246(l)(1) does not include a standalone cause of action. *Id.*

4 **4. Wage Statement Penalties, Waiting Time Penalties, and PAGA Penalties**

5 As a result of these alleged substantive violations, Plaintiff contends that Defendant is
6 liable for derivate wage statement violations, waiting time penalties and civil penalties under the
7 PAGA. Rowbotham Decl., ¶ 19. Additionally, due to the extreme heat experienced inside
8 Defendant’s warehouse where Plaintiff and other non-exempt employees worked, Defendant is
9 also liable for civil penalties due to its failure to provide reasonably comfortable temperatures in
10 work areas consistent with industry-wide standards for the nature of the work performed. *See*
11 Wage Order 1, § 15; Labor Code § 558(a). Defendant argues that the alleged wage statement
12 violations were not “knowing and intentional,” and that Plaintiff could not show he “suffer[ed]
13 injury,” as required by Labor Code § 226(e) for imposition of penalties. *See Amaral v. Cintas*
14 *Corp.* (2008) 163 Cal. App. 4th 1157, 1201. Defendant further contends that it possesses strong,
15 good faith defense to Plaintiff’s underlying claims, thus precluding recovery of waiting time
16 penalties (which are only available for the “willful” failure to pay wages). *See* 8 Cal. Code Regs.
17 § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time
18 penalties under Section 203...A good-faith dispute that any wages are due occurs when an
19 employer presents a defense, based in law or fact which, if successful, would preclude any
20 recovery on the part of the employee.”) Defendant also maintains that, given its good-faith
21 defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if
22 it were to find Defendant liable for any of Plaintiff’s underlying claims. *Id.*

23 **B. DISCOVERY AND MEDIATION**

24 In connection with mediation, Defendant provided Plaintiff with an approximate 25%
25 sample of electronic timekeeping records and payroll records for both union and nonunion
26 employees who worked during the Class Period.⁴ Rowbotham Decl., ¶ 24. Defendant also
27

28 ⁴ Plaintiff has provided additional detail as to how the sample was selected and the statistical
reliability of the sampling methodology in the Rowbotham Declaration at ¶ 24.

provided the relevant collective bargaining agreement (“CBA”) and various meal and rest period policies in effect. *Id.* Plaintiff’s counsel and his retained expert, who has a Ph.D. in economics, then analyzed these records to construct a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim. *Id.*

On March 15, 2024, the Parties participated in a mediation session with Tripper Ortman, Esq. Rowbotham Decl., ¶ 25. During mediation, the Parties exchanged divergent views on Defendant’s liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiff’s claims. *Id.* With the help of Mr. Ortman, the Parties ultimately reached a class-wide resolution of all claims which was then memorialized into the Settlement Agreement.⁵*Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves this settlement, Defendant will pay a Maximum Settlement Amount of \$2,800,000.00. *See* Settlement § III.A. This Settlement is non-reversionary and Settlement Class members will automatically receive their Individual Settlement Payment unless they affirmatively opt-out of the Settlement. *Id.*, § III.F.

Defendant will fund the MSA within 10 days of the Effective Date – which means the date by which all of the following have occurred: (a) the Court has finally approved the Settlement and entered Judgment thereon pursuant to California Rules of Court 3.769(h); and (b) the Judgement becomes “Final”, meaning that the Settlement has been finally approved by the Court without material modification and either: (i) if there are no objections, or if an objection(s) is made and overruled, 61 days from the date the order for final approval is issued; or (ii) if objections are made, and an appeal is filed, the day after the Judgment is affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject to further judicial review. *See* Settlement §§ I.K-L, III.G.1.

⁵ Plaintiff provided the LWDA with the Settlement Agreement along with all moving papers associated with this Motion. *See* Rowbotham Decl.; Exhibit 3 (LWDA Submission Confirmation)

The monetary terms of the Settlement are further broken down as follows:

Maximum Settlement Amount:	\$2,800,000.00
Minus attorneys' fees (one-third):	\$933,333.33
Minus attorneys' costs (up to):	\$60,000.00
Minus Class Representative Service Payment:	\$7,500.00
Minus LWDA PAGA Payment:	\$75,000.00
Minus Settlement Administrator costs:	\$16,990.00
Net Settlement Amount:	\$1,707,176.67

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, the Class Representative Service Payment, costs of settlement administration, and the LWDA's 75% share of PAGA penalties, the remaining Net Settlement Amount of approximately \$1,707,176.67 will be distributed to the Settlement Class members. *See* Settlement §§ I.P, III.G. 20% of each Individual Settlement Payment will be classified as wages and 80% will be classified as interest and penalties. *Id.* at III.F.2. 100% of payments to Aggrieved Employees for PAGA civil penalties will be classified as penalties. *Id.* at III.F.3.

Defendant's records indicate that there are approximately 1,687 Settlement Class members who worked during the Class Period. Rowbotham Decl., ¶ 27. Based on the allocations of the Net Settlement Amount, participating employees will receive, on average, a payment of approximately \$1,011.96. *Id.* Settlement Class members will have 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 § III.L.1-2. Those individuals who do not opt-out of the Settlement will be bound by its terms and will release any and all claims that were asserted or could have been asserted based on the facts alleged in the Action or Plaintiff's letter to the LWDA. *Id.*, § III.I.1.

2. Attorneys' Fees, Costs, and Class Representative Service Payment

As part of the Settlement, Plaintiff will apply for a service payment at the time of seeking final approval of the Settlement in the total amount of \$7,500.00 for his service to the Settlement Class and his general release of all claims (known or unknown) against Defendant. *See* Settlement §§ III.D.1, III.I.2. "[I]ncentive awards 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

1 financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination*
2 *Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff’s requested service payment is intended
3 to recognize the significant benefits conferred upon the Settlement Class due to the time and effort
4 that Plaintiff expended on behalf of the Settlement Class. Some of the activities Plaintiff
5 completed in order to help procure the Settlement including providing factual information and
6 documents to his attorneys, identifying potential witnesses, participating in multiple meetings
7 with his attorneys to discuss the claims and theories at issue in the litigation, and making himself
8 available the entire day of mediation. Figueroa Decl., ¶¶ 6-7. Additionally, Plaintiff undertook
9 significant risks by agreeing to serve as the named plaintiff in this case (as potential employers
10 can now search his name and determine he has previously sued an employer), as well as the fact
11 that Plaintiff agreed to a general release of all claims subject to a waiver of California Civil Code
12 § 1542. Rowbotham Decl., ¶ 28.

13 Class Counsel will also apply for an attorneys’ fee award of \$933,333.33 (one-third of the
14 GSA), and up to \$60,000.00 in verified costs. *See* Settlement, § III.B. Plaintiff submits that the
15 requested fee is fair compensation for undertaking complex, risky, expensive, and time-
16 consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial
17 attorneys’ fees conducting pre-filing investigation, retaining an expert and analyzing Plaintiff’s
18 claims, conducting legal research and analysis, reviewing documents and data produced by
19 Defendant, building a comprehensive damages model, preparing for and attending mediation,
20 negotiating and preparing the long-form Settlement Agreement, preparing this motion for
21 preliminary approval, and otherwise litigating the case. Rowbotham Decl., ¶ 29. Class Counsel
22 will also expend future attorney time in attending the hearing on this Motion, overseeing the
23 Notice process, drafting the final approval motion and supporting documents, and attending the
24 final approval hearing, among other tasks. *Id.*

25 Both California and federal courts have recognized that an appropriate method for
26 awarding attorneys’ fees in class actions is to award a percentage of the “common fund” created
27 as a result of the settlement. *See Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 506 (“the
28 percentage of fund method survives in California class action cases...”); *Wershba v. Apple*

1 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the “percentage of recovery”
2 and “lodestar/multiplier” methods). Historically, courts have awarded percentage fees in the range
3 of 20% to 50%, depending on the circumstances of the case. *See 4 Newberg on Class Actions*
4 § 14.6 (4th Ed. 2013) (“No general rule can be articulated on what is a reasonable percentage of
5 a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
6 common fund in order to assure that the fees do not consume a disproportionate part of the
7 recovery obtained for the class, although somewhat larger percentages are not unprecedented.”).

8 Class Counsel submits that the request for attorneys’ fees is reasonable when viewed as
9 an overall percentage of the settlement (one-third) in light of the substantial risks and the
10 significant work undertaken, the extremely positive results obtained for the class, and the
11 efficiency with which the Parties conducted the litigation. Should the Court grant preliminary
12 approval, Class Counsel will seek an award of attorneys’ fees and verified litigation costs at the
13 time of seeking final approval of the Settlement.

14 **IV. ARGUMENT**

15 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

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.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff’s Case

Class Counsel, with the help of a retained expert who holds a Ph.D. in economics, carefully vetted the claims at issue, reviewed a significant number of timekeeping and payroll records as well as relevant policy documents, and conducted a detailed analysis of that data to create a comprehensive damages model for Defendant’s liability. *See* Rowbotham Decl., ¶¶ 24-25. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.A., *supra*, Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and with respect to class certification. Although Plaintiff was prepared to litigate these claims through class certification and, ultimately, through trial, given the amount offered in settlement, Plaintiff predicted that it was unlikely that further litigation would result in a substantially more beneficial result for the Settlement Class. Thus, this factor supports preliminary approval of the Settlement.

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

This Settlement was reached after a significant informal exchange of classwide timekeeping and payroll records and other relevant information for mediation purposes. *See* Rowbotham Decl., ¶ 24. Absent settlement, the Parties would need to spend substantial time and

resources to engage in formal written and deposition discovery and prepare the case for class certification, summary judgment or adjudication, and ultimately trial.

c. Risk of Maintaining Class Action Status

Prior to reaching the Settlement, Plaintiff had not yet filed his motion for class certification. Considering Defendant's arguments and defenses against certification, there was a legitimate risk that the Court may deny certification of one or more of Plaintiff's claims, preventing the matter from continuing on a class-wide basis. Thus, this factor supports preliminary approval of the Settlement.

d. Amount Offered in Settlement Given Realistic Value of Claims

This proposed Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. After analyzing the data provided by Defendant prior to mediation, Plaintiff and his retained expert prepared a class-wide exposure analysis and forecasted the Settlement Class expected recovery for each claim as follows:

Unpaid Wages - Rounding: \$341,818

As described above, Defendant maintained timekeeping policies and practices that rounded and/or time-shaved Plaintiff and Class Members' hours, which resulted in Plaintiff and Class Members not being compensated for all hours actually worked. *See* Rowbotham Decl., ¶ 13. Plaintiff's expert reviewed the timekeeping and payroll data and determined the Class Members were underpaid an aggregate amount of \$1,823,029 due to Defendant's non-neutral rounding practice. *Id.* At the outset, Defendant contends that this claim is preempted on behalf of union employees due to the applicable CBA. *Id.*, ¶ 14. Beyond that, Defendant asserts that its timekeeping and rounding practice are neutral and operate in an even-handed way, which Defendant asserts is lawful under the ruling in *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Rowbotham Decl., ¶ 14. Further, Defendant argues that it maintains explicit policies that prohibit its employees from working outside of their scheduled hours without prior authorization, and that its records would reflect adherence to that policy. *Id.* As a result, Defendant contends this claim is unmanageable, as it requires individualized inquiries into each employee's payroll records to determine whether the application of its rounding policy to each

1 employee resulted in an underpayment of wages, resulting in an unmanageable series of mini-
2 trials. *Id.* Given these potential defenses, Plaintiff discounted the maximum exposure by 75% for
3 the risk of non-certification and 25% for the risk of being unsuccessful on the merits, to arrive at
4 an estimated exposure of \$341,818. *Id.*, ¶ 13.

5 **Meal Period Violations: \$1,222,617**

6 Plaintiff contends that Defendant failed to provide legally-compliant meal periods
7 resulting in meal periods that were late (commencing after the fifth hour of work), and/or short
8 (less than 30 minutes), or not provided at all. *See* Rowbotham Decl. ¶ 15. Plaintiff also alleges
9 that Defendant failed to provide second meal periods on shifts over 10.0 hours. *Id.* Based on
10 Plaintiff's expert's analysis of Defendant's records, and giving credit for meal period premiums
11 already paid, Plaintiff calculated Defendant's potential exposure for meal periods at \$16,301,554
12 (422,402 union meal violations x \$34.18 union rate of pay + 45,930 non-union meal violations x
13 \$40.73 non-union rate of pay - \$6,875 meal premiums). *Id.* However, Defendant maintains that
14 the vast majority of these purported violations are not violations in the first place as union
15 employees waived Labor Code § 512's meal period protections through the applicable CBA. *Id.*,
16 ¶ 16. Additionally, Defendant contends it provided all legally compliant meal periods to
17 employees and that any missed or non-compliant meal periods were the result of employee choice,
18 not Defendant's policy. *See Brinker, supra*, 53 Cal.4th at 1040. Defendant also contends that
19 employees waived second meal periods on shifts over 10 hours. *See* Rowbotham Decl., ¶ 16.
20 Lastly, Defendant argues Plaintiff's meal period claim is not suited for class certification, since
21 Defendant enforces its legally-compliant written meal period policy and individualized inquiries
22 will be required to determine why each meal period was late, short, or missed, whether there was
23 a valid waiver, and whether a premium was paid on each such shift, thereby precluding class
24 certification of this claim. *Id.* Given these potential defenses, Plaintiff discounted Defendant's
25 maximum exposure by 85% for the risk of non-certification and 50% for the risk of being
26 unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of
27 \$1,222,617. *Id.*, ¶ 15.

1 **Wage Statement Violations: \$833,500**

2 Based on the data provided by Defendant for mediation, 1,667 employees received 80,741
3 wage statements during the 1-year time period associated with wage statement penalties.
4 Rowbotham Decl., ¶ 20. Plaintiff therefore calculated Defendant's maximum wage statement
5 exposure at \$6,668,000 (1,667 employees x \$4,000 maximum penalty per employee). *Id.*
6 Defendant contends that employees could not show they "suffer[ed] injury" as a result of the
7 alleged violations, as required by Labor Code § 226(e). *Id.*, ¶ 19. Considering this argument as
8 well as the potential inability to prove that the violations were "knowing and intentional," Plaintiff
9 discounted the value of this claim by 75% for the risk of non-certification of the underlying claims
10 and discounted 50% for a risk of being unsuccessful on the merits, for an estimated exposure of
11 \$833,500. *Id.*, ¶ 20.

12 **Waiting Time Penalties: \$272,943**

13 Based on the data provided by Defendant for mediation, 243 employees separated their
14 employment with Defendant during the 3-year time period associated with waiting time penalties.
15 Rowbotham Decl., ¶ 21. Plaintiff therefore calculated Defendant's maximum waiting time
16 penalty exposure at \$2,183,541 (122 former union employees x \$34.18 average union hourly rate
17 x 8 hours per day x 30 days + 121 former non-union employees x \$40.73 average non-union
18 hourly rate x 8 hours x 30 days). *Id.* Defendant contends it attempted to pay its employees all final
19 wages owed in good faith upon their separation, therefore precluding a finding of wilfulness
20 which is necessary to obtain waiting time penalties under 8 Cal. Code Regs. § 13520. *Id.*, ¶ 19.
21 Additionally, because this claim is entirely derivative of Plaintiff's underlying wage claims,
22 Defendant contends the waiting time penalty claim will fail with those claims. *Id.* Plaintiff
23 discounted the value of this claim by 75% for the risk of non-certification of the underlying
24 claims, and 50% for a risk of being unsuccessful on the merits (including a failure to establish
25 wilfulness), for an estimated recovery on this claim of \$272,943. *Id.*, ¶ 21.

26 **PAGA Penalties: \$605,558**

27 Assuming that Plaintiff could prove at least one underlying Labor Code violation in each
28 pay period within the PAGA Period, Plaintiff calculates Defendant's maximum PAGA exposure

1 at \$8,047,100 (80,741 pay periods at \$100 per violation). Rowbotham Decl., ¶ 22; *see Amaral,*
2 *supra*, 163 Cal.App.4th at 1207 (finding “initial” violation rate applies until employer is notified
3 that it is violating a Labor Code provision). However, these penalties derived from the underlying
4 wage and hour violations discussed above, which Defendant disputes. *See e.g., Green v. Lawrence*
5 *Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim’s success
6 was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court
7 has discretion to reduce any award of PAGA penalties where it views them as duplicative. *See*
8 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA
9 penalties to \$5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case
10 No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from \$2.8
11 million to \$500,000); *Kennedy v. Arm Strong Towing Services, Inc.*, 2017 WL 9486773, at *3
12 (Cal.Super.) (reducing PAGA penalties to \$1,000 per aggrieved employee – a reduction in excess
13 of 70% from the maximum civil penalty). Plaintiff therefore discounted the maximum figure by
14 85% for the risk of the scope of the PAGA claim being narrowed due to manageability concerns
15 of the underlying claims and an additional 50% to account for the likelihood of this Court reducing
16 penalties, to arrive at an estimated exposure of \$605,558. Rowbotham Decl., ¶ 22.

17 Using these estimated figures for each of the claims described above, Plaintiff predicts
18 that a projected potential recovery for the Settlement Class would be approximately \$3,276,435.
19 Rowbotham Decl., ¶ 23. The Maximum Settlement Amount of \$2,800,000 represents
20 approximately 85.46% of Plaintiff’s projected potential recovery, while avoiding the further
21 expense and risk of proceeding towards class certification and trial. *Id.* Considering the risk of
22 non-certification, failure to prevail on the merits, and the Court’s power to reduce civil penalties,
23 the proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See*
24 *e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily
25 approving wage and hour class action settlement, stating, “[a]lthough 15% represents a modest
26 fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for
27 the Court to grant preliminary approval given the merits of Plaintiff’s claims.”). Preliminary
28 approval is appropriate since the Settlement will provide significant monetary relief to Settlement

1 Class members without the uncertainty, delay, and additional expense of further litigation.

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

3 “Parties represented by competent counsel are better positioned than courts to produce a
4 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
5 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented
6 by competent and experienced counsel who possess extensive experience litigating wage and hour
7 class actions from both the plaintiff and defense side and have been appointed as class counsel in
8 numerous cases alleging similar claims. *See* Rowbotham Decl., ¶¶ 2-8. Class Counsel, with the
9 help of their retained expert, conducted an extensive review of Defendant’s records produced for
10 mediation as well as relevant policies in effect during the Class Period. *Id.*, ¶ 24. Class Counsel
11 also drew on their extensive experience in similar cases to assess the strengths and weaknesses of
12 Plaintiff’s case. *Id.* The Settlement was also reached with the input and assistance of Tripper
13 Ortman, Esq., an experienced and highly respected wage and hour class action mediator. *Id.*, ¶ 25.
14 This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168
15 Cal.App.4th at 130.

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

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

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

23 The proposed Settlement reflects an excellent recovery for the Settlement Class members
24 in light of the significant risks of litigation. The proposed Settlement will provide substantial
25 compensation for contested claims and derivative penalties, and the estimated average payment
26 of \$1,011.96 greatly exceeds the average payment achieved in other wage and hour class action
27 settlements. *See e.g., Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012
28 WL 2117001, at *17 (E.D. Cal. June 11, 2012) (\$198.70 gross recovery per class member

considered substantial recovery). Plaintiff submits that the proposed Settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

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

This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar, supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial information, including timekeeping and payroll data which was analyzed by Plaintiff's counsel and an expert with a Ph.D. in economics, arm's length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional months of negotiating and finalizing the terms of the long-form Settlement Agreement. *See Rowbotham Decl.*, ¶¶ 24-25. Thus, the proposed settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130.

c. The Settlement is Devoid of Obvious Deficiencies

The Settlement will provide substantial monetary relief to Settlement Class members. Moreover, the amounts proposed for Plaintiff's Service Payment, settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's share of PAGA penalties are all reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this final factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS

The proposed Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the individuals in the Settlement Class are so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class members; and (4) Plaintiff and his counsel will fairly and adequately represent the interests of the absent

Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

1. The Proposed Class is Ascertainable and Numerous

A class is “ascertainable” where the members “may be readily identified without unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all current and former nonexempt employees of Defendant in California who worked at any time during the Class Period. According to Defendant’s records, the Settlement Class consists of approximately 1,687 individuals, rendering it impracticable to gather all the Settlement Class members and bring them before the Court. *See* Rowbotham Decl., ¶ 27. Thus, the proposed Settlement Class satisfies the numerosity requirement.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff’s claims are predicated on uniform company policies, principally revolving around Defendant’s timekeeping and meal period policies and practices. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34 (“The theory of liability—that Brinker has a uniform policy, and that that policy...allegedly violates the law—is by its nature a common question eminently suited for class treatment.”); *Bradley v. Networkers Int’l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying meal period claim).

3. The Claims of the Named Plaintiff Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Here, Plaintiff’s claims are typical of those held by the members of the proposed Settlement Class. Like other Settlement Class members, Plaintiff was employed by Defendant in California during the Class Period. Figueroa Decl., ¶ 2. Defendant rounded Plaintiff’s wages and regularly deducted 30-minute meal periods from his hours worked, regardless of whether he was provided a legally compliant meal period. *Id.*, ¶¶ 2-5. Plaintiff was

1 therefore impacted by the same challenged policies that allegedly injured the Settlement Class as
2 a whole and were subject to the same defenses forwarded by Defendant as to the Settlement Class
3 and is therefore typical.

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

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

16 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
17 **CLASS NOTICE**

18 This Court should order distribution of the proposed Class Notice to the Settlement Class
19 by first class mail, postage prepaid, using the last known mailing address information provided
20 by Defendant This manner of giving notice is the “best notice practicable” under the
21 circumstances because it provides “individual notice to all members who can be identified through
22 reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff
23 proposes that the settlement be administered by Apex Class Action Administration (“Apex”), an
24 experienced class action settlement administrator. *See generally* Declaration of Sean Hartranft.
25 Settlement Class members’ addresses will be ascertainable through Defendant’s personnel and
26 payroll records, which Defendant will provide to Apex within ten (10) business days after
27 preliminary approval. *See* Settlement § III.K.1. Prior to mailing the Class Notice packets, Apex
28 will search for updated addresses using the National Change of Address database (“NCOA”). *Id.*,

§ III.K.2. To the extent that any notices are returned, Apex will search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. *Id.*, § III.K.3. The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises putative Settlement Class members of the nature of the claims, basic contentions and denials of the parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Settlement Agreement, Exhibit A (Class Notice). The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provide the Settlement Class contact information for Class Counsel and advise Settlement 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.⁶

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 Settlement Class members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the proposed order submitted concurrently herewith.

Dated: December 30, 2024

HAINES LAW GROUP, APC

By:



Andrew J. Rowbotham
Attorneys for Plaintiff

⁶ The Parties propose posting the final judgment on the Settlement Administrator's website. The URL will be included with Class Member's Individual Settlement Payments.