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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

RAFAEL PEREZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

KYOCERA SGS PRECISION TOOLS, INC.,
an Ohio corporation; and DOES 1 through
100,

Defendants.

CASE NO. 30-2022-01299232-CU-OE-CXC

*[Assigned for all purposes to the Hon.
Randall J. Sherman, Dept. CX105]*

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

Date: January 19, 2024
Time: 10:00 a.m.
Dept.: CX105
Reservation ID No.: 74112939

Action Filed: December 29, 2022
Trial Date: None Set

1 PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court,
2 on January 19, 2024 at 10:00 a.m., or as soon thereafter as the matter may be heard, in
3 Department CX105 of the Orange County Superior Court, located at 751 W Santa Ana
4 Blvd, Santa Ana, California 92701, Plaintiff Rafael Perez (“Plaintiff”), individually and on
5 behalf of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement
7 Agreement”) in this lawsuit;
- 8 2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement
9 purposes only, provisional certification of the Settlement Class, defined as follows:

10 All persons who were employed by Defendant Kyocera SGS Precision
11 Tools, Inc. or its predecessor Kyocera Precision Tool, Inc. in California
12 and were classified as non-exempt at any time from December 29, 2018,
13 through the date the Court grants preliminary approval of the Settlement
14 or August 17, 2023, whichever occurs sooner.

- 15 3. Preliminary appointment of Plaintiff Rafael Perez as the Class Representative;
- 16 4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen,
17 and Susan J. Perez of Haines Law Group, APC as Class Counsel;
- 18 5. The scheduling of a hearing to consider whether the Settlement Agreement should be
19 finally approved and to award amounts for the Class Representative Enhancement
20 Payment, settlement administration costs, payment to the Labor and Workforce
21 Development Agency for its share of civil penalties under the Private Attorneys
22 General Act, Labor Code section 2698 *et seq.*, and Class Counsel’s attorneys’ fees and
23 costs;
- 24 6. Appointment of CPT Group, Inc. as the third-party settlement administrator
25 (“Settlement Administrator”); and
- 26 7. Approval of the proposed Notice of Class and Representative Action Settlement,
27 Notice of Individual Settlement Payment and Individual PAGA Payment, and the
28 Request for Exclusion Form (collectively, the “Notice Packet”), and entry of the
proposed Order instructing the Notice Packet to be disseminated to the proposed
Settlement Class in English and Spanish, as provided in the Settlement Agreement.

1 This motion is based on this notice of motion, the attached memorandum of points and
2 authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Susan J.
3 Perez, Plaintiff Rafael Perez, and Julie Green of CPT Group, Inc., and the exhibits attached
4 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
5 evidence or argument presented at the time of hearing.

6 Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and
7 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
8 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider
9 the entire Motion, which is 26 pages in length.

10
11 Dated: September 27, 2023

Respectfully Submitted,
HAINES LAW GROUP, APC

12
13 By:



Matthew K. Moen
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Rafael Perez (“Plaintiff”), individually and on behalf of the proposed Settlement
4 Class, respectfully requests that this Court preliminarily approve the proposed Stipulation of
5 Settlement (“Settlement Agreement” or “Settlement”),¹ entered into by Plaintiff and Defendant
6 Kyocera SGS Precision Tools, Inc. (“Defendant”) (Plaintiff and Defendant are referred to
7 collectively herein as the “Parties”). The operative First Amended Complaint (“FAC”) alleges
8 Defendant failed to: (i) pay all overtime wages; (ii) pay all minimum wages; (iii) provide all
9 lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse necessary
10 business expenses; (vi) timely pay all final wages upon separation; (vii) comply with California’s
11 Unfair Competition laws; (viii) issue accurate and itemized wage statements; and (ix) is liable for
12 civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”).

13 Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary,
14 \$196,500.00 class action settlement on behalf of the following Settlement Class:

15 All persons who were employed by Defendant or its predecessor Kyocera
16 Precision Tool, Inc. in California and were classified as non-exempt (“California
17 Non-Exempt Employee”) at any time from December 29, 2018, through the date
18 the Court grants preliminary approval of the Settlement or August 17, 2023,
19 whichever occurs sooner (“Class Period”).

20 Based upon the data provided by Defendant, there are approximately 84 potential
21 Settlement Class members and approximately 37 PAGA Aggrieved Employees subject to the
22 Settlement. After Court-approved deductions for Plaintiff’s Class Representative Enhancement
23 Payment, settlement administrator costs, the PAGA Payment to the Labor & Workforce
24 Development Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the remaining
25 Net Settlement Amount (“NSA”) is estimated to be no less than \$81,000.00. This results in
26 average Individual Settlement Payments of approximately \$964.29, with the lowest possible

27 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Matthew K. Moen (“Moen
28 Decl.”), filed concurrently herewith, and the Notice of Class and Representative Action Settlement, Notice
of Individual Settlement Payment and Individual PAGA Payment, and the Request for Exclusion Form
(collectively, the “Notice Packet”) are attached to the Moen Decl. as Exhibit 2.

1 estimated Individual Settlement Payment of \$7.31 (in the event a Settlement Class member
2 worked only one workweek during the Class Period) and the highest possible estimated Individual
3 Settlement Payment of \$1,769.13 (in the event a Settlement Class member performed worked in
4 every workweek throughout the Class Period). Significantly, Settlement Class members do not
5 need to file a claim form in order to receive an Individual Settlement Payment, and all Settlement
6 Class members who do not opt-out will automatically receive their share of the Settlement. This
7 represents a fair and reasonable result for the Settlement Class members, who will be agreeing to
8 a release of only those claims that were actually asserted, or which could have been asserted based
9 on the facts alleged in the operative FAC in the lawsuit.

10 Further, given the tenet that aggrieved employees do not have the ability to opt-out of a
11 representative PAGA claim, all PAGA Aggrieved Employees,² regardless of whether they elect
12 to opt out from participating in the class action settlement or not, shall receive a portion of the
13 settlement monies designated as the PAGA Payment payable to the PAGA Aggrieved Employees
14 and shall release their claims for civil penalties under PAGA based on the Labor Code violations
15 that were pled in the operative FAC in the action or Plaintiff’s June 16, 2023 PAGA Notice letter
16 to the LWDA, or which could have been pled in the operative FAC in the action based on the
17 factual allegations therein, that arose during the PAGA Period. *See Robinson v. Southern Counties*
18 *Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt-out mechanism for
19 PAGA claims and “nonparty employees as well as the government are bound by the judgment in
20 an action brought under [PAGA].”); *see also* Moen Decl., Exhibit 3 (Plaintiff’s PAGA Notice
21 Letter and submission, and LWDA Confirmation of Receipt).

22 Prior to reaching this proposed Settlement, Defendant provided Plaintiff with the payroll
23 and timekeeping records for all Settlement Class members for the duration of the relevant time
24 period, as well as policy documents and key data points. Plaintiff then retained an expert with a
25 Ph.D. in economics to analyze the data and create a class-wide exposure model for the claims at
26

27 ² Defined as “all persons who were employed by Defendant in California and were classified as non-
28 exempt at any time from one year prior to the date of Plaintiff’s PAGA notice letter to the LWDA, through
the close of the Class Period”. *See* Settlement, ¶ 2(B).

1 issue. On May 18, 2023, after extensive legal research and analysis, along with Plaintiff's and his
2 expert's comprehensive review of the data, the Parties participated in a mediation session with
3 Phillip Cha, Esq. At the conclusion of mediation, Mr. Cha made a mediator's proposal for a class-
4 wide resolution of all claims at issue that the Parties ultimately accepted. Over the following
5 months, the Parties negotiated and executed the long-form Settlement Agreement that is now
6 before this Court for preliminary approval.

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

11 **II. SUMMARY OF THE LITIGATION**

12 **A. Factual And Procedural Background**

13 Defendant operates a manufacturing company that produces metal parts and tools for
14 several industries, including the dental and airline industries. Moen Decl., ¶ 9. Plaintiff was
15 employed by Defendant (or its predecessor entities, including KPTI) as a non-exempt employee
16 from approximately 1996 to July 2021 in Costa Mesa, California. *Id.*; Declaration of Rafael
17 Perez ("Perez Decl."), ¶ 2. Plaintiff's primary job duties consisted of operating a "Cincinnati
18 Machine," which consists of heavy machinery that cuts metal material used to produce
19 mechanical parts and tools. *Id.* Like all Settlement Class members, Plaintiff was subject to
20 Defendant's wage and hour policies and practices. Moen Decl., ¶ 9; Perez Decl., ¶¶ 3-5.

21 On December 29, 2022, Plaintiff filed a class action complaint alleging Defendant failed
22 to: (i) pay all overtime wages owed; (ii) pay all minimum wages owed; (iii) provide all lawful
23 meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse all necessary
24 business expenses; (vi) timely pay all final wages upon separation; and (vii) comply with
25 California's Unfair Competition laws. Moen Decl., ¶ 10. As a material term of the Settlement,
26 Plaintiff sent a letter to the LWDA on June 16, 2023, alerting them of Defendant's alleged Labor
27 Code violations and Plaintiff's intent to seek civil penalties under PAGA. *Id.* On September 13,
28 2023, after exhausting his administrative remedies with the LWDA, Plaintiff filed the operative
FAC to include an eighth cause of action for Defendant's failure to issue accurate and itemized

1 wage statements and a ninth cause of action for civil penalties under PAGA, premised on the
2 same underlying Labor Code violations. *Id.*

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

4 **1. Unlawful Time Rounding Violations**

5 Plaintiff asserts that, throughout the putative class period, Defendant maintained an
6 unlawful rounding practice that resulted in Defendant systematically underpaying Plaintiff and
7 Settlement Class members all earned wages. Moen Decl., ¶ 11; *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)). Specifically, Plaintiff claims
11 Defendant records Plaintiff's and Settlement Class members' clock in and clock out timeclock
12 punches to the minute, but rounds Plaintiff's and Settlement Class members' timekeeping entries
13 in an uneven manner to the employees' detriment, resulting in unpaid minimum and overtime
14 wages. Moen Decl., ¶ 11; *see* Labor Code §§ 510(a), 1197, and 1182.12.

15 In response, Defendant contends that its timekeeping practices are lawful, that employees
16 are paid for all time actually worked in accordance with company policies, and that its
17 timekeeping practice is neutral and operates in an even-handed way, which Defendant asserts is
18 lawful under the court's ruling in *See's Candy Shops, Inc. v. Superior Court* (2012) 210
19 Cal.App.4th 889. Moen Decl., ¶ 12; *see also AHMC Healthcare, Inc. v. Superior Ct.* (2018) 24
20 Cal.App.5th 1014, 1027-29 (finding employer's time-rounding policy lawful where it was neutral
21 “on its face” and “in practice”). Moreover, Defendant contends that Plaintiff could not certify this
22 claim, as it would require individualized inquiries into each employee on a pay period by pay
23 period basis as to what time an individual actually worked, notwithstanding early or late time
24 punches (e.g., whether the employee actually started working after their first punch of the day or
25 instead went to the break room for coffee, socialized with coworkers, or otherwise did not work,
26 particularly because some employees were unable to begin working at the shift changeover until
27 the prior shift was complete), whether the employee was overpaid or underpaid based on
28 Defendant's timekeeping practice, and whether Defendant knew that the employee had worked
more time than he or she was paid, resulting in an unmanageable series of mini-trials. Moen Decl.,

¶ 12. Finally, because *Camp v. Home Depot U.S.A., Inc.* has been granted review by the California Supreme Court, Defendant asserted that the decision is only persuasive, not binding authority. *Id.* Plaintiff faces the risk that the *Camp* holding could be reversed, rendering Plaintiff’s reliance on *Camp* misplaced, and Defendant claims that under *See’s Candy Shops, Inc. v. Superior Court*, its rounding practice will be found neutral and lawful. *Id.*

2. Regular Rate Miscalculation Violations

Plaintiff alleges that Defendant paid Plaintiff and Settlement Class members non-discretionary annual bonuses as an incentive for employees to work efficiently. Moen Decl., ¶ 13. However, Plaintiff asserts that Defendant failed to include the value of these bonuses when calculating employees’ respective regular rates of pay. *Id.* As a result, Plaintiff alleges that Defendant thereby failed to accurately pay Plaintiff and other non-exempt employees all sick pay and meal and rest period premium wages owed. *Id.*; see *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.”); 29 U.S.C. §§ 207(a)(1) and (e); 29 C.F.R. §778.211(c) (“Bonuses which are announced to employees to induce them to work more steadily or more rapidly ... are regarded as part of the regular rate of pay. Most attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work ... must be included in the regular rate of pay.”); Labor Code § 246(l)(1) (“Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay...”).

In response, Defendant argues any payments made under its “Bonus Plan” were purely discretionary, as supported by its policy, and therefore are properly excluded from the regular rate of pay. See e.g., *Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184, 1190 (E.D. Cal. 2017); Moen Decl., ¶ 14. As such, Defendant contends that Plaintiff’s claim will fail on the merits. *Id.* Further, Defendant asserts that this claim is unmanageable, as it requires individualized inquiries into whether each bonus made by Defendant was discretionary or non-discretionary and into exactly how much money each employee was purportedly owed as a result of Defendant’s alleged regular rate violation, resulting in an unmanageable series of mini-trials. *Id.*

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In response, Defendant maintains it accurately recorded all time worked by its non-exempt employees and has properly paid all wages owed for all hours worked. Moen Decl., ¶ 16. Defendant argues it did not permit Plaintiff and other non-exempt employees to conduct off-the-clock work and asserts that Plaintiff is unable to provide any class-wide evidence of such an off-the-clock policy/practice. *Id.*; see *Hernandez v. Pac. Bell Tel. Co.* (2018) 29 Cal.App.5th 131, 137. In fact, Defendant alleges it maintained a written policy requiring Plaintiff and other non-exempt employees to record all time they spent undergoing COVID-19 related temperature checks so that they would be paid for all such time. Moen Decl., ¶ 16. Further, Defendant asserts that this claim fails on its face because the government, not Defendant, forced employees to incur this extra time, and in any event, such a claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee underwent a COVID-19 related temperature check while off-the-clock on any given day, which is made increasingly difficult since off-the-clock time is inherently not recorded, and exactly how much time each employee purportedly worked off-the-clock each day, resulting in an unmanageable series of mini-trials. *Id.*

Plaintiff further asserts that Defendant failed to provide the Settlement Class members with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled. Moen Decl., ¶ 17; *see* Labor Code § 512(a); *see also Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1041 (“We conclude that, absent waiver, section 512 requires a first meal period no later than the

1 end of an employee’s fifth hour of work...”); *Benton v. Telecom Network Specialists, Inc.* (2013)
2 220 Cal.App.4th 701, 728-29 (“[The wage order] imposes an affirmative obligation on every
3 employer to authorize and provide legally required meal and rest breaks; if it fails to do so, it has
4 violated the law and is liable.”). Specifically, Plaintiff claims Defendant required Settlement Class
5 members to clock out prior to the conclusion of their fifth hour of work but to continue working
6 on certain, lengthy work projects so that their time records fraudulently appeared to contain a
7 timely meal period when none was actually provided. Moen Decl., ¶ 17. Plaintiff also asserts that
8 Defendant failed to provide all second, duty-free, uninterrupted 30-minute meal periods
9 commencing before the end of the tenth hour of work on days in which the Settlement Class
10 members worked more than 10.0 hours. *Id.* Further, Plaintiff asserts Defendant failed to pay all
11 meal period premiums owed during the relevant time period, which is itself a certifiable issue.
12 *See, e.g., Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (certifying UCL
13 claim based on employer’s failure to pay premium wages under Labor Code section 226.7).

14 In response, Defendant contends it maintained lawful meal period policies/practices
15 throughout the Class Period. Moen Decl., ¶ 18. Specifically, Defendant argues that under *Brinker*,
16 they are only required to “provide” the opportunity to take meal periods, not “ensure” meal
17 periods are timely taken, which Defendant contends it has always done. *Id.*; *see Brinker, supra*,
18 53 Cal.4th at 1038 (rejecting “ensure” standard). Therefore, Defendant asserts that if Settlement
19 Class members did not take timely or duty-free first or second meal periods, this was solely the
20 result of employee choice and not reflective of Defendant’s policies and practices. Moen Decl., ¶
21 18. Defendant contends that Plaintiff’s meal period claim is not suited for class certification as
22 individual inquiries would be required to assess whether an employee chose to not take an
23 otherwise provided meal period, whether was an employee ever validly waived a meal period,
24 and whether a premium was paid on each shift in which a meal period was truly not provided,
25 resulting in an unmanageable series of mini-trials. *Id.*

26 **5. Rest Period Violations**

27 Plaintiff further alleges that Defendant failed to authorize and permit the Settlement Class
28 members to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 19; *see Labor*

Code § 516. As with meal periods, Plaintiff asserts that he and the Settlement Class members regularly worked through their scheduled rest periods, as work demands forced them to remain with their work equipment at all times. Moen Decl., ¶ 19; *see Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.”). Plaintiff also alleges that Defendant failed to pay rest period premiums for each rest period violation at the Settlement Class members’ regular rate of pay. Moen Decl., ¶ 19; Labor Code § 226.7; *Safeway, supra*, 238 Cal.App.4th at 1159.

Defendant maintains it authorized and permitted the Settlement Class members to take all lawful rest periods to which they are entitled. Moen Decl., ¶ 20. To support this position, Defendant produced a facially lawful written rest period policy that Defendant contends was disseminated to all putative Settlement Class members and enforced at all times throughout the putative class period. *Id.* Further, Defendant asserts that this claim is unmanageable and not suited for class certification, as it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days, which Defendant argues Plaintiff will be unable to substantiate with any common, documentary evidence, as rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials. *Id.*

6. Failure to Reimburse Violations

Plaintiff further alleges that Defendant failed to reimburse the Settlement Class members for all necessary business expenses incurred, in violation of Labor Code § 2802. Moen Decl., ¶ 21; *see* Labor Code § 2802. Specifically, Plaintiff asserts that Defendant required Plaintiff and other non-exempt employees to purchase and use their own tools for work-related purposes but did not reimburse Plaintiff and other non-exempt employees for their expenses. *Id.*

In response, Defendant argues it maintained a policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, it was the result of Defendant’s employees failing to submit expense reimbursement requests. Moen Decl., ¶ 22; *Zayers v. Kiewit Infrastructure W. Co.*, 2017 WL 7058141, at *6 (C.D. Cal. Nov. 9, 2017). Further, Defendant argues that Plaintiff’s claim will fail on its merits, as Defendant

provided the Settlement Class members with all tools they needed to perform their job duties, and therefore putative Settlement Class members never needed to purchase tools of their own. Moen Decl., ¶ 22. Defendant also maintains that this claim is not suited for class certification, as it would require a series of mini-trials to determine which employees incurred expenses, if any, whether those expenses were reasonable and necessary, and why the employee had not previously submitted an expense reimbursement request. *Id.*; see *Ruiz v. Affinity Logistics*, 2009 WL 648973, at *7 (S.D. Cal. 2009).

7. Wage Statement, Waiting Time, and PAGA Penalties

As a result of Defendant’s alleged failure to pay all overtime wages, minimum wages, meal period and rest period premiums, and sick pay wages, Plaintiff asserts that Defendant also failed to issue accurate and itemized wage statements and failed to timely pay all final wages at the time of separation. Moen Decl., ¶ 23; see also Labor Code §§ 203(a) and 226(a). As a result of these alleged Labor Code violations, Plaintiff also seeks PAGA civil penalties on behalf of all aggrieved employees. Moen Decl., ¶ 23; see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 (“As we have explained, they [civil penalties under PAGA] are mandatory, not discretionary.”).

In response, Defendant argues that Plaintiff’s underlying claims will fail and, as a result, the derivative wage statement, waiting time, and PAGA claims will also fail. Moen Decl., ¶ 24; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains that Plaintiff cannot show that the wage statement violations were “knowing and intentional,” or that the putative class members “suffer[ed] injury” as a result of the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement penalties. Moen Decl., ¶ 24; see Labor Code § 226(e)(1). Moreover, Defendant maintains that its good faith defenses to Plaintiff’s underlying claims would preclude the recovery of waiting time penalties, which are only available for the “willful” failure to pay wages, and that this Court would exercise its discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 24; 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.”); Labor Code § 2699(e)(2); *Naranjo v. Spectrum Sec. Servs., Inc.*, 88 Cal.App.5th 937 (2023); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of exposure). Defendant also contends that Plaintiff’s PAGA claim is not manageable the for the same reasons that each of the direct claims is not certifiable. Moen Decl., ¶ 24.

C. Discovery And Mediation

In connection with mediation, Defendant provided Plaintiff with electronic timekeeping and payroll records for all the Settlement Class members spanning the entire Class Period, as well as key policy documents and data points. Moen Decl., ¶ 25. Plaintiff then retained an expert with a Ph.D. in economics to analyze the produced data and create a class-wide exposure model for the claims at issue. *Id.* On May 18, 2023, the Parties participated in a mediation session with Phillip Cha, Esq., during which 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.* At the conclusion of mediation, Mr. Cha made a mediator’s proposal that the Parties ultimately accepted. *Id.* Over the following months, the Parties finalized the terms of the proposed Settlement now before the Court for preliminary approval. *Id.*

III. THE PROPOSED SETTLEMENT

A. Essential Terms Of The Settlement

If the Court preliminarily approves this settlement, Defendant will pay a Maximum Settlement Amount (“MSA”) of \$196,500.00. Moen Decl., ¶ 27; Settlement, ¶ 3. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Awards unless they affirmatively opt-out. Settlement, ¶¶ 3.C; 4. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$196,500.00
Minus Court-approved attorneys’ fees (1/3):	\$65,500.00
Minus Court-approved attorneys’ costs (up to):	\$30,000.00
Minus Court-approved Enhancement Payment:	\$5,000.00
Minus settlement administrator costs (up to):	\$7,500.00
Minus PAGA Payment to the LWDA:	\$7,500.00
Net Settlement Amount:	\$81,000.00

1 **1. The Settlement Provides for Reasonable Monetary Payments**

2 After deducting amounts for Court-approved attorneys' fees and costs, Plaintiff's Class
3 Representative Enhancement Payment, settlement administration costs, and the LWDA's share
4 of PAGA penalties, the Settlement provides for an estimated NSA of no less than \$81,000.00. *See*
5 Settlement, ¶¶ 3.C, 4.A. Individual Settlement Payments will be calculated based on the
6 proportionate number of workweeks worked by each participating Settlement Class members
7 during the Class Period divided by the total number of workweeks worked by all participating
8 Settlement Class members, as well as membership in various subclasses. *Id.*, ¶¶ 4.B.i-iv. Further,
9 25% of the PAGA Payment will be paid to all PAGA Aggrieved Employees, regardless of their
10 election to opt-out from participating in the Settlement, based on the proportionate number of
11 workweeks worked by the PAGA Aggrieved Employees during the PAGA Period, divided by the
12 total number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.
13 *Id.*, ¶ 4.B.i.

14 According to Defendant's records, there are approximately 84 putative Settlement Class
15 members and approximately 37 PAGA Aggrieved Employees subject to the Settlement.
16 Settlement, ¶ 3.F. Based on the estimated NSA, average Individual Settlement Payments are
17 projected to be approximately \$964.29, with the lowest possible estimated Individual Settlement
18 Payment of \$7.31 (in the event a Settlement Class member worked only one workweek during
19 the Class Period) and the highest possible estimated Individual Settlement Payment of \$1,769.13
20 (in the event a Settlement Class member performed worked in every workweek throughout the
21 Class Period). Moen Decl., ¶ 28. Settlement Class members will have 45 calendar days from the
22 date of the initial mailing of the Notice Packet to opt-out or object to the Settlement, thereby
23 providing ample time to review the Class Notice without unduly delaying the Settlement. *See*
24 Settlement, ¶¶ 10.D-E. Settlement Class members who do not opt-out of the Settlement will be
25 bound by its terms and will release all claims against Defendant as detailed in the Settlement. *Id.*,
26 ¶¶ 2.A, 10.D. Finally, should the Court ultimately grant final settlement approval, a notice of the
27 Court's Final Judgment and Order will be posted on the Settlement Administrator's website for
28

1 the Settlement Class members and PAGA Aggrieved Employees, in compliance with CRC Rule
2 3.771(b). *See id.*, ¶ 10.H.

3 **2. Attorneys' Fees, Costs, and Plaintiff's Class Representative**
4 **Enhancement Payment**

5 At the time of seeking final settlement approval, Plaintiff will apply for a Class
6 Representative Enhancement Payment in the amount of \$5,000 for his service to the Settlement
7 Class and his general release of all claims. Moen Decl., ¶ 29; *see* Settlement ¶¶ 2.D, 3.C.3, 6.
8 Plaintiff's requested class representative Enhancement Payment is intended to recognize the
9 significant time and effort that he expended on behalf of the Settlement Class, including searching
10 for relevant documents for use in the lawsuit and providing factual information to his attorneys,
11 holding various phone calls with his attorneys to discuss the claims in the lawsuit and Defendant's
12 practices, assisting his attorneys in preparing for mediation, reviewing and providing input
13 regarding the Settlement in his case, and otherwise assisting his attorneys in moving the case
14 towards resolution, the significant risks Plaintiff undertook by serving as the named plaintiff, and
15 the fact that he agreed to a general release of all claims subject to a waiver of Civil Code § 1542.
16 Moen Decl., ¶ 29; Perez Decl., ¶¶ 6-7; Settlement, ¶ 2.D.

17 Class Counsel will also apply for an attorneys' fee award of up to one third of the MSA
18 (currently estimated at \$65,500), and up to \$30,000 in reimbursement for actual litigation costs.
19 Moen Decl., ¶ 30; *see* Settlement, ¶ 3.C.4. Plaintiff submits that the requested fee is fair
20 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
21 purely contingent fee basis. Moen Decl., ¶ 30. Class Counsel has incurred substantial attorneys'
22 fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research
23 and analysis, reviewing class documents and data produced by Defendant, extensively reviewing
24 and evaluating the produced timekeeping and payroll records with the assistance of a retained
25 expert to build a comprehensive damages model, preparing for and attending mediation,
26 negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement,
27 and Notice Packet documents, preparing this motion for preliminary approval, and otherwise
28 litigating the case. *Id.* Class Counsel will also expend future attorney time attending the hearing
on this Motion, overseeing the Notice process, drafting the Final Approval Motion and supporting

documents, attending the Final Approval hearing, and completing other tasks, such as fielding questions from Settlement Class members. *Id.*

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

3. Scope of Release

Participating Class Members who do not submit a valid and timely Request for Exclusion shall release the following against the Released Parties, as defined in the Settlement: all applicable California wage and hour claims, rights, demands, liabilities, and causes of action, arising from the claims pled in the Action or that could have been asserted based on the facts alleged in the Action against Defendant, including, but not limited to, claims for: failure to timely pay all wages at termination (California Labor Code §§ 201, 202, 203); failure to timely pay all minimum and overtime wages (California Labor Code §§ 204, 510, 558, 1182.12, 1194, 1194.1, 1194.2, 1197); meal and rest period violations, including with respect to the rate at which premiums are paid (California Labor Code §§ 226.7, 512, 516, 558, and applicable sections of the relevant Order of the Industrial Welfare Commission); failure to provide for or properly pay sick time (California Labor Code §§ 233, 246, 248, 248.5); failure to reimburse all necessary business expenses (California Labor Code §§ 2802, 2804); violation of the IWC California Wage Orders; failure to provide accurate wage statements in violation of California Labor Code § 226; failure to maintain records in violation of California Labor Code § 1174; violations of the PAGA, Labor Code § 2698 *et seq.* based on the foregoing claims or based on failure to timely pay wages during employment (California Labor Code § 210); unfair competition in violation of California Business and

1 Professions Code section 17200 *et seq.*; and any damages, penalties, restitution, disgorgement,
2 interest, costs, or attorneys' fees as a result thereof ("Released Claims").

3 All PAGA Aggrieved Employees (as defined in the Settlement) shall be deemed to have
4 released and discharged Defendant from all PAGA claims that are based on the Labor Code
5 violations pled in the FAC in the Action or Plaintiff's letter to the LWDA, or which could have
6 been pled in the FAC in the Action based on the factual allegations therein, that arose during the
7 PAGA Period.

8 **IV. ARGUMENT**

9 **A. Preliminary Approval Is Warranted**

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

23 **1. Standard for Preliminary Approval**

24 The Court should consider the following factors when making a fairness determination:
25 "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
26 litigation, the risk of maintaining class action status through trial, the amount offered in
27 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
28 experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

1 “[T]he court is free to engage in a balancing and weighing of factors depending on the
2 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the
3 proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

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

5 Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member data
6 spanning the entire Class Period and all relevant policy documents, and created a comprehensive
7 damages model for Defendant’s liability. Moen Decl., ¶ 31. Although Plaintiff steadfastly
8 maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks
9 and uncertainty in proceeding with class certification and trial. As explained in detail in Section
10 II.B., *supra*, Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and
11 with respect to class certification. Although he was prepared to litigate these claims through class
12 certification and ultimately through trial, it was far from certain that Plaintiff would be able to
13 recover a greater amount should this matter proceed through trial. Thus, this factor supports
14 preliminary approval.

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

16 Although the Parties engaged in substantial informal discovery and information exchange
17 prior to mediation, the Parties had agreed to refrain from engaging in formal written and
18 deposition discovery until after exhausting their settlement efforts at mediation. Moen Decl., ¶
19 32. Absent settlement, the Parties will be required to expend substantial time and resources
20 conducting extensive formal written and deposition discovery. *Id.* Moreover, Plaintiff has not yet
21 filed for class certification, and thus, absent settlement, the Parties would face the prospect of
22 appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment
23 ruling. *Id.* Even if Plaintiff succeeded in certifying one or more classes, the Parties would incur
24 considerably more attorneys’ fees and costs through a possible decertification motion, trial, and
25 possible appeal. *Id.* This Settlement avoids these considerable costs, risks, and the accompanying
26 burden of continued litigation on the Court. Thus, this factor supports preliminary approval.

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

28 At the time of the proposed Settlement, Plaintiff had not filed his motion for class
certification. Moen Decl., ¶ 33. Had the Court certified any claims, Plaintiff anticipated that

1 Defendant would seek decertification. *Id.* There was also a risk that Defendant would engage in
2 a *Pick-up-Stix* campaign that could either affect Plaintiff's ability to maintain the numerosity
3 required to proceed as a class action, or significantly reduce the size of the putative class for a
4 fraction of what Settlement Class members are receiving through this Settlement. *Id.*; see
5 *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement,
6 there was a serious risk that Plaintiff would be unable to move forward on a class-wide basis. *Id.*
7 Thus, this factor supports preliminary approval.

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

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

12 **Unlawful Time Rounding Violations: \$27,314**

13 Plaintiff's expert's data analysis of Defendant's timekeeping and payroll data revealed
14 that Defendant's rounding practice resulted in the Settlement Class members were underpaid for
15 an aggregate of 3,112.6 recorded hours of work during the putative class period. Moen Decl., ¶
16 34. Therefore, Plaintiff calculated Defendant's maximum potential exposure on this claim at
17 \$64,648 (3,112.6 unpaid hours * \$20.77 approximate average rate of pay). *Id.*

18 Defendant argues that it paid employees for all hours actually worked of which it had
19 knowledge and that its timekeeping practice was neutral, both on its face and in practice, and that
20 such a policy is lawful under *See's Candy*. Moen Decl., ¶ 35. Moreover, because *Camp v. Home*
21 *Depot* has been granted review by the California Supreme Court, there is tangible risk that *Camp*
22 will be overturned, rendering Plaintiff's damages analysis substantially overstated. *Id.* Plaintiff
23 therefore discounted the maximum potential exposure by 35% for the risk of non-certification
24 and 35% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of
25 \$27,314. *Id.*

26 **Off-the-Clock Violations: \$2,586**

27 Plaintiff's data analysis determined that Settlement Class members worked an aggregate
28 total of 12,935 shifts during the relevant portion of the Class Period in which Defendant

1 implemented its COVID-19 temperature check policy. Moen Decl., ¶ 36. Plaintiff estimates that
2 Settlement Class members were required to spend approximately 3 minutes per workday
3 undergoing COVID-19 related temperature checks before being able to clock in for their
4 scheduled shifts. *Id.* Accordingly, Plaintiff calculated Defendant's maximum potential exposure
5 for off-the-clock wage violations at approximately \$13,433 (12,935 shifts * 3 minutes per shift *
6 \$20.77 approximate average rate of pay). *Id.*

7 Defendant, however, maintains that it has properly recorded and paid Settlement Class
8 members for all time worked during the Class Period, and argue that its written policies mandate
9 that Plaintiff and other non-exempt employees undergo COVID-19 related temperature checks
10 after clocking-in for their shifts. Moen Decl., ¶ 37. Defendant also asserts that any time spent on
11 temperature checks was about 15 seconds per instance, not 3 minutes. *Id.* Further, Defendant
12 asserts that it is not obligated to pay for this time as all, as the temperature screening was done
13 pursuant to a government mandate. *Id.* Defendant also asserts this claim is unmanageable, as it
14 requires individualized inquiries into whether or not each individual employee was off-the-clock
15 during the temperature checks each day, resulting in an unmanageable series of mini-trials. *Id.*
16 Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and by an
17 additional 45% for risk of losing on the merits, to arrive at an estimated exposure of \$2,586. *Id.*

18 **Meal Period Violations: \$35,814**

19 Plaintiff's data analysis determined that Settlement Class members worked an aggregate
20 total of 5,968 shifts in excess of 5.0 hours during the Class Period that contained a facially
21 unlawful first or second meal period, whether by being missed, late and/or short, for which no
22 meal period premiums were paid. Moen Decl., ¶ 38. Plaintiff's data analysis further revealed that
23 non-exempt employees received a total of 107 meal period premium payments during the Class
24 Period, which Plaintiff asserts were underpaid due to Defendant's failure to incorporate the value
25 of non-discretionary incentive pay when calculating the employees' regular rates of pay. *Id.*
26 Accordingly, Plaintiff calculated Defendant's liability on this claim at \$118,392 ((5,698 meal
27 period violations * \$20.77 approximate average premium) + \$44.94 regular rate miscalculation).
28 *Id.*

1 Defendant asserts, however, that it maintained a lawful meal period policy/practice at all
2 times during the Class Period and that any failure by an employee to take a lawful meal period
3 was the result of employee choice rather than company policy, requiring individual inquiries into
4 the reasons why each non-compliant meal period was untimely or missed on any given day. Moen
5 Decl., ¶ 39. Defendant further asserts that all bonus payments made to putative class members
6 were purely discretionary in nature, and therefore were properly excluded from Defendant's
7 regular rate calculations. *Id.* Given these defenses, Plaintiff discounted the maximum exposure
8 by 45% for the risk of non-certification, and by an additional 45% for risk of losing on the merits,
9 to arrive at an estimated exposure of \$35,814. *Id.*

10 **Rest Period Violations: \$37,591**

11 Plaintiff's data analysis revealed that non-exempt employees worked an aggregate total
12 of 52,609 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 40. Plaintiff
13 estimates a rest period violation occurred on approximately 10% of work shifts in excess of 3.5
14 hours. *Id.* Accordingly, Plaintiff calculated Defendant's maximum potential exposure on this
15 claim at \$195,279 (9,402 rest period violations * \$20.77 approximate average premium). *Id.*

16 But as noted above, Defendant argues it has always authorized and permitted duty-free
17 rest periods in accordance with California law. Moen Decl., ¶ 41. Further, Defendant asserts that
18 this claim is not amenable to class certification given the individual inquiries required to
19 determine whether and why each employee missed a rest period on any given shift, particularly
20 given that rest periods were not recorded. *Id.* Given these defenses, Plaintiff discounted the
21 maximum exposure by 65% for the risk of non-certification, and by an additional 45% for risk of
22 losing on the merits, to arrive at an estimated exposure of \$37,591. *Id.*

23 **Failure to Reimburse Violations: \$2,772**

24 Plaintiff estimates that he and the putative class members spent approximately \$100 each
25 to purchase tools for work purposes. Moen Decl., ¶ 42. Therefore, Plaintiff calculated Defendant's
26 maximum potential exposure on this claim at \$8,400 (\$100 in expenses * 84 non-exempt
27 employees). *Id.*

1 Defendant maintains that, at all relevant times, it never required its employees to purchase
2 tools. Moen Decl., ¶ 43. Further, any failure to reimburse was the result of an employee failing to
3 submit an expense reimbursement request. *Id.* As such, Defendant contends this claim is not
4 certifiable since it would require a series of mini-trials to determine which employees incurred
5 expenses, whether those expenses were reasonable and necessary, and whether Defendant knew
6 about the expense, including why the employee had not previously submitted an expense
7 reimbursement request. *Id.* Therefore, Plaintiff discounted the maximum potential exposure by
8 45% for the risk of non-certification and 40% for the risk of being unsuccessful on the merits, to
9 arrive at an estimated exposure of \$2,772. *Id.*

10 **Wage Statement Penalties: \$51,355**

11 According to the key data points provided by Defendant, approximately 37 Settlement
12 Class members are eligible for wage statement penalties, and a total of 1,455 wage statements
13 were issued during the relevant period. Moen Decl., ¶ 44. Plaintiff calculated Defendant's
14 maximum possible wage statement exposure as approximately \$143,650 ((37 initial violations *
15 \$50 per pay period) + (1,418 subsequent pay periods * \$100 per pay period)). *Id.* However,
16 Defendant raised numerous defenses, including that the alleged violations, if any, were not
17 "knowing and intentional," and that Plaintiff could not show that the Settlement Class members
18 "suffer[ed] injury" as a result of any alleged violations. *Id.* Defendant further argued that
19 Plaintiff's underlying claims would fail, and, therefore, his wholly derivative wage statement
20 claim would also fail. *Id.* Therefore, Plaintiff discounted the maximum exposure by 35% for the
21 risk of non-certification of the underlying claims and 45% for a risk of being unsuccessful on the
22 merits, including failing to prove the violations were "knowing and intentional," that the
23 Settlement Class members "suffer[ed] injury," for an estimated recovery of \$51,355. *Id.*

24 **Waiting Time Penalties: \$77,763**

25 Based on data provided by Defendant, approximately 48 Settlement Class members
26 separated their employment during the relevant period applicable to this claim. Moen Decl., ¶ 45.
27 As a result of Defendant's allegedly unlawful rounding practice, Plaintiff asserts that each of these
28 employees was owed wages that were not paid at the time of their separation. *Id.* Plaintiff

1 therefore calculated Defendant's maximum exposure of \$239,270 (48 former employees *
2 average waiting time penalty of \$4,984.80 (\$20.77 approximate average hourly rate * 8 hours *
3 30 days)). *Id.* Defendant maintains that waiting time penalties are not appropriate because
4 Plaintiff's claims fail on the merits, and given their good-faith defenses, Plaintiff cannot show
5 that any failure by Defendant to pay all final wages was willful either on a class/representative
6 basis or individually under 8 Cal. Code Regs. § 13520 and case law. *Id.*; *see Hill v. Walmart Inc.*,
7 32 F.4th 811 (9th Cir. 2022); *Naranjo, supra*, 88 Cal.App.5th 937. Plaintiff discounted this claim
8 by 35% for the risk of non-certification and by an additional 50% for risk of being unsuccessful
9 on the merits or failing to establish willfulness, for an estimated recovery of \$77,763. *Id.*

10 **PAGA Penalties: \$8,210**

11 Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in
12 which he could prove an underlying Labor Code violation. Moen Decl., ¶ 46. According to
13 Plaintiff's data analysis, the Settlement Class members worked a combined total of 821 pay
14 periods during the PAGA liability period in which at least one of Plaintiff's alleged Labor Code
15 violations occurred. *Id.* Plaintiff therefore calculates Defendant's maximum PAGA exposure at
16 \$82,100 (821 pay periods * \$100 per violation). *Id.*; *see also Amaral, supra*, 163 Cal.App.4th at
17 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor
18 Code provision). However, these penalties are exclusively derivative of the underlying violations
19 that Defendant vigorously disputes, both as to certification and the merits. Moen Decl., ¶ 46; *see*
20 *also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D. Cal. 2013) (explaining
21 that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiff
22 also recognizes that the Court has discretion to substantially reduce any award of PAGA penalties.
23 Moen Decl., ¶ 46; *see also* Labor Code § 2699(e)(2); *Thurman, supra*, 203 Cal.App.4th at 1135;
24 *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D.
25 Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore,
26 Plaintiff discounted the maximum figure by 90% for risk of the Court reducing penalties, to arrive
27 at an estimated exposure of \$8,210. Moen Decl., ¶ 46.

28 Using these estimated figures, Plaintiff estimated that the potential reasonable recovery

1 for the Settlement Class would be approximately \$243,404. Moen Decl., ¶ 47. Thus, the proposed
2 recovery to the Settlement Class of \$196,500 represents approximately 80.73% of Plaintiff's
3 reasonably forecasted class-wide recovery, which is well within the range approved by courts as
4 being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding
5 towards class certification and trial. *Id.*; see, e.g., *Altamirano v. Shaw Industries, Inc.*, 2015 WL
6 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the hypothetical
7 maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant
8 preliminary approval..."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
9 settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska*
10 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only
11 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
12 settlement is grossly inadequate and should be disapproved.") (internal quotations omitted). This
13 result is particularly beneficial to the entire class given that Defendant had a viable option of
14 pursuing a *Pick-Up-Stix* approach to defeat numerosity and other requirements, which could have
15 left some class members without any recovery at all. Moen Decl., ¶ 47. Preliminary approval is
16 appropriate since the Settlement will provide tangible monetary relief to the Settlement Class
17 members without the uncertainty, delay, and additional expense of further litigation.

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

19 "Parties represented by competent counsel are better positioned than courts to produce a
20 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
21 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented
22 by competent and experienced counsel who possesses extensive experience litigating wage and
23 hour class actions from both the plaintiff and defense side, and who have been appointed as class
24 counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K.
25 Haines ("Haines Decl."), ¶¶ 2-9; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-7;
26 and Declaration of Susan J. Perez ("S. Perez Decl."), ¶¶ 2-7. Class Counsel conducted an
27 extensive review and analysis of Defendant's produced timekeeping and payroll records and drew
28 on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's

case. Moen Decl., ¶¶ 25, 34-46. It was only after the completion of this work that the Parties attended mediation and ultimately accepted a mediator's proposal for a class-wide settlement of all claims at issue. *Id.* Thus, this factor strongly supports preliminary approval of the Settlement.

2. The Preliminary Approval Standard is Met

At this stage, the Court can grant preliminary approval of the Settlement and direct that the Class 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 a fair and reasonable recovery for the Settlement Class members in light of the significant risks of litigation. The proposed Settlement will provide compensation for contested claims, while only releasing the claims actually at issue in this litigation. Further, the average payment of \$964.29 greatly exceeds the average payments achieved in other wage and hour class action settlements that have been approved.³ Thus, the proposed Settlement is within the range of possible approval such that notice should be provided to the Settlement Class members to 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 as it is the result of the exchange of pertinent information, including all relevant policies, employee timekeeping and payroll records, and key data points which were analyzed by Plaintiff and his counsel; arm's-

³ *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 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately 198.70 . . . [T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90 . . . [T]he Court finds that the results achieved are good").

length negotiations by counsel; mediation before an experienced wage and hour class action mediator who made a mediator's proposal; and additional negotiations until the terms of the long-form Settlement were agreed upon and finalized. Moen Decl., ¶ 25; *see also Kullar, supra*, 168 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

c. The Settlement is Devoid of Obvious Deficiencies

The Settlement will provide tangible monetary relief to the Settlement Class members. Moreover, the amounts proposed for Plaintiff's class representative Enhancement Payment, settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's portion of PAGA civil 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 Settlement Class for Settlement Purposes

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 Plaintiff's counsel will fairly and adequately represent the interests of the absent Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

1. The Proposed Class is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all persons who were employed by Defendant or its predecessor, Kyocera Precision Tool, Inc., in California as a non-exempt employee at any time during the Class Period. *See* Settlement, ¶ 1. Settlement Class members can be easily identified using Defendant's employment and payroll records. Moen Decl., ¶ 28. Defendant represents that the Settlement Class consists of approximately 84 individuals, rendering it impracticable to bring all Settlement Class members before the Court. *Id.* Thus, the proposed Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

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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, like other Settlement Class members, Plaintiff was employed by Defendant as a non-exempt employee in California and was subject to Defendant's allegedly unlawful wage and hour policies/practices during the Class Period. Perez Decl., ¶¶ 2-5. Plaintiff was therefore impacted by the same challenged policies that allegedly injured the Settlement Class as a whole and was subject to the same defenses forwarded by Defendant as to the Settlement Class, and is therefore typical.

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will adequately represent the Settlement Class members as there are no conflicts between the named Plaintiff and the Settlement Class members he seeks to represent, and Plaintiff possesses claims that are in line with those of the Settlement Class members. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the plaintiff's counsel were not qualified and the plaintiff had no interests antagonistic to those of the

class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Moen Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8; Schmidt Decl., ¶¶ 2-6; S. Perez Decl., ¶¶ 2-6.

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

This Court should order distribution of the proposed Class Notice in both English and Spanish to the Settlement Class members by first class mail, postage prepaid, using the last known mailing address information provided by Defendant. 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 and Jacquelin* (1974) 417 U.S. 156, 173. The Parties propose that the settlement be administered by CPT Group, Inc. (“CPT”), an experienced class action settlement administrator. *See* Declaration of Julie Green. Settlement Class members’ addresses will be ascertainable through Defendant’s personnel records, and Defendant will provide all Settlement Class members’ names, last known mailing addresses, phone numbers, social security numbers, and workweek data to CPT within ten (10) business days after of the Court signs an order preliminarily approving the Settlement. *See* Settlement, ¶ 10.A. CPT will run the Settlement Class members’ addresses through the National Change of Address database and/or conduct skip traces to obtain current address information. *Id.*, ¶ 10.B-C.

The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it advises the Settlement Class members’ of the nature of the claims, basic contentions and denials of the Parties, the key terms of the Settlement, the uniform 45-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 Settlement Class members, and advises them that they will be bound by the terms of the Settlement if they do not request exclusion. *See* Moen Decl., Exhibit 2. The proposed Class Notice will also notify the Settlement Class of the Final Approval Hearing date, provide Class Counsel’s contact information, and advise Settlement Class members that they may enter an appearance through counsel if they so wish. *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. Additionally, because the proposed Settlement includes

1 settlement of Plaintiff's representative PAGA claim, notice of the Settlement has been submitted
2 to the LWDA. *See id.*, ¶ 48, Exhibit 4 (LWDA Settlement Submission); Proof of Service.

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

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

7 **V. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
9 approve the proposed Settlement, provisionally certify the Settlement Class for settlement
10 purposes, and enter the [Proposed] Order submitted concurrently herewith.

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12 Dated: September 27, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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14 By:


Matthew K. Moen
Attorneys for Plaintiff