HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
Susan J. Perez (SBN 329044)
sperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, Esq., CA Bar No. 285256
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 920
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, P.C.
Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 920
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiffs

[*Additional Counsel Listed on the Following Page*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STEVE CORDOVA and HUYEN PHUONG LE, on behalf of themselves and all others similarly situated, Plaintiffs, vs. NORMAN INDUSTRIAL MATERIALS, INC., a California Corporation; and DOES 1-50, inclusive. Defendants.	Case No.: 23STCV17785 Related to Case No.: 23STCV19388 [*Assigned for all purposes to the Hon. Kenneth R. Freeman, Dept. SSC-14*] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: May 13, 2025 Time: 10:00 a.m. Dept.: SSC-14 Action Filed: July 27, 2023 Trial Date: None Set

LAW OFFICES OF RAPHAEL A. KATRI, APC
Raphael A. Katri (SBN 221941)
RKatri@socallaborlawyers.com
8549 Wilshire Boulevard, Suite 200
Beverly Hills, CA 90211-3104
Tel.: (310) 940-2034
Fax: (310) 733-5644

Attorneys for Plaintiffs

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 13, 2025, at 10:00 a.m. in Department 14 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Steve Cordova and Huyen Phuong Le ("Plaintiffs"), as individuals and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed Class Action and PAGA Settlement Agreement ("Settlement Agreement") in this lawsuit;
2. Pursuant to California Code of Civil Procedure § 382, and for settlement purposes only, provisional certification of the Settlement Class defined as follows:

> **Settlement Class** – all current and former non-exempt employees who worked for Defendant Norman Industrial Materials, Inc., dba Industrial Metal Supply Company, in California at any time between July 27, 2019 and the date of preliminary approval (the "Class Period").

3. Preliminary appointment of Plaintiffs Steve Cordova and Huyen Phuong Le as Class Representatives;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC, Mehrdad Bokhour of Bokhour Law Group, P.C., and Joshua S. Falakassa of Falakassa Law, P.C., as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award amounts for the Class Representative Service Payments, Settlement Administrator costs, payment to the LWDA for its 75% share of Private Attorneys General Act civil penalties, as well as attorneys' fees and costs to Class Counsel;
6. Appointment of Apex Class Action Administration as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") and entry of the proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class as provided in the Settlement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Matthew K. Moen, Fletcher W. Schmidt, Paul K. Haines, Susan J. Perez, Mehrdad Bokhour, Joshua S. Falakassa, Plaintiff Steve Cordova, Plaintiff Huyen Phuong Le, Sean Hartranft of Apex Class Action Administration, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and authorities necessitates exceeding the 20-page limit set forth in California Rule of Court 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider the entire Motion, which is 24 pages in length.

Dated: April 11, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: Matthew K. Moen
Matthew K. Moen
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Steve Cordova and Huyen Phuong Le ("Plaintiffs") respectfully request that this Court preliminarily approve this proposed Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement"),[1] entered into by Plaintiffs and Defendant Norman Industrial Materials, Inc., dba Industrial Metal Supply Company ("Defendant") (collectively, the "Parties"). Plaintiffs respectfully request that this Court preliminarily approve this non-reversionary, $1,030,000.00 class action settlement on behalf of the following Settlement Class:

> All current and former non-exempt employee who worked for Defendant Norman Industrial Materials, Inc., dba Industrial Metal Supply Company, in California at any time between July 27, 2019 and the date of preliminary approval (the "Class Period").[2]

Based upon the data received from Defendant, there are approximately 902 potential Settlement Class members who worked approximately 70,000 aggregate workweeks during the Class Period. *See* Settlement § 9. This represents a fair and reasonable result for Settlement Class members who will only release those claims that were actually asserted, or which could have been asserted based on the facts and claims alleged in the action that arose during the Class Period. After Court-approved deductions for Class Representative Service Payments, Settlement Administrator costs, the PAGA Penalties to the LWDA and PAGA Aggrieved Employees, and attorneys' fees and costs to Class Counsel, the remaining amount (the "Net Settlement Amount") of no less than approximately $560,876.67 will be distributed to the participating

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[1] The Settlement Agreement (based off of this Court's model agreement) is attached as Exhibit 1 to the Declaration of Matthew K. Moen ("Moen Decl."), filed concurrently herewith, and the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") is attached as Exhibit A to the Settlement Agreement. *See* Moen Decl., ¶ 10, Exhibit 1.

[2] The Settlement also includes a release of PAGA civil penalties on behalf of all current and former non-exempt employees who worked for Defendant in California at any time between July 27, 2022, and the date of preliminary approval (the "PAGA Period"). *See* Settlement § 1.33; 1.36. These individuals are referred to herein as "PAGA Aggrieved Employees." The "Released PAGA Claims" includes all claims for civil penalties under PAGA and/or PAGA causes of action which were alleged in the operative complaint in the action and asserted in Plaintiff Cordova's July 26, 2023 PAGA Notice Letter to the LWDA or Plaintiff Le's August 14, 2023 PAGA Notice Letter to the LWDA, arising during the PAGA Period. *Id.*, § 1.44, 6.3; *see also* Moen Decl., Exhibit 2 (Plaintiffs' LWDA Letters).

Settlement Class members. This results in the highest possible Individual Class Payment of approximately $2,419.78 (in the event a Settlement Class member performed work in every workweek during the Class Period) and average Individual Class Payments of approximately $621.81. Moen Decl., ¶ 11. Further, an additional $12,500.00 will be paid to all approximately 499 PAGA Aggrieved Employees, resulting in additional average Individual PAGA Payments of approximately $25.00, with the highest possible Individual PAGA Payment of approximately $63.72. *Id*. Significantly, Class Members do not need to file a claim form in order to receive their share of the Settlement, and all Class Members who do not opt-out will automatically receive an Individual Settlement Payment. Further, given the tenet that aggrieved employees do not have the ability to opt-out of a representative PAGA claim, all PAGA Aggrieved Employees, regardless of whether they elect to opt out from participating in the class action portion of the Settlement or not, shall receive a portion of the settlement monies designated as the PAGA Penalties payable to the PAGA Aggrieved Employees. *See Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt–out mechanism for PAGA claims and "nonparty employees as well as the government are bound by the judgment in an action brought under [PAGA].").

Prior to reaching this proposed Settlement, Defendant provided Plaintiffs with timekeeping and payroll records for an approximately 15% random and representative sampling of the Class Members spanning the Class Period, as well as relevant data points, policies, handbooks, and bonus plans in effect during the Class Period. Plaintiffs' counsel then retained an expert forensic and financial consultant to analyze these records to construct a comprehensive damages model. After extensive legal research and analysis along with a comprehensive review of the data performed by Plaintiffs and their expert, the Parties participated in a mediation session with Steven G. Mehta, Esq., a respected wage and hour class action mediator, who, although mediation adjourned without the Parties reaching a resolution of this action, continued to assist the Parties in their settlement negotiations in the weeks following mediation. After continued negotiations following mediation, Mr. Mehta made a mediator's proposal for a class-wide resolution of all claims at issue that the Parties ultimately accepted. Over the following months, the Parties finalized and executed the long-form Settlement Agreement that is now before this Court for preliminary approval.

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

II. SUMMARY OF THE LITIGATION

Defendant is a metal service supplier with store locations throughout California. Moen Decl., ¶ 12. Plaintiff Cordova was employed by Defendant as a non-exempt employee from approximately 2021 until approximately April 27, 2023. Declaration of Steve Cordova ("Cordova Decl."), ¶ 5. Plaintiff Le was employed by Defendant as a non-exempt "Senior Credit Representative" from approximately March 2020 until approximately July 2023. Declaration of Huyen Phuong Le ("Le Decl."), ¶ 2. Like all Settlement Class members, Plaintiffs were subject to Defendant's wage and hour policies and practices. *Id.*, ¶¶ 2-5; Cordova Decl., ¶¶ 5-6.

On July 27, 2023, Plaintiff Cordova filed the initial Complaint in this action, alleging Defendant failed to: (i) pay all minimum wages; (ii) pay all overtime wages; (iii) pay all sick pay wages; (iv) provide all lawful meal periods; (v) authorize and permit all lawful rest periods; (vi) issue accurate, itemized wage statements; (vii) timely pay all final wages upon separation of employment; and (viii) comply with California's Unfair Competition law. Moen Decl. ¶ 13.

On August 14, 2023, Plaintiff Le filed a separate class action complaint, Case No. 23STCV19388, alleging Defendant failed to: (i) pay all overtime wages; (ii) pay all minimum wages; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse all necessary business expenditures; (vi) issue accurate, itemized wage statements; (vii) timely pay all final wages upon separation of employment; and (viii) comply with California's Unfair Competition law. Moen Decl., ¶ 14. On October 19, 2023, Plaintiff Le filed her first amended complaint, adding a cause of action for civil penalties under the PAGA. *Id.*

As a material term of the Settlement, the parties have agreed to file a First Amended Complaint ("FAC"), adding Plaintiff Le as a named plaintiff in the Cordova action, and consolidating all causes of action and factual allegations in the Le Action and Plaintiff Le's August 14, 2023 PAGA Notice Letter to the LWDA into this action. Moen Decl., ¶ 15; Settlement, § 2.3. On March 26, 2025, Plaintiff Cordova filed the parties' stipulation for leave to file the FAC in this action, which remains pending the Court's consideration. *Id*. Plaintiffs will file the FAC immediately upon entry of the Court's order granting leave to amend. *Id*.

A. <u>PLAINTIFFS' CLAIMS AND DEFENDANT'S DEFENSES</u>

1. <u>Rest Period Violations</u>

Plaintiffs assert that Defendant failed to authorize and permit 10 minutes "net rest" for the Settlement Class Members, in violation of California law. Moen Decl., ¶ 17; *see also Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98; DLSE Manual § 45.3.3. Further, Plaintiffs allege that Defendant maintains a facially unlawful rest period policy that prohibits non-exempt employees from leaving the work premises during rest periods, in violation of *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."). Moen Decl., ¶ 17; *Brinker Restaurant Corp. v. Superior Court* (2012) 54 Cal.4th 1004*,* 1036 (stating that employees must be "free to leave the premises" during meal periods).

In response, Defendant argues it maintains a lawful rest period policy/practice that authorizes and permits the Settlement Class Members to take all lawful rest periods to which they are entitled. Moen Decl. ¶ 18. Specifically, Defendant asserts that it has always interpreted its rest period policy such that employees receive a full 10 minutes of "net rest" commencing upon reaching the break room, and provided numerous declarations from putative class members attesting that this interpretation was understood among the employees. *Id*. Additionally, Defendant maintains that, in response to the *Augustus* decision, it issued a revised rest period policy prior to the start of the liability period for this action, removing the requirement that employees remain on premises during rest periods. *Id*. As a result, Defendant argues the rest period claim will fail on the merits, and further asserts that this claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee was authorized to take lawful rest periods on each particular shift, for how long the employees were permitted to remain in the breakroom for each rest period, and whether the employee could and/or did leave the premises during each rest period, resulting in an unmanageable series of mini-trials. *Id*. This manageability concern is especially present as rest periods are not recorded. *Id*.

2. <u>Regular Rate Miscalculations</u>

Plaintiffs assert that Defendant paid Class Members non-discretionary incentive pay, including shift premiums, retention bonuses, and safety bonuses, but failed to correctly include the value of the incentive pay when calculating the employees' respective regular rates of pay for purposes of paying overtime wages, meal period premiums, and sick pay. Moen Decl., ¶ 19; *see* Labor Code § 510(a); *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 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.").

Defendant contends that all bonus payments were discretionary and based on various and changing criteria, and therefore are properly excluded from the regular rate of pay. Moen Decl., ¶ 19; *see, e.g., Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184, 1190 (E.D. Cal. 2017). As a result, Defendant asserts that this claim fails on the merits. *Id*. Defendant further 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 overtime due to the bonus. *Id.* Each of these steps would result in an unmanageable series of mini-trials. *Id.*

3. <u>Meal Period Violations</u>

Plaintiffs assert that Defendant failed to provide uninterrupted, 30-minute meal periods commencing before the end of the fifth hour of work. Moen Decl., ¶ 20; *see also* Labor Code § 512(a); *see also Brinker, supra*, 53 Cal.4th at 1041 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour of work…"). Plaintiffs also allege Defendant failed to provide second meal periods on shifts over 10.0 hours.

Moen Decl., ¶ 20. Specifically, Plaintiffs allege that Defendant instructed employees to return to work after exactly 30-minutes for a meal period, which did not account for travel time between the timeclocks and break rooms, resulting in meal periods shorter than 30 minutes of "net rest" in an area suitable for resting separate from the work station. *Id.* Further, on occasions where Defendant did pay a meal period premiums, it paid those premiums at the base rate of pay, resulting in underpaid meal period premium payments. *Id.*; *see also Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 863.

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. Moen Decl., ¶ 21; *see also Brinker, supra,* 54 Cal.4th at 1038 (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Defendant further asserts that it maintains a policy of automatically paying meal period premiums for first meal period violations, and maintains a practice that if a second meal period violation occurs during an employee's employment, Defendant will meet with the employee to determine why a second meal period was missed and reiterate Defendant's lawful meal period policy, then will manually pay meal period premiums for those subsequent missed meal periods. Moen Decl., ¶ 21. Further, as with rest periods, Defendant provided numerous declarations from putative class members attesting that the employees were always provided with lawful meal periods, including at least 30 minutes "net" in the breakroom. *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 stated above, Defendant asserts that any bonus payments were completely discretionary and were therefore properly excluded from the regular rate of pay for purposes of meal period premium payments. *Id*.

4. <u>Off-the-Clock Wage Violations</u>

Plaintiffs assert that Defendant required Plaintiffs and other non-exempt employees to spend approximately 2-5 minutes booting up their computers before being able to clock in at the start of their work shift. Moen Decl., ¶ 22; *see also Cadena v. Customer Connexx LLC*, 51 F.4th 831, 840 (9th Cir. 2022) (holding time spent booting up computers at the beginning of a shift is compensable where a functional computer is “Integral and indispensable” to an employee’s job duties). Similarly, Plaintiffs allege that Defendant required Plaintiffs and other non-exempt employees to don and doff safety equipment prior to and after clocking in and out, respectively, for their work shifts while off-the-clock. Moen Decl., ¶ 22. However, Defendant failed to pay for this pre-shift and post-shift work time, resulting in additional unpaid minimum and overtime wages owed. *Id.*; *see also* Labor Code §§ 1197 and 1182.12.

In response, Defendant maintains its timekeeping policies/practices comply with California law, and that it properly compensates Settlement Class members for all hours worked. Moen Decl., ¶ 23. Further, Defendant asserts that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee was required to boot up their computer or don and doff safety equipment while off-the-clock, and exactly how much time each employee purportedly spent while off-the-clock on any given day, which is difficult as off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id.*

5. <u>Failure to Reimburse</u>

Plaintiffs allege that Defendant failed to reimburse Plaintiffs and the Settlement Class for all necessary business expenses incurred. Moen Decl., ¶ 24; *see also* Labor Code § 2802 (“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”). Specifically, Plaintiffs assert that Defendant required employees to use their personal cell phones to communicate with supervisors during their workday for necessary, work-related, purposes. *Id.* However, Defendant did not reimburse employees for a reasonable portion of their monthly cell phone bills. *Id.*; *see also Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Ca.App.4th 1137, 1144 (“If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.”).

Defendant argues that it maintains a policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, they were not reasonably incurred. Moen Decl., ¶ 25. Defendant further asserts that it provided work phones to employees that they were instructed to use for work purposes, and therefore any use of the Settlement Class members' personal phones was individualized and the result of employee choice, not Defendant's policies. *Id*. Defendant also maintains that this claim would require a series of mini-trials to determine which employees were actually required to use their cell phone for business purposes and in which pay periods such expenses were allegedly incurred. *Id*.

6. <u>Wage Statement, Waiting Time, and PAGA Penalties</u>

As a result of these alleged substantive violations, Plaintiffs contend that Defendant is liable for derivate wage statement violations, waiting time penalties and civil penalties under the PAGA. Moen Decl., ¶ 26. Defendant argues that the alleged wage statement violations were not "knowing and intentional," and that Plaintiffs could not show they "suffer[ed] injury," as required by Labor Code § 226(e) for imposition of penalties. *Id.*; *see Amaral v. Cintas Corp.* (2008) 163 Cal. App. 4th 1157, 1201. Defendant further contends that it possesses strong, good faith defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties (which are only available for the "willful" failure to pay wages). Moen Decl., ¶ 26; *see* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203."). Defendant also maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiffs' underlying claims. Moen Decl., ¶ 26.

B. <u>DISCOVERY AND MEDIATION</u>

In connection with mediation, Defendant provided Plaintiffs with payroll and timekeeping records for an approximately 15% random and representative sampling of the Settlement Class spanning the putative class period, along with additional key data points and policy document.[3] Moen Decl., ¶ 27. Plaintiffs, with the help of their expert forensic and financial consultant, conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim. *Id*.

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[3] Plaintiffs have provided additional detail as to how the sample was selected and the statistical reliability of the sampling methodology in the Moen Declaration at ¶ 27.

On October 8, 2024, the Parties participated in a mediation with Steven G. Mehta, Esq., a highly respected wage and hour class action mediator. Moen Decl., ¶ 28. During mediation, the Parties exchanged divergent views on Defendant's liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiffs' claims. *Id*. Although the Parties adjourned mediation without reaching a settlement, they continued their settlement negotiations through Mr. Mehta throughout the following weeks. *Id*. After additional weeks of continued negotiations, Mr. Mehta made a mediator's proposal that the Parties ultimately accepted. *Id*. Over the following months, the Parties negotiated and executed the Settlement now before the Court for preliminary approval. *Id.*[4]

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves this settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $1,030,000.00. *See* Settlement § 1.23. This Settlement is non-reversionary and Settlement Class members will automatically receive their Individual Class Payment unless they affirmatively opt-out of the Settlement. *Id*. Defendant will fund the GSA no later than 30 days after the Court enters a Judgment on its Order Granting Final Approval of the Settlement, assuming no objections or appeals are made. *Id*., § 4.3. Should an objection or appeal be filed, Defendant will fund the GSA within 30 days of the date the Court signs an order Granting Final Approval. *Id*. The monetary terms of the Settlement are further broken down as follows:

Gross Settlement Amount:	**$1,030,000.00**
Minus attorneys' fees (one-third):	$343,333.33
Minus attorneys' costs (up to):	$50,000.00
Minus Class Representatives' Service Payments:	$15,000.00 total
Minus LWDA PAGA Payment:	$37,500.00
Minus Aggrieved Employee PAGA Payment:	$12,500.00
Minus Settlement Administrator costs:	$10,790.00
Net Settlement Amount:	**$560,876.67**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, the Class Representative Service Payments, costs of settlement administration, the LWDA's 75% share of

[4] Plaintiffs provided the LWDA with the Settlement Agreement along with all moving papers associated with this Motion. *See* Moen Decl., ¶ 29; Exhibit 3 (LWDA Submission Confirmation); Proof of Service.

PAGA penalties, and the PAGA Aggrieved Employees' share of PAGA penalties, the remaining Net Settlement Amount of approximately $560,876.67 will be distributed to the Settlement Class members. *See* Settlement § 3.2. Class Member payments will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period. *Id*., § 3.2.4.1-3. Further, 25% of the PAGA Amount will be paid to all PAGA Aggrieved Employees, regardless of their election to opt-out from participating in the class action portion of the Settlement, based on their proportionate number of pay periods worked during the PAGA Period. *Id*., § 3.2.5.1. Ten percent (10%) of each Individual Settlement Payment will be classified as wages and ninety percent (90%) will be classified as interest and penalties. *Id*., at 3.2.4.5. 100% of payments to PAGA Aggrieved Employees for PAGA civil penalties will be classified as penalties. *Id*. Further, Defendant will pay the employer's share of payroll taxes separate and apart from, and in addition to, the GSA. *Id*., § 1.23.

Defendant's records indicate that there are approximately 902 Settlement Class members who worked during the Class Period. *Id*., § 9. Based on the allocations of the Net Settlement Amount, participating employees will receive, on average, a payment of approximately $621.81. Moen Decl., ¶ 11. 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 § 8.5. Those individuals who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant as detailed in the Settlement. *Id*., § 6.2. Settlement Class members will have 180 days from the date the Individual Settlement Payments are mailed to cash their checks. *Id*., § 3.2.4.6. In the event that there are any uncashed checks remaining after 180 days, any remaining funds will be transferred to the California State Controller's Unclaimed Property Fund in the name of the Class Member to whom the check was issued. *Id*.

2. <u>Attorneys' Fees, Costs, and Class Representative Service Payments</u>

As part of the Settlement, Plaintiffs will apply for service payments at the time of seeking final approval of the Settlement in the total amount of $15,000.00 ($7,500.00 each) for their service to the Settlement Class and their general release of all claims (known or unknown) against

Defendant. *See* Settlement §§ 3.2.1, 6.1. "[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 financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiffs' requested service payments are intended to recognize the significant benefits conferred upon the Settlement Class due to the time and effort that Plaintiffs expended on behalf of the Settlement Class. Some of the activities Plaintiffs completed in order to help procure the Settlement include providing factual information and documents to their attorneys, identifying potential witnesses, participating in multiple meetings with their attorneys to discuss the claims and theories at issue in the litigation, making themselves available the entire day of mediation to assist and answer factual questions posed by the mediator, reviewing and providing input regarding the settlement in this case, and otherwise assisting their attorneys in moving this case towards resolution. Cordova Decl., ¶¶ 3-4, 7-8; Le Decl., ¶¶ 6-8. Plaintiffs undertook significant risks by agreeing to serve as the named Plaintiffs in this case (as potential employers can search their names and determine they have previously sued an employer), as well as the fact that Plaintiffs agreed to a general release of claims subject to a waiver of California Civil Code § 1542. Moen Decl., ¶ 30.

Class Counsel will also apply for an attorneys' fee award of $343,333.33 (one-third of the GSA), and up to $50,000.00 in verified costs.[5] Moen Decl., ¶ 31; *see* Settlement, § 3.2.2. Plaintiffs submit that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial attorneys' fees conducting pre-filing investigation, retaining an expert and analyzing Plaintiffs' claims, conducting legal research and analysis, reviewing documents and data produced by Defendant, building a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this motion for preliminary approval, and otherwise litigating the case. *Id*. Class Counsel will also expend

[5] Class Counsel have entered into a written fee-splitting agreement. Plaintiffs were fully notified of the fee-splitting agreement in writing and consented to the fee-splitting agreement in writing, in compliance with California Rules of Professional Conduct, Rule 1.5.1. Moen Decl., ¶ 31.

future attorney time attending the hearing on this Motion, overseeing the Notice process, drafting the final approval motion, and attending the final approval hearing, among other tasks. *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 ("the percentage of fund method survives in California class action cases…"); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/multiplier" methods). 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 (one-third) in light of the substantial risks and the work undertaken, the positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

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

1. Standard for Preliminary Approval

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 Plaintiffs' Case

Class Counsel, with the help of a retained expert forensic and financial consultant, 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* Moen Decl., ¶¶ 32. Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*, Defendant presented numerous defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Although Plaintiffs were prepared to litigate these claims through class certification and, ultimately, through trial, given the amount offered in settlement, Plaintiffs 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

Although this Settlement was reached after a significant informal exchange of timekeeping and payroll records and other relevant information for mediation purposes, the

Parties had not yet engaged in formal discovery and deposition efforts at the time the Parties reached the Settlement. *See* Moen Decl., ¶ 32. Absent settlement, the Parties would need to spend substantial time and resources to complete formal written and deposition discovery and prepare the case for class certification, summary judgment or adjudication, and trial. *Id*. Moreover, Plaintiffs have not yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment ruling. *Id*. Even if Plaintiffs succeeded in certifying one or more classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids these considerable costs, risks, and the accompanying burden of continued litigation on the Court.

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

Prior to reaching the Settlement, Plaintiffs had not yet filed their motion for class certification. Moen Decl., ¶ 33. Considering Defendant's arguments against certification, there was a legitimate risk that the Court may deny certification of one or more claims, preventing the matter from continuing on a class-wide basis. Had the Court certified any claims, Plaintiffs anticipated that Defendant would seek decertification. *Id*. There was also a risk that Defendant would engage in a *Pick-up-Stix* campaign that could either affect Plaintiffs' ability to maintain the numerosity required to proceed as a class action, or significantly reduce the size of the putative class for a fraction of what Settlement Class members are receiving through this Settlement. *Id*.; *see Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, there was a serious risk that Plaintiffs would be unable to move forward on a class-wide basis. Moen Decl., ¶ 33. Thus, this factor supports preliminary approval of the Settlement.

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

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, Plaintiffs prepared a class-wide exposure analysis and forecasted the Settlement Class expected recovery for each claim as follows:

<u>Rest Period Violations</u>: **$391,662**

Plaintiffs' expert's data analysis determined that non-exempt employees worked an aggregate total of 333,463 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 34. Plaintiffs assert that Class Members were not authorized and permitted to take a lawful rest period on approximately 40% of all shifts in excess of 3.5 hours (approximately two per workweek). *Id.* Plaintiffs therefore calculated Defendant's potential exposure for rest periods at $3,197,243 (333,463 shifts * 40% violation rate * $23.97 average premium). *Id.*

However, Defendant argues it maintains a facially compliant written rest period policy, that Class Members are encouraged to spend rest periods as they see fit (including leaving the facility if they choose), and that it has always authorized and permitted rest periods in compliance with that policy. Moen Decl. ¶ 35. As a result, Defendant argues the rest period claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee was authorized and permitted to take lawful rest periods on each particular shift, resulting in an unmanageable series of mini-trials, particularly since rest periods are not recorded. *Id.* Based on these defenses, Plaintiffs discounted Defendant's maximum exposure by 65% for risk of non-certification and 65% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of $391,662. *Id.*

<u>Regular Rate Miscalculations</u>: **$14,370**

Plaintiffs' expert's data analysis determined the Class Members were underpaid an aggregate amount of $25,546 in overtime wages due to Defendant's failure to properly calculate the regular rate of pay. Moen Decl., ¶ 36. Defendant asserts that all bonus payments made during the Class Period were discretionary, and therefore properly excluded from the regular rate. *Id*. Further, Defendant asserts 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 overtime on any given week due to the bonus. *Id*. Given these potential defenses, Plaintiffs discounted the maximum exposure by 25% for the risk of non-certification and 25% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $14,370. *Id*.

Meal Period Violations: **$223,610**

Plaintiffs' expert's data analysis determined that Settlement Class members worked an aggregate total of 34,551 shifts during the Class Period that contained a facially unlawful first or second meal period. Moen Decl., ¶ 37. Accordingly, Plaintiffs calculated Defendant's potential exposure for meal periods at $828,187 (34,551 violations x $23.97 average meal premium). *Id.* However, 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. *Brinker, supra,* 54 Cal.4th at 1038. Defendant further provided declarations from numerous putative class members attesting to being provided with lawful meal periods, and asserted that it maintains a policy of automatically paying meal period premiums for meal period violations. Moen Decl., ¶ 37. Defendant also contends that 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 certification. *Id*. Given these defenses, Plaintiffs discounted Defendant's maximum exposure by 40% for the risk of non-certification and 55% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $223,610. *Id*.

Off-the-Clock Violations: **$49,158**

Plaintiffs' data analysis determined that Settlement Class members worked an aggregate total of 333,463 shifts during the putative Class Period. Moen Decl., ¶ 38. Plaintiffs estimated that employees spent approximately 2 minutes on average each workday performing off-the-clock work, either donning and doffing safety equipment or booting up their computers. *Id*. Plaintiffs therefore calculated Defendant's potential exposure for off-the-clock violations at $162,507 (2 minutes per shift * 333,463 aggregate work shifts * $14.62 avg. minimum wage). *Id*.

Defendant maintains its timekeeping policies/practices comply with California law, and that it properly compensates Settlement Class members for all hours worked. Moen Decl., ¶ 39. Further, Defendant asserts that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee was required to perform any work while off-the-clock, and exactly how much time each employee purportedly spent while off-the-clock on any given day, which is difficult as off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id*. Given these defenses, Plaintiffs discounted Defendant's maximum exposure by 45% for the risk of non-certification and 45% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an exposure of $49,158. *Id*.

<u>Unreimbursed Business Expenses</u>: **$55,250**

Based on Plaintiffs' counsel's research of JD Power and Consumer Reports' analyses of average cell phone plan costs amongst the leading cell phone carriers in America, Plaintiffs allege that the Class Members are owed approximately $15 each month as a reasonable portion of their cell phone bills covering work related communications. Moen Decl., ¶ 40. Therefore, Plaintiffs calculated Defendant's potential exposure on this claim at $265,200 ($15 reimbursement x 17,680 aggregate work-months). *Id*. However, Defendant argues that it provides all employees who needed to use cell phones for work purposes with employer-issued work phones, and maintains a policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, they were not reasonably incurred. *Id*. Defendant also maintains that this claim is not certifiable, particularly because it would require a series of mini-trials to determine which employees were required to use their cell phone for business purposes and in which pay periods such expenses were allegedly incurred. *Id*. Given these potential defenses, Plaintiffs discounted Defendant's maximum exposure by 55% for the risk of non-certification and 55% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of $53,703. *Id*.

<u>Wage Statement Violations</u>: **$157,191**

According to Plaintiffs' expert's data analysis, approximately 499 employees received a total of 14,222 wage statements during the 1-year time period associated with wage statement penalties. Moen Decl., ¶ 41. Plaintiffs therefore calculated Defendant's maximum wage statement exposure at $1,397,250 (499"initial" violations x $50 + 13,723 "subsequent" violations x $100). *Id*. However, Defendant raised numerous defenses, including that the alleged violations, if any, were not "knowing and intentional," and that Plaintiffs could not show that the Class Members "suffer[ed] injury" as a result of any alleged violations. *Id*. Defendant further argued that

Plaintiffs' underlying claims would fail, and, therefore, their derivative wage statement claim would also fail. *Id*.; *see also Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065 (holding that a reasonable, good faith belief that employer was in compliance with wage and hour laws precludes imposition of wage statement penalties). Therefore, Plaintiffs discounted the maximum exposure by 25% for the risk of non-certification of the underlying claims and 85% for a risk of being unsuccessful on the merits, including failing to prove the violations were "knowing and intentional," that the Class Members "suffer[ed] injury," or that the Court would find that Defendant had a reasonable, good faith belief of its compliance with wage and hour laws precluding the imposition of wage statement penalties, for a reasonable recovery of $157,191. *Id*.

Waiting Time Penalties: **$358,543**

Plaintiffs' expert's data analysis determined that 554 employees separated their employment with Defendant during the 3-year time period associated with waiting time penalties. Moen Decl., ¶ 42. Plaintiffs therefore calculated Defendant's maximum waiting time penalty exposure at $3,187,051 (554 former employees x $23.97 average hourly rate x 8 hours per day x 30 days). *Id*. Defendant contends Plaintiffs' claims fail on the merits, and given it attempted to pay its employees all final wages owed in good faith upon their separation, Plaintiffs cannot show that any failure by Defendant to pay all final wages was wilful which is necessary to obtain waiting time penalties under 8 Cal. Code Regs. § 13520. *Id*.; *see also Naranjo, supra*, 15 Cal.5th at 1065 (recognizing that good faith dispute over whether any wages are due will preclude imposition of waiting time penalties). Plaintiffs discounted the value of this claim by 25% for the risk of non-certification of the underlying claims, and 85% for a risk of being unsuccessful on the merits (including a failure to establish wilfulness) or that the Court would find a reasonable, good faith dispute over whether any wages are due precluding the imposition of waiting time penalties, for an estimated recovery on this claim of $358,543. *Id*.

PAGA Penalties: **$49,777**

Plaintiffs allege that PAGA civil penalties would be recoverable for each pay period in which they could prove an underlying Labor Code violation. Moen Decl., ¶ 43. According to Plaintiffs' expert's data analysis, the Settlement Class members worked a combined total of

14,222 pay periods during the PAGA liability period in which at least one of Plaintiffs' alleged Labor Code violations occurred. *Id*. Plaintiffs therefore calculate Defendant's maximum PAGA exposure at $1,422,200 (14,222 pay periods at $100 per violation). *Id*.; *see also Amaral, supra,* 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derived from the underlying wage and hour violations discussed above, which Defendant disputes. *See e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiffs also recognize that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. *See Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to $5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from $2.8 million to $500,000). Plaintiffs discounted the maximum figure by 65% for the risk of losing on the merits of all underlying claims or that the scope of the PAGA claim could be narrowed due to manageability, and an additional 90% to account for the likelihood of this Court reducing PAGA penalties awarded, to arrive at an estimated exposure of $49,777. Moen Decl., ¶ 43.

Using these estimated figures for each of the claims described above, Plaintiffs predicts that a projected potential recovery for the Settlement Class would be approximately $1,298,015. Moen Decl., ¶ 44. The GSA of $1,030,000.00 represents approximately 79.35% of Plaintiffs' projected reasonable class-wide recovery, while avoiding the further expense and risk of proceeding towards class certification and trial. *Id*. Considering the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce civil penalties, the proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See e.g.*, *Altamirano v. Shaw Industries, Inc*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action settlement, stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiffs' claims."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the potential recovery").

Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Settlement Class members without the uncertainty, delay, and expense of further litigation.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions from both the Plaintiffs and defense side, and have been appointed as class counsel in numerous cases alleging similar claims. *See* Moen Decl., ¶¶ 2-7; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-14; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9; Declaration of Susan J. Perez ("Perez Decl."), ¶¶ 2-6; Declaration of Mehrdad Bokhour ("Bokhour Decl."), ¶¶ 4-7; Declaration of Joshua Falakassa ("Falakassa Decl."), ¶¶ 4-12. Class Counsel, with the help of their retained expert, conducted an extensive review of Defendant's records produced for mediation as well as relevant policies in effect during the Class Period, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. Moen Decl., ¶¶ 27-28. The Settlement was also reached with the input and assistance of Steven G. Mehta, Esq., an experienced and highly respected neutral wage and hour class action mediator, whose mediator's proposal the Parties ultimately accepted. *Id*. This factor strongly supports preliminary approval. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard is Met

At this stage, the Court can grant preliminary approval of the Settlement and direct that 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 substantial compensation for contested claims and derivative penalties, and the estimated average payment of $621.81 greatly exceeds the average payment achieved in other wage and hour class action settlements.[6] Plaintiffs submit the proposed Settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members. 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 all relevant policies, a representative sample of employee timekeeping and payroll data which was analyzed by Plaintiffs' counsel and an expert forensic and financial consultant; arm's length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional months of negotiating until the terms of the long-form Settlement Agreement were agreed upon and finalized. *See* Moen Decl., ¶¶ 27-28.

c. The Settlement is Devoid of Obvious Deficiencies

The Settlement provides substantial monetary relief to Settlement Class members. Further, the amounts for Plaintiffs' Service Payments, administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's share of PAGA penalties are reasonable and appropriate. Since the Settlement is devoid of obvious deficiencies, this 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

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[6] *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) (average recovery of approximately 198.70).

litigation; (3) Plaintiffs' claims are typical of the claims of the absent Settlement Class members; and (4) Plaintiffs and their counsel will fairly and adequately represent the interests of the absent Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

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

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all current and former non-exempt employees who worked for Defendant in California at any time during the Class period. *See* Settlement, § 1.5, 1.12. Settlement Class members can be easily identified using Defendant's employment and payroll records. Moen Decl., ¶ 11. According to Defendant's records, the Settlement Class consists of approximately 902 individuals, rendering it impracticable to gather all the Settlement Class members and bring them before the Court. *See id*.; Settlement, § 9. Thus, the numerosity requirement is satisfied.

2. <u>Common Issues of Law and Fact Predominate</u>

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, Plaintiffs' claims are predicated on uniform company policies, principally revolving around Defendant's overtime and minimum wage policies and practices, meal and rest period policies and practices, and reimbursement 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 and rest period claims); *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th 864, 871-873 (reversing denial for certification of rest period claim).

3. <u>The Claims of the Named Plaintiffs Are Typical</u>

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, Plaintiffs' claims are typical of those of the Settlement Class members. Like other Settlement Class members, Plaintiffs were employed by Defendant in California during the Class Period, were impacted by the same challenged policies that allegedly injured the Settlement Class as a whole, and were subject to the same defenses forwarded by Defendant as to the Settlement Class. Cordova Decl., ¶¶ 5-6; Le Decl., ¶¶ 2-5.

4. <u>Plaintiffs and Class Counsel are Adequate to Represent the Class</u>

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, Plaintiffs and Class Counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiffs and the Settlement Class they seek to represent, and Plaintiffs possess claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy where there was no indication that Plaintiffs' counsel were not qualified and the named Plaintiffs had no interests antagonistic to those of the proposed class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Moen Decl., ¶¶ 2-7; Haines Decl., ¶¶ 2-14; Schmidt Decl., ¶¶ 2-9; Perez Decl., ¶¶ 2-6; Bokhour Decl., ¶¶ 4-7; Falakassa Decl., ¶¶ 4-12.

C. <u>The Court Should Order Distribution Of The Proposed Class Notice</u>

This Court should order distribution of the proposed Class Notice to the Settlement Class 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. Here, Plaintiffs propose that the settlement be administered by Apex Class Action Administration ("Apex"), an experienced class action settlement administrator. *See generally* Declaration of Sean Hartranft. Settlement Class members' addresses will be ascertainable through Defendant's personnel and payroll records, and Defendant will provide all Settlement Class members' full names, last known addresses, phone numbers, social security numbers, and workweek data to Apex within ten (10) business days after preliminary approval. *See* Settlement § 4.2. Prior to mailing the Class Notice packets, Apex will search for updated addresses using the National Change of Address database ("NCOA"). *Id.*, § 8.4.2. 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.*, § 8.4.3. 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.[7]

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, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the proposed order submitted concurrently herewith.

Dated: April 11, 2025

HAINES LAW GROUP, APC

By: ______________________
Matthew K. Moen
Attorneys for Plaintiffs

[7] 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.