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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RICHARD SOTO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

APPLIED BIOCODE, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: 23STCV20199

*[Assigned for all purposes to the Hon. Laura
A. Seigle, Dept. SSC-17]*

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

Date: October 22, 2024

Time: 9:00 a.m.

Dept.: SSC-17

Action Filed: August 23, 2023

Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on October 22, 2024 at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department SSC-17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Richard Soto (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

All current and former non-exempt and/or hourly employees who worked for Defendant Applied BioCode, Inc., including its family of companies, in California at any time from August 23, 2019 until the date of preliminary approval of the settlement.

3. Preliminary appointment of Plaintiff Richard Soto as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Enhancement Payment, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.*, and Class Counsel’s attorneys’ fees and costs;
6. Appointment of Phoenix Settlement Administrators as the third-party settlement administrator (“Settlement Administrator”); and
7. Approval of the proposed Notice of Class and PAGA Action Settlement and Notice of Individual Settlement Payment (collectively, the “Notice Packet”), and entry of the proposed Order instructing the Notice Packet to be disseminated to the proposed Settlement Class in English, Mandarin, and Vietnamese, 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, Plaintiff
3 Richard Soto, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits
4 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
5 documentary 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 22 pages in length.

10
11 Dated: August 1, 2024

Respectfully Submitted,
HAINES LAW GROUP, APC

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13 By:



Matthew K. Moen
Attorneys for Plaintiff

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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

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

14 Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary,
15 \$210,000.00 class action settlement on behalf of the following Settlement Class:

16 All current and former non-exempt and/or hourly employees who worked for
17 Defendant, including its family of companies, in California at any time from
18 August 23, 2019 until the date of preliminary approval of the settlement (“Class
Period”).

19 Based upon the data provided by Defendant, there are approximately 32 potential
20 Settlement Class members subject to the Settlement. After Court-approved deductions for
21 Plaintiff’s Class Representative Enhancement Payment, settlement administrator costs, the PAGA
22 Amount and PAGA penalties payable to the Labor & Workforce Development Agency
23 (“LWDA”), and attorneys’ fees and costs to Class Counsel, the remaining Net Settlement Amount
24 (“NSA”) is estimated to be no less than \$104,250.00. This results in average Individual Settlement
25 Payments of approximately \$3,257.81, with the lowest possible estimated Individual Settlement
26

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 PAGA Action Settlement and Notice of
Individual Settlement Payment (collectively, the “Notice Packet”) are attached to the Moen Decl. as
Exhibit 2.

1 Payment of approximately \$36.41 (in the event a Settlement Class member worked only one
2 workweek during the Class Period) and the highest possible estimated Individual Settlement
3 Payment of approximately \$8,739.08 (in the event a Settlement Class member performed work
4 in every workweek throughout the Class Period). Moen Decl., ¶ 24. Further, an additional \$2,500
5 will be paid to all current and former hourly-paid and/or non-exempt employees who worked for
6 Defendant in the State of California during the period of August 23, 2022 to the date of
7 preliminary approval of the settlement (the “PAGA Period”) (collectively, the “PAGA
8 Members”) for the release of claims under PAGA. *See* Settlement, ¶¶ 15-16, 29.C.5. Significantly,
9 Settlement Class members do not need to file a claim form in order to receive an Individual
10 Settlement Payment, and all Settlement Class members who do not opt-out will automatically
11 receive their share of the Settlement. This represents a fair and reasonable result for the Settlement
12 Class members, who will be agreeing to a release of only those claims that were actually asserted,
13 or which could have been asserted based on the facts alleged in the operative FAC in the lawsuit.

14 Further, given the tenet that aggrieved employees do not have the ability to opt-out of a
15 representative PAGA claim, all PAGA Members, regardless of whether they elect to opt out from
16 participating in the class action settlement or not, shall receive a portion of the settlement monies
17 designated as the PAGA Amount payable to the PAGA Members and shall release their claims
18 for civil penalties under PAGA based on the Labor Code violations that were pled in the operative
19 FAC in the action or could have been alleged based on the factual allegations in Plaintiff’s August
20 23, 2023 PAGA Notice letter to the LWDA, that arose during the PAGA Period. *See Robinson v.*
21 *Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt–
22 out mechanism for PAGA claims and “nonparty employees as well as the government are bound
23 by the judgment in an action brought under [PAGA].”); *see also* Moen Decl., Exhibit 3 (Plaintiff’s
24 PAGA Notice Letter and submission, and LWDA Confirmation of Receipt).

25 Prior to reaching this proposed Settlement, Defendant provided Plaintiff with the payroll
26 and timekeeping records for an approximately 25% sample of the Settlement Class members
27 spanning the duration of the putative class period, as well as policy documents and key data
28 points. Plaintiff then analyzed the data and created a class-wide exposure model for the claims at

1 issue. On March 27, 2024, after extensive legal research and analysis, along with Plaintiff's
2 comprehensive review of the data, the Parties participated in a mediation session with Steve Pearl,
3 Esq. At the conclusion of mediation, Mr. Pearl made a mediator's proposal for a class-wide
4 resolution of all claims at issue that the Parties ultimately accepted. Over the following months,
5 the Parties negotiated and executed the long-form Settlement Agreement that is now before this
6 Court for preliminary approval.

7 This proposed Settlement is well within the range of possible approval for the reasons
8 discussed herein, and Plaintiff respectfully requests that the Court grant preliminary approval.

9 **II. SUMMARY OF THE LITIGATION**

10 **A. Factual And Procedural Background**

11 Defendant develops and manufactures various scientific and medical testing and
12 diagnostic products, including COVID test kits. Moen Decl., ¶ 9. Plaintiff was employed by
13 Defendant as a non-exempt "Receiving Clerk" from approximately September 8, 2020 to June
14 2023. *Id.*; Declaration of Richard Soto ("Soto Decl."), ¶ 2. Like all Settlement Class members,
15 Plaintiff was subject to Defendant's wage and hour policies and practices. Moen Decl., ¶ 9; Soto
16 Decl., ¶ 3.

17 On August 23, 2023, Plaintiff filed the initial class action complaint in this action. Moen
18 Decl., ¶ 10. On October 30, 2023, after exhausting his administrative remedies with the LWDA,
19 Plaintiff filed the operative FAC to add a ninth cause of action for civil penalties under PAGA,
20 premised on the same underlying Labor Code violations. *Id.*

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

22 **1. Off-The-Clock Wage Violations**

23 Plaintiff alleges that Defendant's timekeeping policies and/or practices resulted in
24 Plaintiff and other non-exempt employees not being compensated for all hours actually worked
25 and/or subject to Defendant's control. Moen Decl., ¶ 11. Specifically, Plaintiff and other non-
26 exempt employees are required to clock in and out through a computer-based software system,
27 requiring them to arrive at their work station to boot up a computer terminal, navigate to the
28 correct screen, and input multiple passwords before being able to clock-in for the start of their

1 respective shifts. *Id.* Similarly, after clocking out at the end of their work shifts, Plaintiff and other
2 non-exempt employees are still required to shut down their computer system, close and lock
3 doors, and on occasions, receive after-hours shipments from FedEx while off-the-clock. *Id.* As a
4 result, Defendant failed to compensate Plaintiff and other non-exempt employees for all minimum
5 and overtime wages owed. *Id.*; *see also* Labor Code §§ 1197 and 1182.12 (establishing the right
6 of employees to be paid minimum wages for all hours worked); Wage Order 1, § 2(G) (“‘Hours
7 Worked’ means the time during which an employee is subject to the control of an employer...”).

8 However, Defendant asserts that its timekeeping policies/practices complied with
9 California law and that it has always properly compensated Settlement Class members for all
10 hours worked throughout the Class Period. Moen Decl., ¶ 12. Defendant further contends that
11 Settlement Class members did not work off-the-clock and that its policies specifically disavow
12 such off-the-clock work. *Id.* Defendant further argues that Plaintiff’s off-the-clock claim is not
13 appropriate for class treatment, as it would require individualized inquiries into whether each
14 employee actually performed any work while off-the-clock, and if so, how much, resulting in an
15 unmanageable series of mini-trials. *Id.*; *see, e.g., Brinker Restaurant Corp. v. Superior Court*, 53
16 Cal.4th 1004, 1052 (2012) (affirming denial of off-the-clock subclass, “[p]roof of off-the-clock
17 liability would have had to continue in an employee-by-employee fashion, demonstrating who
18 worked off the clock, how long they worked, and whether Brinker knew or should have known
19 their work.”).

20 **2. Meal Period Violations**

21 Plaintiff further asserts that Defendant failed to provide the Settlement Class members
22 with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled. Moen
23 Decl., ¶ 13; *see* Labor Code § 512(a); *see also Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
24 1041 (“We conclude that, absent waiver, section 512 requires a first meal period no later than the
25 end of an employee’s fifth hour of work...”); *Benton v. Telecom Network Specialists, Inc.* (2013)
26 220 Cal.App.4th 701, 728-29 (“[The wage order] imposes an affirmative obligation on every
27 employer to authorize and provide legally required meal and rest breaks; if it fails to do so, it has
28 violated the law and is liable.”). Specifically, due to work demands imposed by Defendant,

1 Plaintiff and other non-exempt employees were regularly provided with first and second meal
2 periods that started after the fifth and tenth hours of work, respectively, and were regularly called
3 back to work during their meal periods but before the end of their 30-minute meal period. Moen
4 Decl., ¶ 13. Further, Plaintiff asserts Defendant failed to pay all meal period premiums owed
5 during the relevant time period, which is itself a certifiable issue. *Id.*; *see, e.g., Safeway, Inc. v.*
6 *Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (certifying UCL claim based on employer's
7 failure to pay premium wages under Labor Code section 226.7).

8 In response, Defendant contends it maintained lawful meal period policies/practices
9 throughout the Class Period. Moen Decl., ¶ 14. Specifically, Defendant produced a facially-lawful
10 meal period policy that it claims has been in place and effective at all times during the Class
11 Period, and all meal periods were provided in compliance with its written policy. *Id.* Further,
12 Defendant asserts that Settlement Class members signed meal period waivers during the Class
13 Period, and therefore, if Settlement Class members did not take meal periods it was due to waiver.
14 *Id.* Defendant further produced evidence in employee payroll records of meal period premiums
15 being paid, which Defendant contends confirmed that it provided lawful meal periods or paid
16 premiums in lieu thereof. *Id.* Finally, Defendant contends that Plaintiff's meal period claim is not
17 suited for class certification as individual inquiries would be required to assess whether an
18 employee chose to not take an otherwise provided meal period, whether was an employee ever
19 validly waived a meal period, and whether a premium was paid on each shift in which a meal
20 period was truly not provided, resulting in an unmanageable series of mini-trials. *Id.*

21 **3. Rest Period Violations**

22 Plaintiff further alleges that Defendant failed to authorize and permit the Settlement Class
23 members to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 15. Plaintiff
24 asserts that he and the Settlement Class members were regularly forced to forego their rest
25 periods, as Defendant's supervisors pressured employees to continue working without any duty-
26 free rest periods. Moen Decl., ¶ 15; *see Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
27 257, 260 (“[D]uring required rest periods, employers must relieve their employees of all duties
28 and relinquish any control over how employees spend their break time.”); *Benton v. Telecom*

1 *Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 728-29 (“[The wage order] imposes an
2 affirmative obligation on every employer to authorize and provide legally required meal and rest
3 breaks; if it fails to do so, it has violated the law and is liable.”). Plaintiff also alleges that
4 Defendant failed to pay *any* rest period premiums for rest period violations during the relevant
5 time period. Moen Decl., ¶ 15; Labor Code § 226.7; *Safeway, supra*, 238 Cal.App.4th at 1159.

6 Defendant maintains it authorizes and permits the Settlement Class members to take all
7 lawful rest periods to which they are entitled. Moen Decl., ¶ 16. Further, Defendant asserts that
8 this claim is unmanageable and not suited for class certification, as it requires individualized
9 inquiries into whether each employee was authorized and permitted to take a lawful rest period
10 and on which days, which Defendant argues Plaintiff will be unable to substantiate with any
11 common, documentary evidence, as rest periods are not required to be recorded, resulting in an
12 unmanageable series of mini-trials. *Id.*

13 **4. Failure to Reimburse Violations**

14 Plaintiff further alleges that Defendant failed to reimburse the Settlement Class members
15 for all necessary business expenses incurred, in violation of Labor Code § 2802. Moen Decl., ¶
16 17; *see* Labor Code § 2802. Specifically, Plaintiff asserts that Defendant required Plaintiff and
17 other non-exempt employees to use their personal cellular phones to perform essential job duties,
18 including to communicate daily with supervisors for updates on shipping/receiving and to ask
19 work-related questions, but did not reimburse Plaintiff and other non-exempt employees for a
20 reasonable portion of their monthly cell phone expenses. Moen Decl., ¶ 17; *see also Cochran v.*
21 *Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 (“If an employee is required to
22 make work-related calls on a personal cell phone, then he or she is incurring an expense for
23 purposes of section 2802.”).

24 In response, Defendant argues it maintained a policy to reimburse all reasonable and
25 necessary business expenditures and that, to the extent that any expenses were not reimbursed, it
26 was the result of Defendant’s employees failing to submit expense reimbursement requests. Moen
27 Decl., ¶ 18. Defendant also maintains that this claim is not suited for class certification, as it
28 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.*

5. 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, 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., ¶ 19; *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., ¶ 19; *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., ¶ 20; *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., ¶ 20; *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., ¶ 20; *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).

C. Discovery And Mediation

In connection with mediation, Defendant provided Plaintiff with timekeeping and payroll

records for an approximately 25% sample of putative class members spanning the putative class period, as well as policy documents and key data points. Moen Decl., ¶ 21. Plaintiff then analyzed the produced data and created a class-wide exposure model for the claims at issue. *Id.* On March 27, 2024, the Parties participated in a mediation session with Steve Pearl, 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. Pearl 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 Gross Fund Value (“GFV”) of \$210,000.00. Moen Decl., ¶ 23; Settlement, ¶¶ 11, 29. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Payments unless they affirmatively opt-out. Settlement, ¶¶ 11, 29.C. The monetary terms of the Settlement are as follows:

Gross Fund Value:	\$210,000.00
Minus Court-approved attorneys’ fees (1/3):	\$70,000.00
Minus Court-approved attorneys’ costs (up to):	\$15,000.00
Minus Court-approved Enhancement Payment:	\$5,000.00
Minus settlement administrator costs (up to):	\$5,750.00
Minus PAGA penalties:	\$10,000.00
Net Settlement Amount:	\$104,250.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys’ fees and costs, Plaintiff’s Class Representative Enhancement Payment, settlement administration costs, and PAGA penalties, the Settlement provides for an estimated NSA of no less than \$104,250.00. *See* Settlement, ¶¶ 29.C, 30.A. Individual Settlement Payments will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period, as well as membership in various subclasses. *Id.*, ¶ 30.B.ii-iv. Further, the 25% portion of the PAGA civil penalties allocated as the PAGA Amount will be paid to all PAGA Members, regardless of

1 their election to opt-out from participating in the Settlement, based on the proportionate number
2 of workweeks worked by the PAGA Members during the PAGA Period, divided by the total
3 number of workweeks worked by all PAGA Members during the PAGA Period. *Id.*, ¶ 30.B.i. For
4 tax purposes, each Individual Settlement Payment will be allocated as 10% wages (subject to
5 applicable withholdings), and 90% interest and penalties (not subject to withholdings). *Id.*, ¶ 30.D.
6 The PAGA Amount payable to the PAGA Members shall be allocated as 100% penalties. *Id.*
7 Further, Defendant will pay the employer's share of payroll taxes separate and apart from, and in
8 addition to, the GFV. *Id.*, ¶ 29.F.

9 Based on the estimated NSA, average Individual Settlement Payments are approximately
10 \$3,257.81. Moen Decl., ¶ 24. Settlement Class members will have 45 calendar days from the date
11 of the initial mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing
12 ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement,
13 ¶¶ 35.B-C. Settlement Class members who do not opt-out of the Settlement will be bound by its
14 terms and will release all claims against Defendant as detailed in the Settlement. *Id.*, ¶¶ 28, 35.B.

15 Defendant will fund the GFV within thirty (30) calendar days after the Effective Date, as
16 defined in the Settlement Agreement. *See* Settlement, ¶¶ 6, 29.B. Within ten (10) business days
17 following the full funding of the GFV, the Settlement Administrator will calculate and mail the
18 Individual Settlement Payments to the participating Settlement Class members. *Id.*, ¶ 30.C.
19 Settlement Class members will have 180 days from the date the Individual Settlement Payments
20 are mailed to cash their checks. *Id.*, ¶ 30.E. In the event that there are any uncashed checks
21 remaining after 180 days, any remaining funds will be transferred to Legal Aid Foundation of Los
22 Angeles, the Parties' agreed-upon *cy pres* designee. *Id.* This distribution method ensures that no
23 portion of the GFV will be "unpaid...unclaimed or abandoned," as required for C.C.P. § 384 to
24 apply, and the Court may approve the proposed distribution method without running afoul of
25 C.C.P. § 384.

26 **2. Attorneys' Fees, Costs, and Plaintiff's Class Representative**
27 **Enhancement Payment**

28 At the time of seeking final settlement approval, Plaintiff will apply for a Class

1 Representative Enhancement Payment in the amount of \$5,000 for his service to the Settlement
2 Class and his general release of all claims. Moen Decl., ¶ 25; *see* Settlement ¶¶ 7, 28.C, 29.C.3,
3 32. Plaintiff's requested class representative Enhancement Payment is intended to recognize the
4 significant time and effort that he expended on behalf of the Settlement Class, including searching
5 for relevant documents for use in the lawsuit, providing factual information and relevant
6 documents to his attorneys, holding various phone calls with his attorneys to discuss the claims
7 in the lawsuit and Defendant's practices, discussing the status of the case and general case strategy
8 with his attorneys on multiple occasions, providing valuable input to assist his attorneys in
9 preparing for mediation, making himself available during the mediation, reviewing and providing
10 input regarding the Settlement in his case, and otherwise assisting his attorneys in moving the
11 case towards resolution, the significant risks Plaintiff undertook by serving as the named plaintiff,
12 and the fact that he agreed to a general release of all claims subject to a waiver of Civil Code §
13 1542. Moen Decl., ¶ 25; Soto Decl., ¶¶ 4-5; Settlement, ¶ 28.C.

14 Class Counsel will also apply for an attorneys' fee award of up to one third of the GFV
15 (currently estimated at \$70,000), and up to \$15,000 in reimbursement for actual litigation costs.
16 Moen Decl., ¶ 26; *see* Settlement, ¶ 29.C.4. Plaintiff submits that the requested fee is fair
17 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
18 purely contingent fee basis. Moen Decl., ¶ 26. Class Counsel has incurred substantial attorneys'
19 fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research
20 and analysis, reviewing class documents and data produced by Defendant, extensively reviewing
21 and evaluating the produced timekeeping and payroll records to build a comprehensive damages
22 model, preparing for and attending mediation, negotiating and drafting the Memorandum of
23 Understanding, long-form Settlement Agreement, and Notice Packet documents, preparing this
24 motion for preliminary approval, and otherwise litigating the case. *Id.* Class Counsel will also
25 expend future attorney time attending the hearing on this Motion, overseeing the Notice process,
26 drafting the Final Approval Motion and supporting documents, attending the Final Approval
27 hearing, and completing other tasks, such as fielding questions from Settlement Class members.
28 *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.

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. *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

The Court should consider the following factors when making a fairness determination: "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

1 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
2 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
3 “[T]he court is free to engage in a balancing and weighing of factors depending on the
4 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the
5 proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

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

7 Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member data
8 spanning the entire Class Period and all relevant policy documents, and created a comprehensive
9 damages model for Defendant’s liability. Moen Decl., ¶ 27. Although Plaintiff steadfastly
10 maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks
11 and uncertainty in proceeding with class certification and trial. As explained in detail in Section
12 II.B., *supra*, Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and
13 with respect to class certification. Although he was prepared to litigate these claims through class
14 certification and ultimately through trial, it was far from certain that Plaintiff would be able to
15 recover a greater amount should this matter proceed through trial. Thus, this factor supports
16 preliminary approval.

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

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

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

2 At the time of the proposed Settlement, Plaintiff had not filed his motion for class
3 certification. Moen Decl., ¶ 29. Had the Court certified any claims, Plaintiff anticipated that
4 Defendant would seek decertification. *Id.* There was also a risk that Defendant would engage in
5 a *Pick-up-Stix* campaign that could either affect Plaintiff's ability to maintain the numerosity
6 required to proceed as a class action, or significantly reduce the size of the putative class for a
7 fraction of what Settlement Class members are receiving through this Settlement. *Id.*; see
8 *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement,
9 there was a serious risk that Plaintiff would be unable to move forward on a class-wide basis. *Id.*
10 Thus, this factor supports preliminary approval.

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

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

15 Off-the-Clock Violations: \$19,932

16 Plaintiff estimates that Plaintiff and other Settlement Class members spent approximately
17 five (5) minutes on average before and after their shifts each workday performing off-the-clock
18 work. Moen Decl., ¶ 30. Plaintiff's data analysis determined that Settlement Class members
19 worked an aggregate total of 15,233 shifts during the Class Period. *Id.* Accordingly, Plaintiff
20 calculated Defendant's maximum potential exposure for off-the-clock wage violations at
21 approximately \$36,076 (5 minutes per shift * 15,233 aggregate work shifts * \$14.21 weighted
22 minimum wage * 2 (liquidated damages)). *Id.*

23 As noted above, Defendant argues that it has always properly compensated Settlement
24 Class members for all hours worked and that Plaintiff's off-the-clock claim is not appropriate for
25 class treatment. Moen Decl., ¶ 31. Based on these defenses, Plaintiff discounted the maximum
26 potential exposure by 35% for risk of non-certification, and by an additional 15% for the risk of
27 losing on the merits, to arrive at an estimated exposure of \$19,932.

28 ///

1 Meal Period Violations: \$66,650

2 Plaintiff's data analysis determined that Settlement Class members worked an aggregate
3 total of 4,341 shifts during the Class Period that contained a facially unlawful meal period, for
4 which no meal period premiums were paid. Moen Decl., ¶ 32. Accordingly, Plaintiff calculated
5 Defendant's liability on this claim at \$104,140 (4,341 meal period violations * \$23.99 average
6 premium). *Id.*

7 Defendant asserts, however, that it maintained a lawful meal period policy/practice at all
8 times during the Class Period and that any failure by an employee to take a lawful meal period
9 was the result of employee choice rather than company policy, requiring individual inquiries into
10 the reasons why each non-compliant meal period was untimely or missed on any given day. Moen
11 Decl., ¶ 33. Given these defenses, Plaintiff discounted the maximum exposure by 20% for the
12 risk of non-certification, and by an additional 20% for risk of losing on the merits, to arrive at an
13 estimated exposure of \$66,650. *Id.*

14 Rest Period Violations: \$42,679

15 Plaintiff's data analysis revealed that non-exempt employees worked an aggregate total
16 of 15,080 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 34. Plaintiff
17 estimates a rest period violation occurred on approximately one-third of work shifts in excess of
18 3.5 hours. *Id.* Accordingly, Plaintiff calculated Defendant's maximum potential exposure on this
19 claim at \$119,383 (15,080 rest period violations * 33% violation rate * \$23.99 average premium).
20 *Id.*

21 But as noted above, Defendant argues it has always authorized and permitted duty-free
22 rest periods in accordance with California law and that this claim is not amenable to class
23 certification given the individual inquiries required to determine whether and why each employee
24 missed a rest period on any given shift. Moen Decl., ¶ 35. Given these defenses, Plaintiff
25 discounted the maximum exposure by 45% for the risk of non-certification, and by an additional
26 35% for risk of losing on the merits, to arrive at an estimated exposure of \$42,679. *Id.*

27 Failure to Reimburse Violations: \$12,870

28 Based on Plaintiff's data analysis, Settlement Class members worked a total of

1 approximately 715 aggregate months during the Class Period. Moen Decl., ¶ 36. Using a
2 conservative estimate of \$25 per month for reimbursement of work-related use of personal
3 cellular phones, Plaintiff calculates Defendant's maximum exposure for this claim at
4 approximately \$17,875 (\$25.00/month * 715 months). *Id.*

5 As noted above, Defendant maintains that Settlement Class members were not required to
6 use their personal cellular phones as part of their job and that this claim would require individual
7 inquiries into whether Settlement Class members actually used their personal cellular phones for
8 work purposes. Moen Decl., ¶ 37. Based on these defenses, Plaintiff discounted the estimated
9 maximum amount by 20% for risk of non-certification, and by an additional 10% to account for
10 risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an
11 estimated exposure of approximately \$12,870. *Id.*

12 **Wage Statement Penalties: \$27,274**

13 According to the key data points provided by Defendant, approximately 17 Settlement
14 Class members are eligible for wage statement penalties, and a total of 533 wage statements were
15 issued during the relevant period. Moen Decl., ¶ 38. Plaintiff calculated Defendant's maximum
16 possible wage statement exposure as approximately \$52,450 ((17 initial violations * \$50 per pay
17 period) + (516 subsequent pay periods * \$100 per pay period)). *Id.* However, Defendant raised
18 numerous defenses, including that the alleged violations, if any, were not "knowing and
19 intentional," and that Plaintiff could not show that the Settlement Class members "suffer[ed]
20 injury" as a result of any alleged violations. *Id.* Defendant further argued that Plaintiff's
21 underlying claims would fail, and, therefore, his wholly derivative wage statement claim would
22 also fail. *Id.* Therefore, Plaintiff discounted the maximum exposure by 20% for the risk of non-
23 certification of the underlying claims and 35% for a risk of being unsuccessful on the merits,
24 including failing to prove the violations were "knowing and intentional," that the Settlement Class
25 members "suffer[ed] injury," for an estimated recovery of \$27,274. *Id.*

26 **Waiting Time Penalties: \$62,866**

27 Based on data provided by Defendant, approximately 21 Settlement Class members
28 separated their employment during the relevant period applicable to this claim. Moen Decl., ¶ 39.

1 As a result of Defendant's unlawful off-the-clock, meal period, and rest period practices, Plaintiff
2 asserts that each of these employees are entitled to waiting time penalties. *Id.* Plaintiff therefore
3 calculated Defendant's maximum exposure of \$120,897 (21 former employees * average waiting
4 time penalty of \$5,757 (\$23.99 approximate average hourly rate * 8 hours * 30 days)). *Id.*
5 Defendant maintains that waiting time penalties are not appropriate because Plaintiff's claims fail
6 on the merits, and given its good-faith defenses, Plaintiff cannot show that any failure by
7 Defendant to pay all final wages was willful. *Id.* Plaintiff discounted this claim by 20% for the
8 risk of non-certification and by an additional 35% for risk of being unsuccessful on the merits or
9 failing to establish willfulness, for an estimated recovery of \$62,866. *Id.*

10 **PAGA Penalties: \$9,594**

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., ¶ 40. According to
13 Plaintiff's data analysis, the Settlement Class members worked a combined total of 533 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 \$53,300 (533 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., ¶ 40; *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., ¶ 40; *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 10% for the risk that he would not prevail on any of
27 the underlying claims, and by an additional 80% for risk of the Court reducing penalties, to arrive
28 at an estimated exposure of \$9,594. Moen Decl., ¶ 40.

1 Using these estimated figures, Plaintiff estimated that the potential reasonable recovery
2 for the Settlement Class would be approximately \$241,865. Moen Decl., ¶ 41. Thus, the proposed
3 recovery to the Settlement Class of \$210,000 represents approximately 86.83% of Plaintiff's
4 reasonably forecasted class-wide recovery, which is well within the range approved by courts as
5 being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding
6 towards class certification and trial. *Id.*; see, e.g., *Altamirano v. Shaw Industries, Inc.*, 2015 WL
7 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the hypothetical
8 maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant
9 preliminary approval..."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
10 settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska*
11 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only
12 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
13 settlement is grossly inadequate and should be disapproved.") (internal quotations omitted).
14 Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to
15 the Settlement Class members without the uncertainty, delay, and additional expense of further
16 litigation.

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

18 "Parties represented by competent counsel are better positioned than courts to produce a
19 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
20 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented
21 by competent and experienced counsel who possesses extensive experience litigating wage and
22 hour class actions from both the plaintiff and defense side, and who have been appointed as class
23 counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K.
24 Haines ("Haines Decl."), ¶¶ 2-11; and Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶
25 2-9. Class Counsel conducted an extensive review and analysis of Defendant's produced
26 timekeeping and payroll records and drew on their extensive experience in similar cases to assess
27 the strengths and weaknesses of Plaintiff's case. Moen Decl., ¶¶ 21, 27, 30-41. It was only after
28 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 fantastic 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 \$3,257.81 greatly exceeds the average payments achieved in other wage and hour class action settlements that have been approved.² 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-

² *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., ¶ 21; *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 current and former non-exempt and/or hourly employees who worked for Defendant, including its family of companies, in California 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., ¶ 24. Defendant represents that the Settlement Class consists of approximately 32 individuals, rendering it impracticable to bring all Settlement Class members before the Court. *Id.* Thus, the proposed Settlement Class satisfies numerosity.

1 *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

2 **2. Common Issues of Law and Fact Predominate**

3 The focus in a certification dispute is not on the merits of the case, but rather on what
4 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*
5 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff’s claims are predicated
6 on Defendant’s alleged failures to pay all minimum and overtime wages owed, pay all meal and
7 rest period premiums, reimburse all necessary business expenses, furnish accurate and itemized
8 wage statements, and pay all final wages owed upon separation of employment. These types of
9 claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th
10 at 1032-34 (“The theory of liability—that Brinker has a uniform policy, and that that
11 policy...allegedly violates the law—is by its nature a common question eminently suited for class
12 treatment.”).

13 **3. The Claims of the Named Plaintiff are Typical**

14 The typicality requirement is satisfied where class representatives have claims that are
15 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
16 Cal.App.3d 1341, 1347. Here, like other Settlement Class members, Plaintiff was employed by
17 Defendant as a non-exempt employee in California and was subject to Defendant’s allegedly
18 unlawful wage and hour policies/practices during the Class Period. Soto Decl., ¶¶ 2-3. Plaintiff
19 was therefore impacted by the same challenged policies that allegedly injured the Settlement Class
20 as a whole and was subject to the same defenses forwarded by Defendant as to the Settlement
21 Class, and is therefore typical.

22 **4. Plaintiff and Class Counsel are Adequate to Represent the Class**

23 The adequacy of representation requirement examines conflicts of interest between named
24 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
25 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will
26 adequately represent the Settlement Class members as there are no conflicts between the named
27 Plaintiff and the Settlement Class members he seeks to represent, and Plaintiff possesses claims
28 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., ¶¶ 2-7; Haines Decl., ¶¶ 2-11; Schmidt Decl., ¶¶ 2-9.

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

This Court should order distribution of the proposed Class Notice in English, Mandarin, and Vietnamese 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 Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement administrator. *See* Declaration of Jodey Lawrence. 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, dates of employment, and workweek data to Phoenix within ten (10) business days after of the Court signs an order preliminarily approving the Settlement. *See* Settlement, ¶ 35.A. Phoenix 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.*

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 member, 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

1 California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching
2 Settlement Class members. Additionally, because the proposed Settlement includes settlement of
3 Plaintiff's representative PAGA claim, notice of the Settlement has been submitted to the LWDA.
4 *See id.*, ¶ 42, Exhibit 4 (LWDA Settlement Submission); Proof of Service.

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

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

9 **V. CONCLUSION**

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

13
14 Dated: August 1, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

15
16 By:


Matthew K. Moen
Attorneys for Plaintiff