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

ALFONSO ALMARAZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

WORLD OIL CORP., a California
Corporation; and DOES 1 through 100,
Defendant.

Case No.: 23STCV18296

*[Assigned for all purposes to the Hon. David
S. Cunningham III, Dept. SS-11]*

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

Date: January 17, 2025

Time: 9:00 a.m.

Dept.: SS-11

Action Filed: August 2, 2023

Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on January 17, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department SS-11 of the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012, Plaintiff Alfonso Almaraz (“Plaintiff”), as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Class Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement”) in this lawsuit, entered into between Plaintiff and Defendant Pan Pacific Petroleum Company, Inc. (“Defendant”);
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 non-exempt employees who worked for Defendant in California during the period commencing on August 2, 2022 and ending on the date of preliminary settlement approval, and who do not timely opt-out of the Settlement Class.

3. Preliminary appointment of Plaintiff Alfonso Almaraz as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, and Susan J. Perez of Haines Law Group as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for 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 § 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 Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval (the “Notice Packet”), and entry of the proposed Order instructing the Notice Packet to be disseminated to the proposed Settlement Class in English and Spanish, as provided in the Settlement Agreement.

1 This motion is based on this notice of motion, the attached memorandum of points and
2 authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham,
3 Susan J. Perez, Plaintiff Alfonso Almaraz, and Jodey Lawrence of Phoenix Settlement
4 Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this
5 action, and on any further oral or documentary evidence or argument presented at the time of
6 hearing.

7
8 Dated:

Respectfully Submitted,
HAINES LAW GROUP, APC

9
10 By:

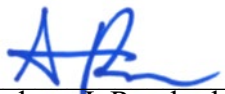

Andrew J. Rowbotham
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alfonso Almaraz (“Plaintiff”), as an individual and on behalf of the proposed
4 Settlement Class, respectfully request that this Court preliminarily approve the proposed Class
5 Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement” or
6 “Settlement”),¹ entered into by Plaintiff and Defendant Pan Pacific Petroleum Company, Inc.
7 (“Defendant”) (collectively, the “Parties”). Plaintiff respectfully requests that this Court
8 preliminarily approve this non-reversionary, \$240,000.00 class action settlement on behalf of the
9 following Settlement Class:

10 All non-exempt employees who worked for Defendant in California during
11 the period commencing on August 2, 2022 and ending on the date of
12 preliminary settlement approval (the “Class Period”), and who do not timely
opt-out of the Settlement Class.

13 Based upon the data provided by Defendant, there are approximately 79 potential
14 Settlement Class members. After Court-approved deductions for settlement administrator costs,
15 the PAGA Payment to the Labor & Workforce Development Agency (“LWDA”), the PAGA
16 amount attributed to aggrieved employees, and attorneys’ fees and costs to Class Counsel, the
17 remaining Net Settlement Amount (“NSA”) is estimated to be no less than \$83,050.00. This
18 results in average Individual Class Payments of approximately \$1,051.27. Based on Defendant’s
19 representation that there were approximately 2,475 pay periods worked by the Settlement Class
20 during the Class Period, the lowest possible estimated Individual Class Payment would be \$33.56
21 (calculated as \$83,050 divided by 2,475 pay periods; in the event a Settlement Class member
22 worked only one pay period during the Class Period) and the highest possible estimated Individual
23 Class Payment of \$2,147.84 (in the event a Settlement Class member performed work during all
24 64 pay periods during the Class Period). Further, of the \$50,000.00 allocated to the PAGA claim,

25
26
27 ¹ The Settlement Agreement is attached as Exhibit A to the Declaration of Andrew J. Rowbotham
28 (“Rowbotham Decl.”), filed concurrently herewith. The Court Approved Notice of Class Action
and PAGA Settlement and Hearing Date for Final Court Approval (the “Notice Packet”) is
attached to the Rowbotham Decl. as Exhibit B.

1 \$12,500.00 will be paid to all non-exempt employees of Defendant in California between August
2 2, 2022, and the date of preliminary settlement approval (the “PAGA Period”) (collectively, the
3 “Aggrieved Employees”) for the release of claims under PAGA. Significantly, Settlement Class
4 members do not need to file a claim form in order to receive an Individual Class Payment, and all
5 Settlement Class members who do not opt-out will automatically receive an Individual Class
6 Payment. This Settlement represents an exceptionally fair and reasonable compromise for the
7 Settlement Class members, who will be agreeing to a release of all claims pled in any complaint
8 Plaintiff filed against Defendant or the Released Parties in this Action (or Plaintiff’s PAGA letters
9 sent to the LWDA), or which could have been pled based on the facts alleged therein, that arose
10 during the Class Period.

11 Further, given that Aggrieved Employees do not have the ability to opt-out of a
12 representative PAGA claim, all Aggrieved Employees, regardless of whether they elect to opt out
13 of the class action settlement, will receive their Individual PAGA Payment and will release all
14 claims for PAGA penalties that arise out of, or directly relate to, the facts alleged in any complaint
15 Plaintiff filed against Defendant or the Released Parties or Plaintiff’s PAGA letters to the LWDA.
16 *See Robinson v. S. Cnty. Oil Co.*, (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt–
17 out mechanism for PAGA claims and “nonparty employees as well as the government are bound
18 by the judgment in an action brought under [PAGA]”).

19 Prior to reaching this proposed Settlement, Defendant, through a comprehensive informal
20 exchange, provided Plaintiff with payroll records, data points regarding the Aggrieved
21 Employees, and all applicable policy documents and employee handbooks in effect. On February
22 23, 2024, after extensive legal research and analysis, the Parties participated in a private mediation
23 with the Hon. Daniel Buckley (Ret.), an experienced and respected wage and hour mediator.
24 Although the matter did not resolve on that day, Judge Buckley continued to assist the Parties in
25 their settlement negotiations over the following weeks and the Parties ultimately reached an
26 agreement to tentatively resolve all claims at issue on a class and representative basis. Over the
27 following months, the Parties negotiated and executed the long-form Settlement Agreement that
28 is now before this Court for preliminary approval.

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

5 **II. SUMMARY OF THE LITIGATION**

6 **A. Factual And Procedural Background**

7 Defendant is a commercial petroleum transportation provider, specializing in the
8 transportation of asphalts, oils, gasoline, and diesel throughout California. Rowbotham Decl.,
9 ¶ 10. Like all Settlement Class members, Plaintiff was employed by Defendant as a non-exempt
10 employee during the Class Period and was subject to Defendant's allegedly unlawful wage and
11 hour policies and practices. Declaration of Alfonso Almaraz ("Almaraz Decl."), ¶¶ 2-4.

12 On August 2, 2023, Plaintiff initiated the instant action, alleging Defendant failed to:
13 (i) reimburse necessary business expenses; (ii) issue accurate itemized wage statements; and
14 (iii) comply with California's Unfair Competition laws. Rowbotham Decl., ¶ 11. On October 17,
15 2023, Plaintiff filed a First Amended Complaint, adding a fourth cause of action for civil penalties
16 under the Private Attorneys General Act, Labor Code § 2698, *et seq.* (PAGA), based on the same
17 underlying Labor Code violations. *Id.* On October 23, 2023, following receipt of a signed
18 arbitration agreement with a class action waiver from Defendant, Plaintiff initiated an individual
19 demand for arbitration with JAMS based on the factual allegations in this matter. *Id.* On
20 November 16, 2023, the Court dismissed Plaintiff's individual claims along with the claims of
21 the putative class members from this matter without prejudice. *Id.* The Court further stayed the
22 remaining PAGA claims here pending the outcome of Plaintiff's individual arbitration. *Id.*

23 On February 23, 2024, the Parties participated in an all-day mediation presided over by
24 Hon. Daniel Buckley (Ret.). Rowbotham Decl., ¶ 12. The Parties continued negotiations in the
25 ensuing weeks with the mediator's assistance and ultimately reached an agreement to tentatively
26 resolve all claims at issue on a class and PAGA representative basis. *Id.*

27 As a material term of the Settlement, the Parties agreed to stipulate to the filing of the
28 Second Amended Complaint ("SAC") to reallege the class claims dismissed without prejudice on

November 16, 2023. Rowbotham Decl., ¶ 13; Settlement, ¶ 11.1. The Court granted the Parties stipulation and Plaintiff filed the operative SAC on September 24, 2024. *Id.*

B. Plaintiff's Claims and Defendant's Defenses

1. Wage Statement Violations

Plaintiff alleges that Defendant failed to issue accurate, itemized wage statements that included the number of piece-rate units earned and any applicable piece rate. Rowbotham Decl., ¶ 14. Specifically, Plaintiff alleges that Defendant issued wage statements which only listed a cumulative total and weekly breakdown of piece-rate wages earned in the prior month. *Id.*; *see* Labor Code § 226(a)(3) (“An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis...”). Defendant maintains that its wage statement policies/practices comply with California law as the wage statements provide sufficient detail to comply with the requirements in Labor Code § 226(a)(3). *Id.* ¶ 14. Defendant also maintains that its provision of a piece-rate statement accompanying each wage statement fits within the meaning of a “detachable part of the check” as to satisfy the requirements of Labor Code § 226(a)(3). *Id.* Defendant also maintains that Plaintiff will be unable to certify this claim (and any other claim) as he (along with all other putative class members) signed a valid arbitration agreement with a class action waiver which, absent settlement, would require he pursue any claims on an individual basis in private arbitration. *Id.*

2. Failure to Reimburse Violations

Plaintiff further alleges that, although Defendant provided Plaintiff with a business cell phone when he was hired, Plaintiff’s supervisor’s and dispatchers regularly contacted him through his personal cell phone throughout his employment. *Id.*, ¶ 15. Plaintiff further alleges that despite requiring Plaintiff to use his personal cell phone for business purposes, Defendant failed to reimburse him for this necessary expense. *Id.*; *see* Labor Code § 2802(a) (“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee

1 in direct consequence of the discharge of his or her duties...”); *see also Cochran v. Schwan’s*
2 *Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140 (holding that § 2802 requires employers
3 to always reimburse employees who are required to use personal cell phones for work-related
4 calls for a reasonable percentage of their cell phone bills). Defendant maintains that it had no
5 knowledge that Plaintiff was using his personal cell phone for business purposes as Plaintiff never
6 reported this expense to Defendant for reimbursement. *Id.*, ¶ 15. Defendant further maintains that
7 even if Plaintiff chose to use his personal cell phone due to personal preference or convenience,
8 his expenses associated with such use are not reimbursable under Section 2802 because they were
9 not reasonable or necessary, given that Defendant provided a business cell phone to Plaintiff upon
10 his hire. *Id.* Further, Defendant maintains that its written policy explicitly prohibits, with limited
11 exception, employees from using their personal cell phone/devices for work-related purposes. *Id.*
12 Lastly, Defendant maintains that this claim is not suited for class certification, as the use of
13 personal cell phone is a fact intensive inquiry, and individual issues would predominate in
14 determining which, if any, individual supervisors contacted employees and disseminated
15 necessary work-related information to the employees’ personal cell phones and which employees,
16 if any, chose to not use the cell phones provided by Defendant, resulting in an unmanageable
17 series of mini-trials. *Id.*

18 **3. PAGA Penalties**

19 As a result of Defendant’s alleged failure to issue accurate, itemized wage statements and
20 reimburse employees for all necessary business expenditures, Plaintiff also seeks PAGA civil
21 penalties on behalf of all aggrieved employees. Rowbotham Decl., ¶ 16; *see also Amaral v. Cintas*
22 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 (“As we have explained, they [civil penalties
23 under PAGA] are mandatory, not discretionary.”). Defendant argues that Plaintiff’s underlying
24 claims will fail and, as a result, the derivative PAGA claim will also fail. Rowbotham Decl., ¶ 16;
25 *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes
26 of action fail, the derivative UCL and PAGA claims also fail.”). Moreover, Defendant maintains
27 that this Court would exercise its discretion to substantially reduce any PAGA penalties awarded.
28 Rowbotham Decl., ¶ 16; *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.* (2023) 88 Cal.App.5th 937; *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).

C. Discovery And Mediation

The Parties engaged in informal discovery prior to attending mediation. Rowbotham Decl., ¶ 17. Defendant provided Plaintiff with payroll records, data points regarding the Aggrieved Employees, and all applicable policy documents and employee handbooks in effect. *Id.* On February 23, 2024, the Parties participated in a mediation session before Hon. Daniel Buckley (Ret.) 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.* Although the Parties adjourned mediation without reaching a settlement, they continued their settlement negotiations with the help of Judge Buckley. *Id.* After additional weeks of continued negotiations, the Parties ultimately reached an agreement to tentatively resolve all claims at issue on a class and representative basis. *Id.*

III. THE PROPOSED SETTLEMENT

A. Essential Terms of The Settlement

If the Court preliminarily approves this settlement, Defendant will pay a Maximum Settlement Amount (“MSA”) of \$240,000.00. Settlement, ¶ 3.1. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Class Payments unless they affirmatively opt-out. Settlement, ¶¶ 3.1; 7.5.1. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$240,000.00
Minus Court-approved attorneys’ fees (1/3):	\$80,000.00
Minus Court-approved attorneys’ costs (up to):	\$20,000.00
Minus settlement administrator costs (up to):	\$6,950.00
Minus PAGA Payment to the LWDA:	\$37,500.00
Minus Individual PAGA Payments:	\$12,500.00
Net Settlement Amount:	\$83,050.00

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

2 After deducting amounts for Court-approved attorneys' fees and costs, settlement
3 administration costs, the LWDA's share of PAGA penalties, and the individual PAGA payments
4 to Aggrieved Employees, the Settlement provides for an estimated NSA of no less than
5 \$83,050.00. *See* Settlement, ¶ 1.27. Individual Class Payments will be calculated by dividing the
6 NSA by the total number of pay periods worked by all Participating Class Members during the
7 Class Period and multiplying the result by the total number of pay periods worked by such
8 Participating Class Member. *Id.*, ¶ 3.2.3. Further, 25% of the PAGA Amount will be paid to all
9 Aggrieved Employees, regardless of their election to opt-out from participating in the class action
10 portion of the Settlement, based on the proportionate number of pay periods worked by the
11 Aggrieved Employees during the PAGA Period. *Id.*, ¶ 3.2.4. For tax purposes, based on the claims
12 alleged and settled each Individual Class Payment will be allocated as 100% settlement of claims
13 for penalties and interest (not subject to withholdings). *Id.*, ¶ 3.2.3.1. The PAGA Amount payable
14 to the Aggrieved Employees shall be allocated as 100% penalties. *Id.*, ¶ 3.2.4.1

15 According to Defendant's records, there are approximately 79 putative Settlement Class
16 members. Rowbotham Decl., ¶ 18. Based on the estimated NSA, average Individual Class
17 Payments are projected to be approximately \$1,051.27. *Id.* Settlement Class members will have
18 60 calendar days from the date of the initial mailing of the Notice Packet to opt-out from, or object
19 to, the Settlement, thereby providing ample time to review the Class Notice without unduly
20 delaying the Settlement. *See* Settlement, ¶ 7.5.1. Settlement Class members who do not opt-out
21 of the Settlement will be bound by its terms and will release all claims against Defendant as
22 detailed in the Settlement. *Id.*, ¶ 5.1. Settlement Class members will have 180 days from the date
23 the Individual Class Payments are mailed to cash their checks. *Id.*, ¶ 4.3.1. In the event that there
24 are any uncashed checks remaining after 180 days, the Administrator shall transmit the funds
25 represented by such checks to the State Controller Unclaimed Property Fund. *Id.*, ¶ 4.3.3 This
26 distribution method ensures that no portion of the MSA will be "unpaid...unclaimed or
27 abandoned," as required for California Code of Civil Procedure § 384 to apply, and the Court
28 may approve the proposed distribution method without running afoul of Section 384.

1 **2. Attorneys' Fees and Costs**

2 At the time of seeking final settlement approval, Class Counsel will apply for an attorneys'
3 fee award of up to one third of the MSA (currently estimated at \$80,000.00), and up to \$20,000.00
4 in reimbursement for actual litigation costs. Rowbotham Decl., ¶ 19; *see* Settlement, ¶ 3.2.1.
5 Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky,
6 expensive, and time-consuming litigation on a purely contingent fee basis. Rowbotham Decl.,
7 ¶ 19. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation,
8 analyzing Plaintiff's claims, conducting legal research and analysis, reviewing documents and
9 data produced by Defendant to build a comprehensive damages model, preparing for and
10 attending mediation, negotiating and drafting the Memorandum of Understanding, long-form
11 Settlement Agreement, and Notice Packet documents, preparing this motion for preliminary
12 approval, and otherwise litigating the case. *Id.* Class Counsel will also expend future attorney
13 time attending the hearing on this Motion, overseeing the Notice process, drafting the Final
14 Approval Motion and supporting documents, attending the Final Approval hearing, and
15 completing other tasks, such as fielding questions from Settlement Class members. *Id.*

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

25 **IV. ARGUMENT**

26 **A. Preliminary Approval Is Warranted**

27 California Rule of Court 3.769 conditions the settlement of a class action on court
28 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 plaintiff’ 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. “[T]he 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.

a. The Strength of Plaintiff’s Case

Class Counsel carefully vetted the claims at issue, reviewed Settlement Class members’ payroll data spanning the relevant time period, reviewed all relevant policy documents, and created a comprehensive damages model for Defendant’ liability. Rowbotham Decl., ¶ 20. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*, Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and with respect to class certification. Specifically, when it

comes to class certification, Defendant claims that Plaintiff and all the putative class members signed arbitration agreements with class action waivers. Thus, absent this settlement, Plaintiff (and any other putative class member) would not be able to pursue any non-PAGA claims in this forum. Although Plaintiff was prepared to litigate these claims through trial, it was far from certain that Plaintiff would be able to recover a greater amount should this matter proceed through trial. Thus, this factor supports preliminary approval.

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

The Parties engaged only in informal discovery and information exchange prior to mediation. Absent settlement, the Parties will be required to expend substantial time and resources conducting additional formal written and deposition discovery. Rowbotham Decl., ¶ 21. Moreover, Plaintiff has not yet filed for class certification (which as discussed above was tenuous at best given the state of arbitration agreements executed by Plaintiff and the putative class), 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 Plaintiff succeeded in avoiding enforcement of his arbitration agreement with Defendant and 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. Thus, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

At the time of the proposed Settlement, Plaintiff had not filed his motion for class certification. Rowbotham Decl., ¶ 22. Should the Court certify any claims, Plaintiff anticipates that Defendant will seek decertification. *Id.* Given the small size of the putative class (less than 100), Plaintiff perceived a legitimate risk that Defendant might engage in a *Pick-up-Stix* campaign that could further impact Plaintiff's ability to meet the numerosity required to proceed as a class action. *Id.*; see *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, and discounting the fact that the putative class members signed arbitration agreements with class action waivers, there was an additional serious risk that Plaintiff would be

1 unable to move forward on a class-wide basis. Rowbotham Decl., ¶ 20. Thus, this factor supports
2 preliminary approval.

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

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

7 **Wage Statement Violations: \$91,331**

8 Plaintiff’s data analysis determined that 79 Settlement Class members received an
9 aggregate 2,475 wage statements which allegedly did not comply with Labor Code § 226(a).
10 Rowbotham Decl., ¶ 23. Plaintiff therefore calculated Defendant’s wage statement exposure at
11 \$243,550 (79 initial violations x \$50 + 2,396 subsequent violations x \$100). *Id.*

12 Defendant maintains its wage statement policies/practices comply with California law,
13 and the statements provided sufficient detail to comply with the requirements in Labor Code
14 § 226(a)(3). Rowbotham Decl., ¶ 24. Specifically, Defendant maintains that its provision of a
15 piece-rate statement accompanying each wage statement fits within the meaning of a “detachable
16 part of the check” as to satisfy the requirements of Labor Code § 226(a)(3). *Id.* Finally, as to
17 certification, Defendant again maintains that this claim is not certifiable in the first place as
18 Plaintiff (and all other putative class members) signed an arbitration agreement with class action
19 waivers. Plaintiff therefore discounted the maximum exposure by 50% for the risk of non-
20 certification, and by an additional 25% for risk of losing on the merits, to arrive at a reasonable
21 exposure of \$91,331. *Id.*

22 **Failure to Reimburse Violations: \$15,469**

23 Plaintiff alleges that he and the putative class members spent approximately \$50 each
24 month as a reasonable portion of their cell phone bills covering work-related communications.
25 Rowbotham Decl., ¶ 25. Therefore, Plaintiff calculated Defendant’s potential exposure on this
26 claim at \$61,875 (\$50 reimbursement x 2,475 aggregate biweekly pay periods ÷ 2). *Id.*

27 Defendant maintains that, at all relevant times, it never required its employees to use their
28 personal cell phones for work related communications, and instead provided employees with

1 company-owned phones at the time of hire. Rowbotham Decl., ¶ 26. Further, Defendant maintains
2 that its written policy explicitly prohibits, with limited exception, employees from using their
3 personal cell phone/devices for work-related purposes. *Id.* Additionally, beyond the arbitration
4 agreements previously discussed, Defendant maintains that this claim is not suited for class
5 certification, as the use of personal cell phone is a fact intensive inquiry, and individual issues
6 would predominate in determining which, if any, individual supervisors contacted employees and
7 disseminated necessary work-related information to the employees' personal cell phones and
8 which employees, if any, chose to not use the cell phones provided by Defendant, resulting in an
9 unmanageable series of mini-trials. *Id.* Therefore, Plaintiff discounted the maximum potential
10 exposure by 50% for the risk of non-certification and 50% for the risk of being unsuccessful on
11 the merits, to arrive at an estimated exposure of \$15,469. *Id.*

12 **PAGA Penalties: \$165,825**

13 Given the numerous violations identified above, Plaintiff contends that PAGA civil
14 penalties would be recoverable for each pay period in the relevant time period. Rowbotham Decl.,
15 ¶ 27. According to Defendant's data, the Settlement Class members worked a combined total of
16 2,475 pay periods during the PAGA liability period. *Id.* Plaintiff therefore calculates Defendant's
17 maximum PAGA exposure at \$247,500 (2,475 pay periods x \$100 per violation). *Id.*; *see also*
18 *Amaral, supra*, 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is
19 notified that it is violating a Labor Code provision). However, these penalties are exclusively
20 derivative of the underlying violations that Defendant vigorously disputes, both as to certification
21 and the merits. Rowbotham Decl., ¶ 27; *see also Green v. Lawrence Service Co.*, 2013 WL
22 3907506, *5, fn. 5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by
23 the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to
24 substantially reduce any award of PAGA penalties. Rowbotham Decl., ¶ 27; *see also* Labor Code
25 § 2699(e)(2); *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL
26 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to
27 \$500,000). Therefore, Plaintiff discounted the maximum figure by 33% for the likely possibility
28 that this Court would reduce the PAGA penalties awarded, to arrive at an estimated exposure of

1 \$165,825. Rowbotham Decl., ¶ 27.

2 Using these estimated figures, Plaintiff estimated that the potential reasonable recovery
3 for the Settlement Class would be approximately \$272,625. Rowbotham Decl., ¶ 28. Thus, the
4 proposed recovery to the Settlement Class of \$240,000 represents approximately 88.03% of
5 Plaintiff's reasonably forecasted class-wide recovery, which is well within the range approved by
6 courts as being fair, reasonable and adequate, while also avoiding further expense and risk of
7 proceeding towards class certification and trial. *Id.*; see, e.g., *Altamirano v. Shaw Industries, Inc.*,
8 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the
9 hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to
10 grant preliminary approval..."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
11 settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska*
12 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only
13 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
14 settlement is grossly inadequate and should be disapproved.") (internal quotations omitted).
15 Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to
16 the Settlement Class without the uncertainty, delay, and additional expense of further 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 possess extensive experience litigating wage and hour
22 class actions from both the plaintiff and defense side, and who have been appointed as class
23 counsel in numerous cases alleging similar claims. Rowbotham Decl., ¶¶ 2-7; Declaration of Paul
24 K. Haines ("Haines Decl."), ¶¶ 2-11; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-
25 9; Declaration of Susan J. Perez ("Perez Decl."), ¶¶ 2-6.. Plaintiff's counsel conducted an
26 extensive review and analysis of Defendant's payroll records and drew on their extensive
27 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Rowbotham
28 Decl., ¶ 29. It was only after the completion of this work that the Parties attended mediation and

ultimately accepted a mediator’s proposal for a class-wide settlement of all claims at issue. *Id.* Thus, this factor supports preliminary approval.

2. The Preliminary Approval Standard is Met

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

a. The Settlement is Within the Range of Possible Approval

The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class members in light of the significant risks of litigation. The proposed Settlement will provide compensation for contested claims, while only releasing the claims actually at issue in this litigation. Further, the average Individual Class Payment of \$1,051 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

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 Defendant 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”).

1 and payroll records which were analyzed by Plaintiff and his counsel; arm's-length negotiations
2 by counsel; mediation before an experienced wage and hour class action mediator who made a
3 mediator's proposal; and additional negotiations until the terms of the long-form Settlement were
4 agreed upon and finalized. Rowbotham Decl., ¶ 30; *see also Kullar, supra*, 168 Cal.App.4th at
5 130. Thus, this factor supports preliminary approval.

6 **c. The Settlement is Devoid of Obvious Deficiencies**

7 The Settlement will provide tangible monetary relief to the Settlement Class members.
8 Moreover, the amounts proposed for settlement administration costs, attorneys' fees and costs to
9 Class Counsel, and the LWDA's portion of PAGA civil penalties are all reasonable and
10 appropriate. Because the Settlement is devoid of obvious deficiencies, this final factor supports
11 preliminary approval.

12 **B. The Court Should Certify the Settlement Class for Settlement Purposes**

13 The proposed Settlement Class satisfies the criteria for certification of a settlement class
14 under California law because: (1) the individuals in the Settlement Class are so numerous that
15 joinder would be impractical; (2) common questions of law and fact predominate over individual
16 questions such that class certification is the most efficient and desirable way to maintain this
17 litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class members;
18 and (4) Plaintiff and Plaintiff's counsel will fairly and adequately represent the interests of the
19 absent Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

20 **1. The Proposed Class is Ascertainable and Numerous**

21 A class is "ascertainable" where the members "may be readily identified without
22 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
23 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
24 Class is defined as all non-exempt employees who worked for Defendant in California during the
25 Class Period, and who do not timely opt out of the settlement class. *See* Settlement, ¶ 1.5.
26 Settlement Class members can be easily identified using Defendant's employment and payroll
27 records. Rowbotham Decl., ¶ 31. Defendant represents that the Settlement Class consists of
28 approximately 79 individuals, rendering it impracticable to bring all Settlement Class members

1 before the Court. *Id.*; Settlement, ¶ 8. Thus, the proposed Settlement Class satisfies numerosity.
2 *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

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

4 The focus in a certification dispute is not on the merits of the case, but rather on what
5 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*
6 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff’s claims are predicated
7 on Defendant’s alleged failures to furnish accurate and itemized wage statements and reimburse
8 all necessary business expenses. Claims based on uniform policies are commonly held to be
9 proper for class certification. *See, e.g., Brinker Restaurant Corp. v. Superior Court* (2012) 53
10 Cal.4th 1004, 1032-1034 (“The theory of liability—that Brinker has a uniform policy, and that
11 that policy...allegedly violates the law—is by its nature a common question eminently suited for
12 class treatment.”).

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

14 The typicality requirement is satisfied where the class representative has 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. Almaraz Decl., ¶¶ 2-4.
19 Plaintiff alleges that he worked as piece-rate employee, received facially deficient wage
20 statements, and was not reimbursed for the business use of his personal cell phone. *Id.* Plaintiff
21 was therefore impacted by the same challenged policies that allegedly injured the Settlement Class
22 as a whole and was subject to the same defenses forwarded by Defendant as to the Settlement
23 Class, and are therefore typical.

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

25 The adequacy of representation requirement examines conflicts of interest between named
26 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
27 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will
28 adequately represent the Settlement Class members as there are no conflicts between the named

1 Plaintiff and the Settlement Class members he seeks to represent, and Plaintiff possesses claims
2 that are in line with those of the Settlement Class members. *See McGhee v. Bank of America*
3 (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the
4 plaintiff's counsel were not qualified and the plaintiff had no interests antagonistic to those of the
5 class). Class Counsel also has extensive experience in wage and hour class action litigation. *See*
6 *Rowbotham Decl.*, ¶¶ 2-7; *Haines Decl.*, ¶¶ 2-11; *Schmidt Decl.*, ¶¶ 2-9; *Perez Decl.*, ¶¶ 2-6..

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

8 This Court should order distribution of the proposed Class Notice in English and Spanish
9 to the Settlement Class members by first class mail, postage prepaid, using the last known mailing
10 address information provided by Defendant. This manner of giving notice is the “best notice
11 practicable” under the circumstances because it provides “individual notice to all members who
12 can be identified through reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S.
13 156, 173. The Parties propose that the settlement be administered by Phoenix Settlement
14 Administrators (“Phoenix”), an experienced class action settlement administrator. *See Declaration*
15 *of Jodey Lawrence*. Settlement Class members’ addresses will be ascertainable through
16 Defendant’s personnel records, and Defendant will provide all Settlement Class members’ names,
17 last known addresses, phone numbers, social security numbers, and pay period data to Phoenix
18 within twenty (20) business days after the Court signs an order preliminarily approving the
19 Settlement. *See Settlement*, ¶ 4.1. Phoenix will run the Settlement Class members’ addresses
20 through the National Change of Address database and/or conduct skip traces to obtain current
21 address information. *Id.*, ¶ 1.11.

22 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
23 because it advises the Settlement Class members of the nature of the claims, basic contentions
24 and denials of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out
25 or object to the Settlement and the procedures by which to do so, explains the recovery formula
26 and expected recovery amount for each Settlement Class members, and advises them that they
27 will be bound by the terms of the Settlement if they do not request exclusion. *See Rowbotham*
28 *Decl.*, Exhibit B. The proposed Class Notice will also notify the Settlement Class of the Final

1 Approval Hearing date, provide Class Counsel's contact information, and advise Settlement Class
2 members that they may enter an appearance through counsel if they so wish. *Id.* This manner of
3 giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective
4 method of reaching Settlement Class members. Additionally, because the proposed Settlement
5 includes settlement of Plaintiff's representative PAGA claim, notice of the Settlement has been
6 submitted to the LWDA. *See id.*, Exhibit E (LWDA Settlement Submission); Proof of Service.

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

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

11 **V. CONCLUSION**

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

15 Dated:

Respectfully Submitted,
HAINES LAW GROUP, APC

16
17 By:


Andrew J. Rowbotham
Attorneys for Plaintiff