

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
Susan J. Perez (SBN 329044)
sperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

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

ERIC PRADO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

WILWOOD ENGINEERING, a California
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 2023CUOE015773

*[Assigned for all purposes to the Hon. Benjamin
F. Coats, Dept. 43]*

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

Date: October 29, 2024
Time: 8:35 a.m.
Dept.: 43

Action Filed: October 24, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on October 29, 2024 at 8:35 a.m., or as soon thereafter as the matter may be heard, in Department 43 of the Ventura County Superior Court, located at 800 South Victoria Avenue, Ventura, California 93009, Plaintiff Eric Prado (“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. Per California Code of Civil Procedure § 382, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

All current and former non-exempt employees of Wilwood Engineering in California who worked at any time between October 24, 2022 and July 15, 2024.

3. Preliminary appointment of Plaintiff Eric Prado as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham 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 § 2698 *et seq.*, and Class Counsel’s attorneys’ fees and costs;
6. Appointment of CPT Group, Inc. 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 and Spanish, as provided in the Settlement Agreement.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, Plaintiff Eric Prado, and Julie Green of CPT Group, Inc., and the exhibits attached thereto, the

1 pleadings and other papers filed in this action, and on any further oral or documentary evidence
2 or argument presented at the time of hearing.

3 Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and
4 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
5 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider
6 the entire Motion, which is 22 pages in length.

7 Dated: October 7, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By:

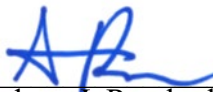

Andrew J. Rowbotham
Attorneys for Plaintiff

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1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Plaintiff Eric Prado (“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 Wilwood Engineering (“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;
10 (iv) authorize and permit all lawful rest periods; (v) reimburse necessary business expenses;
11 (vi) issue accurate and itemized wage statements; (vii) timely pay all final wages upon separation;
12 (viii) comply with California’s Unfair Competition laws; and (ix) is liable for civil penalties under
13 the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”).

14 Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary,
15 \$450,000.00 class action settlement on behalf of the following Settlement Class:

16 All current and former non-exempt employees of Wilwood Engineering in
17 California who worked at any time between October 24, 2022 and July 15, 2024
(the “Class Period”).

18 Based upon the data provided by Defendant, there are approximately 326 potential
19 Settlement Class members subject to the Settlement. After Court-approved deductions for
20 Plaintiff’s Class Representative Enhancement Payment, settlement administrator costs, the PAGA
21 Amount and PAGA penalties payable to the Labor & Workforce Development Agency
22 (“LWDA”), and attorneys’ fees and costs to Class Counsel, the remaining Net Settlement Amount
23 (“NSA”) is estimated to be no less than \$215,000.00. This results in average Individual Settlement
24 Payments of approximately \$659.51, with the lowest possible estimated Individual Settlement
25 Payment of approximately \$9.65 (in the event a Settlement Class member worked only one
26

27 ¹ The Settlement Agreement is attached as **Exhibit 1** to the Declaration of Andrew J. Rowbotham
28 (“Rowbotham 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 Rowbotham Decl. as **Exhibit 2**.

workweek during the Class Period) and the highest possible estimated Individual Settlement Payment of approximately \$868.76 (in the event a Settlement Class member performed work in every workweek throughout the Class Period). Rowbotham Decl., ¶ 28. Of the \$30,000.00 set aside for PAGA civil penalties, \$7,500 will be set aside for current and former non-exempt employees of Defendant in California who worked at any time between October 24, 2022 and July 15, 2024 (the “PAGA Period”) (collectively, the “PAGA Employees”) for the release of claims under PAGA. *See* Settlement, ¶¶ 3, 5C(5). Significantly, Settlement Class members do not need to file a claim form in order to receive an Individual Settlement Payment, and all Settlement Class members who do not opt-out will automatically receive their share of the Settlement. This represents a fair and reasonable result for the Settlement Class members, who will be agreeing to a release of only those claims that were actually asserted, or which could have been asserted based on the facts alleged in the operative FAC in the lawsuit.

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

Prior to reaching this proposed Settlement, Defendant provided Plaintiff with the payroll and timekeeping records for a 1/3 representative sample of the Settlement Class members spanning the duration of the Class Period, as well as policy documents and key data points. Plaintiff, with the help of his retained expert who holds a PhD in labor economics, analyzed the

1 data and created a class-wide exposure model for the claims at issue. On May 16, 2024, after
2 extensive legal research and analysis, along with the comprehensive review of the data, the Parties
3 participated in a mediation session with the Hon. Peter D. Lichtman (Ret.). At the conclusion of
4 mediation, Judge Lichtman made a mediator’s proposal for a class-wide resolution of all claims
5 at issue that the Parties ultimately accepted. Over the following months, the Parties negotiated
6 and executed the long-form Settlement Agreement that is now before this Court for preliminary
7 approval.

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

10 **II. SUMMARY OF THE LITIGATION**

11 **A. Factual And Procedural Background**

12 Defendant designs and manufactures disc brake systems calipers, brake pads, and rotors
13 for numerous industries, including commercial automobiles, competitive motorsports,
14 agriculture (i.e. tractors and forklifts), industrial applications (i.e. pumps, windmills, assembly
15 line rollers, and roller coasters), and military vehicles. Rowbotham Decl., ¶ 10. Defendant
16 employed Plaintiff as a non-exempt “Quality Inspector” from approximately June 2022 until
17 approximately April 2023. Declaration of Eric Prado (“Prado Decl.”), ¶ 2. Plaintiff worked in
18 Defendant’s Calle Bolero warehouse facility in Camarillo, California. Plaintiff, like all other
19 members of the Settlement Class was subject to Defendant’s wage and hour policies and
20 practices throughout the Class Period. Rowbotham Decl., ¶ 10; Prado Decl., ¶ 3.

21 On October 24, 2023, Plaintiff filed the initial class action complaint in this action.
22 Rowbotham Decl., ¶ 11. On September 18, 2024, after exhausting his administrative remedies
23 with the LWDA and receiving this Court’s signed order authorizing amendment to the complaint,
24 Plaintiff filed the operative FAC to add a cause of action for civil penalties under PAGA, premised
25 on the same underlying Labor Code violations. *Id.*

26 As part of Plaintiff’s initial onboarding, Defendant required Plaintiff to sign an arbitration
27 agreement with a class action waiver. Rowbotham Decl., ¶ 12. Through pre-mediation
28 discussions with Defendant’s counsel, rather than dismiss class claims and initiate Plaintiff’s

individual arbitration, the Parties agreed to attend mediation and attempt to resolve on a 1-year class and PAGA basis. *Id.*

B. Plaintiff's Claims and Defendant's Defenses

1. Meal Period Violations

Plaintiff asserts that Defendant failed to provide the Settlement Class members with second meal periods when they worked shifts over 10.0 hours. Rowbotham Decl., ¶ 13; *see* Labor Code § 512(a) (“An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”); *see also Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1042 (“[T]he second meal period may be waived by **mutual consent** of the employer and the employee only if the first meal period was not waived”) (emphasis added); *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 728-29 (“[The wage order] imposes an affirmative obligation on every employer to authorize and provide legally required meal and rest breaks; if it fails to do so, it has violated the law and is liable.”) Plaintiff contends that Defendant never informed its employees that they even had the option to take a second 30-minute meal period for these shifts. Additionally, Plaintiff maintains that while working Saturday shifts, he was required to waive his meal period via a Saturday Lunch Waiver form signed during onboarding. Rowbotham Decl., ¶ 13. Plaintiff also asserts Defendant failed to pay any meal period premiums owed during the relevant time period, which is itself a certifiable issue. *Id.*; *see, e.g., Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (certifying UCL claim based on employer’s failure to pay premium wages under Labor Code § 226.7).

In response, Defendant contends it maintained lawful meal period policies/practices throughout the Class Period. Rowbotham Decl., ¶ 14. Specifically, Defendant produced a facially-lawful meal period policy that it claims has been in place and effective at all times during the Class Period, and all meal periods were provided in compliance with its written policy. *Id.* Further, Defendant asserts that Settlement Class members signed meal period waivers during the

1 Class Period, and therefore, if Settlement Class members did not take meal periods it was due to
2 waiver. *Id.* Finally, Defendant contends that Plaintiff’s meal period claim is not suited for class
3 certification as employees signed arbitration agreements with class action waivers that prevent
4 them from pursuing these claims in court. *Id.*

5 **2. Rest Period Violations**

6 Plaintiff alleges that Defendant failed to authorize and permit the Settlement Class
7 members to take all lawful rest periods to which they were entitled. Rowbotham Decl., ¶ 15.
8 Specifically, Defendant failed to authorize and permit employees to take a “net” rest period of
9 10-minutes, as evidenced by Defendant’s written rest period policy that requires employees to be
10 ready to begin working at the conclusion of the 10-minute allotted rest period time. *See Wage*
11 *Order 1*, § 12(A) (requiring 10 minutes of “net rest time” for every four hours worked or major
12 fraction thereof); Division of Labor Standards Enforcement (“DLSE”) Op. Ltr
13 2002.02.22) (requiring 10 minutes of consecutive, duty-free “net” rest period time); *Vaquero v.*
14 *Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for
15 the proposition that “the rest period begins when the employee reaches an area away from the
16 workstation that is appropriate for rest”); *Kaanaana v. Barrett Bus. Servs., Inc.* (2018) 29 Cal.
17 App. 5th 778, 801 (stating that where lead belt sorters spent 3 to 5 minutes rounding up other belt
18 sorters to clock back in after meal breaks, “[t]hey are entitled to compensation for that work.
19 While defendant argued...that this was a “de minimis” incursion into the 30-minute meal period,
20 the trial court properly rejected that notion, stating: ‘The evidence is that employees lost three to
21 five minutes of a 30 minute break. A 13 percent deprivation of a break is not de minimis. When
22 time is scarce, minutes count. On a 30-minute break, time is scarce.’”) Further, Plaintiff contends
23 that Defendant refused to permit employees to leave the parking lot during rest periods and failed
24 to authorize any third rest periods for shifts over 10.0 hours. *See Augustus v. ABM Security Servs.,*
25 *Inc.* (2016) 2 Cal. 5th 260, 269 (“[D]uring required rest periods, employers must relieve their
26 employees of all duties and relinquish any control over how employees spend their break time...
27 [O]ne cannot square the practice of compelling employees to remain at the ready, **tethered by**
28 **time and policy to particular locations** or communications devices, with the requirement to

1 relieve employees of all work duties and employer control during 10-minute rest
2 periods.”) (emphasis added). Plaintiff also alleges that Defendant failed to pay *any* rest period
3 premiums for rest period violations during the relevant time period. Rowbotham Decl., ¶ 15;
4 Labor Code § 226.7; *Safeway, supra*, 238 Cal.App.4th at 1159.

5 Defendant maintains it authorizes and permits the Settlement Class members to take all
6 lawful rest periods to which they are entitled. Rowbotham Decl., ¶ 16. Further, Defendant asserts
7 that employees are permitted to leave the facility during rest breaks and that, despite its written
8 policy, employees are also authorized breaks in excess of 10 minute and therefore receive at least
9 10 “net” minutes of rest in compliance with California law. *Id.* Like all other class claims,
10 Defendant contends that this claim is uncertifiable given that employees signed arbitration
11 agreements with class action waivers. *Id.*

12 **3. Regular Rate Miscalculation – Sick Pay**

13 Under California law, all non-exempt employees are entitled to paid sick time at the
14 regular rate of pay. *See* Labor Code § 246(l)(1) (“Paid sick time for nonexempt employees shall
15 be calculated in the same manner as the regular rate of pay for the workweek in which the
16 employee uses paid sick time, whether or not the employee actually works overtime in that
17 workweek.”); *see* Labor Code § 226.7(c); *see Alvarado v. Dart Container Corp. of California*
18 (2018) 4 Cal.5th 542, 554 (as modified Apr. 25, 2018) (“Regular rate of pay, which can change
19 from pay period to pay period, includes adjustments to the straight time rate, reflecting, among
20 other things, shift differentials and the per-hour value of any non-hourly compensation the
21 employee has earned.”) Throughout the Class Period, Defendant paid employees shift differential
22 for the night shift and non-discretionary sales bonuses but failed to include the value of these
23 additional forms of pay when calculating the employees’ respective regular rates of pay for sick
24 pay. Rowbotham Decl., ¶ 17. Plaintiff recognizes that this claim does not, by itself, include a
25 private right of action. *Id.* However, the underpayment of sick pay wages does provide additional
26 support for PAGA civil penalties. *Id.*

27 Defendant asserts that its timekeeping policies/practices complied with California law and
28 that it has always properly compensated Settlement Class members throughout the Class Period.

Rowbotham Decl., ¶ 17.

4. Failure to Reimburse Violations

Plaintiff alleges that Defendant failed to reimburse the Settlement Class members for all necessary business expenses incurred, in violation of Labor Code § 2802. Rowbotham Decl., ¶ 18; *see* Labor Code § 2802. Specifically, Plaintiff asserts that Defendant required Plaintiff and other non-exempt employees to purchase levelers and various other items to complete their daily tasks. *Id.*; *see Gattuso v. Harte-Hanks Shoppers, Inc.* (2015) 169 P.3d 889; *see also* Labor Code § 2802(a) (“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...”).

Defendant argues it maintained a policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, Defendant was either unaware of the expense itself was not reasonable or necessary. Rowbotham Decl., ¶ 19. Defendant also maintains that this claim is not suited for class certification as putative class members signed arbitration agreements with class action waivers. *Id.*

5. Wage Statement, Waiting Time, and PAGA Penalties

As a result of Defendant’s alleged failure to pay all 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. Rowbotham Decl., ¶ 20; *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. Rowbotham Decl., ¶ 20; *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. Rowbotham Decl., ¶ 24; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains that Plaintiff cannot show that the wage statement violations were “knowing and intentional,” or that the putative class members “suffer[ed] injury” as a result of the alleged violations, as required

1 by Labor Code § 226(e) for the imposition of wage statement penalties. Rowbotham Decl., ¶ 24;
2 *see* Labor Code § 226(e)(1). Moreover, Defendant maintains that its good faith defenses to
3 Plaintiff’s underlying claims would preclude the recovery of waiting time penalties, which are
4 only available for the “willful” failure to pay wages, and that this Court would exercise its
5 discretion to substantially reduce any PAGA penalties awarded. Rowbotham Decl., ¶ 24; *see also*
6 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude
7 imposition of waiting time penalties under Section 203.”); Labor Code § 2699(e)(2); *Naranjo v.*
8 *Spectrum Sec. Servs., Inc.*, 88 Cal.App.5th 937 (2023); *Thurman v. Bayshore Transit Mgmt., Inc.*
9 (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th
10 504 (affirming reduction of PAGA penalties to 10% of exposure).²

11 **C. Discovery And Mediation**

12 In connection with mediation, Defendant provided Plaintiff with timekeeping and payroll
13 records for a representative 1/3 sample of putative class members spanning the Class Period, as
14 well as policy documents and key data points. Rowbotham Decl., ¶ 27. Plaintiff, with the help of
15 his retained expert who holds a PhD in labor economics, analyzed the mediation data and created
16 a class-wide exposure model for the claims at issue. *Id.* On May 16, 2024, the Parties participated
17 in a mediation session with the Hon. Peter D. Lichtman (Ret.), during which the Parties
18 exchanged divergent views on Defendant’s liability and exposure valuations and their underlying
19 legal positions. *Id.* At the conclusion of mediation, Judge Lichtman made a mediator’s proposal
20 that the Parties ultimately accepted. *Id.* Over the following months, the Parties finalized the terms
21 of the proposed Settlement attached to the Rowbotham Decl. as **Exhibit 1**. *Id.*

22
23
24 ² Plaintiff’s complaint also includes claims for unpaid minimum and overtime wages due to time
25 rounding, overtime underpayment due to a miscalculation of the regular rate of pay, and failure
26 to provide first meal periods. Rowbotham Decl., ¶ 25. Based on a review of the documents
27 Defendant produced prior to mediation, Plaintiff’s expert determined that the rounding claim did
28 not result in an underpayment of wages to any member of the putative class, that Defendant
properly included the value of incentive compensation in the regular rate of pay for overtime
purposes, and that Defendant’s first meal period compliance rate was over 99%. As a result,
Plaintiff and his expert determined these additional claims provide only nominal settlement value.

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 \$450,000.00. Rowbotham Decl., ¶ 28; Settlement, ¶ 5. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Payments unless they affirmatively opt-out. Settlement, ¶¶ 5C. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$450,000.00
Minus Court-approved attorneys’ fees (1/3):	\$150,000.00
Minus Court-approved attorneys’ costs (up to):	\$40,000.00
Minus Court-approved Enhancement Payment:	\$5,000.00
Minus settlement administrator costs (up to):	\$10,000.00
Minus PAGA penalties:	\$30,000.00
Net Settlement Amount:	\$215,000.00

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 \$215,000.00. *See* Settlement, ¶ 5C(1). Individual Settlement Payments will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period. *Id.*, ¶ 6B. Further, the 25% portion of the PAGA civil penalties allocated as the PAGA Amount will be paid to all PAGA Employees, regardless of their election to opt-out from participating in the Settlement, based on the proportionate number of workweeks worked by the PAGA Employees during the PAGA Period, divided by the total number of workweeks worked by all PAGA Employees during the PAGA Period. *Id.*, ¶ 6C. For tax purposes, each Individual Settlement Payment will be allocated as 1/3 wages (subject to applicable withholdings), and 2/3 interest and penalties (not subject to withholdings). *Id.*, ¶ 6E. The PAGA Amount payable to the PAGA Employees shall be allocated as 100% penalties. *Id.* Further, Defendant will pay the employer’s share of payroll taxes separate and apart from, and in addition to, the MSA. *Id.*, ¶ 5F.

Based on the estimated NSA, average Individual Settlement Payments are approximately \$659.51. Rowbotham Decl., ¶ 28. Settlement Class members will have 60 calendar days from the

1 date of the initial mailing of the Notice Packet to opt-out or object to the Settlement, thereby
2 providing ample time to review the Class Notice without unduly delaying the Settlement. *See*
3 Settlement, ¶¶ 11D. Settlement Class members who do not opt-out of the Settlement will be bound
4 by its terms and will release all claims against Defendant as detailed in the Settlement. *Id.*, ¶ 4.

5 Defendant will fund the MSA no later than 30 days after: (i) the Settlement Administrator
6 is engaged and provides Defendant with instructions respecting how to make payment and either
7 (ii) entry by the Court of an Order granting final approval to the Settlement or (iii) any appeals or
8 other challenges to the settlement are resolved, whichever is later. *See* Settlement, ¶ 5B. Within
9 ten (10) business days following the full funding of the MSA, the Settlement Administrator will
10 calculate and mail the Individual Settlement Payments to the participating Settlement Class
11 members. *Id.*, ¶ 6D. Settlement Class members will have 180 days from the date the Individual
12 Settlement Payments are mailed to cash their checks. *Id.*, ¶ 6F. In the event that there are any
13 uncashed checks remaining after 180 days, any remaining funds will be transferred to the
14 Unclaimed Property Fund in the name of the intended recipient. *Id.*

15 **2. Attorneys' Fees, Costs, and Plaintiff's Class Representative**
16 **Enhancement Payment**

17 At the time of seeking final settlement approval, Plaintiff will apply for a Class
18 Representative Enhancement Payment in the amount of \$5,000 for his service to the Settlement
19 Class and his general release of all claims. Rowbotham Decl., ¶ 29; *see* Settlement ¶¶ 5C(3), 8.
20 Plaintiff's requested class representative Enhancement Payment is intended to recognize the
21 significant time and effort that he expended on behalf of the Settlement Class, including searching
22 for relevant documents for use in the lawsuit, providing factual information and relevant
23 documents to his attorneys, holding various phone calls with his attorneys to discuss the claims
24 in the lawsuit and Defendant's practices, discussing the status of the case and general case strategy
25 with his attorneys on multiple occasions, providing valuable input to assist his attorneys in
26 preparing for mediation, making himself available during the mediation, reviewing and providing
27 input regarding the Settlement in his case, and otherwise assisting his attorneys in moving the
28 case towards resolution, the significant risks Plaintiff undertook by serving as the named plaintiff,

1 and the fact that he agreed to a general release of all claims subject to a waiver of Civil Code
2 § 1542. Rowbotham Decl., ¶ 29; Prado Decl., ¶¶ 4-5; Settlement, ¶ 4C.

3 Class Counsel will also apply for an attorneys' fee award of up to one third of the MSA
4 (currently estimated at \$150,000), and up to \$40,000 in reimbursement for actual litigation costs.
5 Rowbotham Decl., ¶ 30; *see* Settlement, ¶ 5C(4). Plaintiff submits that the requested fee is fair
6 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
7 purely contingent fee basis. Rowbotham Decl., ¶ 30. Class Counsel has incurred substantial
8 attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal
9 research and analysis, reviewing class documents and data produced by Defendant, retaining an
10 expert and extensively reviewing and evaluating the produced timekeeping and payroll records to
11 build a comprehensive damages model, preparing for and attending mediation, negotiating and
12 drafting the Memorandum of Understanding, long-form Settlement Agreement, and Notice
13 Packet documents, preparing this motion for preliminary approval, and otherwise litigating the
14 case. *Id.* Class Counsel will also expend future attorney time attending the hearing on this Motion,
15 overseeing the Notice process, drafting the Final Approval Motion and supporting documents,
16 attending the Final Approval hearing, and completing other tasks, such as fielding questions from
17 Settlement Class members. *Id.*

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

1 **IV. ARGUMENT**

2 **A. Preliminary Approval Is Warranted**

3 California Rule of Court 3.769 conditions the settlement of a class action on court
4 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
5 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
6 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine “that the
7 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir.
8 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
9 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
10 preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor*
11 *ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed
12 settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product
13 of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027.
14 There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s
15 length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

16 **1. Standard for Preliminary Approval**

17 The Court should consider the following factors when making a fairness determination:
18 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
21 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
22 “[T]he court is free to engage in a balancing and weighing of factors depending on the
23 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the
24 proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

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

26 Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member data
27 spanning the entire Class Period and all relevant policy documents, and, with the help of a retainer
28 expert who holds a PhD in labor economics, created a comprehensive damages model for

1 Defendant's liability. Rowbotham Decl., ¶ 30. Although Plaintiff steadfastly maintains that his
2 claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in
3 proceeding with continued litigation. As explained in detail in Section II.B., *supra*, Defendant
4 presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class
5 certification. As to class certification, Defendant represented that Plaintiff and the Settlement
6 Class members signed arbitration agreements with class action waivers during their onboarding
7 process. Class Counsel reviewed the agreements and determined it was likely that they would be
8 enforceable as to the class claims. Thus, if the matter did not resolve at mediation, Plaintiff would
9 have had to request dismissal of the class claims and move forward with this matter as a PAGA-
10 only representative action. It was thus far from certain that Plaintiff would be able to recover a
11 greater amount should this matter proceed through trial. Thus, this factor supports preliminary
12 approval.

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

14 Although the Parties engaged in substantial informal discovery and information exchange
15 prior to mediation, the Parties had agreed to refrain from engaging in formal written and
16 deposition discovery until after exhausting their settlement efforts at mediation. Rowbotham
17 Decl., ¶ 27. Absent settlement, the Parties will be required to expend substantial time and
18 resources conducting extensive formal written and deposition discovery. Should the matter have
19 proceeded through summary judgement / adjudication and trial, the Parties would incur
20 considerably more attorneys' fees and costs through a possible appeal. This Settlement avoids
21 these considerable costs, risks, and the accompanying burden of continued litigation on the Court.
22 Thus, this factor supports preliminary approval.

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

24 At the time of the proposed Settlement, Plaintiff had not filed his motion for class
25 certification. As discussed above, Plaintiff and the members of the Settlement Class signed
26 arbitration agreements with class action waivers. Therefore, absent the Settlement, it was all but
27 guaranteed that Plaintiff would be unable to move forward on a class-wide basis. Thus, this factor
28 supports preliminary approval.

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

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

5 **Meal Period Violations: \$7,258**

6 Plaintiff's expert reviewed the timekeeping records produced for mediation and
7 determined that employees worked 7,628 shifts in excess of 10.0 hours during the Class Period.
8 Rowbotham Decl., ¶ 13. Given Plaintiff's contention that Defendant did not provide second meal
9 periods to employees in the first place – meaning they did not have an opportunity to waive this
10 meal period, Plaintiff calculated Defendant's liability on this claim at \$145,161 (7,628 meal
11 period violations x \$19.03 average premium). *Id.*

12 Defendant asserts, however, that it maintained a lawful meal period policy/practice at all
13 times during the Class Period and that any failure by an employee to take a lawful meal period
14 was the result of employee choice rather than company policy. Rowbotham Decl., ¶ 14.
15 Additionally, due to the arbitration agreements with class action waivers, Defendant maintains
16 that this claim is uncertifiable on a classwide basis and would therefore need to be dismissed
17 absent settlement. *Id.* Plaintiff discounted the maximum exposure by 95% for the risk of non-
18 certification, and without any additional discount for the possibility of losing on the merits,
19 arrived at an estimated exposure of \$7,258. *Id.*, ¶ 13.

20 **Rest Period Violations: \$109,405**

21 Plaintiff's expert reviewed the timekeeping records produced for mediation and
22 determined there were 114,982 shifts in excess of 3.5 hours worked during the Class Period.
23 Rowbotham Decl., ¶ 15. Because Defendant did not authorize and permit a "net" of 10-minutes
24 of rest, and did not relinquish all control over employees during rest periods, each of these shifts
25 would accrue a rest period violation. *Id.* Plaintiff therefore calculates Defendant's rest period
26 exposure at \$2,188,107 (114,982 rest period violations x \$19.03 avg. premium). *Id.*

27 But as noted above, Defendant argues it has always authorized and permitted duty-free
28 rest periods in accordance with California law and that this claim is not amenable to class

1 certification given the arbitration agreements with class action waivers. Rowbotham Decl., ¶ 16.
2 Plaintiff discounted the maximum exposure by 95% for the risk of non-certification, and without
3 any additional discount for the possibility of losing on the merits, arrived at an estimated exposure
4 of \$109,405. *Id.*, ¶ 15.

5 **Failure to Reimburse Violations: \$1,630**

6 Based on conversation with Plaintiff, Plaintiff estimates that he and other employees spent
7 at least \$100.00 on specialized tools to perform his job duties during his employment. Rowbotham
8 Decl., ¶ 18. Plaintiff's expert determined that there were 326 employees who worked during the
9 Class Period. *Id.* Assuming each of these employees experienced a similar amount of
10 unreimbursed business expense, Plaintiff calculates Defendant's exposure for this claim at
11 \$32,600 (326 employees x \$100.00 unreimbursed expense). *Id.*

12 As noted above, Defendant maintains that Settlement Class members were not required to
13 purchase their own tools to perform their duties (as Defendant provides all tools necessary) and
14 to the extent any such purchases were made they were not reasonable or necessary. Rowbotham
15 Decl., ¶ 19. Like the other class claims, Defendant also maintains this claim is not certifiable due
16 to the arbitration agreements with class waivers signed by putative class members. *Id.* Plaintiff
17 discounted the maximum exposure by 95% for the risk of non-certification, and without any
18 additional discount for the possibility of losing on the merits, arrived at an estimated exposure of
19 \$1,630. *Id.*, ¶ 18.

20 **Wage Statement Penalties: \$54,710**

21 According to the key data points provided by Defendant, approximately 326 Settlement
22 Class members are eligible for wage statement penalties, and a total of 11,105 wage statements
23 were issued during the relevant period. Rowbotham Decl., ¶ 21. Plaintiff calculated Defendant's
24 maximum possible wage statement exposure as approximately \$1,094,200 ((326 initial violations
25 x \$50.00 per pay period) + (10,779 subsequent pay periods x \$100.00 per pay period)). *Id.*
26 However, Defendant raised numerous defenses, including that the alleged violations, if any, were
27 not "knowing and intentional," and that Plaintiff could not show that the Settlement Class
28 members "suffer[ed] injury" as a result of any alleged violations. *Id.*, ¶ 24. Defendant further

1 argued that, beyond the arbitration agreements, Plaintiff's underlying claims would fail, and,
2 therefore, his wholly derivative wage statement claim would also fail. *Id.* Plaintiff discounted the
3 maximum exposure by 95% for the risk of non-certification, and without any additional discount
4 for the possibility of losing on the merits, arrived at an estimated exposure of \$54,710. *Id.*, ¶ 21.

5 **Waiting Time Penalties: \$11,874**

6 Based on data provided by Defendant, approximately 52 Settlement Class members
7 separated their employment during the relevant period applicable to this claim. Rowbotham Decl.,
8 ¶ 22. As a result of Defendant's unlawful meal period and rest period practices, Plaintiff asserts
9 that each of these employees are entitled to waiting time penalties. *Id.* Plaintiff therefore
10 calculated Defendant's maximum exposure of \$237,484 (52 former employees x average waiting
11 time penalty of \$4,567 (\$19.03 approximate average hourly rate x 8 hours x 30 days)). *Id.*
12 Defendant maintains that waiting time penalties are not appropriate because Plaintiff's claims fail
13 on the merits, putative class members signed arbitration agreements, and given its good-faith
14 defenses, Plaintiff cannot show that any failure by Defendant to pay all final wages was willful.
15 *Id.*, ¶ 24. Plaintiff discounted the maximum exposure by 95% for the risk of non-certification, and
16 without any additional discount for the possibility of losing on the merits, arrived at an estimated
17 exposure of \$11,874. *Id.*, ¶ 22.

18 **PAGA Penalties: \$333,150**

19 Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in
20 which he could prove an underlying Labor Code violation (including each pay period where sick
21 pay wages were underpaid). According to Plaintiff's expert's data analysis, the Settlement Class
22 members worked a combined total of 11,105 pay periods during the PAGA liability period in
23 which at least one of Plaintiff's alleged Labor Code violations occurred. Rowbotham Decl., ¶ 23.
24 Plaintiff therefore calculates Defendant's maximum PAGA exposure at \$1,110,500 (11,105 pay
25 periods x \$100 per violation). *Id.*; *see also Amaral, supra*, 163 Cal.App.4th at 1207 (finding
26 "initial" violation rate applies until employer is notified that it is violating a Labor Code
27 provision). However, these penalties are exclusively derivative of the underlying violations that
28 Defendant vigorously disputes, both as to certification and the merits. Rowbotham Decl., ¶ 23;

1 *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D. Cal.
2 2013) (explaining that a PAGA claim’s success was determined by the merits of its underlying
3 claims). Plaintiff also recognizes that the Court has discretion to substantially reduce any award
4 of PAGA penalties. Rowbotham Decl., ¶¶ 23-24; *see also* Labor Code § 2699(e)(2); *Thurman*,
5 *supra*, 203 Cal.App.4th at 1135; *Fleming v. Covidien Inc.*, Case No. ED CV 10-01487 RGK
6 (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8
7 million to \$500,000). Therefore, Plaintiff discounted the maximum figure by 70% for the risk that
8 he would not prevail on any of the underlying claims and for risk of the Court reducing penalties,
9 to arrive at an estimated exposure of \$333,150. Rowbotham Decl., ¶ 23.

10 Using these estimated figures, Plaintiff estimated that the potential reasonable recovery
11 for the Settlement Class would be approximately \$518,028. Rowbotham Decl., ¶ 26. Thus, the
12 proposed recovery to the Settlement Class of \$450,000 represents approximately 86.87% of
13 Plaintiff’s reasonably forecasted class-wide recovery, which is well within the range approved by
14 courts as being fair, reasonable and adequate, while also avoiding further expense and risk of
15 proceeding towards class certification and trial. *Id.*; *see, e.g., Altamirano v. Shaw Industries, Inc.*,
16 2015 WL 4512372, *9 (N.D. Cal. 2015) (“Although 15% represents a modest fraction of the
17 hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to
18 grant preliminary approval...”); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
19 settlement of “roughly one-sixth of the potential recovery”); *Linney v. Cellular Alaska*
20 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“The fact that a proposed settlement may only
21 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
22 settlement is grossly inadequate and should be disapproved.”) (internal quotations omitted).
23 Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to
24 the Settlement Class members without the uncertainty, delay, and additional expense of further
25 litigation.

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

27 “Parties represented by competent counsel are better positioned than courts to produce a
28 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*

1 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented
2 by competent and experienced counsel who possesses extensive experience litigating wage and
3 hour class actions from both the plaintiff and defense side, and who have been appointed as class
4 counsel in numerous cases alleging similar claims. Rowbotham Decl., ¶¶ 2-8; Declaration of Paul
5 K. Haines (“Haines Decl.”), ¶¶ 2-11; and Declaration of Fletcher W. Schmidt (“Schmidt Decl.”),
6 ¶¶ 2-9. Class Counsel and their retained expert conducted an extensive review and analysis of
7 Defendant’s produced timekeeping and payroll records and drew on their extensive experience in
8 similar cases to assess the strengths and weaknesses of Plaintiff’s case. Rowbotham Decl., ¶ 27.
9 It was only after the completion of this work that the Parties attended mediation and ultimately
10 accepted a mediator’s proposal for a class-wide settlement of all claims at issue. *Id.* Thus, this
11 factor strongly supports preliminary approval of the Settlement.

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

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

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

19 The proposed Settlement reflects a fantastic recovery for the Settlement Class members
20 in light of the significant risks of litigation. The proposed Settlement will provide compensation
21 for contested claims, while only releasing the claims actually at issue in this litigation. Further,
22 the average payment of \$659.51 greatly exceeds the average payments achieved in other wage
23 and hour class action settlements that have been approved.³ Thus, the proposed Settlement is
24

25 ³ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
26 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
27 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of
28 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

1 within the range of possible approval such that notice should be provided to the Settlement Class
2 members to consider the Settlement. The Court will have the opportunity to again assess the
3 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
4 opt-out or object.

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

7 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
8 of the exchange of pertinent information, including all relevant policies, employee timekeeping
9 and payroll records, and key data points which were analyzed by Class Counsel and their retained
10 expert; arm's-length negotiations by counsel; mediation before an experienced wage and hour
11 class action mediator who made a mediator's proposal; and additional negotiations until the terms
12 of the long-form Settlement were agreed upon and finalized. Rowbotham Decl., ¶ 27; *see also*
13 *Kullar, supra*, 168 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

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

15 The Settlement will provide tangible monetary relief to the Settlement Class members.
16 Moreover, the amounts proposed for the Class Representative Enhancement Payment, settlement
17 administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's portion of
18 PAGA civil penalties are all reasonable and appropriate. Because the Settlement is devoid of
19 obvious deficiencies, this final factor supports preliminary approval.

20 **B. The Court Should Certify The Settlement Class for Settlement Purposes**

21 The proposed Settlement Class satisfies the criteria for certification of a settlement class
22 under California law because: (1) the individuals in the Settlement Class are so numerous that
23 joinder would be impractical; (2) common questions of law and fact predominate over individual
24 questions such that class certification is the most efficient and desirable way to maintain this
25 litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class members;
26 and (4) Plaintiff and Class Counsel will fairly and adequately represent the interests of the absent
27

28 _____
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").

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 employees of Defendant in California who worked at any time during the Class Period. *See* Settlement, ¶ 2. Settlement Class members can be easily identified using Defendant’s employment and payroll records. Defendant represents that the Settlement Class consists of approximately 326 individuals, rendering it impracticable to bring all Settlement Class members before the Court. Rowbotham Decl., ¶ 27. Thus, the proposed Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

2. Common Issues of Law and Fact Predominate

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

3. The Claims of the Named Plaintiff are Typical

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

1 as a whole and was subject to the same defenses forwarded by Defendant as to the Settlement
2 Class, and is therefore typical.

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

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

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

15 This Court should order distribution of the proposed Class Notice in English and Spanish
16 to the Settlement Class members by first class mail, postage prepaid, using the last known mailing
17 address information provided by Defendant. This manner of giving notice is the “best notice
18 practicable” under the circumstances because it provides “individual notice to all members who
19 can be identified through reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S.
20 156, 173. The Parties propose that the settlement be administered by CPT Group, Inc. (“CPT”),
21 an experienced class action settlement administrator. *See Declaration of Julie Green*. Settlement
22 Class members’ addresses will be ascertainable through Defendant’s personnel records, and
23 Defendant will provide all Settlement Class members’ names, last known mailing addresses,
24 phone numbers, social security numbers, dates of employment, and workweek data to CPT within
25 ten (10) business days after of the Court signs an order preliminarily approving the Settlement.
26 *See Settlement*, ¶ 11A. CPT will run the Settlement Class members’ addresses through the
27 National Change of Address database and/or conduct skip traces to obtain current address
28 information. *Id.*, ¶ 11B.

1 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
2 because it advises the Settlement Class members' of the nature of the claims, basic contentions
3 and denials of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out
4 or object to the Settlement and the procedures by which to do so, explains the recovery formula
5 and expected recovery amount for each Settlement Class member, and advises them that they will
6 be bound by the terms of the Settlement if they do not request exclusion. *See* Rowbotham Decl.,
7 **Exhibit 2**. The proposed Class Notice will also notify the Settlement Class of the Final Approval
8 Hearing date, provide Class Counsel's contact information, and advise Settlement Class members
9 that they may enter an appearance through counsel if they so wish. *Id.* This manner of giving
10 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method
11 of reaching Settlement Class members. Additionally, because the proposed Settlement includes
12 settlement of Plaintiff's representative PAGA claim, notice of the Settlement has been submitted
13 to the LWDA. *See id.*, ¶ 11, **Exhibit 3** (LWDA Settlement Submission); Proof of Service.

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

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

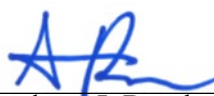
18 **V. CONCLUSION**

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

22 Dated: October 7, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

24 By:


Andrew J. Rowbotham
Attorneys for Plaintiff