

1 **JUSTICE FOR WORKERS, P.C.**

William C. Sung SB# 280792

2 E-Mail: william@justiceforworkers.com

Tiffany L. Luu SB# 335127

3 E-Mail: tluu@justiceforworkers.com

3600 Wilshire Boulevard, Suite 1815

4 Los Angeles, CA 90010

Tel: 323-922-2000

5 Fax: 323-922-2000

6 Attorneys for Plaintiff MUSHFIQUR CHOWDHURY

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10 MUSHFIQUR CHOWDHURY, an individual
11 and on behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 CWT US, LLC, a Delaware limited liability
15 company; and DOES 1 through 50,

16 Defendants.

Case No.: 23STCV25373

[Assigned for All Purposes to:
Hon. Stuart M. Rice, Dept. 1]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

(Filed concurrently with Declarations of
William C. Sung, Tiffany L. Luu, Mushfiquir
Chowdhury, and Simpluris, Inc.; [Proposed]
Order)

DATE: March 11, 2025

TIME: 10:30 a.m.

DEPT: 1

Action Filed: October 17, 2023

Trial Date: None Set

1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
4 March 11, 2025 at 10:30 a.m. in Department 1 of the Los Angeles Superior Court, located at 312
5 North Spring Street, Los Angeles, CA 90012, Plaintiff Mushfiquir Chowdhury ("Plaintiff"),
6 individually and on behalf of a class of similarly situated individuals, will and hereby does move
7 this Court for:

8 1. Preliminary approval of the proposed class settlement of this lawsuit;
9 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional
10 certification of the following Class defined as follows:

11 All current and former California non-exempt employees of Defendant CWT US,
12 LLC during the Class Period of October 17, 2019 through December 31, 2024.

13 3. Preliminary appointment of Plaintiff as Class Representative;
14 4. Preliminary appointment of William C. Sung and Tiffany L. Luu of Justice for
15 Workers, P.C. as Class Counsel;
16 5. The scheduling of a hearing to consider whether the Settlement should be finally
17 approved and to permit a Class Representative Service Award to Plaintiff, civil penalties payable to
18 the LWDA, settlement administration costs, and attorneys' fees and costs to Class Counsel;
19 6. Appointment of Simpluris, Inc. as the third-party Administrator for mailing notices
20 and administering the Settlement; and
21 7. Approval of the proposed Class Notice and an order that it be disseminated to the
22 proposed Class as provided in the Settlement Agreement.

23 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
24 Authorities; the supporting declarations of William C. Sung, Tiffany L. Luu, Plaintiff Mushfiquir
25 Chowdhury, and Denis Islas for Simpluris, Inc., and the exhibits attached thereto; the pleadings, and
26 other papers filed in this Action; and on any further oral or documentary evidence or argument
27 presented at the time of the hearing.

28 ///

1 DATED: January 31, 2025

Respectfully submitted,

2 **JUSTICE FOR WORKERS, P.C.**

3
4 By: 

5 William C. Sung

6 Tiffany L. Luu

7 Attorneys for Plaintiff

8 MUSHFIQUR CHOWDHURY

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Mushfiquir Chowdhury (“Plaintiff”) brought this wage and hour class and
4 representative action on behalf of a Class of current and former non-exempt employees of
5 Defendant CWT US, LLC (“Defendant”) in California from October 17, 2019 through December
6 31, 2024 (the “Class Period”). The primary issues in this case pertain to Defendant’s alleged failure
7 to provide employees with compliant meal and rest periods, failure to pay paid sick leave at the
8 regular rate of pay, and failure to reimburse business expenses for working from home. Plaintiff
9 contends Defendant is also liable for inaccurate wage statement penalties, waiting time penalties,
10 and civil penalties under the California Private Attorneys’ General Act (“PAGA”). Plaintiff now
11 requests that this Court preliminarily approve this non-reversionary, common-fund class action
12 settlement¹, in which Defendant has agreed to pay the Maximum Settlement Amount of Five
13 Hundred Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$506,250.00) to the following
14 Class of approximately 160 members: **All current and former California non-exempt employees**
15 **of Defendant CWT US, LLC during the Class Period.**

16 After deducting administration costs, Plaintiff’s requested Class Representative’s Service
17 Award, the amount set aside as PAGA civil penalties, and requested attorneys’ fees and costs, the
18 Class Employee Fund of approximately \$273,000 will be distributed to all Class Members who do
19 not opt out of the Settlement based on the proportionate number of workweeks worked by each
20 Class Member during the Class Period. Employees with standing for PAGA civil penalties will
21 receive additional consideration for their release of PAGA claims.

22 Significantly, all Class Members will automatically receive a payment unless they
23 affirmatively opt-out. There are approximately 160 Class Members, and **the average payment to**
24 **participating Class Members is projected to be approximately \$1,706.25.** This is an excellent
25 result for Class Members, who will be releasing only those claims alleged in the Action. The

26 _____
27 ¹ The Joint Stipulation of Class Action and Private Attorneys General Act Settlement and Release
28 (“Settlement” or “Agreement”) is attached to the Declaration of William C. Sung as **Exhibit 1**. The proposed
Class Notice is attached to the Agreement as **Exhibit A**. All defined terms in this motion have the same
definition as that in the Agreement.

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

5 **II. SUMMARY OF THE LITIGATION**

6 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

7 Defendant owns and operates a business travel management company with non-exempt
8 employees working remotely in California. Declaration of William C. Sung (“Sung Decl.”), ¶ 9.
9 Defendant employed Plaintiff as a non-exempt, remote employee from approximately January 3,
10 2023 to approximately September 1, 2023 as a Travel Experience Counselor in California.
11 Declaration of Mushfiqur Chowdhury (“Chowdhury Decl.”), ¶ 2.

12 On October 17, 2023, Plaintiff commenced this Action by filing a Class Action Complaint
13 alleging causes of action against Defendant for (1) Minimum Wage Violations; (2) Overtime Wage
14 Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties;
15 (6) Waiting Time Penalties; (7) Failure to Reimburse Business Expenses; (8) Unlawful Deductions;
16 and (9) Unfair Competition. Sung Decl., ¶ 10. On the same day, October 17, 2023, Plaintiff sent a
17 notice letter under the California Private Attorneys General Act (“PAGA”) to the Labor and
18 Workforce Development Agency (“LWDA”). *Id.* at ¶ 11, **Exhibit 2** (LWDA Letter). On December
19 20, 2023, Plaintiff filed the operative First Amended Complaint (“FAC”) adding a cause of action
20 for Civil Penalties under PAGA. *Id.* at ¶ 12, **Exhibit 3** (FAC).

21 **B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

22 **1. Meal and Rest Period Violations**

23 Plaintiff contends that Class Members, including Plaintiff, were frequently unable to take
24 any meal and rest periods or took their meal periods late (i.e., after the end of the fifth hour) because
25 of their high volume of work, need to take client calls, and lack of coverage. Sung Decl., ¶ 13.
26 Defendant counters that it has maintained compliant written meal and rest period policies
27 throughout the Class Period and has always provided compliant meal and rest periods in line with
28 those policies. *Ibid*; see *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004. Defendant contends

1 that meal periods for Class Members were programmed into their schedules, Class Members answer
2 customer calls that are routed to them and their system can go into a “do not disturb” mode where
3 no calls will be routed to them while they are taking their meal and rest periods, and some Class
4 Members are not required to record their meal breaks even though they took them. *Ibid*. Finally,
5 Defendant maintains Plaintiff’s meal and rest period claim is not suited for class certification since
6 individual inquiries would be needed to assess which employees, if any, took non-compliant meal
7 and rest periods, how many meal and rest periods were non-compliant, and the reasons why a
8 particular employee did not take a meal and rest period on a particular shift. *Ibid*.

9 **2. Unpaid Wages Due to Off-the-Clock Work**

10 Plaintiff alleges that Class Members, including Plaintiff, due to Defendant’s operational
11 needs and their workload, they sometimes worked off the clock without compensation. Sung Decl.,
12 ¶ 14. Defendant argues it has compliant policies that prohibit working off the clock, require all
13 employees to receive wages for all hours worked, its payroll records show a substantial amount of
14 overtime premiums paid during the Class Period, and it had no knowledge that Class Members
15 worked off the clock because they worked remotely from home. *Ibid*. Defendant thus contends that
16 Plaintiff’s off-the-clock work claim is individualized and not suited for class certification since
17 there is no evidence of a common policy or practice forcing Class Members to work off the clock
18 and numerous individual inquiries would be needed to assess which Class Members, if any, worked
19 off the clock, how often, the reasons why a particular Class Member worked off the clock, and
20 whether Defendant knew or should have known that Class Members who worked remotely from
21 home worked off the clock for the imposition of classwide liability. *Ibid*; see, e.g., *Troester v.*
22 *Starbucks Corporation* (C.D. Cal., Jan. 27, 2020, No. CV1207677CJCPJWX) 2020 WL 553572, at
23 *9 (denying certification of off-the-clock work claim because of individualized inquiries); *Williams*
24 *v. Superior Court* (2013) 221 Cal.App.4th 1353, 1369, as modified Dec. 24, 2013 (applying “know
25 or should have known” standard for liability for off-the-clock work).

26 **3. Underpaid Wages Due to Regular Rate Violations**

27 Plaintiff contends that Defendant underpaid overtime and paid sick leave wages to Class
28 Members, including Plaintiff, by failing to incorporate non-discretionary incentive compensation,

1 including bonuses and shift differentials into the regular rate of pay. Sung Decl., ¶ 15; *see also*
2 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554, as modified (Apr. 25,
3 2018) (stating the regular rate of pay includes incentive compensation); Labor Code § 246(l)(1) (the
4 paid sick leave rate is the same as the regular rate for overtime). In response, Defendant argues that
5 it properly factored incentive compensation into the regular rate for overtime. Sung Decl., ¶ 15. As
6 to paid sick leave, Defendant contends that there is no private right of action for paid sick leave
7 violations and Plaintiff cannot recover underpaid paid sick leave wages. *Ibid*; *see* Lab. Code §
8 248.5(e) (only the “Labor Commissioner or the Attorney General may bring a civil action”)

9 **4. Failure to Reimburse Necessary Business Expenses**

10 Plaintiff alleges that Class Members, including Plaintiff, were required to work remotely
11 from home because Defendant did not have any physical offices in California, and Defendant failed
12 to reimburse Class Members for the use of their home internet to perform their duties. Sung Decl., ¶
13 16. Defendant counters that it reimbursed Class Members for their home internet expenses upon the
14 Class Members’ submission of reimbursement requests to Defendant pursuant to its expense
15 reimbursement policy. *Ibid*. Defendant thus contends that Plaintiff’s reimbursement claim is
16 individualized and not suited for class certification since there is no evidence of a common policy or
17 practice of failing to reimburse Class Members and numerous individual inquiries would be needed
18 to assess which Class Members, if any, incurred unreimbursed expenses, how often, whether the
19 Class Member submitted reimbursement requests, and whether and why the reimbursement requests
20 were not approved. *Ibid*.

21 **5. Unlawful Deduction of Wages**

22 Plaintiff alleges that Defendant made deductions from the wages of Class Members,
23 including Plaintiff, without their written consent for purported overpayment of wages. Sung Decl., ¶
24 17. In response, Defendant argues that, while it overpaid wages to Plaintiff and deducted the
25 overpayment from Plaintiff’s wages once, this was an one-off occurrence, as evidenced by
26 Defendant’s payroll records. *Ibid*. Defendant thus contends that Plaintiff’s unlawful deductions
27 claim is individualized and not suited for class certification since there is no evidence of a common
28 policy or practice of deducting overpayment of wages from Class Members and numerous

1 individual inquiries would be needed to assess which Class Members, if any, was overpaid, had
2 their wages deducted, and whether they approved the deduction. *Ibid.*

3 **6. Waiting Time, Wage Statement, and PAGA Penalties**

4 As a result of the unpaid wages and unpaid meal and rest period premium wages described
5 above, Plaintiff contends that Defendant failed to comply with its final pay obligations set forth in
6 Labor Code §§ 201 to 203 to former employees and failed to issue accurate itemized wage
7 statements to Class Members as set forth in Labor Code § 226(a). Sung Decl., ¶ 18. Thus, the claims
8 for waiting time and wage statement penalties are derivative of the underlying claims. *Ibid.*
9 Defendant argues that it possesses strong, good faith defenses to Plaintiff’s underlying claims, thus
10 precluding recovery of waiting time penalties, which are only available for the “willful” failure to
11 pay wages. *Ibid.* Defendant further argues any alleged wage statement violations were not “knowing
12 and intentional,” and Plaintiff cannot show the Class “suffer[ed] injury” due to the alleged wage
13 statement violations, as required by Labor Code § 226(e) for the imposition of penalties. *Ibid.*;
14 *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065. Defendant further asserts
15 that Plaintiff’s waiting time and wage statement penalty exposure was inflated as not every
16 employee experienced the alleged Labor Code violations. Sung Decl., ¶ 18.

17 Plaintiff further contends that, as a result of the foregoing Labor Code violations, Defendant
18 is liable for civil penalties under the PAGA. *Ibid.* Since Plaintiff’s PAGA claims are derivative of
19 Plaintiff’s underlying wage claims, Defendant asserts the PAGA claim would fail with those claims.
20 *Ibid.*; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying
21 causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant further maintains
22 that, given its good faith defenses, this Court would exercise its discretion to substantially reduce
23 any PAGA penalties if it were to find Defendant liable for any of Plaintiff’s claims. Sung Decl., ¶
24 18; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th
25 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011)
26 Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties by
27 over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*
28 (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil penalty of just \$5 per pay period where

1 employer made “good faith attempts” to comply with the law).

2 **C. DISCOVERY AND MEDIATION**

3 In connection with mediation, the Parties engaged in informal discovery. Sung Decl., ¶ 19.
4 Defendant produced (1) class and PAGA statistics including number of Class Members and PAGA
5 Employees, former employees, and workweeks worked during the Class Period and pay periods
6 worked during the PAGA Period through mediation; (2) a random sampling of employee time and
7 payroll records exported on Excel and their contact information; (3) various policies and procedural
8 documents, including employee handbooks and relevant policies and procedures; and (4) Plaintiff’s
9 personnel records. *Ibid.* Defendant produced a random sampling of time and payroll records and
10 contact information for 34 Class Members, including Plaintiff, which amounted to a 21.25%
11 sampling. *Ibid.*

12 Plaintiff submits that a 21.25% sampling of records is statistically significant and reliable.
13 The timekeeping data and payroll data produced for mediation were generated from uniform
14 timekeeping and payroll systems, which allowed Plaintiff to extrapolate his findings with
15 confidence. *Ibid.* Class Members worked in similar job positions and were subject to the same wage
16 and hour policies and procedures. *Ibid.* Given these circumstances, the experiences of a subset of
17 employees – the sampling – can be probative as to the experiences of all Class Members. *See e.g.,*
18 *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence was
19 admissible to prove liability and damages across a class, thereby allowing it to support class
20 certification); *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938 (following *Tyson* and
21 finding that a sampling of class records is probative as to the experience of the entire class).

22 In preparation for mediation, Plaintiff’s counsel contacted and interviewed Class Members
23 whose contact information was provided as part of the sampling and conducted a comprehensive
24 analysis and extrapolation of the payroll and timekeeping data produced by Defendant to create a
25 detailed exposure analysis for all claims at issue. Sung Decl., ¶ 20. This discovery and analysis
26 allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification
27 of Plaintiff’s claims, and Defendant’s potential defenses. *Ibid.*

28 ///

On October 27, 2024, the Parties participated in a full-day mediation with Gig Kyriacou, Esq. a well-respected wage and hour class action mediator. Sung Decl., ¶ 21. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class and PAGA settlement at the mediation. *Ibid.* The Parties then finalized the terms of the Settlement and executed Agreement now before the Court. *Ibid*; see Sung Decl., ¶ 21, **Exhibit 1** (Agreement).

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Defendant will pay a Maximum Settlement Amount of \$506,250.00. Agreement, § I.N. (Ex. 1 to Sung Decl.). Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Settlement Payments. *Id.* at §§ III.F. L.1. Each Class Member will automatically receive an Individual Settlement Payments unless they affirmatively opt out of the Settlement. *Id.* at § L.1. The monetary terms of the Settlement are summarized below:

Maximum Settlement Amount:	\$506,250.00
Minus Court-approved attorneys’ fees:	\$168,750.00
Minus Court-approved verified costs (up to):	\$20,000.00
Minus Court-approved Service Award:	\$7,500.00
Minus amount set aside as PAGA penalties:	\$30,000.00
Minus estimated settlement administration costs:	\$7,000.00
Class Employee Fund:	\$273,000.00
Plus 25% “PAGA Penalties” to Class:	\$7,500.00
Total Amount Paid to Class Members:	\$280,500.00

Sung Decl., ¶ 22.

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative’s Service Award to Plaintiff, the amount set aside as PAGA civil penalties, and settlement administration costs, the Settlement requires Defendant to pay a Class Employee Fund of at least **\$273,000.00** to all Class Members who do not timely opt-out. Agreement, §§ III.A.-III.F. The Class Employee Fund shall be distributed to participating Class Members as Individual Class Settlement Share, calculated by (a) dividing the Class Employee Fund by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying

1 the result by each Participating Class Member's Workweeks. Agreement, § III.F.1. Additionally,
2 \$7,500.00 of the Maximum Settlement Amount has been designated as Individual PAGA
3 Settlement Shares to PAGA Employees and shall be distributed to PAGA Employees (including
4 those who submit a valid and timely Request for Exclusion from the class action settlement) who
5 were employed during the PAGA Period proportionally based on the number of pay periods worked
6 during the PAGA Period. Agreement, § III.F.3. In addition to the Maximum Settlement Amount,
7 Defendant is obligated to pay the employer's share of payroll taxes on Individual Class Payments
8 allocated to settlement of wage claims. Agreement, § III.A.

9 According to Defendant, there are approximately 160 Class Members. Sung Decl., ¶ 23.
10 Therefore, the average Individual Class Settlement Share from the Class Employee Fund is
11 projected to be approximately **\$1,706.25**. *Ibid.* There are also approximately 90 PAGA Employees
12 during the PAGA Period who will each receive an average of approximately **\$88.33** as Individual
13 PAGA Settlement Shares. *Ibid.* Class Members will have 45 calendar days from the mailing of the
14 Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the
15 Class Notice without unduly delaying the Settlement. *See* Agreement, §§ III.L.

16 Effective on the date when Defendant fully funds the Maximum Settlement Amount and
17 Employer Taxes, Participating Class Members (Class Members who did not opt out) will release all
18 claims that were alleged, or reasonably could have been alleged, based on the facts stated in the
19 First Amended Complaint; and all PAGA Employees are deemed to release all claims for PAGA
20 penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the
21 First Amended Complaint and PAGA Notice. Agreement, §§ III.I.1-III.I.2.

22 **2. Attorneys' Fees and Costs, Service Award, and PAGA Payment**

23 Plaintiff will apply for Class Representative's Service Award at the time of seeking final
24 approval of the proposed class action settlement in the amount of \$7,500.00 for Plaintiff's service to
25 the Class. *See* Agreement, § III.D.1. "[I]ncentive awards are fairly typical in class action cases . . .
26 and are intended to compensate class representatives for work done on behalf of the class [and] to
27 make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee*
28 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested Service Award is

1 intended to recognize the time and effort Plaintiff expended on behalf of the Class, including
2 providing substantial factual information and documents to Class Counsel, discussing the claims
3 and theories at issue in the litigation, actively participating in the prosecution of Plaintiff's claims,
4 as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this
5 case. *See* Chowdhury Decl., ¶¶ 4-7.

6 Class Counsel will also apply for an attorneys' fees award of One-Third (33 1/3%) of the
7 Maximum Settlement Amount, which is equivalent to \$168,750.00, and up to \$20,000.00 in verified
8 costs reimbursement. *See* Agreement, § III.B.; Sung Decl., ¶ 24. The requested fee is fair
9 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely
10 contingent fee basis. Sung Decl., ¶ 24. Class Counsel has incurred substantial attorneys' fees and
11 costs conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research,
12 conducting extensive informal discovery, analyzing Class Members' time and payroll records,
13 creating a comprehensive damages model, preparing for and attending mediation, negotiating and
14 preparing the long-form Agreement, preparing this Motion, and otherwise litigating the case. *Ibid.*
15 Class Counsel expects to expend additional attorney time in attending the hearing on this Motion,
16 overseeing the Class Notice process and fielding questions from Class Members, preparing the
17 Final Approval papers, and attending the Final Approval hearing. *Ibid.*

18 California courts recognize that an appropriate method for awarding attorneys' fees in class
19 actions is to award a percentage of the "common fund" created as a result of a settlement. *See, e.g.,*
20 *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund
21 method survives in California class action cases"). Class Counsel's request for fees of one-third of
22 the Maximum Settlement Amount is well within the range of reasonableness and indeed is
23 considered the typical rate for common fund settlements. Historically, courts have awarded
24 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4
25 Newberg on Class Actions § 14.6 (4th Ed. 2013). Class Counsel submit that their request for
26 attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of
27 the substantial risks and significant work undertaken, the results obtained, and the efficiency with
28 which the litigation has been conducted. Should the Court grant preliminary approval, Class

1 Counsel will seek an award of attorneys' fees and verified costs upon seeking Final Approval.

2 Additionally, the parties have agreed to designate \$30,000.00 of the Maximum Settlement
3 Amount as PAGA civil penalties, of which \$22,500.00 (75%) will be paid to the LWDA, with the
4 remaining \$7,500.00 (25%) for distribution to the PAGA Employees, as the PAGA requires such
5 penalties to be allocated per Labor Code § 2699(i). *See* Agreement, § III.C. Plaintiff submits this
6 allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo*
7 *Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving
8 PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro*
9 *Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA
10 payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

11 **IV. LEGAL ARGUMENT**

12 **A. PRELIMINARY APPROVAL IS WARRANTED**

13 California Rule of Court 3.769 conditions settlement of a class action on court approval,
14 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
15 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322,
16 337 (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
17 adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule
18 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
19 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in
20 complex class action litigation. *See In re Syncor ERISA Litig* (9th Cir. 2008) 516 F.3d 1095, 1101.
21 The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken
22 as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of
23 fairness where, as here, the Settlement was negotiated at arm’s-length by class counsel and with the
24 assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker*
25 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

26 To make a fairness determination, the Court should consider “the strength of Plaintiffs’ case,
27 the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
28 action status through trial, the amount offered in settlement, the extent of discovery completed and

1 the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*
2 (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive, and the court is free to
3 engage in a balancing and weighing of the factors depending on the circumstances of each case.”
4 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th at 245. As discussed below, the proposed
5 Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

6 **1. The Strength of Plaintiff’s Case and Risk, Expense, Complexity, and**
7 **Duration of Further Litigation**

8 Although Plaintiff maintains that Plaintiff’s claims are meritorious, Plaintiff acknowledges
9 that there were substantial risks and uncertainty in proceeding with litigation. As described above in
10 section II.B., *supra*, Defendant presented multiple defenses to Plaintiff’s claims, both on the merits
11 and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims
12 through class certification and ultimately trial, success was far from certain. Although the Parties
13 engaged in significant informal discovery prior to mediation, the Parties still had significant formal
14 discovery to complete if the Action did not resolve. Sung Decl., ¶ 25. This would have required the
15 expenditure of substantial time and resources by both Parties that would have very likely spanned
16 several years. *Ibid.* Even if Plaintiff were to certify the class, the Parties would incur considerably
17 more attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal.
18 *Ibid.* This Settlement avoids those risks and the accompanying expense. *Ibid.*

19 Plaintiff has not yet filed a motion for class certification, and as such, the extent to which
20 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there was a
21 risk that there would not be a certified class at the time of trial, or if there were, it would consist of a
22 significantly smaller group of employees than the proposed Class (either due to a narrowing of the
23 class definition in a Court order on a contested motion for class certification, or through settlement
24 agreements entered into by Defendant with individual class members by way of *Pick Up Stix* type
25 settlement agreements), and the expected recovery could be significantly reduced, given the
26 settlement amounts that are typically offered through the *Pick Up Stix* process. Sung Decl., ¶ 26.
27 Thus, this factor, too, supports preliminary approval of the settlement. In *Chindarah v. Pick Up Stix,*
28 *Inc.* (2009) 171 Cal.App.4th 796, the Court of Appeal held an employer may enter into pre-

1 certification settlement agreements with individual putative class members in which the putative
2 class members release claims for past unpaid wages and penalties in exchange for consideration.

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

4 The Settlement provides a positive recovery for the Class in the face of disputed claims.
5 Plaintiff conducted a detailed analysis of alleged unpaid wages and meal and rest period premium
6 payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A
7 summary of the results of Plaintiff's exposure analysis are discussed below:

8 Meal Period Violations: \$669,049.01

9 Plaintiff contends that Class Members, including Plaintiff, were frequently unable to take
10 any meal periods or took their meal periods late (i.e., after the end of the fifth hour) because of their
11 high volume of work, need to take client calls, and lack of coverage. Sung Decl., ¶ 27. Based on
12 Plaintiff's counsel's analysis of the sampling time and payroll records and extrapolating the
13 sampling across the full Class Period, Plaintiff estimates Defendant's maximum exposure for
14 unpaid meal period premiums as \$1,784,130.69. *Ibid.* As discussed above, Defendant counters that
15 it provided meal periods consistent with its compliant policies; meal periods for Class Members
16 were programmed into their schedules, Class Members answered customer calls that are routed to
17 them and their system can go into a "do not disturb" mode where no calls will be routed to them
18 while they are taking their meal periods; some Class Members were not required to record their
19 meal breaks even though they took them so the meal period violation rate appears artificially high;
20 and the meal claim is not suited for class certification since individual inquiries would predominate.
21 *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of
22 non-certification, and an additional 50% to account for Defendant's defenses on the merits or failing
23 to recover the full amount sought, to arrive at an estimated total of approximately \$669,049.01. *Ibid.*

24 Rest Period Violations: \$148,183.61

25 Plaintiff contends that Class Members, including Plaintiff, were frequently unable to take
26 any rest periods because of their high volume of work, need to take client calls, and lack of
27 coverage. Sung Decl., ¶ 28. As Class Members are not required to record rest breaks, any rest break
28 violations would not be reflected in the time and payroll records. *Ibid.* Applying an estimated 20%

1 violation rate (one rest period violation per workweek, Plaintiff estimates Defendant's maximum
2 exposure for unpaid rest period premiums as \$592,734.45. *Ibid.* As discussed above, Defendant
3 counters that it provided rest periods consistent with its compliant policies; rest periods for Class
4 Members were programmed into their schedules, Class Members answered customer calls that are
5 routed to them and their system can go into a "do not disturb" mode where no calls will be routed to
6 them while they are taking their rest periods; and the meal claim is not suited for class certification
7 since individual inquiries would predominate. *Ibid.* Thus, Plaintiff discounted Defendant's
8 maximum exposure by 55% to account for the risk of non-certification, and an additional 50% to
9 account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive
10 at an estimated total of approximately \$148,183.61. *Ibid.*

11 **Unpaid Wages Due to Off-the-Clock Work: \$74,091.81**

12 Plaintiff alleges that Class Members, including Plaintiff, due to Defendant's operational
13 needs and their workload, they sometimes worked off the clock without compensation. Sung Decl.,
14 ¶ 29. Any instances of off-the-clock work would not be reflected in the time and payroll records.
15 *Ibid.* Applying an estimated one hour of off-the-clock work per week, Plaintiff estimates
16 Defendant's maximum exposure for off-the-clock work is \$592,734.45. *Ibid.* As discussed above,
17 Defendant argues it has compliant policies that prohibit working off the clock; required all
18 employees to receive wages for all hours worked; its payroll records show a substantial amount of
19 overtime premiums paid during the Class Period (the sampling payroll records showed that Class
20 Members were paid on average 2.74 overtime hours per pay period); it had no knowledge that Class
21 Members worked off the clock because they worked remotely from home; and Plaintiff's off-the-
22 clock work claim is individualized and not suited for class certification. *Ibid.* Thus, Plaintiff
23 discounted Defendant's maximum exposure by 75% to account for the risk of non-certification, and
24 an additional 50% to account for Defendant's defenses on the merits or failing to recover the full
25 amount sought, to arrive at an estimated total of approximately \$74,091.81. *Ibid.*

26 **Failure to Reimburse Business Expenses: \$135,050.46**

27 Plaintiff alleges that Class Members, including Plaintiff, were required to work remotely
28 from home because Defendant did not have any physical offices in California, and Defendant failed

1 to reimburse Class Members for the use of their home internet to perform their duties. Sung Decl., ¶
2 30. Utilizing a pro-rata reimbursement rate of \$50 per month, Plaintiff estimates Defendant's
3 maximum exposure to be approximately \$240,089.70. *Ibid.* As discussed above, Defendant counters
4 that it reimbursed Class Members for their home internet expenses upon the Class Members'
5 submission of reimbursement requests to Defendant pursuant to its expense reimbursement policy
6 and that Plaintiff's reimbursement claim is individualized and not suited for class certification. *Ibid.*
7 Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-
8 certification, and an additional 25% to account for Defendant's defenses on the merits or failing to
9 recover the full amount sought, to arrive at an estimated total of approximately \$135,050.46. *Ibid.*

10 Underpaid Wages Due to Regular Rate Violations: None

11 Plaintiff alleges that Defendant underpaid overtime and paid sick leave wages to Class
12 Members, including Plaintiff, by failing to incorporate non-discretionary incentive compensation,
13 including bonuses and shift differentials into the regular rate of pay. Sung Decl., ¶ 31. In response,
14 Defendant argues that it properly factored incentive compensation into the regular rate for overtime.
15 *Ibid.* As to paid sick leave, Defendant contends that there is no private right of action for paid sick
16 leave violations and Plaintiff cannot recover underpaid paid sick leave wages. *Ibid.* Based on
17 Plaintiff's counsel's analysis of the sampling payroll records, it appears that Defendant did factor in
18 non-discretionary incentive compensation into the regular rate for overtime, but failed to do so for
19 paid sick leave. *Ibid.* Plaintiff's counsel agrees that there is no private right of action for paid sick
20 leave violations, *see* Lab. Code § 248.5(e), but there are potential derivative violations for waiting
21 time penalties, wage statement penalties, and PAGA penalties for paid sick leave violations and the
22 valuation of these claims below accounts for derivative violations. *Ibid.*

23 Unlawful Deduction of Wages: None

24 Plaintiff alleges that Defendant made deductions from the wages of Class Members,
25 including Plaintiff, without their written consent for purported overpayment of wages. Sung Decl., ¶
26 32. In response, Defendant argues that, while it overpaid wages to Plaintiff and deducted the
27 overpayment from Plaintiff's wages once, this was a one-off occurrence, as evidenced by
28 Defendant's payroll records. *Ibid.* Defendant thus contends that Plaintiff's unlawful deductions

1 claim is individualized and not suited for class certification since there is no evidence of a common
2 policy or practice of deducting overpayment of wages from Class Members and numerous
3 individual inquiries would be needed to assess which Class Members, if any, was overpaid, had
4 their wages deducted, and whether they approved the deduction. *Ibid.* Based on Plaintiff's counsel's
5 review of the sampling payroll records, it appears that the deduction of wages experience by
6 Plaintiff was in fact a one-off occurrence. *Ibid.*

7 Waiting Time Penalties: \$133,799.40

8 As a result of the unpaid overtime and sick leave wages and unpaid meal and rest period
9 premium wages described above, Plaintiff contends that Defendant failed to comply with its final
10 pay obligations set forth in Labor Code §§ 201 to 203 to former employees. Sung Decl., ¶ 33. There
11 are approximately 104 Class Members who were former employees during the applicable
12 limitations period. *Ibid.* Applying an average hourly rate of \$28.49 and 8 hours of work per day,
13 Plaintiff estimates Defendant's maximum exposure for waiting time penalties to be approximately
14 \$711,110.40. *Ibid.* Defendant presented several defenses, most notably its assertion that because
15 they possessed good-faith defenses to the underlying wage claims, any failure to pay wages was not
16 "willful" as a matter of law; Plaintiff's waiting time penalty exposure was grossly inflated as not
17 every former employee experienced the alleged Labor Code violations; and because the waiting
18 time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome
19 Defendant's defenses, both as to class certification and on the merits, as to the underlying claims.
20 *Ibid.* To account for Defendant's defenses, Plaintiff discounted the maximum exposure by 25% for
21 the risk of non-certification and an additional 75% for the risk of losing on the merits and/or not
22 receiving the maximum penalties sought to arrive at an estimated exposure of approximately
23 \$133,799.40. *Ibid.*

24 Wage Statement Penalties: \$82,931.25

25 Plaintiff alleges that Defendant is liable for wage statement penalties as a result of the
26 unpaid overtime and sick leave wages and unpaid meal and rest period premium wages. Sung Decl.,
27 ¶ 34. Those penalties are calculated as \$50 for each "initial" violation and \$100 for each
28 "subsequent" violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e).

1 Defendant's data reflected there were approximately 4,505 wage statements issued to Class
2 Members during the limitations period. Sung Decl. at ¶ 33. At \$50 for the first pay period and \$100
3 for each subsequent pay period, Plaintiff estimates wage statement penalties are approximately
4 \$442,300. *Ibid.* As discussed above, Defendant presented several defenses, most notably its
5 assertion that because they possessed good-faith defenses to the underlying claims for meal and rest
6 period violations and any failure to pay wages was not "knowing and intentional" as a matter of law
7 and because the wage statement claim is derivative of Plaintiff's underlying wage claims, Plaintiff
8 would need to overcome Defendant's defenses, both as to class certification and on the merits, as to
9 his underlying claims. *Ibid.* To account for Defendant's defenses, Plaintiff discounted the maximum
10 exposure by 25% for the risk of non-certification and an additional 75% for the risk of losing on the
11 merits and/or not receiving the maximum penalties sought to arrive at an estimated exposure of
12 approximately \$82,931.25. *Ibid.*

13 PAGA Penalties: \$45,050

14 Plaintiff estimated a maximum total PAGA exposure of approximately \$450,500.00 (4,505
15 pay periods during the PAGA Period x \$100 "initial" penalty). Sung Decl., ¶ 35; *Amaral v. Cintas*
16 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until
17 employer is notified that it is violating a Labor Code provision). However, these penalties derive
18 from the underlying wage and hour violations discussed above, which Defendant disputes
19 vigorously. Sung Decl., ¶ 35; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5
20 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its
21 underlying claims). Defendant also asserts that the Court would drastically reduce any award of
22 PAGA penalties as "confiscatory." Sung Decl., ¶ 35 *see also Thurman.*, 203 Cal.App.4th at
23 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047, at *4 (reducing PAGA
24 penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum figure by
25 90% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every
26 pay period and to account for the possibility of this Court reducing penalties, to arrive at an
27 estimated exposure of approximately \$45,050. Sung Decl., ¶ 35.

28 Conclusion

1 Using these estimated figures for each of the claims described above, Plaintiff predicted that
2 the potential realistic recovery for the Class would be approximately \$1,287,689.34. Sung Decl., ¶
3 36. The proposed Settlement of \$506,250 represents approximately 39.31% of the reasonably
4 forecasted recovery for the Class. *Ibid.* Preliminary approval is appropriate since the Settlement will
5 provide significant monetary relief to the Class, which is consistent with what Plaintiff’s counsel
6 believes could have been recovered had the case proceeded through trial. *Ibid.*

7 **3. The Experience and Views of Counsel**

8 “Parties represented by competent counsel are better positioned than courts to produce a
9 settlement that fairly reflects each party’s expected outcome in litigation.” In *In re Pacific*
10 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by
11 competent, experienced counsel who possess extensive experience prosecuting and defending wage-
12 and-hour class actions and who have been appointed as class counsel. *See* Sung Decl., ¶¶ 2-7;
13 Declaration of Tiffany L. Luu (“Luu Decl.”), ¶¶ 2-6; Class Counsel conducted an in-depth review of
14 class records and drew on their extensive experience in similar cases to assess the strengths and
15 weaknesses of Plaintiff’s case. The Settlement was also reached with the assistance of an
16 experienced and respected wage-and-hour class action mediator. Sung Decl., ¶ 21. This factor
17 strongly supports preliminary approval of the Settlement. *See Kullar*, 168 Cal.App.4th at 130.

18 **4. The Preliminary Approval Standard Is Met**

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

24 The proposed Settlement reflects approximately 63.96% of the estimated recovery the Class
25 could reasonably expect in light of the significant litigation risks and will provide tangible,
26 substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability
27 exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g.,*
28 *Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4

(approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial”). The average Individual Class Settlement Share of approximately **\$1,706.25** far exceeds average payments achieved in other wage and hour class action settlements.² Thus, the proposed settlement is within the range of possible approval, such that notice should be provided to the Class Members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

The Settlement resulted from an exchange of substantial information, arm’s-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, analyzed extensive sampling time and payroll data, and conducted a detailed damages analysis to arrive at his estimated class-wide damages figures. *See Sung Decl.*, ¶¶ 25-36. Thus, this factor supports preliminary approval.

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 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good”); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 Preliminary approval of the Settlement is also warranted because there are no obvious
2 deficiencies. The Settlement will provide substantial monetary relief to the Class. The amounts
3 proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment, and Plaintiff’s Class
4 Representative’s Service Award, are all reasonable and appropriate based on the facts of this case.
5 Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

6 **B. THE COURT SHOULD CERTIFY THE CLASS**

7 The Class satisfies the criteria for certification of a settlement class under California law
8 because: (1) the Class is so numerous that joinder would be impractical; (2) common questions of
9 law and fact predominate over individual questions such that class certification is the most efficient
10 and desirable way to maintain this litigation; (3) Plaintiff’s claims are typical of the claims of absent
11 Class Members; and (4) Plaintiff and Plaintiff’s counsel will fairly and adequately represent Class
12 Members’ interest. *See* Cal. Civ. Proc. § 382.

13 A class is “ascertainable” where the members “may be readily identified without
14 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
15 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the Class is defined as all
16 current and former non-exempt employees who worked for Defendant in California during the Class
17 Period. Therefore, Class Members can be identified from Defendant’s personnel and employment
18 records. Defendant represents that the Class consists of approximately 160 current and former non-
19 exempt employees. Sung Decl., ¶ 23. It would therefore be impracticable to bring all Class
20 Members before the Court or for each Class Member to bring an individual lawsuit. Thus, the
21 proposed Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a
22 class representing 10 beneficiaries of a trust sufficiently numerous).

23 The focus in a certification dispute is not on the merits but rather on what types of questions,
24 “common or individual,” are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior*
25 *Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on, among other issues,
26 Defendant’s uniform policy and practice regarding provision of meal and rest periods, regular rate
27 of pay, timekeeping, reimbursements, and provision of wage statements and final wages. These
28 types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom*

1 *Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (certifying meal and rest period claims);
2 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 324 (certifying exemption
3 misclassification and unpaid overtime claim).

4 The typicality requirement is satisfied where class representatives have claims that are
5 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
6 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same
7 goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those
8 held by the Class Members. First, Defendant employed Plaintiff as non-exempt employee during the
9 Class Period, and Plaintiff was subject to Defendant's wage and hour policies at issue in this case.
10 Chowdhury Decl., ¶¶ 2-3. Second, Plaintiff was injured by the same challenged policies/practices
11 that allegedly injured the Class as a whole: high workload resulting in off-the-clock work and meal
12 and rest period violations; failure to reimburse home internet expenses; regular rate violations as to
13 paid sick leave; and derivative statutory and civil penalties. *Id.* at ¶ 3. Because Plaintiff has suffered
14 the same injuries as the other members of the Class, the typicality requirement is satisfied.

15 The adequacy requirement examines conflicts of interest between named parties and the
16 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
17 (2007) 155 Cal.App.4th 676, 697. Plaintiff and Plaintiff's counsel will adequately represent the
18 Class, as there are no conflicts between Plaintiff and the proposed Class, and Plaintiff possesses
19 claims that are in line with those of the Class. Sung Decl., ¶ 38; Chowdhury Decl., ¶ 5; *see McGhee*
20 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no
21 indication that Class Counsel were not qualified and the named plaintiff had no interests
22 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
23 and hour class action litigation. *See* Sung Decl., ¶¶ 2-7; Luu Decl., ¶¶ 2-6.

24 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE**

25 This Court should order distribution to the Class of the proposed Class Notice by U.S. Mail,
26 postage prepaid using the last known mailing address information provided by Defendant. *See*
27 Agreement, §§ III.K.1-III.K.2, Ex. A – Class Notice. The Class Notice will be distributed in English
28 only because Class Members are travel agents who service businesses and required to be proficient

1 in English to carry out their job duties. Sung Decl., ¶ 37. This manner of giving notice is the “best
2 notice practicable” under the circumstances because it provides “individual notice to all members
3 who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S.
4 156, 173. Here, the Parties have agreed that the Settlement be administered by Simpluris, Inc.
5 (“Simpluris”), an experienced class action settlement administrator. *See generally* Declaration of
6 Denise Islas for Simpluris, Inc. (“Simpluris Decl.”) and attached exhibits. Class Members’
7 addresses will be ascertainable through Defendant’s personnel and payroll records, which
8 Defendant will provide to Simpluris within 10 business days of preliminary approval of the
9 Settlement. *See* Agreement, § III.K.1. Within 14 days of receipt of the Class Members’ addresses,
10 Simpluris will run the names of all Class Members through the National Change of Address
11 database to update addresses and mail the Class Notice to all Class Members. *See id* at, § III.K.2. To
12 the extent that any notices are returned, Simpluris will perform a “skip trace” to track any Class
13 Member’s current mailing address and remail the notice within 5 days. *See id.* at § III.K.3.

14 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because
15 it advises Class Members of the nature of the claims, basic contentions and denials of the parties,
16 and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and
17 the procedures by which to do so, explains the recovery formula and expected recovery amount for
18 each Class Member, and advises them that they will be bound by the terms of the Agreement if they
19 do not opt-out. *See* Agreement, Exh. A – Class Notice. The proposed Class Notice will also notify
20 Class Members of the final approval hearing date and provides the Class contact information for
21 Class Counsel and advises Class Members that they may enter an appearance through counsel if
22 they wish to. *Ibid.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the
23 most reliable and cost-effective method of reaching Class Members.

24 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

25 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
26 appropriately scheduled to follow the deadline by which Class Members must file objections to the
27 Settlement or opt-out. *See* California Rule of Court 3.769.

28 ///

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve
3 the proposed Settlement, provisionally certify the Class, and enter the Proposed Order submitted
4 concurrently herewith.

5
6 DATED: January 31, 2025

Respectfully submitted,

7 **JUSTICE FOR WORKERS, P.C.**

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9 By: 

10 _____
William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff
MUSHFIQUR CHOWDHURY