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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

PAULA SOLORIO and AMALIA PALACIO-MORENO, as individuals and on behalf of all others similarly situated, Plaintiffs, vs. THERMAL STRUCTURES, INC., a California corporation; and DOES 1 through 100, Defendants.	Case No.: CVRI2300532 [*Assigned for all purposes to the Hon. Harold W. Hopp; Dept. 1*] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: January 7, 2025 Time: 8:30 a.m. Dept: 1 Reservation ID: 130963481675 Action Filed: February 2, 2023 Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January 7, 2025, at 8:30 a.m. in Department 1 of the above-entitled Court, located at 4050 Main Street, Riverside, California 92501, Plaintiffs Paula Solorio and Amalia Palacio-Moreno ("Plaintiffs") individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

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

   > "All current and former non-exempt and/or hourly-paid employees who worked for Defendant Thermal Structures, Inc. in the State of California at any time from August 5, 2022, through December 9, 2023."

3. Preliminary appointment of Plaintiffs Paula Solorio and Amalia Palacio-Moreno as Class Representatives;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Enhancement Payments to Plaintiffs, civil penalties payable to the Labor & Workforce Development Agency "(LWDA"), settlement administration costs, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices;
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the supporting declarations of Paul K. Haines, Sean M. Blakely, Plaintiffs Paula Solorio and Amalia Palacio-Moreno, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing. Defendant does not intend to oppose this Motion and given the multiplicity of issues addressed in this Motion, has indicated its approval of Plaintiffs' expressed need to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, the parties jointly request the Court's consideration of Plaintiffs' memorandum of points and authorities, which is 23 pages in length.

Dated: December 9, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Paula Solorio and Amalia Palacio-Moreno ("Plaintiffs") brought this class and representative action for various wage and hour violations on behalf of current and former non-exempt and/or hourly-paid employees who worked for Defendant Thermal Structures, Inc. ("TSI") in the State of California from August 5, 2022 through December 9, 2023 (the "PAGA/Class Period"). Plaintiffs' primary allegations stem from TSI's allegedly unlawful timekeeping policies and/or practices, and TSI's alleged failure to provide all legally compliant meal periods and to authorize and permit all legally compliant rest periods. Based on these alleged wage and hour violations, Plaintiffs also brought derivative claims for alleged waiting time penalties, TSI's alleged failure to issue accurate and compliant wage statements, and for civil penalties under the Private Attorneys General Act ("PAGA").[1]

Plaintiffs now respectfully request that this Court preliminarily approve this <u>non-reversionary</u>, common-fund class action settlement,[2] in which TSI has agreed to pay Two Hundred Fifty-One Thousand Nine Hundred Twenty Dollars and Zero Cents ($251,920.00) to the following Settlement Class:

> All current and former non-exempt and/or hourly-paid employees who worked for Defendant Thermal Structures, Inc. in the State of California at any time from August 5, 2022, through December 9, 2023. This period of time will also apply to the settlement with all PAGA Members herein defined and will hereinafter be referred to as the "PAGA/Class Period."

If the Settlement is approved, TSI will pay a non-reversionary Gross Fund Value of $251,920.00. After deducting estimated administration costs, Plaintiffs' requested Class Representative Enhancement Payments, the amount designated as PAGA civil penalties,

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[1] Plaintiffs' operative First Amended Class and Representative Action Complaint ("FAC") pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) unfair competition; and (8) civil penalties under the PAGA.

[2] The Stipulation of Settlement ("Settlement") is attached to the Declaration of Sean M. Blakely as **Exhibit A**. The proposed Class Notice, Request for Exclusion Form, and Objection Form are attached to the Settlement as **Exhibits 1, 2**, and **3** respectively. All defined terms in this motion have the same definition as that in the Settlement.

settlement administration costs, and requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately $104,446.67 will be distributed to all Class Members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Class Member during the PAGA/Class Period.

Significantly, Class Members do not need to file a claim to reap the financial benefits of the Settlement, as all Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 225 Class Members, and the average payment to participating Class Members is projected to be approximately $464.21.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

TSI is a designer and manufacturer of insulation and composite products for the aerospace, marine, military, and construction industries. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. TSI operates out of its headquarters in Corona, California. *Id.* Plaintiff Solorio has worked for TSI in the non-exempt position of "Repair Technician" since approximately 2011 and has been off of work since a work-related injury in March 2021. *See* Declaration of Paula Solorio ("Solorio Decl."), ¶ 2. Plaintiff Palacio-Moreno worked for TSI in the non-exempt positions of "Parts Preparation" or "Repair Technician" from 2004 through approximately March 2021. *See* Declaration of Amalia Palacio-Moreno ("Palacio-Moreno Decl."), ¶ 2.

On February 2, 2023, Plaintiffs filed their Class Action Complaint in Riverside County Superior Court, alleging causes of actions for: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; and (7) unfair competition in violation of California Business & Professions Code § 17200 *et seq*. Blakely Decl., ¶ 9. On October 9, 2023, Plaintiffs submitted their PAGA notice letter to the LWDA. *Id.*; **Exhibit B** (LWDA Letter). As a condition of the Settlement, the Parties stipulated to Plaintiffs' filing of a First Amended Class and Representative Action Complaint ("FAC") solely for the purpose of adding a cause of action for civil penalties under the Private Attorneys' General Act of 2004, Labor Code Section 2698, *et seq*. *Id*. On October 25, 2024, Plaintiffs filed the operative FAC. *Id.*

B. PLAINTIFFS' CLAIMS AND TSI'S DEFENSES

1. Arbitration Agreements

As an initial matter, TSI asserts that Plaintiffs and all Class Members signed valid and enforceable arbitration agreements with class action waivers. Blakely Decl., ¶ 14. Setting aside any arguments as to the merits of Plaintiffs' claims, TSI contends that absent settlement, a class-wide recovery for all Class Members was not possible and that only PAGA civil penalties could potentially be recovered on behalf of the Settlement Class. *Id*. As such, TSI contends that absent its agreement to not raise the arbitration agreements as an affirmative defense any recovery to Class Members would be limited to only the employee's potential 25% share of PAGA civil penalties. *Id*.

2. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiffs contend that TSI underpaid Class Members due to its allegedly unlawful timekeeping policies/practices. Blakely Decl., ¶ 15. Plaintiffs allege that TSI required Class Members to clock in five to fifteen minutes prior to the start of their scheduled shifts, but only compensated employees based on the scheduled start time, rather than for all hours on the clock. *Id.* Plaintiffs allege that they and Class Members were therefore not compensated for work performed prior to the start of their scheduled shifts. *Id*. Plaintiffs further allege that for at least a portion of the PAGA/Class Period, Plaintiffs and Class Members were required to undergo temperature checks off-the-clock, for which they were not compensated for. *Id*.

However, TSI argues that no pre-shift or post-shift work was actually being performed, and that its timekeeping policies/practices were lawful, and that it compensated Class Members for all hours worked throughout the relevant time period. Blakely Decl., ¶ 15. TSI argues that it was not possible for employees to begin working prior to their scheduled start of shift, and therefore, employees could not perform compensable work prior to the start of their scheduled shift. *Id*. TSI further contends that its policies expressly prohibit off-the-clock work. *Id*. TSI asserts that this claim is not amenable to class certification due to the individualized inquires that would be required into whether each employee performed work outside their scheduled hours, and whether TSI was aware that work was being performed. *Id*.

3. Meal Period Claims

Plaintiffs allege that TSI failed to provide timely thirty (30) minutes meal periods to Class Members. Blakely Decl., ¶ 16. Plaintiffs further allege that TSI automatically deducted 30 minutes for Plaintiffs' first meal periods, even though all operations did not cease for meal periods. *Id*. Furthermore, TSI employed a bell system that rang for the start of meal periods at exactly five hours after the start of employees' scheduled shifts, and that rang at the end of meal periods exactly 30 minutes later, resulting in late and/or short first meal periods, as Plaintiffs allege employees regularly clocked in a few minutes before their scheduled start time to begin working, and had to cut their meal periods short in order to be back at their work stations when the second bell rang signalling the end of the meal period. *Id.*

As noted above, TSI argues that no pre-shift work was actually being performed and that the first meal period bell rang within five hours of the scheduled start of employees' shifts. Blakely Decl., ¶ 16. TSI also contends that it has maintained compliant written meal period policies throughout the Class Period and has provided compliant meal periods in line with those policies. *Id*. TSI further contends that under *Brinker*, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. *Id*.; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). TSI also maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Blakely Decl., ¶ 16. Lastly, TSI argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, thereby making class certification of this claim unlikely. *Id*.

4. Rest Period Claims

Plaintiffs allege that TSI failed to authorize and permit rest periods of at least 10 minutes of "net rest" for Class Members due to work demands imposed by TSI. Blakely Decl., ¶ 17.

TSI counters that it has maintained compliant written rest period policies throughout the Class Period. Blakely Decl., ¶ 17. TSI further contends that it has always authorized and permitted employees a 10-minute rest period for each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was a result of employee choice, rather than any TSI policy and/or practice. *Id*. TSI also argues that Plaintiffs' rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id*. These manageability concerns are especially present with respect to rest period claims, TSI argues, given that rest periods are not recorded. *Id*.

5. Wage Statement Violations

Plaintiffs allege that as a result of the unpaid wages, as well as the unpaid meal and rest period premium wages described above, TSI is liable for wage statement penalties. Blakely Decl., ¶ 18. TSI argues that any alleged wage statement violations were not "knowing and intentional," and Plaintiffs cannot show that they or other employees "suffer[ed] injury" due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. *Id*. Further, TSI contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received…The purpose of section 226 is to *document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (Italics in original). Blakely Decl., ¶ 18.

6. Waiting Time Penalties

Plaintiffs allege that as a further result of its failure to pay all wages earned, as well as its failure to pay all meal and rest period premiums, TSI is liable for waiting time penalties pursuant to Labor Code §§ 201-203. Blakely Decl., ¶ 19. TSI argues that it possesses strong, good-faith defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. *Id*; see *also* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203 . . . A 'good faith' dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee."). Moreover, TSI asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Blakely Decl., ¶ 19.

7. PAGA Civil Penalties

As a result of the foregoing Labor Code violations, Plaintiffs allege that TSI is liable for civil penalties under the PAGA. Blakely Decl., ¶ 20. Since Plaintiffs' PAGA claim is derivative of Plaintiffs' underlying wage claims, TSI asserts the PAGA claim would fail with those claims. *Id.*; *see Price v. Starbucks Corp*. 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). TSI further maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find TSI liable for any of Plaintiffs' claims. Blakely Decl., ¶ 20; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*., 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*., Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. DISCOVERY AND MEDIATION

After Plaintiffs filed this class action, TSI produced arbitration agreements signed by Plaintiffs which contained class action waivers, and further represented that all putative class members signed arbitration agreements with class action waivers. Blakely Decl., ¶ 10. Despite the existence of arbitration agreements, the Parties agreed to attend mediation to explore a potential 1-year class and PAGA settlement. *Id*. In connection with mediation, TSI provided Plaintiffs with a sampling of time and payroll records for putative class members, TSI's employee handbook(s), and other relevant data points and information such as the total number of putative class members and the total number of aggregate workweeks worked during the Class Period. *Id*. Plaintiffs conducted a comprehensive analysis and extrapolation of the data produced to calculate TSI's potential exposure for each of Plaintiffs' claims. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims, the chances of certification of Plaintiffs' claims, and TSI's potential defenses. *Id*.

On October 24, 2023, the Parties participated in a full-day mediation with Marc J. Feder, Esq., a highly experienced wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Id*. At the conclusion of the mediation, Mr. Feder issued a mediator's proposal for a classwide settlement, which was ultimately accepted by both sides. *Id*. During the months that followed mediation, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the court. *Id*.

III. <u>THE PROPOSED SETTLEMENT</u>

A. <u>ESSENTIAL TERMS OF THE SETTLEMENT</u>

If the Court preliminarily approves the Settlement, TSI will pay a Gross Fund Value of $251,920.00. *See* Settlement, ¶ 10. Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive a Settlement Payment. *Id*., at ¶¶ 10, 32. Each Class Member will automatically receive a Settlement Payment unless he or she affirmatively opts out of the Settlement. *Id*. The monetary terms of the Settlement are summarized below:

- Gross Fund Value: $251,920.00
- Minus Court-approved attorneys' fees: $83,973.33
- Minus Court-approved verified costs (up to): $20,000.00
- Minus Court-approved Enhancement Payments: $15,000.00
- Minus amount set aside as PAGA penalties: $20,000.00
- <u>Minus estimated Settlement Administration costs: $8,500.00</u>

Net Settlement Amount ("NSA"):	$104,446.67
• PLUS 25% "PAGA Amount" to Settlement Class:	$5,000.00
Total Amount Paid to Settlement Class members:	**$109,446.67**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, the Class Representative Enhancement Payments to Plaintiffs, the amount designated as PAGA civil penalties, and Settlement Administrator's fees and expenses, the Settlement requires TSI to pay an NSA of at least $104,446.67 to all Class Members who do not timely opt out. *See* Settlement, ¶ 32. The NSA shall be allocated among Class Members (except those who submit a timely and valid Request for Exclusion) based on each participating Class Member's proportionate workweeks worked during the PAGA/Class Period. *Id.*, at ¶ 32(B)(i). Additionally, Five Thousand Dollars ($5,000.00) of the Gross Fund Value has been designated as the "PAGA Amount," and shall be distributed to all Class Members (including those who submit a valid and timely Request for Exclusion from the class action settlement) on a *pro rata* basis, based on the total number of workweeks worked during the PAGA/Class Period. *Id.*, at ¶ 32(B)(ii).

TSI shall pay the Employer Taxes separately and in addition to the Gross Fund Value. *See* Settlement, ¶ 10. Any Individual PAGA Payment made from the PAGA Amount shall be treated as 100% penalties; and any Individual Settlement Payment made from the NSA shall be allocated as twenty percent (20%) wages, and eighty percent (80%) penalties and interest. *Id.*, at ¶ 32(D). The Settlement Administrator will be responsible for issuing to participating Class Members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. *Id*.

The Parties propose that Individual Settlement Payment and/or Individual PAGA Payment checks shall remain valid and negotiable for one hundred eighty (180) calendar days after the date of their issuance. Settlement, ¶ 32(E). Thereafter, checks for such payments shall be canceled and funds associated with such checks shall be sent to the Unclaimed Property Law, California Civil Code § 1500 *et seq*., in the name of the Class Member to whom the check was issued, until such time that they claim their property. *Id*.

Based on information from TSI, there are approximately 225 Settlement Class members.

Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Share from the NSA is projected to be approximately $464.21. *Id*. There are approximately 225 aggrieved employees who worked during the PAGA Period. *Id*. Therefore, the average payment from the PAGA Amount is estimated to be approximately $22.22. *Id*.

Class Members will have forty-five (45) calendar days from the mailing of the Notice Packets to opt-out of the Settlement, thereby providing ample time to review the Notice Packet without unduly delaying the Settlement. *See* Settlement, ¶ 35(C). Class Members who do not opt out of the Settlement will be bound by its terms and will release all claims against TSI included within the Settlement. *Id*., at ¶¶ 19, 21, 35(C).

2. Attorneys' Fees and Costs, Enhancement Payments, and PAGA Amount

Plaintiffs will apply for Class Representative Enhancement Payments at the time of seeking final approval of the proposed class action settlement in the amount of $7,500 for each Plaintiff, for a total of $15,000, for their service to the Settlement Class. *See* Settlement, ¶ 28. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases,* 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiffs' requested Enhancement Payments are intended to recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of their claims, gathering and reviewing documents for use in the lawsuit, preparing for mediation and reviewing the Settlement Agreement, as well as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this case, and the fact that Plaintiffs agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶ 40; *see also* Solorio Decl., ¶¶ 4-6; Palacio-Moreno Decl., ¶¶ 4-6.

Class Counsel will also apply for an attorneys' fees award of one-third of the Gross Fund

Value, which is currently estimated to be $83,973.33, and up to $20,000.00 in verified costs reimbursement. *See* Settlement, ¶ 27; Blakely Decl., ¶ 24. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 24. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, conducting extensive informal discovery, analyzing Class Members' timekeeping and payroll records and other data and documents, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id*. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Class Members, preparing the final approval papers, and attending the Final Approval hearing. *Id*.

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the Gross Fund Value is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Class Counsel submit their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking final approval.

Additionally, the Parties have agreed to designate $20,000.00 of the Gross Fund Value as PAGA civil penalties, of which $15,000.00 (75%) will be paid to the LWDA, with the remaining $5,000.00 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 29. Plaintiffs submit this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

IV. <u>ARGUMENT</u>

A. <u>PRELIMINARY APPROVAL IS WARRANTED</u>

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

1. <u>Standard for Preliminary Approval</u>

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiffs' Case

Although Plaintiffs steadfastly maintain that their claims are meritorious, they also acknowledge that there were substantial risks and uncertainty in proceeding with litigation. Blakely Decl., ¶ 22. As described above, TSI presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. *Id.* Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. *Id.*

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

Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not settled. Blakely Decl., ¶ 23. This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Id*. Even if Plaintiffs were to certify the classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids those risks and the accompanying expense. *Id*.

c. Risk of Maintaining Class Action Status

Due to the fact that Plaintiffs and the majority of the Settlement Class were subject to arbitration agreements with class waivers, it is likely that absent settlement, there would not be a certified class at the time of trial. Indeed, TSI only agreed to waive their right to assert the arbitration agreements as a defense in connection with this Settlement. Thus, this factor, too, supports preliminary approval of the settlement.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Settlement Class in the face of hotly disputed claims. Plaintiffs conducted an analysis of underpaid wages due to TSI's allegedly unlawful timekeeping policies and/or practices, potential meal and rest period premiums owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure analysis are discussed below:

Unpaid Wages Due to Rounding: **$15,492**

Plaintiffs allege that TSI underpaid employees due to their unlawful timekeeping policies/practices. Blakely Decl., ¶ 15. Based on Plaintiffs' review of employee timekeeping records, Plaintiffs estimate that Class Members were underpaid by approximately 5,248 hours. *Id*. Therefore, Plaintiffs calculated the maximum exposure for this claim at approximately $103,281 (5,248 hours * $19.68 average hourly rate). *Id*.

As stated above, TSI asserts that Plaintiffs and nearly all Class Members signed valid and enforceable arbitration agreements with class action waivers. Blakely Decl., ¶ 14. TSI also claims that its timekeeping policies complied with California law and resulted in Class Members being compensated for all hours actually worked. Blakely Decl., ¶ 15. TSI also argued that Plaintiffs would be unable to certify this claim given the individualized inquiries as to whether employees were in fact underpaid, or overpaid for each workday in question, and whether they were performing compensable work while clocked in. *Id*. In light of these defenses and arguments, Plaintiffs discounted TSI's maximum exposure by 75% for the risk of non-certification and the ability to proceed on a class-wide basis due to the arbitration agreements, and an additional 40% to account for TSI's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $15,492. *Id.*

Meal Period Violations: **$123,945**

Plaintiffs allege that TSI failed to provide timely 30-minute meal periods before the conclusion of the fifth hour of work. Blakely Decl., ¶ 16. Plaintiffs estimated there was a total of 62,980 shifts during the Class Period entitling employees to a first meal period. *Id.* Based on Class Members' average hourly rate of pay of approximately $19.68 per, Plaintiffs calculated TSI's maximum exposure on this claim at approximately $1,239,446 (62,980 non-compliant first meal periods * $19.68 average meal period premium). *Id.*

However, as noted above, TSI contends that it provided compliant meal periods to Class Members throughout the Class Period. Blakely Decl., ¶ 16. TSI also asserts that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that, as described above, it has always done so, and any non-complaint first meal periods in the timekeeping records were the result of lawful employee waiver or choice. *Id.* TSI also maintains that Plaintiffs' meal period claim is not suited for class certification, since individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id.* In light of these defenses and arguments, Plaintiffs discounted TSI's maximum exposure by 75% for the risk of non-certification and the ability to proceed on a class-wide basis due to the arbitration agreements, and an additional 60% to account for TSI's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $123,945. *Id.*

<u>Rest Period Violation</u>: **$86,761**

Plaintiffs allege that TSI failed to authorize and permit a full ten-minute rest period for every 3.5 hours worked. Blakely Decl., ¶ 17. Based on Plaintiffs' extrapolation of employee timekeeping records, there were approximately 62,980 shifts in excess of 3.5 hours, entitling employees to at least one rest period. *Id*. Thus, Plaintiffs calculated the maximum potential exposure for this claim at approximately $1,239,446 (62,980 rest period violations * $19.68 average premium). *Id*.

However, as discussed above, TSI argues that it always maintained lawful written rest period policies during the Class Period, and that any failure to take rest periods was the result of employee waiver or choice. Blakely Decl., ¶ 17. TSI further argues that Plaintiffs' rest period claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id*. These considerations are particularly present with respect to rest periods, TSI argues, as rest periods are not – and need not be – recorded. *Id*. In light of these defenses, Plaintiffs discounted the maximum amount that the class could potentially recover by 80% for risk of non-certification and the ability to proceed on a class-wide basis due to the arbitration agreements, and discounted an additional 65% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a projected exposure of approximately $86,761. *Id*.

<u>Wage Statement Penalties</u>: **$45,000**

Plaintiffs allege that TSI is liable for wage statement penalties as a result of the unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 18. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. *See* Labor Code § 226(e). *Id*. Plaintiffs' analysis reflected that there were approximately 225 unique employees and approximately 12,596 pay periods worked during the liability period applicable to Plaintiffs' wage statement claim. *Id*. Plaintiffs, therefore, assumed the maximum $4,000.00 penalty for each employee and calculated TSI's potential wage statement exposure at approximately $900,000 (225 employees * $4,000 maximum penalty]). *Id*.; *see also* Labor Code § 226(e).

In light of TSI's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiffs' underlying claims discussed above, Plaintiffs discounted the maximum exposure by 80% for risk of non-certification and the ability to proceed on a class-wide basis due to the arbitration agreements, and by an additional 75% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately $45,000. Blakely Decl., ¶ 18.

<u>Waiting Time Penalties</u>: **$6,789**

TSI's records reflected approximately 23 former Class Members who are eligible for waiting time penalties. Blakely Decl., ¶ 19. Based on an hourly rate of $19.68, Plaintiffs estimated the average waiting time penalty per former employee to be approximately $4,723 ($19.68 * 8 hours per day * 30 days). *Id*. Therefore, Plaintiffs calculated TSI's maximum exposure for potential waiting time penalties to be approximately $108,629 (23 former employees * $4,723 average penalty). *Id*.

TSI presented several defenses to this claim, most notably their assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. Blakely Decl., ¶ 19. TSI further asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id*. Moreover, because the waiting time claim is derivative of Plaintiffs' underlying wage claims, Plaintiffs would need to overcome TSI's defenses, both as to class certification and on the merits, as to his underlying claims. *Id*. To account for TSI's defenses, Plaintiffs discounted the maximum exposure by 75% for the risk of non-certification and the ability to proceed on a class-wide basis due to the arbitration agreements, and an additional 75% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately $6,789. *Id*.

<u>PAGA Penalties</u>: **$28,341**

Plaintiffs estimated a maximum total PAGA exposure of approximately $1,259,600 (12,596 pay periods * $100 "initial" penalty). Blakely Decl., ¶ 20; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which TSI disputes vigorously. Blakely Decl., ¶ 20; *see e.g.*, *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). TSI also asserts that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 20; *see also Thurman v. Bayshore Transit Mgmt., Inc*., 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiffs discounted the maximum figure by 85% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $28,341. Blakely Decl., ¶ 20.

Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential recovery for the Settlement Class would be approximately $306,328. Blakely Decl., ¶ 21. The proposed Settlement of $251,920.00 therefore represents approximately 82.2%

of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiffs' counsel believes could have been recovered had the case proceeded through trial.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. Class Counsel conducted an in-depth review of TSI's timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

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

a. The Settlement Is Within the Range of Possible Approval

The proposed settlement reflects approximately 82.2% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL

221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("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 Settlement Class members at trial"). Further, the average Individual Settlement Payment of approximately $464.21 exceeds average payments achieved in other wage and hour class action settlements.[3] Thus, Plaintiffs submit that 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.

b. <u>The Settlement Resulted from Serious, Informed Negotiations</u>

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

[3] *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).

discussed above, Plaintiffs carefully vetted the claims at issue and reviewed extensive timekeeping and payroll data and conducted a detailed statistical analysis of the data to arrive at their estimated classwide damages figures. *See* Blakely Decl., ¶¶ 14-21. Thus, this factor supports preliminary approval.

c. <u>The Settlement Is Devoid of Obvious Deficiencies</u>

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Settlement Class members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiffs' Class Representative Enhancement Payments, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. <u>THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS</u>

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

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

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt and/or hourly-paid employees who worked for TSI in the State of California at any time during the PAGA/Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be identified from TSI's personnel and employment records. Based on information provided by TSI, the Settlement Class consists of approximately 225 current and former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the Court, or for each Class Member to bring an individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)*, 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated on, among other issues, TSI's uniform timekeeping, and meal and rest period policies and/or practices. These types of claims are commonly held to be proper for class certification. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Claims of the Named Plaintiffs 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.,* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiffs' claims are typical of those held by the Settlement Class members. First, TSI employed Plaintiffs as non-exempt employees during the PAGA/Class Period, and Plaintiffs were subject to TSI's wage and hour policies at issue in this case. *See* Solorio Decl., ¶ 2; Palacio-Morena Decl., ¶ 2. Second, Plaintiffs were injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiffs assert that they were not compensated for all hours worked and that they were deprived of all legally compliant meal and rest periods. *See generally*, Solorio and Palacio-Moreno Decls. Plaintiffs further assert that they did not receive accurate and compliant wage statements and did not receive all wages at the time of separation of employment. *Id*. Because Plaintiffs have suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

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4. **<u>Plaintiffs and Class Counsel Will Fairly and Adequately Represent the Class</u>**

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155, Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class, and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America,* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Haines Decl., ¶¶ 2-8; Blakely Decl., ¶¶ 2-6.

C. **<u>THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE</u>**

This Court should order distribution to the Settlement Class of the proposed Class Notice, Request for Exclusion Form, and Objection Form (the “Notice Packet”) by U.S. Mail, postage prepaid, in English and Spanish, using last known mailing address information provided by TSI. *See* Settlement, ¶ 35. This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits. Class Members’ addresses will be ascertainable through TSI’s personnel and payroll records, which TSI will provide to Phoenix within ten (10) business days of preliminary approval of the Settlement. *See* Settlement, ¶ 35(A). Within ten (10) business days from receipt of this information, the Settlement Administrator will run the names of all Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Class Members, and mail a Notice Packet to each Class Member in English and Spanish at his or her last known address. *See* Settlement, ¶ 35(B). To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any Class

Member's current mailing address. *Id*., at ¶ 35(F).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the parties and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1-3 to Exh. A; Settlement, ¶¶ 35(C)-(D). The proposed Class Notice will also notify Class Members of the final approval hearing date and provides the Settlement Class contact information for Class Counsel and advises Class Members that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

D. <u>THE COURT SHOULD SET A FINAL APPROVAL HEARING</u>

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

V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: December 9, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________

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