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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

OLEGARIO VALDEZ-GARCIA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

BAKERSFIELD ARC, INC., a California
Corporation; BAKERSFIELD ARC
FOUNDATION, a California corporation; and
DOES 1 through 100,

Defendants.

Case No. BCV-23-103290

*[Case assigned for all purposes to the Hon.
Bernard C. Barmann, Jr.; Dept. H]*

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

Date: August 12, 2025

Time: 8:30 a.m.

Dept.: H

Action Filed: October 2, 2023

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
3 on August 12, 2025, at 8:30 a.m. in Department H of the above-entitled Court, located at 1215
4 Truxtun Avenue, Bakersfield, California 93301, Plaintiff Olegario Valdez-Garcia (“Plaintiff”)
5 individually and on behalf of a class of similarly situated individuals, will and hereby does move
6 this Court for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;
- 8 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional
9 certification of the following Settlement Class as defined as follows:
10 All persons who were employed by Bakersfield ARC, Inc. in California as
11 an hourly-paid or non-exempt employee from October 2, 2022 through the
12 date of preliminary approval (the “Class Period”) to provide services to
Bakersfield ARC’s clients.
- 13 3. Preliminary appointment of Plaintiff Olegario Valdez-Garcia as Class Representative;
- 14 4. Preliminary appointment of Paul K. Haines Sean M. Blakely, and Joel M. Gordon of
15 Haines Law Group, APC, 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 Payment to Plaintiff, civil
18 penalties payable to the Labor & Workforce Development Agency (“LWDA”),
19 settlement administration costs, and attorneys’ fees and costs to Class Counsel;
- 20 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
21 Administrator for mailing notices; and
- 22 7. Approval of the proposed Class Notice and an order that it be disseminated to the
23 proposed Settlement Class as provided in the Class Action and PAGA Settlement
24 Agreement.

25 ///

26 ///

27 ///

28 ///

1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the supporting declarations of Paul K. Haines, Sean M. Blakely, Joel M. Gordon,
3 Plaintiff Olegario Valdez-Garcia, and Jodey Lawrence of Phoenix Settlement Administrators, and
4 the exhibits attached thereto, the pleadings, and other papers filed in this Action, and on any
5 further oral or documentary evidence or argument presented at the time of the hearing.

6 Defendants do not intend to oppose this Motion, and given the multiplicity of issues
7 addressed in this Motion, has indicated its approval of Plaintiff's expressed need to exceed the
8 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiff requests the
9 Court's consideration of Plaintiff's memorandum of points and authorities, which is 26 pages in
10 length.

11
12
13 Respectfully submitted,

14 Dated: July 14, 2025

HAINES LAW GROUP, APC

15
16 By:



Paul K. Haines
Sean M. Blakely
Joel M. Gordon
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Olegario Valdez-Garcia (hereinafter “Plaintiff”) brought this class and
4 representative action for various wage and hour violations on behalf of all hourly-paid or non-
5 exempt employees who were employed by Defendant Bakersfield ARC, Inc. (“Bakersfield
6 ARC”) in California from October 2, 2022 through the date of preliminary approval (the “Class
7 Period”). Plaintiff’s primary allegations are that Bakersfield ARC failed to pay all minimum and
8 overtime wages due to its allegedly unlawful timekeeping policies/practices and failed to provide
9 all legally compliant meal and rest periods. As a result of these alleged violations, Plaintiff also
10 brought derivative claims for Bakersfield ARC’s alleged failure to issue accurate and compliant
11 wage statements, and for civil penalties under the Private Attorneys’ General Act (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action settlement,¹ in which Bakersfield ARC has agreed to pay
14 One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) to the following Settlement
15 Class:

16 All persons who were employed by Defendant Bakersfield ARC, Inc. in
17 California as an hourly-paid or non-exempt employee from October 2, 2022
18 through the date of preliminary approval (the “Class Period”) to provide
services to Bakersfield ARC’s clients.

19 If the Settlement is approved, Bakersfield ARC will pay a non-reversionary Gross
20 Settlement Amount of \$150,000.00. After deducting administration costs, Plaintiff’s requested
21 Class Representative Service Payment, the amount designated as PAGA civil penalties, and
22 requested attorneys’ fees and costs, the Net Settlement Amount of approximately \$46,500.00 will
23 be distributed to all Class Members who do not opt-out of the Settlement based on the
24 proportionate number of workweeks worked by each Participating Class Member during the Class
25 Period. Additionally, all persons employed by Defendant Bakersfield ARC, Inc. in California as
26 an hourly-paid or non-exempt employee at any time from October 2, 2022 through the date of

27 _____
28 ¹ The Class Action and PAGA Settlement Agreement (“Settlement”) is attached to the Declaration
of Sean M. Blakely as **Exhibit 1**. The proposed Class Notice is attached to the Settlement as
Exhibit A. All defined terms in this motion have the same definition as that in the Settlement.

preliminary approval (the “PAGA Period”) to provide services to Bakersfield ARC’s clients (“Aggrieved Employees”) will also receive a portion of the \$3,750.00 PAGA Penalties allocated to the Aggrieved Employees based on the proportionate number of PAGA Workweeks² worked during the PAGA 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 205 Class Members, and the average payment to Participating Class Members is projected to be approximately \$226.83.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

In operation since 1949, Bakersfield ARC provides job training, employment, and support services in Kern County for adults with intellectual and developmental disabilities. *See* Declaration of Sean M. Blakely (“Blakely Decl.”), ¶ 8. Plaintiff was employed by Bakersfield ARC in the non-exempt position of “Job Coach” from approximately February 2015 until he went on leave on approximately August 22, 2022. *See* Declaration of Olegario Valdez-Garcia (“Valdez-Garcia Decl.”), ¶ 2. In this position, Plaintiff supervised developmentally disabled clients, driving them to and from work locations, and performed general cleaning and yardwork. *Id.*

On October 2, 2023, Plaintiff filed his Class Action Complaint in Kern County Superior Court, alleging that Bakersfield ARC: (i) failed to pay all overtime wages; (ii) failed to pay all minimum wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and permit

² Defined as “each workweek or seven (7) days within the PAGA Period during which an Aggrieved Employee worked for Defendant Bakersfield ARC, Inc. for at least one day.” *See* Settlement, ¶ 1.38.

1 all rest periods; (v) failed to reimburse employees for necessary business expenditures; (vi) failed
2 to issue accurate, itemized wage statements; and (vii) engaged in unfair competition in violation
3 of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. On that same day,
4 Plaintiff sent his PAGA notice letter to the Labor and Workforce Development Agency
5 (“LWDA”). *Id.*, Exhibit 2. On December 29, 2023, Plaintiff filed the operative First Amended
6 Class and Representative Action Complaint (“FAC”) to add an eighth cause of action for civil
7 penalties under the PAGA. *Id.*

8 **B. PLAINTIFF’S CLAIMS AND BAKERSFIELD ARC’S DEFENSES**

9 **1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices**

10 Plaintiff alleges that for at least a portion of the Class Period, Bakersfield ARC’s
11 timekeeping policies and/or practices resulted in Plaintiff and other Class Members not being
12 compensated for all hours actually worked. Blakely Decl., ¶ 14. Specifically, Plaintiff alleges that
13 for a portion of the Class Period, Plaintiff and other Class Members clocked in and out for shifts
14 using a system that recorded hours worked to the minute, but Bakersfield ARC only compensated
15 Class Members for their scheduled hours worked and/or rounded timekeeping entries to
16 employees’ detriment. *Id.* As a result of these policies/practices, Plaintiff alleges that Bakersfield
17 ARC failed to compensate Plaintiff and other Class Members for all minimum and overtime
18 wages owed. *Id.*

19 However, Bakersfield ARC counters that for much of the Class Period its timekeeping
20 policies/practices complied with California law and that it has always properly compensated Class
21 Members for all hours worked throughout the Class Period. Blakely Decl., ¶ 14. Bakersfield ARC
22 also contends that any unpaid time was not known to it because it relied on employees to record
23 their hours worked electronically and verify those hours each pay period. *Id.* Bakersfield ARC
24 further argues that it is not possible for Class Members to perform compensable work outside of
25 their scheduled shift and that it had procedures for employees to correct their time records and
26 policies prohibiting working “off-the-clock.” *Id.* Finally, Bakersfield ARC asserts that Plaintiff
27 would be unable to certify this claim since its timekeeping policy is facially neutral, and
28 individualized inquiries would be necessary as to whether employees were in fact underpaid or

overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

2. Failure to Pay Overtime Wages Due to Unlawful Alternate Workweek

Schedule

Plaintiff alleges that Bakersfield ARC adopted an unlawful Alternate Workweek Schedule (“AWS”) for Plaintiff and other Class Members. Blakely Decl., ¶ 15. Plaintiff alleges that the AWS was not adopted according to the proper procedures set forth by the Wage Order, including the requirement that employers provide notice in both English and Spanish. *Id.* Based on this allegation that Plaintiff and other Class Members were working pursuant to an unlawful AWS, Plaintiff alleged that Class Members who worked a 4/10 AWS were not properly compensated for their overtime worked. *Id.*

In response, Bakersfield ARC counters that it maintained compliant overtime policies throughout the Class Period in accordance with the collective bargaining agreement between Bakersfield ARC and Class Members, who belonged to SEIU Local 521. Blakely Decl., ¶ 15. Bakersfield ARC also argues that it complied with the Wage Order’s requirements for adopting a valid AWS, and that it registered the results of the AWS election with the Division of Labor Standards Enforcement (“DLSE”), as required by law. *Id.* Finally, Bakersfield ARC maintains that Plaintiff’s AWS claim is not suited for class certification since only a portion of Class Members were subject to the AWS and individual inquiries would be needed to assess which employees were affected. *Id.*

3. Meal Period Claims

Plaintiff alleges that Bakersfield ARC’s policies and/or practices failed to provide Plaintiff and other Class Members with timely, duty-free, and uninterrupted 30-minute meal periods commencing before the end of the fifth hour of work. Blakely Decl., ¶ 16. Plaintiff further alleges that Bakersfield ARC required certain Class Members to sign on-duty meal period agreements, but due to work demands and understaffing these employees were not provided the opportunity to take any meal periods at all. *Id.* Plaintiff also alleges that Bakersfield ARC failed to keep any records of meal periods for the employees who signed on-duty meal period agreements. *Id.*

1 Finally, Plaintiff alleges that Bakersfield ARC failed to provide second meal periods to Class
2 Members when Class Members worked shifts of more than 10.0 hours. Blakely Decl., ¶ 17.

3 Bakersfield ARC argues that it maintained compliant meal break policies throughout the
4 Class Period in accordance with the collective bargaining agreement between Bakersfield ARC
5 and Class Members, who belonged to SEIU Local 521. Blakely Decl., ¶ 16. Bakersfield ARC
6 further contends that it always *provides* employees the opportunity to take meal periods and is
7 not required to *ensure* they are taken. *Id.*; see *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004,
8 1034 (2012) (rejecting “ensure” standard). Thus, Bakersfield ARC argues that any missed, late or
9 short meal periods resulted from lawful employee choice rather than any policy and/or practice
10 of Bakersfield ARC. Blakely Decl., ¶ 16. Bakersfield ARC asserts that certain employees signed
11 revokable on-duty meal break agreements and were provided on-duty meal breaks as permitted
12 by the Wage Order when justified by the nature of the work. *Id.* Additionally, Bakersfield ARC
13 maintains that employees voluntarily waived their second meal period when they worked shifts
14 in excess of 10.0 hours (but less than 12.0 hours), as they are entitled to do under Labor Code §
15 512. Blakely Decl., ¶ 17. Finally, Bakersfield ARC maintains Plaintiff’s meal period claim is not
16 suited for class certification since individual inquiries would be needed to assess which employees
17 took non-compliant or missed meal periods, how many meal periods were non-compliant or
18 missed, the nature of the work while taking on-duty meal breaks, and the reasons why a particular
19 employee did not take a meal period on a particular shift. Blakely Decl., ¶ 16.

20 **4. Rest Period Claims**

21 Plaintiff alleges Bakersfield ARC failed to authorize and permit all required off-duty rest
22 periods to Class Members, including Plaintiff. Blakely Decl., ¶ 18. Specifically, Plaintiff alleges
23 he was not authorized or permitted to take any off-duty rest period during his work shifts due to
24 the requirement that he maintain constant supervision of Bakersfield ARC’s clients. *Id.*
25 Furthermore, Plaintiff alleges that even when he was permitted to take an off-duty rest period, he
26 was not permitted to leave the company premises. *Id.*

27 Bakersfield ARC counters that it has maintained compliant written rest period policies
28 throughout the Class Period and has always authorized and permitted employees a 10-minute rest

1 period for each four (4) hours worked, or major fraction thereof, as required under the Wage
2 Order, and that any failure to take rest periods was a result of employee choice, rather than any
3 Bakersfield ARC policy and/or practice. Blakely Decl., ¶ 18. Bakersfield ARC asserts that it
4 maintained a policy that expressly allowed employees freedom to leave the premises during rest
5 breaks. *Id.* Bakersfield ARC also argues that Plaintiff’s rest period claim is not amenable to class
6 treatment, since individual inquiries would be required to determine which employees failed to
7 take rest periods, how many rest periods they failed to take, and the reasons why each employee
8 failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially
9 present with respect to rest period claims, Bakersfield ARC argues, given that rest periods are not
10 recorded. *Id.*

11 **5. Unreimbursed Business Expenses**

12 Plaintiff alleges that Bakersfield ARC required Plaintiff and other non-exempt employees
13 to use their personal cellular phones to perform essential job duties. Blakely Decl., ¶ 19. Despite
14 requiring Plaintiff and other non-exempt employees to incur these expenses on a daily basis,
15 Plaintiff alleges that Bakersfield ARC failed to reimburse Class Members for these necessary
16 business expenses, in violation of Labor Code § 2802(a) (“An employer shall indemnify his or
17 her employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties.”) Blakely Decl., ¶ 19; *see also Cochran v.*
19 *Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding employer must reimburse
20 use of personal cell phone, even where employee already has “unlimited” plan).

21 Bakersfield ARC maintains that Class Members were not required to use their personal
22 cellular phones as part of their job. Blakely Decl., ¶ 19. Bakersfield ARC further argues that any
23 expenses incurred by Class Members were extremely minimal, given the wide availability of low-
24 cost cellular phone plans. *Id.* Bakersfield ARC further contends that this claim would require
25 individual inquiries into whether Class Members actually used their personal cellular phones for
26 work purposes, how much expense they incurred, whether they submitted a request for
27 reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*;
28 *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) (“In calculating

1 the reimbursement amount due under section 2802, the employer may consider not only the actual
2 expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’
3 which in turn depends on the reasonableness of the employee’s choices”).

4 **6. Wage Statement Claims**

5 As a result of the unpaid wages and unpaid meal and rest period premium wages described
6 above, Plaintiff alleges that Bakersfield ARC is liable for wage statement penalties. Blakely Decl.,
7 ¶ 20

8 Bakersfield ARC argues any alleged wage statement violations were not “knowing and
9 intentional,” and Plaintiff cannot show he or other employees “suffer[ed] injury” due to the
10 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
11 penalties. Blakely Decl., ¶ 20. Further, Bakersfield ARC contends its wage statements always
12 accurately reflected hours worked and amounts paid as well as all other required information,
13 precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22
14 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the
15 pay stubs were accurate in that they correctly reflected the hours worked and the pay
16 received...The purpose of section 226 is to *document the paid wages* to ensure the employee is
17 fully informed regarding the calculation of those wages.”) (Italics in original). Blakely Decl., ¶
18 20.

19 **7. Waiting Time Penalties**

20 As a further result of the unpaid wages and unpaid meal and rest period premium wages
21 described above, Plaintiff alleges that Bakersfield ARC failed to comply with its final pay
22 obligations set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 21.

23 Bakersfield ARC argues that it possesses strong, good-faith defenses to Plaintiff’s
24 underlying claims, thus precluding recovery of waiting time penalties, which are only available
25 for the “willful” failure to pay wages. Blakely Decl., ¶ 21; see *also* 8 Cal. Code Regs. § 13520
26 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties
27 under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer
28 presents a defense, based in law or fact which, if successful, would preclude any recovery on the

part of the employee.”). Bakersfield ARC further asserts that Plaintiff’s waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Blakely Decl., ¶ 21.

8. PAGA Civil Penalties

As a result of the foregoing Labor Code violations, Plaintiff alleges that Bakersfield ARC is liable for civil penalties under the PAGA. Blakely Decl., ¶ 22. Since Plaintiff’s PAGA claim is derivative of Plaintiff’s underlying wage claims, Bakersfield ARC 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.”). Bakersfield ARC 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 Bakersfield ARC liable for any of Plaintiff’s claims. Blakely Decl., ¶ 22; *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

In connection with mediation, Bakersfield ARC provided Plaintiff’s counsel with timekeeping and payroll data for an approximately 20% sampling of Class Members. Blakely Decl., ¶ 10. In addition, Bakersfield ARC provided relevant written wage and hour policies and procedures, AWS documents, and collective bargaining agreements, along with relevant data points such as the number of Class Members, the number of aggregate workweeks worked during the Class Period, and the number of aggregate pay periods worked during the PAGA Period. *Id.* Plaintiff hired a labor economist with a Ph.D. in economics to assist Plaintiff in conducting a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Bakersfield ARC to create a detailed exposure analysis for all claims at issue. *Id.* This discovery

1 allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification
2 of Plaintiff’s claims, and Bakersfield ARC’s potential defenses. *Id.*

3 On August 21, 2024, the Parties participated in a full-day mediation with Scott Radovich,
4 Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During
5 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
6 certification of Plaintiff’s claims, the legal basis for the claims and defenses, as well as
7 Bakersfield ARC’s financial condition. *Id.* The Parties did not reach a settlement at mediation.
8 *Id.* In the months following mediation, Bakersfield ARC provided Plaintiff’s counsel with their
9 financial records and Plaintiff, with the help of its retained forensic accountant, reviewed the
10 documents provided by Bakersfield ARC. *Id.* The Parties continued their discussions with Mr.
11 Radovich following the mediation and ultimately reached a class-wide settlement. *Id.* During the
12 months that followed, the Parties finalized the terms of the Settlement and executed the long-form
13 Settlement Agreement now before the court. *Id.*

14 **III. THE PROPOSED SETTLEMENT**

15 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

16 If the Court preliminarily approves the Settlement, Bakersfield ARC will pay a Gross
17 Settlement Amount of \$150,000.00.³ *See* Settlement, ¶¶ 1.26, 3.1. Significantly, this Settlement
18 is non-reversionary, and no Class Member will have to submit a claim form as a condition of
19 payment. *Id.*, at ¶ 3.1. Each Class Member will automatically receive an Individual Class Payment
20 unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement
21 are summarized below:

- | | | |
|----|--|--------------|
| 22 | • Gross Settlement Amount: | \$150,000.00 |
| 23 | • Minus Court-approved attorneys’ fees: | \$50,000.00 |
| 24 | • Minus Court-approved verified costs (up to): | \$25,000.00 |

25 ³ Following Bakersfield ARC’s representation of its financial condition, Bakersfield ARC turned
26 over its financial records to Plaintiff’s retained expert, Keith D. Messerschmidt, who is a forensic
27 accountant and has consulted or provided expert testimony in dozens of litigation and insurance
28 matters. Blakely Decl., ¶ 11. Mr. Messerschmidt opines that Bakersfield ARC could not
reasonably afford to pay more than the Gross Settlement Amount without dramatically affecting
its business operations. *Id.* Should the Court wish to review a declaration from Mr. Messerschmidt
attesting to these facts and Bakersfield ARC’s financial condition, this declaration could either be
filed in *camera* or filed under seal, at the Court’s request.

• Minus Court-approved Service Payment:	\$5,000.00
• Minus amount set aside as PAGA penalties:	\$15,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$8,500.00</u>
Net Settlement Amount:	\$46,500.00
• PLUS 25% “PAGA Payment” to Aggrieved Employees:	\$3,750.00
Total Amount Paid to Class Members:	\$50,250.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative Service Payment to Plaintiff, the amount designated as PAGA civil penalties, and settlement administration costs, the Settlement requires Bakersfield ARC to pay a Net Settlement Amount of at least \$46,500.00 to all Class Members who do not timely opt-out. *See Settlement, ¶¶ 1.3.2, 3.2.4.* The Net Settlement Amount shall be distributed to Participating Class Members based on each Participating Class Member’s proportionate workweeks worked during the Class Period, which will be calculated by dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members during the Class Period and then multiplying the result by each Participating Class Member’s Class Workweeks. *See Settlement, ¶ 3.2.4.* In addition to the Net Settlement Amount, each Class Member who was employed by Bakersfield ARC at any time during the PAGA Period to provide services to Bakersfield ARC’s clients (including those who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a portion of the Gross Settlement Amount that has been designated as the Aggrieved Employees’ 25% share of the PAGA Penalties proportionate to the number of PAGA Workweeks he or she worked during the PAGA Period. *Id.*, at ¶ 3.2.5.1.

According to Bakersfield ARC, there are approximately 205 Class Members. Blakely Decl., ¶ 13. Therefore, the average Individual Class Payment from the Net Settlement Amount is projected to be approximately \$226.83. *Id.* There are approximately 205 Aggrieved Employees during the PAGA Period. *Id.* Therefore, each Aggrieved Employee will receive an average of approximately \$18.29 from Aggrieved Employees’ 25% share of the PAGA Penalties. *Id.* Class Members will have forty-five (45) calendar days (plus an additional 14 days for Class Members whose Class Notice is re-mailed) from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See Settlement, ¶¶ 1.48, 7.5, 7.7.* Those Class Members who do not opt-out of the

1 Settlement will be bound by its terms and will release all claims against the Released Parties
2 included within the Settlement. *See Id.*, at ¶ 5.2.

3 **2. Attorneys' Fees and Costs, Service Payment and PAGA Penalties**

4 Plaintiff will apply for a Class Representative Service Payment at the time of seeking final
5 approval of the proposed class action settlement in the amount of \$5,000.00 for his service to the
6 Settlement Class. *See* Settlement, ¶¶ 1.15, 3.2.1; Blakely Decl., ¶ 26. “[I]ncentive awards are
7 fairly typical in class action cases . . . and are intended to compensate class representatives for
8 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
9 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
10 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Service Payment
11 is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class,
12 including providing substantial factual information and documents to Class Counsel, discussing
13 the claims and theories at issue in the litigation, actively participating in the prosecution of his
14 claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named
15 plaintiff in this case, and the fact that Plaintiff agreed to a general release of all claims subject to
16 a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 5.1, 5.1.1; Blakely Decl., ¶ 26; *see also* Valdez-
17 Garcia Decl.

18 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
19 Settlement Amount, which is currently estimated to be \$50,000.00, and up to \$25,000.00 in
20 verified costs reimbursement. *See* Settlement, ¶¶ 1.7, 3.2.2; Blakely Decl., ¶ 25. Plaintiff submits
21 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
22 consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 25. Class Counsel has
23 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s
24 claims, conducting legal research, conducting extensive informal discovery, analyzing Class
25 Members’ timekeeping and payroll records with the assistance of a retained expert, creating a
26 comprehensive damages model, preparing for and attending mediation, reviewing Bakersfield
27 ARC’s financial records, negotiating and preparing the long-form Settlement Agreement,
28 preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend

1 additional attorney time in attending the hearing on this Motion, overseeing the Notice process
2 and fielding questions from Class Members, preparing the final approval papers, and attending
3 the Final Approval hearing. *Id.*

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

12 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
13 overall percentage of the Settlement and in light of the substantial risks and significant work
14 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
15 *Blakely Decl.*, ¶ 25. Should the Court grant preliminary approval, Class Counsel will seek an
16 award of attorneys' fees and verified costs upon seeking final approval. *Id.*

17 Additionally, the parties have agreed to designate \$15,000.00 of the Gross Settlement
18 Amount as PAGA civil penalties, of which \$11,250.00 (75%) will be paid to the LWDA, with
19 the remaining \$3,750.00 (25%) for distribution to the Aggrieved Employees, as the PAGA
20 requires such penalties to be allocated per Labor Code § 2699(i). *See Settlement*, ¶¶ 1.37, 3.2.5.
21 Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
22 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.
23 Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
24 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
25 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
26 settlement).

27 ///

28 ///

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions settlement of a class action on court approval,
4 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
5 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
6 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
7 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
8 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
9 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
10 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
11 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
12 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
13 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
14 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
15 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

16 **1. Standard for Preliminary Approval**

17 To make a fairness determination, the Court should consider several factors, including:
18 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
21 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
22 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
23 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
24 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
25 reasonable in light of the overall balance of factors in this case.

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

27 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff
28 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As

described above in section II.B., *supra*, Bakersfield ARC presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification and ultimately trial, success was far from certain.

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 been settled. Blakely Decl., ¶ 24. This would have required the expenditure of substantial time and resources by both parties that would have very likely spanned several years. *Id.* Even if Plaintiff was 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

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Bakersfield ARC with individual class members by way of *Pick-up-Stix* type settlement agreements⁴), and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-up-Stix* process. 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

⁴ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

disputed claims. Plaintiff conducted a detailed analysis of underpaid wages due to Bakersfield ARC's alleged unlawful timekeeping policies/practices, potential meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$16,575

Plaintiff alleges that Bakersfield ARC's timekeeping policies and/or practices resulted in Plaintiff and other Class Members not being compensated for all hours actually worked. Blakely Decl., ¶ 14. Based on Plaintiff's analysis and extrapolation of Bakersfield ARC's timekeeping and payroll records, Plaintiff estimated Class Members were underpaid by approximately 1,468 hours during the Class Period. *Id.* Plaintiff calculated Bakersfield ARC's maximum exposure for unpaid wages due to rounding at approximately \$47,358 (1,468 hours underpaid * \$16.13 avg. hourly rate * 2 (liquidated damages pursuant to Labor Code § 1194.2)). *Id.*

As noted above, Bakersfield ARC argues that its timekeeping system is even-handed and facially neutral, and compensated employees for all hours worked. Blakely Decl., ¶ 14. Bakersfield ARC further argues that just because an employee is clocked in does not mean they are working, that it expressly prohibited off-the-clock work, and that it relied on employees to accurate record and approve their timekeeping. *Id.* Bakersfield ARC also asserts that Plaintiff would be unable to certify this claim given the individualized inquiry as to whether employees were in fact underpaid, or potentially overpaid, for each workday in question. *Id.* Based on these defenses, Plaintiff discounted the estimated maximum amount by 30% for risk of non-certification, and by an additional 50% to account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately \$16,575. *Id.*

Failure to Pay Overtime Wages Due to Unlawful Alternate Workweek Schedule: \$15,624

Plaintiff alleges that Bakersfield ARC adopted an unlawful AWS for Plaintiff and other Class Members. Blakely Decl., ¶ 15. Based on Plaintiff's review and extrapolation of the timekeeping data produced by Bakersfield ARC, Plaintiff calculated that approximately 8% of weeks worked by Class Members were worked pursuant to the AWS, and that Bakersfield ARC

1 failed to compensate each affected employee for approximately 8.0 hours of weekly overtime,
2 resulting in a maximum potential exposure of \$62,494 (968 workweeks * 8.0 hours * \$8.07
3 average overtime premium). *Id.*

4 As noted above, Bakersfield ARC argues that it complied with the Wage Order's
5 requirements for adopting a valid AWS. Blakely Decl., ¶ 15. Furthermore, Bakersfield ARC
6 contends that it registered the results of the AWS election with the DLSE, as required by law. *Id.*
7 Finally, Bakersfield ARC maintains that Plaintiff's AWS claim is not suited for class certification
8 since only a portion of Class Members were subject to the AWS and individual inquiries would
9 be needed to assess which employees were affected. *Id.* In light of these defenses, Plaintiff
10 discounted the estimated maximum amount by 50% for risk of non-certification, and by an
11 additional 50% to account for risk of losing on the merits or failure to recover the maximal amount
12 sought, to arrive at an estimated exposure of approximately \$15,624. *Id.*

13 First Meal Period Violations: \$19,525

14 Based on Plaintiff's review and extrapolation of the timekeeping data produced by
15 Bakersfield ARC, Plaintiff alleges that Bakersfield ARC failed to provide approximately 4,859
16 timely 30-minute first meal periods before the conclusion of the fifth hour of work. Blakely Decl.,
17 ¶ 16. In addition, based on data provided by Bakersfield ARC, Class Members' average hourly
18 rate of pay during the Class Period was approximately \$16.13 per hour. *Id.* Therefore, Plaintiff
19 calculated Bakersfield ARC's maximum exposure for facial meal period violations at \$78,101
20 (4,859 facial meal period violations * \$16.13 average premium) – (17 meal period premiums
21 paid) * \$16.13 average). *Id.*

22 However, as noted above, Bakersfield ARC contends that it provided compliant meal
23 periods to Class Members throughout the Class Period. Blakely Decl., ¶ 16. Bakersfield ARC
24 also asserts that under *Brinker* it is only required to "provide" the opportunity to take meal
25 periods, not "ensure" meal periods are taken, and that, as described above, it has always done so,
26 and any non-complaint first meal periods in the timekeeping records were the result of employee
27 choice. *Id.*; see also *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard and holding
28 employers only have to "provide" employees the opportunity to take meal periods). Finally,

1 Bakersfield ARC maintains that the first meal period claim is not suited for class certification,
2 since individual inquiries would be needed to assess which employees took non-compliant meal
3 periods or missed meal periods, whether each employee agreed to on-duty meal breaks, whether
4 on-duty meal breaks were proper based on the nature of the work, how many meal periods were
5 non-compliant or missed, and the reasons why a particular employee did not take a compliant
6 meal period on a particular shift. Blakely Decl., ¶ 16. In light of these defenses and arguments,
7 Plaintiff discounted Bakersfield ARC's maximum exposure by 50% for the risk of non-
8 certification, and an additional 50% to account for Bakersfield ARC's defenses on the merits, to
9 arrive at an estimated exposure of approximately \$19,525. *Id.*

10 Second Meal Period Violations: \$9,319

11 Plaintiff's analysis of the timekeeping data showed that during the Class Period, there
12 were approximately 4,622 shifts worked in excess of 10.0 hours with a second meal period
13 violation. Blakely Decl., ¶ 17. Therefore, Plaintiff calculates Bakersfield ARC's maximum
14 exposure for second meal period violations at approximately \$74,553 (4,622 second meal period
15 violations * \$16.13 meal period premium). *Id.*

16 However, Plaintiff's theory of liability carried significant risks of both non-certification
17 and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Bakersfield ARC's
18 argument that it has maintained compliant written meal period policies throughout the Class
19 Period, and Class Members can voluntarily waive their second meal period on shifts in excess of
20 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶ 17. In light of these
21 risks, Plaintiff discounted the maximum amount that the class could potentially recover by 50%
22 for a risk of non-certification, and an additional 75% for a risk of losing on the merits, or having
23 exposure reduced due to Bakersfield ARC's waiver arguments, to arrive at estimated exposure of
24 approximately \$9,319. *Id.*

25 Rest Period Violations: \$46,495

26 As indicated above, Plaintiff alleges Bakersfield ARC failed to authorize and permit
27 Plaintiff and other Class Members to take duty-free 10-minute rest periods for every four hours
28 worked, or major fraction thereof, due to Bakersfield ARC's work demands and its obligation to

1 maintain constant supervision over its clients. Blakely Decl., ¶ 18. Based on Plaintiff's analysis
2 and extrapolation of Bakersfield ARC's timekeeping records, Plaintiff estimates there were
3 approximately 54,905 non-compliant rest periods during the Class Period. *Id.* Therefore, Plaintiff
4 estimates Bakersfield ARC's maximum potential exposure for rest period violations at
5 approximately \$885,618 (54,905 rest period violations * \$16.13 average premium). *Id.*

6 However, Bakersfield ARC contends it has maintained and enforced compliant written
7 rest period policies/practices and has always authorized and permitted employees a 10-minute
8 rest period for each 4 hours worked, and that any failure to take rest periods was as a result of
9 employee choice, rather than any Bakersfield ARC policy and/or practice. Blakely Decl., ¶ 18.
10 Bakersfield ARC further argues that Plaintiff's rest period claim is not amenable to class
11 treatment, since individual inquiries would be required to determine which employees failed to
12 take rest periods, how many rest periods they failed to take, and the reasons why each employee
13 failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially
14 present with respect to rest period claims, Bakersfield ARC argues, given that rest periods are not
15 recorded. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 65% for risk of
16 non-certification and an additional 85% for a risk of being unsuccessful on the merits or of failing
17 to recover the full amount sought, to arrive at an estimated realistic exposure of approximately
18 \$46,495. *Id.*

19 Unreimbursed Business Expenses: \$6,864

20 As stated above, Plaintiff alleges that Bakersfield ARC required Plaintiff and other non-
21 exempt employees to use their personal cellular phones to perform essential job duties. Blakely
22 Decl., ¶ 19. Using a conservative estimate of \$5 per week in reasonable work-related personal
23 cellular phone use, Plaintiff calculates Bakersfield ARC's maximum exposure for this claim at
24 approximately \$54,905 (\$5.00/week * 10,981 weeks).

25 However, Bakersfield ARC maintains that Class Members were not required to use their
26 personal cellular phones as part of their job, that any expenses incurred by Class Members were
27 extremely minimal, given the wide availability of low-cost cellular phone plans, and that this
28 claim would require individual inquiries into whether Class Members actually used their personal

cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. Blakely Decl., ¶ 19. Given these defenses, Plaintiff discounted this maximum amount by 50% for risk of non-certification and an additional 75% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately \$6,864. *Id.*

Wage Statement Penalties: \$23,583

Plaintiff alleges that Bakersfield ARC is liable for wage statement penalties as a result of the unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 20. 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.* Plaintiff’s analysis reflected that there were approximately 205 unique employees and approximately 4,033 pay periods worked during the liability period applicable to Plaintiff’s wage statement claim. *Id.* Therefore, Plaintiff calculated Bakersfield ARC’s potential wage statement exposure at approximately \$393,050 ([205 “initial” violations * \$50] + [3,828 “subsequent” violations * \$100]). *Id.*; *see also* Labor Code § 226(e). *Id.*

In light of Bakersfield ARC’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 Plaintiff’s underlying claims discussed above, Plaintiff discounted the maximum exposure by 70% for risk of non-certification, and by an additional 80% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$23,583. Blakely Decl., ¶ 20.

Waiting Time Penalties: \$19,742

Bakersfield ARC’s records reflected approximately 102 former Class Members who are eligible for waiting time penalties. Blakely Decl., ¶ 21. Based on an hourly rate of \$16.13, Plaintiff estimated the average waiting time penalty per former employee to be approximately \$3,871 (\$16.13 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated Bakersfield ARC’s

1 maximum exposure for potential waiting time penalties to be approximately \$394,842 (102
2 former employees * \$3,871 average penalty). *Id.*

3 However, Bakersfield ARC presented several defenses to this claim, most notably its
4 assertion that because it possessed good-faith defenses to the underlying claims, any failure to
5 pay wages was not “willful” as a matter of law. Blakely Decl., ¶ 21. Bakersfield ARC further
6 asserts that Plaintiff’s waiting time penalty exposure was grossly inflated as not every former
7 employee experienced the alleged Labor Code violations. *Id.* Moreover, because the waiting time
8 claim is derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome
9 Bakersfield ARC’s defenses, both as to class certification and on the merits, as to his underlying
10 claims. *Id.* To account for Bakersfield ARC’s defenses, Plaintiff discounted the maximum
11 exposure by 75% for the risk of non-certification and an additional 80% for the risk of losing on
12 the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure
13 of approximately \$19,742. *Id.*

14 PAGA Penalties: \$20,165

15 Plaintiff estimated a maximum total PAGA exposure of approximately \$403,300 (4,033
16 pay periods * \$100 “initial” penalty). Blakely Decl., ¶ 22; *Amaral v. Cintas Corp. No. 2*, 163
17 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified
18 that it is violating a Labor Code provision). However, these penalties derive from the underlying
19 wage and hour violations discussed above, which Bakersfield ARC disputes vigorously. Blakely
20 Decl., ¶ 22; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013)
21 (explaining that a PAGA claim’s success was determined by the merits of its underlying claims).
22 Bakersfield ARC also asserts that the Court would drastically reduce any award of PAGA
23 penalties as “confiscatory.” Blakely Decl., ¶ 22; *see also Thurman v. Bayshore Transit Mgmt.,*
24 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
25 *Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4
26 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the
27 maximum figure by 75% for the risk of losing on the merits and/or not recovering a PAGA penalty
28 for each and every pay period, and an additional 80% to account for the possibility of this Court

1 reducing penalties to arrive at an estimated exposure of approximately \$20,165. Blakely Decl., ¶
2 22.

3 Using these estimated figures for each of the claims described above, Plaintiff predicted
4 that the potential recovery for the Settlement Class would be approximately \$177,892. Blakely
5 Decl., ¶ 23. The proposed Settlement of \$150,000.00 represents approximately 84.3% of the
6 reasonably forecasted recovery for the Settlement Class, especially when taking Bakersfield
7 ARC's financial condition into account. *Id.* Preliminary approval is appropriate since the
8 Settlement will provide significant monetary relief to the Settlement Class, which is consistent
9 with what Plaintiff's counsel believes could have been recovered had the case proceeded through
10 trial, and in light of Bakersfield ARC's financial condition.

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

12 "Parties represented by competent counsel are better positioned than courts to produce a
13 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
14 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
15 by competent, experienced counsel who possess extensive experience prosecuting and defending
16 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
17 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6. *see also* Declaration of Paul K. Haines ("Haines
18 Decl."), ¶¶ 2-8. With the help of a retained Ph.D. in economics, Class Counsel conducted an in-
19 depth review of Bakersfield ARC's timekeeping and payroll records and drew on their extensive
20 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely
21 Decl., ¶¶ 14-23. The Settlement was also reached with the assistance of an experienced and
22 respected wage-and-hour class action mediator. *Id.* This factor strongly supports preliminary
23 approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

24 **2. The Preliminary Approval Standard Is Met**

25 At this stage, the Court can grant preliminary approval of the Settlement and direct that
26 notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2)
27 appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no
28 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 84.3% 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 Class Payment of approximately \$226.83 is in line with average payments achieved in other wage and hour class action settlements.⁵ Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Class Members so that they

⁵ *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 can consider the Settlement. The Court will have the opportunity to again assess the
2 reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or
3 object.

4 **b. The Settlement Resulted from Serious, Informed Negotiations**

5 The Settlement resulted from an exchange of substantial information, arm's-length
6 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
7 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
8 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
9 discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping
10 and payroll data, and conducted a detailed statistical analysis of the data to arrive at his estimated
11 class-wide damages figures. *See Blakely Decl.*, ¶¶ 14-23. Thus, this factor supports preliminary
12 approval.

13 **c. The Settlement Is Devoid of Obvious Deficiencies**

14 Preliminary approval of the Settlement is also warranted because there are no obvious
15 deficiencies. The Settlement will provide substantial monetary relief to Class Members. The
16 amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiff's
17 Class Representative Service Payment, are all reasonable and appropriate based on the facts of
18 this case. Because the Settlement is devoid of obvious deficiencies, this factor supports
19 preliminary approval.

20 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

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

27 **1. The Proposed Class Is Ascertainable and Numerous**

28 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 persons who were employed by Bakersfield ARC, Inc. in California as hourly-paid or non-exempt employees during the Class Period to provide services to Bakersfield ARC’s clients. Therefore, Class Members can be identified from Bakersfield ARC’s personnel and employment records. Bakersfield ARC represents that the Settlement Class consists of approximately 205 current and former hourly-paid or non-exempt employees. *See Blakely Decl.*, ¶ 13. It would therefore be impracticable to bring all Class Members before the Court or for each Class Member to bring an individual lawsuit. Thus, the proposed Settlement Class 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 on 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). Plaintiff’s claims are predicated on, among other issues, Bakersfield ARC’s timekeeping policies/practices and meal and rest period policies/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 Plaintiff Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 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, Plaintiff’s claims are typical of those held by the Class Members. First, Bakersfield ARC, Inc. employed Plaintiff as an hourly-paid or non-exempt employee during the Class Period to provide services to Bakersfield ARC’s clients, and Plaintiff was subject to Bakersfield ARC’s wage and hour policies at issue in this case. *See Valdez-Garcia Decl.*, ¶ 2. Second, Plaintiff was injured by the same challenged

1 policies/practices that allegedly injured the Settlement Class as a whole. *Id.* For example, Plaintiff
2 asserts that he was deprived of all wages and contends that he was deprived of all legally
3 compliant meal and rest periods. *Id.*, at ¶ 2. Plaintiff further asserts that he did not receive accurate
4 and compliant wage statements. *See generally*, Valdez-Garcia Decl. Because Plaintiff has
5 suffered the same injuries as the other members of the Settlement Class, the typicality requirement
6 is satisfied.

7 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
8 **Class**

9 The adequacy requirement examines conflicts of interest between named parties and the
10 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
11 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
12 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
13 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
14 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
15 indication that Class Counsel were not qualified and the named plaintiff had no interests
16 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
17 and hour class action litigation. *See Blakely Decl.*, ¶¶ 2-6; *Haines Decl.*, ¶¶ 2-8.

18 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

19 This Court should order distribution to the Settlement Class of the proposed Class Notice
20 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address
21 information provided by Bakersfield ARC. *See Settlement*, ¶ 7.4. This manner of giving notice is
22 the “best notice practicable” under the circumstances because it provides “individual notice to all
23 members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417
24 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by
25 Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement
26 administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached
27 exhibits. Class Members’ addresses will be ascertainable through Bakersfield ARC’s personnel
28 and payroll records, which Bakersfield ARC will provide to Phoenix within fifteen (15) calendar

1 days of preliminary approval of the Settlement. *See* Settlement, ¶ 4.1. Within fourteen (14)
2 calendar days of receipt of the Class Members' addresses, Phoenix will mail the Class Notice to
3 all Class Members. *Id.*, at ¶ 7.4.2. To the extent that any notices are returned, Phoenix will perform
4 a "skip trace" to track any Class Member's current mailing address. *Id.*, at ¶¶ 1.10, 4.3.2, 7.4.3.

5 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
6 because it advises Class Members of the nature of the claims, basic contentions and denials of the
7 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the
8 Settlement and the procedures by which to do so, explains the recovery formula and expected
9 recovery amount for each Class Member, and advises them that they will be bound by the terms
10 of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1-2 to Exh. A. The proposed
11 Class Notice will also notify Class Members of the final approval hearing date and provides the
12 Settlement Class contact information for Class Counsel and advises Class Members that they may
13 enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies
14 California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class
15 Members.

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

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

20 **V. CONCLUSION**

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

24
25 Dated: July 14, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

26
27 By:



28 Paul K. Haines
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