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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

SERGIO HUIZAR, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

J. VELARDE, INC. d.b.a. CRYSTAL CHRYSLER DODGE JEEP RAM, a California Corporation; ROBERT N. LA TORRE, INC. d.b.a. TORRE NISSAN, a California Corporation; GEOVEL INC. d.b.a. I-10 CHRYSLER DODGE JEEP RAM, a California Corporation; and DOES 1 through 100,

Defendants.

Case No.: CVRI2306697

[*Assigned for all purposes to the Hon. Harold W. Hopp; Dept. 1*]

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

Date: October 16, 2025
Time: 8:30 a.m.
Dept.: 1

Reservation ID: 950123964443

Complaint filed: December 13, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 16, 2025, at 8:30 a.m. in Department 1 of the above-entitled Court, located at 4050 Main Street, Riverside, California 92501, Plaintiff Sergio Huizar ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed 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 employees who worked for Defendants J. Velarde, Inc. dba Crystal Chrysler Dodge Jeep Ram, Robert N. La Torre, Inc. dba Torre Nissan, and Geovel Inc. dba I-10 Chrysler Dodger Jeep Ram in the State of California at any time from December 13, 2019 until January 11, 2025 (the "Class Period").

3. Preliminary appointment of Plaintiff Sergio Huizar as Class Representative;
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 Payment to Plaintiff, civil penalties payable to the Labor & Workforce Development Agency ("LWDA"), Settlement Administrator costs, and attorneys' fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
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 declarations of Sean M. Blakely and Paul K. Haines and exhibits attached thereto; the declaration of Anthony Rogers of ILYM Group, Inc. and exhibits attached thereto; the declaration of Plaintiff Sergio Huizar; the Settlement Agreement; and on any further oral or documentary evidence or argument presented at the time of hearing. Defendants do not intend to oppose this Motion and given the multiplicity of issues addressed in this Motion, has indicated its approval of Plaintiff's 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 Plaintiff's memorandum of points and authorities, which is 24 pages in length.

Dated: September 8, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

By: Sean Blakely

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sergio Huizar ("Plaintiff") seeks preliminary approval of a class action settlement ("Settlement") with Defendants J. Velarde, Inc. dba Crystal Chrysler Dodge Jeep Ram, Robert N. La Torre, Inc. dba Torre Nissan, and Geovel Inc. dba I-10 Chrysler Dodger Jeep Ram (collectively referred to as "Defendants"). Plaintiff's primary allegations are that Defendants failed to pay all minimum and overtime wages, failed to provide all legally compliant meal and rest periods, and failed to reimburse employees for necessary business expenditures. As a result of these alleged violations, Plaintiff also brought derivative claims for Defendants' alleged failure to issue accurate and compliant wage statements, and for civil penalties under the Private Attorneys' General Act ("PAGA"). [1]

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement,[2] in which Defendants have agreed to pay One Hundred Sixty-Five Thousand Dollars and Zero Cents ($165,000.00) to the following Settlement Class, which is estimated to consist of approximately 230 individuals:

> All current and former non-exempt employees who worked for Defendants J. Velarde, Inc. dba Crystal Chrysler Dodge Jeep Ram, Robert N. La Torre, Inc. dba Torre Nissan, and Geovel Inc. dba I-10 Chrysler Dodger Jeep Ram in the State of California at any time from December 13, 2019 until January 11, 2025 (the "Class Period").

The $165,000.00 Gross Settlement Amount represents a favorable result to Class Members who will be agreeing to a release of only those claims that were asserted in this litigation. After deductions for Plaintiff's requested Class Representative Enhancement

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[1] Plaintiff's 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 penalties; (6) failure to reimburse employees for necessary business expenditures; (7) unfair competition; and (8) civil penalties under the PAGA.

[2] The Stipulation of Settlement ("Settlement") is attached as **Exhibit A** to the Declaration of Sean M. Blakely filed concurrently with this Motion. The proposed Class Notice, Request for Exclusion Form, and Objection Form are attached as **Exhibits 1, 2** and **3**, respectively, to the Settlement.

Payment, settlement administrator costs, the amount designated as PAGA civil penalties, and requested attorneys' fees and costs to Class Counsel, the remaining amount (the "Net Settlement Amount") of approximately $58,050.00 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 Class Period. Class Members (including those who exclude themselves from the class action settlement) employed during the period of December 13, 2022, until January 11, 2025 ("PAGA Period") will also be entitled to a share of the PAGA Amount based on the proportionate number of pay periods worked during the PAGA Period.

Significantly, Class Members do not need to file a claim form in order to receive a Settlement Payment, as all Class Members will automatically receive a Settlement Payment unless they affirmatively opt-out. There are approximately 230 Class Members, and the average Settlement Payment is projected to be approximately $252.39.

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 Class Members. 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

Defendants are a group of car dealerships in California. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 9. Plaintiff was employed by Defendants in the non-exempt job position of "Service Drive Manager and/or Greeter" since approximately April 2021. *See* Declaration of Plaintiff Sergio Huizar ("Huizar Decl."), ¶ 2. On December 13, 2023, Plaintiff filed a Class Action Complaint in Riverside County Superior Court, alleging (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) failure to indemnify for all necessary business expenditures; and (7) unfair competition. Blakely Decl., ¶ 10. On that same day, Plaintiff sent his PAGA notice letter to the LWDA. *Id.*, Exhibit B. On February 20, 2024, Plaintiff filed the operative First Amended Class and Representative Action Complaint ("FAC") adding a cause of action for civil penalties under the PAGA. *Id*.

B. PLAINTIFF'S CLAIMS AND DEFENDANTS' DEFENSES

1. Arbitration Agreements

As an initial matter, Defendants assert that Plaintiff and nearly all Class Members signed valid and enforceable arbitration agreements with class action waivers. Blakely Decl., ¶ 15. Setting aside any arguments as to the merits of Plaintiff's claims, Defendants contend 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 a subset of Class Members. *Id*. As such, Defendants contend that absent their 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. Meal Period Claims

Plaintiff alleges that he and other Class Members were provided with meal periods that were often late (i.e., commencing after the completion of five hours of work), short (i.e., less than 30 minutes), and/or missed due to work demands imposed by Defendants. Blakely Decl., ¶ 16. Plaintiff further alleges that he and other Class Members did not receive second meal periods when they worked shifts in excess of 10.0 hours. *Id*., at ¶ 17.

Defendants counter that they have maintained compliant written meal period policies throughout the Class Period and have always provided employees the *opportunity* to take legally compliant meal periods, and that they are not required to "ensure" meal periods are taken. Blakely Decl., ¶ 16; *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). Defendants also maintain that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Blakely Decl., ¶ 16. Defendants also note that they paid numerous meal period premium payments for non-compliant meal periods. *Id.* Lastly, Defendants argue that individualized inquiries will be required to determine why each meal period was taken late, short, or missed by each employee, and whether there was a valid waiver, thereby making class certification of this claim unlikely. *Id*.

3. Rest Period Claims

Plaintiff alleges that Defendants failed to authorize and permit its non-exempt employees to take all required rest periods. Blakely Decl., ¶ 18. Specifically, Plaintiff was often prevented from taking rest periods due to work demands imposed by Defendants. *Id*.

In response, Defendants argue that they have always maintained and enforced lawful rest period policies/practices during the Class Period, and have, in fact, authorized and permitted all required rest periods to Class Members. Blakely Decl., ¶ 18. Furthermore, Defendants argues that Plaintiff's 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, as there are no records of whether or not a rest period was authorized and permitted. *Id.*

4. Regular Rate Miscalculations

Plaintiff alleges that Defendants failed to pay all overtime wages owed by not including all non-discretionary renumeration, including payments denoted as "Bonus SVC" or "Bonus New Pay" into the "regular rate" of pay. Blakely Decl., ¶ 19; *see* Labor Code § 510(a) (requiring overtime to be paid at "one and one-half times the regular rate of pay"); Wage Order 4, § 3 ("[E]mployees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's <u>regular rate of pay</u> for all hours worked over 40 hours in the workweek") (emphasis added).

However, Defendants argue that they properly included all forms of remuneration when calculating the regular rate of pay, and therefore paid all overtime wages to Class Members. Blakely Decl., ¶ 19. Defendants further argue that Class Members received different types of bonus pay throughout the Class Period, creating substantive differences among the Class Members with respect to the incentives received, making class certification unlikely. *Id.*

/ / /

5. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that Defendants' timekeeping policies and/or practices resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked. Blakely Decl., ¶ 20. Plaintiff alleges that he and other Class Members were required to perform work duties such as, washing cars, pulling cars out of the garage, and/or dropping off customers, while off-the-clock. *Id*. As a result of these policies/practices, Plaintiff alleges Defendants failed to compensate Plaintiff and other non-exempt employees for all minimum and overtime wages owed. *Id*.

However, Defendants counter that their timekeeping policies/practices complied with California law and that it has always properly compensated Class Members for all hours worked throughout the Class Period. Blakely Decl., ¶ 20. Defendants further contend that Class Members did not work off-the-clock and that its policies specifically disavow such off-the-clock work. *Id*. Defendants further argue that Plaintiff's off-the-clock claim is not appropriate for class treatment. *Id*.

6. Unreimbursed Business Expenses Claim

Plaintiff alleges that Defendants failed to reimburse him and other putative class members for all reasonable and necessary work expenditures, including personal cellular phone expenses. Blakely Decl., ¶ 21. Specifically, Defendants required Plaintiff and other non-exempt employees to use their personal cellular phones for a variety of work activities, including communication with customers; however, Defendants failed to reimburse Plaintiff and other non-exempt employees for the costs associated with their cellular phones. *Id*.

In response, Defendants maintain that Class Members were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 21. Defendants further argue that any expenses incurred by Class Members were extremely minimal, given the wide availability of low-cost cellular phone plans. *Id*. Defendants further contend that this 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. *Id*.;

see also, *e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices").

7. <u>Wage Statement Claims</u>

As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that Defendants are liable for wage statement penalties. Blakely Decl., ¶ 22.

Defendants argue any alleged wage statement violations were not "knowing and intentional," and Plaintiff cannot show he 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. Blakely Decl., ¶ 22. Further, Defendants 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).

8. <u>PAGA Civil Penalties</u>

As a result of the foregoing Labor Code violations, Plaintiff alleges that Defendants are liable for civil penalties under the PAGA. Blakely Decl., ¶ 23.

Since Plaintiff's PAGA claim is derivative of Plaintiff's underlying wage claims, Defendants assert the PAGA claim would fail with those claims. Blakely Decl., ¶ 23; *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."). Defendants further maintain that, given their good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiff's claims. *Id.*; *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. <u>DISCOVERY AND MEDIATION</u>

In connection with mediation, Defendants provided Plaintiff with approximately 20% sampling of timekeeping and payroll records for putative class members employed during the Class Period. Blakely Decl., ¶ 11. Defendants also produced relevant policy documents, including their written meal and rest period policies, timekeeping policies, and overtime policies; and the number of current and former employees employed during the Class Period, as well as the aggregate number of workweeks worked by all putative class members. *Id*. Plaintiff conducted a comprehensive analysis and extrapolation of the data produced to calculate class-wide damages for all claims at issue. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendants' potential defenses. *Id*.

On November 12, 2024, the Parties attended a full-day mediation with Kevin T. Barnes, Esq., an experienced wage and hour class action mediator. Blakely Decl., ¶ 12. During mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff's claims, and the legal bases for the claims and defenses. *Id*. At the conclusion of mediation, Mr. Barnes issued a mediator's proposal, which was ultimately accepted by all Parties. *Id*. During the months that followed, the Parties negotiated and 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 this Settlement, Defendants will pay a Gross Settlement Amount of $165,000.00. *See* Settlement, § 3. Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive a Settlement

Payment. *Id.,* at §§ 3, 4. Each Class Member will automatically receive a Settlement Payment unless they affirmatively opt out of the Settlement. *Id.*

The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount:	$165,000.00
• Minus Court-approved attorneys' fees (1/3):	$55,000.00
• Minus Court-approved verified costs (up to):	$30,000.00
• Minus Court-approved Enhancement Payment:	$5,000.00
• Minus amount set aside as PAGA penalties:	$10,000.00
• Minus estimated settlement administration costs:	$6,950.00
Net Settlement Amount ("NSA"):	$58,050.00
• PLUS 25% "PAGA Amount" to Settlement Class:	$2,500.00
Total Amount Paid to Class Members:	**$60,550.00**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and verified costs, Plaintiff's Class Representative Enhancement Payment, Settlement Administrator costs, and the amount designated as PAGA civil penalties, the Settlement requires Defendants to pay a Net Settlement Amount of approximately $58,050.00 to all Class Members who do not timely opt out. *See* Settlement, § 4(A). The Net Settlement Amount shall be distributed to all participating Class Members based on the participating Class Member's proportionate number of workweeks worked during the Class Period. *Id*., at § 4(B)(i). In addition to the Net Settlement Amount, Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) has been designated as the "PAGA Amount," and shall be distributed to Class Members employed by Defendants at any from December 13, 2022 until January 11, 2025 ("PAGA Period"), including those who opt-out, proportionally based on the number of pay periods worked for Defendants in during the PAGA Period. *Id*., at § 4(B)(ii).

Defendants' share of employer-side payroll taxes will be paid by Defendants separately, and in addition to, the Gross Settlement Amount. *See* Settlement, § 3(D). Any payment from the PAGA Amount shall be treated as 100% penalties; and any payment from the Net Settlement Amount to Class Members shall be allocated as twenty percent (20%) wages, and eighty percent (80%) as penalties and interest. *Id*., at § 4(D). The Settlement Administrator will issue to Class Members an IRS Form W-2 (for amounts paid was wages) and an IRS Form 1099 (for amounts paid as penalties and interest). *Id*. The Parties propose that any uncashed checks shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund in the name of the Class Member who does not cash his or her check. *Id*., at § 4(E).

According to Defendants' records, there are approximately 230 total Class Members. Blakely Decl., ¶ 14. Therefore, the average Settlement Payment is projected to be approximately $252.39. *Id.* Based on the proposed allocations of the Net Settlement Amount, the lowest potential Settlement Payment is projected to be approximately $4.83, and the highest potential Settlement Payment is estimated to be approximately $1,024.64. *Id*. There are also approximately 153 Class Members who worked during the PAGA Period. *Id*. Therefore, the average payment from the PAGA Amount is estimated at approximately $16.34. *Id*.

Class Members will have forty-five (45) calendar days to opt out of or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 9(C)-(D). Those Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendants included within the Settlement. *See Id*., at § 2(A).

2. <u>Attorneys' Fees, Costs, Enhancement Payment, and PAGA Payment</u>

Plaintiff will separately apply for Enhancement Payment at the time of seeking final approval of the proposed Settlement in the amount of $5,000.00, for his service to the Settlement Class. *See* Settlement, §§ 3(B)(3), 6. "[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, Plaintiff's requested Enhancement Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, actively participating in the prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in this case and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of California Civil Code section 1542. *See* Settlement, § 2(C); *see generally*, Huizar Decl.

Class Counsel will also apply for an attorneys' fees award of one-third of the Gross Settlement Amount, which is currently estimated to be $55,000.00, and up to $30,000.00 in verified costs reimbursement. *See* Settlement, §§ 3(B)(4), 5; Blakely Decl., ¶ 27. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, engaging in informal discovery, reviewing Defendants' documents and policies, analyzing Class Members' relevant records, working to create 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 Settlement Amount 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 excellent 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 litigation costs when seeking final approval.

Additionally, the parties have agreed to designate $10,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $7,500.00 (75%) will be paid to the LWDA, with the remaining $2,500.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(B)(5). Plaintiff submits 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. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

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 the 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. Standard For Preliminary Approval

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 224, 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 Plaintiff's Case

Class Counsel carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data and conducted a detailed analysis of the data to create a comprehensive damages model for Defendants' potential class-wide liability. *See* Blakely Decl., ¶¶ 15-24. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described in section II.B., *supra*, Defendants 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 in advance of mediation, the Parties still had significant discovery to complete in formal litigation had the matter not settled. Blakely Decl., ¶ 26. This would have required 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 class certification motion, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Due to the fact that Plaintiff and other Class Members were subject to arbitration agreements with class action waivers, it is likely that absent settlement, there would not be a certified class at the time of trial. Indeed, Defendants 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. **<u>Amount Offered in Settlement Given Realistic Value of Claims</u>**

The Settlement provides a fair and reasonable monetary recovery for Class Members for hotly disputed claims. After analyzing the data provided by Defendants prior to mediation, Plaintiff prepared a class-wide exposure model and forecasted the expected recovery for each claim as follows:

<u>First Meal Period Violations</u>: $19,562

Plaintiff alleges that Defendants failed to provide all compliant first-meal periods to its non-exempt employees, and that for at least part of the Class Period, Defendants failed to maintain compliant meal period policies. Blakely Decl., ¶ 16. Plaintiff estimates that approximately 6,006 shifts over 6.0 hours contained non-compliant first meal periods. *Id*. Accordingly, Plaintiff calculated Defendants' maximum exposure at approximately $124,204 (6,006 non-compliant first meal periods * $20.68 average meal period premium). *Id*.

However, as noted above, Defendants argue that they maintained compliant meal period practices throughout the Class Period and under *Brinker* it is only required to provide employees the opportunity to take meal periods, not ensure that they are taken. Blakely Decl., ¶ 16; *see Brinker, supra*, 53 Cal.4th at 1034 (rejecting "ensure" standard). Furthermore, Defendants argue that Plaintiff's meal period claim is not suited for class treatment, as individual inquiries would be needed as to which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and why a particular employee did not a take compliant meal period on a particular shift. Blakely Decl., ¶ 16. Based on these defenses, Plaintiff discounted the maximum amount by 55% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 65% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $19,562. *Id*.

Second Meal Period Violations: $6,529

Plaintiff estimates that during the Class Period, there were approximately 2,631 shifts worked in excess of 10.0 hours, where a second meal period violation occurred without a first meal period violation. Blakely Decl., ¶ 17; *see United Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011) ("[E]mployees in this case may recover up to two additional hours of pay on a single work day for meal period and rest period violations – one for failure to provide a meal period and another for failure to provide a rest period"). Therefore, Plaintiff calculates Defendants' maximum exposure for second meal period violations at approximately $54,409 (2,631 second meal period violations * $20.68 average meal period premium). Blakely Decl., ¶ 17.

However, Plaintiff's theory of liability carried significant risks of both non-certification and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Defendants' argument that it has maintained compliant written meal period policies throughout the Class Period, and Class Members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶¶ 16-17. In light of these risks, Plaintiff discounted the maximum amount that the class could potentially recover by 60% for a risk of non-certification, and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 70% for a risk of losing on the merits, or having exposure reduced due to Defendants' waiver arguments, to arrive at estimated exposure of approximately $6,529. *Id*.

Rest Period Violations: $108,669

Based on Plaintiff's review of Defendants' records, there were approximately 60,055 shifts worked over 3.5 hours during the Class Period. Blakely Decl., ¶ 18. Therefore, Plaintiff calculates Defendants' maximum liability for rest period violations at approximately $1,241,937 (60,055 non-compliant first meal periods * $20.68 average rest period premium). *Id*.

However, Defendants argue that they have always maintained and enforced lawful rest period policies/practices during the Class Period, and have, in fact, authorized and permitted all required rest periods to Class Members. Blakely Decl., ¶ 18. Furthermore, Defendants argue that Plaintiff's 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 as there are no records of whether or not a rest period was authorized and permitted. *Id.* Therefore, Plaintiff discounted Defendants' maximum exposure by 65% to account for the risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 75% to account for Defendants' defenses on the merits or failure to recover the full amount sought, to arrive at an estimated exposure of approximately $108,669. *Id.*

<u>Regular Rate Miscalculations</u>: $2,723

Plaintiff alleges that Defendants failed to pay all overtime wages owed by not including the value of all non-discretionary remuneration into the regular rate of pay. Blakely Decl., ¶ 19. Based on Plaintiff's review of employee payroll and timekeeping records, Plaintiff estimates the maximum possible exposure for this claim as approximately $19,453. *Id*.

However, as stated above, Defendants contend that they properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members. Blakely Decl., ¶ 19. Defendants further argue that Class Members received different types of bonuses throughout the Class Period, creating substantive differences among the Class Members with respect to the incentives received, making class certification unlikely. *Id*. In light of these defenses, Plaintiff discounted the maximum amount that the class could potentially recover by 60% for risk of non-certification and potential inability to proceed on a classwide 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 an estimated total of approximately $2,723. *Id*.

<u>Unpaid Wages Due to Unlawful Timekeeping Policies/Practices</u>: $8,151

Plaintiff alleges that Defendants' timekeeping policies and/or practices resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked.

Blakely Decl., ¶ 20. Plaintiff estimated that the failure to compensate employees for all off-the-clock work resulted in approximately 15 minutes per week of unpaid work, or a total of 3,003 unpaid hours during the Class Period. *Id.* Because employees generally worked shifts of at least eight (8) hours, Plaintiff contends that these unpaid wages must be paid at an overtime rate of pay. *Id.* Therefore, Plaintiff estimates Defendants' maximum exposure for this claim at approximately $93,153 (3,003 unpaid hours * $31.02 average overtime rate of pay). *Id.*

However, Defendants counter that their timekeeping policies/practices complied with California law and that it has always properly compensated Class Members for all hours worked during the Class Period. Blakely Decl., ¶ 20. Defendants further contend that their policies specifically disavow such off-the-clock work. *Id.* Defendants further argue that Plaintiff's off-the-clock claim is not appropriate for class treatment. *Id.* Based on these defenses, Plaintiff discounted the estimated maximum amount by 65% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and by an additional 75% 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 $8,151. *Id.*

<u>Unreimbursed Business Expenses</u>: $3,153

Plaintiff alleges that Defendants failed to reimburse him and other putative class members for all reasonable and necessary work expenditures, including the use of personal cellular phone expenses. Blakely Decl., ¶ 21. Plaintiff estimates Defendants' maximum liability for its failure to reimburse employees for usage of their personal cellular phones at approximately $30,030 (6,006 pay periods * $5.00 per pay period). *Id*.

As noted above, Defendants maintain that Class Members were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 21. Defendants further argue that any cellular phone expenses incurred by Class Members were minimal, given the wide availability of low-cost cellular phone plans. *Id*. Defendants further argue that this 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.

Id. Based on these defenses, Plaintiff discounted the estimated maximum amount by 65% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and by an additional 70% 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 $3,153. *Id*.

Wage Statement Violations: $20,503

Plaintiff alleges that Defendants are liable for wage statement penalties as a result of its failure to pay all wages owed and failure to pay all meal and rest period premiums. Blakely Decl., ¶ 22. Based on the data produced, there are 153 putative class members and 3,357 pay periods worked within the one-year liability window relevant to Labor Code § 226. *Id.* Section 226 provides for a $50 penalty for each "initial" violation and $100 for each "subsequent" violation, with a cap of $4,000 per employee. *Id.* Plaintiff calculates Defendants' maximum wage statement exposure at approximately $328,050 ([153 "initial" violations * $50 penalty] + [3,204 "subsequent" violations * $100 penalty]) in potential penalties. *Id*.

However, given Defendants' arguments that no violations occurred, that Class Members suffered no "injury", that any violations were not "knowing and intentional," that the wage statement accurately reflected amounts paid, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 75% for risk of non-certification, and by an additional 75% for risks on the merits, for an estimated realistic exposure of approximately $20,503. Blakely Decl., ¶ 22.

PAGA Civil Penalties: $20,981

The success of Plaintiff's PAGA claim is wholly dependent upon the success of his underlying claims. Assuming that Plaintiff could prove at least one underlying Labor Code violation in each pay period within the PAGA Period, Plaintiff estimates Defendants' maximum PAGA exposure at $335,700 (calculated from 3,357 pay periods * $100.00 initial violation rate). Blakey Decl., ¶ 23; *see also 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 derived from the underlying wage and hour violations discussed above, which Defendants vigorously disputes. Blakey Decl., ¶ 23; *see e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendants also asserts that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 23; *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming reduction of PAGA penalties to $5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from $2.8 million to $500,000). Plaintiff therefore discounted the maximum figure by 75% for the risk of being unable to proceed on a representative basis and risk of losing of the merits, and/or not recovering a PAGA penalty in each and every pay period, and an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $20,981. Blakely Decl., ¶ 23.

Therefore, if Plaintiff was entirely successful at trial on all claims described above, Plaintiff estimates the maximum total exposure to be approximately $2,226,936.00. Blakely Decl., ¶ 24. However, taking into account Defendants' various defenses, both as to certification and merits issues, difficulties of proof, and other risks described above, Plaintiff predicted that the potential likely recovery for the Settlement Class at trial would be approximately $190,271.00. *Id.* The proposed settlement of $165,000.00 therefore represents approximately 86.7% of the reasonably forecasted recovery for the Settlement Class, while avoiding the further expense and serious risk of proceeding towards class certification and trial. *Id.* Taking into account the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce the civil penalties, the proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See e.g., Altamirano v. Shaw Industries, Inc*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action settlement, stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's claims."). Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Class Members without the uncertainty, delay, and additional expense of further litigation.

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, Plaintiff is 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; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. Class Counsel conducted an in-depth review of Defendants' timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely Decl., ¶ 12. The Settlement was also reached with the assistance of an experienced wage and hour class action mediator. *Id.*. 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 86.7% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case 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 Class Members at trial"). Further, the average Settlement Payment of $252.39 is in line with average payments achieved in other wage and hour class action settlements.[3] Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has 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 months of additional negotiations. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully

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[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).

vetted the claims at issue, reviewed extensive payroll and timekeeping data, and conducted a detailed statistical analysis of the data to arrive at the estimated class-wide damages figures. *See* Blakely Decl., ¶¶ 15-24. The parties attended a full-day mediation, and worked collaboratively in the following months to finalize the Settlement. *Id.*, at ¶ 12. Thus, this factor supports preliminary approval.

c. The Settlement is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, the Enhancement Payment, and the PAGA allocation 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. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

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) Plaintiff's claims are typical of the claims of absent Class Members; and (4) Plaintiff and his counsel will fairly and adequately represent Class Members' interest. *See* Cal. Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable And Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all of Defendants' current and former non-exempt employees who worked for Defendants in California at any time during the Class Period. *See* Settlement, § 1. Therefore, Class Members can be identified from Defendants' personnel and employment records. Defendants represent that the Settlement Class consists of approximately 230 current and former non-exempt employees. *See* Blakely Decl., ¶ 14. It would therefore be impracticable to bring all 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). Plaintiff's claims are predicated on, among other issues, Defendants' allegedly unlawful timekeeping policies/practices, and allegedly unlawful meal and rest period policies/practices. These types of claims are commonly held to be proper for class certification. *See e.g.*, *Williams v. Superior Court* 221 Cal.App.4th 1353, 1371 (2013) (certifying class based on uncompensated work time); *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

Typicality is satisfied where a class representative's claims 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). Here, Plaintiff's claims are typical of the Settlement Class. First, Plaintiff worked in California for Defendants as a non-exempt employee during the Class Period, and Plaintiff was subject to Defendants' wage and hour policies/practices at issue in this case. *See* Huizar Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he was deprived of all overtime wages, and of legally compliant meal and rest periods. *See generally*, Huizar Decl. Plaintiff further asserts that he did not receive accurate and compliant wage statements. *Id*. Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

4. Plaintiff And His Class Counsel Will Adequately Represent The Class

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). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement

Class, and Plaintiff possesses 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* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8.

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 in English and Spanish by U.S. Mail, postage prepaid, using last known mailing address information provided by Defendants. *See* Settlement, § 9(A)-(B). 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, Plaintiff proposes that the Settlement be administered by ILYM Group, Inc. ("ILYM"), an experienced class action settlement administrator. *See generally* Declaration of Anthony Rogers ("Rogers Decl.") and attached exhibits. Class Members' addresses will be ascertainable through Defendants' personnel and payroll records, which Defendants will provide to ILYM within ten (10) business days of preliminary approval of the Settlement. *See* Settlement, § 9(A). Within ten (10) business days of receipt of the Class Members' addresses, ILYM will run the addresses through the National Change of Address ("NCOA") database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice in both English and Spanish to all Class Members. *See* Settlement, § 9(B). To the extent that any notices are returned, ILYM will perform a "skip trace" to track any Class Member's current mailing address. *Id*., at § 9(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. The proposed Class Notice will also notify Class Members of the final approval hearing date, provide the Settlement Class contact information for Class Counsel, and advise 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. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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. CONCLUSION

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

Dated: September 8, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

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