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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE MORAN, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

ARACA MERCHANDISE L.P., a New York Limited Partnership; ARACA INK LLC, a Delaware limited liability company; ARACA HOLDINGS LLC, a New York limited liability company; and DOES 3 through 100,

Defendants.

CASE NO. 24STCV02003

[Case assigned for all purposes to the Hon. William F. Highberger, Dept. SSC-10]

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

Date: December 23, 2025
Time: 2:00 p.m.
Dept.: SSC-10

Action Filed: January 24, 2024
SAC Filed: August 27, 2025
Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on December 23, 2025 at 2:00 p.m., or as soon thereafter as the matter may be heard, in Department 10 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Jose Moran, individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") in this lawsuit, entered into between Plaintiff and Defendants Araca Merchandise L.P., Araca Ink LLC and Araca Holdings LLC (collectively, "Defendants");
2. Pursuant to California Code of Civil Procedure § 382, provisional certification of the Settlement Class, defined as follows:

   > All current and former non-exempt employees who worked for Defendants Araca Merchandise L.P., Araca Ink LLC, and/or Araca Holdings LLC in California between January 24, 2020, and the date of preliminary approval of the Settlement (the "Class Period").

3. Preliminary appointment of Plaintiff Jose Moran as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Service Payment, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, and Class Counsel's attorneys' fees and costs;
6. Appointment of Apex Class Action Administration as the third-party settlement administrator; and
7. Approval of the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice"), and entry of the proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class in English and Spanish, as provided in the Settlement Agreement.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Susan J. Perez, Plaintiff Jose Moran, and Sean Hartranft of Apex Class Action Administration, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Given the multiplicity of issues addressed herein, Plaintiff's memorandum of points and authorities necessitates exceeding the 20-page limit set forth in California Rule of Court 3.764(c)(2). As this Motion is unopposed, Plaintiff respectfully requests that the Court consider the entire Motion, which is 24 pages in length.

Dated: October 17, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________
Matthew K. Moen
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jose Moran ("Plaintiff"), individually and on behalf of the proposed Settlement Class, respectfully requests that this Court preliminarily approve the proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Settlement"),[1] entered into by Plaintiff and Defendants Araca Merchandise L.P., Araca Ink LLC, and Araca Holdings LLC (collectively, "Defendants") (Plaintiff and Defendants are referred to collectively herein as the "Parties"). Plaintiff respectfully requests that the Court preliminarily approve this non-reversionary, $415,000.00 class action settlement on behalf of the following Settlement Class:

> All current and former non-exempt employees who worked for Defendants in California between January 24, 2020, and the date of preliminary approval of the Settlement (the "Class Period")[2].

Based on data provided by Defendants in advance of mediation, this Settlement benefits approximately 227 potential Settlement Class Members. *See* Settlement, § 8. After Court-approved deductions for the Class Representative Service Payment, settlement administrator costs, the Private Attorneys General Act ("PAGA") payment to the Labor & Workforce Development Agency ("LWDA") and PAGA aggrieved employees,[3] and attorneys' fees and costs to Class Counsel, the remaining Net Settlement Amount ("NSA") is estimated to be no less than $192,176.67. Moen Decl., ¶ 13. This results in average Individual Class Payments of approximately $846.59, with the lowest possible estimated Individual Class Payment of $12.22

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[1] The Settlement Agreement is attached as Exhibit 1 to the Declaration of Matthew K. Moen, ("Moen Decl."), filed concurrently herewith, and the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") is attached as Exhibit A to the Settlement Agreement.

[2] Defendants have represented their records show the escalator clause was triggered on approximately January 27, 2025, and they therefore intend to exercise their right under paragraph 8(b) of the Settlement Agreement to designate the end of the Class Period on the date when the aggregate Workweeks worked by the Class Members reached 17,292.

[3] The Settlement also includes a release of PAGA claims on behalf of all current and former non-exempt employees who worked for Defendants in California between March 21, 2022, and the date of preliminary approval (the "PAGA Period") (collectively, "Aggrieved Employees"). Settlement, § 1.4; Moen Decl., Exhibit 2 (Plaintiff's PAGA Notice Letter and LWDA Confirmation of Receipt).

(in the event a Settlement Class member worked only one workweek during the Class Period), and the highest possible estimated Individual Class Payment of $1,399.76 (in the event a Settlement Class member performed work in every workweek throughout the Class Period). *Id*. Additionally, $30,000 will be paid to the Aggrieved Employees for the release of claims under PAGA. Settlement, § 1.33. Aggrieved Employees will receive average shares of the Individual PAGA Payments of approximately $70.92, with the lowest possible estimated Individual PAGA Payment of $3.20 and the highest estimated Individual PAGA Payment of $283.20. *Id*.

Settlement Class Members do not need to file a claim form in order to receive an Individual Class Payment and all Settlement Class Members who do not opt-out will automatically receive their share of the Settlement. This Settlement represents a fair and reasonable result for Settlement Class Members, who will only release claims that were actually asserted, or which could have been asserted based on the facts alleged in Plaintiff's operative Second Amended Complaint ("SAC") that arose during the Class Period.

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

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendants operate an international company specializing in theatrical production and merchandising promotional products. Moen Decl., ¶ 14. Plaintiff was initially hired in 2015 by Defendants as a non-exempt "Assistant Press Operator" in their Receiving/Screen Printing Department. *Id*.; Declaration of Jose Moran ("Moran Decl."), ¶ 2. Like all Settlement Class Members, Plaintiff was subject to Defendants' wage and hour policies and practices. *Id*., ¶¶ 2-3.

On January 24, 2024, Plaintiff filed the initial complaint in this action, alleging Defendant Araca Merchandise L.P. and DOE defendants failed to: (i) pay all overtime wages owed; (ii) pay all minimum wages owed; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse all necessary business expenses; (vi) issue accurate and itemized wage statements; (vii) pay all wages due upon separation of employment; and (viii) comply with California's Unfair Competition laws. Moen Decl., ¶ 15. On April 2, 2024, Plaintiff filed a First Amended Complaint, adding a cause of action for civil penalties under PAGA. *Id*. On March 17, 2025, Plaintiff filed DOE amendments to the operative complaint, identifying defendants Araca Ink LLC and Araca Holdings LLC as DOES 1 and 2, respectively. *Id*.

On June 4, 2025, Plaintiff submitted a supplemental PAGA letter to exhaust his administrative remedies against the two additional DOE defendants and to notify the LWDA of additional factual allegations and Labor Code violations supporting the underlying PAGA claim. Moen Decl., ¶ 16. On August 27, 2025, after exhausting his administrative remedies with the LWDA, Plaintiff filed the operative Second Amended Complaint in this action to include the additional factual allegations and Labor Code violations supporting the underlying PAGA claim to align with all of the claims and matters discussed and settled during the Parties' mediation. *Id*.

B. Plaintiff's Claims and Defendants' Defenses

1. Unpaid Wages – Unlawful Time Rounding Violations

Plaintiff asserts that, throughout the putative Class Period, Defendants maintained an unlawful rounding practice that resulted in Defendants systematically underpaying Plaintiff and Settlement Class Members all earned wages. Moen Decl., ¶ 17; *see also Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638 (holding that "[I]f an employer…can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for all the time worked" (Internal quotations omitted)). Specifically, Plaintiff claims Defendants record Plaintiff's and Settlement Class Members' clock in and clock out timeclock punches to the minute, but round Plaintiff's and Settlement Class Members' timekeeping entries in an uneven manner to the employees' detriment, resulting in unpaid minimum and overtime wages. Moen Decl., ¶ 17; *see* Labor Code §§ 510(a), 1197, and 1182.12.

In response, Defendants contend that their timekeeping practices are lawful, that employees are paid for all time actually worked in accordance with company policies and practices, and that their timekeeping practice is neutral and operates in an even-handed way, which Defendants assert is lawful under the court's ruling in *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Moen Decl., ¶ 18; *see also AHMC Healthcare, Inc. v. Superior Ct.* (2018) 24 Cal.App.5th 1014, 1027-29 (finding employer's time-rounding policy lawful where it was neutral "on its face" and "in practice"). Moreover, Defendants contend that whether an employee was overpaid or underpaid based on Defendants' timekeeping practice would result in an unmanageable series of mini-trials. Moen Decl., ¶ 18. Finally, because *Camp v. Home Depot U.S.A., Inc.* has been granted review by the California Supreme Court, Defendants assert that the decision is only persuasive, not binding authority. *Id*. Plaintiff faces the risk that the *Camp* holding could be reversed, rendering Plaintiff's reliance on *Camp* misplaced, and Defendants' claim superior that under *See's Candy Shops, Inc. v. Superior Court*, its rounding practice will be found neutral and lawful. *Id*.

2. <u>Unpaid Wages – Off-the-Clock Violations</u>

Plaintiff asserts that, as a result of Defendants' uniform practices, Defendants failed to maintain accurate records of the hours actually worked by the Settlement Class Members, resulting in unpaid wages throughout the Class Period. Moen Decl., ¶ 19. Specifically, Plaintiff alleges that Defendants' supervisors frequently called Plaintiff and other non-exempt employees on their personal cellular phones during meal periods while clocked out, prior to work shifts while off-the-clock, and after work shifts while off-the-clock, to discuss various work-related demands. *Id*. Plaintiff contends he and other non-exempt employees were not paid for this time. *Id. See* Labor Code §§ 1197 and 1182.12 (establishing the right of employees to be paid minimum wages for all hours worked); Wage Order 7, § 2(H) ("'Hours Worked' means the time during which an employee is subject to the control of an employer…").

In response, Defendants maintain they accurately recorded and properly paid all wages for all hours worked by the Settlement Class Members. Moen Decl., ¶ 20. Specifically, Defendants deny they required employees to use their personal cellular phones, and any personal cellular phone use was a departure from company policies. *Id*. Further, Defendants assert that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee performed work while off-the-clock on any given day, which is made increasingly difficult since such off-the-clock work was inherently not recorded, and determining exactly how much time each employee purportedly worked off-the-clock each day would result in an unmanageable series of mini-trials. *Id*.

3. **Meal Period Violations**

Plaintiff contends that Defendants regularly failed to provide employees with timely, duty-free, and uninterrupted 30-minute meal periods as required by law. Moen Decl., ¶ 21; *see* Labor Code § 512(a); *see also Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour of work…") Specifically, Defendants frequently failed to provide employees with timely meal periods commencing before the end of the fifth hour of work, and regularly interrupted, impeded, or discouraged them from taking duty-free, 30-minute meal periods in order to complete their job assignments. Moen Decl., ¶ 21. Defendants also failed to provide second meal periods when employees worked shifts in excess of 10 hours. *Id*. Plaintiff further alleges that Defendants failed to provide a full 30-minute "net" meal period beginning when the employee reaches a rest area away from his or her workstation, instead only providing exactly 30-minute meal periods beginning the moment an employee leaves their workstation and ending the moment the employee returns to their workstation, without accounting for the time required for the employee to walk to and from the designated breakroom from their workstation. *Id*. As a result, Defendants failed to provide 30-minute meal periods. *Id.*

In response, Defendants contend they maintained lawful meal period policies/practices throughout the Class Period. Moen Decl., ¶ 22. Specifically, Defendants argue that Plaintiff's claim will fail on its merits, and assert they provided Plaintiff and Settlement Class Members with meal periods in a staggered schedule, therefore providing ample ability for Settlement Class Members to take all provided meal periods. *Id*. Defendants argue their employees are provided with meal periods of longer than 30 minutes, thereby subsuming any time required to walk back and forth from the workstation to the breakroom. *Id*. Defendants further contend that Plaintiff's meal period claim is not suited for class certification as individual inquiries would be required to assess whether an employee chose to not take an otherwise provided meal period, whether was an employee ever validly waived a meal period, and whether a premium was paid on each shift in which a meal period was truly not provided, resulting in an unmanageable series of mini-trials. *Id*.

4. Rest Period Violations

Plaintiff alleges that Defendants failed to authorize and permit employees to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 23. Specifically, Plaintiff and other non-exempt employees were regularly required to forgo rest periods due to work demands. *Id*. For example, Plaintiff alleges he was frequently required to prioritize completing orders for Defendants' customers and unloading trucks when deliveries arrived to prevent a back-up of trucks. *Id*. As with meal periods, Plaintiff also maintains that Defendants failed to authorize and permit a "net" rest period of 10-minutes beginning when the employee reaches a rest area away from his or her workstation, instead only providing *exactly* 10-minute rest periods, inclusive of travel time to the breakroom and back to the workstation. *Id*.; *see* DLSE Manual § 45.3.3; *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for the proposition that "the rest period begins when the employee reaches an area away from the work station that is appropriate for rest"); *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 ("[E]mployers must relieve their employees of all duties and relinquish any control over how employees spend their break time.").

Defendants maintain they authorized and permitted the Settlement Class Members to take all lawful rest periods to which they are entitled. Moen Decl., ¶ 24. Specifically, Defendants maintain employees are relieved of their work duties during rest periods since coverage generally is not needed and if coverage is needed, their job duties are covered by other employees during breaks. *Id*. Defendants argue their employees are not required to go to the breakrooms for rest periods, and are authorized and permitted to take rest periods of at least 15 minutes, thereby subsuming any time required to walk and forth from the breakroom to the workstation. *Id*. Further, Defendants assert that this claim is not suited for class certification, as it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days, which Defendants argue Plaintiff will be unable to substantiate with any common, documentary evidence, as rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials. *Id*.

5. **Failure to Reimburse Business Expenses**

Plaintiff alleges that Defendants failed to reimburse Plaintiff and other non-exempt employees for all necessary business expenses. Moen Decl., ¶ 25; s*ee* Labor Code § 2802 ("An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."). Specifically, Plaintiff contends that Defendants required employees to use their personal cellular phones to communicate with supervisors for work-related questions and tasks. Moen Decl., ¶ 25; s*ee* *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137 (holding that if an employee is required to use a personal cell phone for work purposes, the employer must reimburse a reasonable portion of the cost). Plaintiff also alleges Defendants required Plaintiff and other non-exempt employees to purchase and maintain necessary work tools, equipment and supplies, but did not reimburse them for these expenses, in violation of Labor Code section 2802.

Defendants dispute Plaintiff's allegations, asserting they maintain a written policy requiring reimbursement for all reasonable and necessary business expenses. Moen Decl., ¶ 26. Defendants also argue they did not require their employees to use their personal cellular phones and if an employee used his or her phone, that was his or her personal choice. *Id.* As such, Defendants maintain that this claim would require a series of mini-trials to determine which employees actually used their cellular phone for business purposes and/or purchased tools and in which pay periods such expenses were allegedly incurred. *Id*.

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

As a result of Defendants' alleged failure to pay all overtime wages, minimum wages, and meal and rest period premiums, Plaintiff contends that Defendants also failed to issue accurate, itemized wage statements and failed to timely pay all final wages upon separation of employment. Moen Decl., ¶ 27; *see also* Labor Code sections 203(a), 226(a). Plaintiff also seeks PAGA civil penalties on behalf of all aggrieved employees for these alleged violations. *Id*.; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 ("As we have explained, they [civil penalties under PAGA] are mandatory, not discretionary.")

Defendants argue that because Plaintiff's underlying claims will fail, the derivative wage statement, waiting time, and PAGA claims must also fail. Moen Decl., ¶ 28; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendants further argue that Plaintiff cannot show any wage statement violations were "knowing and intentional," or that employees "suffered injury" as required by Labor Code § 226(e). Moen Decl., ¶ 28; *see* Labor Code § 226(e)(1). Moreover, Defendants maintain that its good faith defenses to Plaintiff's underlying claims would preclude the recovery of waiting time penalties, which are only available for the "willful" failure to pay wages, and that this Court would exercise its discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 28; *see also* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203."); Labor Code § 2699(e)(2); *Naranjo v. Spectrum Sec. Servs., Inc.*, 88 Cal.App.5th 937 (2023); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of exposure). Defendants also contend that Plaintiff's PAGA claim is not manageable for the same reasons that each direct claim is not certifiable. Moen Decl., ¶ 28.

C. **Discovery and Mediation**

In connection with mediation, Defendants provided Plaintiff with timekeeping and payroll records for nearly all the Settlement Class Members spanning the entire Class Period, as well as key policy documents and data points. Moen Decl., ¶ 29. Plaintiff then retained an expert to analyze the produced data and create a class-wide exposure model for the claims at issue. *Id*. On November 19, 2024, the Parties participated in a mediation session with Marc Feder, Esq., an experienced and respected wage and hour mediator, during which the Parties exchanged divergent views on Defendants' liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiff's claims. *Id*. At the conclusion of mediation, the Parties ultimately reached an agreement to resolve all claims at issue on a class-wide basis. *Id*. Over the following months, the Parties finalized the terms of the proposed Settlement now before the Court for preliminary approval. *Id*.

III. THE PROPOSED SETTLEMENT

A. Essential Terms of the Settlement

Should the Court preliminarily approve this settlement, Defendants will pay a Gross Settlement Amount of $415,000.00. Settlement § 1.21. This Settlement is non-reversionary and Settlement Class Members will automatically receive their Individual Class Payment unless they affirmatively opt-out of the Settlement. *Id.*, § 3.1. Aggrieved Employees will automatically receive their share of the PAGA civil penalties, and will not have the ability to opt-out. *Id.*, § 7.5.4. Defendants will fund the entire Gross Settlement Amount no later than 30 days of the date of the "Effective Date."[4] *Id.*, §§ 1.17, 4.3. The proposed deductions from the Gross Settlement Amount are below:

Gross Settlement Amount:	**$415,000.00**
Minus Court-approved attorneys' fees (1/3 of GSA):	$138,333.33
Minus Court-approved attorneys' costs (up to):	$30,000.00
Minus Court-approved Class Representative Service Payment:	$7,500.00
Minus Settlement Administrator costs (up to):	$6,990.00
Minus PAGA Penalties (split 75%/25%, as discussed below):	$40,000.00
NSA:	**$192,176.67**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved Class Counsel attorneys' fees and costs, Class Representative Service Payment, costs of settlement administration, Individual PAGA Payments, the LWDA PAGA Payment, the remaining NSA of approximately $192,176.67 will be distributed to the Settlement Class Members. Settlement, § 1.27. Individual Class Payments will be calculated by dividing the NSA by the total number of workweeks worked by all participating Settlement Class Members during the Class Period and multiplying the result by each participating Settlement Class Member's workweeks. *Id.*, § 3.2.4. Further, 25% of the PAGA Penalties will be paid to all Aggrieved Employees, regardless of their election to opt-out from

[4] The Effective Date is the date final approval of the Settlement is granted, or, in the event there are objections or appeals to the Settlement, the Effective Date shall be "sixty-five (65) calendar days after the date the Court grants Final Approval to the Settlement provided there is no appeal or other pending legal challenge to the Settlement" and/or all appeals are resolved in favor of the Settlement. Settlement § 1.17.

participating in the Settlement, by dividing the amount of the Aggrieved Employees' share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and multiplying the result by each Aggrieved Employee's PAGA Pay Periods. *Id.*, §§ 3.2.5.1, 7.5.4.

Defendants' records at the time of mediation indicate that there are approximately 227 potential Settlement Class Members who worked approximately 15,720 workweeks during the Class Period. Moen Decl., ¶ 30; Settlement §§ 4.1, 8. Based on the proposed allocations of the NSA, participating Settlement Class Members will receive an average payment of $846.59.[5] Moen Decl., ¶ 30. Settlement Class Members will have 60 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement (extended by 14 days if the notice is undeliverable and then re-mailed), thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Settlement, § 1.41. Those individuals who do not opt-out of the Settlement will be bound by its terms and will release any and all claims that were asserted or could have been asserted based on the facts alleged in this action, as more fully described in the Settlement Agreement. *Id.*, § 5.2.

Settlement Class Members will have 180 days from the date the Individual Class Payments are mailed to cash their checks. Settlement, § 4.4.1. In the event that there are any uncashed checks remaining after 180 days, any remaining funds will be transferred to the California State Controller's Office to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that they claim their property. *Id.*, § 4.4.3.

2. <u>Attorneys' Fees, Costs, and Plaintiff's Class Representative Service Payment</u>

Should the Court grant preliminary approval of this Settlement, Plaintiff will apply for a Class Representative Service Payment of up to $7,500.00. *See* Settlement §§ 1.14, 3.2.1.

[5] There are also approximately 141 Aggrieved Employees who worked approximately 3,125 pay periods during the PAGA Period. Moen Decl., ¶ 30; Settlement § 4.1. The average Individual PAGA Payment to Aggrieved Employees is approximately $70.92. Moen Decl., ¶ 30.

"[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* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's Class Representative Service Payment is intended to recognize the significant benefits conferred upon the Settlement Class due to the time and effort that Plaintiff expended on their behalf, including searching for and providing relevant documents for use in the lawsuit, providing factual information to his attorneys, holding numerous phone calls with his attorneys to discuss the claims in the lawsuit and Defendants' policies and practices, assisting his attorneys to help them prepare for mediation, making himself available during the full-day mediation to answer any questions posed by the mediator, discussing the status of the case with his attorneys, reviewing the settlement agreement and assisting his attorneys in finalizing its terms, and otherwise assisting his attorneys in moving this case towards resolution. Moran Decl., ¶ 5. Plaintiff's Service Payment is also requested due to the significant risks that Plaintiff undertook by agreeing to serve as the named Plaintiff in this case. *Id*., at ¶ 4.

Class Counsel will also apply for an attorneys' fee award of $138,333.33 (one-third of the Gross Settlement Amount) and up to $30,000.00 in verified costs. Settlement § 3.2.2. Plaintiff submits that the requested fee is fair compensation for the undertaking of complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Moen Decl., ¶ 31. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research and analysis, reviewing class documents and data produced by Defendants, extensively reviewing and evaluating the produced timekeeping and payroll records with the assistance of a retained expert to build a comprehensive damages model, preparing for and attending mediation, negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement, and Class Notice documents, drafting and submitting two PAGA letters to the LWDA, preparing and drafting the Stipulation to file the Second Amended Complaint and the Second Amended Complaint, preparing this motion for preliminary approval, and otherwise litigating the case. *Id*. Class Counsel will also expend future attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class Members, drafting the Final Approval Motion along with supporting documents, and attending the final approval hearing, among other tasks. *Id.* Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement. *Id.*; *see also See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506 ("the percentage of fund method survives in California class action cases…"); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing the "percentage of recovery" and "lodestar" methods).

Class Counsel utilized the expert services of Dave Breshears of Hemming Morse and his staff to perform all expert analyses for this case and are providing a copy of Mr. Breshears' expert invoices in support of this motion. Moen Decl., ¶ 32, Exhibit 3.

IV. ARGUMENT

A. Preliminary Approval Is Warranted

California Rule of Court 3.769 conditions the 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* (2012) 208 Cal.App.4th 322, 337 (stating that 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) (stating that 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. *In re Syncor ERISA Litigation* 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 and is not the product of fraud or collusion between the negotiating parties. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm's length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including "the strength of Plaintiff's 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.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, *supra*, 91 Cal.App.4th at 245. As discussed herein, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. <u>The Strength of Plaintiff's Case</u>

Class Counsel carefully vetted the claims at issue, reviewed Settlement Class Member data spanning the Class Period and all relevant policy documents, and worked with an expert to create a comprehensive damages model for Defendants' liability. Moen Decl., ¶ 33. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there are substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*, Defendants presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. Although Plaintiff was prepared to litigate these claims through class certification and trial, it was far from certain that Plaintiff would be able to recover a greater amount should this matter proceed through trial.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the Parties engaged in a significant informal exchange of documents and data prior to mediation, the Parties agreed to refrain from engaging in formal written and deposition discovery until after exhausting their settlement efforts at mediation. Moen Decl., ¶ 33. Absent settlement, the Parties will be required to expend substantial time and resources conducting extensive formal written and deposition discovery. *Id*. Moreover, Plaintiff has not yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment ruling. *Id*. Even if Plaintiff succeeded in certifying one or more classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids these considerable costs, risks, and the accompanying burden of continued litigation on the Court. Thus, this factor supports preliminary approval.

c. **<u>Risk of Maintaining Class Action Status</u>**

Prior to reaching the Settlement, Plaintiff had not yet filed his motion for class certification. Moen Decl., ¶ 34. Considering Defendants' arguments and defenses against certification, there was a legitimate risk that the Court may deny certification of one or more of Plaintiff's claims. *Id*. Had the Court certified any claims, Plaintiff anticipated that Defendants would seek decertification. *Id*. There was also a risk that Defendants would engage in a *Pick-up-Stix* campaign that could either affect Plaintiff's ability to maintain the numerosity required to proceed as a class action, or significantly reduce the size of the putative class for a fraction of what Settlement Class Members are receiving through this Settlement. *Id*.; *see Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, there was a serious risk that Plaintiff would be unable to move forward on a class-wide basis. Moen Decl., ¶ 34.

d. **<u>Amount Offered in Settlement Given Realistic Value of Claims</u>**

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

<u>Unpaid Wages</u>: **$38,206**

Plaintiff's expert's data analysis of Defendants' timekeeping and payroll data revealed that Defendants' rounding practice resulted in the Settlement Class Members being underpaid for an aggregate of 685 recorded hours of work during the putative class period. Moen Decl., ¶ 35. Further, Plaintiff's expert's data analysis determined that Settlement Class Members worked an aggregate total of 15,720 workweeks during the Class Period, during which they were required to spend approximately 10 minutes per workweek engaging in phone calls with Defendants' supervisors while off-the-clock. *Id*. Therefore, Plaintiff calculated Defendants' maximum potential exposure on his unpaid wage claims at $90,429 (685 unpaid rounded hours + 2,625 unpaid off-the-clock hours * $13.66 weighted minimum wage * 2 liquidated damages). *Id*.

Defendants argue they paid employees for all hours actually worked and that their rounding practice was neutral, both on its face and in practice, and that such a policy is lawful under *See's Candy*. Moen Decl., ¶ 36. Moreover, because *Camp v. Home Depot* has been granted review by the California Supreme Court, there is tangible risk that *Camp* will be overturned, rendering Plaintiff's damages analysis substantially overstated. *Id*. Further, Defendants assert that this claim requires individualized inquiries into exactly how much time each employee purportedly spent while off-the-clock on any given day, which is increasingly difficult since off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id*. Plaintiff therefore discounted the maximum potential exposure by 35% for the risk of non-certification and 35% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $38,206. *Id*.

Meal Period Violations: **$147,440**

Plaintiff's expert's data analysis of Defendants' timekeeping records revealed 21,859 first meal period violations and 1,066 second meal period violations (without an accompanying first violation). Moen Decl., ¶ 37. Plaintiff therefore calculated Defendants' maximum potential exposure for facial meal period violations at $412,420 (22,925 meal violations * $17.99 avg. premium). *Id*.

Defendants maintain they provided all legally compliant meal periods to employees and that any missed or non-compliant meal periods were the result of employee choice or waiver, not Defendants' policy. Moen Decl., ¶ 38; *see Brinker, supra*, 53 Cal.4th at 1040. Defendants also argue they provide meal periods of over 30 minutes in length, thereby any shifts of exactly 30-minutes in length are not evidence of a failure to provide at least 30-minutes "net" time for meal periods. *Id*. As a result, Defendants' assert Plaintiff's meal period claim is not suited for class certification, since individualized inquiries will be required to determine why each meal period was late, short, or missed, and whether there was a valid waiver, thereby precluding class certification of this claim. *Id*. Given these potential defenses, Plaintiff discounted Defendants' maximum exposure by 45% for the risk of non-certification and 35% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of $147,440. *Id*.

Rest Period Violations: **$109,674**

Plaintiff's expert's data analysis determined that non-exempt employees worked an aggregate total of 69,673 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 39. Plaintiff attributes a rest period violation for all work shifts in excess of 3.5 hours due to Defendant's unlawful rest period policy/practice that failed to authorize and permit 10-minutes "net" rest periods. *Id*. Accordingly, Plaintiff calculated Defendant's maximum potential exposure on this claim at $1,253,471 (69,673 rest period violations * $17.99 avg. premium). *Id*.

Defendants argue they have always authorized and permitted rest periods in accordance with California law, and dispute Plaintiff's allegations that employees were not authorized and permitted at least 10 minutes of "net" rest in the breakroom, arguing that employees were given at least 15-minute rest periods. Moen Decl., ¶ 40. Further, Defendants assert that this claim is not amenable to class certification given the individual inquiries required to determine for how long each and every rest period lasted for every employee on any given day throughout the entire Class Period, particularly given that rest periods are not recorded. *Id*. Given these defenses, Plaintiff discounted the maximum exposure by 75% for the risk of non-certification, and by an additional 65% for risk of losing on the merits, for an estimated exposure of $109,674. *Id*.

<u>Unreimbursed Business Expenses</u>: **$34,497**

Based on Plaintiff's counsel's research of JD Power and Consumer Reports' analyses of average cell phone plan costs amongst the leading cell phone carriers in America, Plaintiff alleges the Settlement Class Members are owed approximately $15 each month as a reasonable portion of their cell phone bills covering work related communications. Moen Decl., ¶ 41. Plaintiff also conservatively estimates that he and Settlement Class Members spent approximately $100 each to purchase tools for work purposes. *Id*. Therefore, Plaintiff calculated Defendants' potential exposure on this claim at $81,650 ($15 reimbursement * 3,930 aggregate work-months of cellular phone billing) + ($100 in expenses * 227 non-exempt employees). *Id*.

However, Defendants contend that they provide all employees with expense reimbursements as evidenced by their written policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, they were not reasonably incurred or submitted to Defendants. *Id*. Defendants also maintain that this claim is not certifiable, particularly because it would require a series of mini-trials to determine which employees were required to use their cellular phone for business purposes and/or purchase tools and in which pay periods such expenses were allegedly incurred. *Id*. Given these potential defenses, Plaintiff discounted Defendants' maximum exposure by 35% for the risk of non-certification and 35% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of $34,497. *Id*.

Wage Statement Violations: **$59,563**

According to Plaintiff's expert's data analysis, 141 employees received 3,125 wage statements during the 1-year time period associated with wage statement penalties. Moen Decl., ¶ 43. Plaintiff therefore calculated Defendants' maximum wage statement exposure at $305,450 (141 initial violations * $50 per pay period) + (2,984 subsequent violations * $100 per pay period). *Id*. Defendants argue that any wage statement violations were not "knowing and intentional," as required by Labor Code § 226(e), and that Plaintiff cannot establish that Settlement Class Members "suffered injury" as a result of any alleged inaccuracies. *Id*.; *see also Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065 (holding that a reasonable, good faith belief that employer was in compliance with wage and hour laws precludes imposition of wage statement penalties). Defendants further contend that Plaintiff's wage statement claim is entirely derivative and would necessarily fail if the underlying claims are unsuccessful. *Id*. Plaintiff therefore discounted the value of this claim by 35% for the risk of non-certification of the underlying claims and discounted 70% for a risk of being unsuccessful on the merits or failing to establish willfulness under the "good faith" standard of *Naranjo*, for an estimated exposure of $59,563. *Id*.

Waiting Time Penalties: **$81,667**

Plaintiff's expert's analysis determined that 97 employees separated their employment with Defendants within 3 years of the filing of the complaint. Moen Decl., ¶ 44. As a result of Defendants' alleged failure to pay all wages owed, Plaintiff asserts that each of these employees was owed wages that were not paid at the time of their separation. *Id*. Plaintiff therefore calculated

Defendants' maximum exposure of $418,807 (97 former employees * ($17.99 average hourly rate * 8 hours * 30 days)). *Id.*

Defendants maintain that waiting time penalties are inappropriate here since Plaintiff's claims fail on the merits. Moen Decl., ¶ 45. Additionally, given Defendants' good-faith defenses, Defendants contend that Plaintiff cannot show any willful failure to pay all final wages. *Id*. Given these arguments, Plaintiff discounted this claim by 35% for the risk of non-certification and by an additional 70% for risk of being unsuccessful on the merits, including failing to prove the violations were "knowing and intentional," that the Settlement Class members "suffer[ed] injury," or that the Court would find that Defendants had a reasonable, good faith belief that of compliance with wage and hour laws precluding the imposition of waiting time penalties, for an expected exposure of $81,667; *see also Naranjo, supra,* 15 Cal.5th at 1065 (holding that a reasonable, good faith belief that employer was in compliance with wage and hour laws precludes imposition of wage statement penalties). *Id.*

PAGA Penalties: **$44,392**

Plaintiff alleges that PAGA civil penalties are recoverable for each pay period in which at least one underlying Labor Code violation occurred within the PAGA Period. Moen Decl., ¶ 46. Based on Plaintiff's expert's data analysis, Settlement Class Members worked a total of 4,553 pay periods during the PAGA period in which at least one of Plaintiff's alleged Labor Code violations occurred. *Id*. Applying the $100 "initial violation" rate provided under Labor Code § 2699(f), Plaintiff calculates Defendants' maximum PAGA exposure at $455,300 (4,553 pay periods * $100 per violation). *Id.*; *see Amaral, supra,* 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

However, these penalties derived entirely from the underlying wage and hour violations discussed above, which Defendants dispute. Moen Decl., ¶ 47; *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). Plaintiff also recognizes that the Court has broad discretion to reduce any award of PAGA penalties under Labor Code § 2699(e)(2). Moen Decl., ¶ 47; *see Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 (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); *Kennedy v. Arm Strong Towing Services, Inc.*, 2017 WL 9486773, at *3 (Cal.Super.) (reducing PAGA penalties to $1,000 per aggrieved employee – a reduction in excess of 70% from the maximum civil penalty). Plaintiff therefore applied a 35% discount to account for the risk of not prevailing on the underlying claims, and an additional 85% discount to account for the likelihood of this Court reducing PAGA penalties, to arrive at an estimated exposure of $44,392. Moen Decl., ¶ 47.

Using these estimated figures for each of the claims described above, Plaintiff projects a potential recovery for the Settlement Class Members of approximately $515,439. Moen Decl., ¶ 48. The Gross Settlement Amount of $415,000 represents approximately 80.51% of Plaintiff's projected potential recovery, while avoiding the further expense and risk of proceeding towards class certification and trial. *Id*. Considering the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce 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 (granting preliminary approval where settlement represented 15% of the estimated maximum recovery); *Dunleavy v. Nadler* 213 F.3d 454, 459 (9th Cir. 2000) (approving a settlement worth "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska Partnership* 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotations omitted). Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Settlement Class Members without the uncertainty, delay, and additional expense of further litigation.

e. <u>The Experience and Views of Counsel</u>

"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* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent and experienced counsel who possesses extensive experience litigating wage and hour class actions from both the plaintiff and defense side, and who have been appointed as class counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-14; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9; and Declaration of Susan J. Perez ("Perez Decl."), ¶¶ 2-6. Class Counsel conducted an extensive review and analysis of Defendants' produced timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Moen Decl., ¶¶ 2-7, 29, 35-48. It was only after the completion of this work that the Parties attended mediation and ultimately reached an agreement for a class-wide settlement of all claims at issue. *Id*. Thus, this factor strongly supports preliminary approval of the Settlement.

2. The Preliminary Approval Standard is Met

At this stage, the Court can grant preliminary approval of the Settlement and direct that the Class 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. Settlement is Within the Range of Possible Approval

The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class Members in light of the significant risks of litigation. The proposed Settlement will provide compensation for contested claims, while only releasing the claims actually at issue in this litigation. Further, the average payment of $846.59 greatly exceeds the average payments achieved in other wage and hour class action settlements.[6] Thus, the proposed Settlement is within

[6] *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 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); and *Schiller v. David's Bridal, Inc*., Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately 198.70 . . . [T]his is a substantial recovery where Defendants asserted compelling 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").

the range of possible approval such that notice should be provided to the Settlement Class Members. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class Members have had the opportunity to opt-out or object.

b. Settlement Resulted from Informed and Non-Collusive Negotiations

This proposed Settlement is entitled to an initial presumption of fairness as it is the result of the exchange of pertinent information, including all relevant policies, employee timekeeping and payroll records, and key data points which were analyzed by Plaintiff's counsel and a retained expert; arm's-length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional negotiations until the terms of the long-form Settlement were agreed upon and finalized. Moen Decl., ¶ 49; *see Kullar*, *supra*, 168 Cal.App.4th at 130.

c. Settlement is Devoid of Obvious Deficiencies

The Settlement will provide tangible monetary relief to the Settlement Class Members. Moreover, the amounts proposed for Plaintiff's Class Representative Service Payment, settlement administration costs, attorneys' fees and costs to Class Counsel, Individual PAGA Payments, and the LWDA PAGA Payment are all reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this final factor supports preliminary approval.

B. The Court Should Certify The Settlement Class

The proposed Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the individuals in the Settlement Class are 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 the absent Settlement Class Members; and (4) Plaintiff and Plaintiff's counsel will fairly and adequately represent the interests of the absent Settlement Class Members. *See* Cal. Code Civ. Proc. § 382.

1. The Proposed Class is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement

Class is defined as all current and former non-exempt employees who worked for Defendants in California between January 24, 2020 and the date of preliminary approval of the Settlement. Settlement, § 1.5. Settlement Class Members can be easily identified using Defendant's employment and payroll records. Moen Decl., ¶ 50. Defendants represent that the Settlement Class consists of approximately 227 individuals, rendering it impracticable to bring all Settlement Class Members before the Court. *Id*. Thus, the proposed Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated on uniform company policies, principally revolving around Defendants' timekeeping, meal and rest period policies and practices, and reimbursement policies and practices. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra,*53 Cal.4th at 1032-34 ("The theory of liability—that Brinker has a uniform policy, and that that policy…allegedly violates the law—is by its nature a common question eminently suited for class treatment.").

3. The Claims of the Named Plaintiff are Typical

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

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

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will adequately represent the Settlement Class as there are no conflicts between the named Plaintiff and the Settlement Class he seeks to represent, and Plaintiff possesses claims that are in line with those of the Settlement Class Members. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Moen Decl., ¶¶ 2-7; Haines Decl., ¶¶ 2-14; Schmidt Decl., ¶¶ 2-9; Perez Decl., ¶¶ 2-6.

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

This Court should order distribution of the proposed Class Notice in both English and Spanish to the Settlement Class Members by first class mail, postage prepaid, using the last known mailing address information provided by Defendants. 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 and Jacquelin* 417 U.S. 156, 173 (1974).

Plaintiff proposes that the settlement be administered by Apex Class Action Administration ("Apex"), an experienced class action settlement administrator. *See generally* Declaration of Sean Hartranft. Settlement Class Members' addresses will be ascertainable through Defendants' personnel and payroll records, which Defendants will provide to Apex within 30 calendar days after preliminary approval. Settlement, § 4.2. In the event any Class Notices are returned to Apex as undeliverable, Apex will search for updated addresses using the National Change of Address database ("NCOA") and re-mail the Class Notice. *Id*., §§ 1.10, 7.4.3.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises putative Settlement Class Members of the nature of the claims, basic contentions and denials of the parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Settlement Agreement, Exhibit A (Class Notice). The proposed Class Notice will also notify Settlement Class Members of the final approval hearing date, provide the Settlement Class contact information for Class Counsel, and advise Settlement 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 Settlement Class Members. Additionally, because the proposed Settlement includes settlement of Plaintiff's representative PAGA claim, notice of the Settlement has been submitted to the LWDA. *See* Moen Decl., ¶ 12, Exhibit 4 (LWDA Settlement Submission); Proof of Service.

D. The Court Should Set A Final Approval Hearing

This Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement 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: October 17, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

By: [signature]
Matthew K. Moen
Attorneys for Plaintiff