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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

GREGORY MEADE, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

PUMPKIN CITY'S PUMPKIN FARM INC., a California corporation; and DOES 1 through 100,

Defendants.

Case No. 30-2024-01382083-CU-OE-CXC

[*Case assigned for all purposes to the Hon. Randall J. Sherman, Dept. CX105*]

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

Date: January 24, 2025
Time: 10:00 a.m.
Dept.: CX105
Reservation ID No.: 74397982

Action Filed: February 27, 2024
Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on January 24, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department CX105 of the Orange County Superior Court, located at 751 W Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Gregory Meade ("Plaintiff"), as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement ("Settlement Agreement") in this lawsuit;
2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

   > All current and former non-exempt employees who worked for Defendant Pumpkin City's Pumpkin Farm Inc. ("Defendant") in California at any time between February 27, 2020 and September 23, 2024 ("Class Period").

3. Preliminary appointment of Plaintiff Gregory Meade as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Aden M. Khachadoorian of Haines Law Group, APC, and Joeph Tojarieh of Stonebrook Law 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 Enhancement Award, 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 section 2698 *et seq.*, and Class Counsel's attorneys' fees and costs;
6. Appointment of Apex Class Action Administration as the third-party settlement administrator ("Settlement Administrator"); and
7. Approval of the proposed Notice of Class and PAGA Action Settlement, Notice of Estimated Individual Settlement Payment, and the Request for Exclusion Form (collectively, the "Notice Packet"), and entry of the proposed Order instructing the

Notice Packet 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, Aden M. Khachadoorian, Joseph Tojarieh, Plaintiff Gregory Meade, 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 believes there is good cause to exceed 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 Plaintiff's Memorandum of Points and Authorities in its entirety, which is 23 pages in length.

Dated: October 4, 2024

Respectfully Submitted,
HAINES LAW GROUP, APC

By: Matthew K. Moen
Matthew K. Moen
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Gregory Meade ("Plaintiff"), individually and on behalf of the proposed Settlement Class, respectfully requests that this Court preliminarily approve the proposed Stipulation of Settlement ("Settlement Agreement" or "Settlement"),[1] entered into by Plaintiff and Defendant Pumpkin City's Pumpkin Farm Inc. ("Defendant") (collectively, the "Parties"). Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary, $225,000.00 class action settlement on behalf of the following Settlement Class:

> All current and former non-exempt employees who worked for Defendant in California at any time between February 27, 2020 and September 23, 2024 ("Class Period").[2]

Based upon the data provided by Defendant, there are approximately 1,100 potential Settlement Class members and approximately 487 PAGA Aggrieved Employees[3] subject to the Settlement. After Court-approved deductions for Plaintiff's Class Representative Enhancement Award, settlement administrator costs, the PAGA Payment to the Labor & Workforce Development Agency ("LWDA"), and attorneys' fees and costs to Class Counsel, the remaining Net Settlement Amount ("NSA") is estimated to be no less than $109,010.00. This results in average Individual Settlement Payments of approximately $99.10, with the lowest possible estimated Individual Settlement Payment of $5.88 (in the event a Settlement Class member worked only one single work day during the Class Period, equivalent to $15.83 per workweek) and the highest possible estimated Individual Settlement Payment of $8,431.92 (in the event a Settlement Class member worked six days per week in every workweek throughout the Class

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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 Notice of Class and PAGA Action Settlement, Notice of Estimated Individual Settlement Payment, and the Request for Exclusion Form (collectively, the "Notice Packet") are attached to the Moen Decl. as Exhibit 2.

[2] While the Settlement Agreement defines the close of the Class Period as "the date of preliminary approval or September 23, 2024, whichever is sooner", it has since been determined that September 23, 2024 will be the earlier of the two dates and, therefore, the proper close of the Class Period. *See* Settlement, ¶ 1.

[3] Defined as "all current and former non-exempt employees who worked for Defendant in California at any time between February 27, 2023 through the close of the Class Period (the "PAGA Period")". *See* Settlement, ¶ 2.B.

Period). Plaintiff's estimated Individual Settlement Payment is approximately $170.52, excluding any requested enhancement award. Moen Decl., ¶ 23. Significantly, Settlement Class members do not need to file a claim form in order to receive an Individual Settlement Payment, and all Settlement Class members who do not opt-out will automatically receive their share of the Settlement. This represents a fair and reasonable result for the Settlement Class members, who will be agreeing to a release of only those claims that were actually asserted, or which could have been asserted based on the facts alleged in the operative First Amended Complaint ("FAC").

Further, given the tenet that aggrieved employees do not have the ability to opt-out of a representative PAGA claim, all PAGA Aggrieved Employees, regardless of whether they elect to opt out from participating in the class action settlement or not, shall receive a portion of the settlement monies designated as the PAGA Amount payable to the PAGA Aggrieved Employees and shall release their claims for civil penalties under PAGA based on the Labor Code violations that were pled in the operative FAC in the action or Plaintiff's February 27, 2024 PAGA Notice letter to the LWDA, or which could have been pled in the operative FAC in the action based on the factual allegations therein, that arose during the PAGA Period. *See Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt–out mechanism for PAGA claims); *see also* Moen Decl., Exhibit 1 at ¶ 2.B, Exhibit 3 (Plaintiff's PAGA Notice Letter and submission, and LWDA Confirmation of Receipt). Based on the 25% share of the PAGA civil penalties designated as the PAGA Amount payable to PAGA Aggrieved Employees, the average Individual Settlement Payment from the PAGA Amount is projected to be approximately $5.13, with the lowest possible estimated Individual Settlement Payment from the PAGA Amount of $1.94 (in the event a PAGA Aggrieved Employee worked only one pay period during the PAGA Period) and the highest possible estimated Individual Settlement Payment from the PAGA Amount of $79.54 (in the event a PAGA Aggrieved Employee worked in every pay period throughout the PAGA Period). *Id*., ¶ 23.

Prior to reaching this proposed Settlement, Defendant provided Plaintiff with the payroll and timekeeping records for all of the Settlement Class members spanning the full duration of the putative class period, as well as policy documents and key data points. Defendant further provided

Plaintiff's counsel with copies of the company's last four years of balance sheets and profit & loss/income statements so that Plaintiff could analyze the company's financial condition. Plaintiff then analyzed the data and created a class-wide exposure model for the claims at issue. On July 25, 2024, after extensive legal research and analysis, along with Plaintiff's comprehensive review of the data, the Parties participated in a mediation session with mediator Michael Ludwig, Esq. At the conclusion of mediation, Mr. Ludwig made a mediator's proposal for a class-wide resolution of all claims at issue that the Parties ultimately accepted. Over the following months, the Parties negotiated and executed the long-form Settlement Agreement that is now before this Court for preliminary approval.

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

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendant operates seasonal pumpkin patches, Christmas tree lots, and strawberry stands. Moen Decl., ¶ 9. Plaintiff was employed by Defendant as a non-exempt "Ride Handler" at Defendant's Laguna Hills pumpkin patch location from approximately September through October 2023. *Id.*; Declaration of Gregory Meade ("Meade Decl."), ¶ 2. Like all Settlement Class members, Plaintiff was subject to Defendant's wage and hour policies and practices. Moen Decl., ¶ 9; Meade Decl., ¶¶ 3-4.

On February 27, 2024, Plaintiff filed a class action complaint alleging Defendant 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) issue accurate itemized wage statements; (vi) timely pay all final wages upon separation; and (vii) comply with California's Unfair Competition laws. Moen Decl., ¶ 10. On May 3, 2024, after exhausting his administrative remedies with the LWDA, Plaintiff filed the operative FAC to add an eighth cause of action for civil penalties under PAGA, premised on the same underlying Labor Code violations. *Id.*

B. Plaintiff's Claims and Defendant's Defenses

1. Off-The-Clock Wage Violations

Plaintiff alleges that Defendant failed to maintain accurate records of the hours actually worked by Plaintiff and other non-exempt employees, resulting in unpaid wages. Moen Decl., ¶

11. Specifically, Plaintiff and other non-exempt employees were required to complete work tasks prior to the scheduled start of their shifts and after the end of their scheduled shifts, such as ride maintenance, cleaning, and/or waiting to be relieved from their stations by other employees, but Defendant failed to compensate them for time performing work outside of their scheduled shift times. *Id.*; *see also* Labor Code §§ 1197 and 1182.12; *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585 ("Work not requested but suffered or permitted is work time."). Instead of paying for all time actually worked, Plaintiff alleges that Defendant only recorded and paid Plaintiff and the other non-exempt employees for their scheduled hours, resulting in pre- and post-shift work regularly not being compensated. Moen Decl., ¶ 11.

However, Defendant asserts that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Moen Decl., ¶ 12. Defendant further contends that Settlement Class members did not work off-the-clock and that its policies specifically disavow such off-the-clock work. *Id*. Defendant further argues that Plaintiff's off-the-clock claim is not appropriate for class treatment, as it would require individualized inquiries into whether each employee actually performed any work while off-the-clock, and if so, how much, which is made increasingly difficult since off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id*.

2. <u>Meal Period Violations</u>

Plaintiff further asserts that Defendant failed to provide the Settlement Class members with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled. Moen Decl., ¶ 13; *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…"); *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 728-29 ("[The wage order] imposes an affirmative obligation on every employer to authorize and provide legally required meal and rest breaks; if it fails to do so, it has violated the law and is liable."). Specifically, Plaintiff claims Defendant required Settlement Class members to delay or miss their meal periods due to the work demands placed on them by

Defendant. Moen Decl., ¶ 13. Plaintiff further alleges that Defendant failed to provide lawful meal periods for shifts lasting more than 5.0 hours but fewer than 6.0 hours, and failed to record the start and end times of employees' meal periods. *Id.*; *see also* Wage Order 7, § 7(A). Further, Plaintiff asserts Defendant failed to pay *any* meal period premiums owed during the relevant time period, which is itself a certifiable issue. *See, e.g., Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (certifying UCL claim based on employer's failure to pay premium wages under Labor Code section 226.7).

In response, Defendant contends it maintained lawful meal period policies/practices throughout the Class Period. Moen Decl., ¶ 14. Therefore, Defendant asserts that if Settlement Class members did not take timely or duty-free meal periods, this was solely the result of employee choice and not reflective of Defendant's policies and practices. *Id.* Defendant contends 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 a meal period, whether an employee ever validly waived a meal period, and whether a premium was paid on each shift in which a meal period was not provided, resulting in an unmanageable series of mini-trials. *Id.*

3. Rest Period Violations

Plaintiff further alleges that Defendant failed to authorize and permit the Settlement Class members to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 15; *see* Labor Code § 516. As with meal periods, Plaintiff asserts that work demands forced Plaintiff and the Settlement Class members to remain on duty at all times to man their designated stations. Moen Decl., ¶ 16; *see Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 ("[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time."). Plaintiff also alleges that Defendant failed to pay *any* rest period premiums during the relevant time period; an issue which itself is certifiable. Moen Decl., ¶ 15; *see also Safeway, supra*, 238 Cal.App.4th at 1159.

Defendant maintains it authorized and permitted the Settlement Class members to take all lawful rest periods to which they are entitled. Moen Decl., ¶ 16. Moreover, Defendant asserts it implemented a facially lawful written rest period policy that it enforced during the putative class period, and designated specific employees as "floaters" who were responsible for relieving the other employees in order for them to take rest periods during the work day. *Id*. Further, Defendant asserts that this claim is unmanageable and 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 Defendant argues 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*.

4. Wage Statement, Waiting Time, and PAGA Penalties

As a result of Defendant's alleged failure to pay all overtime wages, minimum wages, and meal period and rest period premiums, Plaintiff asserts that Defendant also failed to issue accurate and itemized wage statements and failed to timely pay all final wages at the time of separation. Moen Decl., ¶ 17; *see also* Labor Code §§ 203(a) and 226(a). As a result of these alleged Labor Code violations, Plaintiff also seeks PAGA civil penalties on behalf of all aggrieved employees. Moen Decl., ¶ 17; *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.").

In response, Defendant argues that Plaintiff's underlying claims will fail and, as a result, the derivative wage statement, waiting time, and PAGA claims will also fail. Moen Decl., ¶ 18; *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."). Defendant also maintains that Plaintiff cannot show that the wage statement violations were "knowing and intentional," or that the putative class members "suffer[ed] injury" as a result of the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement penalties. Moen Decl., ¶ 18; *see* Labor Code § 226(e)(1). Moreover, Defendant maintains 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., ¶ 18; *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); *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).

Finally, Defendant has also argued that as a small, family-owned business, it did not have the financial resources to satisfy a sizable judgment or settlement. Moen Decl., ¶ 19. Defendant produced the last four years' worth of financial statements, including balance sheets and profit & loss/income statements, for Plaintiff to review to support Defendant's position. *Id*. Plaintiff's counsel ultimately concluded, based on this financial review, that it would be an uphill battle to collect a judgment that was significantly in excess of the amount offered in settlement. *Id*.

C. Discovery And Mediation

In connection with mediation, Defendant provided Plaintiff with electronic timekeeping and payroll records for all of Settlement Class members spanning the entire Class Period, as well as key policy documents and data points and the financial documentation detailed above. Moen Decl., ¶ 20. Plaintiff then analyzed the produced data and conducted a comprehensive, class-wide analysis to create a class-wide exposure model for the claims at issue. *Id*. On July 25, 2024, the Parties participated in a mediation session with mediator Michael Ludwig, Esq., during which the Parties exchanged divergent views on Defendant's liability and exposure valuations and the likelihood of certification of Plaintiff's claims. *Id*. At the conclusion of mediation, Mr. Ludwig made a mediator's proposal that the Parties ultimately accepted. *Id*. Over the following months, the Parties finalized the terms of the proposed Settlement now before the Court. *Id*.

III. THE PROPOSED SETTLEMENT

A. Essential Terms Of The Settlement

If the Court preliminarily approves this settlement, Defendant will pay a Maximum Settlement Amount ("MSA") of $225,000.00. Moen Decl., ¶ 22; Settlement, ¶ 3. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Payments unless they affirmatively opt-out. Settlement, ¶¶ 3.C; 4. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	**$225,000.00**
Minus Court-approved attorneys' fees (1/3):	$75,000.00
Minus Court-approved attorneys' costs (up to):	$15,000.00
Minus Court-approved Enhancement Award:	$5,000.00

Minus settlement administrator costs (up to):	$13,490.00
Minus PAGA Payment to the LWDA:	$7,500.00
Net Settlement Amount:	**$109,010.00**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys' fees and costs, Plaintiff's Class Representative Enhancement Award, settlement administration costs, and the LWDA's share of PAGA penalties, the Settlement provides for an estimated NSA of no less than $109,010.00. *See* Settlement, ¶¶ 3.C, 4.A. Individual Settlement Payments will be calculated based on the proportionate number of shifts worked by each participating Settlement Class member during the Class Period divided by the total number of shifts worked by all participating Settlement Class members, as well as membership in various subclasses. *Id*., ¶¶ 4.B.i-iv. Further, the 25% portion of the PAGA civil penalties payable to the PAGA Aggrieved Employees will be paid to all PAGA Aggrieved Employees, regardless of their election to opt-out from participating in the class action portion of the Settlement, based on the proportionate number of pay periods that he or she worked during the PAGA Period, divided by the total number of pay periods worked by all PAGA Aggrieved Employees during the PAGA Period. *Id*., ¶ 4.B.i.

For tax purposes, each Individual Settlement Payment will be allocated as 20% wages (subject to applicable withholdings), and 80% interest and penalties (not subject to withholdings). Settlement, ¶ 4.D. Each PAGA Amount payable to the PAGA Aggrieved Employees shall be allocated as 100% penalties. *Id*. This allocation between taxable and non-taxable amounts is appropriate because the unpaid wages portion of Plaintiff's exposure analysis only amounts to approximately 20% of the total reasonable exposure Defendant faced due to the substantial derivative penalties that stem from these unpaid wages. Moen Decl., ¶ 24; *see also* Section IV.A.1.d, *infra*. Further, Defendant will pay the employer's share of payroll taxes separate and apart from, and in addition to, the MSA. Settlement, ¶ 3.F.

Settlement Class members will have 60 calendar days from the date of the initial mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9.D-E. Further, if any Notice Packets are returned as undeliverable, Settlement Class members to whom Notice

Packets are re-mailed shall have an additional fourteen (14) calendar days after the Response Deadline has expired to submit a Request for Exclusion, Objection, or dispute. *Id*., ¶ 9.C. Should any individual elect to opt-out from participation, and/or should Plaintiff's requested amounts for an enhancement award, attorneys' fees and costs, or settlement administration costs identified in the Settlement Agreement not be approved in full or otherwise reduced from the requested amounts, the additional funds will revert back to the NSA for distribution amongst all participating Settlement Class members. *See id*., § 3.D. Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant as detailed in the Settlement. *Id*., ¶¶ 2.A, 9.D. Finally, should the Court ultimately grant final settlement approval, a notice of the Court's Final Judgment and Order will be posted on the Settlement Administrator's website for the Settlement Class members and PAGA Aggrieved Employees, in compliance with CRC Rule 3.771(b). *See id*., ¶ 10.C.

As discussed in Section II.B.4, *supra*, Defendant has limited financial resources and was constrained by cash-flow issues such that it was unable to fund the settlement in a single lump-sum payment. Therefore, Defendant will fund the MSA with the Settlement Administrator in two equal installment payments, with the first installment payment due thirty (30) calendar days after the Effective Date[4] and the second installment due on or by November 14, 2025. *See* Settlement, ¶ 3.B. Within ten (10) business days following the full funding of the MSA, the Settlement Administrator will calculate and mail the Individual Settlement Payments to the participating Settlement Class members. *Id*., ¶ 4.C. Settlement Class members will have 180 days from the date the Individual Settlement Payments are mailed to cash their checks. *Id*., ¶ 4.E. 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*. This distribution method

[4] The "Effective Date" is defined in the Settlement Agreement as the date upon which the Court signs an order granting final approval of the Settlement Agreement and the judgment approving the Settlement Agreement becomes Final, as defined in the Settlement Agreement. *See* Settlement, ¶ 2.D.

ensures that no portion of the MSA will be "unpaid…unclaimed or abandoned," as required for C.C.P. § 384 to apply, and the Court may approve the proposed distribution method without running afoul of C.C.P. § 384.

2. **<u>Attorneys' Fees, Costs, and Plaintiff's Class Representative Enhancement Award</u>**

At the time of seeking final settlement approval, Plaintiff will apply for a Class Representative Enhancement Award in the amount of $5,000 for his service to the Settlement Class and his general release of all claims. Moen Decl., ¶ 25; *see* Settlement ¶¶ 2.C, 3.C.3, 6. Plaintiff's requested class representative Enhancement Award is intended to recognize the significant time and effort that he expended on behalf of the Settlement Class, including searching for relevant documents for use in the lawsuit and providing factual information to his attorneys, holding various phone calls with his attorneys to discuss the claims in the lawsuit and Defendant's practices, discussing the status of the case and general case strategy with his attorneys on multiple occasions, providing valuable input to assist his attorneys in preparing for mediation, being available for the full-day mediation that lead to the Settlement, reviewing and providing input regarding the Settlement in this case, and otherwise assisting his attorneys in moving the case towards resolution, the significant risks Plaintiff undertook by serving as the named plaintiff, and the fact that he agreed to a general release of all claims subject to a waiver of Civil Code § 1542. Moen Decl., ¶ 25; Meade Decl., ¶¶ 4-5; Settlement, ¶ 2.C.

When seeking final approval, Class Counsel will also apply for an attorneys' fee award of up to one third of the MSA and up to $15,000 in reimbursement for actual litigation costs. Moen Decl., ¶ 26; *see* Settlement, ¶ 3.C.4. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. Moen Decl., ¶ 26. 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 Defendant, extensively reviewing and evaluating the produced timekeeping and payroll records to build a comprehensive damages model, reviewing and evaluating Defendant's produced financial records, preparing for and attending mediation, negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement, Notice Packet documents, preparing this motion for preliminary approval, and otherwise litigating the case. *Id*. Class Counsel will also expend future attorney time attending the hearing on this Motion, overseeing the Notice process, drafting the Final Approval Motion and supporting documents, attending the Final Approval hearing, and completing other tasks, such as fielding questions from Settlement Class members. *Id*. Class Counsel will provide the Court with a lodestar analysis when seeking an award of attorneys' fees, including information about counsel's hourly rates and the time spent on the case. *Id*.; *see also Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480. Plaintiff will also provide additional documentation at final approval in support of the request for reimbursement of litigation costs incurred. Moen Decl., ¶ 26.

3. <u>Scope of Release</u>

Participating Settlement Class members who do not submit a valid and timely Request for Exclusion shall release the following claims against the Released Parties, as defined in the Settlement: all claims, demands, rights, liabilities and causes of action based on the factual allegations set forth in the operative First Amended Complaint in the Action or Plaintiff's PAGA Notice to the LWDA, or which could have been pled in the operative First Amended Complaint in the Action based on the factual allegations therein, that arose during the Class Period including, but not limited to: (i) failure to pay all overtime wages; (ii) failed to pay all minimum wages; (iii) failure to provide all lawful meal periods; (iv) failure to authorize and permit all lawful rest periods; (v) failed to issue accurate itemized wage statements; (vi) failure to timely pay all final wages due upon separation from employment; and (vii) failure to comply with California's Unfair Competition laws ("Released Claims"). *See* Settlement, ¶ 2.A. Further, all PAGA Aggrieved Employees shall be deemed to have released and discharged Released Parties, as defined in the Settlement, from all claims for civil penalties under PAGA that are based on the Labor Code violations pled in the operative First Amended Complaint in the Action or Plaintiff's letter to the LWDA dated February 27, 2024, or which could have been pled in the operative First Amended Complaint in the Action based on the factual allegations therein, that arose during the PAGA Period. *Id*., ¶ 2.B.

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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.* (9th Cir. 1998) 150 F.3d 1011, 1026 (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* (9th Cir. 2008) 516 F.3d 1095, 1101. 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

The Court should consider the following factors when making a fairness determination: "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.* (1996) 48 Cal.App.4th 1794, 1801. "[T]he court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. The proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

a. The Strength of Plaintiff's Case

Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member data spanning the entire Class Period and all relevant policy documents, analyzed the data, and created a comprehensive damages model for Defendant's liability. Moen Decl., ¶ 27. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*, Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. Although he was prepared to litigate these claims through class certification and ultimately through trial, it was far from certain that Plaintiff would be able to recover a greater amount should this matter proceed through trial. Thus, this factor supports preliminary approval.

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

Although the Parties engaged in substantial informal discovery and information exchange prior to mediation, the Parties had agreed to refrain from engaging in formal written and deposition discovery until after exhausting their settlement efforts at mediation. Moen Decl., ¶ 28. 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*. Further, Defendant's financial condition was likely to greatly impact the course of the litigation if the matter had not resolved. *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>

At the time of the proposed Settlement, Plaintiff had not filed his motion for class certification. Moen Decl., ¶ 29. Had the Court certified any claims, Plaintiff anticipated that Defendant would seek decertification. *Id*. There was also a risk that Defendant 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. *Id*. Thus, this factor supports preliminary approval.

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 Defendant's produced data, Class Counsel conducted a class-wide exposure analysis, forecasting the total expected recovery as follows:

<u>Off-the-Clock Violations</u>: **$55,833**

Plaintiff's data analysis determined that Settlement Class members worked an aggregate total of 18,516 shifts during the Class Period. Moen Decl., ¶ 30. Plaintiff estimates that Settlement Class members spent approximately fifteen (15) minutes on average before and after their shifts each workday performing off-the-clock work. *Id*. Accordingly, Plaintiff calculated Defendant's maximum potential exposure for off-the-clock wage violations at approximately $135,352 (15 minutes per shift * 18,516 aggregate work shifts * $14.62 weighted minimum wage * 2 (liquidated damages)). *Id*.

As noted above, Defendant argues that it has always properly compensated Settlement Class members for all hours worked and that Plaintiff's off-the-clock claim is not appropriate for class treatment. Moen Decl., ¶ 31. Based on these defenses, Plaintiff discounted the maximum potential exposure by 45% for risk of non-certification, and by an additional 25% for the risk of losing on the merits, to arrive at an estimated exposure of $55,833.

<u>Meal Period Violations</u>: **$67,821**

Plaintiff's data analysis revealed that non-exempt employees received an average hourly rate of approximately $16.21 and worked an aggregate total of approximately 11,621 shifts over 5.0 hours during the Class Period that contained an unlawful meal period, whether by being missed, late and/or short, and for which no meal period premiums were paid. Moen Decl., ¶ 32. Accordingly, Plaintiff calculated Defendant's liability on this claim at $188,393 (11,622 meal period violations * $16.21 average premium). *Id*.

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Defendant asserts, however, that it maintained a lawful meal period policy/practice at all times during the Class Period and that any failure by an employee to take a lawful meal period was the result of employee choice rather than company policy, requiring individual inquiries into the reasons why each non-compliant meal period was untimely or missed on any given day. Moen Decl., ¶ 33. Given these defenses, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and by an additional 40% for risk of losing on the merits, to arrive at an estimated exposure of $67,821. *Id*.

Rest Period Violations: **$39,653**

Plaintiff's data analysis revealed that non-exempt employees worked an aggregate total of 16,308 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 34. Plaintiff estimates a rest period violation occurred on approximately 60% of work shifts in excess of 3.5 hours. *Id*. Thus, Plaintiff calculated Defendant's maximum potential exposure on this claim at $158,611 (16,308 shifts over 3.5 hours * 60% violation * $16.21 approximate avg. premium). *Id*.

But as noted above, Defendant argues it has always authorized and permitted duty-free rest periods in accordance with California law, including implementing lawful written rest period policies and providing a "floater" as coverage so employees could be relieved of all duties to take all duty-free rest periods to which they were entitled. Moen Decl., ¶ 35. Therefore, Defendant asserts that Plaintiff's damages calculation is severely overstated. *Id*. Further, Defendant asserts that this claim is not amenable to class certification given the individual inquiries required to determine whether each employee was authorized and permitted to take a lawful rest period and on which days, particularly given that rest periods were not recorded. *Id*. Given these defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and by an additional 50% for risk of losing on the merits, to arrive at an estimated exposure of $39,653. *Id*.

Wage Statement Penalties: **$5,595**

According to the key data points provided by Defendant, approximately 487 Settlement Class members are eligible for wage statement penalties, and a total of 1,176 wage statements were issued during the relevant period. Moen Decl., ¶ 36. Plaintiff calculated Defendant's maximum possible wage statement exposure as approximately $93,250 ((487 initial violations *

$50 per pay period) + (689 subsequent pay periods * $100 per pay period)). *Id*. However, Defendant raised numerous defenses, including that the alleged violations, if any, were not "knowing and intentional," and that Plaintiff could not show that the Settlement Class members "suffer[ed] injury" as a result of any alleged violations. *Id*. Defendant further argued that Plaintiff's underlying claims would fail, and, therefore, his wholly derivative wage statement claim would also fail. *Id*. Therefore, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification of the underlying claims and 90% for a 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 wage statement penalties, for an estimated recovery of $5,595. *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).

<u>Waiting Time Penalties</u>: **$89,285**

Based on Plaintiff's data analysis, approximately 918 Settlement Class members separated their employment during the relevant period applicable to this claim and were entitled to waiting time penalties. Moen Decl., ¶ 37. Plaintiff therefore calculated Defendant's maximum exposure of $3,571,387 (918 former employees * average waiting time penalty of $3,890.40 ($16.21 approximate average hourly rate * 8 hours * 30 days)). *Id*. Defendant maintains that waiting time penalties are not appropriate because Plaintiff's claims fail on the merits, and given their good-faith defenses, Plaintiff cannot show that any failure by Defendant to pay all final wages was willful. *Id*. Plaintiff discounted this claim by 75% for the risk of non-certification and by an additional 90% for risk of being unsuccessful on the merits, failing to establish willfulness, or that the Court would find a reasonable, good faith dispute over whether any wages are due precluding the imposition of waiting time penalties, for an estimated recovery of $89,285. *Id*.; *see also Naranjo, supra*, 15 Cal.5th at 1065 (recognizing that good faith dispute over whether any wages are due will preclude imposition of waiting time penalties).

PAGA Penalties: **$9,408**

Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in which he could prove an underlying Labor Code violation. Moen Decl., ¶ 38. According to Plaintiff's data analysis, the Settlement Class members worked a combined total of 1,176 pay periods during the PAGA liability period in which at least one of Plaintiff's alleged Labor Code violations occurred. *Id*. Plaintiff therefore calculates Defendant's maximum PAGA exposure at $117,600 (1,176 pay periods * $100 per violation). *Id*.; *see also 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 are exclusively derivative of the underlying violations that Defendant vigorously disputes, both as to certification and the merits. Moen Decl., ¶ 38; *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to substantially reduce any award of PAGA penalties. Moen Decl., ¶ 38; *see also* Labor Code § 2699(e)(2); *Thurman, supra,* 203 Cal.App.4th at 1135; *Taduran v. James R. Glidewell*, Case No. 30-2017-00934037-CU-OE-CXC, Orange County Superior Court, Honorable William Claster presiding (reducing PAGA penalties by 96.12%). Plaintiff discounted the maximum figure by 20% for the risk that he would not prevail on the underlying claims and/or that the damages were overstated, and by an additional 90% for risk of the Court reducing penalties, for an estimated exposure of $9,408. Moen Decl., ¶ 38.

Using these estimated figures, Plaintiff estimated that the potential reasonable recovery for the Settlement Class would be approximately $267,595. Moen Decl., ¶ 39. Thus, the proposed recovery to the Settlement Class of $225,000.00 represents approximately 84.1% of Plaintiff's reasonably forecasted class-wide recovery, which is within the range approved by courts as being fair, reasonable and adequate, especially in light of Defendant's limited financial resources and cash-flow constraints, while also avoiding further expense and risk of proceeding towards class certification and trial. *Id*.; *see, e.g.*, *Altamirano v. Shaw Industries, Inc*, 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval...”); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of “roughly one-sixth of the potential recovery”); *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“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). The decision to settle this matter was also informed by Plaintiff’s review of Defendant’s confidential financial records which suggested that even if Plaintiff was to prevail at trial and obtain a multi-million-dollar judgment, Plaintiff would face significant difficulties in collecting on the judgment. Moen Decl., ¶ 40. The Settlement will provide tangible monetary relief to the 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.”), ¶¶ 2-11; Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶¶ 2-9; Declaration of Aden M. Khachadoorian (“Khachadoorian Decl.”), ¶¶ 2-6; Declaration of Joseph Tojarieh (Tojarieh Decl.”), at ¶¶ 2-5. Class Counsel conducted an extensive review and analysis of Defendant’s 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., ¶¶ 26, 30-38. It was only after the completion of this work that the Parties attended mediation and ultimately accepted the mediator’s proposal for a class-wide settlement of all claims at issue. *Id*. Thus, this factor strongly supports preliminary approval.

2. <u>The Preliminary Approval Standard is Met</u>

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. The 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 $99.10 is in line with the average payments achieved in other wage and hour class action settlements that have been approved.[5] Further, the average payment is fair because Settlement Class members worked extremely short employment durations for Defendant, lasting, on average, only 6 workweeks (equivalent to only 3 bi-weekly pay periods) comprised of only 16 work shifts total per employee. Thus, the proposed Settlement is within 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 the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, 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, key data points, and four years of detailed financial records, which were analyzed by Plaintiff and his counsel; arm's-length negotiations by counsel; mediation before an experienced wage and hour class action mediator who made a mediator's proposal; and additional negotiations until the terms of the Settlement were agreed upon and finalized. Moen Decl., ¶ 20; *see also Kullar*, *supra*, 168 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

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[5] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (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) ("Plaintiff also notes several similar actions where the gross recoveries per class member were less than $90…").

c. The 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 Enhancement Award, settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's portion of PAGA civil penalties 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 for Settlement Purposes

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 Defendant in California at any time during the Class Period. *See* Settlement, ¶ 1. Settlement Class members can be easily identified using Defendant's employment and payroll records. Moen Decl., ¶ 23. Defendant represents that the Settlement Class consists of approximately 1,100 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 Defendant's alleged failures to pay all minimum and overtime wages owed, pay all meal and rest period premiums, furnish accurate itemized wage statements, and pay all final wages owed upon separation. 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 Defendant as a non-exempt employee in California and was subject to Defendant's allegedly unlawful wage and hour policies/practices during the Class Period. Meade Decl., ¶¶ 2-3. Plaintiff was therefore impacted by the same challenged policies that allegedly injured the Settlement Class as a whole and was subject to the same defenses forwarded by Defendant as to the Settlement Class, and is 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 members as there are no conflicts between the named Plaintiff and the Settlement Class members 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 plaintiff had no interests antagonistic to those of the class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Moen Decl., ¶¶ 2-7; Haines Decl., ¶¶ 2-11; Schmidt Decl., ¶¶ 2-9; Khachadoorian Decl., ¶¶ 2-6; Tojarieh Decl., at ¶¶ 2-5.

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

This Court should order distribution of the proposed Class Notice to the Settlement Class members in English and Spanish by first class mail, postage prepaid, using the last known mailing address information provided by Defendant. 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* (1974) 417 U.S. 156, 173. The Parties propose that the settlement be administered by Apex, an experienced class action settlement administrator. *See* Declaration of Sean Hartranft. Settlement Class members' addresses will be ascertainable through Defendant's personnel records, and Defendant will provide all Settlement Class members' names, last known mailing addresses, phone numbers, social security numbers, pay period and shift data to Apex within twenty-one (21) calendar days after the Court preliminarily approves the Settlement. *See* Settlement, ¶ 9.A. Apex will run the Settlement Class members' addresses through the National Change of Address database and/or conduct skip traces to obtain current address information. *Id.*, ¶ 9.B-C.

The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it advises the 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 procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member and advises Settlement Class members of the dispute resolution process detailed in the Settlement Agreement, and advises them that they will be bound by the terms of the Settlement if they do not request exclusion. *See* Moen Decl., Exhibit 2. The proposed Class Notice will also notify the Settlement Class of the Final Approval Hearing date, provide Class Counsel's contact information, and advise Settlement Class members that they may enter an appearance through counsel if they so wish. *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. *Id.*, ¶ 41, Exhibit 4 (LWDA Settlement Submission); Proof of Service.

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 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 for settlement purposes, and enter the [Proposed] Order submitted concurrently herewith.

Dated: October 4, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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