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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JESUS OCEGUEDA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ROOFING SERVICES INTERNATIONAL,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 37-2023-00012112-CU-OE-CTL

*[Assigned for all purposes to the Hon. Joel R.
Wohlfeil in Dept. C-73]*

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

Date: June 27, 2024

Time: 9:00 a.m.

Dept.: C-73

Action Filed: March 23, 2023

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June
3 27, 2024 at 9:00 a.m. in Department C-73 of the above-entitled Court, located at 330 West Broadway, San
4 Diego, California, 92101, Plaintiff Jesus Ocegueda (“Plaintiff”), individually and on behalf of a class of
5 similarly situated individuals, will and hereby do move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement purposes
8 only, provisional certification of the Settlement Class defined as follows:

9 All current and former non-exempt employees who worked for Defendant Roofing
10 Services International, Inc. in California at any time from March 23, 2019 through the date
11 of preliminary approval of the Settlement (the “Class Period”) who did not sign a
separation and release agreement with Roofing Services International, Inc.

- 12 3. Preliminary appointment of Plaintiff Jesus Ocegueda as Class Representative;
13 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of
14 Haines Law Group, APC as Class Counsel;
15 5. Appointment of Phoenix Settlement Administrators as the third-party Settlement
16 Administrator for mailing notices;
17 6. Approval of the proposed Notice of Class Action Settlement (“Class Notice”) which is attached
18 to the Settlement as Exhibit 1, and an order that it be disseminated to the proposed Settlement
19 Class as provided in the Settlement Agreement; and
20 7. The scheduling of a hearing to consider whether the Settlement should be finally approved and
21 to permit an enhancement payment to Plaintiff, settlement administration costs, civil penalties
22 payable to the California Labor & Workforce Development Agency (“LWDA”), and attorneys’
23 fees and costs to Class Counsel.

24 ///

25 ///

26 ///

27 ///

1 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
2 Authorities; the declarations of Paul K. Haines, Sean M. Blakely, Alexandra R. McIntosh, and exhibits
3 attached thereto; the declaration of Jodey Lawrence of Phoenix Settlement Administrators and exhibits
4 attached thereto; the declaration of Plaintiff Jesus Ocegueda; the pleadings and other papers filed in this
5 action; and on any further oral or documentary evidence or argument presented at the time of hearing.

6 Defendant does not intend to oppose this Motion, and given the multiplicity of issues addressed in
7 this Motion, has indicated its approval of Plaintiff's expressed need to exceed the 20-page limit set forth
8 in California Rule of Court 3.764(c)(2). Therefore, the parties jointly request the Court's consideration of
9 Plaintiff's memorandum of points and authorities, which is 24 pages in length.

10
11 Respectfully submitted,

12 Dated: May 15, 2024

HAINES LAW GROUP, APC

13
14 By:



Paul K. Haines
Sean M. Blakely
Alexandra R. McIntosh
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jesus Ocegueda (“Plaintiff”) brought this class and representative action against
4 Defendant Roofing Services International, Inc. (hereinafter “RSI” or “Defendant”) alleging various wage
5 and hour violations. Plaintiff’s primary claims/allegations are that RSI: (1) failed to pay all minimum
6 wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal
7 periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate,
8 itemized wage statements; (6) failed to timely pay all wages upon termination; (7) failed to reimburse
9 necessary business expenses; (8) engaged in unlawful business practices; and (9) is liable for civil
10 penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 common-fund class action settlement,¹ in which RSI has agreed to pay \$450,000.00 on behalf of the
13 following Settlement Class:

14 All current and former non-exempt employees who worked for RSI in California at
15 any time from March 23, 2019 through the date of preliminary approval of the
16 Settlement (the “Class Period”) who did not sign a separation and release agreement
with Roofing Services International, Inc.

17 The Settlement was only reached after extensive informal discovery, and two mediation sessions
18 with the Honorable Glenda Sanders (Ret.), a well-respected wage and hour class action mediator. Prior to
19 the two mediation sessions, RSI produced timekeeping and payroll records for a sampling of the putative
20 class, applicable documents regarding RSI’s wage and hour policies, and other information regarding
21 RSI’s financial condition. After extensive research and analysis, including Plaintiff’s expert’s analysis of
22 RSI’s financial documents, the Parties attended a second mediation on February 7, 2024. At the conclusion
23 of this second mediation, the Parties agreed to a classwide resolution of this Action.

24 If the Settlement is approved, RSI will pay a non-reversionary Gross Settlement Amount of
25 \$450,000.00. After deducting settlement administration costs, Plaintiff’s requested enhancement payment,
26

27 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely as **Exhibit**
28 **A**. The proposed Class Notice and Notice of Estimated Settlement Award are attached to the Settlement
as **Exhibits 1** and **2**, respectively. All defined terms in this motion have the same definition as that in the
Settlement.

the amount set aside as PAGA civil penalties, and requested attorneys’ fees and costs, the remaining Net Settlement Amount (“NSA”) of \$215,000.00 will be distributed to all Settlement Class members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period.

Significantly, Settlement Class members do not need to file a claim to benefit from the Settlement as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 215 Settlement Class members, and the average payment to participating Settlement Class members is estimated to be approximately \$1,000. This is a favorable result for Settlement Class members, who will be agreeing to a release of only those claims that were asserted in this litigation.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Established in 1993, RSI provides roofing and leak protection services to residential and commercial clients throughout San Diego County. *See* Declaration of Sean M. Blakely (“Blakely Decl.”), ¶ 8. RSI employed Plaintiff as a non-exempt employee from approximately October 2018 until approximately November 2020. *See* Declaration of Jesus Ocegueda in Support of Approval of Class Action Settlement (“Ocegueda Decl.”), ¶ 2.

On March 23, 2023, Plaintiff filed his Class Action Complaint in San Diego County Superior Court, alleging that RSI: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to provide all lawful rest periods; (v) failed to timely pay earned wages at the time of separation of employment; (vi) failed to reimburse for all necessary business expenditures; and (vii) engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq.* *See* Blakely Decl., ¶ 9. On May 13, 2024, as part of the Settlement, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) to add

causes of action for (1) failure to provide accurate and itemized wage statements, and (2) civil penalties under the Private Attorneys General Act (“PAGA”). *Id.*

B. PLAINTIFF’S CLAIMS AND RSI’S DEFENSES

1. Unpaid Wages Due to Unlawful Piece-Rate Compensation Plans

Plaintiff alleges that RSI paid Plaintiff and other non-exempt employees pursuant to unlawful piece-rate plans that did not separately compensate them for “non-productive” time as required by California Law. Blakely Decl., ¶ 15. Specifically, Plaintiff alleges that he was paid on a piece-rate basis whereby he was paid a pre-determined rate per each roofing unit completed. *Id.* Plaintiff alleges RSI’s piece-rate compensation plan is unlawful as it failed to compensate Plaintiff and other non-exempt employees for time spent on tasks that were not tied to earning piece-rate compensation, such as traveling between jobsites, loading tools, and waiting for materials to arrive. *Id.*; *See Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36 (2013) (holding that a piece-rate compensation structure that does not separately compensate employees for non-productive time violates California minimum wage laws).

In response, RSI argues that it paid all wages owed to employees and that its compensation plans fully comply with California law. Blakely Decl., ¶ 15. RSI also contends that employees experienced minimal (if any) uncompensated “non-productive” time as the majority of alleged non-productive activities were directly related to the piece-rate task of installing shingles. *Id.* RSI further argues that there are only a select number of employees who earned piece-rate wages during the Class Period as it only paid employees by piece-rate when they were installing shingles and completely stopped paying employees by piece-rate altogether by April 2021. *Id.* RSI further maintains that certification on the non-productive time claim is unlikely because questions of non-productive time would be highly individualized as there are no records or other common evidence to accurately account for the time spent on the alleged non-productive tasks. *Id.*

2. Rest Period Violations Due to Unlawful Piece-Rate Compensation Plans

Plaintiff alleges that RSI failed to authorize and permit paid rest periods to its piece-rate employees due to its failure to separately compensate employees for required rest periods when they were compensated on a piece-rate basis. Blakely Decl., ¶ 16; *see Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864, 872 (2013) (“[U]nder the rule of *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 323 (2005), rest periods

1 must be separately compensated in a piece-rate system.”); *see also* Labor Code § 226.7(c).

2 In response, RSI contends that it has paid its employees all wages owed and it retroactively paid
3 its employees for their rest periods in July 2020 and began automatically paying its employees for their
4 rest period time thereafter. Blakely Decl., ¶ 16. RSI further argues that any liability for its alleged failure
5 to separately compensate employees working on a piece-rate basis for rest periods would be limited to
6 back-pay for the rest periods themselves (i.e. pay for the 10 minutes of rest) as opposed to the rest period
7 penalties under Labor Code section 226.7, and since it has already retroactively paid its employees for
8 their rest periods, RSI contends no additional wages are owed. *Id.* RSI further contends that any liability
9 associated with piece-rate pay would end in April 2021 as it completely stopped paying employees by
10 piece-rate in April 2021. *Id.*

11 **3. Meal Period Violations**

12 Plaintiff alleges that RSI failed to provide legally compliant meal periods due to their meal period
13 policies/practices, which frequently resulted in late and/or short meal periods. Blakely Decl., ¶ 17.
14 Specifically, due to work demands imposed by RSI, Plaintiff and other Settlement Class members were
15 often not provided with a first meal period prior to the conclusion of their fifth hour of work. *Id.* Plaintiff
16 also alleges that Settlement Class members were not provided with a second meal period when they
17 worked shifts in excess of 10.0 hours in a workday. *Id.*

18 In response, RSI contends that it has maintained compliant written meal period policies throughout
19 the Class Period and has always provided compliant meal periods in line with those policies. Blakely
20 Decl., ¶ 17. RSI further contends that it always provides employees with the opportunity to take meal
21 periods and is not required to *ensure* they are taken. *Id.*; *see Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th
22 1004, 1034 (2012) (rejecting the “ensure” standard). Thus, RSI argues that any non-compliant meal
23 periods resulted from lawful employee waiver or choice rather than any policy and/or practice of RSI.
24 Blakely Decl., ¶ 17. Additionally, with respect to second meal periods, RSI asserts that many employees
25 choose to waive their second meal periods on shifts over 10.0 hours and under 12.0 hours, as they may do
26 under Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes. *Id.*
27 Finally, RSI maintains Plaintiff’s meal period claim is not suited for class certification since individual
28 inquiries would be needed to assess which employees, if any, took non-compliant meal periods, how many

meal periods were non-compliant, the reasons why a particular employee did not take a meal period on a particular shift, and for second meal periods, whether they waived the meal period. *Id.*

4. Regular Rate Miscalculations

Plaintiff alleges that RSI paid its employees non-discretionary incentive pay, including but not limited to, bonus payments denoted on their payroll records as “BONUS,” that are not excludable from an employee’s “regular rate” of pay. Blakely Decl., ¶ 18. However, Plaintiff asserts that RSI failed to include the value of these bonuses when calculating employees’ respective regular rates of pay for the purposes of overtime. *Id.* As a result, Plaintiff alleges that RSI failed to pay all overtime wages owed. *Id.*

In response, RSI argues any bonus payments made were purely discretionary end of the year bonuses, and therefore are properly excluded from the regular rate of pay. Blakely Decl., ¶ 18; *see also* 29 C.F.R. § 778.200(a)(1) (defining the regular rate of pay to include all remuneration for employment paid to the employee while excluding “sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.”). RSI further contends that the discretionary bonuses were not tied to employees’ hours worked and therefore do not need to be included in the regular rate. Blakely Decl., ¶ 18; *see also* 29 U.S.C. § 207(e)(2) (payments made to employee which are not compensation for hours of employment need not be included in regular rate of pay); 29 C.F.R. § 778.208 (discretionary bonuses excludable from regular rate).

5. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that prior to April 2020, RSI underpaid employees due to its unlawful rounding and time-shaving policies/practices. Blakely Decl., ¶ 19. Specifically, Plaintiff alleges that prior to April 2020, RSI’s supervisors/foreman filled out employee timesheets and employees were not able to record their own hours worked. *Id.* Plaintiff alleges that RSI’s supervisors/foreman would record employees’ hours worked in quarter-hour increments, which resulted in a failure to compensate Plaintiff and other non-exempt employees for all hours worked. *Id.*

In response, RSI argues that its timekeeping policies/practices complied with California law and that it paid its employees for all hours worked throughout the Class Period. Blakely Decl., ¶ 19. RSI argues that prior to April 2020, its non-exempt employees recorded their hours worked manually and that to the

1 extent employees recorded their hours worked in quarter-hour increments, they did so voluntarily. *Id.*
2 Additionally, RSI asserts that Plaintiff would be unable to certify this claim since individualized inquiries
3 would be necessary as to whether employees were in fact underpaid, or potentially overpaid, for each
4 workday in question, resulting in an unmanageable series of mini-trials. *Id.* RSI maintains that this is
5 especially true given that prior to April 2020, RSI did not maintain electronic timekeeping records but
6 rather relied on the manual timekeeping records. *Id.*

7 **6. Failure to Reimburse for Necessary Business Expenses**

8 Plaintiff alleges that when RSI transitioned to recording its employees' hours worked
9 electronically in April 2020, it began requiring its employees to download an application on their personal
10 cell phones in order to clock in and out. *See* Blakely Decl., ¶ 20. Plaintiff alleges that despite requiring its
11 employees to download this application and clock in and out for their shift on their personal cell phones,
12 RSI failed to reimburse its employees for use of their personal cellphones in violation of Labor Code §
13 2802. *See* Labor Code § 2802(a) ("An employer shall indemnify his or her employee for all necessary
14 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
15 duties."); *see also Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding
16 employer must reimburse use of personal cell phone, even where employee already has "unlimited" plan).

17 In response, RSI argues that it has paid its employees for all necessary business expenses including
18 use of their personal cellphones. Blakely Decl., ¶ 20. Specifically, RSI maintains that it made retroactive
19 payments of \$10 per month to all of its employees for the period of April 1, 2020 to June 1, 2023 and
20 began automatically paying its employees \$10 per month for use of their cellphones after June 1, 2023.
21 *Id.* RSI maintains that \$10 per month is more than adequate as many employees have cellphones with
22 unlimited data and therefore, it is questionable whether employees even incur any additional expense as a
23 result of clocking and clocking out through the application. *Id.* RSI also maintains that this claim is not
24 suited for class certification, as it would require a series of mini-trials to determine which employees
25 actually incurred any additional cellphone expenses and whether those expenses were reasonable. *Id.*

26 **7. Waiting Time Penalties**

27 As a result of the Labor Code violations described above, Plaintiff alleges that RSI failed to comply
28 with their final pay obligations set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 21. In response, RSI

1 argues that it possesses strong, good faith defenses to Plaintiff’s underlying claims, thus precluding
2 recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. *Id.*; *see*
3 *also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition
4 of waiting time penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when
5 an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on
6 the part of the employee.”). RSI further argues that it made efforts to correct any known Labor Code
7 violations as evidenced by its retroactive payments for potential rest period violations and unreimbursed
8 cellphone expenses and on this basis, Plaintiff would not be able to show that RSI willfully failed to pay
9 wages. Blakely Decl., ¶ 21. RSI further asserts that Plaintiff’s waiting time penalty exposure was grossly
10 inflated as not every former employee experienced the alleged Labor Code violations. *Id.* Moreover,
11 because the waiting time claim is derivative of Plaintiff’s underlying wage claims, RSI argues that Plaintiff
12 would need to overcome RSI’s defenses, both as to class certification and on the merits, as to their
13 underlying claims. *Id.*

14 **8. Wage Statement Claims**

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

26 **9. PAGA Civil Penalties**

27 As a further result of the foregoing Labor Code violations, Plaintiff alleges that RSI is liable for
28 civil penalties under the PAGA. Blakely Decl., ¶ 23. Since Plaintiff’s PAGA claim is derivative of

Plaintiff’s underlying wage claims, RSI asserts the PAGA claim would fail with those claims. *Id.*; *see Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). RSI further maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find RSI liable for any of Plaintiff’s claims. Blakely Decl., ¶ 23; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, the Parties engaged in extensive informal discovery. Blakely Decl., ¶ 10. RSI produced timekeeping and payroll records for a sampling of non-exempt employees during the Class Period, as well as its relevant written wage and hour policies/procedures. *Id.* RSI also provided relevant data points such as the total number of non-exempt employees who earned piece-rate wages, exemplars of RSI’s retroactive payments to employees for their rest periods, including how RSI calculated those payments, as well as information regarding RSI’s retroactive payments for use of employee cellphones. *Id.* Plaintiff hired a labor economist with a Ph.D. in economics to assist Plaintiff in conducting a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by RSI to create a detailed exposure analysis for all claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and RSI’s potential defenses. *Id.*

On September 7, 2023, the Parties participated in mediation with Honorable Glenda Sanders (Ret.), a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, the legal basis for the claims and defenses, as well as RSI’s financial condition. *Id.* Although the Parties did not reach a settlement at the mediation, the Parties agreed at the conclusion of mediation to schedule a second day of mediation following RSI’s production of its financial records. *Id.*

1 Shortly after the first day of mediation, RSI provided Plaintiff with its financial records. Blakely
2 Decl., ¶ 12. Plaintiff, with the help of its retained forensic accountant, reviewed the financial documents
3 provided by RSI to evaluate RSI’s financial condition. *Id.* Following Plaintiff’s review, the Parties
4 attended a second day of mediation with Judge Sanders on February 7, 2024. *Id.* At the conclusion of the
5 mediation, Judge Sanders issued a mediator’s proposal for a class-wide settlement, which was ultimately
6 accepted by both sides. *Id.* During the months that followed, the Parties finalized the terms of the
7 Settlement and executed a long-form settlement agreement now before the Court. *Id.*

8 **III. THE PROPOSED SETTLEMENT**

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

10 If the Court preliminarily approves the Settlement, RSI will pay a Gross Settlement Amount
11 (“GSA”) of \$450,000.00.² *See* Settlement, § 3. Significantly, this Settlement is non-reversionary, and no
12 Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.*, at §§ 3-4.
13 Each Settlement Class member will automatically receive a Settlement Award unless they affirmatively
14 opt out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

15	• Gross Settlement Amount (“GSA”):	\$450,000.00
16	• Minus Court-approved attorneys’ fees:	\$150,000.00
17	• Minus Court-approved verified costs (up to):	\$35,000.00
18	• Minus Court-approved Enhancement Payment:	\$10,000.00
19	• Minus amount set aside as PAGA penalties:	\$30,000.00
20	• <u>Minus estimated settlement administration costs:</u>	<u>\$10,000.00</u>
	Net Settlement Amount (“NSA”):	\$215,000.00
	• Plus 25% “PAGA Amount” to Settlement Class:	\$7,500.00
	Total Amount Paid to Settlement Class Members:	\$222,500.00

21 **1. The Settlement Provides for Reasonable Monetary Payments**

22 After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative
23 Enhancement Payment to Plaintiff, the amount set aside as PAGA civil penalties, and settlement

24
25 ² Following RSI’s representation of its financial condition, RSI turned over its financial records to
26 Plaintiff’s retained expert, Keith D. Messerschmidt, who is a forensic accountant and has consulted or
27 provided expert testimony in dozens of litigation and insurance matters. Blakely Decl., ¶ 12. Mr.
28 Messerschmidt opines that RSI could not reasonably afford to pay more than the Gross Settlement Amount
and that the requested payment plan was necessary to avoid serious interruptions to its business operations.
Should the Court wish to review a declaration from Mr. Messerschmidt attesting to these facts and RSI’s
financial condition, this declaration could either be filed in *camera* or filed under seal, at the Court’s
request.

administration costs, the Settlement requires RSI to pay a Net Settlement Amount (“NSA”) of at least \$215,000.00 to all Settlement Class members who do not timely opt-out. *See* Settlement, § 4(A). All of the NSA shall be distributed to all participating Settlement Class members based on the proportionate number of workweeks each participating Settlement Class member worked during the Class Period. Settlement, § 4(A)(i). Additionally, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) shall be designated as the “PAGA Amount,” and shall be distributed to all Settlement Class members (regardless of whether they opt-out) proportionately based on the number of pay periods worked at any time from March 5, 2023 through the date of preliminary approval (“PAGA Period”). *Id.*, at §§ 2(B); 4(A)(ii).

According to RSI, there are approximately 215 Settlement Class members. Blakely Decl., ¶ 14. Therefore, the average Settlement Award from the NSA is projected to be approximately \$1,000.00. *Id.* Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets 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(C)-(D). Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against RSI included within the Settlement. *See Id.*, at § 2(A).

2. Attorneys’ Fees and Costs, Enhancement Payment, and PAGA Payment

Plaintiff will apply for Class Representative Enhancement Payment at the time of seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for his services to the Settlement Class. *See* Settlement, §§ 3(C)(3), 6; Blakely Decl., ¶ 27. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested enhancement payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of his claims, and the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. *See* Ocegueda Decl., ¶¶ 5-6.

1 Class Counsel will also apply for an attorneys' fees award of one-third of the Gross Settlement
2 Amount, which is currently estimated to be \$150,000.00, and up to \$35,000.00 in verified costs
3 reimbursement. *See* Settlement, §§ 3(C)(4), 5; Blakely Decl., ¶ 26. Plaintiff submits the requested fee is
4 fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely
5 contingent fee basis. *Id.* Class Counsel has incurred substantial attorneys' fees conducting pre-filing
6 investigation, analyzing Plaintiff's claims, conducting legal research, conducting extensive informal
7 discovery, analyzing Settlement Class members' timekeeping and payroll records with the help of a
8 retained expert, creating a comprehensive damages model, preparing for and attending two mediations,
9 reviewing RSI's financials with the help of a retained forensic accountant, negotiating and preparing the
10 long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class
11 Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing
12 the Notice process and fielding questions from Settlement Class members, preparing the Final Approval
13 papers, and attending the Final Approval hearing. *Id.*

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

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

26 Additionally, the parties have agreed to designate \$30,000.00 of the Gross Settlement Amount as
27 PAGA civil penalties, of which \$22,500.00 (75%) will be paid to the LWDA, with the remaining
28 \$7,500.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be

1 allocated per Labor Code § 2699(i). *See* Settlement, § 3(C)(5). Plaintiff submits this allocation to the
2 LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No.
3 C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to
4 LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-
5 03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of
6 \$1.25 million common-fund settlement).

7 **IV. ARGUMENT**

8 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

21 **1. Standard for Preliminary Approval**

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

1 Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

2 **a. The Strength of Plaintiff's Case**

3 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges
4 that there were substantial risks and uncertainty in proceeding with litigation. As described above, RSI
5 presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification.
6 Thus, while Plaintiff was prepared to litigate these claims through class certification and ultimately trial,
7 success was far from certain.

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

9 Although the Parties engaged in significant informal discovery prior to mediation, the Parties still
10 had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 25. This
11 would have required the expenditure of substantial time and resources by both Parties that would have
12 very likely spanned several years. *Id.* Even if Plaintiff was to certify the classes, the Parties would incur
13 considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible
14 appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

15 **c. Risk of Maintaining Class Action Status**

16 Plaintiff had not yet filed his class certification motion, and as such, the extent to which Plaintiff's
17 proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk there would
18 not be a certified class at trial, or if there were, that it would consist of a significantly smaller group of
19 employees than the proposed Settlement Class, and the expected recovery would be significantly reduced.
20 Thus, this factor supports preliminary approval.

21 **d. Amount Offered in Settlement Given Realistic Value of Claims**

22 The Settlement provides a positive recovery for the Settlement Class in the face of disputed claims
23 and financial issues. Plaintiff, with the help of his retained expert, conducted a detailed analysis of alleged
24 unpaid wages, meal period violations, rest period violations, failure to reimburse for all necessary business
25 expenditures, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of
26 the results of Plaintiff's exposure analysis are discussed below:

27 Unpaid Non-Productive Time: \$57,879

28 Plaintiff alleges that prior to April 2021, RSI failed to pay its piece-rate employees for non-

1 productive time. Blakely Decl., ¶ 15. Based on Plaintiff's experience, Plaintiff estimated that employees
2 worked a total of thirty (30) minutes of non-productive time per shift. *Id.* Additionally, based on Plaintiff's
3 expert's analysis and extrapolation of employee timekeeping records, Plaintiff determined that Plaintiff
4 and other piece-rate employees worked a total of 24,510 shifts prior to April 2021 and that employees
5 earned piece rate pay on approximately 2/5 of their shifts during this time. *Id.* RSI further represented that
6 the average rate of pay for employees during the Class Period was \$25.95 per hour. *Id.* Accordingly,
7 Plaintiff calculated RSI's potential exposure for unpaid non-productive time to be \$127,207 (24,510 shifts
8 * 2/5 violation rate * 0.5 hours * \$25.95 average hourly rate). *Id.*

9 RSI argues that all work performed by employees was "directly related" to piece-rate activities
10 and need not be separately compensated. *See* Blakely Decl., ¶ 15. RSI also contends that this claim is not
11 amenable to class treatment because the majority of supposed non-productive activities are not logged or
12 recorded in any way and therefore, an unmanageable series of mini-trials would then be required to
13 determine whether a given activity was "directly related" to the piece-rate work, and if not, how much
14 time was spent on each activity for each employee. *Id.* Based on these defenses, Plaintiff discounted RSI's
15 potential liability by 30% for a risk of non-certification, and by an additional 35% to account for the risk
16 of being unsuccessful on the merits or failure to recover the full amount sought, for a projected total of
17 \$57,879. *Id.*

18 **Rest Period Violations: \$76,024**

19 Plaintiff alleges that prior to July 2020, RSI failed to pay its piece-rate employees separately for
20 their rest periods. Blakely Decl., ¶ 16. Plaintiff further asserts that although RSI retroactively paid its
21 employees back-pay for their rest period time in July 2020, RSI still owed its employees a rest period
22 premium for its failure to permit and authorize *paid* rest periods pursuant to Labor Code section 226.7. *Id.*
23 Based on Plaintiff's expert's analysis of RSI's time records, Plaintiff calculates employees worked 14,361
24 shifts prior to July 1, 2020 and that employees earned piece rate pay on approximately 2/5 of their shifts
25 during this time. *Id.* Accordingly, Plaintiff estimated RSI's exposure for failure to permit and authorize
26 paid rest periods is approximately \$149,067 (14,361 shifts * 2/5 violation rate * \$25.95 average premium).
27 *Id.*

28 However, in response, RSI contends that it has paid its employees all rest period wages owed as it

1 retroactively paid its employees for their rest period time in July 2020 and stopped paying its employees
2 by piece rate in April 2021. Blakely Decl., ¶ 16. RSI further argues that any liability for its alleged failure
3 to separately compensate employees working on a piece-rate basis for rest periods would be limited to
4 back-pay for the rest periods themselves (i.e. pay for the 10 minutes of rest) as opposed to rest period
5 penalties under Labor Code section 226.7, and since it has already retroactively paid its employees for
6 their rest period time, RSI contends no additional wages are owed. *Id.* In light of these defenses, Plaintiff
7 discounted the maximum amount that the class could potentially recover by 15% for risk of non-
8 certification and an additional 40% to account for the risk of being unsuccessful on the merits to arrive at
9 a projected exposure of \$76,024. *Id.*

10 Meal Period Violations: \$175,500

11 Based on Plaintiff's expert's review and extrapolation of the timekeeping records RSI produced,
12 there were approximately 20,494 non-compliant meal periods during the Class Period. Blakely Decl., ¶
13 17. Therefore, Plaintiff calculated RSI's maximum exposure for meal period violations at approximately
14 \$531,819 (20,494 non-complaint meal periods * \$25.95 average premium). *Id.*

15 However, RSI contends that it maintained compliant meal period policies throughout the Class
16 Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 17. RSI also
17 asserts that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure"
18 meal periods are taken, and that, as described above, they have always done so, and that any non-compliant
19 meal periods in the timekeeping records were the result of lawful employee waiver or choice. *Id.* RSI also
20 maintains that Plaintiff's meal period claim is not suited for class certification, since individual inquiries
21 would be needed to assess which employees took non-compliant meal periods, how many meal periods
22 were non-compliant, and the reasons why a particular employee did not take a compliant meal period on
23 a particular shift. *Id.* In light of these defenses, Plaintiff discounted RSI's maximum exposure by 40% for
24 the risk of non-certification, and an additional 45% to account for RSI's defenses on the merits or failure
25 to recover the full amount sought, to arrive at an estimated total of approximately \$175,500. *Id.*

26 Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$16,391

27 Plaintiff alleges that prior to April 2020, RSI utilized a timekeeping system that systematically
28 underpaid wages by manually recording their employees' hours worked in quarter-hour increments.

1 Blakely Decl., ¶ 19. During this time period, Plaintiff estimates that RSI failed to compensate each
2 employee by approximately 10 minutes per shift. *Id.* Plaintiff further calculated that employees worked
3 approximately 11,484 shifts during the time period of March 29, 2019 through April 2020. *Id.* Therefore,
4 Plaintiff estimates RSI's potential exposure for failure to pay all wages at approximately \$49,668 (10
5 minutes * 11,484 shifts * \$25.95 average hourly rate). *Id.*

6 However, RSI argues that its timekeeping policies/practices complied with California law and that
7 it compensated its employees for all hours actually worked. Blakely Decl., ¶ 19. RSI further argues that it
8 did not have a formal policy of requiring employees to record their hours worked in quarter-hour
9 increments, and that to the extent employees did record their hours worked in quarter-hour increments,
10 they did so voluntarily. *Id.* RSI also asserts that Plaintiff would be unable to certify this claim since its
11 timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to
12 whether employees were in fact underpaid for each workday in question, resulting in an unmanageable
13 series of mini-trials. *Id.* Given these defenses, Plaintiff discounted RSI's exposure by 40% for risk of non-
14 certification and an additional 45% for a risk of being unsuccessful on the merits or failing to recover the
15 full amount sought, to arrive at an estimated realistic exposure of approximately \$16,391. *Id.*

16 **Unpaid Overtime Wages Due to Regular Rate Miscalculations: \$5,000**

17 Plaintiff alleges that he and other non-exempt employees received bonuses, which were not
18 included in the regular rate of pay when calculating overtime wages. Blakely Decl., ¶ 18. However, RSI
19 contends that the bonuses were discretionary end of the year bonuses that did not need to be included in
20 the regular rate of pay for the purposes of overtime. *Id.* In support of this contention, RSI pointed Plaintiff
21 to the fact that the bonuses are only provided to the employees once a year and vary in range, with the
22 majority being between \$100 and \$200. *Id.* Based on the data and information provided, Plaintiff estimated
23 RSI's maximum liability for regular rate miscalculations to be approximately \$5,000. *Id.*

24 **Failure to Reimburse Necessary Business Expenses: \$2,962**

25 Plaintiff alleges that beginning in April 2020, RSI required Plaintiff and other non-exempt
26 employees to use their cellphone to clock in and clock out for their shifts but failed to reimburse Plaintiff
27 and other employees for use of their personal cell phones in violation of Labor Code section 2802. Blakely
28 Decl., ¶ 20. Plaintiff estimates that there were approximately 5,924 workweeks worked by employees after

1 April 2020 and that \$2.50 per workweek (\$10 per month) is an adequate reimbursement for cell phone
2 expenses. *Id.* Therefore, Plaintiff calculated RSI's exposure for this claim at \$14,810 (5,924 workweeks
3 * \$2.50 reimbursement). *Id.*

4 But as noted above, RSI presented several defenses to this claim, including that RSI already
5 retroactively reimbursed employees for use of their cellphones, and that employees could request
6 additional reimbursement if they incurred more than \$10 per month. Blakely Decl., ¶ 20. RSI further
7 argues that many employees do not incur any expense in using their phone to clock in and clock out since
8 many cellphone plans include unlimited data. *Id.* RSI further argues that this claim is not suitable for class
9 treatment, since it would require hundreds of mini-trials to determine whether each employee incurred
10 expenses, whether their expenses were reasonable, and whether they were reimbursed enough for their
11 cellphone. *Id.* In light of these defenses, Plaintiff discounted this claim by 50% for the risk of non-
12 certification and by an additional 60% for risk of losing on the merits or failing to recover the full amount
13 sought, to arrive at a realistic estimated exposure of approximately \$2,962. *Id.*

14 Waiting Time Penalties: \$123,159

15 RSI's records show approximately 113 non-exempt employees who separated their employment
16 with RSI since March 29, 2020, and are therefore eligible for waiting time penalties. Blakely Decl., ¶ 21.
17 Based on an hourly rate of \$25.95, Plaintiff estimated the average waiting time penalty per former
18 employee to be approximately \$6,228 (\$25.95 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff
19 calculated RSI's maximum exposure for potential waiting time penalties to be approximately \$703,764
20 (113 former employees * \$6,228 average penalty). *Id.*

21 RSI presented several defenses to this claim, most notably its assertion that because it possessed
22 good-faith defenses to the underlying claims, and voluntarily made retroactive payments to employees for
23 known violations, any failure to pay wages was not "willful" as a matter of law. Blakely Decl., ¶ 21. RSI
24 further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as not every former
25 employee experienced the alleged Labor Code violations. *Id.* Moreover, because the waiting time claim
26 is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome RSI's defenses, both
27 as to class certification and on the merits, as to their underlying claims. *Id.* To account for RSI's defenses,
28 Plaintiff discounted the maximum exposure by 50% for the risk of non-certification and an additional 65%

1 for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an
2 estimated exposure of approximately \$123,159. *Id.*

3 Wage Statement Penalties: \$41,300

4 Plaintiff alleges that RSI is liable for wage statement penalties as a result of the unpaid wages as
5 well as its failure to pay all meal and rest period premiums. Blakely Decl., ¶ 22. Those penalties are
6 calculated as \$50 for each “initial” violation and \$100 for each “subsequent” violation, with a maximum
7 of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Based on Plaintiff’s determination that there were
8 approximately 59 unique employees during the liability period applicable to Plaintiff’s wage statement
9 claim, Plaintiff calculated RSI’s potential wage statement exposure to be approximately \$236,000 (59
10 employees * \$4,000 max penalty). *Id.*; *see also* Labor Code § 226(e).

11 In light of RSI’s arguments that no violations occurred, that employees suffered no “injury,” that
12 any alleged violations were not “knowing and intentional,” that the wage statements always accurately
13 reflected hours worked and amounts paid to employees, the risks associated with Plaintiff’s underlying
14 claims discussed above, Plaintiff discounted the maximum exposure by 50% for risk of non-certification,
15 and by an additional 65% for risk of being unsuccessful on the merits or failure to recover the full amount
16 sought, for an estimated realistic exposure of approximately \$41,300. Blakely Decl., ¶ 22.

17 PAGA Penalties: \$49,545

18 Plaintiff estimated a maximum total PAGA exposure of approximately \$330,300 (3,303 pay
19 periods * \$100 “initial” penalty). Blakely Decl., ¶ 23; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th
20 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified that it is violating a
21 Labor Code provision). However, these penalties derive from the underlying wage and hour violations
22 discussed above, which RSI disputes vigorously. Blakely Decl., ¶ 23; *see e.g., Green v. Lawrence Service*
23 *Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim’s success was determined
24 by the merits of its underlying claims). RSI also asserts that the Court would drastically reduce any award
25 of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 23; *see also Thurman v. Bayshore Transit Mgmt.,*
26 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
27 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA
28 penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum figure by 50% for

1 the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and
2 an additional 70% to account for the possibility of this Court reducing penalties, to arrive at an estimated
3 exposure of approximately \$49,545. Blakely Decl., ¶ 23.

4 Using these estimated figures for each of the claims described above, Plaintiff predicted that the
5 potential realistic recovery for the Settlement Class would be approximately \$547,760. Blakely Decl., ¶
6 24. The proposed Settlement of \$450,000 represents approximately 82% of the reasonably forecasted
7 recovery for the Settlement Class. *Id.* Preliminary approval is appropriate since the Settlement will provide
8 significant monetary relief to the Settlement Class, which is consistent with what Plaintiff's counsel
9 believes could have been recovered had the case proceeded through trial, especially when considering
10 RSI's financial condition.

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

12 "Parties represented by competent counsel are better positioned than courts to produce a settlement
13 that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities*
14 *Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent, experienced
15 counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and
16 who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl.,
17 ¶¶ 2-6; *see also* Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Alexandra R.
18 McIntosh ("McIntosh Decl."), ¶¶ 2-5. Counsel, with the help of a retained expert, conducted an in-depth
19 review of RSI's timekeeping and payroll records and drew on their extensive experience in similar cases
20 to assess the strengths and weaknesses of Plaintiff's case. The Settlement was also reached with the
21 assistance of an experienced and respected wage-and-hour class action mediator. Blakely Decl., ¶¶ 10-11.
22 This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th
23 at 130.

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

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

2013).

a. The Settlement Is Within the Range of Possible Approval

The proposed Settlement reflects approximately 82% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Further, the average Settlement Award of approximately \$1,000.00 exceeds average payments achieved in other wage and hour class action settlements.³ Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

³ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

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

2 The Settlement resulted from an exchange of substantial information, arm's-length negotiations
3 by counsel, two full-day mediations before an experienced wage and hour mediator, and additional months
4 of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial
5 presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully
6 vetted the claims at issue, reviewed extensive timekeeping and payroll data, and conducted a detailed
7 statistical analysis of the data with the help of a retained expert to arrive at his estimated class-wide
8 damages figures. *See Blakely Decl.*, ¶¶ 15-24. Plaintiff also hired a forensic accountant to review RSI's
9 financials to determine a settlement amount that RSI could reasonably afford to pay. Thus, this factor
10 supports preliminary approval.

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

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

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

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

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

25 A class is "ascertainable" where the members "may be readily identified without unreasonable
26 expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* 189
27 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and
28 former non-exempt employees who worked for RSI in California during the Class Period. Therefore,

1 Settlement Class members can be identified from RSI's personnel and employment records. RSI
2 represents that the Settlement Class consists of approximately 215 current and former non-exempt
3 employees. *See* Blakely Decl., ¶ 14. It would therefore be impracticable to bring all Settlement Class
4 members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the
5 proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955)
6 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

7 **2. Common Issues of Law and Fact Predominate**

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

14 **3. The Claims of the Named Plaintiff Are Typical**

15 The typicality requirement is satisfied where class representatives have claims that are typical of
16 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347
17 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
18 in a consumer class action). Here, Plaintiff's claims are typical of those held by the Settlement Class
19 members. First, RSI employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff
20 was subject to RSI's wage and hour policies at issue in this case. *See* Ocegueda Decl., ¶ 2. Second, Plaintiff
21 was injured by the same challenged policies/practices that allegedly injured the Settlement Class as a
22 whole. For example, Plaintiff asserts that he was deprived of all legally compliant meal and rest periods.
23 *Id.*, at ¶ 3. Plaintiff further asserts that he did not receive accurate and compliant wage statements and did
24 not receive all wages at the time of separation of employment. *Id.* Because Plaintiff has suffered the same
25 injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

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

27 The adequacy requirement examines conflicts of interest between named parties and the class(es)
28 they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th

676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class, and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8; McIntosh Decl., ¶¶ 2-5.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

This Court should order distribution to the Settlement Class of the proposed Class Notice by U.S. Mail, in English and Spanish, postage prepaid, using the last known mailing address information provided by RSI. *See* Settlement, § 9. This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties propose that the Settlement be administered by Pheonix Settlement Administrators (“Pheonix”), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits. Settlement Class members’ addresses will be ascertainable through RSI’s personnel and payroll records, which RSI will provide to Phoenix within fifteen (15) business days of preliminary approval of the Settlement. *See* Settlement, § 9(A). Within ten (10) business days of receiving the Class Data, Phoenix will run the names of all Settlement Class members through the National Change of Address database to update addresses and mail the Class Notice to all Settlement Class members. *Id.*, at § 9(B). To the extent that any notices are returned, Pheonix will perform a “skip trace” to track any Settlement Class member’s current mailing address. *Id.*, at § 9(F).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 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 them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1, 2 to Exh. A. The proposed Class Notice will also notify

1 Settlement Class members of the final approval hearing date and provides the Settlement Class contact
2 information for Class Counsel and advises Settlement Class members that they may enter an appearance
3 through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e)
4 as the most reliable and cost-effective method of reaching Settlement Class members.

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

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

9 **V. CONCLUSION**

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

13
14 Dated: May 17, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

15
16 By:



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