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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ERIC LOVENG, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

ORANGE CORROSION SERVICES, INC., a California corporation; and DOES 1 through 100, inclusive.

Defendants.

Case No.: 24STCV13607

[*Assigned for all purposes to the Hon. David S. Cunningham III, Dept. 11*]

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

Date: June 17, 2026
Time: 9:00 a.m.
Dept.: 11

Action Filed: May 30, 2024
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 17, 2026, at 9:00 a.m. in Department 11 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Eric Loveng ("Plaintiff"), as an individual and on behalf of a class of similarly situated individuals, will move, and hereby moves, this Court for:

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

   > All individuals who are or previously were employed by Defendant Orange Corrosion Services, Inc., in California and classified as non-exempt employees at any time during the period of time from May 30, 2020, to August 25, 2025 (the "Class Period").

3. Preliminary appointment of Plaintiff Eric Loveng as Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, and Ian T. Mallery of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award amounts for the Class Representative Service Payment, Settlement Administrator costs, payment to the LWDA for its 75% share of Private Attorneys General Act civil penalties, as well as attorneys' fees and costs to Class Counsel;
6. Appointment of Apex Class Action LLC as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") and entry of the proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class as provided in the Settlement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Andrew J. Rowbotham, Fletcher W. Schmidt, Paul K. Haines, Ian T. Mallery, Plaintiff Eric Loveng, Sean Hartranft of Apex Class Action LLC, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

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

Dated: May 26, 2026

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________________
Andrew J. Rowbotham
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Eric Loveng ("Plaintiff") respectfully requests that this Court preliminarily approve this proposed Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement"),[1] entered into by Plaintiff and Defendant Orange Corrosion Services, Inc. ("Defendant") (collectively, the "Parties"). Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary, $510,000.00 class action and PAGA settlement on behalf of the following Settlement Class:

> All individuals who are or previously were employed by Defendant Orange Corrosion Services, Inc., in California and classified as non-exempt employees at any time during the period of time from May 30, 2020, to August 25, 2025 (the "Class Period").[2]

Based upon the data received from Defendant, there are approximately 225 potential Settlement Class members who worked approximately 19,318 aggregate workweeks during the Class Period. *See* Settlement § 9. This represents a fair and reasonable result for Settlement Class members who will only release those claims that were actually asserted, or which could have been asserted based on the facts and claims alleged in the action that arose during the Class Period. After Court-approved deductions for the Class Representative Service Payment, Settlement Administrator costs, the PAGA Penalties to the LWDA and PAGA Aggrieved Employees, and attorneys' fees and costs to Class Counsel, the remaining amount (the "Net Settlement Amount") of no less than approximately $216,425.00 will be distributed to the participating

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[1] The Settlement Agreement (based on this Court's model agreement) is attached as Exhibit 1 to the Declaration of Andrew J. Rowbotham ("Rowbotham Decl."), filed concurrently herewith, and the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") is attached as Exhibit A to the Settlement Agreement. *See* Rowbotham Decl., ¶ 9, Exhibit 1.

[2] The Settlement also includes a release of PAGA civil penalties on behalf of all individuals who were employed by Defendant in California and classified as non-exempt employees at any time during the period from May 30, 2023, to August 25, 2025 (the "PAGA Period"). *See* Settlement § 1.4; 1.32. These individuals are referred to herein as "Aggrieved Employees." The "Released PAGA Claims" include all claims for civil penalties under PAGA and/or PAGA causes of action alleged in the operative complaint in the Action or asserted in Plaintiff's May 30, 2024 PAGA Notice Letter to the LWDA, arising during the PAGA Period. *Id.*, § 1.40, 6.3; *see also* Rowbotham Decl., ¶ 9, Exhibit 2 (Plaintiff's LWDA Letter).

Settlement Class members. This results in the highest possible Individual Class Payment of approximately $3,058.50 (in the event a Settlement Class member performed work in every workweek during the Class Period) and average Individual Class Payments of approximately $961.89. Rowbotham Decl., ¶ 10. Further, an additional $12,500.00 will be paid to all approximately 120 PAGA Aggrieved Employees, resulting in additional average Individual PAGA Payments of approximately $104.17, with the highest possible Individual PAGA Payment of approximately $417.83. *Id*. Significantly, Class Members do not need to file a claim form in order to receive their share of the Settlement, and all Class Members who do not opt-out will automatically receive an Individual Class Payment. 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 portion of the Settlement or not, shall receive a portion of the settlement monies designated as the PAGA Penalties payable to the PAGA Aggrieved Employees. *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 and "nonparty employees as well as the government are bound by the judgment in an action brought under [PAGA].").

Prior to reaching this proposed Settlement, Defendant provided Plaintiff with timekeeping and payroll records for an approximately 31% random and representative sampling of the Class Members spanning the Class Period, as well as policies and handbooks in effect during the Class Period. Plaintiff then analyzed these records to construct a comprehensive damages model. After extensive legal research and analysis along with a comprehensive review of the data performed by Plaintiff, the Parties participated in a mediation session with Steven G. Mehta, Esq., a respected wage and hour class action mediator, who, although mediation adjourned without the Parties reaching a resolution of this action, continued to assist the Parties in their settlement negotiations in the months following mediation. After continued negotiations following mediation, Mr. Mehta 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 finalized 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 in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the monetary benefits to 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

Defendant is a construction company specializing in repairing and replacing oil and gas pipelines, and performing general construction for the petroleum industry in Southern California. Rowbotham Decl., ¶ 11. Plaintiff Loveng was employed by Defendant as a non-exempt "Heavy Equipment Operator" from approximately September 2016 until May 18, 2026. Declaration of Eric Loveng ("Loveng Decl."), ¶ 2. Like all Settlement Class members, Plaintiff was subject to Defendant's wage and hour policies and practices. *Id.*, ¶¶ 2-3.

On May 30, 2024, Plaintiff Loveng filed the initial Complaint in this action, alleging Defendant failed to: (i) pay all overtime wages; (ii) pay all minimum wages; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse all necessary business expenditures; (vi) issue accurate, itemized wage statements; and (vii) comply with California's Unfair Competition law. Rowbotham Decl., ¶ 12. On August 5, 2024, Plaintiff filed the operative First Amended Complaint, adding a cause of action for civil penalties under the PAGA. *Id.*

A. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Overtime Wages

Plaintiff asserts that Defendant implemented an unlawful alternative workweek schedule in which employees worked 10.0 hours per day four days a week. Specifically, Plaintiff asserts that Defendant failed to lawfully elect an alternative workweek schedule, as required under Wage Order 16 § 3(C)(7). Rowbotham Decl. ¶ 13; *see Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1327 ("it was [the employer]'s burden to establish that it did [implement an AWS]."). Further, Plaintiff asserts that Defendant's foreman recorded Plaintiff and other non-exempt employees' hours as assumed 10-hour shifts from 6:00 a.m. to 4:30 p.m. Monday through Thursday using handwritten timecards. Rowbotham Decl. ¶ 13. As a result, Defendant's non-exempt employees were required to work in excess of 8.0 hours per day without being compensated at their overtime rate of pay. *Id*.

In response, Defendant argues it maintains a lawful alternative workweek schedule that lawfully compensates Settlement Class members for all hours worked, and that in fact *over*compensates most employees because employees are always paid for 10-hour shifts when in reality they often work less than 10 hours. Rowbotham Decl. ¶ 14. Defendant also argues that the alternative workweek schedule only applied to a portion of its non-exempt employees. *Id*. As a result, Defendant argues that this portion of the overtime wages claim will fail on the merits, and further asserts that this claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee worked over 8.0 hours on a given shift, resulting in an unmanageable series of mini-trials. *Id*.

2. <u>Off-the-Clock Wage Violations</u>

Plaintiff asserts that Defendants failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, including all hours subject to the control of Defendants and/or suffered or permitted to work. Rowbotham Decl., ¶ 15. Specifically, Defendants required Plaintiff and other non-exempt employees to pick up a company vehicle and/or equipment before arriving at the designated job site and clocking in each day, and likewise returning the company vehicle to the pick up location after clocking out each day, and therefore failed to compensate Plaintiff and other non-exempt employees for all time worked. *Id*.; *see* DLSE Opinion Letter dated April 22, 2003 ("DLSE has taken the position that travel involving a substantial distance from the assigned work place to a distant work site to <u>report</u> to work on a short-term basis is compensable travel time.") (emphasis in original); *see also Ribot v. Farmers Insurance Group*, Case No. CV 11-02404 DDP (FMOx), 2013 WL 3778784 (C.D. Cal. July 17, 2013) (certifying claim for failing to compensate for pre-shift work); Labor Code §§ 1182.12 and 1197 (establishing the right of employees to be paid minimum wages for all hours worked); Wage Order 16, § 2(J) ("Hours worked means the time during which an employee is subject to the control of an employer..."); Wage Order 16, § 5(A) (requiring compensation for employermandated travel after the first location where the employee's presence is required by the employer).

In response, Defendant maintains its timekeeping policies/practices comply with California law, and that it properly compensates Settlement Class members for all hours worked, and in fact overcompensates many employees who are paid for 10-hour shifts when they actually worked less than 10 hours. Rowbotham Decl., ¶ 16. Further, Defendant asserts that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee was required to travel while off the clock, and exactly how much time each employee purportedly spent off the clock on any given day, which is increasingly difficult since employees reported to work at varying worksites and off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id*.

3. Rest Period Violations

Plaintiff asserts that Defendant failed to authorize and permit all 10-minute rest periods for every four hours worked, in violation of California law. Rowbotham Decl., ¶ 17. Specifically, Plaintiff asserts Defendant failed to authorize and permit third duty-free rest periods on occasions when Plaintiff and other non-exempt employees worked shifts over 10.0 hours. *Id*.; *see also Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1028-1030. Further, Plaintiff alleges that Defendant failed to pay any rest period premium payments on occasions when rest periods were not authorized and permitted. *Id*.; *See also Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding class certification proper when evidence reflected practice of never paying premium wages for missed rest periods).

In response, Defendant argues it maintains a lawful rest period policy/practice that authorizes and permits the Settlement Class Members to take all lawful rest periods to which they are entitled. Rowbotham Decl. ¶ 18. As a result, Defendant argues the rest period claim will fail on the merits, and further asserts that this claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee was authorized to take lawful rest periods on each particular shift, and whether the employee worked over 10.0 hours on a given shift, resulting in an unmanageable series of mini-trials. *Id*. This manageability concern is especially present as rest periods are not recorded. *Id*.

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

Plaintiff asserts that Defendant failed to provide uninterrupted, 30-minute meal periods commencing before the end of the fifth hour of work and second meal periods on shifts in excess of 10.0 hours. Rowbotham Decl., ¶ 19; *see also* Labor Code § 512(a); Wage Order 16, § 10(B); *Brinker, supra*, 53 Cal.4th at 1041 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour of work…"). Specifically, Plaintiff alleges that Defendant recorded its employees' hours based on scheduled 10-hour shifts, rather than accurately recording the hours actually worked by each employee. *Id*. Plaintiff also alleges that, due to Defendant's work demands, employees were frequently required to delay or skip their meal periods altogether, which is reflected in Defendant's timekeeping records. *Id*.; *see also Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 77 (holding that when timekeeping records do not reflect legally compliant meal periods, the employer bears the burden of rebutting the presumption that compliant meal periods were not provided).

Defendant argues it maintains a legally-compliant written meal period policy, that it has always provided meal periods consistent with that policy, and that it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. Rowbotham Decl., ¶ 20; *see also Brinker, supra,* 53 Cal.4th at 1038 (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Defendant further asserts that its time records show substantial compliance with timely first meal periods and second meal periods. Rowbotham Decl., ¶ 20. Defendant also argues individualized inquiries will be required to determine why meal periods are late, short, or missed, whether there was a valid waiver, and whether a premium was paid on each such shift, thereby precluding class certification of this claim. *Id*.

5. <u>Failure to Reimburse</u>

Plaintiff alleges that Defendant failed to reimburse Plaintiff and the Settlement Class for all necessary business expenses incurred. Rowbotham Decl., ¶ 21; *see also* Labor Code § 2802 ("An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."). Specifically, Plaintiff asserts that Defendant required employees to use their personal cell phones to communicate with supervisors during their workday for necessary, work-related, purposes, and use their personal vehicles to travel to and between job sites. *Id*. However, Defendant did not reimburse employees for a reasonable portion of their monthly cell phone bills or vehicle mileage. *Id*.; *see also Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 ("If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.").

Defendant argues that it maintains a policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, they were not reasonably incurred. Rowbotham Decl., ¶ 22. Defendant further asserts that any use of the Settlement Class members' personal phones was individualized and the result of employee choice, not Defendant's policies. *Id*. Defendant maintains that it provided company vehicles and that any mileage incurred by employees was the result of personal choice. *Id*. Defendant also maintains that this claim would require a series of mini-trials to determine which employees were actually required to use their cell phone for business purposes and in which pay periods such expenses were allegedly incurred. *Id*.

6. Wage Statement and PAGA Penalties

As a result of these alleged substantive violations, Plaintiff contends that Defendant is liable for derivative wage statement violations and civil penalties under the PAGA. Rowbotham Decl., ¶ 23. Defendant argues that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff could not show Plaintiff "suffer[ed] injury," as required by Labor Code § 226(e) for imposition of penalties. *Id.*; *see Amaral v. Cintas Corp.* (2008) 163 Cal. App. 4th 1157, 1201. Defendant further contends that it possesses strong, good faith defenses to Plaintiff's underlying claims and, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's underlying claims. Rowbotham Decl., ¶ 23.

B. DISCOVERY AND MEDIATION

In connection with mediation, Defendant provided Plaintiff with payroll and timekeeping records for an approximately 31% random and representative sampling of the Settlement Class spanning the putative class period, along with additional key data points and policy documents. Rowbotham Decl., ¶ 24. Plaintiff conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim. *Id*.

On March 31, 2025, the Parties participated in a mediation with Steven G. Mehta, Esq., a highly respected wage and hour class action mediator. Rowbotham Decl., ¶ 25. During mediation, the Parties exchanged divergent views on Defendant's liability and exposure, their legal positions, and the likelihood of certification of Plaintiff's claims. *Id*. Although the Parties adjourned mediation without reaching a settlement, they continued settlement negotiations through Mr. Mehta in the following months. *Id*.

The Parties also entered into a stipulated protective order, and Defendant produced to Plaintiff's counsel on a confidential basis its tax returns and audited financial statements spanning 2021-2024, to support its position that it was financially unable to pay a settlement anywhere in the seven-figures, and would need significant time to fund even a mid-six figure settlement such as the one reached herein. Rowbotham Decl., ¶ 26.

After additional months of continued negotiations, Mr. Mehta made a mediator's proposal that the Parties ultimately accepted. Rowbotham Decl., ¶ 27. Over the following months, the Parties negotiated and executed the Settlement now before the Court for preliminary approval. *Id.*[3]

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves this settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $510,000.00. *See* Settlement § 1.22. This Settlement is non-reversionary and Settlement Class members will automatically receive their Individual Class Payment unless they

[3] Plaintiff provided the LWDA with the Settlement Agreement along with all moving papers associated with this Motion. *See* Rowbotham Decl., ¶ 9, Exhibit 3 (LWDA Submission Confirmation); Proof of Service.

affirmatively opt-out of the Settlement. *Id.,* §§ 1.22, 3.1, 8.5. Defendant will fund the GSA in 18 monthly installments, with 17 installments of $28,333.33 and a final installment of $28,333.39 plus the employer payroll taxes, to be held in trust by the Administrator. *Id*., § 4.3. The first installment will be due five business days after the Judgment is final. *Id*. The Judgment is final as of the day after the last date to file a notice of appeal from the Judgment under California Rules of Court, rule 8.104, and no appeal is filed; or, if an appeal is filed, as of the day after the appeal is finally resolved and the time to seek further review expires, with the Judgment affirmed and no further review pending. *Id.,* §§ 1.19, 4.3. The monetary terms of the Settlement are further broken down as follows:

Gross Settlement Amount:	**$510,000.00**
Minus attorneys' fees (35%):	$178,500.00
Minus attorneys' costs (up to):	$50,000.00
Minus Class Representative Service Payment:	$7,500.00
Minus LWDA PAGA Payment:	$37,500.00
Minus Aggrieved Employee PAGA Payment:	$12,500.00
Minus Settlement Administrator costs:	$7,575.00
Net Settlement Amount:	**$216,425.00**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, the Class Representative Service Payment, costs of settlement administration, the LWDA's 75% share of PAGA penalties, and the PAGA Aggrieved Employees' share of PAGA penalties, the remaining Net Settlement Amount of approximately $216,425.00 will be distributed to the Settlement Class members. *See* Settlement § 3.2. Class Member payments will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. *Id*., § 3.2.(e). Further, 25% of the PAGA Amount 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, by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($12,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. *Id.,* §§ 3.2(d)(i), 6.3, 8.5(d). Twenty percent (20%) of each

Individual Class Payment will be classified as wages and eighty percent (80%) will be classified as interest and penalties. *Id*., § 3.2.(e).i. 100% of payments to PAGA Aggrieved Employees for PAGA civil penalties will be classified as penalties. *Id*., §3.2(d).ii. Further, Defendant will pay the employer's share of payroll taxes separate and apart from, and in addition to, the GSA. *Id*., § 1.22.

Defendant's records indicate that there are approximately 225 Settlement Class members who worked during the Class Period. *Id*., § 9. Based on the allocations of the Net Settlement Amount, participating employees will receive, on average, a payment of approximately $961.89. Rowbotham Decl., ¶ 29. Settlement Class members will have 60 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See Settlement* §§ 1.43, 8.5, 8.7. Those individuals 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.*, §§ 1.39, 6.2. Settlement Class members will have 180 days from the date the Individual Class Payments are mailed to cash their checks. *Id*., § 5.2. 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 Unclaimed Property Fund in the name of the Class Member to whom the check was issued. *Id*., § 5.4.

2. <u>Attorneys' Fees, Costs, and Class Representative Service Payments</u>

As part of the Settlement, Plaintiff will apply for a service payment at the time of seeking final approval of the Settlement in the amount of $7,500.00 for Plaintiff's service to the Settlement Class and his general release of all claims (known or unknown) against Defendant. *See* Settlement §§ 3.2.(a), 6.1. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested service payment is intended to recognize the significant benefits conferred upon the Settlement Class due to the time and effort that Plaintiff expended on behalf of the Settlement Class. Some of the activities Plaintiff completed in order to help procure the Settlement include providing factual information and documents to Plaintiff's attorneys, identifying potential witnesses, participating in multiple meetings with Plaintiff's attorneys to discuss the claims and theories at issue in the litigation, making Plaintiff available the entire day of mediation to assist and answer factual questions posed by the mediator, reviewing and providing input regarding the settlement in this case, and otherwise assisting Plaintiff's attorneys in moving this case towards resolution. Loveng Decl., ¶¶ 4-5. Plaintiff undertook significant risks by agreeing to serve as the named Plaintiff in this case (as potential employers can search Plaintiff's name and determine Plaintiff has previously sued an employer), as well as the fact that Plaintiff agreed to a general release of claims subject to a waiver of California Civil Code § 1542. Rowbotham Decl., ¶ 30.

Class Counsel will also apply for an attorneys' fee award of $178,500.00 (35% of the GSA), and up to $50,000.00 in verified costs. Rowbotham Decl., ¶ 31; *see* Settlement, § 3.2.(b). Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial attorneys' fees conducting pre-filing investigation, conducting legal research and analysis, reviewing documents and data produced by Defendant, building a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, 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 attending the final approval hearing, among other tasks. *Id*.

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506 ("the percentage of fund method survives in California class action cases…"); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/multiplier" methods). Historically, courts have awarded percentage fees in the range of 20% to 50%. *See* 4 *Newberg on Class Actions* § 14.6 (4th Ed. 2013). Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement (35%) in light of the substantial risks and the work undertaken, the positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement.

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. *See 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

To make a fairness determination, the Court should consider several factors, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, *supra*, 91 Cal.App.4th at 245.

As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

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

Class Counsel carefully vetted the claims at issue, reviewed a significant number of timekeeping and payroll records as well as relevant policy documents, and conducted a detailed analysis of that data to create a comprehensive damages model for Defendant's liability. Rowbotham Decl., ¶ 32. Although Plaintiff steadfastly maintains that Plaintiff's 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.A., *supra*, Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. Although Plaintiff was prepared to litigate these claims through class certification and, ultimately, through trial, given the amount offered in settlement, Plaintiff predicted that it was unlikely that further litigation would result in a substantially more beneficial result for the Settlement Class. Thus, this factor supports preliminary approval of the Settlement.

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

Although this Settlement was reached after a significant informal exchange of timekeeping and payroll records and other relevant information for mediation purposes, the Parties had not yet completed formal discovery and deposition efforts at the time the Parties reached the Settlement. Rowbotham Decl., ¶ 33. Absent settlement, the Parties would need to spend substantial time and resources to complete formal written and deposition discovery and prepare the case for class certification, summary judgment or adjudication, and trial. *Id*. Moreover, Plaintiff has not yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment ruling. *Id*. Even if Plaintiff succeeded in certifying one or more classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids these considerable costs, risks, and the accompanying burden of continued litigation on the Court.

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

Prior to reaching the Settlement, Plaintiff had not yet filed Plaintiff's motion for class certification. Rowbotham Decl., ¶ 34. Considering Defendant's arguments against certification, there was a legitimate risk that the Court may deny certification of one or more claims, preventing the matter from continuing on a class-wide basis. 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. Rowbotham Decl., ¶ 34. Thus, this factor supports preliminary approval of the Settlement.

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

This proposed Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. After analyzing the data provided by Defendant prior to mediation, Plaintiff prepared a class-wide exposure analysis and forecasted the Settlement Class expected recovery for each claim as follows:

<u>Overtime Violations</u>: **$268,809**

Plaintiff's expert's analysis found that if Plaintiff prevailed on his arguments that Defendant's alternative workweek schedule was invalid, it would result in a total of approximately 154,488 hours during the putative Class Period that should have been paid at the overtime rate of pay but were instead paid at the base rate of pay. Rowbotham Decl., ¶ 35. Plaintiff therefore calculated Defendant's maximum exposure for overtime violations at $2,240,076 (154,488 hours x $14.50 average overtime premium). *Id*.

Defendant argues it maintains a lawful alternative workweek schedule that lawfully compensates Settlement Class members for all hours worked. Rowbotham Decl. ¶ 36. Defendant also maintains that employees are often overpaid as a result of the alternative workweek schedule, since they are always paid for 10 hour shifts but frequently work less. *Id.* Defendant also argues that the alternative workweek schedule only applied to a portion of its non-exempt employees. *Id.* Defendant asserts that this portion of the overtime wages claim will fail on the merits, and further asserts that this claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee worked over 8.0 hours on a given shift, resulting in an unmanageable series of mini-trials. *Id.* As a result, Plaintiff discounted Defendant's maximum exposure by 70% for the risk of non-certification and 60% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an exposure of $268,809. *Id.*

<u>Off-the-Clock Violations</u>: **$66,152**

Plaintiff's expert's data analysis determined that Settlement Class members worked an aggregate total of 19,311 workweeks during the putative Class Period. Rowbotham Decl., ¶ 37. Plaintiff estimated that employees spent approximately 45 minutes per week (0.75 hours) performing uncompensated pre- and post-shift tasks, including traveling to and from jobsites while off-the-clock. *Id.* Plaintiff therefore calculated Defendant's potential exposure for off-the-clock violations at $420,014.25 (0.75 hours per week x 19,311 aggregate workweeks x $29.00 average hourly rate). *Id.*

Defendant maintains its timekeeping policies/practices comply with California law, and that it properly compensates Settlement Class members for all hours worked. Rowbotham Decl., ¶ 38. Further, Defendant asserts that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee was required to perform any work while off-the-clock, and exactly how much time each employee purportedly spent while off-the-clock on any given day, which is difficult as off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id.* Given these defenses, Plaintiff discounted Defendant's maximum exposure by 65% for the risk of non-certification and 55% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an exposure of $66,152. *Id.*

<u>Rest Period Violations</u>: **$9,408**

Plaintiff's expert's data analysis determined that non-exempt employees worked an aggregate total of 9,269 shifts in excess of 10.0 hours during the Class Period. Rowbotham Decl., ¶ 39. Plaintiff asserts that Class Members were not authorized and permitted to take lawful third rest periods on approximately 50% of all shifts in excess of 10.0 hours *Id.* Plaintiff therefore calculated Defendant's potential exposure for rest periods at $134,400.50 (9,269 shifts x 50% violation rate x $29.00 average premium). *Id.*

However, Defendant argues it maintains a facially compliant written rest period policy, that Class Members are encouraged to spend rest periods as they see fit, and that it has always authorized and permitted rest periods in compliance with that policy. Rowbotham Decl. ¶ 40. As a result, Defendant argues the rest period claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee worked over 10.0 hours and was authorized and permitted to take a lawful third rest period on each particular shift, resulting in an unmanageable series of mini-trials, particularly since rest periods are not recorded. *Id.* Based on these defenses, Plaintiff discounted Defendant's maximum exposure by 80% for risk of non-certification and 65% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of $9,408. *Id*.

Meal Period Violations: **$110,212**

Plaintiff's expert's data analysis determined that Settlement Class members worked an aggregate total of 31,670 shifts during the Class Period that contained a facially unlawful first meal period. Rowbotham Decl., ¶ 41. Accordingly, Plaintiff calculated Defendant's potential exposure for meal periods at $918,430 (31,670 violations x $29.00 average meal premium). *Id.* However, Defendant argues it maintains a legally-compliant written meal period policy, that it has always provided meal periods consistent with that policy, and that it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. *Brinker, supra,* 53 Cal.4th at 1038. Defendant also contends that individualized inquiries will be required to determine why meal periods are late, short, or missed, whether there was a valid waiver, and whether a premium was paid on each such shift, thereby precluding certification. *Id*. Given these defenses, Plaintiff discounted Defendant's maximum exposure by 70% for the risk of non-certification and 60% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $110,212. *Id*.

Unreimbursed Business Expenses: **$25,135**

Based on Plaintiff's counsel's research of J.D. Power and Consumer Reports' analyses of average cell phone plan costs among the leading cell phone carriers in America, Plaintiff alleges that the Class Members are owed approximately $20 each month as a reasonable portion of their cell phone bills covering work-related communications. Rowbotham Decl., ¶ 43. Plaintiff also estimates that employees were required to use their personal vehicles for work-related purposes and that non-exempt employees' average weekly mileage was approximately 12 miles. Therefore, Plaintiff calculated Defendant's potential exposure on this claim at $251,346.40 ($20 reimbursement x 4,456.7 aggregate work-months + 19,311 aggregate workweeks x 12 miles per workweek x $0.70 standard mileage rate). *Id*. However, Defendant further asserts that any use of the Settlement Class members' personal phones was individualized and the result of employee choice, not Defendant's policies. *Id*. Defendant maintains that it provided company vehicles and that any mileage incurred by employees was the result of personal choice. *Id*. Defendant also maintains that this claim would require a series of mini-trials to determine which employees were actually required to use their cell phone for business purposes and in which pay periods such expenses were allegedly incurred. *Id*. Given these potential defenses, Plaintiff discounted Defendant's maximum exposure by 80% for the risk of non-certification and 50% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of $25,135. *Id*.

Wage Statement Violations: **$11,640**

According to Plaintiff's expert's data analysis, approximately 120 employees received a total of 3,104 wage statements during the 1-year time period associated with wage statement penalties. Rowbotham Decl., ¶ 44. Plaintiff therefore calculated Defendant's maximum wage statement exposure at $155,200 (3,104 violations x $50 "initial" violation penalty). *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 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 derivative wage statement claim would also fail.

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). Therefore, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification of the underlying claims and 85% for a risk of being unsuccessful on the merits, including failing to prove the violations were "knowing and intentional," that the Class Members "suffer[ed] injury," or that the Court would find that Defendant had a reasonable, good faith belief of its compliance with wage and hour laws precluding the imposition of wage statement penalties, for a reasonable recovery of $11,640. *Id.*

PAGA Penalties: **$46,560**

Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in which Plaintiff could prove an underlying Labor Code violation. Rowbotham Decl., ¶ 45. According to Plaintiff's data analysis, the Settlement Class members worked a combined total of 3,104 pay periods during the PAGA liability period in which at least one of Plaintiff's alleged Labor Code violations occurred. *Id*. Plaintiff therefore calculated Defendant's maximum PAGA exposure at $310,400 (3,104 pay periods at $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 derived from the underlying wage and hour violations discussed above, which Defendant disputes. *See e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. *See Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to $5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from $2.8 million to $500,000). Plaintiff discounted the maximum figure by 50% for the risk of losing on the merits of all underlying claims or that the scope of the PAGA claim could be narrowed due to manageability, and an additional 70% to account for the likelihood of this Court reducing PAGA penalties awarded, to arrive at an estimated exposure of $46,560. Rowbotham Decl., ¶ 45.

Using these estimated figures for each of the claims described above, Plaintiff predicts that a projected potential recovery for the Settlement Class would be approximately $537,916. Rowbotham Decl., ¶ 46. The GSA of $510,000.00 represents approximately 94.81% of Plaintiff's projected reasonable class-wide recovery, while avoiding the further expense and risk of proceeding towards class certification and trial. *Id*. Considering the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce civil penalties, the proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See e.g.*, *Altamirano v. Shaw Industries, Inc*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action settlement, stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's claims."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the potential recovery").

Furthermore, given Defendant's documented financial limitations, Plaintiff believes that continued litigation would be unlikely to produce a more favorable result for the Settlement Class. Rowbotham Decl., ¶ 47. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Settlement Class members without the uncertainty, delay, and 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 possess extensive experience litigating wage and hour class actions from both the plaintiff and defense sides, and have been appointed as class counsel in numerous cases alleging similar claims. *See* Rowbotham Decl., ¶¶ 1-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-14; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9; Declaration of Ian T. Mallery ("Mallery Decl."), ¶¶ 2-6. Class Counsel conducted an extensive review of Defendant's records produced for mediation as well as relevant policies in effect during the Class Period, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Rowbotham Decl., ¶¶ 24, 32. The Settlement was also reached with the input and assistance of Steven G. Mehta, Esq., an experienced and highly respected neutral wage and hour class action mediator, whose mediator's proposal the Parties ultimately accepted. *Id*. This factor strongly supports preliminary approval. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

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. <u>The Settlement is Within the Range of Possible Approval</u>

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 substantial compensation for contested claims and derivative penalties, including an estimated average Individual Class Payment of approximately $961.89 before any Individual PAGA Payment. Plaintiff submits 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 had the opportunity to opt-out or object.

b. <u>The Settlement Resulted from Serious, Informed, and Non-Collusive Negotiations</u>

This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar*, *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial information, including all relevant policies, a representative sample of employee timekeeping and payroll data which was analyzed by Plaintiff's counsel; arm's length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional months of negotiating until the terms of the long-form Settlement Agreement were agreed upon and finalized. *See* Rowbotham Decl., ¶¶ 24-27.

c. **<u>The Settlement is Devoid of Obvious Deficiencies</u>**

The Settlement provides substantial monetary relief to Settlement Class members. Further, the amounts for Plaintiff's Service Payment, administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's share of PAGA penalties are reasonable and appropriate. Since the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. **<u>The Court Should Certify the Settlement Class for Settlement Purposes</u>**

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 his counsel will fairly and adequately represent the interests of the absent Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

1. **<u>The Proposed Class is Ascertainable and Numerous</u>**

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 individuals who are or previously were employed by Defendant Orange Corrosion Services, Inc., in California and classified as non-exempt employees at any time during the Class Period. *See* Settlement, § 1.5, 1.13. Settlement Class members can be easily identified using Defendant's employment and payroll records. Rowbotham Decl., ¶ 24. According to Defendant's records, the Settlement Class consists of approximately 225 individuals, rendering it impracticable to gather all the Settlement Class members and bring them before the Court. *See id.*; Settlement, § 9. Thus, the numerosity requirement is satisfied.

2. **<u>Common Issues of Law and Fact Predominate</u>**

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated on uniform company policies, principally revolving around Defendant's overtime and minimum wage policies and practices, meal and rest period policies and practices, and reimbursement policies and practices. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34 ("The theory of liability—that Brinker has a uniform policy, and that that policy…allegedly violates the law—is by its nature a common question eminently suited for class treatment."); *Bradley v. Networkers Int'l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying meal and rest period claims); *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th 864, 871-873 (reversing denial for certification of rest period claim).

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, Plaintiff's claims are typical of those of the Settlement Class members. Like other Settlement Class members, Plaintiff was employed by Defendant in California during the Class Period, was 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. Loveng Decl., ¶¶ 2-3.

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

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the Settlement Class that Plaintiff seeks to represent, and Plaintiff possesses claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy where there was no indication that Plaintiffs' counsel were not qualified and the named Plaintiffs had no interests antagonistic to those of the proposed class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Rowbotham Decl., ¶¶ 2-7; Haines Decl., ¶¶ 2-14; Schmidt Decl., ¶¶ 1-9; Mallery Decl., ¶¶ 1-6.

C. <u>The Court Should Order Distribution Of The Proposed Class Notice</u>

This Court should order distribution of the proposed Class Notice to the Settlement Class 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. Here, Plaintiff proposes that the settlement be administered by Apex Class Action LLC ("Apex"), an experienced class action settlement administrator. *See generally* Declaration of Sean Hartranft. Settlement Class members' addresses will be ascertainable through Defendant's personnel and payroll records, and Defendant will provide Class Members' full names, last-known mailing addresses, Social Security numbers, email addresses, and Workweek and PAGA Pay Period data to Apex within ten (10) business days after preliminary approval. *See* Settlement § 4.2. Prior to mailing the Class Notice packets, Apex will search for updated addresses using the National Change of Address database ("NCOA"). *Id.*, § 8.4.(a). To the extent that any notices are returned, Apex will search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. *Id.*, § 8.4.(b). The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises putative Settlement Class members of the nature of the claims, basic contentions and denials of the parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Settlement Agreement, Exhibit A (Class Notice). The proposed Class Notice will also notify Settlement Class Members of the final approval hearing date and provide the Settlement Class contact information for Class Counsel and advise Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies California

Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.[4]

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, and enter the proposed order submitted concurrently herewith.

Dated: May 26, 2026

HAINES LAW GROUP, APC

By: ______________________

Andrew J. Rowbotham
Attorneys for Plaintiff

[4] The Parties propose posting the final judgment on the Settlement Administrator's website. The URL will be included with Class Members' Individual Class Payments.