

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
Ian T. Mallery (SBN 359132)
imallery@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

VICENTE SANDOVAL, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

CYBEX SECURITY SOLUTIONS, LLC, a
California Limited Liability Company;
SONITROL ORANGE COUNTY, LLC, a
California Limited Liability Company; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 30-2024-01398109-CU-OE-CXC

*[Assigned for all purposes to the Hon. Layne
H. Melzer, Dept. CX102]*

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

Date: September 11, 2025
Time: 2:00 p.m.
Dept.: CX102
Reservation ID No.: 74579556

Action Filed: May 8, 2024
Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on September 11, 2025 at 2:00 p.m., or as soon thereafter as the matter may be heard, in Department CX102 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Vicente Sandoval (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement Agreement”) in this lawsuit, entered into between Plaintiff and Defendants Cybex Security Solutions, LLC, and Sonitrol Orange County, LLC (collectively, “Defendants”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

All current and former non-exempt employees who worked for Defendants in California between May 8, 2020 and the date of preliminary approval (the “Class Period”).
3. Preliminary appointment of Plaintiff Vicente Sandoval as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Ian T. Mallery of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Enhancement Payments, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.*, and Class Counsel’s attorneys’ fees and costs;
6. Appointment of Apex Class Action Administration as the third-party settlement administrator (“Settlement Administrator”); and
7. Approval of the proposed Notice of Class Action and PAGA Action Proposed Settlement (“Class Notice”), the Notice of Individual Settlement Payment, and the Request for Exclusion Form (collectively, the “Notice Packet”), and entry of the

1 proposed Order instructing the Notice Packet to be disseminated to the proposed
2 Settlement Class in English, as provided in the Settlement Agreement.

3 This motion is based on this notice of motion, the attached memorandum of points and
4 authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Ian T.
5 Mallery, Plaintiff Vicente Sandoval, and Sean Hartranft of Apex Class Action Administration,
6 and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any
7 further oral or documentary evidence or argument presented at the time of hearing.

8 Given the multiplicity of issues addressed herein, Plaintiff's memorandum of points and
9 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
10 3.764(c)(2). As this Motion is unopposed, Plaintiff respectfully requests that the Court consider
11 the entire Motion, which is 23 pages in length.

12
13 Dated: June 5, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

14
15 By:


Matthew K. Moen
Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	3
A. Factual And Procedural Background	3
B. Plaintiff's Claims and Defendants' Defenses.....	3
1. Meal Period Violations	3
2. Rest Period Violations	4
3. Failure to Reimburse Violations	5
4. Off-the-Clock Violations	6
5. Unlawful Time Rounding	7
6. Wage Statement and PAGA Penalties	7
C. Discovery And Mediation	8
III. THE PROPOSED SETTLEMENT.....	8
A. Essential Terms Of The Settlement	8
1. The Settlement Provides for Reasonable Monetary Payments	9
2. Attorneys' Fees, Costs, and Plaintiff's Class Representative Enhancement Payments.....	10
IV. ARGUMENT.....	11
A. Preliminary Approval Is Warranted.....	11
1. Standard for Preliminary Approval.....	12
a. The Strength of Plaintiff's Case.....	12
b. Risk, Expense, Complexity, and Duration of Further Litigation.....	13
c. Risk of Maintaining Class Action Status	13
d. Amount Offered in Settlement Given Realistic Value of Claims.....	13
e. The Experience and Views of Counsel	18
2. The Preliminary Approval Standard is Met.....	19
a. The Settlement is Within the Range of Possible Approval.....	19
b. The Settlement Resulted from Serious, Informed and Non-Collusive Negotiations	20

1	c. The Settlement is Devoid of Obvious Deficiencies	20
2	B. The Court Should Certify the Settlement Class for Settlement Purposes	20
3	1. The Proposed Class is Ascertainable and Numerous.....	20
4	2. Common Issues of Law and Fact Predominate.....	21
5	3. The Claims of the Named Plaintiff are Typical	21
6	4. Plaintiff and Class Counsel are Adequate to Represent the Class	21
7	C. The Court Should Order Distribution Of The Proposed Class Notice	22
8	D. The Court Should Set A Final Approval Hearing.....	23
9	V. CONCLUSION	23

TABLE FOR AUTHORITIES

Federal Cases

<i>Dunleavy v. Nadler</i>	
213 F.3d 454 (9th Cir. 2000)	18
<i>Eisen v. Carlisle and Jacquelin</i>	
417 U.S. 156 (1974)	22
<i>Hanlon v. Chrysler Corp.</i>	
150 F.3d 1011 (9th Cir. 1998)	12
<i>In re Pacific Enterprises Securities Litigation</i>	
47 F.3d 373 (9th Cir. 1995)	18
<i>In re Syncor ERISA Litigation</i>	
516 F.3d 1095 (9th Cir. 2008)	12
<i>Linney v. Cellular Alaska Partnership</i>	
151 F.3d 1234 (9th Cir. 1998)	18

State Cases

<i>Amaral v. Cintas Corp. No. 2</i>	
(2008) 163 Cal.App.4th 1157	7, 17
<i>Augustus v. ABM Security Services, Inc.</i>	
(2016) 2 Cal.5th 257	5
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i>	
(1987) 191 Cal.App.3d 1341	21
<i>Brinker v. Superior Court</i>	
(2012) 53 Cal.4th 1004	3, 4, 21
<i>Camp v. Home Depot U.S.A., Inc.</i>	
(2022) 84 Cal.App.5th 638	7
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	21
<i>Carrington v. Starbucks Corporation</i>	
(2018) 30 Cal.App.5th 504	8
<i>Chindarah v. Pick Up Stix, Inc.</i>	
(2009) 171 Cal.App.4th 796	13
<i>Collins v. Rocha</i>	
(1972) 7 Cal.3d 232	21

1	<i>Dunk v. Ford Motor Co.</i>	
2	(1996) 48 Cal.App.4th 1794	12
3	<i>Kullar v. Foot Locker Retail, Inc.</i>	
4	(2008) 168 Cal.App.4th 116	12, 20
5	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
6	(2016) 1 Cal.5th 480	11
7	<i>McGhee v. Bank of America</i>	
8	(1976) 60 Cal.App.3d 442	22
9	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
10	(2023) 88 Cal.App.5th 937	8
11	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
12	(2024) 15 Cal.5th 1056	17
13	<i>Price v. Starbucks Corp.</i>	
14	(2011) 192 Cal.App.4th 1136	8
15	<i>Reed v. United Teachers Los Angeles</i>	
16	(2012) 208 Cal.App.4th 322	12
17	<i>Robinson v. Southern Counties Oil Company</i>	
18	(2020) 53 Cal.App.5th 476	2
19	<i>Rodriguez v. E.M.E., Inc.</i>	
20	(2016) 246 Cal.App.4th 1027	4-5
21	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
22	(2004) 34 Cal.4th 319	21
23	<i>See's Candy Shops, Inc. v. Superior Court</i>	
24	(2012) 210 Cal.App.4th 889	7
25	<i>Sevidal v. Target Corp.</i>	
26	(2010) 189 Cal.App.4th 905	20
27	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
28	(2012) 203 Cal.App.4th 1112	8
	<i>Wershba v. Apple Computer, Inc.</i>	
	(2001) 91 Cal.App.4th 224	11, 12
	<u>State Statues and Rules</u>	
	Cal. Code Civ. Proc. § 382	20
	California Rule of Court 3.769	23
	Labor Code § 204.....	7

1	Labor Code § 226.....	7, 8
2	Labor Code § 510(a)	7
3	Labor Code § 512(a)	3, 4
4	Labor Code § 1174.....	7
5	Labor Code § 1182.12.....	6, 7
6	Labor Code § 1197.....	6, 7
7	Labor Code § 2699(e)(2)	8, 17
8	Labor Code § 2802.....	5

Unpublished Cases

10	<i>Altamirano v. Shaw Industries, Inc</i>	
11	2015 WL 4512372 (N.D. Cal. 2015)	18
12	<i>Bercea v. AE Retail West</i>	
13	Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012)	19
14	<i>Green v. Lawrence Service Co.</i>	
15	2013 WL 3907506 (C.D. Cal. 2013).....	17
16	<i>Ressler v. Federated Department Stores, Inc.</i>	
17	Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009)	19
18	<i>Ribot v. Farmers Insurance Group</i>	
19	Case No. CV 11-02404 DDP (FMOx)	
20	2013 WL 3778784 (C.D. Cal. July 17, 2013).....	6
21	<i>Schiller v. David's Bridal, Inc.</i>	
22	Case No. 1:10-cv-00616-AWI-SKO	
23	2012 WL 2117001 (E.D. Cal. June 11, 2012)	19
24	<i>Taduran v. James R. Glidewell</i>	
25	Case No. 30-2017-00934037-CU-OE-CXC (Orange County Superior Court)	17-18

Other Sources

26	4 Newberg on Class Actions (4th Ed. 2013).....	11, 19
27	DLSE Opinion Letter dated April 22, 2003.....	6
28	Manual for Complex Litigation § 30.41 (3rd Ed. 1995).....	19
	Wage Order 4, § 2(L).....	6

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Vicente Sandoval (“Plaintiff”), as an individual and on behalf of the proposed
4 Settlement Class, respectfully requests that this Court preliminarily approve the proposed
5 Stipulation of Settlement (“Settlement Agreement” or “Settlement”),¹ entered into by Plaintiff
6 and Defendants Cybex Security Solutions, LLC and Sonitrol Orange County, LLC (collectively,
7 “Defendants”) (with Plaintiff, the “Parties”). Plaintiff respectfully requests that this Court
8 preliminarily approve this non-reversionary, \$185,000.00 class action settlement on behalf of the
9 following Settlement Class:

10 All current and former non-exempt employees who worked for Defendants in
11 California between May 8, 2020 and the date of preliminary approval (the “Class
12 Period”).

13 Based upon the data provided by Defendants, there are approximately 41 potential
14 Settlement Class members. After Court-approved deductions for Plaintiff’s Class Representative
15 Enhancement Payment, settlement administrator costs, the PAGA Payment to the Labor &
16 Workforce Development Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the
17 remaining Net Settlement Amount (“NSA”) is estimated to be no less than \$95,843.34. This
18 results in average Individual Settlement Payments of approximately \$2,337.64, with the lowest
19 possible estimated Individual Settlement Payment of \$19.38 (in the event a Settlement Class
20 member worked only one workweek during the Class Period) and the highest possible estimated
21 Individual Settlement Payment of \$5,407.54 (in the event a Settlement Class member performed
22 work in every workweek during the Class Period). Moen Decl., ¶ 12. Plaintiff’s estimated
23 Individual Settlement Payment is approximately \$3,294.60, excluding any requested
24 enhancement award. *Id.* Further, an additional \$2,500.00 will be paid to all current and former
25 non-exempt employees who worked for Defendants in California between May 8, 2023 and the
26

27 ¹ The Settlement Agreement is attached as Exhibit A to the Declaration of Matthew K. Moen (“Moen
28 Decl.”), filed concurrently herewith, and the Notice of Class Action Settlement (“Class Notice”), the
Notice of Individual Settlement Payment, and the Request for Exclusion Form (collectively, the “Notice
Packet”) are attached to the Moen Decl. as Exhibit B.

1 date of preliminary approval (the “PAGA Period”) (collectively, the “PAGA Aggrieved
2 Employees”) for the release of claims under the PAGA. *See* Settlement, ¶¶ 1, 2.B, 3.C.5.
3 Significantly, Settlement Class members do not need to file a claim form in order to receive an
4 Individual Settlement Payment, and all Settlement Class members who do not opt-out will
5 automatically receive their share of the Settlement. This represents an exceptional, fair and
6 reasonable result for the Settlement Class members, who will be agreeing to a release of only
7 those claims that were actually asserted, or which could have been asserted based on the facts
8 alleged in the operative complaint.

9 Further, given the tenet that aggrieved employees do not have the ability to opt-out of a
10 representative PAGA claim, all Allegedly Aggrieved Employees, regardless of whether they elect
11 to opt out from participating in the class action settlement or not, shall receive a portion of the
12 settlement monies designated as the PAGA Amount payable to the PAGA Aggrieved Employees
13 and shall release all claims for PAGA penalties that were alleged in the operative First Amended
14 Complaint or Plaintiff’s May 8, 2024 PAGA Notice to the LWDA that arose during the PAGA
15 Period. *See Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, 482
16 (holding that there is no opt–out mechanism for PAGA claims and “nonparty employees as well
17 as the government are bound by the judgment in an action brought under [PAGA].”); *see also*
18 Moen Decl., Exhibit C (Plaintiff’s PAGA Letter). The average Individual Settlement Payment
19 from the PAGA Amount is projected to be approximately \$69.44, with the lowest possible
20 estimated Individual Settlement Payment from the PAGA Amount of \$1.37 (in the event a PAGA
21 Aggrieved Employee worked only one pay period during the PAGA Period) and the highest
22 possible estimated Individual Settlement Payment from the PAGA Amount of \$168.04 (in the
23 event a PAGA Aggrieved Employee worked in every pay period throughout the PAGA Period).

24 Prior to reaching this proposed Settlement, Defendants provided Plaintiff with
25 timekeeping and payroll records for all putative class members. Plaintiff then analyzed the data
26 and created a class-wide exposure model for the claims at issue. On January 24, 2025, after
27 extensive legal research and analysis, along with Plaintiff’s comprehensive review of the data,
28 the Parties participated in a mediation session with Will Klatte, Esq., an experienced wage and

hour class action mediator, and ultimately accepted a mediator’s proposal for a class-wide resolution of all claims at issue. Over the following months, the Parties negotiated and executed the long-form Settlement Agreement that is now before this Court for preliminary approval.

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

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendants specialize in the installation and repair of burglary and fire security systems for commercial buildings and businesses. Moen Decl., ¶ 13. Plaintiff worked for Defendants as a “Lead Technician” since approximately November 5, 2019. Declaration of Vicente Sandoval (“Sandoval Decl.”), ¶ 2. Like all Settlement Class members, Plaintiff was employed by Defendants as a non-exempt employee during the Class Period and was subject to Defendants’ allegedly unlawful wage and hour policies and practices. Sandoval Decl., ¶¶ 2-3.

On May 8, 2024, Plaintiff initiated the instant action, alleging Defendants 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 necessary business expenses; (vi) issue accurate itemized wage statements; and (vii) comply with California’s Unfair Competition laws. Moen Decl., ¶ 14. On July 15, 2024, Plaintiff filed a First Amended Complaint, adding an eighth cause of action for civil penalties under the Private Attorneys General Act, Labor Code section 2698, *et seq.* (“PAGA”), based on the same underlying Labor Code violations. *Id.*

B. Plaintiff’s Claims and Defendants’ Defenses

1. Meal Period Violations

Plaintiff asserts that Defendants failed to provide the Settlement Class members with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled. Moen Decl., ¶ 15; *see* Labor Code § 512(a); *see also Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1041 (“We conclude that, absent waiver, section 512 requires a first meal period no later than the end of an employee’s fifth hour of work...”). Specifically, Plaintiff asserts Defendants required

1 employees to clock out for purported meal periods prior to the conclusion of the fifth hour of
2 work so that time records would appear Labor Code compliant, but required employees to
3 continue working while off the clock in order to complete projects, resulting in Plaintiff and
4 Settlement Class members not being provided with meal periods commencing prior to the fifth
5 hour of work. Moen Decl., ¶ 15. Further, Plaintiff asserts that Defendants only provided a single
6 meal period for shifts over 5.0 hours, regardless of the length of the shift, and therefore failed to
7 provide second meal periods to Plaintiff and the putative class members for shifts lasting longer
8 than 10.0 hours in length. *Id.*; *see also* Labor Code § 512(a). Finally, Plaintiff alleges that
9 Defendants required Plaintiff and the putative class to carry a cell phone with them at all times
10 and to immediately respond to any incoming calls or messages at all times, even during purported
11 meal periods, in violation of California law. *See Brinker, supra*, 53 Cal.4th at 1038-39; Moen
12 Decl., ¶ 15.

13 In response, Defendants contend they maintained lawful meal period policies/practices
14 throughout the Class Period. Moen Decl., ¶ 16. Defendants assert that their time records show
15 substantial compliance with timely first meal periods and second meal periods. *Id.* Further,
16 Defendants assert that there is no written policy or practice requiring employees to respond to
17 calls and messages while taking their meal period. *Id.* Moreover, Defendants claim that most
18 employees work on their own on a daily basis, and therefore have complete control and discretion
19 over their meal periods and at what time they are taken. *Id.* Defendants also contend that
20 Plaintiff's meal period claim is not suited for class certification as individual inquiries would be
21 required to assess whether each employee was not provided a timely meal period for every meal
22 period taken, resulting in an unmanageable series of mini-trials. *Id.*

23 **2. Rest Period Violations**

24 Plaintiff further alleges that Defendants failed to authorize and permit the Settlement Class
25 members to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 17.
26 Specifically, Plaintiff asserts that Defendants maintained a practice of unlawfully combining rest
27 breaks into the employees' meal periods. *Id.*; *see Rodriguez v. E.M.E., Inc.* (2016) 246
28 Cal.App.4th 1027 (holding that the preferred schedule requires the provision of a rest period in

1 the middle of each “work period” before and after the meal break). Further, as with meal periods,
2 Plaintiff alleges that Defendants maintained an unlawful policy of requiring Plaintiff and the
3 putative class to carry a cell phone with them at all times and to immediately respond to any
4 incoming calls or messages at all times, even during purported rest periods, in violation of
5 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. Moen Decl., ¶ 17.

6 Defendants maintain they authorized and permitted the Settlement Class members to take
7 all lawful rest periods to which they are entitled. Moen Decl., ¶ 18. Defendants assert that they
8 did not maintain a written rest period policy or practice requiring that rest periods be combined
9 with meal periods, that employees were free to take their rest period at the time of their choosing,
10 and therefore this claim will fail on the merits. *Id.* Defendants also assert that this claim is
11 unmanageable and not suited for class certification, as it requires individualized inquiries into
12 whether each employee was authorized and permitted to take a lawful rest period and on which
13 days, which Defendants argue Plaintiff will be unable to substantiate with any common,
14 documentary evidence, as rest periods are not required to be recorded, resulting in an
15 unmanageable series of mini-trials. *Id.*

16 **3. Failure to Reimburse Violations**

17 Plaintiff further alleges that Defendants required Plaintiff and the Settlement Class
18 members to use their personal cell phones and to purchase and use their personal tools, such as
19 hammer drills, EMT conduit benders, and knockout sets, to complete their necessary job duties,
20 but failed to reimburse the Settlement Class members for these necessary business expenses.
21 Moen Decl., ¶ 19; *see* Labor Code § 2802.

22 In response, Defendants argue they provided company cell phones to their employees,
23 limiting any liability, and they never required employees to purchase their own tools and any
24 purchasers were due to employee choice. Moen Decl., ¶ 20. Further, Defendants maintain that
25 this claim is not suited for class certification, as individual issues would predominate to determine
26 which, if any, employees purchased tools or used their personal cell phones rather than using
27 those provided by Defendants, resulting in an unmanageable series of mini-trials. *Id.*

28 ///

1 **4. Off-the-Clock Violations**

2 Plaintiff asserts that Defendants failed to compensate Plaintiff and Settlement Class
3 members for all hours actually worked, including all hours subject to the control of Defendants
4 and/or suffered or permitted to work. Moen Decl., ¶ 21. Specifically, Defendants failed to pay
5 Plaintiff and the Settlement Class members for all time spent traveling to their initial jobsite each
6 work day, which varied each day, even when such jobsites resulted in unreasonably extended
7 travel time. *Id.*; see DLSE Opinion Letter dated April 22, 2003 (“DLSE has taken the position
8 that travel involving a substantial distance from the assigned work place to a distant work site to
9 report to work on a short-term basis is compensable travel time.”) (emphasis in original). Instead,
10 Plaintiff and the Settlement Class members were only permitted to clock in prior to reaching their
11 initial work location if this initial daily travel exceeded 75 miles or if they were stuck in traffic
12 for more than one hour and twenty-five minutes. Moen Decl., ¶ 21. Further, Defendants required
13 Plaintiff and the Settlement Class members to communicate with supervisors for work purposes
14 while off the clock to receive their next day’s job assignments. *Id.*; see *Ribot v. Farmers Insurance*
15 *Group*, Case No. CV 11-02404 DDP (FMOx), 2013 WL 3778784 (C.D. Cal. July 17, 2013)
16 (certifying claim for failing to compensate for pre-shift work); Labor Code §§ 1182.12 and 1197
17 (establishing the right of employees to be paid minimum wages for all hours worked); Wage
18 Order 4, § 2(L) (“‘Hours Worked’ means the time during which an employee is subject to the
19 control of an employer...”).

20 In response, Defendants maintain their timekeeping policies/practices comply with
21 California law, and that they properly compensate Settlement Class members for all hours
22 worked. Moen Decl., ¶ 22. Further, Defendants assert that this claim is not suitable for class
23 treatment, as it requires individualized inquiries into whether any employee was required to travel
24 or communicate with supervisors while off-the-clock, and exactly how much time each employee
25 purportedly spent while off-the-clock on any given day, which is increasingly difficult since
26 employees reported to work at varying work sites and off-the-clock time is inherently not
27 recorded, resulting in an unmanageable series of mini-trials. *Id.*

28 ///

1 **5. Unlawful Time Rounding**

2 Plaintiff asserts that Defendants maintained an unlawful rounding practice that resulted in
3 Defendants systematically underpaying Plaintiff and Settlement Class members all earned wages.
4 Moen Decl., ¶ 23; *see also Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638. Plaintiff
5 claims Defendants record Plaintiff's and Settlement Class members' clock in and clock out
6 timeclock punches to the minute, but round Plaintiff's and Settlement Class members'
7 timekeeping entries in an uneven manner to the employees' detriment, resulting in unpaid
8 minimum and overtime wages. Moen Decl., ¶ 23; *see* Labor Code §§ 510(a), 1182.12, and 1197.

9 In response, Defendants contend that its timekeeping practices are lawful and its rounding
10 practice is neutral and operates in an even-handed way, which Defendants assert is lawful under
11 the court's ruling in *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Moen
12 Decl., ¶ 24. Moreover, Defendants contend that Plaintiff could not certify this claim, as it would
13 require individualized inquiries into each employee on a pay period by pay period basis as to
14 whether the employee was overpaid or underpaid based on Defendants' rounding practice,
15 resulting in an unmanageable series of mini-trials. *Id.* Finally, because *Camp v. Home Depot*
16 *U.S.A., Inc.* has been granted review by the California Supreme Court, the decision is only
17 persuasive, not binding authority, and Plaintiff faces the risk that the *Camp* holding could be
18 reversed, rendering Plaintiff's reliance on *Camp* misplaced. *Id.*

19 **6. Wage Statement and PAGA Penalties**

20 As a result of Defendants' alleged failure to pay all wages, including overtime and
21 minimum wages, and meal and rest period premiums, Plaintiff asserts that Defendants also failed
22 to maintain accurate payroll records, timely pay all wages during employment, and issue accurate
23 and itemized wage statements. Moen Decl., ¶ 25; *see also* Labor Code §§ 204, 226(a), and 1174.
24 As a result of these alleged Labor Code violations, Plaintiff also seeks PAGA civil penalties on
25 behalf of all aggrieved employees. Moen Decl., ¶ 25; *see also Amaral v. Cintas Corp. No. 2*
26 *(2008)* 163 Cal.App.4th 1157, 1213 ("As we have explained, they [civil penalties under PAGA]
27 are mandatory, not discretionary.").

28 ///

1 In response, Defendants argue that Plaintiff’s underlying claims will fail and, as a result,
2 these derivative claims will also fail. Moen Decl., ¶ 26; *see Price v. Starbucks Corp.* (2011) 192
3 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and
4 PAGA claims also fail.”). Defendants also maintain that Plaintiff cannot show that the wage
5 statement violations were “knowing and intentional,” or that the putative class members
6 “suffer[ed] injury” as a result of the alleged violations, as required by Labor Code § 226(e) for
7 the imposition of wage statement penalties. Moen Decl., ¶ 26; *see* Labor Code § 226(e)(1).
8 Moreover, Defendants maintain that this Court would exercise its discretion to substantially
9 reduce any PAGA penalties awarded. Moen Decl., ¶ 26; *see also* Labor Code § 2699(e)(2);
10 *Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th 937; *Thurman v. Bayshore Transit*
11 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30
12 Cal.App.5th 504 (affirming reduction of PAGA penalties).

13 **C. Discovery And Mediation**

14 The Parties engaged in significant informal discovery, and Plaintiff propounded four sets
15 of formal written discovery on Defendants prior to attending mediation. Moen Decl., ¶ 27.
16 Through informal discovery, Defendants provided Plaintiff with timekeeping and payroll records
17 for all putative class members. *Id.* Plaintiff then conducted an in-depth analysis of the produced
18 data and create a class-wide exposure model for the claims at issue. *Id.* On January 24, 2025, the
19 Parties participated in a mediation session with Will Klatte, Esq., an experienced wage and hour
20 mediator, during which the Parties exchanged divergent views on Defendants’ liability and
21 exposure valuations, their legal positions, and the likelihood of certification of Plaintiff’s claims.
22 *Id.* Ultimately, the Parties accepted a mediator’s proposal for a class-wide resolution of all claims.
23 *Id.* Over the following months, the Parties finalized the terms of the proposed Settlement now
24 before the Court for preliminary approval. *Id.*

25 **III. THE PROPOSED SETTLEMENT**

26 **A. Essential Terms Of The Settlement**

27 If the Court preliminarily approves this settlement, Defendants will pay a Maximum
28 Settlement Amount (“MSA”) of \$185,000.00. Settlement, ¶ 3. This Settlement is non-
reversionary, and Settlement Class members will automatically receive their Individual

Settlement Payments unless they affirmatively opt-out. Settlement, ¶¶ 3.C; 4. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$185,000.00
Minus Court-approved attorneys' fees (1/3):	\$61,666.66
Minus Court-approved attorneys' costs (up to):	\$12,000.00
Minus Court-approved Enhancement Payments:	\$5,000.00
Minus settlement administrator costs (up to):	\$2,990.00
Minus PAGA Payment to the LWDA:	\$7,500.00
Net Settlement Amount:	\$95,843.34

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys' fees and costs, Plaintiff's Class Representative Enhancement Payments, settlement administration costs, and the LWDA's share of PAGA penalties, the Settlement provides for an estimated NSA of no less than \$95,843.34. *See* Settlement, ¶ 4.A. Individual Settlement Payments will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period, as well as membership in the wage statement subclass. *Id.*, ¶¶ 4.B.ii-iii. 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, based on the proportionate number of pay periods worked by the PAGA Aggrieved Employees during the PAGA Period. *Id.*, ¶ 4.B.i. For tax purposes, each Individual Settlement Payment will be allocated as 15% wages (subject to applicable withholdings), and 85% interest and penalties (not subject to withholdings). *Id.*, ¶ 4.D. The PAGA Amount payable to the PAGA Aggrieved Employees shall be allocated as 100% penalties. *Id.* This allocation between taxable and non-taxable amounts is appropriate because the unpaid wages portion of Plaintiff's exposure analysis only amounts to approximately 16.2% of the total reasonable exposure Defendants faced due to the derivative penalties that stem from these unpaid wages, as well as a portion of Defendant's maximum reasonable exposure being comprised of non-taxable expense reimbursements. Moen Decl., ¶ 28; *see also* Section IV.A.1.d, *infra*. Further, Defendants will pay the employer's share of payroll taxes separate and apart from, and in addition to, the MSA. Settlement, ¶ 3.E.

Settlement Class members will have 60 calendar days from the date of the initial mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review

1 the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 10.D-E. Settlement
2 Class members to whom Notice Packets are re-mailed shall have an additional forty-five (45)
3 calendar dates from the date of re-mailing or until the Response Deadline has expired, whichever
4 is later, to submit a Request for Exclusion, objection, or dispute. *Id.*, ¶ 10.C. Settlement Class
5 members who do not opt-out of the Settlement will be bound by its terms and will release all
6 claims against Defendants as detailed in the Settlement. *Id.*, ¶¶ 2.A, 10.D. Settlement Class
7 members will have 180 days from the date the Individual Settlement Payments are mailed to cash
8 their checks. *Id.*, ¶ 4.E. In the event that there are any uncashed checks remaining after 180 days,
9 any remaining funds will be transferred to the California State Controller’s Office to be held
10 pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the
11 Settlement Class member to whom the check was issued, until such time that they claim their
12 property. *Id.* This distribution method ensures that no portion of the MSA will be
13 “unpaid...unclaimed or abandoned,” as required for C.C.P. § 384 to apply, and the Court may
14 approve the proposed distribution method without running afoul of C.C.P. § 384.

15 **2. Attorneys’ Fees, Costs, and Plaintiff’s Class Representative**
16 **Enhancement Payments**

17 At the time of seeking final settlement approval, Plaintiff will apply for a Class
18 Representative Enhancement Payment in the amount of \$5,000 for his service to the Settlement
19 Class and general release of all claims. Moen Decl., ¶ 29; *see* Settlement ¶¶ 2.C, 3.C.3, 6.
20 Plaintiff’s requested class representative Enhancement Payment is intended to recognize the
21 significant time and effort that Plaintiff expended on behalf of the Settlement Class, including
22 searching for relevant documents for use in the lawsuit, providing factual information to his
23 attorneys, holding various phone calls with his attorneys to discuss the claims in the lawsuit and
24 Defendants’ policies and practices, assisting his attorneys to help prepare for mediation, making
25 himself available during mediation to assist and answer factual questions posed by the mediator,
26 reviewing and providing input regarding the settlement in this case, and otherwise assisted his
27 attorneys in moving this case towards resolution, the significant risks Plaintiff undertook by
28 serving as the named plaintiff, and the fact that he agreed to a general release of all claims subject
to a waiver of Civil Code § 1542. Moen Decl., ¶ 29; Sandoval Decl., ¶¶ 5-6; Settlement, ¶ 2.C.

1 Class Counsel will also apply for an attorneys' fee award of up to one third of the MSA
2 (currently estimated at \$61,666.66), and up to \$12,000.00 in reimbursement for actual litigation
3 costs. Moen Decl., ¶ 30; *see* Settlement, ¶ 3.C.4. Plaintiff submits that the requested fee is fair
4 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
5 purely contingent fee basis. Moen Decl., ¶ 30. Class Counsel has incurred substantial attorneys'
6 fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research
7 and analysis, engaging in substantial informal discovery, drafting and propounding four sets of
8 formal written discovery, reviewing class documents and data produced by Defendants,
9 extensively reviewing and evaluating the produced timekeeping and payroll records to build a
10 comprehensive damages model, preparing for and attending mediation, negotiating and drafting
11 the Memorandum of Understanding, long-form Settlement Agreement, and Notice Packet
12 documents, preparing this motion for preliminary approval, and otherwise litigating the case. *Id.*
13 Class Counsel will also expend future attorney time attending the hearing on this Motion,
14 overseeing the Notice process, drafting the Final Approval Motion and supporting documents,
15 attending the Final Approval hearing, and completing other tasks, such as fielding questions from
16 Settlement Class members. *Id.*

17 Both California and federal courts have recognized that an appropriate method for
18 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
19 as a result of the settlement. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506;
20 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. Historically, courts have
21 awarded percentage fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6 (4th
22 Ed. 2013). Class Counsel will provide the Court with a lodestar analysis when seeking an award
23 of attorneys' fees during final approval, including information about counsel's hourly rates and
24 the time spent on the case.

25 **IV. ARGUMENT**

26 **A. Preliminary Approval Is Warranted**

27 California Rule of Court 3.769 conditions the settlement of a class action on court
28 approval, which is generally evaluated under the federal standards applicable under Rule 23 of

1 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
2 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine “that the
3 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir.
4 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
5 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
6 preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor*
7 *ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed
8 settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product
9 of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027.
10 There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s
11 length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

12 **1. Standard for Preliminary Approval**

13 The Court should consider the following factors when making a fairness determination:
14 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
15 litigation, the risk of maintaining class action status through trial, the amount offered in
16 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
17 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
18 “[T]he court is free to engage in a balancing and weighing of factors depending on the
19 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the
20 proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

21 **a. The Strength of Plaintiff’s Case**

22 Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member
23 timekeeping and payroll data, reviewed all relevant policy documents, engaged in substantial
24 informal discovery, and created a comprehensive damages model for Defendants’ liability. Moen
25 Decl., ¶ 31. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff
26 acknowledges that there were substantial risks and uncertainty in proceeding with class
27 certification and trial. As explained in detail in Section II.B., *supra*, Defendants presented
28 numerous defenses to Plaintiff’s claims, both on the merits and with respect to class certification.

1 Although he was prepared to litigate these claims through class certification and ultimately
2 through trial, it was far from certain that Plaintiff would be able to recover a greater amount
3 should this matter proceed through trial. Thus, this factor supports preliminary approval.

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

5 Although the Parties engaged in substantial informal discovery and information exchange
6 prior to mediation, the Parties had not yet meaningfully engaged in formal discovery, including
7 significant document exchanges and corporate witness depositions that had not yet taken place at
8 the time the Parties reached the Settlement. Moen Decl., ¶ 32. Absent settlement, the Parties will
9 be required to expend substantial time and resources conducting formal written and deposition
10 discovery. *Id.* Moreover, Plaintiff has not yet filed for class certification, and thus, absent
11 settlement, the Parties would face the prospect of appeals in the wake of a disputed class
12 certification ruling and/or an adverse summary judgment ruling. *Id.* Even if Plaintiff succeeded
13 in certifying one or more classes, the Parties would incur considerably more attorneys' fees and
14 costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement
15 avoids these considerable costs, risks, and the accompanying burden of continued litigation on
16 the Court. Thus, this factor supports preliminary approval.

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

18 At the time of the proposed Settlement, Plaintiff had not filed his motion for class
19 certification. Moen Decl., ¶ 33. Had the Court certified any claims, Plaintiff anticipated that
20 Defendants would seek decertification. *Id.* There was also a risk that Defendants would engage
21 in a *Pick-up-Stix* campaign that could either affect Plaintiff's ability to maintain the numerosity
22 required to proceed as a class action, or significantly reduce the size of the putative class for a
23 fraction of what Settlement Class members are receiving through this Settlement. *Id.*; see
24 *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement,
25 there was a serious risk that Plaintiff would be unable to move forward on a class-wide basis.
26 Moen Decl., ¶ 33. Thus, this factor supports preliminary approval.

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

28 This proposed Settlement provides a fair and reasonable recovery for the Settlement Class
in the face of disputed claims. After analyzing Defendants' produced data, Class Counsel

1 conducted a class-wide exposure analysis, forecasting the total expected recovery as follows:

2 Meal Period Violations: \$103,644

3 Plaintiff's data analysis determined that Settlement Class members worked an aggregate
4 total of 21,852 shifts in excess of 5.0 hours during the Class Period. Moen Decl., ¶ 34. Plaintiff's
5 data analysis determined that approximately half of these shifts contained an unlawful first and/or
6 second meal period, whether late, short or missed. *Id.* Accordingly, Plaintiff calculated
7 Defendants' liability on this claim at \$345,480 (10,926 meal period violations * \$31.62 average
8 premium wage). *Id.*

9 Defendants assert, however, that they maintained lawful meal period policies/practices at
10 all times during the Class Period. Moen Decl., ¶ 35. Defendants further assert that Plaintiff's meal
11 period claim is not suited for class certification as individual inquiries would be required to assess
12 whether each employee was not provided a timely meal period for every meal period taken, which
13 Defendants assert would be a particularly difficult undertaking given that most employees worked
14 on their own during work shifts, and were therefore responsible for initiating their own meal
15 periods, resulting in an unmanageable series of mini-trials. *Id.* Given these defenses, Plaintiff
16 discounted the maximum exposure by 40% for the risk of non-certification, and by an additional
17 50% for risk of losing on the merits, to arrive at a reasonable exposure of \$103,644. *Id.*

18 Rest Period Violations: \$48,883

19 Plaintiff's data analysis determined that non-exempt employees worked an aggregate total
20 of 22,086 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 36. Plaintiff asserts
21 that he and the putative class members were not authorized and permitted a lawful rest period at
22 least two times per workweek due to Defendants' unlawful rest period policy/practices that
23 combined meal and rest periods and required employees to respond to incoming phone calls and
24 text messages during rest periods. *Id.* Accordingly, Plaintiff calculated Defendants' maximum
25 potential exposure on this claim at \$279,331 (8,834 rest period violations * \$31.62 average
26 premium wage). *Id.*

27 However, Defendants argue they have always authorized and permitted rest periods in
28 accordance with California law. Moen Decl., ¶ 37. Defendants also assert that this claim is

unmanageable and not suited for class certification, as it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days, resulting in an unmanageable series of mini-trials. *Id.* Given these defenses, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and by an additional 50% for risk of losing on the merits, to arrive at an estimated exposure of \$48,883. *Id.*

Failure to Reimburse Violations: \$15,226

Plaintiff estimates that he and the putative class members spent approximately \$500 each to purchase tools for work purposes. Moen Decl., ¶ 38. Plaintiff also asserts that he and the putative class were required to use their personal cell phones for work purposes and that \$15 per month represents a reasonable percentage of the employee's cell phone bill. Therefore, Plaintiff calculated Defendants' maximum potential exposure on this claim at \$39,040 ((\$500 in expenses * 41 affected employees) + (1,236 work months * \$15 cell phone bill)). *Id.*

Defendants argue they provided company cell phones to their employees, and they never required employees to purchase their own tools. Moen Decl., ¶ 39. Further, Defendants maintain that this claim is not suited for class certification, as individual issues would predominate to determine which, if any, employees purchased tools or used their personal cell phones rather than using those provided by Defendants, resulting in an unmanageable series of mini-trials. *Id.* Therefore, Plaintiff discounted the maximum potential exposure by 35% for the risk of non-certification and 40% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$15,226. *Id.*

Off-The-Clock Wage Violations: \$35,010

Plaintiff's data analysis determined that Settlement Class members worked an aggregate total of 4,945 workweeks during the relevant time period in which Defendants required compensable travel time and/or off-the-clock communication with supervisors. Moen Decl., ¶ 40. Plaintiff estimates that Settlement Class members were required to spend approximately one hour per workweek traveling or otherwise communicating with supervisors while off-the-clock. *Id.* Accordingly, Plaintiff calculated Defendants' maximum potential exposure for this claim at

1 approximately \$72,938 (1 hour per workweek * 4,945 aggregate workweeks * \$14.75 average
2 minimum wage). *Id.*

3 Defendants, however, maintain that they properly compensated Settlement Class members
4 for all time worked, and assert that any time spent on traveling was non-compensable. Moen
5 Decl., ¶ 41. Defendants also assert this claim is unmanageable, as it requires individualized
6 inquiries into whether any employee was required to travel or communicate with supervisors
7 while off-the-clock, and exactly how much time each employee purportedly spent while off-the-
8 clock on any given day. *Id.* Plaintiff therefore discounted the maximum exposure by 40% for the
9 risk of non-certification, and by an additional 20% for risk of losing on the merits and
10 overexposure in Plaintiff's data analysis, to arrive at a reasonable exposure of \$35,010. *Id.*

11 Unlawful Time Rounding Violations: \$2,404

12 Plaintiff's analysis of Defendants' timekeeping and payroll data revealed that Defendants'
13 rounding practice resulted in the Settlement Class members being underpaid in 2,131 workweeks
14 during the putative class period, for an average of approximately 9 minutes per workweek. Moen
15 Decl., ¶ 42. Therefore, Plaintiff calculated Defendants' maximum potential exposure on this claim
16 at \$4,714 (9 unpaid minutes * 2,131 workweeks * \$14.75 average minimum wage). *Id.*

17 Defendants argue that their timekeeping practice was neutral, both on its face and in
18 practice, and that such a policy is lawful under *See*'s *Candy*. Moen Decl., ¶ 43. Moreover, because
19 *Camp v. Home Depot* has been granted review by the California Supreme Court, there is tangible
20 risk that *Camp* will be overturned, rendering Plaintiff's damages analysis substantially overstated.
21 *Id.* Plaintiff therefore discounted the maximum potential exposure by 15% for the risk of non-
22 certification and 40% for the risk of being unsuccessful on the merits, to arrive at an estimated
23 exposure of \$2,404. *Id.*

24 Wage Statement Penalties: \$14,825

25 According to Plaintiff's data analysis, 36 Settlement Class members are eligible for wage
26 statement penalties, and a total of 1,815 wage statements were issued during the relevant period.
27 Moen Decl., ¶ 44. Accordingly, Plaintiff calculated Defendants' maximum potential exposure for
28 this claim at approximately \$179,700 (36 initial wage statements * \$50 initial violation penalty)

+ (1,779 subsequent wage statements * \$100 subsequent penalty)). *Id.* However, Defendants raised numerous defenses, including that the alleged violations, if any, were not “knowing and intentional,” and that Plaintiff could not show that the Settlement Class members “suffer[ed] injury” as a result of any alleged violations. *Id.* Defendants further argued that Plaintiff’s underlying claims would fail, and, therefore, their derivative wage statement claim would also fail. *Id.* Therefore, Plaintiff discounted the maximum exposure by 45% 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 Settlement Class members “suffer[ed] injury,” or that the Court would find that Defendants had a reasonable, good faith belief that of compliance with wage and hour laws precluding the imposition of wage statement penalties, for an estimated reasonable recovery of \$14,825. *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).

PAGA Penalties: \$10,890

Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in which they could prove an underlying Labor Code violation. Moen Decl., ¶ 45. According to Plaintiff’s data analysis, the Settlement Class members worked a combined total of 1,815 pay periods during the PAGA liability period in which at least one of Plaintiff’s alleged Labor Code violations occurred. *Id.* Plaintiff therefore calculate Defendants’ maximum PAGA exposure at \$181,500 (1,815 pay periods * \$100 per violation). *Id.*; *see also Amaral, supra*, 163 Cal.App.4th at 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties are exclusively derivative of the underlying violations that Defendants vigorously dispute, both as to certification and the merits. Moen Decl., ¶ 45; *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D. Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to substantially reduce any award of PAGA penalties. Moen Decl., ¶ 45; *see also Labor Code § 2699(e)(2); Taduran v. James R. Glidewell,*

Case No. 30-2017-00934037-CU-OE-CXC, Orange County Superior Court, Honorable William Claster presiding (reducing PAGA penalties by 96.12%). Therefore, Plaintiff discounted the maximum figure by 40% for the risk of losing on the merits of all underlying claims and by 90% for the likely possibility that this Court would reduce the PAGA penalties awarded, to arrive at an estimated exposure of \$10,890. Moen Decl., ¶ 45.

Using these estimated figures, Plaintiff estimated that the potential reasonable recovery for the Settlement Class would be approximately \$230,882. Moen Decl., ¶ 46. Thus, the proposed recovery to the Settlement Class of \$185,000 represents approximately 80.13% of Plaintiff's reasonably forecasted class-wide recovery, which is well within the range approved by courts as being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding towards class certification and trial. *Id.*; see, e.g., *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval..."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotations omitted). Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to the Settlement Class without the uncertainty, delay, and additional expense of further litigation.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (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 side, and who have been appointed as class counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-14; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9;

1 Declaration of Ian T. Mallery (“Mallery Decl.”), ¶¶ 2-6. Class Counsel conducted an extensive
2 review and analysis of Defendants’ produced timekeeping and payroll records and drew on their
3 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case.
4 Moen Decl., ¶¶ 27, 30, 34-45. It was only after the completion of this work that the Parties
5 attended mediation and ultimately accepted the mediator’s proposal for a class-wide settlement
6 of all claims at issue. *Id.* Thus, this factor supports preliminary approval.

7 **2. The Preliminary Approval Standard is Met**

8 At this stage, the Court can grant preliminary approval of the Settlement and direct that
9 the Class Notice be given if the proposed Settlement: (1) falls within the range of possible
10 approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and
11 (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3rd Ed. 1995); 4
12 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

13 **a. The Settlement is Within the Range of Possible Approval**

14 The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class
15 members in light of the significant risks of litigation. The proposed Settlement will provide
16 compensation for contested claims, while only releasing the claims actually at issue in this
17 litigation. Further, the average payment of \$2,337.64 greatly exceeds the average payments
18 achieved in other wage and hour class action settlements that have been approved.² Thus, the
19 proposed Settlement is within the range of possible approval such that notice should be provided
20 to the Settlement Class members to consider the Settlement. The Court will have the opportunity
21 to again assess the reasonableness of the Settlement after the Settlement Class members have had
22 the opportunity to opt-out or object.

23 ///

24 ///

25
26 ² *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9,
27 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case
28 No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and
Schiller v. David’s Bridal, Inc., Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal.
June 11, 2012) (“Class Members will receive an average of approximately 198.70. . . [T]he Court finds
that the results achieved are good”).

1 **b. The Settlement Resulted from Serious, Informed and Non-Collusive**
2 **Negotiations**

3 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
4 of the exchange of pertinent information, including all relevant policies, employee timekeeping
5 and payroll records which were analyzed by Plaintiffs and their counsel; arm's-length
6 negotiations by counsel; mediation before an experienced wage and hour class action mediator
7 who made a mediator's proposal that the Parties' ultimately accepted; and additional negotiations
8 until the terms of the long-form Settlement were agreed upon and finalized. Moen Decl., ¶ 27;
9 *see also Kullar, supra*, 168 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

10 **c. The Settlement is Devoid of Obvious Deficiencies**

11 The Settlement will provide tangible monetary relief to the Settlement Class members.
12 Moreover, the amounts proposed for Plaintiff's class representative Enhancement Payment,
13 settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's
14 portion of PAGA civil penalties are all reasonable and appropriate. Because the Settlement is
15 devoid of obvious deficiencies, this final factor supports preliminary approval.

16 **B. The Court Should Certify the Settlement Class for Settlement Purposes**

17 The proposed Settlement Class satisfies the criteria for certification of a settlement class
18 under California law because: (1) the individuals in the Settlement Class are so numerous that
19 joinder would be impractical; (2) common questions of law and fact predominate over individual
20 questions such that class certification is the most efficient and desirable way to maintain this
21 litigation; (3) Plaintiff's claims are typical of the claims of the absent Settlement Class members;
22 and (4) Plaintiff and Plaintiff's counsel will fairly and adequately represent the interests of the
23 absent Settlement Class members. *See* Cal. Code 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
26 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
27 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
28 Class is defined as all current and former non-exempt employees who worked for Defendants in
California at any time during the Class Period. *See* Settlement, ¶ 1. Settlement Class members

1 can be easily identified using Defendants’ employment and payroll records. Moen Decl., ¶ 12.
2 Defendants represent that the Settlement Class consists of approximately 41 individuals,
3 rendering it impracticable to bring all Settlement Class members before the Court. *Id.*; Settlement,
4 ¶ 3.F. Thus, the proposed Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7
5 Cal.3d 232, 234.

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

7 The focus in a certification dispute is not on the merits of the case, but rather on what
8 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*
9 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff’s claims are predicated
10 on Defendants’ alleged failures to pay all minimum and overtime wages owed, pay all meal and
11 rest period premiums, reimburse all necessary business expenses, and furnish accurate and
12 itemized wage statements. These types of claims are commonly held to be proper for class
13 certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34 (“The theory of liability—that
14 Brinker has a uniform policy, and that that policy...allegedly violates the law—is by its nature a
15 common question eminently suited for class treatment.”).

16 **3. The Claims of the Named Plaintiff are Typical**

17 The typicality requirement is satisfied where class representatives have claims that are
18 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
19 Cal.App.3d 1341, 1347. Here, like other Settlement Class members, Plaintiff was employed by
20 Defendants as a non-exempt employee in California and was subject to Defendants’ allegedly
21 unlawful wage and hour policies/practices during the Class Period. Sandoval Decl., ¶¶ 2-4.
22 Plaintiff was therefore impacted by the same challenged policies that allegedly injured the
23 Settlement Class as a whole and was subject to the same defenses forwarded by Defendants as to
24 the Settlement Class, and is therefore typical.

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

26 The adequacy of representation requirement examines conflicts of interest between named
27 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
28 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will
adequately represent the Settlement Class members as there are no conflicts between the named

1 Plaintiff and the Settlement Class members he seeks to represent, and Plaintiff possesses claims
2 that are in line with those of the Settlement Class members. *See McGhee v. Bank of America*
3 (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the
4 plaintiff's counsel were not qualified and the plaintiff had no interests antagonistic to those of the
5 class). Class Counsel also has extensive experience in wage and hour class action litigation. *See*
6 *Moen Decl.*, ¶¶ 2-7; *Haines Decl.*, ¶¶ 2-14; *Schmidt Decl.*, ¶¶ 2-9; *Mallery Decl.*, ¶¶ 2-6.

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

8 This Court should order distribution of the proposed Class Notice in English only³ to the
9 Settlement Class members by first class mail, postage prepaid, using the last known mailing
10 address information provided by Defendants. This manner of giving notice is the “best notice
11 practicable” under the circumstances because it provides “individual notice to all members who
12 can be identified through reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S.
13 156, 173. The Parties propose that the settlement be administered by Apex Class Action
14 Administration (“Apex”), an experienced class action settlement administrator. *See* Declaration
15 of Sean Hartranft. Settlement Class members’ addresses will be ascertainable through
16 Defendants’ personnel records, and Defendants will provide all Settlement Class members’
17 names, last known addresses, phone numbers, social security numbers, and workweek data to
18 Apex within fourteen (14) business days after of the Court signs an order preliminarily approving
19 the Settlement. *See* Settlement, ¶ 10.A. Apex will run the Settlement Class members’ addresses
20 through the National Change of Address database and/or conduct skip traces to obtain current
21 address information. *Id.*, ¶ 10.B-C.

22 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
23 because it advises the Settlement Class members’ of the nature of the claims, basic contentions
24 and denials of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out
25 or object to the Settlement and the procedures by which to do so, explains the recovery formula
26 and expected recovery amount for each Settlement Class members, and advises them that they

27 _____
28 ³ Based on the demographics of the Settlement Class members, Defendants confirmed that no
language translations are necessary. *See* Settlement, ¶ 7.

1 will be bound by the terms of the Settlement if they do not request exclusion. *See* Moen Decl.,
2 Exhibit B. The proposed Class Notice will also notify the Settlement Class of the Final Approval
3 Hearing date, provide Class Counsel's contact information, provide the URL to a website
4 maintained by the settlement administrator to which the most important documents in the case
5 will be posted (including the operative FAC, the Settlement Agreement, Notice Packet,
6 Preliminary Approval Motion and Order, and the Court's Judgment and Final Approval Order,
7 among others, *see* Settlement ¶ 7), and advise Settlement Class members that they may enter an
8 appearance through counsel if they so wish. *Id.* This manner of giving notice satisfies California
9 Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class
10 members. Additionally, because the proposed Settlement includes settlement of Plaintiff's
11 representative PAGA claim, notice of the Settlement has been submitted to the LWDA. *See id.*, ¶
12 11, Exhibit D (LWDA Settlement Submission); Proof of Service.

13 **D. The Court Should Set A Final Approval Hearing**

14 Finally, this Court should set a hearing for final approval of the Settlement on a date
15 appropriately scheduled to follow the deadline by which Settlement Class members must file
16 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

17 **V. CONCLUSION**

18 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
19 approve the proposed Settlement, provisionally certify the Settlement Class for settlement
20 purposes, and enter the [Proposed] Order submitted concurrently herewith.

21
22 Dated: June 5, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

23
24 By: 
25 Matthew K. Moen
26 Attorneys for Plaintiff
27
28