**HAINES LAW GROUP, APC**
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@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 LOS ANGELES**

HECTOR HERNANDEZ AVILA, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

MOSS MANAGEMENT SERVICES, INC., a California corporation; and DOES 1 through 100,

Defendants.

Case No. 24STCV15560

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

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

Date: March 17, 2027
Time: 2:00 p.m.
Dept.: SSC-10

Action Filed: June 21, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on March 17, 2027, at 2:00 p.m. in Department SSC-10 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Hector Hernandez Avila ("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 class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

   > All current and former non-exempt employees of Defendant Moss Management Services, Inc. in the State of California who worked between June 21, 2020 and March 2, 2026 (the "Class Period").

3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely 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 permit Class Representative Enhancement Payment to Plaintiff, civil penalties payable to the Labor & Workforce Development Agency ("LWDA"), settlement administration costs, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and Notice of Estimated Individual Settlement Payment (collectively, the "Notice Packet"), and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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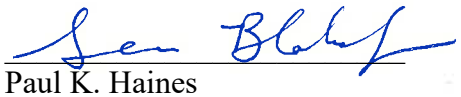
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This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the declarations of Paul K. Haines, Sean M. Blakely, Plaintiff Hector Hernandez Avila, and Jodey Lawrence of Phoenix Settlement Administrators, and the 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.

Respectfully submitted,

Dated: November 4, 2026

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiff Hector Hernandez Avila (hereinafter "Plaintiff") brought this class and representative action for various wage and hour violations on behalf of current and former non-exempt employees of Defendant Moss Management Services, Inc. ("Moss Management") in the State of California who worked between June 21, 2020 and March 2, 2026 (the "Class Period"). Plaintiff filed this wage and hour class and representative action alleging that Moss Management failed to pay all required minimum and overtime wages, failed to provide compliant meal and rest periods, and failed to reimburse employees for necessary business expenditures. As a result of these violations, Plaintiff alleges Moss Management issued inaccurate wage statements and is liable for civil penalties under the Private Attorneys' General Act ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement,[1] in which Moss Management has agreed to pay Four Hundred Eighty-Five Thousand Dollars and Zero Cents ($485,000.00) to the following Settlement Class:

> All current and former non-exempt employees of Defendant Moss Management Services, Inc. in the State of California who worked between June 21, 2020 and March 2, 2026 (the "Class Period").

If the Settlement is approved, Moss Management will pay a non-reversionary Maximum Settlement Amount of $485,000.00. After deducting administration costs, Plaintiff's requested Class Representative Enhancement Payment, the amount designated as PAGA civil penalties, and requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately $233,333.33 will be distributed to all Settlement Class members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period.

[1] The Stipulation of Settlement ("Settlement") is attached to the Declaration of Sean M. Blakely as **Exhibit 1**. The proposed Class Notice and Notice of Estimated Individual Settlement Payment are attached to the Settlement as **Exhibits A** and **B,** respectively, to the Settlement. All defined terms in this motion have the same definition as that in the Settlement.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 475 Settlement Class members, and the average Individual Settlement Payment to participating Settlement Class members is projected to be approximately **$491.23**.

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

## II. SUMMARY OF THE LITIGATION

### A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Moss Management was founded in 1960 and operates as a property management company maintaining residential and commercial properties in Southern California. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Plaintiff was hired by Moss Management as a non-exempt employee in the position of "Maintenance Technician" in approximately July 2019. *See* Declaration of Plaintiff Hector Hernandez Avila In Support of Approval of Class Action Settlement ("Avila Decl."), ¶ 2.

On June 21, 2024, Plaintiff filed a Class Action Complaint in Los Angeles County Superior Court, alleging causes of actions for: (1) failure to provide meal periods; (2) failure to authorize and permit rest period; (3) failure to provide accurate, itemized wage statements; (4) failure to reimburse employees for necessary business expenditures; and (5) unfair competition in violation of California Business & Professions Code § 17200 *et seq*. Blakely Decl., ¶ 9. On that same day, Plaintiff sent his PAGA notice letter to Moss Management and the Labor & Workforce Development Agency ("LWDA"). *Id*., ¶ 9, Exhibit 2 (LWDA Letter). On August 26, 2024, Plaintiff filed the First Amended Class and Representative Action Complaint ("FAC"), adding a cause of action for civil penalties under the Private Attorneys General Act ("PAGA"). *Id*, ¶ 9. On July 21, 2026, as part of the Settlement, Plaintiff filed the operative Second Amended

Class and Representative Action Complaint ("SAC"), adding causes of action for failure to pay minimum and overtime wages. *Id*, ¶ 9.

### B. PLAINTIFF'S CLAIMS AND MOSS MANAGEMENT'S DEFENSES

#### 1. Arbitration Agreements

Moss Management asserts that nearly all Settlement Class members, including Plaintiff, signed valid and enforceable arbitration agreements with class action waivers. Blakely Decl., ¶ 14. Setting aside any arguments as to the merits of Plaintiff's claims, Moss Management contends that absent settlement, a classwide recovery was not possible and that only PAGA civil penalties could potentially be recovered on behalf of a subset of the Settlement Class members. *Id*. As such, Moss Management contends that absent its agreement to not raise the arbitration agreements as an affirmative defense, any recovery to the Settlement Class members would be limited to only the employees' potential 25% share of PAGA civil penalties. *Id.*

#### 2. Unpaid Wages Claims

Plaintiff alleges that Moss Management's timekeeping policies/practices failed to compensate Settlement Class members for all hours worked. Blakely Decl., ¶ 15. Specifically, Plaintiff alleges that employees routinely performed work-related tasks off-the-clock work before clocking in to their shifts and/or after punching out of their shifts, resulting in unpaid wages to Settlement Class members. *Id*.

Moss Management argues that it has paid employees for all hours worked throughout the Class Period, prohibits off-the-clock work, and maintains policies requiring employees to accurately record all time worked. Blakely Decl., ¶ 15. Moss Management further argues that these claims would not be suitable for class treatment because they would require individualized inquiries into whether any employee performed work that was not recorded, the nature and amount of any such work, whether the work was known to or authorized by Moss Management, and whether the employee accurately reported all hours worked, thereby precluding class certification of this claim. *Id*.

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**3. Meal Period Claims**

Plaintiff alleges that Moss Management failed to provide legally compliant first meal periods such that first meal periods were regularly late (commencing after the fifth hour of work) and/or short (less than 30 minutes). Blakely Decl., ¶ 16. In addition, Plaintiff claims that Moss Management had a meal period practice requiring Plaintiff and other non-exempt employees to carry a company-provided phone on their person throughout their shift. *Id*. As a result, Plaintiff and other non-exempt employees' meal periods were interrupted and/or shortened because they were expected to respond to emergent work-related issues while on their duty-free meal period. *Id*.

Moss Management counters that it maintained compliant written meal period policies throughout the Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 16. Moss Management further contends that it always provided employees the opportunity to take meal periods and is not required to *ensure* they are taken. *Id*.; *see Brinker Restaurant Corporation v. Superior Court*, 53 Cal.4th 1004, 1034 (2012) (rejecting "ensure" standard). Thus, Moss Management argues, any non-compliant meal periods were the result of lawful employee choice or waiver, rather than any policy and/or practice of Moss Management. Blakely Decl., ¶ 16. Finally, Moss Management maintains Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be needed to assess which employees, if any, took non-compliant or missed meal periods, how many meal periods were non-compliant or missed, the reasons why a particular employee did not take a meal period on a particular shift, and whether they waived the meal period. *Id*.

**4. Rest Period Claims**

Plaintiff alleges that Moss Management failed to authorize and permit all legally compliant off-duty rest periods. Blakely Decl., ¶ 17. Plaintiff contends that he and other non-exempt employees were often interrupted during their rest periods and required to work through their off-duty rest periods due to understaffing and work demands. *Id.* As with meal periods, Plaintiff contends that Moss Management had a practice requiring Plaintiff and other non-exempt employees to carry a company-provided phone on their person throughout their shift. *Id*. As a

result, Plaintiff and other non-exempt employees were not authorized and permitted to take a duty-free rest period. *Id*.

Moss Management contends that it has maintained and enforced compliant written rest period policies/practices and has always authorized and permitted employees a 10-minute rest period for each 4 hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was a result of employee choice rather than any Moss Management policy and/or practice. Blakely Decl., ¶ 17. Moss Management further argues that Plaintiff's rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id*. These manageability concerns are especially present with respect to rest period claims, Moss Management argues, given that rest periods are not, and need not, be recorded. *Id*.

**5. Unreimbursed Business Expenses**

Plaintiff alleges that Moss Management failed to reimburse him and other Settlement Class members for all reasonable and necessary work expenditures, including personal cellular phone expenses. Blakely Decl., ¶ 18. Specifically, Plaintiff alleges that Moss Management required Plaintiff and other non-exempt use their personal cell phones in order to communicate with colleagues and respond to emergent work issues, however, Moss Management failed to reimburse Plaintiff and other non-exempt employees for the costs associated with their cellular phones. *Id*.

In response, Moss Management maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 18. Moss Management further argues that any expenses incurred by Settlement Class members were extremely minimal, given the wide availability of low-cost cellular phone plans. *Id*. Moss Management further contends that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id*.; *see also*, *e.g., Gattuso v.*

*Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices").

**6. Claims Under Labor Code § 226 and the PAGA**

As a result of these alleged wage and hour violations, Plaintiff asserts that Moss Management failed to comply with its wage statement obligations, in violation of Labor Code § 226. Blakely Decl., ¶ 19. In addition, Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. *Id*., at ¶ 20.

Moss Management contends that any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses, that Plaintiff cannot show he or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e) for the imposition of penalties, and that the wage statements always accurately reflected amounts *paid* to employees. Blakely Decl., ¶ 19; *see also*, *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1337 (2018) ("The purpose of section 226 is to 'document the paid wages to ensure the employee is fully informed regarding the calculation of those wages'").

Finally, Moss Management contends that since Plaintiff's PAGA claim is derivative of his underlying wage claims, Plaintiff's PAGA claim would fail with those claims. Blakely Decl., ¶ 20; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail"). Moss Management further maintains that given its good-faith defenses, the Court would substantially reduce any PAGA penalties awarded. Blakely Decl., ¶ 20; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the

law).

### C. DISCOVERY AND MEDIATION

In connection with mediation, the Parties engaged in extensive informal discovery. Blakely Decl., ¶ 10. Moss Management produced a sampling of timekeeping and payroll records for the putative class, as well as its relevant Employee Handbook utilized during the putative class period, and relevant data points such as the number of putative class members, the number of aggregate workweeks during the Class Period, and the total number of pay periods worked during the PAGA Period. *Id*. Plaintiff's counsel conducted a comprehensive analysis and extrapolation of the data produced by Moss Management to calculate Moss Management's potential exposure for each of Plaintiff's claims at issue. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Moss Management's potential defenses. *Id*.

On May 19, 2025, the Parties participated in a full-day mediation with Michael Ludwig, Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*. At the conclusion of the mediation, the Parties were unable to come to a resolution. *Id*. Following mediation, the Parties continued engaging in settlement negotiations through Mr. Ludwig leading to a mediator's proposal for a class-wide settlement that was ultimately accepted by both sides. *Id*. During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. *Id*.

## III. THE PROPOSED SETTLEMENT

### A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Moss Management will pay a Maximum Settlement Amount of $485,000.00. *See* Settlement, § 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Payment. *Id*., at §§ 3-4. Each Settlement Class member who does not request exclusion will automatically receive an Individual Settlement Payment. *Id*. The monetary

terms of the Settlement are summarized below:

| | |
|---|---|
| • Maximum Settlement Amount: | $485,000.00 |
| • Minus Court-approved attorneys' fees: | $161,666.67 |
| • Minus Court-approved verified costs (up to): | $30,000.00 |
| • Minus Court-approved Enhancement Payment: | $10,000.00 |
| • Minus amount set aside as PAGA penalties: | $40,000.00 |
| • Minus estimated Settlement Administration costs: | $10,000.00 |
| Net Settlement Amount ("NSA"): | $233,333.33 |
| • PLUS 25% "PAGA Amount" to PAGA Employees: | $10,000.00 |
| **Total Amount Paid to Settlement Class members:** | **$243,333.33** |

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

After deducting amounts for the Court-approved attorneys' fees and costs, the Class Representative Enhancement Payment to Plaintiff, the amount designated as PAGA civil penalties, and Settlement Administrator's fees and expenses, the Settlement requires Moss Management to pay a Net Settlement Amount ("NSA") of at least $233,333.33 to all Settlement Class members who do not timely opt out. *See* Settlement, § 4(A). The Net Settlement Amount shall be allocated to participating Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate share of the Net Settlement Amount based upon the number of workweeks worked as a non-exempt employee during the Class Period. *Id*., at § 4(B)(i). In addition to the NSA, Ten Thousand Dollars and Zero Cents ($10,000.00) of the Maximum Settlement Amount has been designated as the "PAGA Amount" and each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked between June 21, 2023 and March 2, 2026 (the "PAGA Period"). *Id*., at §§ 2(B), 4(C).

Based on information from Moss Management, Plaintiff understands that there are approximately 475 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Payment is projected to be approximately $491.23. *Id*. There are approximately 374 PAGA Employees who worked during the PAGA Period. *Id*. Therefore, the average PAGA Payment is estimated to be approximately $25.74. *Id*.

Settlement Class members who wish to opt out of the Settlement must complete and mail, e-mail, or fax a Request for Exclusion to the Settlement Administrator within sixty (60) calendar

days of the date of the initial mailing of the Notice Packets (the "Response Deadline"). *See* Settlement, § 9(D). Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Moss Management included within the Settlement. Settlement, § 2(A).

**2. Attorneys' Fees and Costs, Enhancement Payment, and PAGA Payment**

Plaintiff will apply for a Class Representative Enhancement Payment at the time of seeking final approval of the proposed class action settlement in the amount of $10,000, for his service to the Settlement Class. *See* Settlement, §§ 3(D)(3), 6; *see also* Blakely Decl., ¶ 24. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases,* 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff's requested Enhancement Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, actively participating in the prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in this case and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of California Civil Code section 1542. *See generally*, Avila Decl; *see also* Blakely Decl., ¶ 24.

Class Counsel will also apply for an attorneys' fees award of one-third of the Maximum Settlement Amount, which is currently estimated to be $161,666.67, and up to $30,000.00 in verified costs reimbursement. *See* Settlement, §§ 3(D)(4), 5; Blakely Decl., ¶ 23. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 23. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, conducting extensive informal discovery, analyzing Settlement Class members' timekeeping and payroll records and other data and documents, creating a

comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id*. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing. *Id*.

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

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

Additionally, the Parties have agreed to designate $40,000.00 of the Maximum Settlement Amount as PAGA civil penalties, of which $30,000.00 (75%) will be paid to the LWDA, with the remaining $10,000.00 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(D)(5). Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

## IV. ARGUMENT

### A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions 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*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (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 Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. See e.g., *Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

#### 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.,* 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

##### a. The Strength of Plaintiff's Case

Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As

described above in section II.B., *supra*, Moss Management presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

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

Although the Parties engaged in informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not settled. Blakely Decl., ¶ 22. This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Id*. Even if Plaintiff was to certify the classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

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

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Moss Management with individual class members by way of *Pick-up-Stix* type settlement agreements[2]), and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

[2] In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

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

The Settlement provides a positive recovery for the Settlement Class in the face of hotly disputed claims. Plaintiff conducted an analysis of Moss Management's potential meal and rest period premium payments owing, unpaid wages due to its unlawful timekeeping policies/practices, wage statement penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

Unpaid Off-The-Clock Wages: $58,802

Plaintiff contends that he and other non-exempt employees worked approximately 30 minutes off-the-clock every workweek and were not compensated for this time. Blakely Decl., ¶ 15. Because Plaintiff and other non-exempt employees frequently worked at least eight hours per shift, Plaintiff calculates the following exposure analysis using the average overtime rate of pay for Settlement Class members during the Class Period at approximately $32.83. *Id*. Accordingly, Plaintiff estimates Moss Management's maximum exposure for unpaid wages at approximately $980,041 (59,704 workweeks * 30 minutes per workweek * $32.83 average overtime rate of pay). *Id.*

Moss Management contends that it pays employees for all hours worked, prohibits off-the-clock work, and maintains policies requiring employees to accurately record all time worked. Blakely Decl., ¶ 15. Moss Management further argues that these claims would not be suitable for class treatment because they would require individualized inquiries into whether any employee performed work off-the-clock, the nature and amount of any such work, whether the work was known to or authorized by Moss Management, and whether the employee accurately reported all hours worked. *Id*. Based on these defenses, Plaintiff discounted the maximum amount by 80% for risk of non-certification and inability to proceed on a class-wide basis due to the arbitration agreements, and an additional 70% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $58,802. *Id.*

Meal Period Violations: $204,206

Plaintiff estimates there were approximately 74,630 shifts with a meal period violation. Blakely Decl., ¶ 16. Plaintiff further calculates that the average hourly rate of pay for Settlement

Class members during the Class Period at approximately $21.89. *Id.* Accordingly, Plaintiff estimates Moss Management's maximum exposure for meal period violations at approximately $1,633,651 (74,630 non-compliant meal periods * $21.89 average premium). *Id.*

However, as noted above, Moss Management argues that it maintained compliant written meal period policies throughout the Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 16. Moss Management further contends that under *Brinker* it always provided employees the opportunity to take meal periods and is not required to ensure they are taken. *Id.*; *see Brinker, supra*, 53 Cal.4th at 1034 (rejecting "ensure" standard). Finally, Moss Management maintains Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be needed to assess which employees, if any, took non-compliant or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a meal period on a particular shift. Blakely Decl., ¶ 16. Based on these defenses, Plaintiff discounted the maximum amount by 75% for risk of non-certification and inability to proceed on a class-wide basis due to the arbitration agreements, and an additional 50% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $204,206. *Id.*

Rest Period Violations: $163,365

Based on Plaintiff's analysis of Moss Management's timekeeping records, Plaintiff estimates there were approximately 298,520 shifts in excess of 3.5 hours during the Class Period. Blakely Decl., ¶ 17. Plaintiff estimates that employees were not authorized and permitted to take all legally compliant rest periods on approximately half of all shifts. *Id*. Accordingly, Plaintiff calculates Moss Management's maximum potential exposure for rest period violations at approximately $3,267,301 (149,260 rest period violations * $21.89 average rest period premium). *Id*.

However, Moss Management contends that Plaintiff and Settlement Class members were authorized and permitted the opportunity for rest periods and that it maintained compliant rest period policies/practices throughout the Class Period. Blakely Decl., ¶ 17. Moss Management further argues that Plaintiff's rest period claim is not amenable to class treatment, since individual

inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id*. These manageability concerns are especially present with respect to rest period claims, Moss Management argues, given that rest periods are not recorded. *Id*. Given these defenses, Plaintiff discounted this maximum amount by 75% for risk of non-certification and inability to proceed on a class-wide basis due to the arbitration agreements and an additional 80% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $163,365. *Id*.

Unreimbursed Business Expenses: $16,792

Plaintiff alleges that Moss Management failed to reimburse him and other putative class members for all reasonable and necessary work expenditures, including personal cellular phone expenses. Blakely Decl., ¶ 18. Assuming that employees are owed approximately $5.00 per bi-weekly pay period for cellular phone usage, Plaintiff estimates Moss Management's maximum liability for its failure to reimburse employees for usage of their personal cellular phones at approximately $149,260 (29,852 bi-weekly pay periods * $5.00 per pay period). *Id*.

As noted above, Moss Management maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 18. Moss Management further argues that any cellular phone expenses incurred by Settlement Class members were minimal, given the wide availability of low-cost cellular phone plans. *Id*. Moss Management further argues that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id*. Based on these defenses, Plaintiff discounted the estimated maximum amount by 75% for risk of non-certification and inability to proceed on a class-wide basis due to the arbitration agreements, and by an additional 55% to account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately $16,792. *Id*.

Wage Statement Penalties: $63,960

Plaintiff's analysis reflected that there were approximately 374 putative class members and approximately 12,979 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. Blakely Decl., ¶ 19. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. *See* Labor Code § 226(e). Accordingly, Plaintiff calculated Moss Management's potential wage statement exposure at approximately $1,279,200 ([374 "initial" violations * $50] + [12,605 "subsequent" violations * $100]). *Id*.; *see also* Labor Code § 226(e).

In light of Moss Management's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 75% for risk of non-certification and inability to proceed on a class-wide basis due to the arbitration agreements, and by an additional 80% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately $63,960. Blakely Decl., ¶ 19.

PAGA Penalties: $48,671

Plaintiff estimated a maximum total PAGA exposure at approximately $1,297,900 (12,979 pay periods * $100 "initial" penalty). Blakely Decl., ¶ 20; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Moss Management vigorously disputes. Blakely Decl., ¶ 20; *see e.g.*, *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Moss Management also asserts the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 20; *see also Thurman v. Bayshore Transit Mgmt., Inc*., 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff

discounted the maximum figure by 75% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $48,671. Blakely Decl., ¶ 20.

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential recovery for the Settlement Class would be approximately $555,796. Blakely Decl., ¶ 21. The proposed Settlement of $485,000 therefore represents approximately 87.3% of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiff's counsel believes could have been recovered had the case proceeded through trial.

**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* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. Class Counsel conducted an in-depth review of Moss Management's timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely Decl., ¶ 10. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. This factor strongly supports preliminary approval of the Settlement. *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 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 approximately 87.3% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Further, the average Individual Settlement Payment of approximately **$491.23** exceeds average payments achieved in other wage and hour class action settlements.[3] Thus, Plaintiff submits that the proposed settlement is within the range

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

of possible approval, such that notice should be provided to the Settlement Class members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

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

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue and reviewed extensive timekeeping and payroll data and conducted a detailed statistical analysis of the data to arrive at his estimated classwide damages figures. *See* Blakely Decl., ¶¶ 15-21. Thus, this factor supports preliminary approval.

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

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

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

The Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is 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 absent Settlement Class members; and (4) Plaintiff and his counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

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

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees of Moss Management in the State of California who worked during the Class Period. *See* Settlement, § 1. Therefore, Settlement Class members can be identified from Moss Management's personnel and employment records. Based on information provided by Moss Management, Plaintiff understands that the Settlement Class consists of approximately 475 current and former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the Court, or for each Settlement Class member to bring an individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

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

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

**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.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the Settlement Class members. First, Moss Management employed Plaintiff as a non-exempt employee in the State of California during the Class Period, and Plaintiff was subject

to Moss Management's wage and hour policies at issue in this case. *See* Avila Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he was deprived of all wages and contends that he was deprived of all legally–compliant meal and rest periods. *Id*., at ¶ 3. Plaintiff also contends that he did not receive accurate and compliant wage statements. *Id*. Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

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

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class, and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 3-8.

**C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

This Court should order distribution to the Settlement Class of the proposed Notice Packet, in English and Spanish, by U.S. Mail, postage prepaid, using last known mailing address information provided by Moss Management. *See* Settlement, ¶ 9. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by Phoenix Settlement Administrators ("Phoenix"), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence ("Lawrence Decl.") and attached exhibits. Settlement Class members' addresses will be ascertainable through Moss Management's

personnel and payroll records, which Moss Management will provide to Phoenix within seven (7) business days after entry of order preliminarily approving the Settlement. *See* Settlement, ¶ 9(A). Within ten (10) business days from receipt of this information, the Settlement Administrator will run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members and mail a Notice Packet to each Settlement Class member at his or her last known address. *Id*., at ¶ 9(B). To the extent that any notices are returned, Phoenix will perform a "skip trace" to track any Settlement Class member's current mailing address. *Id*., at ¶ 9(C).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. A & B to Exh. 1. The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provides the Settlement Class contact information for Class Counsel and advises 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.

**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.

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## 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: November 4, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

By: 

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff