CARLOS JIMENEZ, SBN 227534
carlos@protectionlawgroup.com
JEFFREY JIMENEZ, SBN 338228
jeffrey@protectionlawgroup.com
STEPHANIE PAPAYANIS, SBN 337655
stephanie@protectionlawgroup.com
PROTECTION LAW GROUP, LLP
149 Sheldon Street
El Segundo, California 90245
Telephone: (424) 290-3095
Facsimile: (866) 264-7880

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
Aden M. Khachadoorian (SBN 346908)
akhachadoorian@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

FALCAO RIVELINO HERNANDEZ and SERGIO RODRIGUEZ NAVA, individually and on behalf of others similarly situated, and as aggrieved employees and Private Attorneys General, Plaintiffs, vs. LDI MECHANICAL, INC., a Delaware corporation doing business in California; and DOES 1 through 50, inclusive, Defendant.	Case No. CVRI2401542 [*Case assigned for all purposes to the Hon. Harold W. Hopp, Dept. 1*] **PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA ACTION SETTLEMENT** Date: September 8, 2025 Time: 8:30 a.m. Dept.: 1 Action Filed: March 22, 2024 Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on September 8, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 1 of the Riverside County Superior Court, located at 4050 Main Street Riverside, CA 92501, Plaintiffs Falcao Rivelino Hernandez and Sergio Rodriguez Nava ("Plaintiffs"), as individuals and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement ("Settlement Agreement") of the lawsuit between Plaintiffs and Defendant LDI Mechanical, Inc. ("Defendant");
2. Pursuant to California Code of Civil Procedure § 382, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

   > All current and former non-exempt employees who worked for Defendant LDI Mechanical, Inc. in California at any time from March 22, 2020, until the earlier of: (i) June 8, 2025; or (ii) the date when the Defendant exercises the option to cutoff the aggregate workweeks at 139,292 total workweeks.

3. Preliminary appointment of Falcao Rivelino Hernandez and Sergio Rodriguez Nava as the Class Representatives;
4. Preliminary appointment of Heather Davis, Carlos Jimenez and Amir Nayebdadash of Protection Law Group, LLP and Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen 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, costs to the Settlement Administrator, payment to the Labor and Workforce Development Agency for its share of Private Attorneys General Act civil penalties, and Class Counsel's attorneys' fees and costs;
6. Appointment of Phoenix Settlement Administrators as the third-party settlement administrator ("Settlement Administrator"); and
7. Approval of the proposed Notice of Pendency of Class Action and Proposed Settlement ("Class Notice"), which also includes the Dispute Form, Request For Exclusion Form, and Objection Form (collectively, the "Notice Packet"), and entry of

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

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Carlos Jimenez of Protection Law Group, LLP and Paul K. Haines, Fletcher W. Schmidt, Aden M. Khachadoorian, and Matthew K. Moen of Haines Law Group, APC, Plaintiffs Falcao Rivelino Hernandez and Sergio Rodriguez Nava, and Kevin Lee 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.

Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and authorities necessitates exceeding the 20-page limit set forth in California Rule of Court 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider the entire Motion, which is 22 pages in length.

Dated: August 6, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

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

TABLES OF CONTENTS

TABLES OF AUTHORITIES

Federal Cases

State Cases

State Statues and Rules

Unpublished Cases

Other Sources

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Falcao Rivelino Hernandez and Sergio Rodriguez Nava ("Plaintiffs") respectfully request that this Court preliminarily approve the proposed Stipulation of Settlement ("Settlement Agreement" or "Settlement"),[1] entered into by Plaintiffs and Defendant LDI Mechanical, Inc. ("Defendant"), on behalf of the following Settlement Class: "All current and former non-exempt employees who worked for Defendant LDI Mechanical, Inc. in California at any time from March 22, 2020, until the earlier of: (i) June 8, 2025; or (ii) the date when the Defendant exercises the option to cutoff the aggregate workweeks at 139,292 total workweeks (the 'Class Period')."

Based on data provided by Defendant, there are approximately 1,225 potential Settlement Class Members. After Court-approved deductions for the Class Representative Enhancement Payments, settlement administration costs, payment to the Labor and Workforce Development Agency ("LWDA") for its share of Private Attorneys General Act ("PAGA") civil penalties, and Class Counsel's attorneys' fees and costs, the remaining Net Settlement Amount ("NSA") is estimated to be no less than $1,743,333.33. This will result in an average Settlement Award of approximately $1,423.13, with the lowest possible estimated award of $13.76 (for Settlement Class Members who worked only one workweek during the Class Period), and the highest estimated award of $3,744.69 (for those who worked every workweek during the Class Period).

In addition to the NSA, all current and former non-exempt employees who worked for Defendant in California between March 22, 2023, and the earlier of: (i) June 8, 2025; or (ii) the date when the Defendant exercises the option to cutoff the aggregate workweeks at 139,292 total workweeks (the "PAGA Period") (the "PAGA Aggrieved Employees"), will receive their 25% share of the $100,000.00 set aside for PAGA civil penalties. According to Defendant's data, there

---

[1] The Settlement Agreement is attached as **Exhibit A** to the Declaration of Matthew K. Moen ("Moen Dec."), filed concurrently herewith. The Notice of Pendency of Class Action and Proposed Settlement ("Class Notice") which also includes a Dispute Form, Request for Exclusion Form, and Objection Form (collectively, the "Notice Packet") are attached to the Moen Dec. as **Exhibit B**.

are approximately 700 PAGA Aggrieved Employees, resulting in an average individual PAGA settlement payment of approximately $35.71.

Settlement Class Members and PAGA Aggrieved Employees will not be required to file a claim form to receive a Settlement Award. All individuals who do not opt out will automatically receive their share of the Settlement. This represents a fair and reasonable result for Settlement Class Members, who will be releasing only those claims that were asserted or that could have been asserted based on the facts alleged in the operative complaint.

For their share of the PAGA civil penalties, PAGA Aggrieved Employees will not release any claims for wages or damages. Only Plaintiffs and the State will release statutory penalty claims under PAGA that could have been brought by the Labor Commissioner based on the alleged violations identified in Plaintiff Hernandez's pre-filing letter dated March 22, 2024 and Plaintiff Rodriguez's pre-filing letter dated June 7, 2024 to the LWDA (the "PAGA Release").[2]

This proposed Settlement is well within the range of possible approval given the significant legal and factual obstacles Plaintiffs faced, the risks and costs of further litigation, and the substantial monetary benefit to Settlement Class Members. For these reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. Factual and Procedural Background

Defendant operates a full-service heating, ventilation, and air conditioning company, specializing in HVAC design, fabrication, and installation services primarily for multi-family and commercial projects. Moen Decl., ¶ 9. Defendant employed Plaintiff Hernandez as an hourly paid, non-exempt employee from approximately September 2022 to approximately November 2023. Declaration of Falcao Rivelino Hernandez ("Hernandez Decl."), ¶ 4. Defendant employed Plaintiff Rodriguez as a "Lead Man" since approximately 2001. Declaration of Sergio Rodriguez Nava ("Rodriguez Decl."), ¶ 2. Like all Settlement Class Members, Plaintiffs were employed by

[2] Plaintiffs' prefiling letters to the LWDA are attached to the Moen Dec. as **Exhibit C**. Concurrently with the filing of this Motion, Plaintiffs also provided notice to the LWDA of the Settlement along with the approval paperwork. The LWDA submission confirmation is attached to the Moen Dec. as **Exhibit D**.

Defendant during the Class Period and were subject to Defendant's alleged unlawful wage and hour policies and practices. Hernandez Decl., ¶ 4; Rodriguez Decl., ¶¶ 2-4.

On March 22, 2024, Plaintiff Hernandez initiated this action against Defendant, asserting the following causes of action: (1) failure to pay all overtime wages; (2) failure to pay meal period premiums; (3) failure to pay rest period premiums; (4) failure to pay minimum wages; (5) failure to timely pay final wages; (6) failure to timely pay wages during employment; (7) failure to provide accurate wage statements; (8) failure to reimburse necessary business expenses; (and (9) violation of the California Business and Professions Code section 17200, *et seq*. Moen Decl., ¶ 10. On June 18, 2024, Plaintiff Hernandez filed a First Amended Complaint, adding a cause of action for civil penalties under the PAGA (Labor Code § 2698 *et seq*.) based on the same underlying Labor Code violations. *Id.*

On June 7, 2024, Plaintiff Rodriguez filed a separate wage and hour class action against Defendant alleging the following causes of action: (1) failure to pay all overtime wages; (2) failure to pay minimum wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse necessary business expenses; and (6) unfair competition. Moen Decl., ¶ 11. On August 13, 2024, Plaintiff Rodriguez filed a First Amended Complaint, adding a cause of action for civil penalties under the PAGA (Labor Code § 2698 *et seq*.) based on the same underlying Labor Code violations. *Id*.

On June 20, 2025, as a material term of the Parties' Settlement, Plaintiff Hernandez filed the operative Second Amended Complaint ("SAC") in this action, to add Plaintiff Rodriguez as a named plaintiff in this action, and to consolidate all causes of action and factual allegations in the two actions into the first-filed *Hernandez* action for purposes of seeking settlement approval. Moen Decl., ¶ 12. Thereafter, Plaintiff Rodriguez dismissed his separately filed action, without prejudice. *Id*.

B. Plaintiffs' Claims and Defendant's Defenses

1. Meal Period Violations

Plaintiffs contend that Defendant regularly failed to provide Settlement Class Members with timely, duty-free, and uninterrupted 30-minute meal periods to which they were entitled. *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, Defendant frequently failed to provide Plaintiffs and other non-exempt employees with timely meal periods commencing prior to the completion of five hours of work, and regularly interrupted, impeded or discouraged Plaintiffs and other non-exempt employees from taking timely and duty-free, 30-minute meal periods. Moen Decl., ¶ 13. Defendant also failed to provide second meal periods when employees worked shifts in excess of 10 hours. *Id*. Further, Plaintiffs assert that Defendant failed to pay any meal period premiums during the relevant time period, which is itself a certifiable issue. *See, e.g., Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (affirming certification of UCL claim based on alleged systemwide failure to pay premium wages when meal periods were not provided).

Defendant contends that it maintained a facially compliant written meal period policy at all times throughout the putative class period, and has always provided meal periods consistent with that policy. Moen Decl., ¶ 14. Defendant also asserts that all meal periods were taken simultaneously by all employees at the same time every day, thereby ensuring that timely meal periods of at least 30-minutes in length were provided. *Id*. Defendant further argues that any meal period violations reflected in the time records were the result of employee choice, not company policy, and that individualized inquiries would be required to determine whether and why a particular meal period was late, short, or missed, thereby posing significant obstacles to class certification. *Id*.

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

Plaintiffs contend that Defendant failed to authorize and permit employees to take all lawful rest periods to which they were entitled. Moen Decl., ¶ 15. Specifically, Plaintiffs assert that Defendant maintained a policy and/or practice of unlawfully requiring Plaintiffs and other non-exempt employees to miss or interrupt their purported rest periods in order to complete their work duties and responsibilities, resulting in Plaintiff and other non-exempt employees not being authorized and permitted to take all lawful rest periods to which they were entitled, in violation of California law. *Id*. Plaintiffs also allege that Defendant failed to pay any rest period premiums, an issue which itself is certifiable. *Id.*; *see also Safeway, supra*, 238 Cal.App.4th at 1159.

Defendant disputes these allegations and asserts that it maintains a facially lawful written rest period policy at all times throughout the putative class period, and that it has always authorized and permitted rest periods consistent with California law. Moen Decl., ¶ 16. Defendant further contends that all rest periods are scheduled and taken collectively, and therefore any missed or delayed rest periods were the result of employee choice rather than company policy. *Id*. As such, Defendant argues that individualized inquiries would be required to determine whether an employee was truly not authorized and permitted to take a rest period on any given shift, rendering the claim unsuitable for class treatment. *Id*. Defendant also asserts that questions such as whether the employee was authorized and permitted to take a rest period, or whether rest periods were voluntarily skipped would overwhelm any common questions and raise serious manageability concerns, especially given that rest periods are not recorded. *Id*.

3. <u>Off-The-Clock Wage Violations</u>

Plaintiffs allege that Defendant's timekeeping policies and/or practices resulted in Plaintiffs and other non-exempt employees not being compensated for all hours actually worked and/or subject to Defendant's control. Moen Decl., ¶ 17. Specifically, Defendant required Plaintiffs and other non-exempt employees to perform substantial work while off-the-clock, resulting in unpaid minimum and overtime wages owed. *Id*. Plaintiffs allege that Defendant required Plaintiffs and other non-exempt employees to travel to their assigned jobsites, which can vary in location each day, before being permitted to clock in for their work shift, and therefore Defendant failed to pay Plaintiffs and other non-exempt employees for all time spent traveling to their initial jobsite each work day. *Id*. Plaintiffs and other non-exempt employees were required to perform substantial off-the-clock work before clocking in at the start of their shifts, when purportedly clocked out for meal periods, and after clocking out for the end of their shifts, including responding to work-related communications when clocked out for purported meal periods and on off-days or after hours. *Id*. Plaintiffs also allege that Defendant's supervisors recorded the hours worked for Plaintiffs and other non-exempt employees, but did not accurately record the total hours worked or actual start and end times for Plaintiffs and other non-exempt employees, instead only recording the employees' start time after they arrived at the jobsite and at their scheduled shift start time, resulting in Defendant's failure to accurately record and compensate for all hours actually worked. *Id.* Additionally, Plaintiffs also allege that Defendant rounded and/or time-shaved Plaintiffs' and other non-exempt employees' hours in quarter increments, which resulted in Plaintiffs and other non-exempt employees not being compensated for all hours actually worked. *Id.*; *see also Camp v. Home Depot U.S.A., Inc.*, (2022) 84 Cal.App.5th 638, 654 ("[I]f an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for "all the time" worked."). As a result, Plaintiffs and other non-exempt employees were not compensated for all earned minimum and overtime wages. Moen Decl., ¶ 17.

Defendant asserts that its timekeeping policies/practices complied with California law and that it has always properly compensated Plaintiffs and other settlement class members for all hours worked throughout the Class Period. Moen Decl., ¶ 18. Defendant further contends that Settlement Class members did not work off-the-clock and that its policies specifically disavow such off-the-clock work. *Id*. Specifically, Defendant asserts that employees are restricted from worksites in the mornings and evenings due to site closures and sound ordinances, and each work day starts with a safety meeting attended by all employees at the same time before any work can be performed, and therefore there could not possibly be any work performed off the clock. *Id*. Defendant further argues that Plaintiffs' off-the-clock claim is not appropriate for class treatment, as it would require individualized inquiries into whether each employee actually performed any work while off-the-clock, and if so, how much, resulting in an unmanageable series of mini-trials. *Id.*; *see, e.g., Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1052 (2012) (affirming denial of off-the-clock subclass, "[p]roof of off-the-clock liability would have had to continue in an employee-by-employee fashion, demonstrating who worked off the clock, how long they worked, and whether Brinker knew or should have known their work.").

///

///

4. <u>Unreimbursed Business Expenditures</u>

Plaintiffs allege that Defendant failed to reimburse employees for the use of their personal cellular phones, including communicating with supervisors throughout the workday, and for the purchase of supplies necessary to complete their job duties, including tools and steel toed boots. Moen Decl., ¶ 19; *see* Labor Code § 2802(a); *see also Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 ("If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.").

Defendant argues that it maintained a facially lawful written reimbursement policy at all times throughout the putative class period, including prohibiting employees from using their personal cell phones at Defendant's worksites, and reimbursed all reasonable and necessary business expenditures. Moen Decl., ¶ 20. Defendant further argues that this claim is not suitable for class certification, as it would require a series of mini-trials to determine which employees incurred expenses, whether those expenses were reasonable and necessary, and why the employee never submitted a reimbursement request. *Id*.

5. <u>Reporting Time and Prevailing Wage Violations</u>

Plaintiffs further allege that they and other non-exempt employees were required to report for work on various occasions, but were sent home without work. Moen Decl., ¶ 21. Despite this, Plaintiffs allege that Defendant failed to pay Plaintiffs and other non-exempt employees for half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the regular rate of pay. *Id*.; *see* Wage Order No. 4-2001. Moreover, Plaintiffs assert that Defendant required Plaintiffs and other non-exempt employees to perform work on public works projects, but failed to pay Plaintiffs and other non-exempt employees the correct general prevailing wage rate for work performed on such projects. Moen Decl., ¶ 21; *see also* Labor Code §§ 1720 and 1772.

In response, Defendant asserts that it maintained facially lawful written reporting time and prevailing wage pay policies at all times throughout the putative class period, and accurately paid all employees. Moen Decl., ¶ 22. Further, Defendant asserts that it did not engage in any prevailing wage jobs in California at any point during the applicable 4-year liability period applicable to this action. *Id*. Therefore, Defendant argues that Plaintiffs' claims will fail on their merits. *Id*. Further, Defendant argues that these claims are not appropriate for class certification, as individualized issues will predominate as to which employees, if any, were required to report for work without being provided work or reporting time pay, and on which days, requiring a series of mini trials. *Id*.

6. Wage Statement, Waiting Time, PAGA Civil Penalties

As a result of Defendant's alleged failure to pay all overtime wages, minimum wages, and meal and rest period premiums, Plaintiffs assert that Defendant also failed to issue accurate and itemized wage statements, failed to timely pay all wages due during employment, and failed to timely pay all final wages upon separation of employment. Moen Decl., ¶ 23; *see also* Labor Code §§ 203(a), 226(a). Plaintiffs also seek PAGA civil penalties on behalf of all aggrieved employees for these alleged violations. *Id*.; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 ("As we have explained, they [civil penalties under PAGA] are mandatory, not discretionary.").

Defendant argues that Plaintiffs' underlying claims will fail and, as a result, the derivative wage statement, waiting time, and PAGA claims must also fail. Moen Decl., ¶ 27; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant also maintains that Plaintiffs cannot show that any wage statement violations were "knowing and intentional," or that the putative class members "suffered injury" as required by Labor Code § 226(e). Moen Decl., ¶ 27; *see* Labor Code § 226(e)(1). Moreover, Defendant contends that its good faith defenses to the underlying claims would preclude recovery of waiting time penalties, which require a "willful" failure to pay wages. Defendant also asserts that this Court should exercise its discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 27; *see also* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203."); Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of exposure).

C. Discovery And Mediation

In connection with mediation, Defendant provided Plaintiffs with electronic timekeeping and payroll records for a representative sampling of approximately 15% of the Settlement Class covering the entire Class Period, along with key policy documents and relevant data points. Moen Decl., ¶ 29. Plaintiffs then analyzed the data and conducted a comprehensive, class-wide analysis to develop an exposure model for the claims at issue. *Id*. On March 20, 2025, the Parties participated in a mediation session with mediator Marc Feder, Esq., during which they exchanged divergent views regarding Defendant's liability, potential exposure, and the likelihood of class certification. *Id*. Although mediation adjourned without the Parties reaching a resolution of this action, the parties continued their settlement negotiations in the weeks that followed with the mediator's assistance. *Id*. After additional weeks of negotiations, Mr. Feder issued a mediator's proposal, which the Parties ultimately accepted. *Id.* Over the following months, the Parties finalized the terms of the proposed Settlement now submitted to the Court for preliminary approval.

III. THE PROPOSED SETTLEMENT

A. Essential Terms of the Settlement

If the Court preliminarily approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $2,900,000.00. Settlement, ¶ 4. This Settlement is non-reversionary, and Settlement Class Members will automatically receive their individual Settlement Awards unless they affirmatively opt-out. *Id.*, ¶¶ 4.C, 5. The monetary terms of the Settlement are as follows:

Gross Settlement Amount:	**$2,900,000.00**
Minus Court-approved attorneys' fees (1/3):	$966,666.67
Minus Court-approved attorneys' costs (up to):	$60,000.00
Minus Court-approved Enhancement Payments:	$15,000.00 total
Minus Settlement Administrator costs (up to):	$15,000.00
Minus PAGA Penalties:	$100,000.00
Net Settlement Amount:	**$1,743,333.33**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting Court-approved amounts for attorneys' fees and costs, the Class Representative Enhancement Payments, settlement administration costs, and the amount allocated to PAGA civil penalties, the Settlement provides for an estimated NSA of no less than $1,743,333.33. *See* Settlement, ¶ 5. Individual Settlement Awards will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class Member during the Class Period. *Id.*, ¶ 5.B.i. Separately, the $25,000.00 allocated to PAGA Aggrieved Employees as their share of the $100,000.00 in PAGA civil penalties will be distributed based on the proportionate number of weekly pay periods worked during the PAGA Period. *Id.*, ¶ 5.B.ii.

For tax purposes, each Settlement Award will be allocated as one-third (1/3) wages (subject to applicable withholdings) and two-thirds (2/3) interest and penalties (not subject to withholdings). *Id.*, ¶ 5.D. Amounts paid as PAGA civil penalties will be treated as 100% penalties. *Id*. Defendant will pay the employer's share of payroll taxes separately and in addition to the GSA. *Id.*, ¶ 4.D.

Based on records produced prior to mediation, there are approximately 1,225 potential Settlement Class Members who will receive an average Settlement Award of approximately $1,423.13.[3] Moen Decl., ¶ 30. Settlement Class Members will have sixty (60) calendar days from the initial mailing of the Notice Packet to opt out of or object to the Settlement, providing ample time to review the Class Notice. *See* Settlement, ¶¶ 10.C-D. Settlement Class Members who do not opt out will be bound by the Settlement and will release all claims against Defendant as detailed therein. *Id.*, ¶ 2.A. Settlement Class Members will have 180 days from the mailing of Settlement Awards to cash their checks. *Id.*, ¶ 5.E. Any uncashed funds will be redistributed equally among Settlement Class Members who cashed their checks prior to the deadline. *Id.*

2. <u>Class Counsel Fees, Costs, and Plaintiffs' Enhancement Payments</u>

At the time of final settlement approval, Plaintiffs will request Class Representative Enhancement Payments in the amount of $7,500.00 each ($15,000.00 in total), in recognition of the significant time and effort they dedicated to this litigation. Moen Decl., ¶ 32; *see also* Settlement, ¶¶ 4.C(3), 7. Throughout the litigation, Plaintiffs searched for relevant documents, provided factual information to Class Counsel, participated in multiple calls to discuss the claims

[3] There are approximately 700 PAGA Aggrieved Employees who will receive an average of approximately $35.71 for their share of PAGA civil penalties. Moen Decl., ¶ 30.

and company policies, reviewed documents and filings related to the case, assisted with mediation preparation, made themselves available throughout mediation to respond to factual inquiries from opposing counsel and the mediator, and discussed the settlement terms with Class Counsel and gave input on whether they believed the settlement was fair. Hernandez Decl., ¶ 9; Rodriguez Decl., ¶ 6. Plaintiffs estimate they devoted at least 25-30 hours each to tasks that contributed directly to the resolution of this matter. *Id*. They also assumed meaningful risk by serving as the named plaintiffs, as their names are now associated with a wage and hour class action against a current and/or former employer. Moen Decl., ¶ 32.

Class Counsel will also seek an attorneys' fee award of up to one-third of the GSA (currently estimated at $966,666.67) and reimbursement of actual litigation costs up to $60,000.00. Moen Decl., ¶ 33; *see* Settlement, ¶¶ 4.C(4), 6. The requested fee reflects fair compensation for undertaking complex, risky, and time-intensive litigation on a purely contingent basis. Class Counsel's work to date has included pre-filing investigation, legal research, review and analysis of class data and policy documents, developing a comprehensive damages model, participation in mediation and continued settlement negotiations in the weeks following mediation, drafting the Memorandum of Understanding, long-form Settlement Agreement, and Notice documents, as well as all required pleadings and filings to consolidate the two Plaintiffs' actions and to file this Motion. *Id*. Class Counsel will also devote additional time to overseeing the notice process, preparing the Final Approval Motion and related filings, attending the Final Approval hearing, and responding to Settlement Class Member inquiries. *Id*.

Both California and federal courts recognize the percentage-of-the-common-fund method as an appropriate way to award attorneys' fees in class actions. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506; *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 254. Courts commonly approve fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6 (4th ed. 2002). Class Counsel submits that the requested fee is reasonable in light of the risks, the quality of the work performed, the results achieved, and the efficiency with which the case was resolved. A formal fee request will be submitted in connection with the Motion for Final Approval.

IV. ARGUMENT

A. Preliminary Approval Is Warranted

California Rule of Court 3.769 conditions the settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *In re California Pizza Kitchen Data Breach Litigation* (9th Cir. 2025) 129 F.4th 667, 674–675 (noting that under Rule 23(e), a district court must ensure a class settlement is "fair, reasonable, and adequate"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101.

The Court's responsibility is not to evaluate the merits of the parties' negotiating positions or insist on a perfect outcome, but rather to confirm that the settlement is fundamentally sound and the result of informed, non-collusive bargaining. *California Pizza Kitchen, supra*, 129 F.4th at 674. There is an initial presumption of fairness when the settlement has been reached through arm's-length negotiations by experienced class counsel. *See Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

When determining whether a proposed class action settlement is fair, the Court considers the following factors: "the strength of [the] case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801. The Court may engage in a balancing and weighing of these factors based on the specific circumstances of the case. *See Wershba, supra,* 91 Cal.App.4th at 245.

As explained below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of these considerations.

///

a. Strength of Plaintiffs' Case

Class Counsel carefully vetted the claims at issue, reviewed timekeeping and payroll records spanning the entire Class Period, examined relevant policy documents, and developed a comprehensive damages model addressing Defendant's classwide liability. Moen Decl., ¶ 34. While Plaintiffs continue to believe their claims are meritorious, they acknowledge that there were substantial risks and uncertainties associated with obtaining class certification and prevailing at trial. As explained in Section II.B, *supra*, Defendant raised numerous defenses on both the merits and certification. Although Plaintiffs were prepared to litigate these claims through trial, success was not guaranteed. This factor therefore supports preliminary approval.

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

Although the Parties participated in an informal exchange prior to mediation, full discovery had not yet been completed. Moen Decl., ¶ 35. Absent settlement, the Parties would have faced extensive discovery obligations and further pretrial motions, including class certification, summary adjudication, and potential appeals. Even if Plaintiffs succeeded in certifying one or more classes, continued litigation would involve significant costs, including trial preparation, trial, and post-trial proceedings. The Settlement avoids these burdens and provides prompt, meaningful relief to the Settlement Class. This factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

No class has been certified in this case. Had the Court granted certification, Plaintiffs anticipated that Defendant would seek decertification. Defendant also could have attempted to reduce the size of the putative class through a *Pick-Up-Stix* campaign, thereby undermining Plaintiffs' ability to maintain numerosity or obtain meaningful classwide relief. *See Chindarah v. Pick Up Stix, Inc*. (2009) 171 Cal.App.4th 796. Accordingly, the risk that Plaintiffs would not be able to proceed on a classwide basis, absent settlement, supports preliminary approval.

d. Amount Offered in Settlement Given Realistic Value of Claims

The proposed Settlement provides a fair and reasonable recovery for the Settlement Class in light of the disputed nature of the claims and the risks of continued litigation. Based on a detailed review of the timekeeping and payroll records produced for mediation, Class Counsel developed a damages model forecasting the expected recovery, including the following:

Meal Period Violations: **$643,522**

Plaintiffs' analysis determined that Settlement Class Members experienced 7,525 first or second meal period violations on shifts exceeding 5.0 hours during the Class Period, according to Defendant's timekeeping records on their face. Moen Decl., ¶ 13. Further, an additional 54,432 shifts over 5.0 hours in length included a recorded meal period of *exactly* 30-minutes in duration, which Plaintiffs allege were artificially recorded by Defendant's supervisors and do not accurate reflect the existence, timing, or duration of any meal period actually taken. *Id*. Based on an average regular rate of $24.73, Plaintiffs calculated Defendant's liability for meal period violations to be $1,532,196 (61,957 meal violations x $24.73 average premium). *Id*.

Defendant contends it maintained a lawful meal period policy throughout the Class Period and that any non-compliant meal periods resulted from employee choice rather than employer practice. Moen Decl., ¶ 14. Defendant argues that individualized inquiries would be required to determine whether a waiver applied and the specific reason a given meal period was missed or delayed, posing substantial obstacles to certification. *Id.* Plaintiffs therefore discounted the overall figure by 40% for the risk of non-certification and an additional 30% for the risk of not prevailing on the merits or overstating damages, resulting in a projected reasonable recovery of $643,522. *Id*., at ¶ 13.

Rest Period Violations: **$552,258**

Plaintiffs' analysis determined that Settlement Class Members worked a total of 76,347 shifts exceeding 3.5 hours during the Class Period. Moen Decl., ¶ 15. Plaintiffs asserted that they were not authorized or permitted to take all lawful rest period on all shifts in excess of 3.5 hours. *Id*. Plaintiffs therefore calculated Defendant's maximum liability for rest period violations at $1,888,061 (76,347 rest period violations x $24.73 average premium). *Id*.

Defendant contends that it maintained a facially lawful rest period policy and consistently authorized and permitted rest periods in accordance with California law. Moen Decl., ¶ 16. Defendant further asserts that the rest period claim is not suitable for class certification due to the individualized inquiries required to determine whether each employee was authorized to take a rest period and whether the employee voluntarily skipped the break. *Id*. Plaintiffs therefore applied a 55% discount for the risk of non-certification and an additional 35% discount for the risk of not prevailing on the merits, resulting in a projected recovery of $552,258. *Id.*, at ¶ 15.

Unpaid Wage Violations: **$915,974**

Plaintiffs estimate that Plaintiffs and other Settlement Class members spent approximately one (1) hour on average each work week performing off-the-clock work before and after their shifts or during purported off-the-clock meal periods. Moen Decl., ¶ 17. Plaintiffs' data analysis determined that Settlement Class members worked an aggregate total of 126,629 work weeks during the Class Period. *Id*. Accordingly, Plaintiffs calculated Defendant's maximum potential exposure for unpaid wage violations at approximately $3,131,535 (1 hour per shift * 126,629 aggregate work weeks * $24.73 average hourly rate). *Id.*

As noted above, Defendant argues that it has always properly compensated Settlement Class members for all hours worked and that Plaintiffs' off-the-clock claim is not appropriate for class treatment. Moen Decl., ¶ 18. Based on these defenses, Plaintiffs discounted the maximum potential exposure by 55% for risk of non-certification, and by an additional 35% for the risk of losing on the merits, to arrive at an estimated exposure of $915,974. *Id.*, at ¶ 17.

Failure to Reimburse Violations: **$334,377**

Plaintiffs allege that Defendant failed to reimburse employees for the work-related use of their personal cell phones, including communicating with supervisors and participating in group text threads for scheduling and store operations, as well as for the cost of necessary business expenses incurred for supplies, steel toed boots, and use of personal vehicles. Moen Decl., ¶ 19. Plaintiffs estimate that employees incurred approximately $25.00 per month on average for necessary business expenses, including a reasonable portion of the average monthly cell phone bill attributable to work use. *Id.* Plaintiffs' data analysis further determined that Settlement Class members worked an aggregate total of 31,657 work months during the Class Period. *Id*. Plaintiffs therefore calculated Defendant's maximum liability for unreimbursed business expenses as $791,425 ($25.00 monthly reimbursement x 31,657 work months). *Id*.

Defendant contends that Settlement Class Members were not required to use personal cell phones for work purposes or purchase any of their own supplies or tools needed to complete their job duties. Moen Decl., ¶ 20. Defendant further asserts that this claim is not suitable for class certification, as it would require individualized inquiries into whether each employee incurred a business-related expense, whether that use was actually required, and whether the expenses were reasonable and necessary. *Id*. Plaintiffs therefore applied a 35% discount for the risk of non-certification and an additional 35% discount for the risk of not prevailing on the merits or failing to establish damages, resulting in a projected recovery of approximately $334,377. *Id*., at ¶ 19.

Wage Statement Penalties: **$504,000**

Based on data provided by Defendant, approximately 700 Settlement Class Members received wage statements during the relevant statutory period, totaling 47,944 pay periods. Moen Decl., ¶ 24. Plaintiffs calculated Defendant's maximum potential exposure for wage statement violations as $2,800,000 (700 employees x $4,000 maximum statutory penalty). *Id*.

Defendant argues that any wage statement violations were not "knowing and intentional," as required by Labor Code § 226(e). Moen Decl., ¶ 27. Defendant also asserts that Plaintiffs cannot establish that Settlement Class Members "suffered injury" as a result of any alleged inaccuracies. *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). Defendant further contends that Plaintiffs' wage statement claim is entirely derivative and would necessarily fail if the underlying claims are unsuccessful. *Id*. Plaintiffs therefore applied a 40% discount for the risk of non-certification of the underlying claims and an additional 70% discount for the risk of not prevailing on the merits or failing to prove the statutory prerequisites for penalties, including the risk the Court would find Defendant held a good-faith belief it was in compliance with wage and hour laws, resulting in a projected recovery of approximately $504,000. *Id*., at ¶ 24.

Waiting Time Penalties: **$710,443**

Plaintiffs' data analysis determined that 665 Settlement Class Members separated their employment during the relevant statutory period. Moen Decl., ¶ 25. Based on an average hourly wage of $24.73 and the statutory maximum of 30 days' pay (8 hours per day), Plaintiffs calculated

Defendant's maximum waiting time exposure at $3,946,908 (665 employees x 8 hours x 30 days x $24.73 average hourly rate). *Id*.

Defendant contends that waiting time penalties are inappropriate because Plaintiffs' underlying claims lack merit and that any alleged failure to pay final wages was not wilful. Moen Decl., ¶ 27. Defendant also claims a good-faith dispute over the alleged wage violations, presenting an additional obstacle to the imposition of penalties. *Id.*; *see also Naranjo, supra*, 15 Cal.5th at 1065 (recognizing that good faith dispute over whether any wages are due will preclude imposition of waiting time penalties). Defendant also argues that Plaintiffs' damages are overstated, as they assumed every separated employee is entitled to the maximum penalty, regardless of individual circumstances or whether final wages were timely paid. *Id.* Plaintiffs therefore applied a 40% discount for the risk of non-certification and an additional 70% discount for the risk of not prevailing on the merits, overstating damages, or failing to establish willfulness under *Naranjo*, resulting in a projected recovery of approximately $710,443. *Id*., at ¶ 25.

<u>PAGA Penalties</u>: **$167,797**

Plaintiffs allege that civil penalties under PAGA are recoverable for each pay period in which an underlying Labor Code violation occurred. Moen Decl., ¶ 26. Based on Plaintiffs' data analysis, Settlement Class Members worked a total of 47,942 weekly pay periods during the PAGA period in which at least one of Plaintiffs' alleged violations occurred. *Id*. Applying the $100 "initial violation" rate provided under Labor Code § 2699(f), Plaintiffs calculated Defendant's maximum PAGA exposure as $4,794,200 (47,942 pay periods x $100 violation rate). *Id.*; *see 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, the PAGA penalties are entirely derivative of the underlying claims, which Defendant vigorously disputes on both certification and merits grounds. Moen Decl., ¶ 27; *see also Green v. Lawrence Service Co*., 2013 WL 3907506, *5 n.5 (C.D. Cal. 2013) (holding that PAGA claims rise and fall with the underlying Labor Code violations). Plaintiffs also acknowledge that the Court retains broad discretion to reduce any PAGA award under Labor Code § 2699(e)(2). Moen Decl., ¶ 27; *see also* Labor Code § 2699(e)(2); *Thurman, supra,* 203

Cal.App.4th at 1135. Plaintiffs therefore applied a 65% discount to account for the risk of not prevailing on the underlying claims or overstating penalty exposure, and an additional 90% discount to account for the likely probability that this Court would utilize its discretion to reduce penalties, resulting in a projected recovery of approximately $167,797. Moen Decl., ¶ 26.

Based on the estimated exposure values across all class claims, Plaintiffs calculate the potential reasonable recovery for the Settlement Class to be approximately $3,492,777. Moen Decl., ¶ 28. The maximum theoretical exposure for the case was calculated at $18,884,325. *Id*. The proposed non-reversionary settlement of $2,900,000.00 therefore represents approximately 83.03% of Plaintiffs' forecasted reasonable recovery. *Id.* This is a fair and reasonable result that falls well within the range that courts have consistently deemed fair, adequate, and reasonable when evaluating class action settlements.

This level of recovery is particularly notable when viewed against the risks of continued litigation, including contested certification, potential summary judgment, and appeal. *See, e.g., Altamirano v. Shaw Industries, Inc*., 2015 WL 4512372, *9 (N.D. Cal. 2015) (granting preliminary approval where settlement represented 15% of the estimated maximum recovery); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving a settlement worth "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). Accordingly, preliminary approval is warranted, as the Settlement provides meaningful and immediate monetary relief to the Settlement Class without the delay, risk, and expense of further litigation.

e. <u>Experience and Views of Counsel</u>

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by experienced counsel with an extensive background litigating wage and hour class actions from both the plaintiff and defense perspective. Class Counsel have been appointed in numerous cases involving similar claims. Carlos Jimenez Decl., ¶¶ 2-13; Paul K. Haines Decl., ¶¶ 2-12; Fletcher W. Schmidt Decl., ¶¶ 2-9; Aden M. Khachadoorian Decl., ¶¶ 2-6; and Moen Decl., ¶¶ 2-8.

Class Counsel conducted a thorough review of Defendant's timekeeping and payroll data and used their experience in comparable cases to assess the strengths and weaknesses of Plaintiffs' claims. Moen Decl., ¶ 34. Only after completing this due diligence did the Parties attend mediation and ultimately accept the mediator's proposal for a class-wide resolution. *Id*. This factor supports preliminary approval.

2. Preliminary Approval Standard Is Met

At this stage, the Court may grant preliminary approval and direct that the Class Notice be disseminated 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) contains no obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3d ed. 1995); 4 Newberg on Class Actions §§ 11:24–25 (4th ed. 2002).

a. Settlement Is Within the Range of Possible Approval

The proposed Settlement reflects a fair and reasonable resolution in light of the significant risks posed by continued litigation. It provides monetary compensation for contested claims while releasing only those claims asserted, or that could have been asserted, based on the facts alleged in the operative complaint. Moreover, the average payment of $1,423.13 exceeds the averages approved in other wage and hour class action settlements. The proposed Settlement is therefore within the range of possible approval, warranting distribution of notice to the Settlement Class. The Court will have another opportunity to evaluate the Settlement at the final approval stage, after class members have had an opportunity to opt out or object.

b. Settlement Resulted from Serious and Non-Collusive Negotiations

The Settlement is entitled to a presumption of fairness as it was reached only after the exchange of relevant policies, timekeeping and payroll records, comprehensive analysis, and arm's-length negotiations by experienced counsel. Mediation was conducted before Marc Feder, an experienced wage and hour class action mediator, who issued a mediator's proposal that both sides accepted. Additional negotiations continued until the final long-form Settlement Agreement was executed. Moen Decl., ¶ 29; *see also Kullar, supra*, 168 Cal.App.4th at 130. This factor supports preliminary approval.

c. Settlement Is Devoid of Obvious Deficiencies

The Settlement provides meaningful monetary relief to Settlement Class Members. The proposed amounts for the Class Representative Enhancement Payments, attorneys' fees and costs, settlement administration expenses, and PAGA penalties are all reasonable and appropriate. Because the Settlement lacks any apparent deficiencies, this factor also supports preliminary approval.

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

The proposed Settlement Class satisfies the criteria for certification under California law: (1) the class is so numerous that joinder is impracticable; (2) common issues of law and fact predominate; (3) Plaintiff's claims are typical of those of the Settlement Class; and (4) Plaintiff and Class Counsel will fairly and adequately represent the Class. *See* Code Civ. Proc. § 382.

1. Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members may be identified without unreasonable effort through official or business records. *See Sevidal v. Target Corp*. (2010) 189 Cal.App.4th 905, 919. Here, the Settlement Class includes all current and former non-exempt employees who worked for Defendant in California at any time from March 22, 2020, until the earlier of: (i) June 8, 2025; or (ii) the date when the Defendant exercises the option to cutoff the aggregate workweeks at 139,292 total workweeks. *See* Settlement, ¶ 1. Defendant's payroll and personnel records can be used to identify Class Members. With approximately 1,225 members, the Class satisfies numerosity. *Id.*; *see Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

2. Common Issues of Law and Fact Predominate

The predominance inquiry focuses on whether common legal or factual issues are likely to arise. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiffs' claims center on Defendant's alleged uniform policies regarding wage payments, meal and rest periods, and expense reimbursements. These claims routinely support class certification. *See Brinker, supra*, 53 Cal.4th at 1032–34 ("The theory of liability, that Brinker has a uniform policy, and that that policy… allegedly violates the law, is by its nature a common question eminently suited for class treatment.”).

3. Claims of the Named Plaintiffs Are Typical

Typicality exists where the class representative’s claims arise from the same course of conduct and are based on the same legal theories as those of the class. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc*. (1987) 191 Cal.App.3d 1341, 1347. Plaintiffs, like other Settlement Class Members, were non-exempt employees subject to the same allegedly unlawful policies. *See* Hernandez Decl., ¶¶ 4, 10; Rodriguez Decl., ¶¶ 2-4. Plaintiffs were denied compliant meal and rest periods, not paid for all hours worked, and not reimbursed for business-related use of their personal cell phones, vehicles, and tools. *Id*. Their claims are therefore typical of the Class.

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

Adequacy turns on whether there are conflicts of interest and whether counsel is qualified to represent the class. *See Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiffs’ interests are aligned with those of the Class, and Class Counsel is experienced in wage and hour litigation. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the Plaintiff’s counsel were not qualified and the Plaintiff had no interests antagonistic to those of the class); Carlos Jimenez Decl., ¶¶ 2-13; Paul K. Haines Decl., ¶¶ 2-12; Fletcher W. Schmidt Decl., ¶¶ 2-9; Aden M. Khachadoorian Decl., ¶¶ 2-6; and Moen Decl., ¶¶ 2-8. This element is met.

C. The Court Should Order Distribution of the Proposed Class Notice

Plaintiffs request that the Court order distribution of the Class Notice in English and Spanish via first-class mail to Settlement Class Members using the last known addresses provided by Defendant. This is the “best notice practicable” under the circumstances, as it provides individual notice to those who can be identified through reasonable effort. *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173.

Phoenix Settlement Administrators (“Phoenix”), a qualified settlement administrator, will handle notice and administration. *See* Declaration of Kevin Lee. Defendant will provide Phoenix with Settlement Class Members’ names, Social Security numbers, workweek information, dates of employment, and last known address and telephone information within ten (10) business days after preliminary approval. *See* Settlement, ¶ 10.A. Phoenix will perform National Change of Address checks and skip traces as needed. *Id*., ¶ 10.B. The Class Notice will include the Final Approval Hearing date, Class Counsel's contact information, and information about entering an appearance through counsel. This process satisfies California Rule of Court 3.766(e).

D. The Court Should Set a Final Approval Hearing

Plaintiffs respectfully request that the Court schedule a hearing on final approval for a date that follows the close of the objection and opt-out period. *See* Cal. Rules of Court, Rule 3.769.

V. CONCLUSION

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

DATED:

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________
Matthew K. Moen
Attorneys for Plaintiffs