

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Joel M. Gordon (SBN 280721)
jgordon@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

ELECTRONICALLY

FILED

5/2/2025 3:33 PM

SAN LUIS OBISPO SUPERIOR COURT
BY 
Julie Vierra, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

JOSE GONZALEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CALIFORNIA CUSTOM POWER SPORTS,
INC., a California corporation; and DOES 1
through 100,

Defendants.

Case No.: 24CVP-0190

*[Assigned for all purposes to the Hon.
Michael C. Kelley, Paso Robles Dept. 2]*

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

~~7-29-25~~

Date: ~~May 29, 2025~~

Time: 9:00 a.m.

Dept: P2, Paso Robles Branch

Action Filed: May 31, 2024

Trial Date: None Set

MOVING PARTY TO GIVE NOTICE

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 ~~May 29, 2025~~ ⁷⁻²⁹⁻²⁵, at 9:00 a.m. in Department P2 of the above-entitled Court, located at 901 Park Street, Paso Robles, California 93446, Plaintiff Jose Gonzalez (“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 who worked for Defendant California Custom Power Sports, Inc. in California at any time from May 31, 2020 through the date the Court enters an Order granting preliminary approval of the settlement (the “Class Period”).
3. Preliminary appointment of Plaintiff Jose Gonzalez as Class Representative;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Joel M. Gordon 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 a 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 ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices;
7. Approval of the proposed Class Notice and an order that is to be disseminated to the Settlement Class as provided in the Joint Stipulation and Settlement Agreement.

///

///

///

///

///

///

1 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
2 Authorities; the supporting declarations of Paul K. Haines, Sean M. Blakely, Joel M. Gordon,
3 Plaintiff Jose Gonzalez, and Anthony Rodgers of ILYM Group, Inc., and the exhibits attached
4 thereto; the pleadings, and other papers filed in this Action; and on any further oral or
5 documentary evidence or argument presented at the time of the hearing. Defendant does not
6 intend to oppose this Motion, and given the multiplicity of issues addressed in this Motion, has
7 indicated its approval of Plaintiff's expressed need to exceed the 20-page limit set forth in
8 California Rule of Court 3.764(c)(2). Therefore, Plaintiff requests the Court's consideration of
9 Plaintiff's memorandum of points and authorities, which is 25 pages in length.

10
11
12 Dated: May 2, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

13
14 By:

Paul K. Haines
Sean M. Blakely
Joel M. Gordon
Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. THE PARTIES AND BRIEF PROCEDURAL HISTORY	2
B. PLAINTIFF’S CLAIMS AND CALIFORNIA CUSTOM’S DEFENSES	3
1. Meal Period Claims.....	3
2. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices.....	4
3. Regular Rate Miscalculations	4
4. Rest Period Claims.....	5
5. Failure to Reimburse for Necessary Business Expenditures	5
6. Wage Statement Claims.....	6
7. Waiting Time Penalties.....	6
8. PAGA Civil Penalties	7
C. DISCOVERY AND MEDIATION.....	7
III. THE PROPOSED SETTLEMENT.....	8
A. ESSENTIAL TERMS OF THE SETTLEMENT	8
1. The Settlement Provides for Reasonable Monetary Payments.....	8
2. Attorneys’ Fees and Costs, Enhancement Payment, and PAGA Payment	9
IV. ARGUMENT.....	11
A. PRELIMINARY APPROVAL IS WARRANTED	11
1. Standard for Preliminary Approval.....	12
a. The Strength of Plaintiff’s Case.....	12
b. Risk, Expense, Complexity, and Duration of Further Litigation	12
c. Risk of Maintaining Class Action Status	12
d. Amount Offered in Settlement Given Realistic Value of Claims.....	13

1	e. The Experience and Views of Counsel	19
2	2. The Preliminary Approval Standard Is Met.....	20
3	a. The Settlement Is Within the Range of Possible Approval.....	20
4	b. The Settlement Resulted from Serious, Informed	
5	Negotiations.....	21
6	c. The Settlement Is Devoid of Obvious Deficiencies	21
7	B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS.....	22
8	1. The Proposed Class Is Ascertainable and Numerous	22
9	2. Common Issues of Law and Fact Predominate.....	22
10	3. The Claims of the Named Plaintiff Are Typical	23
11	4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the	
12	Class	23
13	C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE	23
14	D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	24
15	V. CONCLUSION	25

TABLE OF AUTHORITIES

Federal Cases

Dunleavy v. Nadler

213 F.3d 454 (9th Cir. 2000) 20

Eisen v. Carlisle & Jacquelin

417 U.S. 156 (1974)..... 24

Hanlon v. Chrysler Corp.

150 F.3d 1011 (9th Cir. 1998) 11

In re Pacific Enterprises Securities Litigation

47 F.3d 373 (9th Cir. 1995) 19

In re Syncor ERISA Litig.

516 F.3d 1095 (9th Cir. 2008) 11

Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.

221 F.R.D. 523 (C.D. Cal. 2004) 20

State Cases

Amaral v. Cintas Corp. No. 2

163 Cal.App.4th 1157 (2008) 19

Benton v. Telecom Network Specialists, Inc.

220 Cal.App.4th 701 (2013) 22

Bercea v. AE Retail West

Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) 21

Bowles v. Sup. Ct.

44 Cal.2d 574 (1955) 22

Brinker Rest. Corp. v. Sup. Ct.

53 Cal.4th 1004 (2012) 3,14

B.W.I. Custom Kitchen v. Owens-Illinois, Inc

191 Cal.App.3d 1341 (1987) 23

1	<i>Capital People First v. State Dept. of Developmental Services</i>	
2	155 Cal.App.4th 676 (2007)	23
3	<i>Carrington v. Starbucks Corp.</i>	
4	30 Cal.App.5th 504 (2018)	7
5	<i>Cochran v. Schwan's Home Service, Inc.</i>	
6	228 Cal.App.4th 1137 (2014)	5
7	<i>Doty v. Costco Wholesale Corp.</i>	
8	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007)	21
9	<i>Dunk v. Ford Motor Co.</i>	
10	48 Cal.App.4th 1794 (1996)	12
11	<i>Gomez v. Amadeus Salon, Inc.</i>	
12	Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010)	21
13	<i>In re Cellphone Fee Termination Cases</i>	
14	186 Cal.App.4th 1380 (2010)	9-10
15	<i>Kullar v. Foot Locker Retail, Inc.</i>	
16	168 Cal.App.4th 116 (2008)	12,20,21
17	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
18	1 Cal.5th 480 (2016)	10
19	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
20	Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006)	21
21	<i>Maldonado v. Epsilon Plastics, Inc.</i>	
22	22 Cal.App.5th 1308 (2018)	6
23	<i>McGhee v. Bank of America</i>	
24	60 Cal.App.3d 442 (1976)	23
25	<i>Palencia v. 99 Cents Only Stores</i>	
26	Case No. 34-2010-00079619 (Sacramento County Super. Ct.)	21
27	<i>Price v. Starbucks Corp.</i>	
28	192 Cal.App.4th 1136 (2011)	7

1	<i>Reed v. United Teachers Los Angeles</i>	
2	208 Cal.App.4th 322 (2012)	11
3	<i>Ressler v. Federated Department Stores, Inc.</i>	
4	Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009).....	21
5	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i>	
6	34 Cal.4th 319 (2004)	22
7	<i>Sevidal v. Target Corp.</i>	
8	189 Cal.App.4th 905 (2010)	22
9	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
10	203 Cal.App.4th 1112 (2012)	7,19
11	<i>Wershba v. Apple Computer, Inc.</i>	
12	91 Cal.App.4th 245 (2001)	12
13	<u>State Statutes and Rules</u>	
14	8 Cal. Code Regs. § 13520.....	6
15	Cal. Code Civ. Proc. § 382	22
16	Cal. Rule of Court 3.766(d)	24
17	California Rule of Court 3.769	24
18	Labor Code §§ 201.....	6
19	Labor Code §§ 202.....	6
20	Labor Code §§ 203.....	6
21	Lab. Code § 2699(e)(2).....	7
22	Labor Code § 2802.....	5
23	<u>Unpublished Cases</u>	
24	<i>Chu v. Wells Fargo Investments, LLC</i>	
25	Case No. C 05-4526 MHP, 2011 WL 672645 (N.D. Cal. 2011).....	11
26	<i>Fleming v. Covidien Inc.</i>	
27	Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	7,19
28		

1	<i>Glass v. UBS Finan. Servs.</i>	
2	Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007).....	20
3	<i>Green v. Lawrence Service Co.</i>	
4	2013 WL 3907506 (C.D. Cal. 2013).....	19
5	<i>Lazarin v. Pro Unlimited, Inc.</i>	
6	Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013).....	11
7	<i>Schiller v. David's Bridal, Inc.</i>	
8	Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (E.D. Cal. June 11, 2012).....	21
9	<i>Sorenson v. PetSmart, Inc.</i>	
10	Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)	21
11	<i>Williams v. Centerplate, Inc.</i>	
12	Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428	
13	(S.D. Cal. Aug. 26, 2013)	21
14	<u>Other Sources</u>	
15	Manual for Complex Litigation § 30.41(3rd Ed. 1995).....	20
16	4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013)	20
17	4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	10

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff Jose Gonzalez (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of current and former non-exempt
5 employees who worked for Defendant California Custom Power Sports, Inc. (“California
6 Custom”) in California at any time from May 31, 2020 through the date the Court enters an Order
7 granting preliminary approval of the settlement (the “Class Period”). Plaintiff’s primary
8 allegations are that California Custom failed to pay all minimum and overtime wages, failed to
9 provide all legally compliant meal periods, and failed to authorize and permit all required rest
10 periods. As a result of these alleged violations, Plaintiff also brought derivative claims for
11 California Custom’s alleged failure to issue accurate and compliant wage statements, its failure
12 to pay all final wages owed, and for civil penalties under the Private Attorneys’ General Act
13 (“PAGA”).¹

14 Plaintiff now respectfully requests that this Court preliminarily approve this non-
15 reversionary, common-fund class action settlement,² in which California Custom has agreed to
16 pay Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) to the following Settlement
17 Class:

18 All current and former non-exempt employees who worked for Defendant
19 California Custom Power Sports, Inc. in California at any time from May
20 31, 2020 through the date the Court enters an Order granting preliminary
21 approval of the settlement (the “Class Period”).

22 ¹ The operative Second Amended Class and Representative Action Complaint (“SAC”) pleads
23 the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
24 wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6)
25 failure to indemnify for all necessary business expenditures; (7) waiting time penalties; (8) failure
26 to pay sick pay; (9) unfair competition in violation of Cal. Business & Professions Code § 17200,
et seq.; and (10) civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698
et seq. (“PAGA”).

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

1 If the Settlement is approved, California Custom will pay a non-reversionary Gross
2 Settlement Amount of \$600,000.00. After deducting administration costs, Plaintiff's requested
3 Class Representative Enhancement Payment, the amount set aside as PAGA civil penalties, and
4 requested attorneys' fees and costs, the Net Settlement Amount of approximately \$332,000.00
5 will be distributed to all Class Members who do not opt out of the Settlement based on the
6 proportionate number of workweeks worked by each Participating Class Member during the Class
7 Period. Additionally, all non-exempt employees who worked for California Custom in California
8 from June 3, 2023 through the date the Court enters an Order granting preliminary approval of
9 the settlement (the "PAGA Period") will also receive a portion of the \$5,000.00 PAGA Penalties
10 based on the proportionate number of PAGA Pay Periods worked during the PAGA Period.

11 Significantly, Class Members do not need to file a claim to reap the financial benefits of
12 the Settlement, as all Class Members will automatically receive a payment unless they
13 affirmatively opt out. There are approximately 188 Class Members, and the average payment to
14 Participating Class Members is projected to be approximately \$1,765.96.

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

20 **II. SUMMARY OF THE LITIGATION**

21 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

22 In business since 1984, California Custom specializes in the sale and service of trailers,
23 power sports vehicles, and marine products and operates multiple locations throughout the State
24 of California. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Plaintiff worked for
25 California Custom in the non-exempt position of "Lot Porter" from approximately October 2023
26 until approximately April 2024. *See* Declaration of Plaintiff Jose Gonzalez in Support of Approval
27 of Class Action Settlement ("Gonzalez Decl."), ¶ 2.

28 On May 31, 2024, Plaintiff filed this class action asserting causes of action for: (1) failure

1 to pay all overtime wages; (2) meal period violations; (3) rest period violations; (4) wage
2 statement violations; (5) failure to indemnify for all necessary business expenditures; (6) waiting
3 time penalties; (7) failure to pay sick pay; and (8) unfair competition in violation of Cal. Business
4 & Professions Code § 17200, *et seq.* Blakely Decl., ¶ 9. On June 3 2024, Plaintiff sent his PAGA
5 notification letter to the Labor & Workforce Development Agency (“LWDA”). *Id.*; **Exhibit B**
6 (LWDA Letter). Subsequently, on August 8, 2024, Plaintiff filed a First Amended Class and
7 Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the
8 PAGA. *Id.* As a condition of the Settlement, the Parties stipulated to the filing of the operative
9 Second Amended Class and Representative Action Complaint (“SAC”), which added a claim for
10 failure to pay all minimum wages and added certain factual allegations pertaining to California
11 Custom’s alleged rounding and timekeeping policies and/or practices. *Id.* The SAC was filed on
12 April 14, 2025. *Id.*

13 **B. PLAINTIFF’S CLAIMS AND CALIFORNIA CUSTOM’S DEFENSES**

14 **1. Meal Period Claims**

15 Plaintiff alleges California Custom failed to provide legally compliant first meal periods
16 because California Custom’s policies/practices failed to provide Plaintiff and other non-exempt
17 employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before
18 the end of the fifth hour of work. Blakely Decl., ¶ 14. Plaintiff further alleges that California
19 Custom failed to record meal periods altogether for many shifts during the Class Period and
20 automatically deducted 30-60 minutes on those workdays for a purported meal period, even
21 though Class Members were not always provided with a timely compliant meal period on those
22 shifts. *Id.* Plaintiff further alleges that Class Members were not provided with second meal periods
23 when they worked shifts in excess of 10.0 hours in a workday. *Id.*, at ¶ 15.

24 California Custom counters that it maintained compliant meal period policies throughout
25 the Class Period, and that the company always provided compliant meal periods in line with those
26 policies. Blakely Decl., ¶ 14. California Custom further contends that it always provided
27 employees the opportunity to take meal periods and is not required to ensure they are taken. *Id.*;
28 *see Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard).

1 Thus, California Custom argues that any missed, late or short meal periods resulted from lawful
2 employee choice rather than any policy and/or practice of California Custom. Blakely Decl., ¶
3 14. Additionally, California Custom maintains that employees voluntarily waived their second
4 meal period when they worked shifts in excess of 10.0 hours (but less than 12.0 hours), as they
5 are entitled to do under Labor Code § 512. *Id.*, at ¶ 15 Finally, California Custom argues that
6 these claims are not suited for class treatment, as individual inquiries would be needed to assess
7 which employees took non-compliant meal periods or missed meal periods, how many meal
8 periods were non-compliant or missed, and the reasons why a particular employee did not take a
9 compliant meal period on a particular shift. *Id.*, at ¶¶ 14-15.

10 **2. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices**

11 Plaintiff contends that for at least a portion of the Class Period, California Custom utilized
12 a timekeeping system that systematically underpaid wages to Class Members. Blakely Decl., ¶
13 16. Specifically, Plaintiff contends that although California Custom’s timekeeping system
14 recorded hours worked to the minute, California Custom rounded employee timekeeping entries,
15 resulting in an underpayment of wages to Class Members. *Id.*

16 However, California Custom counters that its timekeeping policies/practices complied with
17 California law and that it has always properly compensated Class Members for all hours worked
18 throughout the Class Period. Blakely Decl., ¶ 16. California Custom also asserts that this claim is
19 not amenable to class certification due to the individualized inquiries that would be required into
20 whether each Class Member was in fact underpaid, or potentially overpaid, for each workday in
21 question, including whether they were performing compensable work while clocked in for their
22 shift. *Id.*

23 **3. Regular Rate Miscalculations**

24 Plaintiff alleges that California Custom failed to pay all overtime wages owed by not
25 including the value of all non-discretionary remuneration into the regular rate of pay. Blakely
26 Decl., ¶ 17. Specifically, Plaintiff alleges that he and other non-exempt employees were paid
27 sales-related bonuses identified on employees’ paychecks as “Sales Incentives,” “Shop
28 Incentive,” “Bonus,” and “2% Sales Setup Initiative.” *Id.* Plaintiff contends California Custom

1 failed to include the value of these payments into the regular rate of pay for purposes of calculating
2 overtime, and as a result, underpaid overtime wages. *Id.*

3 California Custom contends that it properly included all forms of remuneration when
4 calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members.
5 Blakely Decl., ¶ 17. California Custom further argues that Class Members received different types
6 of bonuses throughout the Class Period, creating substantive differences among the Class
7 Members with respect to the incentives received, making class certification unlikely. *Id.*

8 **4. Rest Period Claims**

9 Plaintiff alleges that California Custom failed to authorize and permit legally compliant
10 off-duty rest periods to Plaintiff and other Class Members. Blakely Decl., ¶ 18. Specifically,
11 Plaintiff contends that employees were regularly prevented from taking off-duty rest periods due
12 to chronic understaffing and work demands imposed by California Custom. *Id.*

13 California Custom counters that it maintained and enforced lawful rest period
14 policies/practices during the Class Period, and has, in fact, authorized and permitted all required
15 rest periods to Class Members. Blakely Decl., ¶ 18. California Custom further argues that
16 Plaintiff's rest period claim is not amenable to class treatment, since individual inquiries would
17 be required to determine which employees failed to take rest periods, how many rest periods they
18 failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift.
19 *Id.* These manageability concerns are especially pertinent with respect to rest period claims,
20 California Custom argues, given that rest periods are not recorded. *Id.*

21 **5. Failure to Reimburse for Necessary Business Expenditures**

22 Plaintiff contends that California Custom required Class Members to use their personal
23 cellphones for a variety of work activities, including but not limited to, communicating with
24 supervisors, but were not reimbursed for these business expenses. Blakely Decl., ¶ 19; *see also*
25 Labor Code § 2802; *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137, 1144 (2014)
26 ("Thus to be in compliance with section 2802, the employer must pay some reasonable percentage
27 of the employee's cell phone bill."). California Custom maintains that Class Members were not
28 required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 19. California

1 Custom further argues that any expenses incurred by Class Members were minimal, given the
2 wide availability of low-cost cellular phone plans. *Id.* Lastly, California Custom argues this claim
3 is not suitable for class treatment, as it would require individualized determinations as to whether
4 each Class Member used a personal cellular phone for work-related purposes, and if so, how much
5 of that use was a reasonable percentage of their individual monthly phone bill. *Id.*

6 **6. Wage Statement Claims**

7 As a result of the unpaid wages and unpaid meal and rest period premium wages described
8 above, Plaintiff alleges that California Custom is liable for wage statement penalties. Blakely
9 Decl., ¶ 20.

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

20 **7. Waiting Time Penalties**

21 As a further result of the unpaid wages and unpaid meal and rest period premium wages
22 described above, Plaintiff alleges that California Custom failed to comply with its final pay
23 obligations set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 21.

24 California Custom argues that it possesses strong, good-faith defenses to Plaintiff’s
25 underlying claims, thus precluding recovery of waiting time penalties, which are only available
26 for the “willful” failure to pay wages. Blakely Decl., ¶ 21.; see *also* 8 Cal. Code Regs. § 13520
27 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties
28 under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer

1 presents a defense, based in law or fact which, if successful, would preclude any recovery on the
2 part of the employee.”). California Custom further asserts that Plaintiff’s waiting time penalty
3 exposure was grossly inflated as not every former employee experienced the alleged Labor Code
4 violations. Blakely Decl., ¶ 21.

5 **8. PAGA Civil Penalties**

6 As a result of the foregoing Labor Code violations, Plaintiff alleges that California Custom
7 is liable for civil penalties under the PAGA. Blakely Decl., ¶ 22. Since Plaintiff’s PAGA claim is
8 derivative of Plaintiff’s underlying wage claims, California Custom asserts the PAGA claim
9 would fail with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011)
10 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
11 California Custom further maintains that, given its good-faith defenses, this Court would exercise
12 its discretion to substantially reduce any PAGA penalties if it were to find California Custom
13 liable for any of Plaintiff’s claims. Blakely Decl., ¶ 22; see Lab. Code § 2699(e)(2); *Thurman v.*
14 *Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA
15 penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047,
16 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not
17 aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming
18 PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to
19 comply with the law).

20 **C. DISCOVERY AND MEDIATION**

21 In connection with mediation, California Custom provided Plaintiff’s counsel with
22 timekeeping and payroll records for approximately 20% of the non-exempt employees employed
23 during the Class Period. Blakely Decl., ¶ 10. California Custom also provided relevant data points
24 such as the total number of putative class members and workweeks worked during the Class
25 Period, along with its written policies and/or procedures in use during the Class Period. *Id.*
26 Plaintiff hired a labor economist with a Ph.D. in economics to assist Plaintiff in conducting a
27 comprehensive analysis and extrapolation of the payroll and timekeeping data produced by
28 California Custom to create a detailed exposure analysis for all claims at issue. *Id.* This discovery

1 allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification
2 of Plaintiff’s claims, and California Custom’s potential defenses. *Id.*

3 On January 9, 2025, the Parties participated in a full-day mediation with Michael Ludwig,
4 Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During
5 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
6 certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* At the
7 conclusion of mediation, Mr. Ludwig issued a mediator’s proposal for a class-wide settlement,
8 which was accepted by both sides. *Id.* During the months that followed, the Parties finalized the
9 terms of the Settlement and executed the Joint Stipulation and Settlement Agreement now before
10 the court. *Id.*

11 **III. THE PROPOSED SETTLEMENT**

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

13 If the Court preliminarily approves the Settlement, California Custom will pay a Gross
14 Settlement Amount of \$600,000.00. *See* Settlement, §§ 1.22, 3.1. Significantly, this Settlement is
15 non-reversionary, and no Class Member will have to submit a claim form to receive an Individual
16 Class Payment. *Id.*, at § 3.1. Each Class Member will automatically receive an Individual Class
17 Payment unless they affirmatively opt out of the Settlement. *Id.*, at § 1.35. The monetary terms
18 of the Settlement are summarized below:

19	• Gross Settlement Amount:	\$600,000.00
20	• Minus Court-approved attorneys’ fees:	\$200,000.00
21	• Minus Court-approved verified costs (up to):	\$30,000.00
22	• Minus Court-approved Enhancement Payment:	\$10,000.00
23	• Minus amount set aside as PAGA penalties:	\$20,000.00
24	• <u>Minus estimated settlement administration costs:</u>	<u>\$8,000.00</u>
25	Net Settlement Amount:	\$332,000.00
26	• Plus 25% “PAGA Amount” to Settlement Class:	\$5,000.00
27	Total Amount Paid to Class Members:	\$337,000.00

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

After deducting amounts for the Court-approved attorneys’ fees and costs, Class
Representative Enhancement Payment to Plaintiff, the amount set aside as PAGA civil penalties,
and settlement administration costs, the Settlement requires California Custom to pay a Net

1 Settlement Amount of at least \$332,000.00 to all Class Members who do not timely opt-out. *See*
2 Settlement, §§ 1.28, 3.2.5. The Net Settlement Amount shall be distributed to Participating Class
3 Members based on each Participating Class Member's proportionate workweeks worked during
4 the Class Period, which will be calculated by dividing the Net Settlement Amount by the total
5 number of Workweeks worked by all Participating Class Members during the Class Period and
6 then multiplying the result by the total Workweeks worked by each Participating Class Member
7 during the Class Period. *Id.*, at § 3.2.5. In addition to the Net Settlement Amount, each Aggrieved
8 Employee who was employed by California Custom at any time during the PAGA Period
9 (including those who submit a valid and timely Request for Exclusion from the class action
10 settlement) shall receive a portion of the Gross Settlement Amount that has been designated as
11 the "PAGA Penalties" proportionate to the number of PAGA Pay Periods worked during the
12 PAGA Period. *Id.*, at § 3.2.6.1.

13 According to California Custom, there are approximately 188 Class Members. Blakely
14 Decl., ¶ 13. Therefore, the average Individual Class Payment from the Net Settlement Amount is
15 projected to be approximately \$1,765.96. *Id.* There are also approximately 107 Aggrieved
16 Employees during the PAGA Period who will receive an average of approximately \$46.73 from
17 the PAGA Penalties. *Id.* Class Members will have sixty (60) calendar days from the mailing of
18 the Notice Packets to opt out or object to the Settlement, thereby providing ample time to review
19 the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 1.43, 7.5, 7.6. Those
20 Participating Class Members who do not opt out of the Settlement will be bound by its terms and
21 will release all claims against California Custom included within the Settlement. *Id.*, at § 5.2.

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

23 Plaintiff will apply for a Class Representative Enhancement Payment at the time of
24 seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for his
25 service to the Settlement Class. *See* Settlement, §§ 1.14, 3.2.1; Blakely Decl., ¶ 26. "[I]ncentive
26 Payments are fairly typical in class action cases . . . and are intended to compensate class
27 representatives for work done on behalf of the class [and] to make up for financial or reputational
28 risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th

1 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff's requested
2 Enhancement Payment is intended to recognize the time and effort Plaintiff expended on behalf
3 of the Settlement Class, including providing substantial factual information and documents to
4 Class Counsel, discussing the claims and theories at issue in the litigation, actively participating
5 in the prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to
6 serve as the named plaintiff in this case. *See* Blakely Decl., ¶ 26; *see also* Gonzalez Decl., ¶¶ 4-
7 6.

8 Class Counsel will also apply for an attorneys' fees award of one-third of the Gross
9 Settlement Amount, which is currently estimated to be \$200,000.00, and up to \$30,000.00 in
10 verified costs reimbursement. *See* Settlement, §§ 1.7, 1.18, 3.2.2; Blakely Decl., ¶ 25. Plaintiff
11 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
12 time-consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 25. Class Counsel
13 has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's
14 claims, conducting legal research, conducting extensive informal discovery, analyzing Class
15 Members' timekeeping and payroll records with the assistance of a retained expert, creating a
16 comprehensive damages model, preparing for and attending mediation, negotiating and preparing
17 the long-form Joint Stipulation and Settlement Agreement, preparing this Motion, and otherwise
18 litigating the case. *Id.* Class Counsel expects to expend additional attorney time in attending the
19 hearing on this Motion, overseeing the Notice process and fielding questions from Class
20 Members, preparing the Final Approval papers, and attending the Final Approval hearing. *Id.*

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

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

6 Additionally, the parties have agreed to designate \$20,000.00 of the Gross Settlement
7 Amount as PAGA civil penalties, of which \$15,000.00 (75%) will be paid to the LWDA, with
8 the remaining \$5,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA
9 requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, §§ 1.34, 3.2.6.
10 Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
11 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.
12 Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
13 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
14 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
15 settlement).

16 **IV. ARGUMENT**

17 **A. PRELIMINARY APPROVAL IS WARRANTED**

18 California Rule of Court 3.769 conditions settlement of a class action on court approval,
19 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
20 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
21 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and
22 adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
23 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair,
24 adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly
25 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
26 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the
27 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
28 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, California Custom 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 significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 24. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Id.* Even if Plaintiff were to certify the proposed 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

1 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
2 was a risk that there would not be a certified class at the time of trial, or if there were, it would
3 consist of a significantly smaller group of employees than the proposed Settlement Class (either
4 due to a narrowing of the class definition in a Court order on a contested motion for class
5 certification, or through Stipulation of Settlements entered into by California Custom with
6 individual class members by way of *Pick Up Stix* type settlement agreements³), and the expected
7 recovery could be significantly reduced, given the settlement amounts that are typically offered
8 through the *Pick Up Stix* process. Thus, this factor, too, supports preliminary approval of the
9 settlement.

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

11 The Settlement provides a positive recovery for the Settlement Class in the face of
12 disputed claims. Plaintiff conducted a detailed analysis of alleged timekeeping violations, meal
13 and rest period premium payments owing, wage statement penalties, waiting time penalties, and
14 PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed
15 below:

16 First Meal Period Violations: \$222,334

17 Based on Plaintiff's review and extrapolation of the timekeeping records California
18 Custom produced, of the records where employees were recording their meal periods, 11,258 first
19 meal periods show a facial meal period violation. Blakely Decl., ¶ 14. Furthermore, 10,284 shifts
20 reflect a missing first meal period due to California Custom's auto-deduct practices. *Id.* California
21 Custom's records further reflect that it paid approximately 34 meal period premium payments
22 during the Class Period. *Id.* Therefore, Plaintiff calculated California Custom's maximum
23 exposure for first meal period violations at approximately \$423,493 ([21,542 non-compliant first
24

25 ³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
26 employer may enter into pre-certification settlement agreements with individual putative class
27 members in which the putative class members release claims for past unpaid wages and penalties
28 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.

meal periods * \$19.69 average meal period premium] – 34 meal period premiums paid). *Id.*

However, as noted above, California Custom argues that it maintained compliant meal period policies throughout the Class Period, and that the company always provided compliant meal periods in line with those policies. Blakely Decl., ¶ 14. California Custom 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 Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). California Custom also argues that these claims are not suited for class treatment, as individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id.*, at ¶ 14. In light of these defenses and arguments, Plaintiff discounted California Custom’s maximum exposure by 25% for the risk of non-certification, and an additional 30% to account for California Custom’s defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately \$222,334. *Id.*

Second Meal Period Violations: \$2,918

Plaintiff’s analysis of the timekeeping data showed that during the Class Period, there were approximately 456 shifts worked in excess of 10.0 hours where a second meal period violation occurred. Blakely Decl., ¶ 15. Therefore, Plaintiff calculates California Custom’s maximum exposure for second meal period violations at approximately \$8,979 (456 second meal period violations * \$19.69 meal period premium). *Id.*

However, Plaintiff’s theory of liability carried significant risks of both non-certification and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, California Custom’s argument that it has maintained compliant written meal period policies throughout the Class Period, and Class Members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶ 15. In light of these risks, Plaintiff discounted the maximum amount that the class could potentially recover by 35% for a risk of non-certification, and an additional 50% for a risk of losing on the merits, or having exposure reduced due to California Custom’s waiver arguments, to arrive at estimated exposure

of approximately \$2,918. *Id.*

Unpaid Wages Due to Unlawful Timekeeping Policies/Practices: \$6,552

Plaintiff alleges that California Custom utilized a timekeeping system that systematically underpaid wages due to rounding. Blakely Decl., ¶ 16. Based on Plaintiff's analysis of California Custom's timekeeping and payroll data, Plaintiff estimates that Class Members were underpaid by approximately 821.5 hours during the Class Period. *Id.* Since employees were generally scheduled for eight-hour shifts, unpaid wages should be calculated using the applicable overtime rate. *Id.* Accordingly, Plaintiff calculates California Custom's liability for this claim at approximately \$24,267 (821.5 unpaid hours * \$29.54 average overtime rate). *Id.*

As noted above, however, California Custom contends that it maintained lawful timekeeping policies and/or practices, and compensated Class Members for all hours actually worked. Blakely Decl., ¶ 16. California Custom also asserts that it stopped its rounding policies/practices, thereby cutting off any liability for this claim. *Id.* In light of California Custom's arguments and defenses, Plaintiff discounted the maximum recovery on this claim by 40% to account for the risk of non-certification and an additional 55% to account for being unsuccessful on the merits or failure to recover the full amount sought, for a projected total of approximately \$6,552. *Id.*

Regular Rate Claims: \$28,516

Plaintiff alleges that California Custom failed to pay all overtime wages owed by not including the value of all non-discretionary remuneration into the regular rate of pay. Blakely Decl., ¶ 17. Based on Plaintiff's review of payroll records, overtime wages owed to employees due to the failure to include various payments into the regular rate was approximately \$41,935. *Id.*

However, as stated above, California Custom contends that it properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members. Blakely Decl., ¶ 17. California Custom further argues that Class Members received different types of bonuses throughout the Class Period, creating substantive differences among the Class Members with respect to the incentives received, making class certification

1 unlikely. *Id.* In light of these defenses, Plaintiff discounted the maximum amount that the class
2 could potentially recover by 15% for risk of non-certification and discounted an additional 20%
3 for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive
4 at an estimated total of approximately \$28,516. *Id.*

5 Rest Period Violations: \$202,268

6 During the Class Period, Plaintiff alleges that he and other non-exempt employees were
7 not authorized and permitted to take duty-free 10-minute rest periods for every four hours worked,
8 or major fraction thereof, due to work demands imposed upon them by California Custom.
9 Blakely Decl., ¶ 18. Based on Plaintiff's analysis and extrapolation of employee timekeeping
10 records, there were approximately 51,363 shifts in excess of 3.5 hours worked by Class Members
11 during the Class Period. *Id.* As such, Plaintiff calculates California Custom's maximum exposure
12 for rest period violations at approximately \$1,011,337 (51,363 rest period eligible shifts * \$19.69
13 average premium). *Id.*

14 However, California Custom contends it has maintained and enforced compliant written
15 rest period policies/practices and has always authorized and permitted employees a 10-minute
16 rest period for every four hours worked, or major fraction thereof, and that any failure to take rest
17 periods was as a result of employee choice, rather than any California Custom policy and/or
18 practice. Blakely Decl., ¶ 18. California Custom further argues that Plaintiff's rest period claim
19 is not amenable to class treatment, since individual inquiries would be required to determine
20 which employees failed to take rest periods, how many rest periods they failed to take, and the
21 reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These
22 manageability concerns are especially present with respect to rest period claims, California
23 Custom argues, given that rest periods are not recorded. *Id.* Given these defenses, Plaintiff
24 discounted this maximum amount by 50% for risk of non-certification, and an additional 60% for
25 a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive
26 at an estimated realistic exposure of approximately \$202,268.

27 ///

28 ///

1 Unreimbursed Expenses: \$5,154

2 Plaintiff alleges that California Custom failed to reimburse Class Members for a
3 reasonable portion of cellular phone expenses even though Class Members were required to use
4 their personal cellular phones for daily work activities. Blakely Decl., ¶ 19. Based on California
5 Custom's data, Plaintiff estimated that Class Members worked approximately 11,780 aggregate
6 workweeks during the Class Period. *Id.* Assuming a \$2.50 reimbursement per workweek for
7 cellular phone data, Plaintiff calculated California Custom's maximum exposure at approximately
8 \$29,450 (\$2.50 unreimbursed cellular phone data * 11,780 workweeks). *Id.*

9 However, California Custom argues that it did not require Class Members to use their
10 cellular phones in the discharge of their work duties. Blakely Decl., ¶ 19. California Custom
11 further contends that cellular phone expenses would be minimal due to the availability of low-
12 cost cellular phone plans. *Id.* Lastly, California Custom argues that this claim is not suitable for
13 class treatment, as it would require individualized determinations as to whether each Class
14 Member used a personal cellular phone for work-related purposes and if so, how much of that use
15 was a reasonable percentage of their individual monthly phone bill. *Id.* Therefore, in light of these
16 arguments and the presence of the arbitration agreements, Plaintiff discounted the maximum
17 exposure by 50% for the risk of non-certification, and an additional 65% for risk of losing on the
18 merits, to arrive at an estimated exposure of \$5,154. *Id.*

19 Wage Statement Penalties: \$47,201

20 Plaintiff alleges that California Custom is liable for wage statement penalties as a result
21 of the unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 20. Those
22 penalties are calculated as \$50 for each "initial" violation and \$100 for each "subsequent"
23 violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff's
24 analysis reflected that there were approximately 107 unique employees and approximately 2,199
25 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. *Id.*
26 Plaintiff, therefore, calculated California Custom's potential wage statement exposure at
27 approximately \$214,550 (107 "initial" violations * \$50 penalty) + (2,092 "subsequent" violations
28 * \$100 penalty). *Id.*; *see also* Labor Code § 226(e).

1 In light of California Custom’s arguments that no violations occurred, that employees
2 suffered no “injury,” that any alleged violations were not “knowing and intentional,” that the
3 wage statements always accurately reflected hours worked and amounts paid to employees, as
4 well as risks associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted
5 the maximum exposure by 45% for risk of non-certification, and by an additional 60% for risk of
6 being unsuccessful on the merits, for an estimated realistic exposure of approximately \$47,201.
7 Blakely Decl., ¶ 20.

8 Waiting Time Penalties: \$91,803

9 California Custom’s records show approximately 111 Class Members who are eligible for
10 waiting time penalties. Blakely Decl., ¶ 21. Based on an hourly rate of \$19.69, Plaintiff estimated
11 the average waiting time penalty per former employee to be approximately \$4,726 ($\$19.69 * 8$
12 $\text{hours per day} * 30 \text{ days}$). *Id.* Therefore, Plaintiff calculated California Custom’s maximum
13 exposure for potential waiting time penalties to be approximately \$524,586 (111 former
14 $\text{employees} * \$4,726 \text{ average penalty}$). *Id.*

15 However, California Custom presented several defenses to this claim, most notably their
16 assertion that because they possessed good-faith defenses to the underlying claims, any failure to
17 pay wages was not “willful” as a matter of law. Blakely Decl., ¶ 21. California Custom further
18 asserts that Plaintiff’s waiting time penalty exposure was grossly inflated as not every former
19 employee experienced the alleged Labor Code violations. *Id.* Moreover, because the waiting time
20 claim is derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome
21 California Custom’s defenses, both as to class certification and on the merits, as to his underlying
22 claims. *Id.* To account for California Custom’s defenses, Plaintiff discounted the maximum
23 exposure by 50% for the risk of non-certification and an additional 65% for the risk of losing on
24 the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure
25 of approximately \$91,803. *Id.*

26 PAGA Penalties: \$26,388

27 Based on Plaintiff’s analysis and extrapolation, Plaintiff estimated a maximum total
28 PAGA exposure of approximately \$219,900 ($2,199 \text{ pay periods} * \$100 \text{ “initial” penalty}$). Blakely

Decl., ¶ 22; *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 California Custom disputes vigorously. Blakely Decl., ¶ 22; *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). California Custom also asserts that the Court would drastically reduce any award of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 22; *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 60% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 70% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$26,388. Blakely Decl., ¶ 22.

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Settlement Class would be approximately \$633,134. Blakely Decl., ¶ 23. The proposed Settlement of \$600,000 therefore represents approximately 94.7% 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. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation* 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.”), ¶¶ 2-8; Declaration of Joel M. Gordon (“Gordon Decl.”), ¶¶ 2-4. With the help of a retained Ph.D. in economics, Class Counsel conducted an in-depth review of California Custom’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., ¶¶ 14-23. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

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. The Settlement Is Within the Range of Possible Approval

The proposed Settlement reflects approximately 94.7% 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 Class Payment of approximately \$1,765.96 greatly exceeds average payments achieved in other wage

1 and hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within
2 the range of possible approval, such that notice should be provided to the Class Members so that
3 they can consider the Settlement. The Court will have the opportunity to again assess the
4 reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or
5 object.

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

7 The Settlement resulted from a result of extensive informal discovery, a full-day
8 mediation, and months of negotiating the Settlement. Thus, it is entitled to a presumption of
9 fairness *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted
10 the claims at issue, reviewed extensive timekeeping and payroll data, and conducted a detailed
11 statistical analysis of the data to arrive at his estimated class-wide damages figures. *See Blakely*
12 *Decl.*, ¶¶ 14-23. Thus, this factor supports preliminary approval.

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

14 Preliminary approval of the Settlement is also warranted because there are no obvious
15 deficiencies. The Settlement will provide substantial monetary relief to Class Members. The
16 amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiff's
17

18 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
19 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
20 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
21 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
22 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
23 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
24 of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
25 County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
26 *Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
27 recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
28 *DAD* (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average
recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-
SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an
average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted
compelling defenses to liability; Plaintiff also notes several similar actions where the gross
recoveries per class member were less than \$90...[T]he Court finds that the results achieved are
good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC,
2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 Class Representative Enhancement Payment, are all reasonable and appropriate based on the facts
2 of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports
3 preliminary approval.

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

5 The Settlement Class satisfies the criteria for certification because: (1) it is sufficiently
6 numerous; (2) common questions of law and fact predominate; (3) Plaintiff's claims are typical;
7 and (4) Plaintiff and his counsel will adequately represent the Settlement Class. Cal. Code Civ.
8 Proc. § 382.

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

10 A class is "ascertainable" where the members "may be readily identified without
11 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
12 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
13 defined as all current and former non-exempt employees who worked for California Custom in
14 California during the Class Period. Therefore, Class Members can be identified from California
15 Custom's personnel and employment records. California Custom represents that the Settlement
16 Class consists of approximately 188 current and former non-exempt employees. *See Blakely*
17 *Decl.*, ¶ 13. It would therefore be impracticable to bring all Class Members before the Court or
18 for each Class Member to bring an individual lawsuit. Thus, the proposed Settlement Class
19 satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class
20 representing 10 beneficiaries of a trust sufficiently numerous).

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

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

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

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

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

17 The adequacy requirement examines conflicts of interest between named parties and the
18 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
19 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
20 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
21 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
22 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
23 indication that Class Counsel were not qualified and the named plaintiff had no interests
24 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
25 and hour class action litigation. *See* Haines Decl., ¶¶ 2-8; Blakely Decl., ¶¶ 2-6.

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

27 This Court should order distribution to the Settlement Class of the proposed Class Notice
28 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address

1 information provided by California Custom. *See* Settlement, § 7.4. This manner of giving notice
2 is the “best notice practicable” under the circumstances because it provides “individual notice to
3 all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*
4 417 U.S. 156, 173 (1974). Here, Plaintiff proposes the settlement be administered by ILYM
5 Group, Inc. Administrators (“ILYM”), an experienced class action settlement administrator. *See*
6 Declaration of Anthony Rodgers (“Rodgers Decl.”) and attached exhibits. Class Members’
7 addresses will be ascertainable through California Custom’s personnel and payroll records, which
8 California Custom will provide to ILYM within thirty (30) calendar days of preliminary approval
9 of the Settlement. *See* Settlement, § 4.2. Within fourteen (14) days of receipt of the Class
10 Members’ addresses, ILYM will run the names of all Class Members through the National Change
11 of Address database to update addresses and mail the Class Notice to all Class Members. *Id.*, at
12 §§ 1.10, 7.4.2. To the extent that any notices are returned, ILYM will perform a “skip trace” to
13 track any Class Member’s current mailing address. *Id.*

14 The proposed Class Notice satisfies Cal. Rule of Court 3.766(d) because it advises Class
15 Members of the nature of the claims, basic contentions and denials of the parties, and the key
16 terms of the Settlement, the 60-day deadline to opt out or object to the Settlement and the
17 procedures by which to do so, explains the recovery formula and expected recovery amount for
18 each Class Member, and advises them that they will be bound by the terms of the Settlement if
19 they do not opt-out. *See* Blakely Decl., Exhs. 1, 2 to Exh. A. The proposed Class Notice will also
20 notify Class Members of the final approval hearing date and provides the Settlement Class contact
21 information for Class Counsel and advises Class Members that they may enter an appearance
22 through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court
23 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

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

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

28 ///

1 **V. CONCLUSION**

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

5
6 Dated: May 2, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:



9 Paul K. Haines
10 Sean M. Blakely
11 Joel M. Gordon
12 Attorneys for Plaintiff
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28