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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

WILLIAM BOWEN, as an individual and on behalf of all others similarly situated, Plaintiff, vs. THE F. A. BARTLETT TREE EXPERT COMPANY, a Connecticut Corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 24CV05757 [*Assigned for all purposes to the Hon. Thomas P. Anderle, Dept. 3*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: July 22, 2026 Time: 10:00 a.m. Dept.: 3 Action Filed: October 16, 2024 Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 22, 2026 at 10:00 a.m. in Department 3 of the above-entitled Court, located at 1100 Anacapa Street, Santa Barbara, California 93101, Plaintiff William Bowen ("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 The F.A. Bartlett Tree Expert Company in California from October 16, 2020, through January 5, 2026 (the "Class Period").

3. Preliminary appointment of William Bowen as Class Representative for Settlement Class;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Enhancement Payment to Plaintiff, 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; and
7. Approval of the proposed Notice Packet (comprised of the Class Notice and Notice of Estimated Individual Settlement Payment) and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of Sean M. Blakely, Paul K. Haines, Plaintiff William Bowen, and Anthony Rogers of ILYM Group, Inc., and the exhibits attached thereto; the Settlement Agreement; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing. Defendant does not intend to oppose this Motion, and given the multiplicity of issues addressed in this Motion, has indicated its approval of Plaintiff's expressed need to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiff requests the Court's consideration of Plaintiff's memorandum of points and authorities, which is 24 pages in length.

Respectfully submitted,

Dated: May 1, 2026

HAINES LAW GROUP, APC

By: Sean Blakely
____
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff William Bowen (hereinafter "Plaintiff") brought this class and representative action for various wage and hour violations on behalf of current and former non-exempt employees who worked for Defendant The F.A. Bartlett Tree Expert Company ("F.A. Bartlett") in California from October 16, 2020, through January 5, 2026 (the "Class Period"). Plaintiff's primary allegations are that F.A. Bartlett failed to pay all minimum and overtime wages, failed to provide all legally compliant meal and rest periods, and failed to reimburse employees for all necessary business expenditures. As a result of these alleged violations, Plaintiff also brought derivative claims for F.A. Bartlett's alleged failure to pay all final wages owed, failure to issue accurate and compliant wage statements, and for civil penalties under the Private Attorneys' General Act ("PAGA"). [1]

Plaintiff now respectfully requests that this Court preliminarily approve this non reversionary, common-fund class action settlement,[2] in which F.A. Bartlett has agreed to pay Three Million Four Hundred Twenty-Five Thousand Dollars and Zero Cents ($3,425,000.00) to the following Settlement Class:

> All current and former non-exempt employees who worked for The F.A. Bartlett Tree Expert Company in California from October 16, 2020, through January 5, 2026 (the "Class Period").

If the Settlement is approved, F.A. Bartlett will pay a non-reversionary Gross Settlement Amount of $3,425,000.00. After deducting administration costs, Plaintiff's requested Class

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[1] Plaintiff's operative First Amended Class and Representative Action Complaint ("FAC") pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse for all necessary business expenditures; (6) wage statement penalties; (7) waiting time penalties; (8) unfair competition; and (9) civil penalties under the PAGA.

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

Representative Enhancement Payment, the amount set aside as PAGA civil penalties, and requested attorneys' fees and costs, the Net Settlement Amount of approximately $2,006,250.00 will be distributed to all Settlement Class members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 504 Settlement Class members, and **the average Individual Settlement Payment to participating Settlement Class members is projected to be approximately $3,980.65**. This is an excellent result for Settlement Class members, who will be releasing only those claims alleged in the Action.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

F.A. Bartlett is a tree-service company based in Stamford, Connecticut with locations throughout the United States, including California. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Plaintiff worked for F.A. Bartlett as a non-exempt employee in the positions of "Crew Leader" and "Plaint Health Care Specialist" from approximately July 31, 2023, until approximately July 19, 2024. *See* Declaration of William Bowen In Support of Approval of Class Action Settlement ("Bowen Decl."), ¶ 2.

On October 16, 2024, Plaintiff filed his Class Action Complaint in Santa Barbara County Superior Court and alleged causes of action for: (i) minimum wages violations; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) rest period violations; (v) failure to reimburse for all necessary business expenditures; (vi) wage statement penalties; (vii) waiting time penalties; and (viii) unfair competition. Blakely Decl., ¶ 9. On that same day, Plaintiff sent his PAGA notice letter to F.A. Bartlett and the Labor & Workforce Development Agency ("LWDA"). *Id.*; Exhibit 2 (LWDA Letter). On November 20, 2024, F.A. Bartlett removed this case to the United States District Court for the Central District Court. Blakely Decl., ¶ 9. On December 23, 2024, Plaintiff filed an action in Santa Barbara Superior Court, alleging a single cause of action under the Private Attorneys General Act ("PAGA"), in the matter entitled *William Bowen v. The F.A. Bartlett Tree Expert Company*, Santa Barbara Superior Court Case No. 24CV07248 ("PAGA Action"). *Id.* As a condition of the Settlement, the Parties stipulated to Plaintiff filing a First Amended Class and Representative Action Complaint ("FAC") in this Action to add a claim for civil penalties under the PAGA *Id.* On April 20, 2026, Plaintiff filed the operative FAC adding Plaintiff's PAGA claim to the Action as well as a claim that Settlement Class members and Aggrieved Employees were prevented from using a bathroom during their meal and rest breaks. *Id.* Plaintiff dismissed the PAGA Action on April 29, 2026. *Id.*

B. PLAINTIFF'S CLAIMS AND F.A. BARTLETT'S DEFENSES

1. Meal Period Claims

Plaintiff alleges that due to F.A. Bartlett's meal policies/practices, he and other non-exempt employees regularly did not receive compliant 30-minute meal periods taken before the end of the fifth hour of work. Blakely Decl., ¶ 15. Specifically, Plaintiff alleges that despite compliant written meal period policies and/or procedures, he was told to record meal periods of exactly 30 minutes before the end of the fifth hour of work on his timesheets at the end of each workday. *Id*. However, due to work demands, Plaintiff and other non-exempt employees were often not able to take meal periods at all. *Id*. Furthermore, Plaintiff alleges that he was not permitted to leave the worksite for meal periods, even to use the restroom, and that any meal periods he did take were frequently interrupted with work demands. *Id*.

F.A. Bartlett counters that it has maintained compliant written meal period policies throughout the Class Period and has always provided compliant meal periods in line with those policies. Blakely Decl., ¶ 15. F.A. Bartlett further contends that it always provides 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). Thus, F.A. Bartlett argues that any non-compliant meal periods resulted from lawful employee waiver or choice, rather than any policy and/or practice of F.A. Bartlett. Blakely Decl., ¶ 15. F.A. Bartlett points to employee time sheets which show compliant, timely meal periods, and asserts that employees were required to accurately record the start and end of their meal periods. *Id*. Finally, F.A. Bartlett maintains Plaintiff's meal period claim is not suited for class certification since individual inquiries would be needed to assess which employees, if any, took non-compliant or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a meal period on a particular shift. *Id*.

2. <u>Unpaid Wages Due to Unlawful Timekeeping Policies/Practices</u>

Plaintiff alleges that F.A. Bartlett's timekeeping policies and/or practices systematically underpaid wages to Settlement Class members. Blakely Decl., ¶ 16. Plaintiff alleges that he and other non-exempt employees were instructed by their supervisors to record time entries on their paper timesheets at the end of each workday, rounded to the nearest quarter hour, even when these time entries did not correspond to their actual time worked. *Id*. Furthermore, Plaintiff alleges that F.A. Bartlett frequently required he and other non-exempt employees to work through unpaid meal periods. *Id.* As a result of these timekeeping policies and/or practices, Plaintiff alleges that F.A. Bartlett failed to compensate employees for all minimum and overtime wages. *Id.*

F.A. Bartlett argues that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 16. F.A. Bartlett contends employees were required to accurately record their start and end times, and that it paid employees for all hours recorded. *Id*. Finally, F.A. Bartlett asserts that Plaintiff would be unable to certify this claim as individualized inquiries would be necessary as to whether employees were in fact underpaid or potentially overpaid for each workday in question (including whether they were actually working during the hours which they recorded on their timesheets), resulting in an unmanageable series of mini-trials. *Id.*

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3. Rest Period Claims

Plaintiff alleges that F.A. Bartlett failed to authorize and permit all legally compliant off-duty rest periods. Blakely Decl., ¶ 17. Plaintiff contends that he and other non-exempt employees were frequently not permitted to take off-duty rest periods due to nature of their work and significant work demands placed on employees by F.A. Bartlett's supervisors and managers. *Id.* Furthermore, even when employees did receive 10-minute rest periods, Plaintiff alleges employees were often interrupted with work demands. *Id.* As with meal breaks, Plaintiff alleges he and other non-exempt employees were not permitted to leave the worksite during their rest periods, even to use the restroom. *Id*. On those occasions when all lawful rest periods were not authorized and permitted, Plaintiff alleges F. A. Bartlett failed to pay rest period premiums as required by Labor Code § 226.7. *Id*.

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

4. Unreimbursed Business Expenses

Plaintiff alleges that F.A. Bartlett failed to reimburse him and other non-exempt employees for all reasonable and necessary work expenditures, including personal cellular phone expenses. Blakely Decl., ¶ 18. Plaintiff alleges F.A. Bartlett required Plaintiff and other non-exempt employees to use their personal cellular phones on a daily basis; however, F.A. Bartlett failed to reimburse Plaintiff and other non-exempt employees for the costs associated with their cellular phones. *Id*.

In response, F.A. Bartlett maintains that employees were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 18. F.A. Bartlett further argues that any expenses incurred by employees were extremely minimal, given the wide availability of low-cost cellular phone plans. *Id*. F.A. Bartlett further contends that this claim would require individual inquiries into whether employees actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id*.; *see also*, *e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices").

5. Wage Statement Penalties

As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that F.A. Bartlett is liable for wage statement penalties pursuant to Labor Code § 226. Blakely Decl., ¶ 19. F.A. Bartlett argues any alleged wage statement violations were not "knowing and intentional," and Plaintiff cannot show that he or other employees "suffer[ed] injury" due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. *Id*. Further, F.A. Bartlett contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc*., 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received…The purpose of section 226 is to document the paid wages to ensure the employee is fully informed regarding the calculation of those wages.") (Italics in original). Blakely Decl., ¶ 19.

6. Waiting Time Penalties

Plaintiff alleges that as a further result of its failure to pay all wages earned, as well as its failure to pay all meal and rest period premiums, F.A. Bartlett is liable for waiting time penalties pursuant to Labor Code §§ 201-203. Blakely Decl., ¶ 20. F.A. Bartlett argues that it possesses strong, good-faith defenses to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. *Id.*; *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 . . . A 'good faith' dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee."). F.A. Bartlett further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Blakely Decl., ¶ 20.

7. <u>PAGA Penalties</u>

As a result of the foregoing Labor Code violations, Plaintiff alleges that F.A. Bartlett is liable for civil penalties under the PAGA. Blakely Decl., ¶ 21. Since Plaintiff's PAGA claim is derivative of Plaintiff's underlying wage claims, F.A. Bartlett asserts the PAGA claim would fail with those claims. *Id.*; *see Price v. Starbucks Corp*. 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). F.A. Bartlett further maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find F.A. Bartlett liable for any of Plaintiff's claims. Blakely Decl., ¶ 21; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*., Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. <u>DISCOVERY AND MEDIATION</u>

While this Action was pending in federal court, the Parties engaged in extensive formal discovery. Blakely Decl., ¶ 10. Plaintiff served written discovery requests seeking, among other items, contact information for the putative class, timekeeping and payroll records for the putative class, F.A. Bartlett's written wage and hour policies/procedures, and other information and documents. *Id*. F.A. Bartlett served written discovery requests, as well, seeking all documents and communications in Plaintiff's possession regarding the issues in this case. *Id.* On February 21, 2025, F.A. Bartlett took the full-day deposition of Plaintiff. *Id*. On April 10, 2025 and April 16, 2025, Plaintiff took the depositions of F.A. Bartlett's corporate witnesses pursuant to Fed. R. Civ. Proc. 30(b)(6) regarding F.A. Bartlett's wage and hour policies and procedures. *Id.*

The Parties extensively met and conferred regarding F.A. Bartlett's responses and objections to Plaintiff's written discovery, and ultimately, F.A. Bartlett produced timekeeping and payroll records for the *entire* putative class as well as F.A. Bartlett's written wage and hour policies and Employee Handbook. Blakely Decl., ¶ 10. In total, F.A. Bartlett produced over 30,000 pages of timekeeping and payroll records for the putative class. *Id*. The Parties completed a *Belaire-West* notice procedure and F.A. Bartlett produced the contact information for the putative class. *Id.* Thereafter, Plaintiff's counsel interviewed dozens of putative class members regarding their work experiences with F.A. Bartlett, and obtained declarations from putative class members in support of Plaintiff's Motion for Class Certification. *Id.* After completing this extensive discovery, Plaintiff began preparing his Motion for Class Certification, which was to be filed by December 5, 2025. *Id*.

In connection with mediation, F.A. Bartlett produced relevant data points, including the number of putative class members, the number of aggregate workweeks worked during the Class Period, and the aggregate number of pay periods during the PAGA Period. Blakely Decl., ¶ 11. With the assistance of a retained expert, Plaintiff conducted a comprehensive analysis of the payroll and timekeeping data produced by F.A. Bartlett to create a detailed exposure analysis for all claims at issue. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and F.A. Bartlett's potential defenses. *Id*.

On November 6, 2025, the Parties participated in a full-day mediation with Steven G. Mehta, Esq., a preeminent wage and hour class action mediator. Blakely Decl., ¶ 12. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*. On November

13, 2025, Mr. Mehta made a mediator's proposal, which the Parties ultimately accepted. *Id*. In the months following mediation, the Parties negotiated and finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. *Id*.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, F.A. Bartlett will pay a Gross Settlement Amount of $3,425,000.00. *See* Settlement, § 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Payment. *Id*., at §§ 3-4. Each Settlement Class member will automatically receive an Individual Settlement Payment unless he or she affirmatively opts out of the Settlement. *Id*. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount:	$3,425,000.00
• Minus Court-approved attorneys' fees:	$1,198,750.00
• Minus Court-approved verified costs (up to):	$100,000.00
• Minus Court-approved Enhancement Payment:	$10,000.00
• Minus amount set aside as PAGA penalties:	$100,000.00
• Minus estimated settlement administration costs (up to):	$10,000.00
Net Settlement Amount:	$2,006,250.00
• PLUS 35% "PAGA Amount" to Aggrieved Employees:	$35,000.00
Total Amount Paid to Settlement Class members:	$2,041,250.00

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 F.A. Bartlett to pay a Net Settlement Amount of at least $2,006,250.00 to all Settlement Class members who do not timely opt-out. *See* Settlement, § 4(A). The Settlement Administrator will calculate payments from the Net Settlement Amount based on each Settlement Class member's proportionate number of workweeks worked during the Class Period. *Id*., at § 4(B)(i).

According to F.A. Bartlett there are approximately 504 Settlement Class members. Blakely Decl., ¶ 14. Therefore, the average Individual Settlement Payment from the Net Settlement Amount is projected to be approximately **$3,980.65**. *Id*. There are approximately 308

Aggrieved Employees who worked during the PAGA Period. *Id*. Therefore, the average PAGA Payment from the PAGA Amount is estimated to be approximately $113.64. *Id*.

Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 9(C)-(D). Those Settlement Class members who do not opt out of the Settlement will be bound by its terms and will release all claims against F.A. Bartlett included within the Settlement. *Id*., at § 2(A).

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

Plaintiff will apply for Class Representative Enhancement Payment at the time of seeking final approval of the proposed class action settlement in the amount of $10,000.00 for his service to the Settlement Class. *See* Settlement, §§ 3(C)(3), 6; Blakely Decl., ¶ 25. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases,* 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff's requested Enhancement Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, responding to formal written discovery requests, preparing for and sitting for a full-day deposition, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. *See* Blakely Decl., ¶ 25; *see also* Bowen Decl., ¶¶ 4-6.

Class Counsel will also apply for an attorneys' fees award of 35% of the Gross Settlement Amount, which is currently estimated to be $1,198,750.00, and up to $100,000.00 in verified costs reimbursement. *See* Settlement, §§ 3(C)(4), 5; Blakely Decl., ¶ 24. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, conducting extensive formal discovery, taking the depositions of F.A. Bartlett's corporate witnesses, and defending Plaintiff's deposition. *Id.* Class Counsel interviewed dozens of putative class members regarding their work experiences with F.A. Bartlett and prepared declarations in support of Plaintiff's anticipated Motion for Class Certification. *Id*. Class Counsel hired a labor economist with a Ph.D. in economics to assist Plaintiff in conducting a comprehensive analysis of the payroll and timekeeping data produced by, and created a comprehensive mediation brief and damages model. *Id.* Class Counsel also prepared for and attended mediation, negotiated and prepared the long-form Stipulation of Settlement, prepared this Motion, and otherwise litigated the case. *Id*. Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the Final Approval papers, and attending the Final Approval hearing. *Id*.

California courts recognize that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See, e.g., Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of 35% of the Gross Settlement Amount is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

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

Additionally, the parties have agreed to designate $100,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $65,000.00 (65%) will be paid to the LWDA, with the remaining $35,000.00 (35%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(C)(5). Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,* *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See* e.g., *Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff's Case

Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above in section II.B., *supra*, F.A. Bartlett 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 formal and informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 23. 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 was to certify the classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

c. Risk of Maintaining Class Action Status

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by F.A. Bartlett with individual class members by way of *Pick Up Stix* type settlement agreements[3]), and the expected recovery could

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

be significantly reduced, given the settlement amounts that are typically offered through the *Pick Up Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

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

The Settlement provides a positive recovery for the Settlement Class in the face of disputed claims. Plaintiff, with the help of a retained expert, conducted a detailed analysis of alleged unpaid wages, meal and rest period premium payments owing, unreimbursed business expenses, waiting time penalties and wage statement penalties. A summary of the results of Plaintiff's exposure analysis is discussed below:

<u>Meal Period Violations</u>: $1,509,236

Based on records produced by F.A. Bartlett, Plaintiff estimates there were approximately 4,672 facial meal period violations, resulting in $141,375 in unpaid premiums (4,672 non-compliant facial meal period violations * $30.26 average premium), and approximately 161,580 meal period violations due to unlawful timekeeping practices, resulting in $4,889,411 in unpaid premiums (161,580 violations * $30.26 average premium) in unpaid premiums. Blakely Decl., ¶ 15. Therefore, Plaintiff calculated F.A. Barlett's maximum exposure for first meal period violations at approximately $5,030,786. *Id*.

However, as noted above, F.A. Bartlett contends that it maintained compliant meal period policies throughout the Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 15. F.A. Bartlett also asserts that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that, as described above, it has always done so, and any non-complaint first meal periods in the timekeeping records were the result of lawful employee waiver or choice. *Id.* F.A. Bartlett also maintains that Plaintiff's meal period claim is not suited for class certification, since 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

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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.

particular employee did not take a compliant meal period on a particular shift. *Id.* In light of these defenses and arguments, Plaintiff discounted F.A. Bartlett's maximum exposure by 40% for the risk of non-certification, and an additional 50% to account for F.A. Bartlett's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $1,509,236. *Id.*

<u>Unpaid Wages Due to Unlawful Timekeeping Policies/Practices</u>: $1,360,076

Plaintiff alleges that F.A. Bartlett failed to compensate employees for both working during their meal periods and working off-the-clock before and/or after their shifts. Blakely Decl., ¶ 16. Since Plaintiff and other non-exempt employees typically worked shifts of 8.0 hours or more, this time worked should have been paid at an overtime rate of pay. *Id.* Based on the number of synthetic meal periods in F.A. Bartlett's timekeeping and payroll records, during which employees were required to work during their recorded unpaid meal breaks, Plaintiff estimates the resulting unpaid wages at approximately $3,667,058 (161,580 synthetic first and second meals *0.5 hour * $45.39 avg. overtime rate). *Id.* Furthermore, Plaintiff alleges that he and other non-exempt employees were required to work approximately 20 minutes off-the-clock before and/or after their scheduled shift times, resulting in approximately $2,515,105 in unpaid wages (55,411 unpaid hours * 45.39 average overtime rate). *Id.* Accordingly, Plaintiff calculates the maximum potential exposure for this claim at approximately $6,182,163. *Id.*

However, as argued above, F.A. Bartlett counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period, and that Plaintiff would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. Blakely Decl., ¶ 16. Given these defenses, Plaintiff discounted this maximum amount by 45% for risk of non-certification and an additional 60% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $1,360,076. *Id.*

Rest Period Violations: $452,771

According to Plaintiff's analysis, there were a total of 166,252 shifts over 3.5 hours, and Plaintiff contends that he and other non-exempt employees were not authorized and permitted to take any duty-free rest periods. Blakely Decl., ¶ 17. Therefore, Plaintiff calculated F.A. Bartlett's maximum rest period exposure at approximately $5,030,786 (166,252 rest period violations * $30.26 average premium). *Id*.

However, as discussed above, F.A. Bartlett argues that it always maintained and enforced lawful rest period policies and practices during the Class Period. Blakely Decl., ¶ 17. F.A. Bartlett also maintains that any failure to take rest periods was the result of employee waiver or choice, and that it is not required to police rest periods. *Id.* F.A. Bartlett further argues that Plaintiff's rest period claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id*. These considerations are particularly present with respect to rest periods, F.A. Bartlett argues, as rest periods are not—and need not be—recorded. *Id*. In light of these defenses, Plaintiff discounted the maximum amount that the class could potentially recover by 70% for risk of non-certification, and discounted an additional 70% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a projected exposure of approximately $452,771. *Id*.

Unreimbursed Business Expenses: $38,264

Plaintiff alleges that F.A. Bartlett failed to reimburse him and other putative class members for all reasonable and necessary work expenditures, including personal cellular phone expenses. Blakely Decl., ¶ 18. Assuming that employees are owed approximately $25.00 per month for cellular phone usage, Plaintiff estimates F.A. Bartlett's maximum liability for its failure to reimburse employees for usage of their personal cellular phones at approximately $173,925 (6,957 aggregate work months * $25.00 per month). *Id*.

In response, F.A. Bartlett maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 18. F.A. Bartlett further argues that any expenses incurred by Settlement Class members were extremely minimal, given the wide availability of low-cost cellular phone plans. *Id*. F.A. Bartlett further contends that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id*. In light of F.A. Bartlett's defenses, Plaintiff discounted the maximum exposure by 45% for a risk of non-certification, and an additional 60% for a risk of being unsuccessful on the merits, to arrive at an estimated exposure of approximately $38,264. *Id*.

Wage Statement Penalties: $215,600

Plaintiff's analysis reflected that there were approximately 308 Settlement Class members and approximately 18,000 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. Blakely Decl., ¶ 19. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. *See* Labor Code § 226(e). *Id*. Plaintiff, therefore, assumed the maximum $4,000.00 penalty for each employee and calculated F.A. Bartlett's potential wage statement exposure at approximately $1,232,000 (308 employees * $4,000 maximum penalty). *Id*.; *see also* Labor Code § 226(e).

In light of F.A. Bartlett's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 50% for risk of non-certification, and by an additional 65% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately $215,600. Blakely Decl., ¶ 19.

Waiting Time Penalties: $202,428

F.A. Bartlett's records reflected approximately 223 Settlement Class members who separated their employment during the applicable period, and are therefore eligible for waiting time penalties. Blakely Decl., ¶ 20. Assuming an average waiting time penalty of $7,262 ($30.26 average hourly rate * 8 hours * 30 days), Plaintiff calculates F.A. Bartlett's maximum waiting time exposure at approximately $1,619,426 (223 former employees * $7,262 average waiting time penalty). *Id.*

F.A. Bartlett argues that it possesses strong, good-faith defenses to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. Blakely Decl., ¶ 20. F.A. Bartlett further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id*. To account for these defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 75% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately $202,428. *Id*.

<u>PAGA Penalties</u>: $126,000

Plaintiff estimated a maximum total PAGA exposure at approximately $1,800,000 (approx. 18,000 pay periods * $100 "initial" penalty). Blakely Decl., ¶ 21; *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 F.A. Bartlett vigorously disputes. Blakely Decl., ¶ 21; *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). F.A. Bartlett also asserts the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 21; *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 65% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 80% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $126,000. Blakely Decl., ¶ 21.

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 $3,904,375.

Blakely Decl., ¶ 22. The proposed Settlement of $3,425,000 represents approximately 87.7% 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. *Id.*

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

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines ("Haines Decl."). Class Counsel conducted an in-depth review of F.A. Bartlett's timekeeping and payroll records with the help of a retained expert, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely Decl., ¶¶ 10-11. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. <u>The Preliminary Approval Standard Is Met</u>

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

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

The proposed Settlement reflects approximately 87.7% 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 Settlement Payment of approximately **$3,980.65** greatly exceeds average payments achieved in other wage and hour class action settlements.[4] Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, extensive formal

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

discovery including depositions, written discovery, and the production of thousands of pages of records, arm's-length negotiations by counsel and a full-day mediation before an experienced wage and hour mediator. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and with the help of a retained expert conducted a detailed statistical analysis of the data to arrive at his estimated class-wide damages figures. *See* Blakely Decl., ¶¶ 15-22. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

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

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees who worked for F.A. Bartlett in California during the Class Period. *See* Settlement, at § 1. Therefore, Settlement Class members can be identified from F.A. Bartlett's personnel and employment records. F.A. Bartlett represents that the Settlement Class consists of approximately 504 current and former non-exempt employees. *See* Blakely Decl., ¶ 14. It would therefore be impracticable to bring all Settlement Class members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

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

3. The Claims of the Named Plaintiff Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the Settlement Class members. First, F.A. Bartlett employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff was subject to F.A. Bartlett's wage and hour policies at issue in this case. *See* Bowen Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he is owed unpaid wages due to unlawful timekeeping policies/practices. *See* Bowen Decl., ¶ 3. In addition, Plaintiff alleges he was deprived of all legally compliant meal and rest periods. *Id*. Plaintiff also alleges that he was not reimbursed for any cell phone expenses even though he was required to use his cell phone for work purposes. *Id*. Plaintiff further asserts that he did not receive accurate and compliant wage statements. *Id*. Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

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

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

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

This Court should order distribution to the Settlement Class of the proposed Notice Packet by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address information provided by F.A. Bartlett. *See* Settlement, § 9. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by ILYM Group, Inc. ("ILYM"), an experienced class action settlement administrator. *See generally* Declaration of Anthony Rogers ("Rogers Decl.") and attached exhibits. Settlement Class members' addresses will be ascertainable through F.A. Bartlett's personnel and payroll records, which F.A. Bartlett will provide to ILYM within fifteen (15) business days after entry of an order preliminarily approving this Settlement. *See* Settlement, § 9(A). Within ten (10) business days of receipt of the Settlement Class members' addresses, ILYM will run the names of all Settlement Class members through the National Change of Address database to update addresses and mail a Notice Packet to each Settlement Class member. *Id.*, at § 9(B). To the extent that any notices are returned, ILYM will perform a "skip trace" to track any Settlement Class member's current mailing address. *Id*., at § 9(F).

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

D. <u>THE COURT SHOULD SET A FINAL APPROVAL HEARING</u>

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

V. <u>CONCLUSION</u>

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

Dated: May 1, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

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