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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OSCAR LEON, as an individual and on behalf of all others similarly situated, Plaintiff, vs. VALET PARKING PROS, LLC, a California limited liability company; and DOES 1 through 100, inclusive, Defendants.	Case No.: 22STCV21953 **CLASS ACTION** *[Assigned for all purposes to the Hon. Yvette M. Palazuelos, Dept. SSC-9]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: June 13, 2024 Time: 10:00 a.m. Dept.: SSC-9 Action Filed: July 7, 2022 Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 13, 2024, 2024 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 9 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Oscar Leon ("Plaintiff") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement ("Settlement") between Plaintiff and Defendant Valet Parking Pros, LLC ("VPP" or "Defendant");
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:

   All current and former non-exempt employees who worked for VPP in California at any time from January 1, 2021 through the date of preliminary approval of this Settlement (the "Class Period").
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Haines Law Group, APC and Abramson Labor Group as Class Counsel;
5. Appointment of Phoenix Settlement Administrators as Settlement Administrator;
6. Approval of the proposed Class Notice and Notice of Estimated Settlement Award (together, the "Notice Packet"), and an order that the Notice Packet be disseminated to the Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award a Class Representative Enhancement Award to Plaintiff, and attorneys' fees and costs to Class Counsel.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declarations of counsel and exhibits attached thereto; the declaration of Jodey Lawrence and exhibits attached thereto; the declaration of Plaintiff; the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: February 26, 2024

ABRAMSON LABOR GROUP

Tuvia Korobkin
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Oscar Leon ("Plaintiff") seeks preliminary approval of a class action settlement ("Settlement") with Defendant Valet Parking Pros, LLC ("VPP" or "Defendant") (together with Plaintiff, the "Parties"). The Settlement resolves a class and representative action pending before this Court (the "Action"), in which Plaintiff alleges that VPP failed to reimburse Plaintiff and other non-exempt employees for business expenses; failed to pay for all hours worked; failed to provide all meal periods; and failed to authorize and permit all rest periods. Plaintiff further alleges that as a result of these violations, VPP failed to issue accurate itemized wage statements, failed to pay all wages on termination of employment, engaged in unfair competition, and is liable for civil penalties under the Private Attorneys General act ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action Settlement,[1] in which VPP has agreed to pay $180,000.00 to the following Settlement Class, which is estimated to consist of 44 individuals:

> All current and former non-exempt employees who worked for VPP in California at any time from January 1, 2021 through the date of preliminary approval of this Settlement (the "Class Period").

The Settlement was reached after the parties engaged in a full-day mediation with Phillip Cha, Esq., an experienced wage and hour class action mediator. Prior to mediation, the Parties engaged in extensive formal discovery. Among other things, VPP produced employment records for the putative class; a class list containing putative class members' hire dates, termination dates, and number of events worked; and relevant written policies.

After extensive research and investigation, including a detailed analysis of VPP's potential exposure, the mediation session was held with Mr. Cha on June 2, 2023. At the conclusion of the mediation, the Parties agreed to a mediator's proposal to resolve the Action. Over the following months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement.

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[1] The Settlement is attached as Exhibit 1 to the Korobkin Declaration. The Class Notice and Notice of Estimated Settlement Award are attached as Exhibits A and B, respectively, to the Settlement.

Notably, Settlement Class members do not need to submit a claim form to receive a payment ("Settlement Award"). After deductions for proposed administration costs, attorney fees and costs, Plaintiff's incentive award, and the LWDA's share of PAGA civil penalties, the average Settlement Award is estimated to be at least **$1,857.95**. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

VPP provides valet parking services, mainly servicing private events in the Los Angeles area. Declaration of Tuvia Korobkin ("Korobkin Decl."), ¶ 9. Plaintiff is a former non-exempt parking attendant who worked for VPP during the Class Period. *Id*. On July 7, 2022, Plaintiff filed this Action, alleging claims for failure to pay all earned wages, meal and rest period violations, waiting time penalties, wage statement penalties, failure to reimburse expenses, and unfair competition. *Id*., ¶ 10. On September 12, 2022, after providing the required written notice to VPP and the Labor & Workforce Development Agency (LWDA), Plaintiff filed the operative First Amended Complaint (FAC), which added a claim for PAGA civil penalties. *Id.*, ¶ 10.

B. PLAINTIFF'S CLAIMS AND VPP'S DEFENSES

1. Unpaid Wage Claim

Plaintiff alleges that VPP would pay employees only for their scheduled hours, rather than their actual hours worked. Korobkin Decl., ¶ 11. Specifically, Plaintiff alleges that employees were frequently underpaid by about 15 minutes per shift, as VPP encouraged employees to arrive 15 minutes early in order to acquaint themselves with the venue and report to their station, but failed to pay employees for that time.

VPP contends it consistently pays employees for all hours worked (including any early arrival times), that it includes the additional 15 minutes in employees' schedules, that employees are not required to work without pay, and that employees are in fact prohibited from working off the clock. *Id*. VPP further argues this claim would not be certified, as it would require individual inquiries into each unique event and each employee, as to whether the employee worked off the clock, how much time was worked, and whether such work was reported to VPP. *Id*.

2. Expense Reimbursement Claim

Plaintiff's reimbursement claim is predicated primarily on his allegation that he and other non-exempt employees were required to download and use the "Sling" app on their personal cell phones in order to request work events and view their work schedules, and that they were required to use their personal cell phones to communicate with management and/or other employees. Korobkin Decl., ¶ 12. VPP argues that employees were <u>not</u> required to download Sling, and that there were other, more traditional ways to obtain their schedules, including in person from management. *Id*. VPP asserts that it provides the *optional* use of Sling as a perk for employees because employees prefer the ease of using an app. *Id*. As for other cell phone use, VPP argues that any such use was sporadic and not an ordinary part of working for VPP. VPP further argues that this claim would not be certified, as it would require dozens of individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, whether VPP knew (or reasonably should have known) about the expense, and whether the expense was "necessary" under the circumstances. *Id*.; *see also Gattuso v. Hart-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."); *Grissom v. Vons Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991) (under § 2802, "ascertaining what was a necessary expenditure will require an inquiry into what was reasonable under the circumstances").

3. Meal Period Claim

Plaintiff alleges that he and other employees were unable to take off-duty meal periods, as they were required to remain on-duty at all times during their shifts. Korobkin Decl., ¶ 13. VPP argues that only about half of all shifts were over 5.0 hours and therefore even eligible for meal periods, and that in any event, VPP has maintained legally-compliant meal period policies and practices throughout the Class Period, and that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure" they are taken. Korobkin Decl., ¶ 13; *see also Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting "ensure" standard). VPP further argues that most events were staffed by more than one valet, and therefore, each valet could take an off-duty meal period while the other valet(s) covered for them. *Id*. Any failure to take a timely, 30-minute meal period was the result of employee choice, VPP contends, rather than any policy or practice of VPP. *Id*. VPP further argues that individualized inquiries would be required to determine whether individual employees – working on many different shifts in various locations and under varying circumstances – received a non-compliant meal period on each individual shift, and why any meal period was late, short, or missed, thus precluding certification of this claim. *Id*.

4. Rest Period Claim

Plaintiff alleges that VPP failed to authorize and permit net 10-minute rest periods since, as with meal periods, Plaintiff alleges that he and other nonexempt employees were required to remain on-duty during the duration of their shifts. Korobkin Decl., ¶ 14. VPP asserts that it has always maintained lawful rest period policies and practices, that it has always authorized and permitted all required rest periods to non-exempt employees, that it informs employees of their right to rest periods, and that any failure to take a rest period is the result of employee choice rather than any practice of VPP. *Id*. As with meal periods, VPP argues that most events were staffed by more than one valet, and therefore individual valets could take a rest break while other valet(s) covered for them. *Id*. VPP further argues that, as with meal periods, this claim is not amenable to class treatment because individualized inquiries would be required to determine whether individual employees in different locations, on different shifts, and under various circumstances, were in fact authorized and permitted to take rest periods on any given shift, thus precluding class certification. *Id*. These manageability concerns are particularly present with respect to rest periods, VPP contends, since rest periods are not recorded. *Id*.

5. Claims Under Lab. Code §§ 203, 226, and the PAGA

As a result of VPP's alleged failure to pay all wages, as well as its failure to provide all meal and rest periods, Plaintiff asserts that VPP failed to comply with its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. Korobkin Decl., ¶ 15. Plaintiff also seeks civil penalties under the PAGA based on the aforementioned claims. *Id*.

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VPP argues that Plaintiff's derivative claims fail for the same reasons his underlying claims fail. Korobkin Decl., ¶ 16. VPP further asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding imposition of waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties). VPP further contends that employee wage statements always accurately reflect amounts *paid* to employees and therefore no wage statement violations occurred. Korobkin Decl., ¶ 16; *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) ("The purpose of section 226 is to '*document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

Finally, VPP contends Plaintiff's PAGA claim fails because the underlying claims fail. *See, e.g., 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."). VPP further maintains that given its good-faith defenses, the Court would substantially reduce PAGA civil penalties even if it were to find in Plaintiff's favor on some or all of his underlying claims. Korobkin Decl., ¶ 16; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties in light of employer's financial condition and because "the evidence showed…defendants took their obligations…seriously and attempted to comply with the law"); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was "not aware" of violations and "took prompt steps to correct all violations once notified"); *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. DISCOVERY AND MEDIATION

After the case was at issue, the Parties engaged in extensive formal discovery. Specifically, both Plaintiff and VPP propounded and responded to written discovery, including interrogatories, requests for production, and requests for admission. Korobkin Decl., ¶ 17. The Parties met and conferred over the respective discovery responses, resulting in VPP's production of supplemental responses. *Id*. Among other things, VPP produced a class list with putative class members' hire dates, termination dates, and number of events worked for putative class members; payroll records for putative class members; Sling scheduling records; and VPP's relevant written policies. *Id*., ¶ 17. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims and VPP's defenses, as well as the chances for class certification. *Id*.

After completing this initial formal discovery, The Parties agreed to schedule a private mediation in an effort to resolve the case on a class-wide basis. The Parties attended a full-day mediation with Phillip Cha, Esq. on June 2, 2023, during which they vigorously debated Plaintiff's claims and VPP's defenses, and the chances of certification. Korobkin Decl., ¶ 18. At the conclusion of the mediation session, the Parties agreed to accept a mediator's proposal, and shortly thereafter executed a short-form MOU. *Id.* Over the following months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement. *Id*.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, VPP will pay a non-reversionary Maximum Settlement Amount ("MSA") of $180,000.00. The monetary terms of the Settlement are summarized below:

• Maximum Settlement Amount ("MSA"):	$180,000.00
• Minus Court-approved attorneys' fees (one-third):	$60,000.00
• Minus Court-approved costs (up to):	$15,000.00
• Minus Court-approved Incentive Award:	$5,000.00
• Minus Amount Set Aside as PAGA penalties:	$15,000.00
• Minus estimated settlement administration costs:	$7,000.00
Net Settlement Amount ("NSA"):	**$78,000.00**
PLUS 25% of PAGA penalties ("PAGA Amount"):	$3,750.00
Total Amount Paid to Settlement Class:	**$81,750.00**

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved incentive award, administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Settlement Class members will receive at least $81,750.00. *See* Settlement, § 3(E). Based on data provided by VPP in discovery, there are approximately 44 Settlement Class members. Korobkin Decl., ¶

20. Thus, the average payment to Settlement Class members is estimated to be approximately $1,857.95. *Id*.

The NSA shall be distributed to Participating Class Members (those Settlement Class members who do not opt out) proportionally based on the number of events worked during the Class Period. *See* Settlement, § 4(B)(i). In addition, all Settlement Class members (regardless whether they opt out) who were employed by VPP in California at any time from July 7, 2021 through the date of preliminary approval (the "PAGA Period"), will receive a portion of the $3,750.00 PAGA Amount, based on their proportionate number of events worked for VPP in California during the PAGA Period. *See* Settlement, § 4(B)(ii).

Payments from the NSA will be treated as one-third wages reported on a Form W-2, with the remaining two-thirds treated as interest and penalties and reported on a Form 1099. *See* Settlement, § 4(D). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* VPP will separately pay the employer's share of payroll taxes on the amount designated as "wages," in addition to the MSA. *Id*., § 3(F).

2. <u>Notice Period and Release of Claims</u>

Settlement Class members will have 60 days from the Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing ample time to review the Notice without unduly delaying the Settlement. *See* Settlement, § 9(C)-(E).

Participating Class Members will be bound by the Settlement, and shall release all wage and hour claims that were pled in the Action, or that could have been pled based on the facts alleged in the Action, during the Class Period ("Class Member Released Claims"). *See* Settlement, § 2(A). In addition, all Settlement Class members (regardless whether they opt out) who worked for VPP in California during the PAGA Period ("Aggrieved Employees"), will release all claims against VPP for PAGA penalties based on the facts alleged in the operative complaint in the Action, that arose during the PAGA Period ("PAGA Released Claims"). *Id*., § 2(B).

3. <u>Funding of the Settlement</u>

The Gross Settlement Amount will be funded in three payments. VPP's initial payment of $65,000.00 will be made no later than thirty (30) days following execution of the Settlement

Agreement. The second payment of $65,000 will be made no later than thirty (30) days thereafter. The third and final payment of $50,000 will be made within 30 days of the Effective Date. *See* Settlement, § 3(C).

4. Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment

At final approval, Plaintiff will apply for a Class Representative Enhancement Award in the amount of $5,000. *See* Settlement, § 3(E)(3). "[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 final approval, Plaintiff's requested payment is in recognition of the time and effort he expended on behalf of the Settlement Class, including providing factual information and documents to counsel, discussing with counsel the claims and theories at issue in the litigation, reviewing the settlement agreement and other documents, and otherwise actively participating in the prosecution of this case. Korobkin Decl., ¶ 33. Plaintiff respectfully submits that the requested payment is well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving $7,500 award to each of five named plaintiffs).

The parties have also designated $15,000 of the GSA as PAGA penalties, of which $11,120 (75%) will be paid to the LWDA, with the remaining $3,750 (25%) distributed to Settlement Class members (*see* Settlement, § 3(E)(5)), consistent with the PAGA's requirement that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of $7,500 to LWDA from $6.9 million settlement).

At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA (currently estimated at $60,000.00), and up to $15,000 in litigation costs. *See* Settlement, § 3(E)(4). The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel has incurred substantial attorneys' fees, in, among other things, conducting pre-filing investigation and legal research; conducting extensive formal discovery; analyzing payroll records and other data to create a comprehensive damages model; preparing for and attending the mediation session; negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Korobkin Decl., ¶ 31. Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls from Settlement Class members, preparing the Final Approval Motion and supporting documents, and appearing at the Final Approval Hearing. *Id*.

It is appropriate to award attorneys' fees as a percentage of the "common fund" created by the settlement. *Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). Counsel's fee request is well within the range of reasonableness and is typical for common fund settlements. *See*, *e.g.*, *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, n.11 (2008) ("regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). As will be briefed at final approval, counsel's fee request is reasonable in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which counsel conducted the litigation.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions class action settlements on court approval, which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires 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 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 is to ensure the settlement agreement taken as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a presumption of fairness when a settlement is negotiated at arm's length by counsel. *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 Plaintiff's 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 224, 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

While Plaintiff is confident in the merits of his claims, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, VPP presented multiple defenses to Plaintiff's claims, both on the merits and to class certification, rendering success far from certain.

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

Although the Parties engaged in significant discovery, there was still additional formal discovery to conduct, including deposition discovery, which would have required expenditure of substantial time and resources. Korobkin Decl., ¶ 34. Plaintiff also still had to file for class certification. *Id*. Even if Plaintiff obtained certification, the Parties would incur considerable attorneys' fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id*. The Settlement avoids those risks and the accompanying expense. *Id.* Thus, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

Plaintiff had not yet filed his class certification motion, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk there would not be a certified class at trial, or if there were, that it would consist of a significantly smaller group of employees than the proposed Settlement Class, and the expected recovery would be significantly reduced. Thus, this factor supports preliminary approval.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class for disputed claims. As detailed in the concurrently-filed Korobkin Declaration, Plaintiff conducted an analysis of potential damages due to VPP's allegedly unlawful policies and practices. After applying reasonable discounts to Plaintiff's derivative claims for risks of not obtaining class certification and of losing on the merits, Plaintiff estimated his claims had a realistic potential value of approximately $201,514.00. Korobkin Decl., ¶¶ 22-30. The proposed settlement of $180,000.00 therefore represents over 89% of Plaintiff's reasonably forecasted classwide recovery. *Id*., ¶ 30. Preliminary approval is appropriate, as the Settlement will provide significant monetary relief to the Settlement Class.

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 Pac. Enter. Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience litigating wage and hour class actions, and have been appointed class counsel in numerous cases alleging similar claims. *See* Korobkin Decl., ¶¶ 2-7; Declaration of Neil M. Larsen, ¶¶ 2-5; Declaration of Paul K. Haines, ¶¶ 2-8; Declaration of Sean M. Blakely, ¶¶ 2-6. Counsel conducted an in-depth review of VPP's policies, employment records, and other relevant data, and drew on their extensive experience to assess Plaintiff's claims. Korobkin Decl., ¶¶ 8, 22-30. The Settlement was also reached after a mediation session with mediator Phillip Cha, Esq., an experienced wage and hour class action mediator. *Id.*, ¶ 18. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

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

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

As noted, the Settlement reflects over 89% of the realistic potential value of Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

b. <u>The Settlement Resulted from Serious, Informed Negotiations</u>

The Settlement resulted from an exchange of substantial information, arm's-length negotiations, a mediation session with an experienced mediator, and months of additional negotiations. Plaintiff carefully vetted the claims at issue, and conducted a detailed analysis of the relevant data and information. Korobkin Decl., ¶¶ 22-30. The Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

c. <u>The Settlement Is Devoid of Obvious Deficiencies</u>

The Settlement provides tangible monetary relief to the Settlement Class, and the amounts proposed for attorneys' fees, costs, Plaintiff's incentive award, and PAGA penalties are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this supports preliminary approval.

B. <u>THE COURT SHOULD CERTIFY THE PROPOSED CLASS</u>

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

1. <u>The Proposed Class Is Ascertainable and Numerous</u>

A class is ascertainable where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp.,* 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked for VPP in California during the Class Period, and thus can be readily identified from VPP's records. As noted, there are about 44 Settlement Class members, rendering it impracticable to bring them all before the Court. *See Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (noting the California Supreme Court has upheld certification of a class with as few as 10 class members) (disapproved on other grounds in *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955 (2019)).

2. Common Issues of Law and Fact Predominate

The focus on certification is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated primarily on VPP's alleged failure to pay all wages due, allegedly unlawful meal and rest period policies/practices, and alleged failure to reimburse expenses. Such claims are commonly held 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); *Tokoshima v. Pep Boys-Manny Moe & Jack of Calif.*, No. C-12-4810-CRB, 2014 WL 1677979 at **5-8 (N.D . Cal. Apr. 28, 2014) (certifying minimum wage claim); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (reversing denial of class certification of reimbursement claim).

3. The Named Plaintiff's Claims Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff was employed by VPP as a non-exempt employee in California during the Class Period, and he was injured by the same challenged policies that allegedly injured the Settlement Class as a whole. *See* Declaration of Oscar Leon, ¶¶ 2-3. Thus, typicality is satisfied.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiff or his counsel and the Settlement Class. *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was 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, as noted above.

C. <u>THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE</u>

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by VPP. This is the "best notice practicable" under the circumstances as it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes the Settlement be administered by Phoenix Settlement Administrators, an experienced administrator. *See* Jodey Lawrence Declaration and exhibits. Phoenix will run all addresses through the U.S. Postal Service National Change of Address database, and will perform "skip traces" to obtain current addresses for Notices returned as undeliverable. *See* Settlement, § 9(B) & (F).

The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims; the basic contentions and denials of the parties; the key terms of the Settlement; the 60-day deadline to opt out, object, or submit a dispute and how to do so; explains the recovery formula and expected recovery amount for each Settlement Class member; and explains the releases of claims included in the Settlement. *See* Korobkin Decl., Exh. A to Exh. 1. The proposed Notice also includes the final approval hearing date and time, and it provides contact information for Class Counsel in the event Settlement Class members have any questions about the Settlement. *Id.* This Notice satisfies Cal. Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching the Settlement Class.

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

Finally, the Court should set a hearing for final approval on a date appropriately scheduled to follow Settlement Class members' response deadline. *See* Cal. Rule of Court 3.769.

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V. **CONCLUSION**

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

Dated: February 26, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

By: ______________________________
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