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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

JASON MENDEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

RAMSEY LATH & PLASTER, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 22CV01808

CLASS ACTION

*[Assigned for all purposes to Hon. Syda
Cogliati, Dept. 5]*

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

Date: May 23, 2024
Time: 8:30 a.m.
Dept.: 5

Action Filed: August 22, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 23, 2024 at 8:30 a.m. in Department 5 of the above-entitled Court, located at 701 Ocean Street, Santa Cruz, California 95060, Plaintiff Jason Mendez (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant Ramsey Lath & Plaster, Inc. (“RLP” 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 RLP in California at any time from August 22, 2018 through the Class Period End Date (the “Class Period”).
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Neil M. Larsen, Meghan E. McNally, and Jennifer S. Ramirez of Abramson Labor Group as Class Counsel;
5. Appointment of ILYM Group, Inc. (“ILYM”) as the 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 Service 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 declaration of Neil M. Larsen and exhibits attached thereto; the declaration of Meghan E. McNally; the declaration of Jennifer S. Rivera; the declaration of Lisa Mullins 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 hearing.

Dated: April 25, 2024

Respectfully Submitted,
ABRAMSON LABOR GROUP

Neil Larsen

Neil M. Larsen
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jason Mendez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant Ramsey Lath & Plaster, Inc. (“RLP” or
5 “Defendant”) (together with Plaintiff, the “Parties”). The Settlement resolves a class and
6 representative action pending before this Court (the “Action”), in which Plaintiff alleges that RLP:
7 (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide legally-
8 compliant meal periods; (4) failed to authorize and permit legally-complaint rest periods; (5)
9 failed to reimburse employees for business expenses. Plaintiff further alleges that as a result of
10 these violations, RLP failed to issue accurate itemized wage statements, failed to pay all wages
11 on termination of employment, and is liable for civil penalties under the Private Attorneys General
12 Act (“PAGA”).

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action Settlement,¹ in which RLP has agreed to pay \$650,000.00
15 to the following Settlement Class, which is estimated to consist of approximately 200 individuals:

16 All current and former non-exempt employees who worked for RLP in California
17 at any time from August 22, 2018 through the Class Period End Date² (the “Class
Period”).

18 The Settlement was reached after the parties engaged in mediation with Tripper Ortman,
19 Esq., an experienced and well-respected wage and hour class action mediator. In connection with
20 mediation, RLP provided Plaintiff with extensive informal discovery, including timekeeping and
21 payroll records for a sampling of putative class members; a detailed class list that included each
22 Settlement Class member’s hire date and termination date (if applicable); relevant written
23 policies; and additional relevant data and information. After extensive research and investigation,
24 including a detailed analysis of RLP’s potential exposure made with the assistance of an expert
25 data analyst, the mediation session was held with Mr. Ortman on September 5, 2023. With Mr.

26
27 ¹ The Settlement is attached as Exhibit 1 to the Larsen Declaration. The Class Notice and Notice
of Estimated Settlement Award are attached as Exhibit A and B, respectively, to the Settlement.

28 ² Per Section 1 of the Settlement, unless RLP elects to truncate the end of the Class Period per the
escalator clause, the Class Period End Date shall be the date the Court enters an order granting
preliminary approval.

1 Ortman’s assistance, the Parties reached a resolution in principle at mediation. Over the following
2 months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the
3 Settlement. Notably, Settlement Class members need not submit a claim to receive a payment
4 (“Settlement Award”). After deductions for proposed administration costs, attorney fees and
5 costs, Plaintiff’s service award, and the LWDA’s share of PAGA civil penalties, the average
6 Settlement Award is estimated to be at least **\$1,786.67**. For the reasons discussed herein, Plaintiff
7 respectfully requests that the Court grant preliminary approval of the Settlement.

8 **II. SUMMARY OF THE LITIGATION**

9 **A. FACTUAL AND PROCEDURAL BACKGROUND**

10 RLP is a residential plastering company located in Santa Cruz County, California. See
11 Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 7. Plaintiff worked for RLP as a non-exempt
12 Plaster Tender from approximately July 2018 until approximately September 2021. *Id.*

13 On August 22, 2022, Plaintiff, through my office, filed this Action, alleging claims for:
14 (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) meal period violations;
15 (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) failure to
16 reimburse business expenses; and (8) unfair business practices. Also on August 22, 2022,
17 Plaintiff, through my office, provided written notice to the Labor & Workforce Development
18 Agency (LWDA) and RLP of his intent to pursue PAGA civil penalties for alleged violations of
19 the California Labor Code, as required by Labor Code § 2699.3. Larsen Decl., ¶ 8. On October
20 27, 2022, Plaintiff, through my office, filed the operative First Amended Complaint (FAC), which
21 added a claim for PAGA civil penalties. *Id.*, ¶ 9.

22 **B. PLAINTIFF’S CLAIMS AND RLP’S DEFENSES**

23 **1. Claim for Underpaid Wages Based on Unlawful Rounding/Time Shaving** 24 **Practices**

25 Plaintiff alleges that RLP engaged in unlawful rounding/time shaving practices, resulting
26 in underpayment of wages, including overtime and minimum wages. Specifically, rather than
27 clocking in and out in a traditional manner, a foreman or supervisor recorded the pre-set hours
28 for each employee on each shift in whole and half hour increments, without recording a meal

period, and submitted those timesheets. Larsen Decl., ¶ 10; *See*’s *Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 901-902 (2012) (“an employer’s rounding policy violates the DOL rounding regulation if it ‘systematically undercompensate[s] employees,’ such as where the defendant’s rounding policy ‘encompasses only rounding down.’”) (citations omitted). RLP counters that its rounding policy was neutral in its application and benefitted Plaintiff and other non-exempt employees at least as often as it did RLP. Larsen Decl., ¶ 10. RLP also argues that Plaintiff cannot estimate with any accuracy the amount of time for which he and other non-exempt employees were uncompensated. *Id.*

2. Claim for Underpaid Wages Based on Regular Rate Miscalculation

Plaintiff alleges that he and other employees earned prevailing wages on select prevailing wage projects during the Class Period, which resulted in Plaintiff and other employees earning multiple rates of pay in a workweek. Larsen Decl., ¶ 11. Plaintiff further alleges that RLP failed to use the weighted average of the multiple hourly rates when calculating his and other employees’ rate of pay, and instead paid Plaintiff and other employees overtime wages at 1.5 times their base rates of pay. *Id.* Plaintiff contends that where an employee works multiple rates of pay in a workweek and works overtime hours, the employees must be paid overtime at 1.5 times the weighted average of those rates. Larsen Decl., ¶ 11; DLSE Enforcement Manual at § 49.2.5 (“Weighted Average Method. When two rates of pay are paid during a workweek, the California method for determining the regular rate of pay for calculating overtime in the workweek mirrors the federal method, based upon the weighted average of all hourly rates paid....The rate will be established by adding all hours worked in the week and dividing that number into the total compensation for the week.”) (*Italics added*); *see also Alvarado v. Dart Container Corp. of Calif.*, 4 Cal.5th 542, 544 (2018) (“Not all employees earn at a fixed pay rate throughout a pay period, and therefore regular rate of pay is a weighted average reflecting work done at varying times, under varying circumstances, and at varying rates.”) (*emphasis in original*) (citing to DLSE Enforcement Manual § 49.2.5)

RLP argues that any overtime under-payments were *de minimis*. Larsen Decl., ¶ 11. RLP also argues that employees worked on various projects throughout the Class Period, some being

prevailing wage projects and other non-prevailing wage projects, thus creating individualized differences among the putative class members with respect to the payments received as well as the expectations regarding those payments, making class certification unlikely. *Id.*

3. Meal Period Claim

Plaintiff alleges that he and other employees were frequently not provided with legally compliant meal periods because of the workload imposed by RLP. Larsen Decl., ¶ 12. Additionally, as noted above, Plaintiff further alleges that RLP failed to record Plaintiff's and other employees' meal periods.

RLP argues that it 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. Larsen Decl., ¶ 12; *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). RLP further argues that, given its lawful policies and practices, any failure to take a legally compliant meal period was the result of employee choice rather than any policy or practice of RLP. Larsen Decl., ¶ 12. Additionally, RLP contends that nearly all of its current employees would confirm that they receive meal periods, and that these individuals would likely provide declarations attesting to receiving legally compliant meal periods. *Id.* RLP further argues that individualized inquiries would be required to determine whether individual employees, under different foremen or supervisors, did not take a legally compliant meal period, and why any meal period was missed, late, or short, thereby precluding certification of this claim. *Id.*

4. Rest Period Claim

Plaintiff alleges that RLP failed to authorize and permit legally compliant rest periods because of the workload imposed by RLP. Larsen Decl., ¶ 13; *Brinker, supra*, 53 Cal.4th at 1028-32 (discussing rest period requirements).

RLP asserts it has always maintained legally compliant rest period policies, and that, in practice, 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 policy or practice of RLP. Larsen

Decl., ¶ 13. Additionally, Defendant also contends that all or nearly all of its current employees would confirm that they received legally compliant rest periods, and that these individuals would likely provide declarations attesting to receiving legally compliant rest periods. *Id.* RLP further argues this claim is not amenable to class treatment as individualized inquiries would be required to determine whether individual employees’ different foremen or supervisors 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, RLP contends, since rest periods are not (and need not be) recorded. *Id.*

5. Claim for Failure to Reimburse Business Expenses

Plaintiff alleges that RLP failed to indemnify him and other employees for the use of their personal cell phones for work purposes, primarily to communicate with supervisors and other employees regarding work-related issues. Larsen Decl., ¶ 14.

RLP counters that employees did not need to use their personal cell phones in connection with their job duties, and generally would not have been able to use their personal cell phones because their hands are coated in plaster for most of the workday. *Id.* RLP also contends that employees are provided with any equipment necessary to perform their job duties. *Id.* RLP further argues that this claim would not be certified, as it would require well over one hundred individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, whether RLP knew (or reasonably should have known) about the expense, and whether the expense was “necessary” under the circumstances. Larsen Decl., ¶ 14; *see 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.”); *see also 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”).

6. Claims Under Labor Code §§ 203, 226, and the PAGA

As a result of its alleged failure to pay all minimum and overtime wages (due to both

1 rounding and failure to pay overtime wages at the regular rate), as well as its failure to provide
2 all meal and rest periods, Plaintiff asserts that RLP failed to comply with its final payment and
3 wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. Larsen
4 Decl., ¶ 15. Finally, Plaintiff seeks civil penalties under the PAGA based on the aforementioned
5 claims, and for failure to maintain records based on RLP’s failure to record meal periods. *Id.*

6 RLP argues that Plaintiff’s derivative claims fail for the same reasons his underlying
7 claims fail. RLP further asserts it has strong, good-faith defenses to Plaintiff’s underlying claims,
8 precluding waiting time penalties. Larsen Decl., ¶ 16; *see* 8 Cal. Code Regs. § 13520 (a “good
9 faith dispute that any wages are due will preclude imposition of waiting time penalties”); *see also*
10 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded
11 imposition of waiting time penalties). RLP further contends that any alleged wage statement
12 violations were not “knowing and intentional,” particularly given its good-faith defenses; that
13 Plaintiff cannot show he or other employees “suffer[ed] injury” due to alleged wage statement
14 violations, as required by Lab. Code § 226(e); and that employee wage statements always
15 accurately reflect amounts *paid* to employees. Larsen Decl., ¶ 16; *see also Maldonado v. Epsilon*
16 *Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to
17 ‘document the paid wages to ensure the employee is fully informed regarding the calculation of
18 those wages.’”) (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

19 Finally, RLP contends Plaintiff’s PAGA claim fails because the underlying claims fail.
20 Larsen Decl., ¶ 17; *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011)
21 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
22 RLP further maintains that given its strong defenses and its good-faith attempts to comply with
23 the law, the Court would substantially reduce PAGA penalties even if it were to find in Plaintiff’s
24 favor on his underlying claims. Larsen Decl., ¶ 17; *see also* Lab. Code § 2699(e)(2) (authorizing
25 discretionary reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
26 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because, *inter alia*, “the
27 evidence showed...defendants took their obligations...seriously and attempted to comply with the
28 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); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In preparation for mediation, the Parties engaged in extensive informal discovery. Larsen Decl., ¶ 18. RLP provided Plaintiff’s counsel with a detailed class list that included Settlement Class members’ hire dates and termination dates (if applicable). *Id.* RLP also produced a sampling of timekeeping and payroll records for putative class members, its wage and hour policies, and other data points and information. *Id.* Plaintiff’s counsel hired an expert data analyst to analyze and extrapolate the data produced by RLP. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims and RLP’s defenses, as well as the chances for class certification. *Id.*

On September 5, 2023, the Parties attended a mediation with Mr. Ortman, an experienced and well-respected wage and hour class action mediator. Larsen Decl., ¶ 19. At the mediation, the Parties vigorously debated Plaintiff’s claims and RLP’s defenses, the potential value of Plaintiff’s claims, and the chances of certification. *Id.* With Mr. Ortman’s assistance, the Parties reached a class-wide settlement in principle at mediation. *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, RLP will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$650,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$650,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$216,666.67
• Minus Court-approved costs (up to):	\$25,000.00
• Minus Court-approved Service Award:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$50,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$6,000.00</u>
Net Settlement Amount (“NSA”):	\$344,833.33
PLUS 25% of PAGA penalties (“PAGA Amount”):	\$12,500.00
Total Amount Paid to Settlement Class:	\$357,333.33

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

2 As noted above, after deducting amounts for a court-approved incentive award,
3 administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, RLP will pay
4 at least \$357,333.33 to Settlement Class members. *See* Settlement, § 4(C). RLP represents that
5 there are approximately 200 Settlement Class members. *Id.*, § 1. Thus, **the average Settlement**
6 **Award is estimated to be \$1,786.67.** Larsen Decl., ¶ 21.

7 The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class
8 members who do not opt-out of the Settlement) as follows: (i) 10% of the NSA is designated the
9 “Waiting Time Amount,” and will be paid in equal amounts to all Participating Class Members
10 who are former employees of RLP and whose employment with RLP ended at any time from
11 August 22, 2019 until the end of the Class Period (“Waiting Time Period”), will receive an equal
12 share of the Waiting Time Amount; (ii) 5% of the NSA is designated the “Wage Statement
13 Amount” and will be paid to all Participating Class Members who were employed by RLP at any
14 time from August 22, 2021 through the end of the Class Period (the “Wage Statement Period”)
15 will receive a *pro rata* portion of the Wage Statement Amount based on the proportionate number
16 of pay periods that he or she was employed by RLP in California as a non-exempt employee
17 during the Wage Statement Period; and (iii) the remaining 85% of the NSA will be distributed to
18 all Participating Class Members, proportionally based on the number of workweeks worked
19 during the Class Period. *See* Settlement, § 6(B).

20 In addition, all Settlement Class members (regardless whether they opt-out) who were
21 employed by RLP in California at any time between August 22, 2021 and the end of the Class
22 Period (the “PAGA Period”), will receive a portion of the \$12,500.00 PAGA Amount, based on
23 their proportionate number of pay periods worked during the PAGA Period. *Id.*, § 6(C).

24 Payments from the NSA will be treated as one-third wages reported on a Form W-2, with
25 the remaining two-thirds treated as interest and penalties and reported on a Form 1099. *See*
26 Settlement, § 6(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* RLP
27 will separately pay the employer’s share of payroll taxes on the amount designated as “wages,” in
28 addition to the GSA. *Id.*, § 4(B). 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. *Id.*, § 11(C)-(E).

Participating Class Members will be bound by the Settlement and will release all claims that were pled in the Action, or that could have been pled based on the facts alleged in the operative Complaint, or that could have been alleged based on the facts alleged in the operative Complaint, during the Class Period (“Released Class Claims”). *See* Settlement, § 2. In addition, all Settlement Class members (regardless whether they opt-out) who worked for RLP in California during the PAGA Period, will release all claims against RLP for PAGA penalties based on the allegations in the operative Complaint, that arose during the PAGA Period (“PAGA Released Claims”). *Id.*

2. Payment of Gross Settlement Amount

The GSA shall be funded by RLP in four installments spanning 18 months from the September 5, 2023 mediation date. *See* Settlement, § 4(B). Specifically, 50% of the GSA, or \$325,000.00, will be funded by RLP on or before June 5, 2024. *Id.* The remaining \$325,000.00 will be funded in three quarterly installments: \$108,333.33 on or before September 5, 2024; \$108,333.33 on or before December 5, 2024; and \$108,333.34 on or before March 5, 2025. *Id.* At its sole discretion, RLP may fund all or a portion of the GSA in advance of the above dates. *Id.* RLP’s share of payroll taxes shall be deposited no later than the penultimate installment is deposited, i.e., on or before December 5, 2024. *Id.*

3. Attorneys’ Fees and Costs, Enhancement Award, and PAGA Payment

At final approval, Plaintiff will apply for a Class Representative Service Award in the amount of \$7,500.00. *See* Settlement, § 4(C)(iii). “[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 otherwise actively participating in the

1 prosecution of this case, as well as his general release of claims and waiver of Civil Code § 1542.
2 Larsen Decl., ¶ 33; *see also* Settlement, §§ 3, 4(C)(iii). Plaintiff respectfully submits that the
3 requested payment is well within the range of approval. *See, e.g., Bellinghausen v. Tractor Supply*
4 *Company*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$15,000 payment to named plaintiff
5 from wage and hour class action settlement, including \$10,000 incentive payment and additional
6 \$5,000 for his general release, where payments to class members averaged just over \$450);
7 *Martinez v. Knight Transportation*, No. 1:16-cv-01730, 2023 WL 5917989 (E.D. Cal. Sept. 11,
8 2023) (approving \$10,000 award to plaintiff in \$400,000 wage and hour class action settlement
9 where payments to class members averaged about \$127).

10 The Parties have also designated \$50,000.00 of the GSA as PAGA penalties, of which
11 \$37,500.00 (75%) will be paid to the LWDA, with the remaining \$12,500.00 (25%) distributed
12 to Settlement Class members (*see* Settlement, § 4(C)(v)), consistent with the PAGA's
13 requirement that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties
14 allocated to aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the
15 LWDA is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g.,*
16 *Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16,
17 2011) (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement); *Hudson v.*
18 *Libre Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13,
19 2020) (approving \$21,250 PAGA payment from \$425,000 settlement).

20 At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA
21 (currently estimated at \$216,666.67), and up to \$25,000.00 in litigation costs. Larsen Decl., ¶ 32;
22 *see also* Settlement, § 4(C)(iv). The requested fee is fair compensation for undertaking complex,
23 risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel have
24 incurred substantial attorneys' fees conducting pre-filing investigation and legal research;
25 analyzing timekeeping, payroll, and other data with Plaintiff's data expert to create a
26 comprehensive damages model; preparing for and attending mediation; negotiating and preparing
27 the Settlement; preparing this Motion; and otherwise prosecuting this case. Larsen Decl., ¶ 32.
28 Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls

1 from Settlement Class members, preparing the Final Approval Motion, and appearing at the Final
2 Approval Hearing. *Id.*

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

11 **IV. ARGUMENT**

12 **A. PRELIMINARY APPROVAL IS WARRANTED**

13 California Rule of Court 3.769 conditions class action settlements on court approval,
14 which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
15 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
16 “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*,
17 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed
18 settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of
19 dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*,
20 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role is to ensure the settlement agreement taken
21 as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a
22 presumption of fairness when a settlement is negotiated at arm’s length by counsel. *See, e.g.,*
23 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

24 **1. Standard for Preliminary Approval**

25 To make a fairness determination, the Court should consider several factors, including:
26 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
27 litigation, the risk of maintaining class action status through trial, the amount offered in
28 settlement, the extent of discovery completed and the stage of the proceedings, [and] the

1 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
2 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
3 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
4 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
5 and reasonable in light of the overall balance of factors in this case.

6 **a. The Strength of Plaintiff’s Case**

7 Although he maintains his claims are meritorious, Plaintiff acknowledges there were
8 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
9 merits. As described in section II.B., *supra*, RLP presented multiple defenses to Plaintiff’s claims,
10 both on the merits and to class certification, rendering success far from certain.

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

12 Although the Parties engaged in significant informal discovery, they had not completed
13 formal written and deposition discovery, which would have required expenditure of substantial
14 time and resources. Larsen Decl., ¶ 34. Plaintiff also still had to file for class certification. *Id.*
15 Even if Plaintiff obtained certification, the Parties would incur considerable fees and costs through
16 a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id.*
17 The Settlement avoids those risks and the accompanying expense. *Id.*

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

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

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

25 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
26 for disputed claims. As detailed in the concurrently filed Larsen Declaration, and with the
27 assistance of an expert data analyst, Plaintiff conducted an analysis of potential damages due to
28 RLP’s allegedly unlawful wage and hour policies and practices. After applying reasonable

discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiff estimated his claims had a realistic potential value of approximately \$927,965. Larsen Decl., ¶¶ 23-31. The proposed settlement of \$650,000.00 therefore represents approximately 70% of Plaintiff's reasonably forecasted classwide recovery. *Id.*, ¶ 31. As noted above, payments under the Settlement will average approximately **\$1,786.67**. 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 Larsen Decl., ¶¶ 2-6; Declaration of Meghan E. McNally, ¶¶ 2-4, and Declaration of Jennifer Rivera, ¶¶ 2-4. Counsel conducted an in-depth review of RLP's policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiff's claims. Larsen Decl., ¶¶ 23-30. The Settlement was also reached after a mediation session with Tripper Ortman, Esq., an experienced and well-respected wage and hour class action mediator. *Id.*, ¶ 19. 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. The Settlement Is Within the Range of Possible Approval

As noted, the Settlement reflects approximately 70% of the realistic estimated recovery on 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.

///

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

2 The Settlement resulted from an exchange of substantial information, arm’s-length
3 negotiations, mediation with an experienced mediator, and months of additional negotiations.
4 Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the relevant data
5 and information. Larsen Decl., ¶¶ 19, 23-31. The Settlement is thus entitled to a presumption of
6 fairness. *Kullar*, 168 Cal.App.4th at 130.

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

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

12 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

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

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

18 A class is “ascertainable” where members “may be readily identified without unreason-
19 able expense or time by reference to official [or business] records.” *Sevidal v. Target Corp.*, 189
20 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked
21 for RLP in California during the Class Period, and thus can be readily identified from RLP’s
22 records. RLP represents there are approximately 200 Settlement Class members, rendering it
23 impracticable to bring them all before the Court. Numerosity is therefore satisfied.

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

25 The focus on certification is not on the merits of the case, but rather on what types of
26 questions, “common or individual,” are likely to arise in the action. *Sav-On Drug Store, Inc. v.*
27 *Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated primarily on RLP’s
28 allegedly unlawful rounding policies and practices, failure to include multiple rates of pay in the

1 “regular rate,” allegedly unlawful meal and rest period policies/practices, and failure to reimburse
2 business expenses. Such claims are commonly held proper for class certification. *See, e.g.,*
3 *Carlino v. CHG Medical Staffing, Inc.*, No. 1:17-cv-01323-DAD-JLT, 2019 WL 1005070 (N.D.
4 Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v. Telecom Network Specialists, Inc.*
5 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

6 **3. The Named Plaintiff’s Claims Are Typical**

7 The typicality requirement is satisfied where class representatives have claims that are
8 typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347
9 (1987). Here, Plaintiff’s claims are typical of those held by Settlement Class members. Plaintiff
10 was employed by RLP as a non-exempt employee in California during the Class Period, and he
11 was injured by the same challenged policies that allegedly injured the Settlement Class as a whole.
12 *See* Declaration of Jason Mendez, ¶¶ 2-3. Thus, typicality is satisfied.

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

14 The adequacy requirement examines conflicts of interest between named parties and the
15 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155
16 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement
17 Class, as there are no known conflicts between Plaintiff or his counsel and the Settlement Class.
18 *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where
19 there was no indication that plaintiff’s counsel was not qualified and the named plaintiff had no
20 interests antagonistic to those of the proposed class). Class Counsel also have extensive
21 experience in wage and hour class action litigation, as noted above.

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

23 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
24 mailing addresses provided by RLP. *See* Settlement, § 11. This is the “best notice practicable”
25 under the circumstances, as it provides “individual notice to all members who can be identified
26 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
27 proposes the Settlement be administered by ILYM Group, Inc., an experienced class action
28 settlement administrator. *See* Lisa Mullins Declaration and exhibits. Settlement Class members’

addresses will be ascertainable through RLP's records. ILYM will also run all addresses through the U.S. Postal Service National Change of Address database and/or perform "skip traces" to obtain current addresses. *See* Settlement, § 11(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 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* Larsen 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 and ILYM 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. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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.

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: April 25, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

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