Neil M. Larsen (SBN 276490)
neil@abramsonlabor.com
Eli J. Drummond (SBN 348281)
eli@abramsonlabor.com
Meghan E. McNally (SBN 350701)
meghan@abramsonlabor.com
Jennifer Rivera (SBN 353268)
jennifer.r@abramsonlabor.com
ABRAMSON LABOR GROUP
1700 W. Burbank Blvd.
Burbank, California 91506
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CHARLES L. BING, on behalf of himself and all others similarly situated, Plaintiff, vs. MIRAMAR HEALTH, LLC, a limited liability company; MIRAMAR HEALTH, INC., a California corporation; and DOES 1 through 100, Inclusive, Defendants.	Case No.: 30-2022-01274896-CU-OE-CXC **CLASS ACTION** *[Assigned for all purposes to the Hon. Melissa R. McCormick, Dept. CX104]* **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** **Reservation No.: 74336339** Date: October 24, 2024 Time: 2:00 p.m. Dept.: CX104 Action Filed: August 11, 2022 Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 24, 2024 at 2:00 p.m., or as soon thereafter as the matter may be heard in Department CX104 of the above-entitled Court, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701, Plaintiffs Charles L. Bing ("Plaintiff Bing") and Jonathan Wilder ("Plaintiff Wilder") (collectively "Plaintiffs") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiffs and Defendants Miramar Health, LLC and Miramar Health, Inc. (together "Miramar" or "Defendants");
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 Miramar in California at any time from August 11, 2018 through November 21, 2023 (the "Class Period").
3. Preliminary appointment of Plaintiffs Bing and Wilder as Class Representatives;
4. Preliminary appointment of Abramson Labor Group as Class Counsel;
5. Appointment of Phoenix Settlement Administrators 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 Payment to Plaintiffs Bing and Wilder, 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 Jodey Lawrence and exhibits attached thereto; the declarations of Plaintiffs; the pleadings and other papers filed in this action; and any further evidence or argument presented at the hearing.

Dated: July 11, 2024

Respectfully Submitted,
ABRAMSON LABOR GROUP

Neil M. Larsen
Attorneys for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

<u>Federal Statues & Rules</u>

<u>State Statutes and Rules</u>

<u>Unpublished Cases</u>

<u>Other Citations</u>

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Charles L. Bing ("Plaintiff Bing") and Jonathan Wilder ("Plaintiff Wilder") (collectively "Plaintiffs") seek preliminary approval of a class action settlement agreement ("Settlement") with Defendants Miramar Health, LLC and Miramar Health, Inc. (collectively "Miramar" or "Defendants") (together with Plaintiffs, the "Parties"). The Settlement resolves a class and representative action pending before this Court (the "Action"), in which Plaintiffs allege that Miramar failed to provide all meal periods; failed to authorize and permit all rest periods; failed to reimburse employees for business expenses; and failed to include accurate hours worked on employee wage statements. Plaintiffs further allege that as a result of these violations, Miramar 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").

Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary, common-fund class action Settlement,[1] in which Miramar has agreed to pay $285,000.00 to the following Settlement Class, which is estimated to consist of 131 individuals:

> All current and former non-exempt employees who worked for Miramar in California at any time from August 11, 2018 through November 21, 2023 (the "Class Period").

The Settlement was reached after the parties engaged in mediation with mediator Brandon McKelvey, Esq., an experienced and well-respected wage and hour class action mediator. In connection with mediation, Miramar provided Plaintiffs' counsel with extensive informal discovery, including timekeeping and payroll records for all putative class members; a class list containing putative class members' hire and termination dates (if applicable), and other information and relevant written policies.

After extensive research and investigation, including detailed analysis of Miramar's potential exposure made with the assistance of an expert data analyst, the mediation session was held with Mr. McKelvey on September 22, 2023. At the conclusion of the mediation, the Parties

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

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.

Notably, Settlement Class members need not submit a claim to receive a payment ("Settlement Award"). After deductions for proposed administration costs, attorney fees and costs, Plaintiffs' Class Representative Service Payments, and the LWDA's share of PAGA civil penalties, the average Settlement Award is estimated to be at least **$1,022**. For the reasons discussed herein, Plaintiffs respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Miramar is a healthcare provider exclusively for Veterans, focused on rehabilitation programs, treatment, and mental health services. Declaration of Neil M. Larsen ("Larsen Decl."), ¶ 7. Plaintiff Bing is a former non-exempt Driver who worked for Miramar in California during the Class Period. *Id*. Plaintiff Wilder is a former non-exempt Behavioral Health Technician who worked for Miramar in California during the Class Period. *Id*. On August 11, 2022, Plaintiff Bing filed this Action, alleging claims for meal and rest period violations, waiting time penalties, wage statement penalties, failure to reimburse expenses, and unfair business practices. *Id.*, ¶ 8. On August 11, 2022, Plaintiff Bing also provided written notice to the Labor & Workforce Development Agency (LWDA) and Miramar of their intent to pursue PAGA civil penalties for alleged violations of the California Labor Code, as required by Labor Code § 2699.3. *Id.* On October 14, 2022, Plaintiff Bing filed the First Amended Complaint (FAC), which added a claim for PAGA civil penalties. *Id.*, ¶ 9. On October 21, 2022, Plaintiff Bing electronically submitted a copy of the FAC to the LWDA. *Id*. On February 29, 2024, Plaintiff Bing filed the operative Second Amended Complaint (SAC), which added Plaintiff Wilder as a named plaintiff and class representative. *Id*., ¶ 10. On April 4, 2024, Plaintiffs electronically submitted a copy of the SAC to the LWDA. *Id*.

///

///

B. PLAINTIFFS' CLAIMS AND MIRAMAR'S DEFENSES

1. Unreimbursed Expenses Claim

Plaintiffs allege that Miramar failed to indemnify them and other employees for the use of their personal cell phones and/or other personal devices for work purposes, including to download and use the "Paychex" mobile application to clock in and out of work, as well as to communicate with co-workers and supervisors. Larsen Decl., ¶ 11. Miramar counters that employees did not need to use their personal cell phones in connection with their job duties, and that if they did, there are procedures in place for employees to request reimbursement of work-related expenses. *Id*. Miramar also contends that employees are provided with any equipment necessary to perform their job duties. *Id.* Miramar further argues that this claim would not be certified, as it would require more than a hundred individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, whether Miramar knew (or reasonably should have known) about the expense, and whether the expense was "necessary" under the circumstances. *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."); *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").

2. Meal Period Claim

Plaintiffs allege that they and other employees were often forced to take late, short and/or missed meal periods, as a result of Miramar requiring them to be available to Miramar's clients for the entirety of their shifts, rendering them unable to take an off-duty meal period. Larsen Decl., ¶ 12. Plaintiffs further allege that Miramar failed to provide second meal periods on shifts over 10 hours. *Id.* Miramar 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; *see Brinker*

Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1038 (rejecting "ensure" standard). Miramar further argues that employee time records generally show that employees clocked out for legally compliant meal periods for the majority of shifts over 5 hours, demonstrating that employees regularly took compliant meal periods. *Id*. Miramar also contends that employees were paid a meal period penalty when no legally compliant meal period was taken. *Id*. With respect to second meal periods, Miramar argues that employees rarely work shifts over 10 hours; that many employees indeed take second meal periods on shifts over 10 hours, as reflected in timekeeping records; and that those who do not have voluntarily waived their second meal period as they are entitled to do under Labor Code § 512. *Id*. Miramar further argues that individualized inquiries would be required to determine whether individual employees received a non-compliant meal period and/or did not take a second meal period on each individual shift, and why any meal period was late, short or missed, thereby precluding certification of this claim. *Id*.

3. <u>Rest Period Claim</u>

Plaintiffs allege that Miramar often failed to authorize and permit legally compliant off-duty rest period. Larsen Decl., ¶ 13; *Brinker*, 53 Cal.4th at 1028-32 (discussing rest period requirements). Miramar asserts that, in policy and practice, they have always authorized and permitted all required rest periods to non-exempt employees; that they inform 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 Miramar. *Id*. Miramar further argues that this claim is not amenable to class treatment as individualized inquiries would be required to determine whether individual employees in different job positions were in fact authorized and permitted to take rest periods on any given shift, under various supervisors and time periods, thus precluding class certification. *Id*. These manageability concerns are particularly present with respect to rest periods, Miramar contends, since rest periods are not (and need not) be recorded. *Id*.

4. <u>Claims Under Lab. Code §§ 203, 226, and the PAGA</u>

As a result of Miramar's alleged failure to provide all meal and rest periods, Plaintiffs assert that Miramar failed to comply with its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. Larsen Decl., ¶ 14. Plaintiffs further allege that Miramar regularly issued facially deficient wage statements. Specifically, Plaintiffs allege that the wage statements issued by Miramar included a line item titled "Total Hrs Worked," and that Miramar would include the hours paid as meal period premiums as "hours worked," even though the hours ascribed to meal period premiums are not actually hours worked. *Id*.

Miramar argues that Plaintiffs' derivative claims fail for the same reasons their underlying claims fail. Larsen Decl., ¶ 15. Miramar further asserts it has strong, good-faith defenses to Plaintiffs' 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). Miramar further contends any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiffs cannot show they or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e), particularly because the alleged facially deficient wage statements did not result in unpaid wages; and that employee wage statements always accurately reflect amounts *paid* to employees. Larsen Decl., ¶ 15; *see Naranjo v. Spectrum Security Srvcs., Inc.*, 15 Cal.5th 1056, 1087 (2024) (holding that an employer's "good faith" belief that it is not violating Labor Code Section 226 precludes a finding of a knowing and intentional violation); *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, Miramar contends Plaintiffs' 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."). Miramar further maintains that given its good-faith defenses, the Court would substantially reduce PAGA civil penalties even if it were to find in Plaintiffs' favor on their underlying claims. Larsen Decl., ¶ 15; *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

In preparation for mediation, the Parties engaged in extensive informal discovery. Miramar produced a class list with putative class members' hire dates and termination dates (if applicable). Miramar also produced timekeeping and payroll records for all putative class members during the Class Period, its wage and hour policies, and other relevant information. Larsen Decl., ¶ 16. Plaintiffs' counsel hired an expert data analyst to analyze and extrapolate the data produced by Miramar. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims and Miramar's defenses, as well as the chances for class certification. *Id*.

The Parties attended a mediation with Mr. McKelvey on September 22, 2023, at which they vigorously debated Plaintiffs' claims and Miramar's defenses, and the chances of certification. Larsen Decl., ¶ 17. At the conclusion of the mediation session, the Parties agreed to accept a mediator's proposal. *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, Miramar will pay a non-reversionary Gross Settlement Amount ("GSA") of $285,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	$285,000.00
• Minus Court-approved attorneys' fees (one-third):	$95,000.00
• Minus Court-approved costs (up to):	$17,500.00
• Minus Court-approved Service Payments:	$10,000.00
• Minus Amount Set Aside as PAGA penalties:	$30,000.00
• Minus estimated settlement administration costs:	$6,000.00
Net Settlement Amount ("NSA"):	**$126,500.00**
PLUS 25% of PAGA penalties ("PAGA Amount"):	$7,500.00
Total Amount Paid to Settlement Class:	**$134,000.00**

1. **Funding of the Settlement**

The Gross Settlement Amount shall be funded in accordance with the following schedule: Miramar shall make fifteen (15) monthly payments of $19,000 each, on the last day of each month beginning on October 31, 2023 through December 31, 2024. *See* Settlement, § 4(B).

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

As noted above, after deducting amounts for court-approved Class Representative Service Payments, administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Miramar will pay at least $134,000.00 to Settlement Class members. *See* Settlement, § 4(C). Miramar represents that there are approximately 131 Settlement Class members. *Id.*, § 1. Thus, the average payment to Settlement Class members is estimated to be $1,022. Larsen Decl., ¶ 19.

The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class members who do not opt-out of the Settlement) as follows: (i) 15% of the NSA is designated the "Waiting Time Amount," and will be paid in equal amounts to all Participating Class Members whose employment with Miramar ended at any time from August 11, 2019 through November 21, 2023; (ii) 10% of the NSA is designated the "Wage Statement Amount" and will be paid to all Participating Class Members who were employed by Miramar in California at any time from August 11, 2021 through November 21, 2023, based on their proportionate number of pay periods worked during that time period; and (iii) the remaining 75% of the NSA will be distributed to all Participating Class Members, proportionally based on the number of workweeks worked during the Class Period. *See* Settlement, § 6(B).

In addition, all Settlement Class members (regardless whether they opt-out) who were employed by Miramar in California at any time between August 11, 2021 and November 21, 2023 (the "PAGA Period"), will receive a portion of the $7,500 PAGA Amount, based on their proportionate number of pay periods worked for Miramar in California during the PAGA Period. *See* Settlement, §§ 1, 2, 6(C).

Payments from the NSA will be treated as 33.33% wages reported on a Form W-2, and 66.67% as penalties and expense reimbursement, reported on a Form 1099. *See* Settlement, § 6(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* At the same time it deposits the **final** installment payment of the GSA, Miramar will separately pay the employer's share of payroll taxes on the amount designated as "wages," in addition to the GSA. *Id*., § 4(D). 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 Id.*, § 11(C)-(E).

Participating Class Members will be bound by the Settlement, and shall release Miramar from any and all causes of action, claims, rights, damages, and penalties arising under California law that were alleged in the operative Complaint or that could have been alleged based on the facts alleged in the operative Complaint, during the Class Period ("California Released Claims"). *See* Settlement, § 2. In addition, all Settlement Class members (regardless whether they opt-out from the Class Settlement) who worked for Miramar in California during the PAGA Period, will release all claims against Miramar 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*.

3. Attorneys' Fees and Costs, Service Payments, and PAGA Payment

At final approval, Plaintiffs will apply for Class Representative Service Payments in the amount of $5,000 each (totaling $10,000). *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, Plaintiffs' requested Class Representative Service Payments are in recognition of the time and effort they 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 prosecution of this case. Larsen Decl., ¶ 29. Plaintiffs respectfully submit that the requested Service Payments are 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 from $505,058.60 settlement).

The Parties have also designated $30,000 of the GSA as PAGA penalties, of which

$22,500 (75%) will be paid to the LWDA, with the remaining $7,500 (25%) distributed to Settlement Class members (*see* Settlement, § 4(C)(v)), 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)). Plaintiffs submit 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, Plaintiffs' counsel will request attorneys' fees of one-third of the GSA (currently estimated at $95,000), and up to $17,500 in litigation costs. *See* Settlement, § 4(C)(iv). The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiffs' counsel has incurred substantial attorneys' fees, in, among other things, conducting pre-filing investigation and legal research; analyzing timekeeping, payroll, and other data with Plaintiffs' expert data analyst 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. Larsen Decl., ¶ 28. 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 Plaintiffs' Case

While Plaintiffs are confident in the merits of their claims, Plaintiffs acknowledge there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, Miramar presented multiple defenses to Plaintiffs' 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 informal discovery, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. Larsen Decl., ¶ 30. Plaintiffs also still had to file for class certification. *Id*. Even if Plaintiffs 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

Plaintiffs had not yet filed their class certification motion, and as such, the extent to which Plaintiffs' 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 Larsen Declaration, and with the assistance of an expert data analyst, Plaintiffs conducted an analysis of potential damages due to Miramar's allegedly unlawful policies and practices. After applying reasonable discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiffs estimated their claims had a realistic potential value of approximately $302,654. Larsen Decl., ¶¶ 21-27. The proposed settlement of $285,000.00 therefore represents over 94.1% of Plaintiffs' reasonably forecasted classwide recovery. *Id* at 27. As noted above, payments under the Settlement will average over $1,022. 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., ¶¶ 2-5. Counsel conducted an in-depth review of Miramar's policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiffs' claims. Larsen Decl., ¶ 16. The Settlement was also reached after a mediation session with mediator Brandon McKelvey, Esq., an experienced wage and hour class action mediator. *Id.*, ¶ 17. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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

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 94.1% of the realistic estimated recovery on Plaintiffs' claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiffs submit 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 weeks of additional negotiations. Plaintiffs carefully vetted the claims at issue, and conducted a detailed analysis of the relevant data and information with the help of a retained expert. Larsen Decl., ¶¶ 16-17. 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, Plaintiffs' service payments, 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. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

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) Plaintiffs' claims are typical of the Settlement Class; and 4) Plaintiffs and their counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

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 Miramar in California during the Class Period, and thus can be readily identified from Miramar's records. Miramar represents there are about 131 Settlement Class members, rendering it impracticable to bring them all before the Court. Numerosity is satisfied.

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). Plaintiffs' claims are predicated primarily on Miramar's allegedly unlawful meal period, rest period, and reimbursement policies/practices. 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); *Espejo v. The Copley Press, Inc.*, 13 Cal.App.5th 329 (2017) (affirming that reimbursement claims are susceptible to common proof).

3. The Named Plaintiffs' 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, Plaintiffs' claims are typical of Settlement Class members. Plaintiffs were employed by Miramar as non-exempt employees in California during the Class Period, and were injured by the same policies and practices that allegedly injured the Settlement Class. Declaration of Charles Bing, ¶¶ 2-3; Declaration of Jonathan Wilder, ¶¶ 2-3. Thus, typicality is satisfied.

4. <u>Plaintiffs and Class Counsel Will Adequately Represent the Class</u>

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). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiffs or their 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 Miramar. *See* Settlement, § 11. 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). Plaintiffs propose the Settlement be administered by Phoenix Settlement Administrators, an experienced class action settlement administrator. *See* Jodey Lawrence Declaration and exhibits. Settlement Class members' addresses will be ascertainable through Miramar's records. Phoenix 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 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* Larsen Decl., Exh. A to Exh. 1. The proposed Notice also includes the final approval hearing date and time, and provides contact information for Class Counsel and the administrator 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, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Respectfully submitted,

Dated: July 11, 2024

ABRAMSON LABOR GROUP

By: *Neil Larsen*
Neil M. Larsen
Attorneys for Plaintiffs