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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

ULISES JIMENEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

DELTA VIEW FARMS, LLC, a California
limited liability company; GREGORY O. DIAS
DAIRY-FARMING, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: VCU293548

CLASS ACTION

*[Assigned for all purposes to the Hon.
Bret D. Hillman, Dept. 07]*

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

Date: February 6, 2024

Time: 8:30 a.m.

Dept.: 7

Action Filed: September 29, 2022

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on February 6, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 7 of the above-entitled Court, located at 221 South Mooney Blvd., Visalia, California 93291, Plaintiff Ulises Jimenez (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant Gregory O. Dias Dairy Farming, Inc. dba Delta View Farms (“Delta View”);
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 Delta View in California at any time from September 29, 2018 through October 17, 2023 (the “Class Period”).
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Abramson Labor Group as Class Counsel;
5. Appointment of Phoenix Settlement Administrators (“Phoenix”) 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.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Tuvia Korobkin 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: January 11, 2024

ABRAMSON LABOR GROUP


Tuvia Korobkin
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ulises Jimenez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) with Defendant Gregory O. Dias Dairy Farming, Inc. dba Delta View
5 Farms (“Delta View” or “Defendant”) (together with Plaintiff, the “Parties”). The Settlement
6 resolves a class and representative action pending before this Court (the “Action”), in which
7 Plaintiff alleges that Defendant failed to pay Plaintiff and other employees all overtime wages
8 due and failed to provide all required meal and rest periods. Plaintiff further alleges that as a result
9 of these violations, Defendant failed to issue accurate itemized wage statements, failed to pay all
10 wages on termination of employment, engaged in unfair competition, and is liable for civil
11 penalties under the Private Attorneys General act (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action Settlement,¹ in which Delta View has agreed to pay
14 \$270,000.00 to the following Settlement Class, which is estimated to consist of 149 individuals:

15 All current and former non-exempt employees who worked for Delta View in
16 California at any time from September 29, 2018 through October 17, 2023 (the
“Class Period”).

17 The Settlement was reached after the parties engaged in a full-day mediation with Jim
18 Phillips, Esq., an experienced wage and hour class action mediator. In connection with mediation,
19 Delta View produced extensive formal and informal discovery, including timekeeping and payroll
20 records for putative class members; a class list containing putative class members’ hire dates,
21 termination dates, and rates of pay; relevant policy documents; and other relevant documents and
22 information.

23 After extensive research and investigation, including a detailed analysis of Delta View’s
24 potential exposure made with the assistance of an expert data analyst, the mediation session was
25 held with Mr. Phillips on October 17, 2023. At the conclusion of the mediation, the Parties agreed
26 to a mediator’s proposal to resolve the Action. Over the following months, the Parties negotiated
27 the finer terms of the settlement, ultimately resulting in the Settlement.

28 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 \$837.25. As explained in detail below, Plaintiff respectfully submits that the Court should grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Delta View is a dairy farm in Visalia. *See* Declaration of Tuvia Korobkin (“Korobkin Decl.”), ¶ 9. *Id.* Plaintiff is a former non-exempt employee who worked at Delta View during the Class Period. *Id.* On September 29, 2022, Plaintiff filed this Action, alleging claims for failure to pay overtime wages, meal and rest period violations, waiting time penalties, wage statement penalties, and unfair competition. *Id.*, ¶ 10. On December 5, 2022, after providing the required notice to Delta View and the Labor & Workforce Development Agency (LWDA), Plaintiff filed his First Amended Complaint (FAC), adding a claim for PAGA civil penalties. *Id.*, ¶¶ 10-11.

B. DELTA VIEW’S PICK UP STIX CAMPAIGN

In or about January 2023, Delta View engaged in a “Pick Up Stix” process² in which it offered individual settlement payments of \$250.00 each to many of its employees, in exchange for those employees’ signing a general release. *See* Korobkin Decl., ¶ 12. According to Delta View, approximately 19 putative class members signed releases and received payments as a result of its *Pick Up Stix* campaign. *Id.* This, Delta View contends, would narrow the scope of any potential class that Plaintiff could represent in this action.

C. PLAINTIFF’S CLAIMS AND DELTA VIEW’S DEFENSES

1. Overtime Claim

Plaintiff alleges that Delta View only paid overtime to Plaintiff and its other employees after 10 hours of work, in violation of California law. Korobkin Decl., ¶ 13. Specifically, Plaintiff alleges that under Wage Order 14, Delta View was required to pay employees overtime after 9.5

² In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), a wage and hour class action, the Court of Appeal upheld the validity of individual settlement agreements that a defendant-employer had reached directly with individual putative class members in exchange for their release of claims.

1 hours of work in a workday (or after 55 hours in a workweek) beginning in 2019, after 9 hours of
2 work in a workday (or after 50 hours in a workweek) beginning in 2020, after 8.5 hours of work
3 in a workday (or after 45 hours in a workweek) beginning in 2021, and after 8 hours of work in a
4 workday (or after 40 hours in a workweek) beginning in 2022. *Id.*; *see also* Wage Order 14, § 3.

5 Delta View contends that at all relevant times, it employed 25 or fewer employees.
6 Korobkin Decl., ¶ 13. Thus, pursuant to Wage Order 14, it was only required to pay overtime
7 after 10 hours of work through the end of 2021, and the lower overtime thresholds only began
8 “phasing in” in 2022. *Id.*; *see also* Wage Order 14, § 3(A)(2). Delta View further contends that
9 it has consistently adhered to the overtime requirements found in Section 3(A)(2) of Wage Order
10 14, and thus, it has paid its employees overtime correctly. *Id.* Delta View further argues that this
11 claim would not be certified, as it would require individualized inquiries into whether Delta View
12 employed more than 25 employees at any given time, whether Delta View paid overtime properly
13 to each employee, and how much each employee suffered in potential damages. *Id.* Delta View
14 also points to its *Pick Up Stix* settlement agreements, as well as arbitration agreements that it
15 claims were signed by putative class members, and argues that these would further decrease the
16 likelihood of certification of this claim or any other of Plaintiff’s claims. *Id.*

17 **2. Meal Period Claim**

18 Plaintiff alleges that he and other employees were often unable to take compliant meal
19 periods, and therefore took late and/or short meal periods or missed meal periods altogether, as a
20 result of the workload imposed on them and understaffing. Korobkin Decl., ¶ 14.

21 Delta View argues that it has maintained legally-compliant meal period practices
22 throughout the Class Period, and that under *Brinker* it is only required to “provide” the
23 opportunity to take meal periods, not “ensure” they are taken. Korobkin Decl., ¶ 14; *see Brinker*
24 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). Delta View further
25 argues that employees were permitted to take their meal periods at their own discretion, and thus
26 any failure to take a timely, 30-minute meal period was the result of employee choice rather than
27 any policy or practice of Delta View. *Id.* As for second meal periods, Delta View argues that
28 employees who did not take a second meal period on shifts over 10 hours waived their second

1 meal period as they are entitled to do under Labor Code § 512. *Id.* Delta View further argues that
2 employees consistently signed attestations on their time cards that they were provided all meal
3 and rest breaks required by California law, which refutes Plaintiff's claim that meal periods were
4 not properly provided. *Id.* Delta View also points out that it has paid thousands of meal period
5 premiums during the Class Period, demonstrating that it takes its meal period obligations
6 seriously and attempts to comply with the law. Finally, Delta View argues that individualized
7 inquiries would be required to determine whether individual employees – working on many
8 different shifts in various job positions and under varying circumstances – received a non-
9 compliant meal period and/or did not take a second meal period on each individual shift, and why
10 any meal period was late, short or missed, thereby precluding certification of this claim. *Id.*

11 **3. Rest Period Claim**

12 Plaintiff alleges that Delta View often failed to authorize and permit net 10-minute rest
13 periods as a result of the workload imposed by Delta View. Korobkin Decl., ¶ 15; *Brinker*, 53
14 Cal.4th at 1028-32 (discussing rest period requirements). Delta View asserts that, in practice, it
15 has always authorized and permitted all required rest periods to non-exempt employees; that it
16 informs employees of their right to rest periods; that employees sign attestations affirming that
17 they are provided all required rest periods (as noted above); and that any failure to take a rest
18 period is the result of employee choice rather than any Delta View policy or practice. *Id.* Delta
19 View further argues that, as with meal periods, this claim is not amenable to class treatment
20 because individualized inquiries would be required to determine whether individual employees
21 in different job positions, different shifts, and different circumstances, were in fact authorized
22 and permitted to take rest periods on any given shift, thus precluding class certification. *Id.* These
23 manageability concerns are particularly present with respect to rest periods, Delta View contends,
24 since rest periods are not recorded. *Id.*

25 **4. Claims Under Lab. Code §§ 203, 226, and the PAGA**

26 As a result of Delta View's alleged failure to pay all overtime wages, as well as its alleged
27 failure to provide all meal and rest periods, Plaintiff asserts that Delta View failed to comply with
28 its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and

226, respectively. Korobkin Decl., ¶ 16. Plaintiff also seeks civil penalties under the PAGA based on the aforementioned claims. *Id.*

Delta View argues that Plaintiff’s derivative claims fail for the same reasons his underlying claims fail. Korobkin Decl., ¶ 17. Delta View 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). Delta View further contends that employee wage statements always accurately reflect amounts *paid* to employees and therefore no wage statement violations occurred. Korobkin Decl., ¶ 17; *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, Delta View contends the 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.”). Delta View 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., ¶ 17; *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).

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1 **D. DISCOVERY AND MEDIATION**

2 The Parties engaged in both formal and informal discovery. Specifically, Plaintiff
3 propounded a set of written discovery, including Form Interrogatories, Special Interrogatories,
4 Requests for Production, and Requests for Admission. Korobkin Decl., ¶ 18. In response, Delta
5 View provided written responses as well as over 4,500 pages of documents, including (but not
6 limited to) a class list, settlement agreements reached between Delta View and putative class
7 members, policy documents, and timekeeping and payroll records for putative class members. In
8 addition, and in preparation for mediation, the Parties engaged in informal discovery, including
9 (but not limited to) Delta View’s production of a class list with putative class members’ hire dates,
10 termination dates, and rates of pay. *Id.* Plaintiff’s counsel hired an expert data analyst to analyze
11 the data produced by Delta View. *Id.* The Parties’ counsel also conducted a pre-mediation call
12 where they shared their views of the case and potential damages. *Id.* This discovery allowed the
13 Parties to assess the merits and value of Plaintiff’s claims and Delta View’s defenses, as well as
14 the chances for class certification. *Id.*

15 The Parties attended a full-day mediation with Jim Phillips, Esq. on October 17, 2023,
16 during which they vigorously debated Plaintiff’s claims and Delta View’s defenses, and the
17 chances of certification. Korobkin Decl., ¶ 19. At the conclusion of the mediation session, the
18 Parties agreed to accept a mediator’s proposal. *Id.* Over the following months, the Parties
19 negotiated the finer terms of the settlement, ultimately resulting in the Settlement. *Id.*

20 **III. THE PROPOSED SETTLEMENT**

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

22 Under the Settlement, Delta View will pay a non-reversionary Gross Settlement Amount
23 (“GSA”) of \$270,000.00. The monetary terms of the Settlement are summarized below:

24	• Gross Settlement Amount (“GSA”):	\$270,000.00
25	• Minus Court-approved attorneys’ fees (one-third):	\$90,000.00
26	• Minus Court-approved costs (up to):	\$20,000.00
27	• Minus Court-approved Incentive Award:	\$7,500.00
28	• Minus Amount Set Aside as PAGA penalties:	\$25,000.00
	• <u>Minus estimated settlement administration costs:</u>	<u>\$9,000.00</u>
	Net Settlement Amount (“NSA”):	\$118,500.00
	PLUS 25% of PAGA penalties (“PAGA Amount”):	\$6,250.00
	Total Amount Paid to Settlement Class:	\$124,750.00

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, Settlement
4 Class members will receive at least \$124,750.00. *See* Settlement, § 3(C). Delta View represents
5 that there are approximately 149 Settlement Class members. *Id.*, § 1. Thus, the average payment
6 to Settlement Class members is estimated to be \$837.25. Korobkin Decl., ¶ 21.

7 The NSA shall be distributed to Participating Class Members (those Settlement Class
8 members who do not opt out) as follows: First, \$250.00 will be allocated to each Participating
9 Class Member who did not sign a *Pick Up Stix* agreement with Delta View, as a “true up” payment
10 meant to place those employees on equal footing with those employees who did sign a *Pick Up*
11 *Stix* agreement and received the \$250.00 payment from Delta View. *See* Settlement, § 6(B)(i).
12 Delta View represents that approximately 130 Settlement Class members did not sign the *Pick*
13 *Up Stix* settlement agreement, and thus, this “true up” payment will equal approximately
14 \$32,500.00. *Id.* The remainder of the NSA, called the “NSA Remainder,” will be distributed to
15 all Participating Class Members based on the proportionate number of workweeks worked by
16 each Participating Class Member during the Class Period. *See* Settlement, § 6(B)(ii).

17 In addition, all Settlement Class members (regardless whether they opt out) who were
18 employed by Delta View in California at any time from September 29, 2021 to October 17, 2023
19 (the “PAGA Period”), will receive a portion of the \$6,250.00 PAGA Amount, based on their
20 proportionate number of pay periods worked for Delta View in California during the PAGA
21 Period. *See* Settlement, § 6(C).

22 Payments from the NSA will be treated as 20% wages reported on a Form W-2, with the
23 remaining 80% treated as interest and penalties and reported on a Form 1099. *See* Settlement, §
24 6(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* Delta View will
25 separately pay the employer’s share of payroll taxes on the amount designated as “wages,” in
26 addition to the GSA. *Id.*, § 4(D).

27 ///

28 ///

1 **2. Notice Period and Release of Claims**

2 Settlement Class members will have 60 days from the Notice mailing to opt out of or
3 object to the Settlement, or submit disputes, thereby providing ample time to review the Notice
4 without unduly delaying the Settlement. *See* Settlement, § 11(C)-(E).

5 Participating Class Members will be bound by the Settlement, and shall release all wage
6 and hour claims that were pled in the Action, or that could have been pled based on the facts
7 alleged in the Action, during the Class Period (“California Released Claims”). *See* Settlement, §
8 2. In addition, all Settlement Class members (regardless whether they opt out) who worked for
9 Delta View in California during the PAGA Period, will release all claims against Delta View for
10 PAGA penalties based on the claims alleged in the operative complaint in the Action, that arose
11 during the PAGA Period (“PAGA Released Claims”). *Id.*

12 **3. Funding of the Settlement**

13 The Gross Settlement Amount will be funded by Delta View no later than 30 days after
14 the Court grants final approval of the Settlement. *See* Settlement, § 4(B).

15 **4. Attorneys’ Fees and Costs, Enhancement Award, and PAGA Payment**

16 At final approval, Plaintiff will apply for a Class Representative Enhancement Award in
17 the amount of \$7,500. *See* Settlement, § 4(C)(iii). “[I]ncentive awards are fairly typical in class
18 action cases...and are intended to compensate class representatives for work done on behalf of
19 the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In*
20 *re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully
21 briefed at final approval, Plaintiff’s requested payment is in recognition of the time and effort he
22 expended on behalf of the Settlement Class, including providing factual information and
23 documents to counsel, discussing with counsel the claims and theories at issue in the litigation,
24 reviewing the settlement agreement and other documents, and otherwise actively participating in
25 the prosecution of this case. Korobkin Decl., ¶ 31. Plaintiff respectfully submits that the requested
26 payment is well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No.
27 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving
28 \$7,500 award to each of five named plaintiffs from \$505,058.60 settlement).

1 The parties have also designated \$25,000 of the GSA as PAGA penalties, of which
2 \$18,750 (75%) will be paid to the LWDA, with the remaining \$6,250 (25%) distributed to
3 Settlement Class members (*see* Settlement, § 4(C)(v)), consistent with the PAGA’s requirement
4 that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to
5 aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is
6 appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells*
7 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011)
8 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement).

9 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
10 (currently estimated at \$90,000.00), and up to \$20,000 in litigation costs. *See* Settlement, §
11 4(C)(iv). The requested fee is fair compensation for undertaking complex, risky, expensive, and
12 time-consuming litigation on a contingent basis. Plaintiff’s counsel has incurred substantial
13 attorneys’ fees, in, among other things, conducting pre-filing investigation and legal research;
14 conducting formal and informal discovery; analyzing timekeeping, payroll, and other data with a
15 data expert to create a comprehensive damages model; preparing for and attending mediation;
16 negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this
17 case. Korobkin Decl., ¶ 30. Counsel will also incur future attorney fees in overseeing the Notice
18 process, fielding phone calls from Settlement Class members, preparing the Final Approval
19 Motion and supporting documents, and appearing at the Final Approval Hearing. *Id.*

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

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions class action settlements on court approval,
4 which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
5 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
6 “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*,
7 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed
8 settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of
9 dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*,
10 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role is to ensure the settlement agreement taken
11 as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a
12 presumption of fairness when a settlement is negotiated at arm’s length by counsel. *See, e.g.,*
13 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

14 **1. Standard for Preliminary Approval**

15 To make a fairness determination, the Court should consider several factors, including:
16 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
17 litigation, the risk of maintaining class action status through trial, the amount offered in
18 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
19 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
20 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
21 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
22 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
23 and reasonable in light of the overall balance of factors in this case.

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

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

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

2 Although the Parties engaged in significant formal and informal discovery, they had not
3 yet completed formal discovery, including deposition discovery, which would have required
4 expenditure of substantial time and resources. Plaintiff also still had to file for class certification.
5 Even if Plaintiff obtained certification, the Parties would incur considerable attorneys' fees and
6 costs through a possible decertification motion, motions for summary judgment, trial, and
7 potential appeals. The Settlement avoids those risks and the accompanying expense. Thus, this
8 factor supports preliminary approval.

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

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

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

17 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
18 for disputed claims. As detailed in the concurrently-filed Korobkin Declaration, and with the
19 assistance of a data expert, Plaintiff conducted an analysis of potential damages due to Delta
20 View's allegedly unlawful policies and practices. After applying reasonable discounts for risks
21 of not obtaining class certification and risks of losing on the merits, Plaintiff estimated his claims
22 had a realistic potential value of approximately \$315,407. Korobkin Decl., ¶¶ 22-29. The
23 proposed settlement of \$270,000.00 therefore represents over 85% of Plaintiff's reasonably
24 forecasted classwide recovery. *Id.*, ¶ 29. Preliminary approval is appropriate, as the Settlement
25 will provide significant monetary relief to the Settlement Class.

26 **e. The Experience and Views of Counsel**

27 "Parties represented by competent counsel are better positioned than courts to produce a
28 settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter.*

1 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
2 litigating wage and hour class actions, and have been appointed class counsel in numerous cases
3 alleging similar claims. See Korobkin Decl., ¶¶ 2-7. Counsel conducted an in-depth review of
4 Delta View's policies, timekeeping and payroll records, and other relevant data, and drew on their
5 extensive experience to assess Plaintiff's claims. *Id.*, ¶ 18. The Settlement was also reached after
6 a mediation session with mediator Jim Phillips, Esq., an experienced wage and hour class action
7 mediator. *Id.*, ¶ 19. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

8 **2. The Preliminary Approval Standard Is Met**

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

13 **a. The Settlement Is Within the Range of Possible Approval**

14 As noted, the Settlement reflects over 85% of the realistic estimated recovery on Plaintiff's
15 claims, and will provide tangible, monetary compensation for hotly disputed wage claims.
16 Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

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

18 The Settlement resulted from an exchange of substantial information, arm's-length
19 negotiations, a mediation session with an experienced mediator, and months of additional
20 negotiations. Plaintiff carefully vetted the claims at issue, and conducted a detailed analysis of
21 the relevant data and information with the help of a retained expert. Korobkin Decl., ¶¶ 19, 22-
22 29. The Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

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

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

28 ///

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

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

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

7 A class is "ascertainable" where members "may be readily identified without unreason-
8 able expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189
9 Cal.App.4th 905, 919 (2010). Here, the Settlement Class includes non-exempt employees who
10 worked for Delta View in California during the Class Period, and thus can be readily identified
11 from Delta View's records. Delta View represents there are about 149 Settlement Class members,
12 rendering it impracticable to bring them all before the Court. Numerosity is therefore satisfied.

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

14 The focus on certification is not on the merits of the case, but rather on what types of
15 questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v.*
16 *Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated primarily on Delta View's
17 allegedly unlawful failure to pay the statutorily mandated overtime wage and allegedly unlawful
18 meal and rest period policies/practices. Such claims are commonly held proper for class
19 certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726
20 (2013) (certifying meal and rest period claims); *Shaw v. AMN Healthcare, Inc.*, 326 F.R.D. 247
21 (N.D. Cal. 2018) (certifying overtime and meal and rest period claims).

22 **3. The Named Plaintiff's Claims Are Typical**

23 The typicality requirement is satisfied where class representatives have claims that are
24 typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347
25 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff
26 was employed by Delta View as a non-exempt employee in California during the Class Period,
27 and was injured by the same challenged policies that allegedly injured the Settlement Class as a
28 whole. *See Declaration of Ulises Jimenez*, ¶¶ 2-3. Thus, typicality is satisfied.

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

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

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

11 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
12 mailing addresses provided by Delta View. This is the “best notice practicable” under the
13 circumstances as it provides “individual notice to all members who can be identified through
14 reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes
15 the Settlement be administered by Phoenix Settlement Administrators, an experienced
16 administrator. *See* Jodey Lawrence Declaration and exhibits. Phoenix will run all addresses
17 through the U.S. Postal Service National Change of Address database, and it will perform “skip
18 traces” to obtain current addresses for any Notices returned as undeliverable without a forwarding
19 address. *See* Settlement, § 11(B) & (F).

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

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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: January 11, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

By:



Tuvia Korobkin
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