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

AMANDA MARLENE TAVERA, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

BLVD RESIDENTIAL, INC., a corporation; and
DOES 1 through 100,

Defendants.

Case No.: 34-2022-00327501-CU-OE-GDS

CLASS ACTION

*[Assigned for all purposes to the Hon. Jill
Talley, Dept. 27]*

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

Date: July 21, 2023

Time: 9:00 a.m.

Dept.: 27

Reservation No. A-327501-001

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 July 21, 2023 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 25 of the above-entitled Court, located at 720 9th Street, Sacramento, California 95814, Plaintiff Amanda Marlene Tavera (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant BLVD Residential, Inc. (“BLVD”);
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 BLVD in California at any time from September 29, 2018 through the date preliminary approval is granted (the “Class Period”).
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Tuvia Korobkin and Rijenea Appling 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 Enhancement Award to Plaintiff, and attorneys’ fees and costs to Class Counsel.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Tuvia Korobkin and exhibits attached thereto; the declaration of Rijenea Appling; 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.

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court’s website. If the party does not have

1 online access, they may call the dedicated phone number for the department as referenced in the
2 local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before
3 the hearing and receive the tentative ruling. If you do not call the court and the opposing party
4 by 4:00 p.m. the court day before the hearing, no hearing will be held.

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6 Dated: June 26, 2023

Respectfully Submitted,
ABRAMSON LABOR GROUP

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Tuvia Korobkin
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Amanda Marlene Tavera (“Plaintiff”) seeks preliminary approval of a class
4 action settlement agreement (“Settlement”) with Defendant BLVD Residential, Inc. (“BLVD” 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
7 BLVD failed to pay all earned wages, including failure to pay overtime wages and meal period
8 premium wages due to its failure to incorporate bonuses into the “regular rate”; failed to provide
9 all meal periods; failed to authorize and permit all rest periods; failed to reimburse employees for
10 expenses; and failed to include accurate hours worked on employee wage statements. Plaintiff
11 further alleges that as a result of these violations, BLVD failed to issue accurate itemized wage
12 statements, failed to pay all wages on termination of employment, engaged in unfair competition,
13 and is liable for civil penalties under the Private Attorneys General act (“PAGA”).

14 Plaintiff now respectfully requests that this Court preliminarily approve this non-
15 reversionary, common-fund class action Settlement,¹ in which BLVD has agreed to pay
16 \$900,000.00 to the following Settlement Class, which is estimated to consist of 600 individuals:

17 All current and former non-exempt employees who worked for BLVD in California
18 at any time from September 29, 2018 through the date preliminary approval is
granted (the “Class Period”).

19 The Settlement was reached after two mediation sessions with Mark C. Peters, Esq., an
20 experienced wage and hour class action mediator. In connection with mediation, BLVD provided
21 Plaintiff’s counsel with extensive informal discovery, including timekeeping records, payroll
22 records, and wage statements for a large sampling of putative class members; class lists containing
23 putative class members’ hire dates, termination dates, job titles, locations, and other information;
24 and BLVD’s written policies. In addition, before the second mediation session BLVD produced
25 financial records including multiple years of tax returns and financial statements.

26 After extensive research and investigation, including detailed analysis of BLVD’s
27 potential exposure made with the assistance of an expert economist with a Ph.D. in economics,

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.

1 the first mediation session was held with Mr. Peters on March 30, 2023. A resolution was not
2 reached at the first mediation. The second mediation session was held on April 26, 2023, after
3 BLVD produced its financial records and Plaintiff's counsel reviewed those records with the
4 assistance of a forensic accountant. At the conclusion of the second mediation, the Parties agreed
5 to a mediator's proposal to resolve the Action. Over the following weeks, the Parties negotiated
6 the finer terms of the settlement, ultimately resulting in the Settlement.

7 Notably, Settlement Class members need not submit a claim to receive a payment
8 ("Settlement Award"). After deductions for proposed administration costs, attorney fees and
9 costs, Plaintiff's incentive award, and the LWDA's share of PAGA civil penalties, the average
10 Settlement Award is estimated to be at least \$778.33. For the reasons discussed herein, Plaintiff
11 respectfully requests that the Court grant preliminary approval of the Settlement.

12 **II. SUMMARY OF THE LITIGATION**

13 **A. FACTUAL AND PROCEDURAL BACKGROUND**

14 BLVD is a multifamily property management company with a portfolio of properties in
15 central and Northern California. *See* Declaration of Tuvia Korobkin ("Korobkin Decl."), ¶ 9.
16 Plaintiff is a former non-exempt Leasing Agent who worked for BLVD in California during the
17 Class Period. *Id.* On September 29, 2022, Plaintiff filed this Action, alleging claims for failure to
18 pay wages, meal and rest period violations, waiting time penalties, wage statement penalties,
19 failure to reimburse expenses, and unfair business practices. *Id.*, ¶ 10. Plaintiff subsequently filed
20 a First Amended Complaint adding a claim for PAGA civil penalties. *Id.*, ¶ 11.

21 **B. PLAINTIFF'S CLAIMS AND BLVD'S DEFENSES**

22 **1. "Regular Rate" Claim for Underpaid Overtime and Meal Period Premiums**

23 Plaintiff alleges BLVD failed to incorporate bonuses in employees' "regular rate" and, as
24 a result, under-paid overtime wages and meal period premiums. Korobkin Decl., ¶ 12; *see also*
25 *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 862 (2021) (holding "regular rate of
26 compensation" under § 226.7(c), like "regular rate of pay" under § 510(a), "encompasses all
27 nondiscretionary payments, not just hourly wages."). BLVD contends any under-payments were
28 *de minimis*, and the result of a payroll error that has since been corrected. Korobkin Decl., ¶ 12.

1 **2. Meal Period Claim**

2 Plaintiff alleges that she and other employees were often forced to take late and/or short
3 meal periods, as a result of the workload imposed on them and work-related interruptions.
4 Korobkin Decl., ¶ 13. Plaintiff further alleges that BLVD failed to provide second meal periods
5 on shifts over 10 hours, and that this allegation is supported by the fact that most shifts over 10
6 hours do not reflect a second meal period in employee timekeeping records. *Id.*

7 BLVD argues that it has maintained legally-compliant meal period practices throughout
8 the Class Period, and that under *Brinker* it is only required to “provide” the opportunity to take
9 meal periods, not “ensure” they are taken. Korobkin Decl., ¶ 14; *see Brinker Rest. Corp. v. Sup.*
10 *Ct.*, 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). BLVD further argues that employee
11 time records generally show that they were clocked out for legally-compliant meal periods on
12 over 70% of shifts over 5 hours, demonstrating that they largely were able to take compliant meal
13 periods. *Id.* As for second meal periods, BLVD argues that employees rarely work shifts over 10
14 hours; that many employees indeed take second meal periods on shifts over 10 hours, as reflected
15 in timekeeping records; and that those who do not have waived their second meal period as they
16 are entitled to do under Labor Code § 512. *Id.* BLVD further argues that individualized inquiries
17 would be required to determine whether individual employees received a non-compliant meal
18 period and/or did not take a second meal period on each individual shift, and why any meal period
19 was late, short or missed, thereby precluding certification of this claim. *Id.*, ¶ 14.

20 **3. Rest Period Claim**

21 Plaintiff alleges that BLVD often failed to authorize and permit net 10-minute rest periods
22 as a result of the workload mentioned above. Korobkin Decl., ¶ 15; *Brinker*, 53 Cal.4th at 1028-
23 32 (discussing period requirements). BLVD asserts that, in practice, it has always authorized and
24 permitted all required rest periods to non-exempt employees; that it informs employees of their
25 right to rest periods; and that any failure to take a rest period is the result of employee choice
26 rather than any practice of BLVD. *Id.* BLVD further argues this claim is not amenable to class
27 treatment as individualized inquiries would be required to determine whether individual
28 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 and in various locations, thus precluding class certification. *Id.* These manageability concerns are particularly present with respect to rest periods, BLVD contends, since rest periods are not (and need not) be recorded. *Id.*

4. Unreimbursed Expenses Claim

Plaintiff alleges that BLVD failed to indemnify her and other employees for the use of their personal cell phones and/or personal laptops for work purposes, including to communicate with supervisors and/or to clock in and out on the ADP app. Korobkin Decl., ¶ 16. BLVD 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.* BLVD further contends that employees are provided with any equipment necessary to perform their job duties. BLVD further argues that this claim would not be certified, as it would require hundreds of individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, whether BLVD 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”).

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

As a result of its alleged failure to pay all wages, as well as its failure to provide all meal and rest periods, Plaintiff asserts that BLVD failed to comply with its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. Korobkin Decl., ¶ 17. Plaintiff further alleges a “direct” wage statement claim, in that BLVD’s wage statements consistently failed to include an accurate tally of hours worked. *Id.* Finally, Plaintiff seeks civil penalties under the PAGA based on the aforementioned claims. *Id.*

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

15 Finally, BLVD contends Plaintiff’s PAGA claim fails because the underlying claims fail.
16 *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
17 causes of action fail, the derivative UCL and PAGA claims also fail.”). BLVD further maintains
18 that given its good-faith defenses, as well as its financial condition, the Court would substantially
19 reduce PAGA civil penalties even if it were to find in Plaintiff’s favor on her underlying claims.
20 Korobkin Decl., ¶ 18; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties
21 in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135
22 (2012) (affirming reduction of PAGA penalties in light of employer’s financial condition and
23 because “the evidence showed...defendants took their obligations...seriously and attempted to
24 comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL
25 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer
26 was “not aware” of violations and “took prompt steps to correct all violations once notified”);
27 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of
28 just \$5 per pay period where employer made “good faith attempts” to comply with the law).

1 **C. DISCOVERY AND MEDIATION**

2 In preparation for mediation, the Parties engaged in extensive informal discovery. BLVD
3 produced a class list with putative class members’ hire dates, termination dates, job titles,
4 locations, and other information. BLVD also produced a sampling of timekeeping and payroll
5 records for putative class members during the Class Period, its wage and hour policies, and other
6 information. Korobkin Decl., ¶ 19. Plaintiff’s counsel hired a labor economist with a Ph.D. in
7 economics to analyze and extrapolate the data produced by BLVD. *Id.* This discovery allowed
8 the Parties to assess the merits and value of Plaintiff’s claims and BLVD’s defenses, as well as
9 the chances for class certification. *Id.*

10 The Parties attended a mediation with Mr. Peters on March 30, 2023, at which they
11 vigorously debated Plaintiff’s claims and BLVD’s defenses, and the chances of certification.
12 Korobkin Decl., ¶ 20. The Parties did not reach a resolution, but they agreed to schedule a second
13 mediation session. *Id.* In the interim, BLVD agreed to produce its tax returns and other financial
14 documents to Plaintiff’s counsel. *Id.* BLVD subsequently produced multiple years of tax returns,
15 income statements, balance sheets, and statements of cash flows, as well as additional
16 information related to its financial condition, and Plaintiff’s counsel reviewed these documents
17 and information with a forensic accountant. *Id.* At the second mediation session, on April 26,
18 2023, the Parties resumed their settlement negotiations and, at the conclusion of the session,
19 agreed to accept a mediator’s proposal. *Id.* Over the next several weeks, the Parties negotiated
20 the finer terms of the settlement, ultimately resulting in the Settlement. *Id.*

21 **III. THE PROPOSED SETTLEMENT**

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

23 Under the Settlement, BLVD will pay a non-reversionary Gross Settlement Amount
24 (“GSA”) of \$900,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$900,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$300,000.00
• Minus Court-approved costs (up to):	\$45,000.00
• Minus Court-approved Incentive Award:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$90,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$13,000.00</u>
Net Settlement Amount (“NSA”):	\$444,500.00
PLUS 25% of PAGA penalties (“PAGA Amount”):	\$22,500.00
Total Amount Paid to Settlement Class:	\$467,000.00

1 **1. Funding of the Settlement**

2 The Gross Settlement Amount will be funded over the course of approximately the next
3 19 months. *See* Settlement, § 3(B). BLVD’s initial payment of \$200,000.00 (the “Down
4 Payment”), was made on or about June 8, 2023. *See* Declaration of Jodey Lawrence (“Lawrence
5 Decl.”), ¶ 17. The Settlement requires BLVD to make 18 monthly payments of at least \$20,000
6 each, and to fund the remainder of the GSA in the month after that. *See* Settlement, § 3(B).²

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

8 As noted above, after deducting amounts for a court-approved incentive award,
9 administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, BLVD will
10 pay at least \$467,000.00 to Settlement Class members. *See* Settlement, § 3(C). BLVD represents
11 that there are approximately 600 Settlement Class members. *Id.*, § 1. Thus, the average Settlement
12 Award is estimated to be \$778.33. Korobkin Decl., ¶ 23.

13 The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class
14 members who do not opt out of the Settlement) as follows: (i) 20% of the NSA is designated the
15 “Waiting Time Amount,” and will be paid in equal amounts to all Participating Class Members
16 whose employment with BLVD ended at any time from September 29, 2019 through the end of
17 the Class Period; (ii) 15% of the NSA is designated the “Wage Statement Amount” and will be
18 paid to all Participating Class Members who were employed by BLVD in California at any time
19 from September 29, 2021 to the end of the Class Period, based on their proportionate number of
20 pay periods worked during that time period; and (iii) the remaining 65% of the NSA will be
21 distributed to all Participating Class Members, proportionally based on the number of workweeks
22 worked during the Class Period. *See* Settlement, § 4(B).

23 In addition, all Settlement Class members (regardless whether they opt out) who were
24 employed by BLVD in California at any time between September 29, 2021 and the end of the
25 Class Period (the “PAGA Period”), will receive a portion of the \$22,500 PAGA Amount, based
26 on their proportionate number of pay periods worked for BLVD in California during the PAGA
27 Period. *See* Settlement, § 4(C).

28

² The payment plan was warranted based on BLVD’s financial condition, as reviewed by Plaintiff’s counsel with the assistance of a forensic accountant. Korobkin Decl., ¶ 22.

1 Payments from the NSA will be treated as one-third wages reported on a Form W-2, with
2 the remaining two-thirds treated as interest and penalties and reported on a Form 1099. *See*
3 Settlement, § 4(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.*
4 BLVD will separately pay the employer’s share of payroll taxes on the amount designated as
5 “wages,” in addition to the GSA. *Id.*, § 3(D). Settlement Class members will have 60 days from
6 the Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing
7 ample time to review the Notice without unduly delaying the Settlement. *See id.*, § 9(C)-(E).

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

15 **3. Attorneys’ Fees and Costs, Enhancement Awards, 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, § 3(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 she
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 attending the first mediation, reviewing the settlement agreement, and otherwise actively
25 participating in the prosecution of this case. Korobkin Decl., ¶ 34. Plaintiff respectfully submits
26 that the requested payment is well within the range of permissible approval. *See, e.g., Alvarado*
27 *v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17,
28 2011) (approving \$7,500 award to each of five named plaintiffs from \$505,058.60 settlement).

1 The parties have also designated \$90,000 of the GSA as PAGA penalties, of which
2 \$67,500 (75%) will be paid to the LWDA, with the remaining \$22,500 (25%) distributed to
3 Settlement Class members (*see* Settlement, § 3(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 \$300,000), and up to \$45,000 in litigation costs. *See* Settlement, § 3(C)(iv).
11 The requested fee is fair compensation for undertaking complex, risky, expensive, and time-
12 consuming litigation on a contingent basis. Plaintiff’s counsel have incurred substantial attorneys’
13 fees conducting pre-filing investigation and legal research; analyzing timekeeping, payroll, and
14 other data with Plaintiff’s economics expert to create a comprehensive damages model; analyzing
15 BLVD’s financial records with an expert forensic accountant; preparing for and attending two
16 mediation sessions; negotiating and preparing the Settlement; preparing this Motion; and
17 otherwise prosecuting this case. Korobkin Decl., ¶ 33. Counsel will also incur future attorney fees
18 in overseeing the Notice process, fielding phone calls from Settlement Class members, preparing
19 the Final Approval Motion, 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 Although she maintains her claims are meritorious, 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*, BLVD 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 informal discovery, they had not completed
3 formal written and deposition discovery, which would have required expenditure of substantial
4 time and resources. Korobkin Decl., ¶ 35. Plaintiff also still had to file for class certification. *Id.*
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. *Id.* The Settlement avoids those risks and the accompanying expense. *Id.* Thus,
8 this factor supports preliminary approval.

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

10 Plaintiff had not yet filed her 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 the expected
14 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

16 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
17 for disputed claims. As detailed in the concurrently-filed Korobkin Declaration, and with the
18 assistance of a retained economist with a Ph.D. in economics, Plaintiff conducted an analysis of
19 potential damages due to BLVD’s allegedly unlawful policies and practices. After applying
20 reasonable discounts for risks of not obtaining class certification and risks of losing on the merits,
21 Plaintiff estimated her claims had a realistic potential value of approximately \$1,047,396.
22 Korobkin Decl., ¶¶ 25-32. The proposed settlement of \$900,000.00 therefore represents nearly
23 86% of Plaintiff’s reasonably forecasted classwide recovery. *Id.* As noted above, payments under
24 the Settlement will average over \$778. Preliminary approval is appropriate as the Settlement will
25 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; Declaration of Rijenea Appling, ¶¶ 2-4.
4 Counsel conducted an in-depth review of BLVD’s policies, timekeeping and payroll records, and
5 other relevant data, and drew on their extensive experience to assess Plaintiff’s claims. Korobkin
6 Decl., ¶ 19. The Settlement was also reached after two mediation sessions and with the assistance
7 of mediator Mark C. Peters, an experienced wage and hour class action mediator. *Id.*, ¶ 20. This
8 strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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

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

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

15 As noted, the Settlement reflects nearly 86% of the realistic estimated recovery on
16 Plaintiff’s claims, and will provide tangible, monetary compensation for hotly disputed wage
17 claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

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

19 The Settlement resulted from an exchange of substantial information, arm’s-length
20 negotiations, two mediation sessions with an experienced mediator, and weeks of additional
21 negotiations. Plaintiff carefully vetted the claims at issue, and conducted a detailed analysis of
22 the relevant data and information with the help of a retained expert. Korobkin Decl., ¶¶ 25-32.
23 The Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

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

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

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 her
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). The Settlement Class includes non-exempt employees who worked
10 for BLVD in California during the Class Period, and thus can be readily identified from BLVD’s
11 records. BLVD represents there are about 600 Settlement Class members, rendering it
12 impracticable to bring them all before the Court. Numerosity is 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 BLVD’s
17 allegedly unlawful failure to include bonuses in the “regular rate” and allegedly unlawful meal
18 and rest period policies/practices. Such claims are commonly held proper for class certification.
19 *See, e.g., Carlino v. CHG Medical Staffing, Inc.*, No. 1:17-cv-01323-DAD-JLT, 2019 WL
20 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v. Telecom Network*
21 *Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying 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 BLVD as a non-exempt employee in California during the Class Period, and
27 was injured by the same challenged policies that allegedly injured the Settlement Class as a whole.
28 *See Declaration of Amanda Marlene Tavera*, ¶¶ 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 her counsel will adequately represent the Settlement
5 Class, as there are no known conflicts between Plaintiff or her 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 BLVD. *See Settlement*, § 9. This is the “best notice practicable”
13 under the circumstances as it provides “individual notice to all members who can be identified
14 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
15 proposes the Settlement be administered by Phoenix Settlement Administrators, an experienced
16 class action settlement administrator. *See Jodey Lawrence Declaration and exhibits*. Settlement
17 Class members’ addresses will be ascertainable through BLVD’s records. Phoenix will also run
18 all addresses through the U.S. Postal Service National Change of Address database and/or perform
19 “skip traces” to obtain current addresses. *See Settlement*, § 9(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., Exh.*
25 *A 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: June 26, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By:



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