

Neil M. Larsen (SBN 276490)
neil@abramsonlabor.com
Meghan E. McNally (SBN 350701)
meghan@abramsonlabor.com
Jennifer S. 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 Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JULIUS GREEN, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

UNION RESCUE MISSION, a limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 22STCV30872

CLASS ACTION

*[Assigned for all purposes to Hon.
Lawrence P. Riff, Dept. SSC-7]*

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

Date: June 6, 2024
Time: 10:00 a.m.
Dept.: SS-7

Action Filed: September 21, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 6, 2024 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 7 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Julius Green (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant Union Rescue Mission (“URM” or “Defendant”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:
All current and former non-exempt employees who worked for URM in California at any time from September 21, 2018 through August 23, 2023 (the “Class Period”).
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Neil M. Larsen, Meghan E. McNally, and Jennifer S. Rivera 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 Award to Plaintiff, and attorneys’ fees and costs to Class Counsel.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Neil M. Larsen and exhibits attached thereto; the declaration of Jodey Lawrence on behalf of Phoenix Settlement Administrators 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: April 12, 2024

Respectfully Submitted,
ABRAMSON LABOR GROUP
Neil Larsen

Neil M. Larsen
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF THE LITIGATION 2

 A. FACTUAL AND PROCEDURAL BACKGROUND.....2

 B. PLAINTIFF’S CLAIMS AND URM’S DEFENSES2

 1. Unpaid Wages - Rounding.....2

 2. Meal Period Violations3

 3. Unpaid Wages – On Duty Meal Periods.....3

 4. Rest Period Violations3

 5. Failure to Reimburse Business Expenses4

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

 C. DISCOVERY AND MEDIATION.....6

III. THE PROPOSED SETTLEMENT.....7

 A. ESSENTIAL TERMS OF THE SETTLEMENT 7

 1. The Settlement Provides for Reasonable Monetary Payments.....6

 2. Attorneys’ Fees and Costs, Enhancement Award and PAGA Payment8

IV. ARGUMENT..... 10

 A. PRELIMINARY APPROVAL IS WARRANTED 10

 1. Standard for Preliminary Approval..... 10

 a. The Strength of Plaintiff’s Case..... 10

 b. Risk, Expense, Complexity, and Duration of Further Litigation..... 10

 c. Risk of Maintaining Class Action Status 11

 d. Amount Offered in Settlement Given Realistic Value of Claims..... 11

 e. The Experience and Views of Counsel 12

 2. The Preliminary Approval Standard Is Met..... 12

 a. The Settlement Is Within the Range of Possible Approval 12

 b. The Settlement Resulted from Serious, Informed Negotiations 12

 c. The Settlement Is Devoid of Obvious Deficiencies..... 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS..... 13

 1. The Proposed Class Is Ascertainable and Numerous 13

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

 3. The Named Plaintiff’s Claims Are Typical 14

 4. Plaintiff and Class Counsel Will Adequately Represent the Class..... 14

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE..... 14

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING 15

V. CONCLUSION..... 15

TABLE OF AUTHORITIES

Federal Cases

<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	14
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	10
<i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	12
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	10

State Cases

<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013).....	13
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	14
<i>Brinker Restaurant Corp. v. Sup. Ct.</i> , 53 Cal.4th 1004 (2012).....	3
<i>Capital People First v. State Dept. of Develop. Svcs.</i> , 155 Cal.App.4th 676 (2007)	14
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	6
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (Cal.App. 1 Dist.,2008).....	9
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	10
<i>Gattuso v. Hart-Hanks Shoppers, Inc.</i> , 42 Cal.4th 554 (2007).....	4
<i>Grissom v. Vons Companies, Inc.</i> , 1 Cal.App.4th 52 (1991).....	4
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	8
<i>Kao v. Joy Holiday</i> , 12 Cal.App.5th 947 (2017)	5
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	10, 12
<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016).....	9
<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308 (2018)	5
<i>McGhee v. Bank of Am.</i> , 60 Cal.App.3d 442 (1976)	14
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	5
<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....	10
<i>Sav-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004).....	13
<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010).....	13
<i>Soto v. Motel 6 Operating, L.P.</i> , 4 Cal.App.5th 385 (2016).....	5
<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112 (2012)	6

1	<i>Wershba v. Apple Computer, Inc</i> , 91 Cal.App.4th 224 (2001)	10
2	<u>Federal Statutes & Rules</u>	
3	Fed. R. Civ. Proc. Rule 23	10
4	<u>State Statutes and Rules</u>	
5	8 Cal. Code Regs. § 13520.....	5
6	Cal. Code Civ. Proc. § 382	13
7	Cal. Rule of Court 3.766	15
8	Cal. Rule of Court 3.769	10, 15
9	Cal. Labor Code § 203	5
10	Cal. Labor Code § 226	5
11	Cal. Labor Code § 2699	6, 9
12	<u>Unpublished Cases</u>	
13	<i>Alvarado v. Nederend</i> , 2011 WL 1883188 (E.D. Cal. May 17, 2011)	8
14	<i>Chu v. Wells Fargo Inv., LLC</i> , 2011 WL 672645 (N.D. Cal. Feb. 16, 2011).....	9
15	<i>Fleming v. Covidien, Inc.</i> , 2011 WL 7563047 (C.D. Cal. 2011).....	6
16	<i>Hudson v. Libre Technology, Inc.</i> , 2020 WL 2467060 (S.D. Cal. May 13, 2020)	9
17	<i>Martinez v. Knight Transportation</i> , 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023)	8
18	<i>Tapia v. Zale Delaware Inc.</i> , 2016 WL 1385181 (S.D. Cal. Apr. 6, 2016)	13
19	<u>Other Citations</u>	
20	<i>Manual for Complex Litig.</i> , § 30.41 (3rd Ed. 1995)	12
21	<i>Newberg on Class Actions</i> , §§ 11:24-25 (4th Ed. 2013).....	12
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Julius Green (“Plaintiff”) seeks preliminary approval of a class action settlement
4 agreement (“Settlement”) with Defendant Union Rescue Mission (“URM” or “Defendant”)
5 (together with Plaintiff, the “Parties”). The Settlement resolves a class and representative action
6 pending before this Court (the “Action”), in which Plaintiff alleges that URM: (i) failed to pay all
7 minimum and overtime wages owed, (ii) failed to provide legally-compliant meal periods, (iii)
8 failed to authorize and permit legally-complaint rest periods, and (iv) failed to reimburse
9 employees for business expenses. Plaintiff further alleges that as a result of these violations, URM
10 failed to issue accurate itemized wage statements, failed to pay all wages on termination of
11 employment, and is liable for civil 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 URM has agreed to pay
14 \$900,000.00 to the following Settlement Class, which is estimated to consist of 344 individuals:

15 All current and former non-exempt employees who worked for URM in California
16 at any time from September 21, 2018 through August 23, 2023 (the “Class Period”).

17 The Settlement was reached after the parties engaged in mediation with Steve G. Mehta,
18 Esq., an experienced and well-respected wage and hour class action mediator. In connection with
19 mediation, URM provided Plaintiff with extensive informal discovery, including timekeeping and
20 payroll records for all putative class members; a class list containing putative class members’ hire
21 and termination dates; relevant written policies; and additional data and information.

22 After extensive research and investigation, including a detailed analysis of URM’s
23 potential exposure made with the assistance of an expert data analyst, the mediation session was
24 held with Mr. Mehta on August 23, 2023. The Parties did not reach a resolution at mediation, but
25 they continued their negotiations and, with the mediator’s assistance, eventually reached a class-
26 wide settlement in principle. Over the following months, the Parties negotiated the finer terms of
27 the settlement, ultimately resulting in the Settlement.

28

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.

1 Notably, Settlement Class members need not submit a claim to receive a payment
2 (“Settlement Award”). After deductions for proposed administration costs, attorney fees and
3 costs, Plaintiff’s service award, and the LWDA’s share of PAGA civil penalties, the average
4 Settlement Award is estimated to be **\$1,454.94**. For the reasons discussed herein, Plaintiff
5 respectfully requests that the Court grant preliminary approval of the Settlement.

6 **II. SUMMARY OF THE LITIGATION**

7 **A. FACTUAL AND PROCEDURAL BACKGROUND**

8 URM is a non-profit organization established in 1891, that focuses on ending
9 homelessness in Los Angeles. *See* Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 7. Plaintiff
10 is a former non-exempt Environmental Services Tech, who performed custodial services for URM
11 in California during the Class Period. *Id.*

12 On September 21, 2022, Plaintiff filed this Action, alleging claims for minimum wage
13 violations, failure to pay overtime wages, meal and rest period violations, waiting time penalties,
14 wage statement penalties, and unfair business practices. Larsen Decl., ¶ 8. Plaintiff subsequently
15 filed a First Amended Complaint adding a claim for PAGA civil penalties on November 28, 2022.
16 *Id.* On March 11, 2024, Plaintiff, through my office, filed the operative SAC. *Id.*

17 **B. PLAINTIFF’S CLAIMS AND URM’S DEFENSES**

18 **1. Unpaid Wages - Rounding**

19 Plaintiff alleges that URM required employees to clock in and out for all shifts and record
20 their time worked to the minute, but that it would then round employees’ time entries to
21 employees’ detriment, resulting in unpaid wages. Larsen Decl., ¶ 19. Based on Plaintiff’s expert’s
22 analysis of URM’s timekeeping records, URM rounded employees’ time up until March 2021,
23 and putative class members were underpaid approximately 424 hours in the Class Period. *Id.*

24 **2. Meal Period Violations**

25 Plaintiff alleges that URM failed to provide him and other employees with legally
26 compliant meal periods. Larsen Decl., ¶ 20. Specifically, Plaintiff alleges that URM failed to
27 provide legally compliant off-duty meal periods to non-exempt employees – including
28 environmental service workers like Plaintiff, as well as other maintenance workers and program
assistants - because Plaintiff and other employees were required to carry their “walkie talkie”

1 radios with them at all times and remain on-call during their meal periods. *Id.* In addition,
2 Plaintiff alleges that he and other employees were at times provided late and/or short meal
3 periods. *Id.*

4 URM contends that it maintained compliant written meal period policies throughout the
5 Class Period, and provided legally-compliant meal periods in line with those policies. Larsen
6 Decl., ¶ 20. URM further contends that under *Brinker*, it is only required to “provide” meal
7 periods, not “ensure” that they are taken, and that is has always done so. URM further contends
8 that any short, missed, or late meal period was the result of lawful employee waiver or choice,
9 thereby precluding liability. *Id.* URM further asserts that many putative class members would
10 testify that they were, in fact, provided with legally compliant off-duty meal periods. *Id.* Lastly,
11 URM argues that individualized inquires would be needed to determine why each meal period
12 was missed, taken late or was short by each employee, whether there was a valid waiver, and
13 whether each meal period was on-call or off-duty for each employee, thus making certification
14 of the meal period claim unlikely. *Id.*

15 **3. Unpaid Wages – On Duty Meal Periods**

16 Plaintiff alleges that URM failed to pay Plaintiff and other employees non-exempt
17 employees – including environmental service workers like Plaintiff, as well as other maintenance
18 workers and program assistants - all wages owed, as a result of URM’s requirement that he and
19 these other employees remain on-duty during their meal periods. Larsen Decl., ¶ 21. Because
20 these employees were required to carry their “walkie talkie” radios at all time and remain on-call
21 during their meal periods, Plaintiff asserts that he and these other employees should have been
22 paid for this on-duty meal period time. *Id.*

23 URM contends that it maintained compliant written meal period policies throughout the
24 Class Period, and provided legally-compliant off-duty meal periods in line with those policies.
25 *Id.* URM further asserts that many putative class members would testify that they were, in fact,
26 provided with legally compliant off-duty meal periods. *Id.* URM further argues that
27 individualized inquires would be needed to determine whether each meal period was on-call or
28 off-duty for each employee, thus making certification of the meal period claim unlikely. *Id.*

1 **4. Rest Period Violations**

2 Plaintiff alleges that URM failed to authorize and permit legally-compliant rest periods,
3 because URM required Plaintiff and other employees to remain on URM’s premises during rest
4 periods and also remain on-call, via walkie talkie radio, during rest periods. Larsen Decl., ¶ 22.

5 URM argues that it always maintained and enforced lawful rest period policies and
6 practices during the Class Period, and that employees were authorized and permitted to take off-
7 duty rest periods and that it was not URM’s practice to require Settlement Class members to take
8 their rest periods on URM’s premises. Larsen Decl., ¶ 22. In fact, URM asserts that many putative
9 class members would testify that they did, in fact, take off-duty rest periods and were able to take
10 rest periods off URM’s premises. *Id.* URM further contends that, even if it (or individual
11 managers) had required employees to remain on URM’s premises during rest periods, the
12 California Supreme Court in *Augustus* rejected Plaintiff’s “on premises” theory when it observed
13 that “one would expect that employees will ordinarily have to remain onsite or nearby. *Id.* This
14 constraint, which is of course common to all rest periods, is not sufficient to establish employer
15 control.” *Augustus*, 2 Cal.5th at 270. URM further contends that individual inquiries would be
16 required to determine whether each employee was in fact required to remain on call during each
17 rest period on each shift, precluding class certification. Larsen Decl., ¶ 22.

18 **5. Failure to Reimburse Business Expenses**

19 Plaintiff alleges that URM failed to indemnify him and other employees for the use of
20 their personal cell phones for work purposes, including to use their cell phones to clock in and out
21 of work using the Paylocity mobile app. Larsen Decl., ¶ 23. URM counters that employees did
22 not need to use their personal cell phones in connection with their job duties, and that if they did,
23 there are procedures in place for employees to request reimbursement of work-related expenses.
24 *Id.* URM further argues that this claim would not be certified, as it would require hundreds of
25 individualized inquiries as to whether employees incurred business-related expenses, whether
26 they were reimbursed, whether URM knew (or reasonably should have known) about the
27 expense, and whether the expense was “necessary” under the circumstances. Larsen Decl., ¶ 23;
28 *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,’

1 which in turn depends on the reasonableness of the employee's choices.”); *Grissom v. Vons*
2 *Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991) (under § 2802, “ascertaining what was a necessary
3 expenditure will require an inquiry into what was reasonable under the circumstances”).

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

5 As a result of its alleged failure to pay all minimum and overtime wages, as well as its
6 failure to provide all meal and rest periods, Plaintiff asserts that URM failed to comply with its
7 final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226,
8 respectively. Larsen Decl., ¶¶ 24-25. Finally, Plaintiff seeks civil penalties under the PAGA
9 based on the aforementioned claims. *Id.* at ¶ 26.

10 URM argues that Plaintiff’s derivative claims fail for the same reasons his underlying
11 claims fail. *Id.* at ¶¶ 24-25. URM further asserts it has strong, good-faith defenses to Plaintiff’s
12 underlying claims, precluding waiting time penalties. See 8 Cal. Code Regs. § 13520 (a “good
13 faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v.*
14 *Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition
15 of waiting time penalties). URM further contends that any alleged wage statement violations were
16 not “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot
17 show he or other employees “suffer[ed] injury” due to alleged wage statement violations, as
18 required by Lab. Code § 226(e), particularly because the alleged “direct” wage statement
19 deficiencies did not result in unpaid wage, and the fact that URM provided Plaintiff’s counsel
20 with evidence that the wage statements actually furnished upon Plaintiff and Settlement Class
21 members included the name of the legal entity that was the employer and the beginning of the
22 pay period, in compliance with Labor Code § 226(a)(6) and (8); and that employee wage
23 statements always accurately reflect amounts *paid* to employees. Larsen Decl., ¶ 24; *see also*
24 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (“The purpose
25 of section 226 is to ‘document the *paid wages* to ensure the employee is fully informed regarding
26 the calculation of those wages.”) (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392
27 (2016)).

28 Finally, URM contends Plaintiff’s PAGA claim fails because the underlying claims fail.
Larsen Decl., ¶ 26; *see, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011)

1 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
2 URM further maintains that given its strong defenses and its good-faith attempts to comply with
3 the law, the Court would substantially reduce PAGA penalties even if it were to find in Plaintiff’s
4 favor on his underlying claims. Larsen Decl., ¶ 17; *see also* Lab. Code § 2699(e)(2) (authorizing
5 discretionary reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
6 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because, *inter alia*, “the
7 evidence showed...defendants took their obligations...seriously and attempted to comply with the
8 law”); *Fleming v. Covidien, Inc.*, 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA
9 penalties by over 82% in part because employer was “not aware” of violations); *Carrington v.*
10 *Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay
11 period where employer made “good faith attempts” to comply with the law).

12 **C. DISCOVERY AND MEDIATION**

13 Prior to mediation, the Parties engaged in significant informal discovery, including
14 Defendants’ production of timekeeping and payroll data for all putative class members, all
15 relevant wage and hour written policies, and other relevant data and information. Larsen Decl., ¶
16 15. Defendants also produced a “class list” with Class Members’ hire and termination dates (if
17 applicable). *Id.* Plaintiff also retained an expert data analyst, who conducted a comprehensive
18 analysis and extrapolation of the timekeeping and payroll data to calculate Defendants’ potential
19 exposure for each of Plaintiff’s claims. *Id.* This discovery allowed the Parties to assess the merits
20 and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Defendants’
21 potential defenses. *Id.*

22 On August 23, 2023, the Parties attended a mediation with Steven G. Mehta, Esq., an
23 experienced and well-respected wage and hour class action mediator. Larsen Decl., ¶ 16. During
24 mediation, the Parties vigorously debated Plaintiff’s claims and URM’s defenses, the potential
25 value of Plaintiff’s claims, and the chances of certification. *Id.* The Parties did not reach a
26 resolution at mediation. *Id.* However, the Parties continued their negotiations with Mr. Mehta’s
27 assistance and eventually agreed to a class-wide settlement. *Id.* Over the following months, the
28 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, URM will pay a non-reversionary Gross Settlement Amount (“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):	\$22,000.00
• Minus Court-approved Service Award:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$80,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$10,000.00</u>
Net Settlement Amount (“NSA”):	\$480,500.00
PLUS 25% of PAGA penalties (“PAGA Amount”):	\$20,000.00
Total Amount Paid to Settlement Class:	\$500,500.00

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved service award, administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, URM will pay at least \$500,500.00 to Settlement Class members. *See* Settlement, § 3. URM represents that there are approximately 344 Settlement Class members. *Id.*, § 1. Thus, **the average Settlement Award is estimated to be \$1,454.94**. Larsen Decl., ¶ 18.

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: The NSA will be distributed to all Participating Class Members based on each Participating Class Member’s proportional number of workweeks worked for URM. *See* Settlement, § 5(B). The settlement Administrator will calculate each Participating Class Member’s payment from the NSA by multiplying the NSA by a fraction, the numerator of which is the participating Class Member’s number of workweeks, and the denominator of which is the total workweeks worked by Participating Class Members. *Id.*

In addition, all Settlement Class members (regardless whether they opt out) who were employed by URM in California at any time between September 21, 2021 and August 23, 2023 (the “PAGA Period”), will receive a portion of the \$20,000 PAGA Amount, based on their proportionate number of pay periods worked during the PAGA Period. *See* Settlement, § 5(C).

Payments from the NSA will be treated as 33.33% wages reported on a Form W-2, with the remaining 66.67% treated as interest and penalties and reported on a Form 1099. *See* Settlement, § 5(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* URM

1 will separately pay the employer's share of payroll taxes on the amount designated as "wages," in
2 addition to the GSA. *Id.*, §§ 3(D), 5(E). Settlement Class members will have 60 days from the
3 Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing
4 ample time to review the Notice without unduly delaying the Settlement. *See Id.*, § 10(C)-(D).

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

12 **2. Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment**

13 At final approval, Plaintiff will apply for a Class Representative Service Award in the
14 amount of \$7,500. *See* Settlement, § 3(C)(iii). "[I]ncentive awards are fairly typical in class action
15 cases...and are intended to compensate class representatives for work done on behalf of the class
16 [and] to make up for financial or reputational risk undertaken in bringing the action." *In re*
17 *Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010).

18 As will be fully briefed at final approval, Plaintiff's requested payment is in recognition
19 of the time and effort he expended on behalf of the Settlement Class, including providing factual
20 information and documents to counsel, identifying potential witnesses, attending multiple
21 telephonic meetings with my office to discuss the claims and theories at issue in the litigation,
22 reviewing the settlement agreement, and otherwise actively participating in the prosecution of
23 this case. Larsen Decl., ¶ 29. Plaintiff respectfully submits that the requested payment is well
24 within the range of approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB,
25 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 award to each of five
26 named plaintiffs from \$505,058.60 settlement); *see also Martinez v. Knight Transportation*, No.
27 1:16-cv-01730, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (approving \$10,000 award to
28 plaintiff in \$400,000 class action settlement where class member payments averaged about \$127).

1 The Parties have also designated \$80,000 of the GSA as PAGA penalties, of which
2 \$60,000 (75%) will be paid to the LWDA, with the remaining \$20,000 (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); *Hudson v. Libre*
9 *Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13, 2020)
10 (approving \$21,250 PAGA payment from \$4235,000 settlement).

11 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
12 (currently estimated at \$300,000.00), and up to \$22,000 in litigation costs. *See* Settlement, §
13 3(C)(iv). The requested fee is fair compensation for undertaking complex, risky, expensive, and
14 time-consuming litigation on a contingent basis. Plaintiff’s counsel have incurred substantial
15 attorneys’ fees conducting pre-filing investigation; analyzing Plaintiff’s claims; conducting legal
16 research; analyzing timekeeping, payroll, and other data with our expert to create a
17 comprehensive damages model; preparing for and attending mediation; negotiating and preparing
18 the Settlement; preparing this Motion; and otherwise prosecuting this case. Larsen Decl., ¶ 28.
19 Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls
20 from Settlement Class members, preparing the Final Approval Motion and supporting documents,
21 and appearing at the Final Approval Hearing. *Id.*

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

undertaken, the results obtained, and the efficiency with which counsel conducted the litigation.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

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

1. Standard for Preliminary Approval

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

a. The Strength of Plaintiff’s Case

Although he maintains his claims are meritorious, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, URM presented multiple defenses to Plaintiff’s

claims, both on the merits and to class certification, rendering success far from certain.

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

Although the Parties engaged in significant informal discovery, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. Larsen Decl., ¶ 30. Plaintiff also still had to file for class certification. *Id.* Even if Plaintiff obtained certification, the Parties would incur considerable attorneys' fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id.* The Settlement avoids these risks, expense, and delays, and is therefore a favorable outcome for the Settlement Class. *Id.* Thus, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

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

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class for disputed claims. As detailed in the concurrently filed Larsen Declaration, and with the assistance of an expert data analyst, Plaintiff conducted an analysis of potential damages due to URM's allegedly unlawful wage and hour policies and practices. After applying reasonable discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiff estimated his claims had a realistic potential value of approximately \$1,125,288. Larsen Decl., ¶¶ 19-27. The proposed settlement of \$900,000.00 therefore represents about 79.9% of Plaintiff's reasonably forecasted class-wide recovery. *Id.* As noted above, payments under the Settlement will average approximately \$1,454.94. Larsen Decl., ¶ 18. Preliminary approval is appropriate as the Settlement will provide significant monetary relief to the Settlement Class.

///

///

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

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter.*
4 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
5 litigating wage and hour class actions, and have been appointed class counsel in numerous cases
6 alleging similar claims. *See* Larsen Decl., ¶¶ 2-5; Declaration of Meghan E. McNally, ¶¶ 2-4, and
7 Declaration of Jennifer Rivera, ¶¶ 2-4. Counsel conducted an in-depth review of URM’s policies,
8 timekeeping and payroll records, and other relevant data, and drew on their extensive experience
9 to assess Plaintiff’s claims. Larsen Decl., ¶¶ 8, 19-26. The Settlement was also reached after a
10 mediation session with Steve Mehta, an experienced and well-respected wage and hour class
11 action mediator. *Id.*, ¶ 16. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th
12 at 130.

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

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

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

19 As noted, the Settlement reflects approximately 79.9% of the realistic estimated recovery
20 on Plaintiff’s claims, and will provide tangible, monetary compensation for hotly disputed wage
21 claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

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

23 The Settlement resulted from an exchange of substantial information, arm’s-length
24 negotiations, mediation with an experienced mediator, and months of additional negotiations.
25 Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the relevant data
26 and information. Larsen Decl., ¶¶ 15-16, 19-26. The Settlement is thus entitled to a presumption
27 of fairness. *Kullar*, 168 Cal.App.4th at 130.

28 ///

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

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

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

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

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

12 A class is “ascertainable” where members “may be readily identified without unreason-
13 able expense or time by reference to official [or business] records.” *Sevidal v. Target Corp.*, 189
14 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked
15 for URM in California during the Class Period, and thus can be readily identified from URM’s
16 records. URM represents there are about 344 Settlement Class members, rendering it
17 impracticable to bring them all before the Court. Numerosity is therefore satisfied.

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

19 The focus on certification is not on the merits of the case, but rather on what types of
20 questions, “common or individual,” are likely to arise in the action. *Sav-On Drug Store, Inc. v.*
21 *Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated primarily on URM’s
22 allegedly unlawful failure to pay minimum and overtime wages, allegedly unlawful meal and rest
23 period policies/practices, and alleged failure to reimburse for business expenses. Such claims are
24 commonly held proper for class certification. *See, e.g., Tapia v. Zale Delaware Inc.*, 2016 WL
25 1385181 at **3-4 (S.D. Cal. Apr. 6, 2016) (certifying rounding claim); *Benton v. Telecom*
26 *Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period
27 claims).

28 ///

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

2 The typicality requirement is satisfied where class representatives have claims that are
3 typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347
4 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff
5 was employed by URM as a non-exempt employee in California during the Class Period, and he
6 was injured by the same challenged policies that allegedly injured the Settlement Class as a whole.
7 See Declaration of Julius Green, ¶¶ 2-3. Thus, typicality is satisfied.

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

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

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

18 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
19 mailing addresses provided by URM. See Settlement, § 10. This is the "best notice practicable"
20 under the circumstances, as it provides "individual notice to all members who can be identified
21 through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
22 proposes the Settlement be administered by Pheonix Settlement Administrators, an experienced
23 class action settlement administrator. See Jodey Lawrence Declaration and exhibits. Settlement
24 Class members' addresses will be ascertainable through URM's records. Phoenix will also run all
25 addresses through the U.S. Postal Service National Change of Address database and/or perform
26 "skip traces" to obtain current addresses. See Settlement, § 10(B) & (F).

27 The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement
28 Class members of the nature of the claims; the basic contentions of the parties; the key terms of

1 the Settlement; the 60-day deadline to opt out, object, or submit a dispute and how to do so;
2 explains the recovery formula and expected recovery amount for each Settlement Class member;
3 and explains the releases of claims included in the Settlement. *See* Larsen Decl., Exh. A to Exh.
4 1. The proposed Notice also includes the final approval hearing date and time, and it provides
5 contact information for Class Counsel and the administrator in the event Settlement Class
6 members have any questions about the Settlement. *Id.* This Notice satisfies Cal. Rule of Court
7 rule 3.766(e) as the most reliable and cost-effective method of reaching the Settlement Class.

8 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

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

11 **V. CONCLUSION**

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

15 Respectfully submitted,

16 Dated: April 12, 2024

ABRAMSON LABOR GROUP

17
18 By: Neil Larsen
19 Neil M. Larsen
Attorneys for Plaintiff