Neil M. Larsen, Esq. (SBN 276490)
neil@abramsonlabor.com
Jennifer Rivera, Esq. (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 VENTURA

VICTOR CARDENAS, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

G I SECURITY INC.; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 56-2022-00570355-CU-OE-VTA

CLASS ACTION

[Assigned for all purposes to Hon. Maureen M. Houska, Dept. 20]

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

Date: May 13, 2025
Time: 8:20 a.m.
Dept.: 20

Action Filed: September 19, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 13, 2025 at 8:20 a.m., in Department 20 of the above-entitled Court, located at the Hall of Justice, 800 South Victoria Avenue Ventura, California, 93009, Plaintiff Victor Cardenas ("Plaintiff") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiff and Defendant GI Security Inc. ("GIS" 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 were employed by GI Security Inc. in California at any time from September 19, 2018 through January 23, 2024 (the "Class Period");

3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Abramson Labor Group as Class Counsel;
5. Preliminary appointment of Phoenix Settlement Administrators as the Settlement Administrator;
6. Approval of the proposed Class Notice, and an order that the Class Notice 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 and exhibits attached thereto; the Declaration of the Keith D. Messerschmidt; 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 21, 2025

Respectfully Submitted,
ABRAMSON LABOR GROUP

Neil Larsen

Neil M. Larsen
Attorneys for Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

Federal Statues & Rules

State Statutes and Rules

Unpublished Cases

Other Citations

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Victor Cardenas ("Plaintiff") seeks preliminary approval of a class action settlement agreement ("Settlement") with Defendant GI Security ("Defendant" or "GIS") (together with Plaintiff, the "Parties"). The Settlement resolves a class and representative action pending before this Court (the "Action"), in which Plaintiff alleges that Defendant failed to pay overtime wages owed; failed to provide all meal periods; failed to authorize and permit all rest periods; failed to reimburse employees for business expenses; and failed to issue accurate itemized wage statements. Plaintiff further alleges that as a result of these violations, Defendant failed to pay all wages on termination of employment, engaged in unfair competition, and is liable for civil penalties under the Private Attorneys General Act ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action Settlement,[1] in which Defendant has agreed to pay $120,000.00 to the following Settlement Class, which is estimated to consist of approximately 393 individuals:

> All current and former non-exempt employees who were employed by GI Security, Inc. in California at any time from September 19, 2018 through January 23, 2024 (the "Class Period").

The Settlement was reached after the parties engaged in mediation with Hon. Jeff Winikow (Ret.), an experienced mediator. In connection with mediation, Defendant provided Plaintiff with extensive informal discovery, including an approximately 15% sampling of timekeeping and payroll records for putative class members during the Class Period; a detailed Class List that included each employees' hire date and termination date (if applicable); relevant written policies; and additional relevant data and information. Defendant also produced relevant financial records to support its defense of financial distress. Plaintiff hired an expert financial accountant to analyze and review Defendant's financial records.

After extensive research and investigation, including a detailed analysis of Defendant potential exposure made with the assistance of an expert data analyst, the mediation session was

[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.

held with Hon. Jeff Winikow (Ret.) on January 23, 2024. At the mediation, the Parties did not reach a settlement.

As noted above, Defendant made representations regarding its financial condition and agreed to produce financial records requested by Plaintiff. Plaintiff's expert forensic accountant analyzed the financial records produced by Defendant. Declaration of Keith M. Messerschmidt ("Messerschmidt Decl."), ¶¶ 5-23. In the opinion of Plaintiff's expert, it did not appear that Defendant could pay a class-wide settlement of more than $120,000. *Id*. After Plaintiff's expert's analysis of the financial records produced by Defendant, the Parties continued their negotiations and reached a class-wide settlement.

Notably, Settlement Class members need not submit a claim to receive a payment ("Settlement Award"). After deductions for proposed administration costs, attorney fees and costs, Plaintiff's service award, and the LWDA's share of PAGA civil penalties, the average Settlement Award is estimated to be at least $98.60. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. <u>SUMMARY OF THE LITIGATION</u>

A. <u>FACTUAL AND PROCEDURAL BACKGROUND</u>

Defendant is a security service company that provides security guards to businesses in California. *See* Declaration of Neil M. Larsen ("Larsen Decl."), ¶ 7. Plaintiff is a former non-exempt employee who worked for Defendant in California during the Class Period. *Id*.

On September 19, 2022, Plaintiff filed this Action, alleging claims for failure to pay overtime wages, meal period violations, rest period violations, failure to reimburse business expenses, wage statement violations, waiting time penalties, and unfair business practices. Larsen Decl., ¶ 8.

On November 21, 2022, Plaintiff filed a First Amended Complaint adding a claim for civil penalties under the Private Attorneys General Act ("PAGA"), Labor Code § 2698. *Id*., ¶ 9.

///

///

///

B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES

1. Claim for Underpaid Wages Based on Alternative Workweek Schedule

Plaintiff alleges that Defendant underpaid overtime wages as a result of an unlawful alternative workweek schedule (“AWS”). Larsen Decl., ¶ 10. Specifically, Defendant required Plaintiff and other employees to work shifts between 10.0 and 12.0 hours, but Defendant would only pay employees straight time for the hour worked between 10.01 and 12.0 hours. As a result, Defendants failed to pay overtime in conformance with the requirements of Wage Order 4 and Labor Code § 511. *Mitchell v. Yoplait*, 19 Cal.Rptr.3d 267, 270 (2004) (recognizing that the purpose of Labor Code § 511 was “to limit the alternative schedules to not more than 10 hours per day without triggering daily overtime”) (citation to legislative history omitted). Defendant contends that any alleged act or omission was inadvertent, the result of clerical error, not willful or intentional, in good faith (including, but not limited to, a good faith dispute concerning the amount of wages due), and/or Defendant had reasonable grounds for believing in good faith that their conduct did not violate any provision of applicable federal or state law, including the applicable wage orders. *Id*. Defendant further argues that any overtime or double-time under payments were *de minimis* and not recoverable. *Id.*

2. Claim for Unpaid Wages Based on Regular Rate Miscalculation

Plaintiff additionally alleges that Defendant miscalculated Plaintiff’s and other employees’ “regular rate” or pay, which resulted in an underpayment of overtime wages. Larsen Decl., ¶ 11. Specifically, Plaintiff alleges that during certain pay periods Defendant paid Plaintiff and other employees “Hazard Pay”, but when it paid overtime wages, Defendant consistently paid overtime wages at 1.5 times employees’ base rate of pay and failed to incorporate the value of Hazard Pay into employees’ regular rate of pay. *See Alvarado v. Dart Container Corp. of Calif.*, 4 Cal.5th 542, 544 (2018) (“Not all employees earn at a fixed pay rate throughout a pay period, and therefore regular rate of pay is a weighted average reflecting work done at varying times, under varying circumstances, and at varying rates.”) (emphasis in original) (citing to DLSE Enforcement Manual § 49.2.5). Defendants contend that any alleged act or omission was inadvertent, the result of clerical error, not willful or intentional, in good faith (including, but not limited to, a good faith dispute concerning the amount of wages due), and/or Defendant had reasonable grounds for believing in good faith that their conduct did not violate any provision of applicable federal or state law, including the applicable wage order. Defendant further argues that any underpayments were de minimis and not recoverable. Larsen Decl., ¶ 11.

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

Plaintiff also alleges that he and other employees were at times required to take on-duty meal periods, but that neither Plaintiff nor other class members entered into written on-duty meal period agreements. Larsen Decl., ¶ 12. Thus, even if the nature of the work otherwise would have required on-duty meal periods, Plaintiff alleges that the on-duty meal periods required by Defendant were unlawful because there were no written on-duty meal period agreements. *Id*.

Defendant argues that it has maintained legally-compliant meal period policies throughout the Class Period, and that under *Brinker* they are only required to "provide" the opportunity to take meal periods, not "ensure" they are taken. Larsen Decl., ¶ 12; *see Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting "ensure" standard). Defendant further argue that given its lawful policies and practices, any failure to take a timely 30-minute meal period was the result of employee choice rather than any policy or practice of Defendant. *Id.* Defendant further asserts that many putative class members would testify that they were, in fact provided with legally compliant meal periods. *Id.* Lastly, Defendant argues that individualized inquires would be required to determine whether an employee was required to take an on-duty meal period. *Id.*

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

Plaintiff alleges that as with meal periods, Defendant failed to authorize and permit legally compliant rest periods, because Defendant required Plaintiff and other employees to remain within close proximity of their posts and also remain on call, via walkie talkie radio, during their rest periods. Larsen Decl., ¶ 13.

Defendant asserts that, in practice, they have always authorized and permitted all required off-duty rest periods to non-exempt employees and that they inform employees of their right to rest periods. In fact, Defendant asserts that many putative class members would testify that they did, in fact, take off-duty rest periods. *Id*. Defendant further argues this claim is not amenable to class treatment, as individualized inquires would be required to determine whether individual employees in different job locations and under different supervisors were in fact authorized and permitted to take off-duty rest periods on any given shift, under various time periods during the Class Period, thus precluding class certification. *Id*. Defendant contends, these manageability concerns are particularly present with respect to rest periods, since rest periods are not (and need not be) recorded. *Id*.

5. Claim for Failure to Reimburse Business Expenses

Plaintiff alleges that Defendant failed to indemnify him and other employees for the use of their personal cell phones for work purposes, including to use their cell phones to clock in and out of work using the EasyTimeClock mobile app. Larsen Decl., ¶ 14. Defendant 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*. Defendant also contends that employees are provided with any equipment necessary to perform their job duties. *Id.* Defendant 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 Defendant 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").

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

Plaintiff alleges that Defendant failed to provide him and other non-exempt employees with complete and accurate wage statements as required under Cal. Labor Code § 226. Larsen Decl., ¶ 15. Specifically, the wage statements issued by Defendant failed to include the number of hours worked or the rates of pay for paid "lunch time," and instead simply lists a dollar amount. *Id.* Defendant contends that Plaintiff cannot show he or other employees "suffer[ed] injury" due to alleged wage statement violations, required by Cal. Labor Code § 226(e); that employee wage statements always accurately reflect amounts paid to employees, and that wage statements accurately reflected the number of hours worked for which employees were being paid in any given pay period. *Id.* Defendant also contends that any alleged wage statement violations were not "knowing and intentional," particularly given its good faith defenses. *Id.*

As a result of its alleged failure to pay all overtime wages, as well as its failure to provide all meal and rest periods, Plaintiff asserts that Defendant failed to comply with its final payment obligations, in violation of Cal. Labor Code §§ 201-203. Larsen Decl., ¶ 16. Finally, Plaintiff seeks civil penalties under the PAGA based on the aforementioned claims. *Id*.

Defendant argues that Plaintiff's derivative claims fail for the same reasons his underlying claims fail. Defendant further asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding 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).

Finally, Defendant contends Plaintiff's 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."). Defendant further maintains that given its strong defenses and its good-faith attempts to comply with the law, the Court would substantially reduce PAGA penalties even if it were to find in Plaintiff's favor on his underlying claims. Larsen Decl., ¶ 17; *see also* Lab. Code § 2699(e)(2) (authorizing discretionary reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because, *inter alia*, "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); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. <u>DISCOVERY AND MEDIATION</u>

In preparation for mediation, the Parties engaged in extensive informal discovery. Defendant produced a class list with putative class members' hire dates, termination dates (if applicable), and other information. Defendant also produced an approximate 15% sampling of timekeeping and payroll records for putative class members during the Class Period, Defendant's relevant wage and hour policies, and other information. Lasen Decl., ¶ 18. Plaintiff's counsel hired an expert data analyst to analyze and extrapolate the data produced by Defendant. *Id*. Defendant also produced relevant financial records to support its defense of financial distress. *Id.* Plaintiff hired an expert financial accountant to analyze and review Defendant's financial records. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff's claims and Defendant's defenses, as well as the chances for class certification and Defendant's ability to pay a settlement. *Id*.

The Parties attended a mediation with Hon. Jeff Winikow (Ret.), on January 23, 2024. At mediation the Parties vigorously debated Plaintiff's claims and Defendant's defenses, the potential value of Plaintiff's claims, and the chances of certification. Larsen Decl., ¶ 19. At the mediation, the Parties did not reach a settlement. *Id.*

Following the mediation, Defendant made representations regarding its financial condition and agreed to produce financial records requested by Plaintiff. Plaintiff's expert forensic accountant analyzed the financial records produced by Defendant. Declaration of Keith M. Messerschmidt ("Messerschmidt Decl."), ¶¶ 8-21. In the opinion of Plaintiff's expert, it did not appear that Defendant could pay a class-wide settlement of more than $120,000. Declaration of Keith M. Messerschmidt ("Messerschmidt Decl."), ¶¶ 6, 21. After Plaintiff's expert's analysis of the financial records produced by Defendant, the Parties continued their negotiations and reached a class-wide settlement.

///

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Defendant will pay a non-reversionary Maximum Settlement Amount ("MSA") of $120,000.00. The monetary terms of the Settlement are summarized below:

• Maximum Settlement Amount ("MSA"):	$120,000.00
• Minus Court-approved attorneys' fees (one-third):	$40,000.00
• Minus Court-approved costs (up to):	$22,500.00
• Minus Court-approved Service Payment:	$5,000.00
• Minus Amount Set Aside as PAGA penalties:	$5,000.00
• Minus estimated settlement administration costs:	$10,000.00
Net Settlement Amount ("NSA"):	**$37,500.00**
PLUS 25% of PAGA penalties ("PAGA Amount"):	$1,250.00
Total Amount Paid to Settlement Class:	**$38,750.00**

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved Class Representative Service Payment, administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Defendant will pay at least $38,750.00 to Settlement Class members. *See* Settlement, § 7(C). Defendant represents that there are approximately 393 Settlement Class members. *Id.*, § 1. Thus, the average Settlement Award is estimated to be $98.60. Larsen Decl., ¶ 21.

In addition, all Settlement Class members (regardless whether they opt-out) who were employed by Defendant in California at any time from September 15, 2021 through January 23, 2024 (the "PAGA Period"), will receive a portion of the $1,250 PAGA Amount, based on their proportionate number of pay periods worked during the PAGA Period. *See* Settlement, §§ 2, 7(C), 8(A)(ii).

Payments from the NSA will be treated as 30% wages reported on a Form W-2, 35% treated as penalties, and 35% treated as interest reported on a Form 1099. *See* Settlement, § 8(C). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* Defendant will separately pay the employer's share of payroll taxes on the amount designated as "wages," in addition to the GSA. *Id*. Settlement Class members will have 60 days from the Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing ample time to review the Notice without unduly delaying the Settlement. *See id.*, § 13(C)-(E).

///

Upon the Settlement being Final and the Settlement being fully funded by Defendant, Plaintiff and every Settlement Class member who does not opt out of the class portion of the Settlement ("Participating Class Members") will release and discharge Defendant, as well as Defendant's parents, subsidiaries, affiliates, officers, shareholders, directors, agents, employees, attorneys, and insurers (the Released Parties) from any and all causes of action, claims, rights, damages, and penalties that were alleged in the First Amended Complaint ("FAC") or that could have been alleged based on the facts alleged in the FAC. *See* Settlement, § 3. In addition, all Aggrieved Employees (whether or not they opt out of the class portion of the Settlement) shall release GI Security and Released Parties from any right or claim for civil penalties pursuant to the PAGA based on Labor Code violations that were alleged in Plaintiff's notice letter to the LWDA and/or in the FAC, for the duration of the PAGA Period ("PAGA Released Claims"). *See* Settlement, § 4.

2. <u>Attorneys' Fees and Costs, Class Representative Service Payment, and PAGA Payment</u>

At final approval, Plaintiff will apply for a Class Representative Service Payment in the amount of $5,000. *See* Settlement, § 7(C)(iii). "[I]ncentive awards are fairly typical in class action cases…and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010).

As will be fully briefed at final approval, Plaintiff's requested Class Representative Service payment is in recognition of the time and effort he expended on behalf of the Settlement Class, including providing factual information and documents to counsel, discussing with counsel the claims and theories at issue in the litigation, making himself available during mediation, reviewing the settlement agreement, and otherwise actively participating in the prosecution of this case, as well as his general release of claims and waiver of Civil Code § 1542. (*See* Settlement, § 6). Plaintiff respectfully submits that the requested payment is well within the range of approval. *See, e.g., Bellinghausen v. Tractor Supply Company*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving $15,000 payment to named plaintiff from wage and hour class action settlement, including $10,000 incentive payment and additional $5,000 for his general release, where payments to class members averaged just over $450); *Martinez v. Knight Transportation*, No. 1:16-cv-01730, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (approving $10,000 award to plaintiff in $400,000 wage and hour class action settlement where payments to class members averaged about $127).

The Parties have also designated $5,000 of the GSA as PAGA penalties, of which $3,750 (75%) will be paid to the LWDA, with the remaining $1,250 (25%) distributed to Settlement Class members (*see* Settlement, § 7(C)(v)), consistent with the PAGA's requirement that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of $7,500 to LWDA from $6.9 million settlement); *Hudson v. Libre Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13, 2020) (approving $21,250 PAGA payment from $425,000 settlement).

At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA (currently estimated at $40,000.00), and up to $22,500 in litigation costs. *See* Settlement, § 7(C)(iv). The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel have incurred substantial attorneys' fees conducting pre-filing investigation and legal research; analyzing timekeeping, payroll, and other data with Plaintiff's data expert to create a comprehensive damages model; analyzing Defendant's financial records with the help of an expert forensic accountant; preparing for and attending mediation; negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Larsen Decl., ¶ 32. Counsel will also incur future attorneys' fees in overseeing the Notice process, fielding phone calls from Settlement Class members, preparing the Final Approval Motion, and appearing at the Final Approval Hearing. *Id.*

It is appropriate to award attorney fees as a percentage of the "common fund" created by the settlement. *Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). Counsel's fee request is well within the range of reasonableness and is typical for common fund settlements. *See*, *e.g.*, *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, n.11 (2008) ("regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). As will be briefed at final approval, 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. <u>The Strength of Plaintiff's Case</u>

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*, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and to class certification, and on its ability to pay a settlement, rendering success far from certain. Moreover, as noted above, Plaintiff's expert forensic accountant analyzed Defendant's financial records and his opinion is that Defendant could not pay a class-wide settlement of more than $120,000. Messerschmidt Decl., ¶¶ 5-23.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

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., ¶ 34. Plaintiff also still had to file for class certification. *Id*. Even if Plaintiff obtained certification, the Parties would incur considerable fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id*. Moreover, given Defendant's financial condition, there is a real risk that continued litigation would cause Defendant to file for bankruptcy. *Id*. In such an event, it is unlikely that class members would receive any financial recovery from Defendant. *Id*. The Settlement avoids those risks and the accompanying expense. Furthermore, Plaintiff's expert forensic accountant analyzed Defendant's financial records and his opinion is that Defendant could not pay a class-wide settlement of more than $120,000. Messerschmidt Decl., ¶¶ 5-23.

c. <u>Risk of Maintaining Class Action Status</u>

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. Moreover, given Defendant's financial condition, there is a real risk that continued litigation would cause Defendant to file for bankruptcy. Larsen Decl., ¶ 34. In such an event, it is unlikely that this matter would have been able to proceed as a Class Action and class members would likely not have received any financial recovery from Defendant. *Id*. 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 Larsen Declaration, and with the assistance of an expert data analyst, Plaintiff conducted an analysis of potential damages due to Defendant's allegedly unlawful 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 $511,376. Larsen Decl., ¶¶ 23-31. The proposed settlement of $120,000 therefore represents approximately 23.5% of Plaintiff's reasonably forecasted classwide recovery. *Id*. As noted above, payments under the Settlement will average nearly $98.60. Preliminary approval is appropriate as the Settlement will provide monetary relief to the Settlement Class, which may not have seen any monetary recovery if litigation continued due Defendant's precarious financial condition.

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

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience litigating wage and hour class actions and have been appointed class counsel in numerous cases alleging similar claims. *See* Larsen Decl., ¶¶ 2-5. Counsel conducted an in-depth review of Defendant's policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiff's claims. Larsen Decl., ¶¶ 18; 23-30. Along with his expert forensic accountant, Counsel also conducted an in-depth review of Defendant's financial condition. Ultimately, the Settlement was also reached after Plaintiff's expert forensic accountant analyzed Defendant's financial records to confirm its financial condition and after a mediation session with Hon. Jeff Winikow (Ret.), an experienced mediator. *Id.*, ¶¶ 18-19. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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

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

a. <u>The Settlement Is Within the Range of Possible Approval</u>

As noted, the Settlement reflects approximately 23.5% of the realistic estimated recovery on Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiff submits the Settlement is clearly within the range of possible approval.

b. <u>The Settlement Resulted from Serious, Informed Negotiations</u>

The Settlement resulted from an exchange of substantial information, arm's-length negotiations, mediation with an experienced mediator, and months of additional negotiations. Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the relevant data and information. Larsen Decl., ¶¶ 18, 23-30. The Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

c. <u>The Settlement Is Devoid of Obvious Deficiencies</u>

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

B. <u>THE COURT SHOULD CERTIFY THE PROPOSED CLASS</u>

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

///

1. <u>The Proposed Class Is Ascertainable and Numerous</u>

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked for Defendant in California during the Class Period, and thus can be readily identified from Defendant's records. Defendant represents there are about 393 Settlement Class members, rendering it impracticable to bring them all before the Court. Numerosity is therefore satisfied.

2. <u>Common Issues of Law and Fact Predominate</u>

The focus on certification is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated primarily on Defendant's alleged failure to pay overtime wages due to an invalid AWS, failure to pay overtime based upon the correct "regular rate" of pay, and alleged unlawful meal and rest period policies/practices. Such claims are commonly held proper for class certification. *See, e.g., Carlino v. CHG Medical Staffing, Inc.*, No. 1:17-cv-01323-DAD-JLT, 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. <u>The Named Plaintiff's Claims Are Typical</u>

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

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

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155

Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiff or his counsel and the Settlement Class. *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation, as noted above.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by Defendant. *See* Settlement, § 13. This is the "best notice practicable" under the circumstances, as it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 173 (1974). Plaintiff proposes the Settlement be administered by Pheonix Settlement Administrators, an experienced class action settlement administrator. *See* Jodey Lawrence Declaration and exhibits. Settlement Class members' addresses will be ascertainable through Defendant's records. Phoenix will also run all addresses through the U.S. Postal Service National Change of Address database and/or perform "skip traces" to obtain current addresses. *See* Settlement, § 13(B) & (F).

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

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

V. **CONCLUSION**

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

Dated: April 21, 2025

Respectfully Submitted,
ABRAMSON LABOR GROUP

Neil Larsen

Neil M. Larsen
Attorneys for Plaintiff