

1 Neil M. Larsen (SBN 276490)
neil@abramsonlabor.com
2 Eli Drummond (SBN 348281)
eli@abramsonlabor.com
3 Jennifer Rivera (SBN 353268)
jennifer.r@abramsonlabor.com
4 **ABRAMSON LABOR GROUP**
1700 W. Burbank Blvd.
5 Burbank, California 91506
Tel: (213) 493-6300
6 Fax: (213) 723-2522

7 *Attorneys for Plaintiff*

8
9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 DEXTER A. HUNTER, on behalf of himself
13 and all others similarly situated,

14
15 Plaintiff,

16 vs.

17
18 VACO, LLC, a California corporation; and
19 DOES 1 through 100, inclusive,

20 Defendants.
21

Case No.: 22STCV29059

CLASS ACTION

*[Assigned for all purposes to Hon.
Kenneth R. Freeman, Dept, SSC-14]*

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

Date: March 25, 2025
Time: 10:00 a.m.
Dept.: SSC-14

Action Filed: September 7, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on March 25, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department SSC-14 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Dexter A. Hunter (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant Vaco, LLC (“Vaco” 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 employees who worked for Defendant Vaco LLC (“Vaco”) in California at any time from September 7, 2021 through February 24, 2023 (the “Class Period”), and were issued at least one wage statement that did not include overtime hours in its calculation of “Total Hrs Worked” (“Affected Wage Statement”).

3. Preliminary appointment of Plaintiff as Class Representative;

4. Preliminary appointment of Abramson Labor Group as Class Counsel;

5. Appointment of Phoenix Settlement Administrators as the Settlement Administrator;

6. Approval of the proposed Class Notice and Notice of Estimated Settlement Award (together, the “Notice Packet”), and an order that the Notice Packet be disseminated to the Settlement Class as provided in the Settlement; and

7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award a Class Representative Service Payment to Plaintiff, PAGA payment to the LWDA, 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 Plaintiff; the pleadings and other papers filed in this action; and any further evidence or argument presented at the time of hearing.

Respectfully Submitted,

Dated: August 22, 2024

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 VACO’S DEFENSES	2
1. Claim for Failure to List the Correct Total Hours Worked on Wage Statements.....	2
C. DISCOVERY AND MEDIATION.....	3
III. THE PROPOSED SETTLEMENT.....	3
A. ESSENTIAL TERMS OF THE SETTLEMENT	3
1. The Settlement Provides for Reasonable Monetary Payments.....	3
2. Attorneys’ Fees and Costs, Enhancement Award and PAGA Payment	4
IV. ARGUMENT.....	6
A. PRELIMINARY APPROVAL IS WARRANTED	6
1. Standard for Preliminary Approval.....	6
a. The Strength of Plaintiff’s Case.....	6
b. Risk, Expense, Complexity, and Duration of Further Litigation.....	7
c. Risk of Maintaining Class Action Status	7
d. Amount Offered in Settlement Given Realistic Value of Claims.....	7
e. The Experience and Views of Counsel	8
2. The Preliminary Approval Standard Is Met.....	8
a. The Settlement Is Within the Range of Possible Approval	8
b. The Settlement Resulted from Serious, Informed Negotiations	8
c. The Settlement Is Devoid of Obvious Deficiencies.....	9
B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS.....	9
1. The Proposed Class Is Ascertainable and Numerous	9
2. Common Issues of Law and Fact Predominate.....	9
3. The Named Plaintiff’s Claims Are Typical	9
4. Plaintiff and Class Counsel Will Adequately Represent the Class.....	10

1 C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE..... 10
2 D. THE COURT SHOULD SET A FINAL APPROVAL HEARING 11
3 V. CONCLUSION..... 11
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 AUTHORITIES

Federal Cases

<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	10
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	6
<i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	8
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	6

State Cases

<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	9
<i>Capital People First v. State Dept. of Develop. Svcs.</i> , 155 Cal.App.4th 676 (2007)	10
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (Cal.App. 1 Dist.,2008)	5
<i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996)	6
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010)	4
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	6, 8
<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016)	5
<i>McGhee v. Bank of Am.</i> , 60 Cal.App.3d 442 (1976)	10
<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....	6
<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926 (1981)	9
<i>Sav-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004).....	9
<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010)	9
<i>Wershba v. Apple Computer, Inc</i> , 91 Cal.App.4th 224 (2001)	6

Federal Statues & Rules

Fed. R. Civ. Proc. Rule 23	6
----------------------------------	---

State Statutes and Rules

Cal. Code Civ. Proc. § 382	9
Cal. Rule of Court 3.766.....	10, 11
Cal. Rule of Court 3.769	6, 11
Cal. Labor Code § 226	2, 4
Cal. Labor Code § 2699	2, 5

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

Unpublished Cases

Alvarado v. Nederend
No. 1:08-cv-01099-OWW-DLB, 2011 WL 90228 (E.D. Cal. Jan. 11, 2011).....3

Chu v. Wells Fargo Inv., LLC
No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011)5

Other Citations

Manual for Complex Litig., § 30.41 (3rd Ed. 1995) 8

Newberg on Class Actions, §§ 11:24-25 (4th Ed. 2013)..... 8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Dexter A. Hunter (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant Vaco, LLC (“Vaco” 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 Vaco failed to list the
7 correct total hours worked on employee wage statements.

8 Plaintiff now respectfully requests that this Court preliminarily approve this non-
9 reversionary, common-fund class action Settlement,¹ in which Vaco has agreed to pay
10 \$675,000.00 to the following Settlement Class, which is estimated to consist of 1,653 individuals:

11 All current and former employees who worked for Defendant Vaco LLC
12 (“Vaco”) in California at any time from September 7, 2021 through
13 February 24, 2023 (the “Class Period”), and were issued at least one
14 wage statement that did not include overtime hours in its calculation of
15 “Total Hrs Worked” (“Affected Wage Statement”).

16 The Settlement was reached after the parties engaged in a mediation with Tripper Ortman,
17 Esq., a well-regarded and highly experienced wage and hour class action mediator. Prior to
18 mediation, Vaco provided Plaintiff’s counsel with informal discovery that included a sampling of
19 wage statements and other relevant data and information. On August 28, 2023, the Parties
20 attended a mediation session Mr. Ortman, but were unable to reach a settlement at the mediation.
21 Over the following months, the Parties continued to negotiate with Mr. Ortman’s assistance and
22 Vaco confirmed that 11,758 Affected Wage Statements were issued to 1,653 employees from
23 September 7, 2021 through February 24, 2024 (Class Period). Ultimately, with Mr. Ortman’s
24 assistance, the Parties reached a class-wide settlement in principle, ultimately resulting in the
25 Settlement.

26 Notably, Settlement Class members need not submit a claim to receive a payment
27 (“Settlement Award”). After deductions for proposed administration costs, attorney fees and
28 costs, Plaintiff’s incentive award, and the LWDA’s share of PAGA civil penalties, the average

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.

Settlement Award is estimated to be at least \$214.76. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Vaco is a staffing and recruiting firm specializing in the placement of accounting, finance, and IT workers. See Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 9. Plaintiff is a former non-exempt employee who worked for Vaco from approximately January 2022 to March 2022. *Id.*

On September 7, 2022, Plaintiff filed this Action, alleging that Vaco failed to list the correct total hours worked on employee wage statements. Larsen Decl., ¶ 8. On that same day, Plaintiff also submitted a notice letter to the Labor & Workforce Development Agency (“LWDA”), of his intent to pursue PAGA civil penalties for alleged violations of the California Labor Code, as required by Labor Code § 2699.3, including for the wage statement violation. *Id.*

On November 14, 2022, Plaintiff filed a First Amended Complaint that added a claim for civil penalties pursuant to the Private Attorneys’ General Act (“PAGA”). *Id.*, ¶ 9.

B. PLAINTIFF’S CLAIMS AND VACO’S DEFENSES

1. Claim for Failure to List the Correct Total Hours Worked on Wage Statements

Plaintiff alleges that Vaco Vaco failed to list the correct total hours worked on employee wage statements, in violation of Labor Code § 226(a)(2). Larsen Decl., ¶ 10.

Vaco contends that any failure to include the correct total hours worked in employees’ wage statements was not the result of a “knowing and intentional” act by Vaco, as required to establish liability for penalties under Labor Code § 226(e). Further, Vaco contends, neither Plaintiff nor any other employee suffered any actual “injury” as a result of this alleged failure, as there is no allegation that any employees were underpaid or otherwise injured as a result of the alleged violation. *Id.*

///

///

1 **C. DISCOVERY AND MEDIATION**

2 Before mediation, Vaco provided Plaintiff’s counsel with informal discovery that included
3 a sampling of wage statements and other relevant data and information. Larsen Decl., ¶ 11.

4 The Parties attended a mediation with Mr. Ortman on August 28, 2023, at which they
5 vigorously debated Plaintiff’s claims and Vaco’s defenses, the potential value of Plaintiff’s
6 claims, and the chances of certification. Larsen Decl., ¶ 12. The Parties but were unable to reach
7 a settlement at mediation. *Id.* Over the following months, the Parties continued to negotiate with
8 Mr. Ortman’s assistance and Vaco confirmed that 11,758 Affected Wage Statements were issued
9 to 1,653 employees from September 7, 2021 through February 24, 2024 (Class Period). *Id.*
10 Ultimately, with Mr. Ortman’s assistance, the Parties reached a class-wide settlement in principle,
11 ultimately resulting in the Settlement. *Id.*

12 **III. THE PROPOSED SETTLEMENT**

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

14 Under the Settlement, WLI will pay a non-reversionary Gross Settlement Amount
15 (“GSA”) of \$675,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$675,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$225,000.00
• Minus Court-approved costs (up to):	\$20,000.00
• Minus Court-approved Service Payment:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$50,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$17,500.00</u>
Net Settlement Amount (“NSA”):	\$355,000.00
PLUS 25% of PAGA penalties (“PAGA Amount”):	\$12,500.00
Total Amount Paid to Settlement Class:	\$367,500.00

21 **1. The Settlement Provides for Reasonable Monetary Payments**

22 As illustrated above, after deducting amounts for a court-approved incentive award,
23 administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, Vaco will pay
24 at least \$355,000.00 to Settlement Class members. *See* Settlement, § 4(C). Vaco represents that
25 there are approximately 1,653 Settlement Class members. *Id.*, § 1. Thus, the average Settlement
26 Award is estimated to be \$214.76. Larsen Decl., ¶ 14.

27 The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class
28 members who do not opt-out of the Settlement) proportionately, based on each Participating Class

Member's proportionate number of Affected Wage Statements received during the Class Period. See Settlement, § 6(B). In addition, all Settlement Class members (regardless of whether they opt-out) will receive a portion of the \$12,500.00 PAGA Amount, based on their proportionate number of Affected Wage Statements received during the PAGA Period. See Settlement, § 6(C).

Settlement payments will be treated as penalties and reported on a Form 1099, as all of the alleged damages in this case are either PAGA civil penalties or statutory penalties pursuant to Labor Code § 226(e). See Settlement, § 6(E). Settlement Class members will have 60 days from the Notice mailing to opt-out of or object to the Settlement, or submit disputes, thereby providing ample time to review the Notice without unduly delaying the Settlement. See *id.*, § 11(C)-(E).

Participating Class Members shall release all wage and hour claims that were pled in the Action, or that could have been pled based on the facts alleged in the Action, during the Class Period, including all claims for failure to issue inaccurate wage statements under Labor Code § 226 ("California Released Claims"). See Settlement, § 2. In addition, all Settlement Class members (regardless whether they opt-out) will release all claims against Vaco for PAGA penalties based on the facts alleged in the Action for failure to issue inaccurate wage statements under Labor Code § 226 ("PAGA Released Claims"). *Id.*

2. Attorneys' Fees and Costs, Class Representative Service Payment, and PAGA Payment

At final approval, Plaintiff will apply for a Class Representative Service Payment in the amount of \$7,500. See Settlement, § 4(C)(iii). "[I]ncentive awards are fairly typical in class action cases...and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, Plaintiff's requested 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, reviewing the settlement agreement, and otherwise actively participating in the prosecution of this case. Larsen Decl., ¶ 20. Plaintiff respectfully submits that the requested payment is well

1 within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-
2 OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 award to
3 each of five named plaintiffs from \$505,058.60 settlement).

4 The parties have also designated \$50,000 of the GSA as PAGA penalties, of which
5 \$37,500 (75%) will be paid to the LWDA, with the remaining \$12,500 (25%) distributed to
6 Settlement Class members (*see* Settlement, § 4(C)(v)), consistent with the requirements of Labor
7 Code § 2699(i)). Plaintiff submits this allocation to the LWDA is appropriate and reasonable as
8 a percentage of the overall settlement. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-
9 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of \$7,500 to
10 LWDA from \$6.9 million settlement).

11 At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA
12 (currently estimated at \$225,000), and up to \$20,000 in litigation costs. *See* Settlement, § 4(C)(iv).
13 The requested fee is fair compensation for undertaking complex, risky, expensive, and time-
14 consuming litigation on a contingent basis. Plaintiff's counsel have incurred substantial attorneys'
15 fees conducting pre-filing investigation and legal research; analyzing payroll and other data to
16 create a comprehensive damages model; preparing for and attending mediation; negotiating and
17 preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Larsen
18 Decl., ¶ 19. Counsel will also incur future attorney fees in overseeing the Notice process, fielding
19 phone calls from Settlement Class members, preparing the Final Approval Motion, and appearing
20 at the Final Approval Hearing. *Id.*

21 It is appropriate to award attorneys' fees as a percentage of the "common fund" created
22 by the settlement. *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding "the percentage
23 of fund method survives in California class action cases"). Counsel's fee request is well within
24 the range of reasonableness and is typical for common fund settlements. *See, e.g., Chavez v.*
25 *Netflix, Inc.*, 162 Cal.App.4th 43, n.11 (2008) ("regardless whether the percentage method or the
26 lodestar method is used, fee awards in class actions average around one-third of the recovery").
27 As will be briefed at final approval, the fee request is reasonable in light of the risks and the work
28 undertaken, the results obtained, and the efficiency with which counsel 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 he maintains his 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*, Vaco 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 informal discovery, they had not completed formal
3 written and deposition discovery, which would have required expenditure of substantial time and
4 resources. Larsen Decl., ¶ 21. Plaintiff also still had to file for class certification. *Id.* Even if
5 Plaintiff obtained certification, the Parties would incur considerable attorneys’ fees and costs
6 through a possible decertification motion, motions for summary judgment, trial, and potential
7 appeals. *Id.* The Settlement avoids those risks and the accompanying expense. *Id.* Thus, this factor
8 supports preliminary approval.

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

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

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

17 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
18 for disputed claims. As detailed in the concurrently-filed Larsen Declaration, Plaintiff conducted
19 an analysis of potential damages due to Vaco’s allegedly unlawful Affected Wage Statements
20 issued to Class members during the Class Period. After applying reasonable discounts for risks
21 of not obtaining class certification and risks of losing on the merits, Plaintiff estimated his claims
22 had a realistic potential value of approximately \$906,021. Larsen Decl., ¶¶ 16-18. The proposed
23 settlement of \$675,000.00 therefore represents about 74.5% of Plaintiff’s reasonably forecasted
24 classwide recovery. *Id.* As noted above, Settlement payments are projected to average nearly
25 \$214.76. Preliminary approval is appropriate as the Settlement will provide significant monetary
26 relief to the Settlement Class.

27 ///

28 ///

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, Plaintiff’s counsel have extensive
5 experience litigating wage and hour class actions, and have been appointed class counsel in
6 numerous cases alleging similar claims. *See* Larsen Decl., ¶¶ 2-5. Counsel conducted an in-depth
7 review of Vaco’s payroll practices, payroll records, and other relevant data, and drew on their
8 extensive experience to assess Plaintiff’s claims. Larsen Decl., ¶¶ 8, 11-12, 16-18. The Settlement
9 was also reached after a mediation session and continued post-mediation negotiation assistance
10 with Tipper Ortman, Esq., a well-regard and highly experienced wage and hour class action
11 mediator. *Id.*, ¶ 12. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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

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

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

18 As noted above, the Settlement reflects about 74.5% of the realistic estimated recovery on
19 Plaintiff’s claims, and will provide tangible, monetary compensation for hotly disputed wage
20 claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

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

22 The Settlement resulted from an exchange of substantial information, arm’s-length
23 negotiations, mediation with a highly experienced mediator, and months of additional
24 negotiations. Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the
25 relevant data and information. Larsen Decl., ¶¶ 16-18. The Settlement is thus entitled to a
26 presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

27 ///

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 payment, 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 employees who worked for Vaco in
15 California during the Class Period, and thus can be readily identified from Vaco’s records. Vaco’s
16 represents there are about 1,653 Settlement Class members, rendering it impracticable to bring
17 them all before the Court. Numerosity is satisfied. *See, e.g., Rose v. City of Hayward*, 126
18 Cal.App.3d 926, 934 (1981) (recognizing that “our Supreme Court has upheld a class” with just
19 10 members).

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

21 The focus on certification is not on the merits of the case, but rather on what types of
22 questions, “common or individual,” are likely to arise in the action. *Sav-On Drug Store, Inc. v.*
23 *Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s class claim is predicated on Vaco’s allegedly
24 unlawful failure to list the correct total hours worked on employees’ wage statements, a theory
25 that applies equally to all employees and thus is proper for class certification.

26 **3. The Named Plaintiff’s Claims Are Typical**

27 The typicality requirement is satisfied where class representatives have claims that are
28 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 Vaco in California during the Class Period, and was injured by the same Affected Wage Statements that allegedly injured the Settlement Class as a whole. See Declaration of Dexter A. Hunter, ¶¶ 2-3. Thus, typicality is satisfied.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

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 Vaco. See Settlement, § 11. This is the "best notice practicable" under the circumstances, as it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes the Settlement be administered by Phoenix Settlement Administrators, an experienced class action settlement administrator. See Jodey Lawrence Declaration and exhibits. Settlement Class members' addresses will be ascertainable through Vaco's records. Phoenix will also run all addresses through the U.S. Postal Service National Change of Address database and/or perform "skip traces" to obtain current addresses. See Settlement, § 11(B) & (F).

The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims; the basic contentions 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 1. The proposed Notice also includes the final approval hearing date and time, and it provides
2 contact information for Class Counsel and Phoenix in the event Settlement Class members have
3 any questions about the Settlement. *Id.* This Notice satisfies Cal. Rule of Court 3.766(e) as the
4 most reliable and cost-effective method of reaching the Settlement Class.

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

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

8 **V. CONCLUSION**

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

12 Respectfully submitted,

13 Dated: August 22, 2024

ABRAMSON LABOR GROUP

14
15 By: Neil Larsen
16 Neil M. Larsen
17 Attorneys for Plaintiff
18
19
20
21
22
23
24
25
26
27
28