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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN**
10

11 KEVIN WALTERS, on behalf of himself and
12 all others similarly situated,

13 Plaintiff,
14

15 vs.
16

17 UFP THORNTON, LLC, a limited liability
18 company; and DOES 1 through 100, inclusive,

19 Defendants.
20
21

Case No.: STK-CV-UOE-2022-0012249

CLASS ACTION

*[Assigned for all purposes to Hon. Robert
T. Waters, Dept. 11B]*

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

Date: TBD

Time: TBD

Dept.: 11B

Action Filed: December 29, 2022

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on a date and time to be determined by the Court, in Department 11B of the above-entitled Court, located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiff Kevin Walters (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant UFP Thornton, LLC (“UFP” 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 employed by UFP Thornton, LLC (“UFP”) in California at any time from December 29, 2018 through December 11, 2023 (the “Class Period”).

3. Preliminary appointment of Plaintiff as Class Representative;

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

5. Appointment of Phoenix Settlement Administrators 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 Tuvia Korobkin and exhibits attached thereto; the declaration of Neil M. Larsen; the declaration of Jodey Lawrence and exhibits attached thereto; the declaration of Plaintiff; the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: February 29, 2023

Respectfully Submitted,
ABRAMSON LABOR GROUP



Tuvia Korobkin
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Kevin Walters (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant UFP Thornton, LLC (“UFP” or
5 “Defendant”) (together with Plaintiff, the “Parties”). The Settlement resolves a class and
6 representative action pending before this Court (the “Action”), in which Plaintiff alleges that UFP
7 failed to incorporate bonuses and other payments into the “regular rate,” resulting in underpaid
8 overtime, meal period premiums, and sick pay; failed to provide all meal periods; failed to
9 authorize and permit all rest periods; and failed to reimburse employees for business expenses.
10 Plaintiff further alleges that as a result of these violations, UFP failed to issue accurate itemized
11 wage statements, failed to pay all wages on termination of employment, and is liable for civil
12 penalties under the Private Attorneys General act (“PAGA”).

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action Settlement,¹ in which UFP has agreed to pay \$745,000.00
15 to the following Settlement Class, which is estimated to consist of 343 individuals:

16 All current and former non-exempt employees employed by UFP Thornton, LLC
17 (“UFP”) in California at any time from December 29, 2018 through December 11,
2023 (the “Class Period”).

18 The Settlement was reached after the parties engaged in mediation with Steve G. Mehta,
19 Esq., an experienced wage and hour class action mediator. In connection with mediation, UFP
20 provided Plaintiff with extensive informal discovery, including timekeeping and payroll records
21 for a sampling of putative class members; relevant written policies; and additional relevant data
22 and information. After extensive research and investigation, including a detailed analysis of
23 UFP’s potential exposure made with the assistance of an expert data analyst, the mediation session
24 was held with Mr. Mehta on September 12, 2023. The Parties did not reach a resolution at
25 mediation, but they continued their negotiations and, with the mediator’s assistance, eventually
26 reached a settlement in principle. Over the following months, the Parties negotiated the finer terms
27 of the settlement, ultimately resulting in the Settlement.

28 _____
¹ The Settlement is attached as Exhibit 1 to the Korobkin Declaration. The Class Notice is attached
as Exhibit A 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 at least **\$1,156.46**. 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 UFP is a lumber supplier to builders all over the nation. *See* Declaration of Tuvia Korobkin
9 (“Korobkin Decl.”), ¶ 9. Plaintiff is a former non-exempt Forklift Operator who worked for UFP
10 in California during the Class Period. *Id.*

11 On December 29, 2022, Plaintiff filed this Action, alleging claims for failure to pay
12 overtime wages, meal and rest period violations, waiting time penalties, wage statement penalties,
13 failure to reimburse expenses, and unfair business practices. Korobkin Decl., ¶ 10. Plaintiff
14 subsequently filed a First Amended Complaint adding a claim for PAGA civil penalties. *Id.*, ¶ 11.

15 **B. PLAINTIFF’S CLAIMS AND UFP’S DEFENSES**

16 **1. Claim for Underpaid Wages Based on Regular Rate Miscalculation**

17 Plaintiff alleges UFP failed to incorporate bonuses and other payments in employees’
18 “regular rate” and, as a result, under-paid overtime, meal period premiums, and sick pay. *See* 29
19 C.F.R. § 778.200 (under FLSA, “regular rate” includes all forms of remuneration except for eight
20 enumerated exceptions); *see also Prachasaisoradej v. Ralphs Grocery Co., Inc.*, 42 Cal.4th 217,
21 242 n.14 (2007) (“California follows the federal standard” for calculating regular rate).

22 UFP contends that the bonus payments in question were discretionary, were not tied to the
23 quantity or quality of work performed, and were therefore excludable from the regular rate. *See*
24 29 C.F.R. §§ 778.208, 778.211 (excluding “discretionary” bonuses from regular rate). UFP argues
25 that other payments in question were a “bona fide plan” excludable from the regular rate pursuant
26 to 29 C.F.R. § 778.215(a)(5). UFP further argues that any overtime under-payments were *de*
27 *minimis* and not recoverable. Korobkin Decl., ¶ 12. UFP also maintains that employees received
28 different types of remuneration throughout the Class Period, thus creating substantive differences

1 among the putative class members with respect to the payments received as well as the
2 expectations regarding those payments, making class certification unlikely. *Id.*

3 **2. Meal Period Claim**

4 Plaintiff alleges that he and other non-exempt employees were not provided with second
5 meal periods on shifts over 10 hours. Korobkin Decl., ¶ 13. UFP argues that it has maintained
6 legally-compliant meal period policies and practices throughout the Class Period, and that under
7 *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure” they
8 are taken. Korobkin Decl., ¶ 13; *see also Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038
9 (rejecting “ensure” standard). UFP further argues that, given its lawful policies and practices, any
10 failure to take a second 30-minute period was the result of employee choice rather than any policy
11 or practice of UFP. *Id.* UFP additionally argues that employees waive their second meal period
12 on shifts under 12 hours (which comprise the vast majority of 10+ hour shifts), as they are entitled
13 to do under Labor Code § 512, since employees would rather go home 30 minutes earlier than
14 take a second 30-minute unpaid break. *Id.* UFP further argues that individualized inquiries would
15 be required to determine whether individual employees, in different job positions and under
16 different managers, did not take a second meal period on each individual shift, and why any
17 second meal period was missed, thereby precluding certification of this claim. *Id.*

18 **3. Rest Period Claim**

19 Plaintiff alleges that, as with meal periods, UFP failed to authorize and permit a third 10-
20 minute rest periods on shifts over 10 hours. Korobkin Decl., ¶ 14; *Brinker*, 53 Cal.4th at 1028-
21 32 (discussing rest period requirements). UFP asserts it has always maintained legally compliant
22 rest period policies, and that, in practice, it has always authorized and permitted all required rest
23 periods to non-exempt employees; that it informs employees of their right to rest periods; and
24 that any failure to take a rest period is the result of employee choice rather than any policy or
25 practice of UFP. *Id.* UFP further argues this claim is not amenable to class treatment as
26 individualized inquiries would be required to determine whether individual employees in
27 different job positions and under different supervisors were in fact authorized and permitted to
28 take rest periods on any given shift, under various supervisors and time periods, thus precluding

1 class certification. *Id.* These manageability concerns are particularly present with respect to rest
2 periods, UFP contends, since rest periods are not (and need not be) recorded. *Id.*

3 **4. Claim for Failure to Reimburse Business Expenses**

4 Plaintiff alleges that UFP failed to indemnify him and other employees for the use of their
5 personal cell phones for work purposes, including to use the calculators on their cell phones to
6 calculate load weights to ensure vehicles were not overloaded . Korobkin Decl., ¶ 15. UFP
7 counters that employees did not need to use their personal cell phones in connection with their
8 job duties, and that if they did, there are procedures in place for employees to request
9 reimbursement of work-related expenses. *Id.* UFP also contends that employees are provided
10 with any equipment necessary to perform their job duties. *Id.* UFP further argues that this claim
11 would not be certified, as it would require hundreds of individualized inquiries as to whether
12 employees incurred business-related expenses, whether they were reimbursed, whether UFP
13 knew (or reasonably should have known) about the expense, and whether the expense was
14 “necessary” under the circumstances. *See Gattuso v. Hart-Hanks Shoppers, Inc.*, 42 Cal.4th 554,
15 568 (2007) (“In calculating the reimbursement amount due under section 2802, the employer
16 may consider not only the actual expenses that the employee incurred, but also whether each of
17 those expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee’s
18 choices.”); *Grissom v. Vons Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991) (under § 2802,
19 “ascertaining what was a necessary expenditure will require an inquiry into what was reasonable
20 under the circumstances”).

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

22 As a result of its alleged failure to pay all overtime wages, as well as its failure to provide
23 all meal and rest periods, Plaintiff asserts that UFP failed to comply with its final payment and
24 wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively.
25 Korobkin Decl., ¶ 16. Finally, Plaintiff seeks civil penalties under the PAGA based on the
26 aforementioned claims. *Id.*

27 UFP argues that Plaintiff’s derivative claims fail for the same reasons his underlying
28 claims fail. UFP 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). UFP further contends that any alleged wage statement violations were not “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show he or other employees “suffer[ed] injury” due to alleged wage statement violations, as required by Lab. Code § 226(e); and that employee wage statements always accurately reflect amounts *paid* to employees. Korobkin Decl., ¶ 17; *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to ‘document the *paid* wages to ensure the employee is fully informed regarding the calculation of those wages.’”) (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

Finally, UFP 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.”). UFP 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. Korobkin 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. DISCOVERY AND MEDIATION

In preparation for mediation, the Parties engaged in extensive informal discovery. UFP provided Plaintiff’s counsel with several data points, including the number of class members, workweeks worked, average rate of pay, and other relevant metrics. UFP also produced a sampling of timekeeping and payroll records for putative class members, its wage and hour

1 policies, and other information. Korobkin Decl., ¶ 18. Plaintiff’s counsel hired an expert data
2 analyst to analyze and extrapolate the data produced by UFP. *Id.* This discovery allowed the
3 Parties to assess the merits and value of Plaintiff’s claims and UFP’s defenses, as well as the
4 chances for class certification. *Id.*

5 The Parties attended a mediation with Mr. Mehta on September 12, 2023. At mediation
6 the Parties vigorously debated Plaintiff’s claims and UFP’s defenses, the potential value of
7 Plaintiff’s claims, and the chances of certification. Korobkin Decl., ¶ 19. The Parties did not
8 reach a resolution at mediation. Korobkin Decl., ¶ 19. However, the Parties continued their
9 negotiations with Mr. Mehta’s assistance and eventually agreed to a resolution in principle. Over
10 the following months, the Parties negotiated the finer terms of the settlement, ultimately resulting
11 in the Settlement. *Id.*

12 **III. THE PROPOSED SETTLEMENT**

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

14 Under the Settlement, UFP will pay a non-reversionary Gross Settlement Amount
15 (“GSA”) of \$745,000.00. The monetary terms of the Settlement are summarized below:

16	• Gross Settlement Amount (“GSA”):	\$745,000.00
17	• Minus Court-approved attorneys’ fees (one-third):	\$248,333.33
18	• Minus Court-approved costs (up to):	\$20,000.00
19	• Minus Court-approved Service Payment:	\$10,000.00
20	• Minus Amount Set Aside as PAGA penalties:	\$80,000.00
21	• <u>Minus estimated settlement administration costs:</u>	<u>\$10,000.00</u>
22	Net Settlement Amount (“NSA”):	\$376,666.67
23	PLUS 25% of PAGA penalties (“PAGA Amount”):	\$20,000.00
24	Total Amount Paid to Settlement Class:	\$396,666.67

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

26 As noted above, after deducting amounts for a court-approved incentive award,
27 administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, UFP will pay
28 at least \$396,666.67 to Settlement Class members. *See* Settlement, § 5(C). UFP represents that
there are approximately 343 Settlement Class members. *Id.*, § 1. Thus, **the average Settlement
Award is estimated to be \$1,156.46.** Korobkin Decl., ¶ 21.

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: (i) 15% of the NSA is designated the
“Waiting Time Amount,” and will be paid in equal amounts to all Participating Class Members

1 whose employment with UFP ended at any time from December 29, 2019 through the end of the
2 Class Period; (ii) 10% of the NSA is designated the “Wage Statement Amount” and will be paid
3 to all Participating Class Members who were employed by UFP in California at any time from
4 December 29, 2021 to the end of the Class Period, based on their proportionate number of pay
5 periods worked during that time period; and (iii) the remaining 75% of the NSA will be distributed
6 to all Participating Class Members, proportionally based on the number of workweeks worked
7 during the Class Period. *See Settlement*, § 7(B).

8 In addition, all Settlement Class members (regardless whether they opt out) who were
9 employed by UFP in California at any time between December 29, 2021 and the end of the Class
10 Period (the “PAGA Period”), will receive a portion of the \$20,000 PAGA Amount, based on their
11 proportionate number of pay periods worked during the PAGA Period. *See Settlement*, § 7(C).

12 Payments from the NSA will be treated as 20% wages reported on a Form W-2, with the
13 remaining 80% treated as interest and penalties and reported on a Form 1099. *See Settlement*, §
14 7(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* UFP will separately
15 pay the employer’s share of payroll taxes on the amount designated as “wages,” in addition to the
16 GSA. *Id.*, § 5(D). Settlement Class members will have 45 days from the Notice mailing to opt out
17 of or object to the Settlement, or submit disputes, thereby providing ample time to review the
18 Notice without unduly delaying the Settlement. *See id.*, § 12(C)-(E).

19 Participating Class Members will be bound by the Settlement and will release all claims
20 that were pled in the Action, or that could have been pled based on the facts alleged in the Action,
21 during the Class Period (“Released Class Claims”). *See Settlement*, § 2. In addition, all Settlement
22 Class members (regardless whether they opt out) who worked for UFP in California during the
23 PAGA Period, will release all claims against UFP for PAGA penalties based on the allegations in
24 the Action, that arose during the PAGA Period (“PAGA Released Claims”). *See Settlement*, § 3.

25 **2. Attorneys’ Fees and Costs, Enhancement Award, and PAGA Payment**

26 At final approval, Plaintiff will apply for a Class Representative Enhancement Award in
27 the amount of \$10,000. *See Settlement*, § 5(C)(iii). “[I]ncentive awards are fairly typical in class
28 action cases...and are intended to compensate class representatives for work done on behalf of

1 the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In*
2 *re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010).

3 As will be fully briefed at final approval, Plaintiff’s requested payment is in recognition
4 of the time and effort he expended on behalf of the Settlement Class, including providing factual
5 information and documents to counsel, discussing with counsel the claims and theories at issue
6 in the litigation, attending the first mediation, reviewing the settlement agreement, and otherwise
7 actively participating in the prosecution of this case, as well as his general release of claims and
8 waiver of Civil Code § 1542. (See Settlement, § 4.) Plaintiff respectfully submits that the
9 requested payment is well within the range of approval. *See, e.g., Bellinghausen v. Tractor Supply*
10 *Company*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$15,000 payment to named plaintiff
11 from wage and hour class action settlement, including \$10,000 incentive payment and additional
12 \$5,000 for his general release, where payments to class members averaged just over \$450);
13 *Martinez v. Knight Transportation*, No. 1:16-cv-01730, 2023 WL 5917989 (E.D. Cal. Sept. 11,
14 2023) (approving \$10,000 award to plaintiff in \$400,000 wage and hour class action settlement
15 where payments to class members averaged about \$127).

16 The parties have also designated \$80,000 of the GSA as PAGA penalties, of which
17 \$60,000 (75%) will be paid to the LWDA, with the remaining \$20,000 (25%) distributed to
18 Settlement Class members (*see* Settlement, § 5(C)(v)), consistent with the PAGA’s requirement
19 that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to
20 aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is
21 appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells*
22 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011)
23 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement); *Hudson v. Libre*
24 *Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13, 2020)
25 (approving \$21,250 PAGA payment from \$4235,000 settlement).

26 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
27 (currently estimated at \$248,333.33), and up to \$20,000 in litigation costs. *See* Settlement, §
28 5(C)(iv). The requested fee is fair compensation for undertaking complex, risky, expensive, and

1 time-consuming litigation on a contingent basis. Plaintiff's counsel have incurred substantial
2 attorneys' fees conducting pre-filing investigation and legal research; analyzing timekeeping,
3 payroll, and other data with Plaintiff's data expert to create a comprehensive damages model;
4 preparing for and attending mediation; negotiating and preparing the Settlement; preparing this
5 Motion; and otherwise prosecuting this case. Korobkin Decl., ¶ 31. Counsel will also incur future
6 attorney fees in overseeing the Notice process, fielding phone calls from Settlement Class
7 members, preparing the Final Approval Motion, and appearing at the Final Approval Hearing. *Id.*

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

16 **IV. ARGUMENT**

17 **A. PRELIMINARY APPROVAL IS WARRANTED**

18 California Rule of Court 3.769 conditions class action settlements on court approval,
19 which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
20 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
21 "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*,
22 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a proposed
23 settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of
24 dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*,
25 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role is to ensure the settlement agreement taken
26 as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a
27 presumption of fairness when a settlement is negotiated at arm's length by counsel. *See, e.g.,*
28 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1 **1. Standard for Preliminary Approval**

2 To make a fairness determination, the Court should consider several factors, including:
3 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
4 litigation, the risk of maintaining class action status through trial, the amount offered in
5 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
6 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
7 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
8 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
9 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
10 and reasonable in light of the overall balance of factors in this case.

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

12 Although he maintains his claims are meritorious, Plaintiff acknowledges there were
13 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
14 merits. As described in section II.B., *supra*, UFP presented multiple defenses to Plaintiff’s claims,
15 both on the merits and to class certification, rendering success far from certain.

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

17 Although the Parties engaged in significant informal discovery, they had not completed
18 formal written and deposition discovery, which would have required expenditure of substantial
19 time and resources. Korobkin Decl., ¶ 33. Plaintiff also still had to file for class certification. *Id.*
20 Even if Plaintiff obtained certification, the Parties would incur considerable fees and costs through
21 a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id.*
22 The Settlement avoids those risks and the accompanying expense.

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

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

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

2 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
3 for disputed claims. As detailed in the Korobkin Declaration, and with the assistance of an expert
4 data analyst, Plaintiff conducted an analysis of potential damages due to UFP’s allegedly unlawful
5 policies and practices. After applying reasonable discounts for risks of not obtaining class
6 certification and risks of losing on the merits, Plaintiff estimated his claims had a realistic
7 potential value of approximately \$896,351. Korobkin Decl., ¶¶ 23-30. The proposed settlement
8 of \$745,000.00 therefore represents over 83% of Plaintiff’s reasonably forecasted classwide
9 recovery. *Id.* As noted above, payments under the Settlement will average over \$1,100.
10 Preliminary approval is appropriate as the Settlement will provide significant monetary relief to
11 the Settlement Class.

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

13 “Parties represented by competent counsel are better positioned than courts to produce a
14 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter.*
15 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
16 litigating wage and hour class actions, and have been appointed class counsel in numerous cases
17 alleging similar claims. *See* Korobkin Decl., ¶¶ 2-7; Declaration of Neil M. Larsen, ¶¶ 2-5.
18 Counsel conducted an in-depth review of UFP’s policies, timekeeping and payroll records, and
19 other relevant data, and drew on their extensive experience to assess Plaintiff’s claims. Korobkin
20 Decl., ¶¶ 23-30. The Settlement was also reached after a mediation session with Steve Mehta, an
21 experienced and well-respected wage and hour class action mediator. *Id.*, ¶ 19. This strongly
22 supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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

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

28 ///

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

2 As noted, the Settlement reflects over 83% of the realistic estimated recovery on Plaintiff's
3 claims, and will provide tangible, monetary compensation for hotly disputed wage claims.
4 Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

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

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations, mediation with an experienced mediator, and months of additional negotiations.
8 Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the relevant data
9 and information. Korobkin Decl., ¶¶ 19, 23-30. The Settlement is thus entitled to a presumption
10 of fairness. *Kullar*, 168 Cal.App.4th at 130.

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

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

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

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

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

22 A class is "ascertainable" where members "may be readily identified without unreason-
23 able expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189
24 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked
25 for UFP in California during the Class Period, and thus can be readily identified from UFP's
26 records. UFP represents there are about 343 Settlement Class members, rendering it impracticable
27 to bring them all before the Court. Numerosity is therefore satisfied.

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

2 The focus on certification is not on the merits of the case, but rather on what types of
3 questions, “common or individual,” are likely to arise in the action. *Sav-On Drug Store, Inc. v.*
4 *Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated primarily on UFP’s
5 allegedly unlawful failure to include bonuses and other payments in the “regular rate” and
6 allegedly unlawful meal and rest period policies/practices. Such claims are commonly held proper
7 for class certification. *See, e.g., Carlino v. CHG Medical Staffing, Inc.*, No. 1:17-cv-01323-DAD-
8 JLT, 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v.*
9 *Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest
10 period claims).

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

12 The typicality requirement is satisfied where class representatives have claims that are
13 typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347
14 (1987). Here, Plaintiff’s claims are typical of those held by Settlement Class members. Plaintiff
15 was employed by UFP as a non-exempt employee in California during the Class Period, and he
16 was injured by the same challenged policies that allegedly injured the Settlement Class as a whole.
17 *See* Declaration of Kevin Walter, ¶¶ 2-3. Thus, typicality is satisfied.

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

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

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

2 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
3 mailing addresses provided by UFP. *See* Settlement, § 12. This is the “best notice practicable”
4 under the circumstances, as it provides “individual notice to all members who can be identified
5 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
6 proposes the Settlement be administered by Pheonix Settlement Administrators, an experienced
7 class action settlement administrator. *See* Jodey Lawrence Declaration and exhibits. Settlement
8 Class members’ addresses will be ascertainable through UFP’s records. Phoenix will also run all
9 addresses through the U.S. Postal Service National Change of Address database and/or perform
10 “skip traces” to obtain current addresses. *See* Settlement, § 12(B) & (F).

11 The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement
12 Class members of the nature of the claims; the basic contentions of the parties; the key terms of
13 the Settlement; the 45-day deadline to opt out, object, or submit a dispute and how to do so;
14 explains the recovery formula and expected recovery amount for each Settlement Class member;
15 and explains the releases of claims included in the Settlement. *See* Korobkin Decl., Exh. A to Exh.
16 1. The proposed Notice also includes the final approval hearing date and time, and it provides
17 contact information for Class Counsel and Phoenix in the event Settlement Class members have
18 any questions about the Settlement. *Id.* This Notice satisfies Cal. Rule of Court 3.766(e) as the
19 most reliable and cost-effective method of reaching the Settlement Class.

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

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

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1 **V. CONCLUSION**

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

5
6 Dated: September 29, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

7
8 By:


Tuvia Korobkin
Attorneys for Plaintiff