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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

ROBNEY COOPER, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

BIRTCHE ANDERSON & DAVIS
ASSOCIATES, INC., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2023-01303804-CU-OE-CXC

CLASS ACTION

*[Assigned for all purposes to Hon.
Melissa R. McCormick, Dept. CX-104]*

Reservation #: 74288216

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

Date: September 26, 2024

Time: 2:00 p.m.

Dept.: CX-104

Action Filed: January 24, 2023

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on September 26, 2024 at 2:00 p.m., or as soon thereafter as the matter may be heard, in Department CX-104 of the above-entitled Court, located at 751 West Santa Ana Boulevard, Santa Ana, CA 92701, Plaintiff Robney Cooper (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant Birtcher Anderson & Davis Associates, Inc. (“Birtcher” or “Defendant”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class: **All current and former non-exempt employees who worked for Defendant in California at any time from January 24, 2022 through September 19, 2023 (the “Class Period”) and who were issued at least one wage statement that counted meal period premiums, comp time hours, bereavement leave hours, birthday pay hours, jury pay hours, retro pay hours, and/or Early Out hours in its calculation of “Total Hrs Worked”.**
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Neil M. Larsen, Meghan E. McNally, and Jennifer S. Rivera 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, 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

1 papers filed in this action; and any further evidence or argument presented at the time of hearing.

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3 Respectfully Submitted,

4 Dated: May 3, 2024

ABRAMSON LABOR GROUP

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Neil M. Larsen
7 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Robney Cooper (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant Birtcher Anderson & Davis Associates, Inc.
5 (“Birtcher” or “Defendant”) (together with Plaintiff, the “Parties”). The Settlement resolves a
6 class and representative action pending before this Court (the “Action”), in which Plaintiff alleges
7 that Birtcher failed to issue accurate itemized wage statements, and is liable for civil penalties
8 under the Private Attorneys General Act (“PAGA”).

9 Plaintiff now respectfully requests that this Court preliminarily approve this non-
10 reversionary, common-fund class action Settlement,¹ in which Birtcher has agreed to pay
11 \$172,575.00 to the following Settlement Class, which is estimated to consist of 83 individuals:

12 All current and former non-exempt employees who worked for Defendant in
13 California at any time from January 24, 2022 through September 19, 2023 (the
14 “Class Period”) and who were issued at least one wage statement that counted meal
15 period premiums, comp time hours, bereavement leave hours, birthday pay hours,
16 jury pay hours, retro pay hours, and/or Early Out hours in its calculation of “Total
17 Hrs Worked” (“Affected Wage Statement”).

18 The Settlement was reached after the parties engaged in mediation with Phillip Cha, Esq.,
19 an experienced and well-regarded wage and hour class action mediator. In connection with
20 mediation, Birtcher provided Plaintiff with extensive informal discovery, payroll records for all
21 non-exempt employees during the relevant time period, and an anonymized class list which
22 included each non-exempt employee’s hire date and termination date (if applicable), and other
23 relevant information. After extensive research and investigation, including a detailed analysis of
24 Birtcher’s potential exposure made with the assistance of an expert data analyst, the mediation
25 session was held with Mr. Cha on September 19, 2023. At the conclusion of the mediation, the
26 Parties agreed to a mediator’s proposal to resolve this Action. Over the following months, the
27 Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement.

28 Notably, Settlement Class members need not submit a claim to receive a payment
29 (“Settlement Award”). After deductions for proposed administration costs, attorney fees and

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.

costs, Plaintiff's Service Payment, and the LWDA's share of PAGA civil penalties, the average Settlement Award is estimated to be at least **\$705.42**. 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

Birtcher is a commercial real estate firm located in San Juan Capistrano, California. See Declaration of Neil M. Larsen ("Larsen Decl."), ¶ 7. Plaintiff worked for Birtcher as a non-exempt employee from approximately April 2022 until approximately June 2022. *Id.*

On January 24, 2023, Plaintiff, through my office, filed this Action, alleging that Birtcher failed to provide complete and accurate wage statements, in that the wage statements failed to list the correct total hours worked. Larsen Decl., ¶ 8. On March 30, 2023, Plaintiff, through my office, filed the operative First Amended Complaint (FAC), which added a claim for PAGA civil penalties. *Id.*, ¶ 9.

B. PLAINTIFF'S CLAIMS AND BIRTCHER'S DEFENSES

1. Claim for Failure to Issue Complete and Accurate Wage Statements

Plaintiff alleges that Birtcher failed to provide him and other non-exempt employees with complete and accurate wage statements as required under Cal. Labor Code § 226. Larsen Decl., ¶ 10. During Plaintiff's employment with Defendant, Defendant regularly issued facially deficient wage statements to Plaintiff and other non-exempt employees, in that the wage statements failed to list the correct total hours worked and therefore, failed to comply with Labor Code § 226(a)(2). *Id.* Specifically, the wage statements issued by Defendant included a line item titled "Total Hrs Worked," and the wage statements would include the hours paid as meal period premiums, Comp Time and/or other non-working hours as "hours worked," even though such hours do not actually reflect hours worked. *Id.* Per *Delgado v. New Albertsons, Inc.*, it is a material misrepresentation to include an inaccurate sum total of hours worked, even if all regular hours have been correctly listed on the wage statement. *Delgado v. New Albertsons, Inc.*, No. SACV-08-0806-DOC, 2009 WL 10670628 at *5 (C.D. Cal. Dec. 15, 2009).

Birtcher contends that Plaintiff cannot show he or other employees "suffer[ed] injury" due

1 to alleged wage statement violations, as required by Lab. Code § 226(e); that employee wage
2 statements always accurately reflect amounts *paid* to employees, and that the “Total Hours” line
3 item accurately reflected the number of hours for which employees were being paid in any given
4 pay period. Larsen Decl., ¶ 10. Birtcher also contends that any alleged wage statement violations
5 were not “knowing and intentional,” particularly given its good-faith defenses. *Id.*

6 **2. Claims Under the PAGA**

7 Plaintiff seeks civil penalties under the PAGA based on the aforementioned claims. *Id.*
8 Birtcher contends Plaintiff’s PAGA claim fails because the underlying claims fail. Larsen Decl.,
9 ¶ 10; *see also See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because
10 the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Birtcher
11 further contends that given its strong defenses and its good-faith attempts to comply with the law,
12 the Court would substantially reduce PAGA penalties even if it were to find in Plaintiff’s favor
13 on his underlying claims. Larsen Decl., ¶ 10; *see also Maldonado v. Epsilon Plastics, Inc.*, 22
14 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to ‘document the paid
15 wages to ensure the employee is fully informed regarding the calculation of those wages.’”)
16 (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016); *see also* Lab. Code §
17 2699(e)(2) (authorizing discretionary reduction in PAGA penalties); *Thurman v. Bayshore*
18 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties
19 because, *inter alia*, “the evidence showed...defendants took their obligations...seriously and
20 attempted to comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx),
21 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because
22 employer was “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504,
23 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good faith
24 attempts” to comply with the law).

25 **C. DISCOVERY AND MEDIATION**

26 In preparation for mediation, the Parties engaged in extensive informal discovery. Larsen
27 Decl., ¶ 11. Birtcher provided my office including payroll records for all non-exempt employees
28 during the relevant time period, and an anonymized class list which included each non-exempt

employee's hire date and termination date (if applicable), and other relevant information. *Id.* My office hired an expert data analyst to analyze the data produced by Birtcher. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff's claims and Birtcher's defenses, as well as the chances for class certification. *Id.*

The Parties attended a mediation with Phillip Cha, Esq. on September 19, 2023. Larsen Decl., ¶ 12. At the mediation, the Parties vigorously debated Plaintiff's claims and Birtcher's defenses, the potential value of Plaintiff's claims, and the chances of certification. *Id.* At the end of mediation, the Parties accepted a mediator's proposal to resolve the action on a class and PAGA representative basis. *Id.* Over the following months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Birtcher will pay a non-reversionary Gross Settlement Amount ("GSA") of \$172,575.00. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$172,575.00
Minus Court-approved attorneys' fees (one-third):	\$57,525.00
Minus Court-approved costs (up to):	\$15,000.00
Minus Court-approved Service Payment:	\$5,000.00
Minus Amount Set Aside as PAGA penalties:	\$40,000.00
Minus estimated settlement administration costs:	\$6,500.00
Net Settlement Amount ("NSA"):	\$48,550.00
PLUS 25% of PAGA penalties ("PAGA Amount"):	\$10,000.00
Total Amount Paid to Settlement Class:	\$58,550.00

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved Service Payment, administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Birtcher will pay at least \$58,550.00 to Settlement Class members. Larsen Decl., ¶¶ 13-14. Birtcher represents that there are approximately 83 Settlement Class members. *See* Settlement, § 1. Thus, the average Settlement Award is estimated to be \$705.42. Larsen Decl., ¶ 14.

The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class members who do not opt out of the Settlement) based on each Participating Class Member's proportionate number of Affected Wage Statements they received during the Class Period. Larsen

Decl. ¶ 14; *see also* Settlement § 6(B). The Settlement Administrator will calculate each Participating Class Member's payment from the NSA by multiplying the NSA by a fraction, the numerator of which is the Participating Class Member's number of Affected Wage Statements received during the Class Period, and the denominator of which is the total Affected Wage Statements received by all Participating Class Members during the Class Period. *See* Settlement, § 6(B).

In addition, all Settlement Class members (regardless whether they opt out) will receive a portion of the \$10,000 PAGA Amount, based on their proportionate number of pay periods worked during the PAGA Period. *See* Settlement, §§ 4(C)(v), 6(C).

Payments from the NSA shall be allocated as 100% penalties and reported on a Form 1099, as the claims in this case concern only wage statement penalties and PAGA civil penalties, and do not include any claims for unpaid wages. *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 will be bound by the Settlement and will release all 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 ("California Released Claims"). *See* Settlement, § 2. In addition, all Settlement Class members (whether or not they opt out of the class portion of the Settlement) shall release any right or claim for civil penalties pursuant to the PAGA, California Labor Code sections 2698, et seq., arising under the California Labor Code based on Birtcher's alleged failure to issue accurate wage statements under Labor Code § 226 at any time during the Class Period ("PAGA Released Claims"). *See* Settlement, § 2.

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

At final approval, Plaintiff will apply for a Class Representative Service Payment in the amount of \$5,000. *See* Settlement, §§ 4(C)(iii), 8. "[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*

1 *re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010).

2 As will be fully briefed at final approval, Plaintiff's requested Service Payment is in
3 recognition of the time and effort he expended on behalf of the Settlement Class, including
4 providing factual information and documents to counsel, discussing with counsel the claims and
5 theories at issue in the litigation, attending the first mediation, reviewing the settlement
6 agreement, and otherwise actively participating in the prosecution of this case, as well as his
7 general release of claims and waiver of Civil Code § 1542. Larsen Decl., ¶ 20; *see also* Settlement,
8 §§ 3-4, 8. Plaintiff respectfully submits that the requested payment is well within the range of
9 approval. *See, e.g., Bellinghausen v. Tractor Supply Company*, 306 F.R.D. 245, 268 (N.D. Cal.
10 2015) (approving \$15,000 payment to named plaintiff from wage and hour class action settlement,
11 including \$10,000 incentive payment and additional \$5,000 for his general release, where
12 payments to class members averaged just over \$450); *Martinez v. Knight Transportation*, No.
13 1:16-cv-01730, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (approving \$10,000 award to
14 plaintiff in \$400,000 wage and hour class action settlement where payments to class members
15 averaged about \$127).

16 The parties have also designated \$40,000 of the GSA as PAGA penalties, of which
17 \$30,000 (75%) will be paid to the LWDA, with the remaining \$10,000 (25%) distributed to
18 Settlement Class members (*see* Settlement, § 4(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 \$4,235,000 settlement).

26 At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA
27 (currently estimated at \$57,525.00), and up to \$15,000 in litigation costs. *See* Settlement, §
28 4(C)(iv). The requested fee is fair compensation for undertaking complex, risky, expensive, and

1 time-consuming litigation on a contingent basis. Plaintiff's has incurred substantial attorneys'
2 fees in, among other things, conducting pre-filing investigation; analyzing Plaintiff's claims;
3 conducting legal research; analyzing timekeeping, payroll, and other data with our expert to create
4 a comprehensive damages model; preparing for and attending mediation; negotiating and
5 preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Larsen
6 Decl., ¶ 19. Counsel will also incur future attorney fees in overseeing the Notice process, fielding
7 phone calls from Settlement Class members, preparing the Final Approval Motion, and appearing
8 at the Final Approval Hearing. *Id.*

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

17 **IV. ARGUMENT**

18 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

1 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

2 **1. Standard for Preliminary Approval**

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

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

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

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

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

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

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

1 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

3 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
4 for disputed claims. As detailed in the Larsen Declaration, and with the assistance of an expert
5 data analyst, Plaintiff conducted an analysis of potential damages due to Birtcher's allegedly
6 unlawful wage statement policies and practices. After applying reasonable discounts for risks of
7 not obtaining class certification and risks of losing on the merits, Plaintiff estimated his claims
8 had a realistic potential value of approximately \$186,490. Larsen Decl., ¶¶ 16-18. The proposed
9 settlement of \$172,575.00 therefore represents over 92.5% of Plaintiff's reasonably forecasted
10 class-wide recovery. *Id.* As noted above, Settlement payments are projected to average over \$700.
11 Preliminary approval is appropriate as the Settlement will provide significant monetary relief to
12 the Settlement Class.

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

14 "Parties represented by competent counsel are better positioned than courts to produce a
15 settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter.*
16 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
17 litigating wage and hour class actions, and have been appointed class counsel in numerous cases
18 alleging similar claims. *See* Larsen Decl., ¶¶ 2-5. Counsel conducted an in-depth review of
19 Birtcher's wage statement policies, payroll records, and other relevant data, and drew on their
20 extensive experience to assess Plaintiff's claims. Larsen Decl., ¶¶ 15-18. The Settlement was also
21 reached after a mediation session with Phillip Cha, Esq., an experienced and well-regarded wage
22 and hour class action mediator. *Id.*, ¶ 12. This strongly supports preliminary approval. *Kullar*, 168
23 Cal.App.4th at 130.

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

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

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

2 As noted, the Settlement reflects over 92.5% of the realistic estimated recovery on
3 Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage
4 statement claims. Thus, 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. Larsen Decl., ¶¶ 12, 16-18. The Settlement is thus entitled to a presumption of
10 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 payment, 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 Birtcher in California during the Class Period who received a deficient wage statement, and
26 thus can be readily identified from Birtcher's records. Birtcher represents there are about 83
27 Settlement Class members, rendering it impracticable to bring them all before the Court.
28 Numerosity is therefore satisfied.

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 class claims are predicated on Birtcher’s alleged
5 failure to provide Settlement Class members with complete and accurate wage statements because
6 the wage statements furnished by Birtcher included meal period premiums, “Comp Time,” and
7 other non-working hours in its calculation of “Total Hrs Worked”. This is a theory that applies
8 equally to all employees and thus is proper for class certification.

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

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

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

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

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

26 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
27 mailing addresses provided by Birtcher. See Settlement, § 11. This is the “best notice practicable”
28 under the circumstances, as it provides “individual notice to all members who can be identified

1 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
2 proposes the Settlement be administered by Pheonix Settlement Administrators, an experienced
3 class action settlement administrator. See Jodey Lawrence Declaration and exhibits. Settlement
4 Class members’ addresses will be ascertainable through Birtcher’s records. Phoenix will also run
5 all addresses through the U.S. Postal Service National Change of Address database and/or perform
6 “skip traces” to obtain current addresses. See Settlement, § 11(B) & (F).

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

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

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

19 **V. CONCLUSION**

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

23 Respectfully submitted,

24 Dated: May 3, 2024

ABRAMSON LABOR GROUP

25
26
27 By: _____
28 Neil Larsen
Attorneys for Plaintiff