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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SILVIA MARTINEZ, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

FAMILY HEALTH CARE CENTERS OF GREATER LOS ANGELES, INC.; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 23STCV04109

CLASS ACTION

[Assigned for all purposes to Hon. Samantha Jessner, Dept. SSC-7]

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

Date: July 15, 2025
Time: 10:00 a.m.
Dept.: SSC-7

Action Filed: February 24, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 15, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 7 of the above-entitled Court, located at 312 North Spring Street, California 90012, Plaintiff Silvia Martinez ("Plaintiff") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiff and Defendant Family Health Care Centers of Greater Los Angeles, Inc.;
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class: **All individuals who are or were previously employed by Defendant Family Health Care Centers of Greater Los Angeles, Inc. in California and classified as non-exempt employees at any time from February 24, 2019 to January 1, 2025**.
3. Preliminary appointment of Plaintiff as Class Representative, and Preliminary appointment of Neil M. Larsen and Jennifer S. Rivera as Class Counsel;
4. Preliminary appointment of Phoenix Settlement Administrators as the Settlement Administrator;
5. 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
6. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award a Class Representative Service Award to Plaintiff, and attorneys' fees and costs to Class Counsel.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Neil M. Larsen and exhibits attached thereto; the declaration of Jodey Lawrence on behalf of Phoenix Settlement Administrators and exhibits attached thereto; the declaration of Plaintiff; the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: May 19, 2025

Respectfully Submitted,
ABRAMSON LABOR GROUP

Neil Larsen

Neil M. Larsen
Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION 1
II. SUMMARY OF THE LITIGATION 2
A. FACTUAL AND PROCEDURAL BACKGROUND 2
B. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES 2
1. Unpaid Wages – On Duty Meal Periods 2
2. Rest Period Violations 3
3. Failure to Reimburse Business Expenses 3
4. Claims Under Labor Code §§ 203, 226 and the PAGA 4
C. DISCOVERY AND MEDIATION 5
III. THE PROPOSED SETTLEMENT 6
A. ESSENTIAL TERMS OF THE SETTLEMENT 6
1. The Settlement Provides for Reasonable Monetary Payments 6
2. Attorneys' Fees and Costs, Class Representative Service Payment, and PAGA Payment 7
IV. ARGUMENT 9
A. PRELIMINARY APPROVAL IS WARRANTED 9
1. Standard for Preliminary Approval 10
a. The Strength of Plaintiff's Case 10
b. Risk, Expense, Complexity, and Duration of Further Litigation 10
c. Risk of Maintaining Class Action Status 10
d. Amount Offered in Settlement Given Realistic Value of Claims 11
e. The Experience and Views of Counsel 11
2. The Preliminary Approval Standard Is Met 11
a. The Settlement Is Within the Range of Possible Approval 12
b. The Settlement Resulted from Serious, Informed Negotiations 12
c. The Settlement Is Devoid of Obvious Deficiencies 12
B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS 13

1. The Proposed Class Is Ascertainable and Numerous 12
2. Common Issues of Law and Fact Predominate 13
3. The Named Plaintiff's Claims Are Typical 13
4. Plaintiff and Class Counsel Will Adequately Represent the Class 13
C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE 14
D. THE COURT SHOULD SET A FINAL APPROVAL HEARING 14
V. CONCLUSION 14

TABLE OF AUTHORITIES

Federal Cases

Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) 14

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 10

In re Pac. Enter. Sec. Litig., 47 F.3d 373 (9th Cir. 1995) 12

In re Syncor ERISA Litig., 516 F.3d 1095 (9th Cir. 2008) 10

State Cases

Benton v. Telecom Network Specialists, Inc., 220 Cal.App.4th 701 (2013) 13

B.W.I. Custom Kitchen v. Owens-Illinois, Inc., 191 Cal.App.3d 1341 (1987) 13

Brinker Restaurant Corp. v. Sup. Ct., 53 Cal.4th 1004 (2012) 3

Capital People First v. State Dept. of Develop. Svcs., 155 Cal.App.4th 676 (2007) 14

Carrington v. Starbucks Corp., 30 Cal.App.5th 504 (2018) 6

Chavez v. Netflix, Inc., 162 Cal.App.4th 43 (Cal.App. 1 Dist.,2008) 9

Dunk v. Ford Motor Co., 48 Cal.App.4th 1794 (1996) 10

Gattuso v. Hart-Hanks Shoppers, Inc., 42 Cal.4th 554 (2007) 4

Grissom v. Vons Companies, Inc., 1 Cal.App.4th 52 (1991) 4

In re Cellphone Fee Termination Cases, 186 Cal.App.4th 1380 (2010) 8

Kao v. Joy Holiday, 12 Cal.App.5th 947 (2017) 5

Kullar v. Foot Locker Retail, Inc., 168 Cal.App.4th 116 (2008) 10, 12

Laffitte v. Robert Half Int'l, Inc., 1 Cal.5th 480 (2016) 9

Maldonado v. Epsilon Plastics, Inc., 22 Cal.App.5th 1308 (2018) 5

McGhee v. Bank of Am., 60 Cal.App.3d 442 (1976) 14

Price v. Starbucks Corp., 192 Cal.App.4th 1136 (2011) 5

Reed v. United Teachers Los Angeles, 208 Cal.App.4th 322 (2012) 10

Sav-On Drug Store, Inc. v. Sup. Ct., 34 Cal.4th 319 (2004) 13

Sevidal v. Target Corp., 189 Cal.App.4th 905 (2010) 13

Soto v. Motel 6 Operating, L.P., 4 Cal.App.5th 385 (2016) 5

Thurman v. Bayshore Transit Management, Inc., 203 Cal.App.4th 1112 (2012) 5

Wershba v. Apple Computer, Inc, 91 Cal.App.4th 224 (2001) 10

Federal Statues & Rules

Fed. R. Civ. Proc. Rule 23 10

State Statutes and Rules

8 Cal. Code Regs. § 13520 5

Cal. Code Civ. Proc. § 382 13

Cal. Rule of Court 3.766 .... 14, 14

Cal. Rule of Court 3.769 .... 10, 14

Cal. Labor Code § 203 .... 4, 5

Cal. Labor Code § 226 5

Cal. Labor Code § 2699 .... 5, 9

Unpublished Cases

Alvarado v. Nederend, 2011 WL 1883188 (E.D. Cal. May 17, 2011) 8

Chu v. Wells Fargo Inv., LLC, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) 9

Fleming v. Covidien, Inc., 2011 WL 7563047 (C.D. Cal. 2011) 6

Hudson v. Libre Technology, Inc., 2020 WL 2467060 (S.D. Cal. May 13, 2020) 9

Martinez v. Knight Transportation, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) 8

Tapia v. Zale Delaware Inc., 2016 WL 1385181 (S.D. Cal. Apr. 6, 2016) 13

Other Citations

Manual for Complex Litig., § 30.41 (3rd Ed. 1995) 12

Newberg on Class Actions, §§ 11:24-25 (4th Ed. 2013) 12

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Silvia Martinez ("Plaintiff") seeks preliminary approval of a class action settlement agreement ("Settlement") with Defendant Family Health Care Centers of Greater Los Angeles, Inc. ("Defendant") (together with Plaintiff, the "Parties"). The Settlement resolves a class and representative action pending before this Court (the "Action"), in which Plaintiff alleges that Defendant: (i) failed to pay all minimum and overtime wages owed, (ii) failed to provide legally-compliant meal periods, (iii) failed to authorize and permit legally-complaint rest periods, and (iv) failed to reimburse employees for business expenses. Plaintiff further alleges that as a result of these violations, Defendant failed to issue accurate itemized wage statements, failed to pay all wages on termination of employment, and is liable for civil penalties under the Private Attorneys General act ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action Settlement,[1] in which Defendant has agreed to pay $475,000.00 to the following Settlement Class, which is estimated to consist of 289 individuals: **All individuals who are or were previously employed by Defendant Family Health Care Centers of Greater Los Angeles, Inc. in California and classified as non-exempt employees at any time from February 24, 2019 to January 1, 2025 ("Class Period")**.

The Settlement was reached after the parties engaged in mediation with Kelly A. Knight, Esq., an experienced and respected wage and hour class action mediator. In connection with mediation, Defendant provided Plaintiff with extensive informal discovery, including timekeeping and payroll records for a sample of putative class members; a class list containing putative class members' hire and termination dates (if applicable); relevant written policies; and additional data and information.

After extensive research and investigation, including a detailed analysis of Defendant's potential exposure made with the assistance of an expert data analyst, the mediation session was held with Mr. Knight on May 30, 2024. The Parties did not reach a resolution at mediation. After

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[1] The Settlement is attached as Exhibit 1 to the Larsen Declaration. The Class Notice is attached as Exhibit A to the Settlement.

mediation, the Parties engaged in formal discovery and motion practice. The Parties continued their negotiations with Mr. Knight's assistance and reached a class-wide settlement in principle, ultimately resulting in the Settlement.

Notably, Settlement Class members need not submit a claim to receive a payment ("Settlement Award"). After deductions for proposed administration costs, attorneys' fees and costs, Plaintiff's Class Representative Service Payment, and the LWDA's share of PAGA civil penalties, the average Individual Class Payment is estimated to be $902.83. 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

Defendant owns and operates approximately six health clinics in Los Angeles county. *See* Declaration of Neil M. Larsen ("Larsen Decl."), ¶ 7. Plaintiff is a former non-exempt employee who worked for Defendant in California during the Class Period. *Id*.

On February 24, 2023, Plaintiff filed this Action, alleging claims for minimum wage violations, failure to pay overtime wages, meal period violations, rest period violations, wage statement penalties, waiting time penalties, failure to reimburse business expenses, and unfair business practices. Larsen Decl., ¶ 8. Plaintiff subsequently filed a First Amended Complaint adding a claim for PAGA civil penalties on May 1, 2023. *Id*.

B. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Unpaid Wages – On Duty Meal Periods

Plaintiff alleges that Defendant failed to pay Plaintiff and other non-exempt employees all minimum and overtime wages owed and failed to pay requisite meal period premium wages during the Class Period, as a result of Defendant's requirement that she and other employees take on-duty meal periods. Larsen Decl., ¶ 10. Specifically, Plaintiff alleges that Defendant required her and other employees to take on-duty meal periods during meal period eligible shifts, and that Defendant would nevertheless auto-deduct a half-hour from each meal period eligible shift. *Id*. As a result, Plaintiff alleged that Defendant failed to pay Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and meal period premium wages owed for unlawful on-duty meal periods. *Id*.

Defendant contends that it maintained compliant written meal period policies throughout the Class Period, and provided legally-compliant off-duty meal periods in line with those policies. *Id*. Defendant further asserts that many putative class members would testify that they were, in fact, provided with legally compliant off-duty meal periods and took meal periods off Defendant's premises. *Id*. Defendant further argues that individualized inquires would be needed to determine whether each meal period was on-call or off-duty for each employee, thus making certification of unpaid minimum and overtime wages unlikely. *Id*.

2. <u>Rest Period Violations</u>

Plaintiff alleges that Defendant failed to authorize and permit legally-compliant rest periods, because Defendant required Plaintiff and other employees to remain on Defendant's premises and at their workstations during rest periods. Larsen Decl., ¶ 11.

Defendant argues that it always maintained and enforced lawful rest period policies and practices during the Class Period, and that employees were authorized and permitted to take off-duty rest periods and that it was not Defendant's practice to require Settlement Class members to take their rest periods on the work premises. *Id*. Defendant also asserts that many putative class members would testify that they did, in fact, take off-duty rest periods and were able to take rest periods off Defendant's work premises. *Id*. Defendant further contends that, even if it (or individual managers) had allegedly required employees to remain on Defendant's premises during rest periods, the California Supreme Court in *Augustus* rejected Plaintiff's "on premises" theory when it observed that "one would expect that employees will ordinarily have to remain onsite or nearby. *Id*. This constraint, which is of course common to all rest periods, is not sufficient to establish employer control. *Augustus*, 2 Cal.5th at 270. Defendant further contends that individual inquiries would be required to determine whether each employee was in fact required to remain on call during each rest period on each shift, precluding class certification. *Id*.

3. <u>Failure to Reimburse Business Expenses</u>

Plaintiff alleges that Defendant failed to indemnify her and other employees for the use of their personal cell phones for work purposes, including communicating with Defendant, reviewing work schedules, and clocking in and out of work using the Time Tree mobile app. Larsen Decl., ¶ 12. Defendant counters that employees did not need to use their personal cell phones in connection with their job duties, and that if they did, there are procedures in place for employees to request reimbursement of work-related expenses. *Id*. Defendant further argues that this claim would not be certified, as it would require hundreds of individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, whether Defendant knew (or reasonably should have known) about the expense, and whether the expense was "necessary" under the circumstances. Larsen Decl., ¶ 12; *See Gattuso v. Hart-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices."); *Grissom v. Vons Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991) (under § 2802, "ascertaining what was a necessary expenditure will require an inquiry into what was reasonable under the circumstances").

4. <u>Claims Under Lab. Code §§ 203, 226, and the PAGA</u>

As a result of its alleged failure to pay all minimum and overtime wages, as well as its failure to provide all meal and rest periods, Plaintiff asserts that Defendant failed to comply with its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. Larsen Decl., ¶ 13. Finally, Plaintiff seeks civil penalties under the PAGA based on the aforementioned claims. *Id*. at ¶ 14.

Defendant argues that Plaintiff's derivative claims fail for the same reasons her underlying claims fail. *Id*. at ¶¶ 13-14. Defendant further asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties). Defendant further contends that any alleged wage statement violations were not "knowing and intentional," particularly given its good-faith defenses; that Plaintiff cannot show she or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e), particularly because the alleged "direct" wage statement deficiencies did not result in unpaid wages and that employee wage statements always accurately reflect amounts *paid* to employees. Larsen Decl., ¶ 13; *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, Defendant contends Plaintiff's PAGA claim fails because the underlying claims fail. Larsen Decl., ¶ 14; *see, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant further maintains that given its strong defenses and its good-faith attempts to comply with the law, the Court would substantially reduce PAGA penalties even if it were to find in Plaintiff's favor on her underlying claims. Larsen Decl., ¶ 14; *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.*, 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was "not aware" of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

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

Prior to mediation, the Parties engaged in significant informal discovery, including Defendant's production of timekeeping and payroll data for a sample of putative class members, all relevant wage and hour written policies, and other relevant data and information. Larsen Decl., ¶ 15. Defendant also produced a "class list" with Class Member's hire and termination dates (if applicable). *Id*. Plaintiff's counsel also conducted a comprehensive analysis and extrapolation of the timekeeping and payroll data to calculate Defendant's potential exposure for each of Plaintiff's claims. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses. *Id*.

On May 30, 2024, the Parties attended a mediation with Kelly A. Knight, Esq., an experienced and respected wage and hour class action mediator. Larsen Decl., ¶ 16. During mediation, the Parties vigorously debated Plaintiff's claims and Defendant's defenses, the potential value of Plaintiff's claims, and the chances of certification. *Id*. The Parties did not reach a resolution at mediation. *Id*. After mediation, the Parties engaged in formal discovery and motion practice. The Parties continued their negotiations with Mr. Knight's assistance and eventually reached a class-wide settlement in principle, ultimately resulting in the Settlement. *Id*.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Defendant will pay a non-reversionary Gross Settlement Amount ("GSA") of $475,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	$475,000.00
• Minus Court-approved attorneys' fees (one-third):	$158,331.75
• Minus Court-approved costs (up to):	$20,000.00
• Minus Court-approved Service Payment:	$7,500.00
• Minus Amount Set Aside as PAGA penalties:	$20,000.00
• Minus estimated settlement administration costs:	$8,250.00
Net Settlement Amount ("NSA"):	**$260,918.25**
PLUS 25% of PAGA penalties ("PAGA Amount"):	$5,000.00
Total Amount Paid to Settlement Class:	**$265,918.25**

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved Class Representative Service Payment, administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Defendant will pay at least $265,918.25 to Settlement Class members. *See* Settlement, § 3. Defendant represents that there are approximately 289 Settlement Class members. *Id.*, § 4.1. Thus, the average Settlement Award is estimated to be $902.83. Larsen Decl., ¶ 18.

The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class members who do not opt out of the Settlement) as follows: The NSA will be distributed to all Participating Class Members based on each Participating Class Member's proportional number of workweeks worked for Defendant. *See* Settlement, §§ 1.23, 1.28, 3.2.4. The settlement Administrator will calculate each Participating Class Member's payment from the NSA by multiplying the NSA by a fraction, the numerator of which is the participating Class Member's number of workweeks, and the denominator of which is the total workweeks worked by

Participating Class Members. *Id*.

In addition, all Settlement Class members (regardless of whether they opt-out from the Class Action portion of the settlement) who were employed by Defendant in California at any time between February 24, 2022 to January 1, 2025 (the "PAGA Period"), will receive a portion of the $5,000 PAGA Amount, based on their proportionate number of pay periods worked during the PAGA Period. *See* Settlement, §§ 1.24, 1.28, 3.2.4.1.

Payments from the NSA will be treated as 15% to be allocated to settlement of wage claims (the "Wage Portion"). *See* Settlement, § 3.2.4.1. The Wage Portions are subject to tax withholdings and will be reported on an IRS W-2 Form. The remaining 85% of the NSA will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). *Id*. The Non-Wage Portions will be treated as interest and penalties and reported on a Form 1099. *Id*. Payments from the PAGA Amount will be treated as 100% penalties. *Id. See* Settlement, § 3.2.5. Defendant will separately pay the employer's share of payroll taxes on the amount designated as "wages," in addition to the GSA. *Id*., §§ 3.1, 4.3. Settlement Class members will have 45 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*., §§ 7.5.1, 7.5.5.

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 operative First Amended Complaint in the Action, during the Class Period ("Released Class Claims"). *See* Settlement, § 5.2. In addition, all Settlement Class members (regardless whether they opt out) who worked for Defendant in California during the PAGA Period, will release all claims against Defendant for PAGA penalties based on the facts alleged in the operative First Amended Complaint in the Action, that arose during the PAGA Period ("PAGA Released Claims"). *See* Settlement, § 5.3.

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

At final approval, Plaintiff will apply for a Class Representative Service Payment in the amount of $7,500.00. *See* Settlement, § 3.2.1. "[I]ncentive awards are fairly typical in class action cases…and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010).

As will be fully briefed at final approval, Plaintiff's requested Class Representative Service Payment is in recognition of the time and effort she expended on behalf of the Settlement Class, including providing factual information and documents to counsel, identifying potential witnesses, attending multiple telephonic meetings with my office to discuss 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., ¶ 27. Plaintiff respectfully submits that the requested payment is well within the range of approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving $7,500 award to each of five named plaintiffs from $505,058.60 settlement); *see also Martinez v. Knight Transportation*, No. 1:16-cv-01730, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (approving $10,000 award to plaintiff in $400,000 class action settlement where class member payments averaged about $127).

The Parties have also designated $20,000 of the GSA as PAGA penalties, of which $15,000.00 (75%) will be paid to the LWDA, with the remaining $5,000.00 (25%) distributed to Settlement Class members (*see* Settlement, §§ 1.24, 1.27, 1.34, 3.2.5, consistent with the PAGA's requirement that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of $7,500 to LWDA from $6.9 million settlement); *Hudson v. Libre Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13, 2020) (approving $21,250 PAGA payment from $4235,000 settlement).

At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA (currently estimated at $158,331.75), and up to $20,000 in litigation costs. *See* Settlement, §§ 1.7, 1.22, 1.28, 3.2.2. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel have incurred substantial attorneys' fees conducting pre-filing investigation; analyzing Plaintiff's claims; conducting legal research; analyzing timekeeping, payroll, and other data with our expert to create a comprehensive damages model; preparing for and attending mediation; engaging in the formal discovery process, negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Larsen Decl., ¶ 26. Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls from Settlement Class members, preparing the Final Approval Motion and supporting documents, and appearing at the Final Approval Hearing. *Id*.

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

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

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

1. <u>Standard for Preliminary Approval</u>

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

a. <u>The Strength of Plaintiff's Case</u>

Although she maintains her claims are meritorious, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and to class certification, rendering success far from certain.

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

Although the Parties engaged in significant informal and formal discovery, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. Larsen Decl., ¶ 28. Plaintiff also still had to file for class certification. *Id*. Even if Plaintiff obtained certification, the Parties would incur considerable attorneys' fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id*. The Settlement avoids these risks, expense, and delays, and is therefore a favorable outcome for the Settlement Class. *Id*. Thus, this factor supports preliminary approval.

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

Plaintiff had not yet filed her class certification motion, and as such, the extent to which

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

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class for disputed claims. As detailed in the concurrently filed Larsen Declaration, Plaintiff's counsel conducted an analysis of potential damages due to Defendant's allegedly unlawful wage and hour policies and practices. After applying reasonable discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiff estimated her claims had a realistic potential value of approximately $676,384. Larsen Decl., ¶¶ 19-25. The proposed settlement of $475,000.00 therefore represents about 70.23% of Plaintiff's reasonably forecasted class-wide recovery. *Id*., ¶ 25. As noted above, payments under the Settlement will average approximately $902.83. Larsen Decl., ¶ 19. Preliminary approval is appropriate as the Settlement will provide significant monetary relief to the Settlement Class.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience litigating wage and hour class actions, and have been appointed class counsel in numerous cases alleging similar claims. *See* Larsen Decl., ¶¶ 2-5. Counsel conducted an in-depth analysis and review of Defendant's policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiff's claims. Larsen Decl., ¶¶ 15, 19-25. The Settlement was also reached after a mediation session with Kelly A. Knight, Esq., an experienced and respected wage and hour class action mediator. *Id.*, ¶ 17. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

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

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

As noted, the Settlement reflects approximately 70.23% of the realistic estimated recovery on Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

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

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

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

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

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

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

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

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked for Defendant in California during the Class Period, and thus can be readily identified from Defendant's records. Defendant represents there are about 289 Settlement Class members, rendering it impracticable to bring them all before the Court. Numerosity is therefore satisfied.

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

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

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

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

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

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiff or her 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). Plaintiff's counsel also have extensive experience in wage and hour class action litigation, as noted above.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by Defendant. *See* Settlement, § 7.4. This is the "best notice practicable" under the circumstances, as it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes the Settlement be administered by Pheonix Settlement Administrators, an experienced class action settlement administrator. *See* Jodey Lawrence Declaration and exhibits. Settlement Class members' addresses will be ascertainable through Defendant's records. Phoenix will also run all addresses through the U.S. Postal Service National Change of Address database and/or perform "skip traces" to obtain current addresses. *See* Settlement, §§ 7.4.2 & 7.4.3.

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

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

V. CONCLUSION

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

Dated: May 19, 2025

Respectfully submitted,
ABRAMSON LABOR GROUP

By: *Neil Larsen*
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