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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN FRANCISCO**

12 SCOTT LLEWELLYN, on behalf of himself
13 and all others similarly situated,

14
15 Plaintiff,

16 vs.
17

18 BETZ & SONS, INC., a California corporation;
19 and DOES 1 through 100, inclusive,

20
21 Defendants.

Case No.: CGC-23-606077

CLASS ACTION

*[Assigned for all purposes to Hon. Ethan
P. Schulman, Dept. 304]*

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

Date: July 31, 2024
Time: 1:30 p.m.
Dept.: 304

Action Filed: April 25, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 31, 2024 at 1:30 p.m. in Department 304 of the above-entitled Court, located at 400 McAllister Street, San Francisco, CA 94102, Plaintiff Scott Llewellyn ("Plaintiff") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiff and Defendant Betz & Sons, Inc. ("Betz" 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 non-exempt employees who worked for Betz in California at any time from April 25, 2019 through January 31, 2024 (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 ("Phoenix") as the Settlement Administrator;
6. Approval of the proposed Class Notice, and an order that the Class Notice be disseminated to the Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award a Class Representative Service Award to Plaintiff, and attorneys' fees and costs to Class Counsel.

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

Respectfully submitted,

Dated: July 5, 2024

ABRAMSON LABOR GROUP

By: Neil Larsen
Neil M. Larsen
Attorneys for Plaintiff

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28	<i>Newberg on Class Actions</i> , §§ 11:24-25 (4th Ed. 2013)	12

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Scott Llewellyn (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant Betz & Sons, Inc. (“Betz” or “Defendant”)
5 (together with Plaintiff, the “Parties”). The Settlement resolves a class and representative action
6 pending before this Court (the “Action”), in which Plaintiff alleges that Betz: (1) failed to pay
7 overtime at the regular rate of compensation; (2) failed to pay meal period premiums at the regular
8 rate of compensation; (3) failed to provide legally-compliant meal periods; (4) furnished
9 inaccurate wage statements; and (5) failed to timely pay final wages upon separation of
10 employment. Plaintiff further alleges that as a result of these violations, Betz is liable for civil
11 penalties under the Private Attorneys General Act (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action Settlement,¹ in which Betz has agreed to pay \$190,000.00
14 to the following Settlement Class, which is estimated to consist of approximately 260 individuals:

15 All current and former non-exempt employees who worked for Betz in California
16 at any time from April 25, 2019 to January 31, 2024 through the Class Period End
Date (the “Class Period”).

17 The Settlement was reached after the parties engaged in mediation with Mark LeHocky,
18 Esq., an experienced and well-respected wage and hour class action mediator. In connection with
19 mediation, Betz provided Plaintiff with extensive informal discovery, including a sampling of
20 timekeeping and payroll records for putative class members; a detailed class list that included
21 each Settlement Class member’s hire date and termination date (if applicable); relevant written
22 policies; and additional relevant data and information. After extensive research and investigation,
23 including a detailed analysis of Betz’s potential exposure made with the assistance of an expert
24 data analyst, the mediation session was held with Mr. LeHocky on January 31, 2024. With Mr.
25 LeHocky’s assistance, the Parties reached a class-wide resolution in principle. Over the following
26 months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the
27 Settlement. Notably, Settlement Class members need not submit a claim to receive a payment

28 _____
¹ The Settlement is attached as Exhibit 1 to the Larsen Declaration. The Class Notice is attached as Exhibit A to the Settlement.

1 (“Settlement Award”). After deductions for proposed administration costs, attorney fees and
2 costs, Plaintiff’s Class Representative Service Payment, and the LWDA’s share of PAGA civil
3 penalties, the average Settlement Award is estimated to be at least **\$293.14**. For the reasons
4 discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the
5 Settlement.

6 **II. SUMMARY OF THE LITIGATION**

7 **A. FACTUAL AND PROCEDURAL BACKGROUND**

8 Betz is a restaurant business that operates under the name “House of Prime Rib”
9 in San Francisco County, California. *See* Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 7.
10 Plaintiff worked for Betz as a non-exempt employee from approximately August 2021 until
11 approximately July 2022. *Id.*

12 On April 25, 2023, Plaintiff filed this Action, alleging claims for: (1) failure to pay
13 overtime at the regular rate of compensation; (2) failure to pay meal period premiums at the
14 regular rate of compensation; (3) failure to provide legally-compliant meal periods; (4) wage
15 statement violations; (5) waiting time penalties; and (6) unfair business practices. Larsen Decl., ¶
16 8. On July 5, 2023, Plaintiff filed the operative First Amended Complaint (“FAC”), which added
17 a claim for PAGA civil penalties. *Id.*, ¶ 9. On July 19, 2023, Plaintiff through my office submitted
18 a confirmed copy of the FAC to the LWDA, pursuant to Labor Code § 2699(1). *Id.*

19 **B. PLAINTIFF’S CLAIMS AND BETZ’S DEFENSES**

20 **1. Claim for Underpaid Overtime Wages Based on Regular Rate**

21 **Miscalculations**

22 Plaintiff alleges that Betz failed to incorporate the value of free meals in the regular rate
23 of compensation when calculating overtime wages, resulting in Plaintiff and other non-exempt
24 employees’ underpayment of overtime and/or double-time compensation. Larsen Decl., ¶ 10.
25 Betz contends that it paid its employees all overtime wages owed, and that the value of free meals
26 provided to employees were not required to be included when calculating the regular rate of
27 compensation. *Id.*; *see* 29 CFR 548.3(d) (“the rate or rates which may be used under the Act to
28 compute overtime compensation of the employee but excluding the cost of meals where the

1 employer customarily furnishes not more than a single meal per day.”); *see also* 26 CFR 1.119-
2 1 (“value of meals furnished to an employee by his employer shall be excluded from the
3 employee's gross income if two tests are met: (i) The meals are furnished on the business premises
4 of the employer, and (ii) the meals are furnished for the convenience of the employer.”)
5 Specifically, Betz argues that it is only open for dinner service and that only a single meal could
6 be offered to employees per day, thus under 29 CFR 548.3(d), it was not obligated to include the
7 value of the single free meal offered to employees. Betz argues that it furnished meals on its
8 premises and for the convenience of the employer as 26 CFR 1.119-1(d) provides that a meal
9 furnished to a restaurant employee for each meal period in which the employee works will be
10 regarded as furnished for a substantial non-compensatory business reason and for the
11 convenience of the employer. Betz further argues that individualized differences among the
12 putative class members with respect to the provision of free meals, whether employees partook
13 in the free meal, the value of the free meal, and whether employees worked overtime or were
14 paid meal period premiums, as well as the expectations regarding those free meals, makes class
15 certification unlikely. *Id.*

16 **2. Claim for Underpaid Meal Premium Wages Based on Regular Rate**
17 **Miscalculation**

18 Plaintiff alleges that Betz failed to compensate him and other employees with meal period
19 premiums at their “regular rate of compensation,” as required under Labor Code § 226.7. Larsen
20 Decl., ¶ 11. Specifically, Betz failed to include the value of free meals that Plaintiff and other
21 non-exempt employees received and/or other remunerations that are not excludable from the
22 regular rate when calculating the value of meal period premiums. *Id.* The California Supreme
23 Court has held that the terms “regular rate of pay” used in Labor Code § 510 and “regular rate of
24 compensation” used in Labor Code § 226.7 are synonymous, and therefore, just as bonuses must
25 be incorporated into the “regular rate of pay” when calculating overtime, they must also be
26 incorporated into the “regular rate of compensation” when calculating overtime meal and rest
27 period premiums under Labor Code § 226.7. *See Ferra v. Lowes Hollywood Hotel, LLC*, 11
28 Cal.5th 858, 862 (2021) (holding that the terms are synonymous: ‘regular rate of compensation’

under section 226.7(c), like ‘regular rate of pay’ under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.”).

As noted above, Betz contends that the value of free meals provided to employees were not required to be included when calculating the regular rate of compensation, and thus Betz was not required to include the value of free meals in the regular rate of pay when calculating employees’ meal period premiums. Larsen Decl., ¶ 11; *see* 29 CFR 548.3(d) (“the rate or rates which may be used under the Act to compute overtime compensation of the employee but excluding the cost of meals where the employer customarily furnishes not more than a single meal per day.”); *see also* 26 CFR 1.119-1 (“value of meals furnished to an employee by his employer shall be excluded from the employee's gross income if two tests are met: (i) The meals are furnished on the business premises of the employer, and (ii) the meals are furnished for the convenience of the employer.”) Specifically, Betz argues that it is only open for dinner service and that only a single meal could be offered to employees per day. Larsen Decl., ¶ 11. Betz argues that it furnished meals on its premises and for the convenience of the employer as 26 CFR 1.119-1(d) provides that a meal furnished to a restaurant employee for each meal period in which the employee works will be regarded as furnished for a substantial non-compensatory business reason and for the convenience of the employer. Betz further argues that individualized differences among the putative class members with respect to whether employees partook in free meals and the value of the free meals received makes class certification unlikely. *Id.*

3. Meal Period Claim

Plaintiff alleges that he and other employees were frequently not provided with legally compliant meal periods, because they were often forced to take late and/or missed meal periods as a result of the workload imposed by Betz. Larsen Decl., ¶ 12. Additionally, Plaintiff further alleges that Betz failed to record Plaintiff’s and other employees’ meal periods. The California Superior Court in *Donohue*, held that records showing non-compliant missed meal period raise a rebuttable presumption of meal period violations at both the class certification and summary judgement stage. *Donohue v. AMN Services, Inc.*, 11 Cal.5th 58, 674-75 (2021).

Betz argues that it has maintained legally-compliant meal period policies and practices

1 throughout the Class Period, and that under *Brinker* it is only required to “provide” the
2 opportunity to take meal periods, not “ensure” they are taken. Larsen Decl., ¶ 12; *Brinker Rest.*
3 *Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). Betz further argues that,
4 given its lawful policies and practices, any failure to take a legally compliant meal period was the
5 result of employee choice rather than any policy or practice of Betz. Larsen Decl., ¶ 12.
6 Additionally, Betz contends that nearly all of its current employees would confirm that they
7 receive meal periods, and that these individuals would likely provide declarations attesting to
8 receiving legally compliant meal periods. *Id.* Betz further argues that individualized inquiries
9 would be required to determine whether individual employees, under different managers or
10 supervisors, did not take a legally compliant meal period, and why any meal period was missed,
11 late, or short, thereby precluding certification of this claim. *Id.*

12 **4. Claims Under Labor Code §§ 203, 226, and the PAGA**

13 As a result of its alleged failure to pay all overtime wages, as well as its failure to provide
14 all meal period premium wages, Plaintiff asserts that Betz failed to comply with its final payment
15 and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively.
16 Larsen Decl., ¶ 13. Finally, Plaintiff seeks civil penalties under the PAGA based on the
17 aforementioned claims, and for failure to maintain records based on Betz’s failure to record meal
18 periods. *Id.*

19 Betz argues that Plaintiff’s derivative claims fail for the same reasons his underlying
20 claims fail. Betz further asserts it has strong, good-faith defenses to Plaintiff’s underlying claims,
21 precluding waiting time penalties. Larsen Decl., ¶ 14; see 8 Cal. Code Regs. § 13520 (a “good
22 faith dispute that any wages are due will preclude imposition of waiting time penalties”); see also
23 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded
24 imposition of waiting time penalties). Betz further contends that any alleged wage statement
25 violations were not “knowing and intentional,” particularly given its good-faith defenses; that
26 Plaintiff cannot show he or other employees “suffer[ed] injury” due to alleged wage statement
27 violations, as required by Lab. Code § 226(e); and that employee wage statements always
28 accurately reflect amounts *paid* to employees. Larsen Decl., ¶ 14; see *Naranjo v. Spectrum*

1 *Security Srvcs., Inc.*, 88 Cal.App.5th 937, 908 (2024) (holding that an employer’s “good faith”
2 belief that it is not violating Labor Code Section 226 precludes a finding of a knowing and
3 intentional violation); *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-
4 37 (2018) (“The purpose of section 226 is to ‘document the paid wages to ensure the employee is
5 fully informed regarding the calculation of those wages.’”) (citing *Soto v. Motel 6 Operating, L.P.*,
6 4 Cal.App.5th 385, 392 (2016)).

7 Finally, Betz contends Plaintiff’s PAGA claim fails because the underlying claims fail.
8 Larsen Decl., ¶ 15; *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011)
9 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
10 Betz further maintains that given its strong defenses and its good-faith attempts to comply with
11 the law, the Court would substantially reduce PAGA penalties even if it were to find in Plaintiff’s
12 favor on his underlying claims. Larsen Decl., ¶ 15; *see also* Lab. Code § 2699(e)(2) (authorizing
13 discretionary reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
14 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because, *inter alia*, “the
15 evidence showed...defendants took their obligations...seriously and attempted to comply with the
16 law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D.
17 Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was “not aware” of
18 violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA
19 penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the
20 law).

21 C. **DISCOVERY AND MEDIATION**

22 In preparation for mediation, the Parties engaged in extensive informal discovery. Larsen
23 Decl., ¶ 16. Betz provided Plaintiff’s counsel with a detailed class list that included Settlement
24 Class members’ hire dates and termination dates (if applicable). *Id.* Betz also produced a sampling
25 of timekeeping and payroll records for putative class members, its wage and hour policies, and
26 other data points and information. *Id.* Plaintiff’s counsel hired an expert data analyst to analyze
27 and extrapolate the data produced by Betz. *Id.* This discovery allowed the Parties to assess the
28 merits and value of Plaintiff’s claims and Betz’s defenses, as well as the chances for class

certification. *Id.*

On January 31, 2024, the Parties attended a mediation with Mr. LeHocky, an experienced and well-respected wage and hour class action mediator. Larsen Decl., ¶ 17. At the mediation, the Parties vigorously debated Plaintiff’s claims and Betz’s defenses, the potential value of Plaintiff’s claims, and the chances of certification. *Id.* With Mr. LeHocky’s assistance, the Parties reached a class-wide settlement in principle. *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, Betz will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$190,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$190,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$63,333.33
• Minus Court-approved costs (up to):	\$15,000.00
• Minus Court-approved Service Award:	\$5,000.00
• Minus Amount Set Aside as PAGA penalties:	\$30,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$7,950.00</u>
Net Settlement Amount (“NSA”):	\$68,716.67
PLUS 25% of PAGA penalties (“PAGA Amount”):	\$7,500.00
Total Amount Paid to Settlement Class:	\$76,216.67

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved incentive award, administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, Betz will pay at least \$76,216.67 to Settlement Class members. *See* Settlement, § 4. Betz represents that there are approximately 260 Settlement Class members. *Id.*, § 5.1. Thus, **the average Settlement Award is estimated to be \$293.14**. Larsen Decl., ¶ 19.

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) the NSA will be distributed to all Participating Class Members, proportionally based on the number of workweeks worked during the Class Period. *See* Settlement, § 4.2.5.

In addition, all Settlement Class members (regardless whether they opt-out) who were employed by Betz in California at any time between April 26, 2022 and the end of the Class

Period (the “PAGA Period”), will receive a portion of the \$7,500.00 PAGA Amount, based on their proportionate number of pay periods worked during the PAGA Period. *Id.*, § 4.2.6.

Payments from the NSA will be treated as one-third wages reported on a Form W-2, with the remaining two-thirds treated as interest and penalties and reported on a Form 1099. *See* Settlement, § 4.2.5.1. Payments from the PAGA Amount will be treated as 100% penalties. Betz will separately pay the employer’s share of payroll taxes on the amount designated as “wages,” in addition to the GSA. *Id.*, § 4.1. 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. *Id.*, § 8.5.1.

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 Complaint, or that could have been alleged based on the facts alleged in the operative Complaint, during the Class Period (“Released Class Claims”). *See* Settlement, § 6.2. In addition, all Settlement Class members (regardless of whether they opt-out) who worked for Betz in California during the PAGA Period, will release all claims against Betz for PAGA penalties based on the allegations in the operative Complaint, that arose during the PAGA Period (“PAGA Released Claims”). *Id.*

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

At final approval, Plaintiff will apply for a Class Representative Service Payment in the amount of \$5,000.00. *See* Settlement, § 4.2.1. “[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 payment is in recognition of the time and effort he expended on behalf of the Settlement Class, including providing factual information and documents to counsel, identifying potential witnesses, attending multiple telephonic meetings with my office to discuss the claims and theories at issue in the litigation,

1 reviewing the settlement agreement, and otherwise actively participating in the prosecution of
2 this case, as well as his general release of claims and waiver of Civil Code § 1542. Larsen Decl.,
3 ¶ 29; *see also* Settlement, §§ 6.1.1. Plaintiff respectfully submits that the requested payment is
4 well within the range of approval. *See, e.g., Bellinghausen v. Tractor Supply Company*, 306
5 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$15,000 payment to named plaintiff from wage and
6 hour class action settlement, including \$10,000 incentive payment and additional \$5,000 for his
7 general release, where payments to class members averaged just over \$450); *Martinez v. Knight*
8 *Transportation*, No. 1:16-cv-01730, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (approving
9 \$10,000 award to plaintiff in \$400,000 wage and hour class action settlement where payments to
10 class members averaged about \$127).

11 The Parties have also designated \$30,000.00 of the GSA as PAGA penalties, of which
12 \$22,500.00 (75%) will be paid to the LWDA, with the remaining \$7,500.00 (25%) distributed to
13 Settlement Class members (*see* Settlement, § 4.2.4, consistent with the PAGA’s requirement that
14 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to
15 aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is
16 appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells*
17 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011)
18 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement); *Hudson v. Libre*
19 *Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13, 2020)
20 (approving \$21,250 PAGA payment from \$425,000 settlement).

21 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
22 (currently estimated at \$63,333.33), and up to \$15,000.00 in litigation costs. Larsen Decl., ¶ 28;
23 *see also* Settlement, § 4.2.2. The requested fee is fair compensation for undertaking complex,
24 risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff’s counsel has
25 incurred substantial attorneys’ fees conducting pre-filing investigation and legal research;
26 analyzing timekeeping, payroll, and other data with Plaintiff’s data expert to create a
27 comprehensive damages model; preparing for and attending mediation; negotiating and preparing
28 the Settlement; preparing this Motion; and otherwise prosecuting this case. Larsen Decl., ¶ 28.

1 Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls
2 from Settlement Class members, preparing the Final Approval Motion, and appearing at the Final
3 Approval Hearing. *Id.*

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

12 **IV. ARGUMENT**

13 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

25 **1. Standard for Preliminary Approval**

26 To make a fairness determination, the Court should consider several factors, including:
27 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
28 litigation, the risk of maintaining class action status through trial, the amount offered in

1 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
2 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
3 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
4 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
5 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
6 and reasonable in light of the overall balance of factors in this case.

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

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

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

13 Although the Parties engaged in significant informal discovery, they had not completed
14 formal written and deposition discovery, which would have required expenditure of substantial
15 time and resources. Larsen Decl., ¶ 30. Plaintiff also still had to file for class certification. *Id.*
16 Even if Plaintiff obtained certification, the Parties would incur considerable fees and costs through
17 a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id.*
18 The Settlement avoids those risks and the accompanying expense. *Id.*

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

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

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

26 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
27 for disputed claims. As detailed in the concurrently filed Larsen Declaration, and with the
28 assistance of an expert data analyst, Plaintiff conducted an analysis of potential damages due to

1 Betz’s allegedly unlawful wage and hour policies and practices. After applying reasonable
2 discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiff
3 estimated his claims had a realistic potential value of approximately \$236,190. Larsen Decl., ¶¶
4 20-27. The proposed settlement of \$190,000.00 therefore represents approximately 80.4% of
5 Plaintiff’s reasonably forecasted classwide recovery. *Id.* As noted above, payments under the
6 Settlement will average approximately **\$293.14**. Preliminary approval is appropriate as the
7 Settlement will provide significant monetary relief to the Settlement Class.

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

9 “Parties represented by competent counsel are better positioned than courts to produce a
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter.*
11 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
12 litigating wage and hour class actions, and have been appointed class counsel in numerous cases
13 alleging similar claims. See Larsen Decl., ¶¶ 2-6. Counsel conducted an in-depth review of Betz’s
14 policies, timekeeping and payroll records, and other relevant data, and drew on their extensive
15 experience to assess Plaintiff’s claims. Larsen Decl., ¶¶ 20-27. The Settlement was also reached
16 after a mediation session with Mark LeHocky, Esq., an experienced and well-respected wage and
17 hour class action mediator. *Id.*, ¶ 17. This strongly supports preliminary approval. *Kullar*, 168
18 Cal.App.4th at 130.

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

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

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

25 As noted, the Settlement reflects approximately 80.4% of the realistic estimated recovery
26 on Plaintiff’s claims, and will provide tangible, monetary compensation for hotly disputed wage
27 claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

28 ///

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

2 The Settlement resulted from an exchange of substantial information, arm’s-length
3 negotiations, mediation with an experienced mediator, and months of additional negotiations.
4 Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the relevant data
5 and information. Larsen Decl., ¶¶ 17, 20-27. The Settlement is thus entitled to a presumption of
6 fairness. *Kullar*, 168 Cal.App.4th at 130.

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

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

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

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

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

18 A class is “ascertainable” where members “may be readily identified without unreason-
19 able expense or time by reference to official [or business] records.” *Sevidal v. Target Corp.*, 189
20 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked
21 for Betz in California during the Class Period, and thus can be readily identified from Betz’s
22 records. Betz represents there are approximately 260 Settlement Class members, rendering it
23 impracticable to bring them all before the Court. Numerosity is therefore satisfied.

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

25 The focus on certification is not on the merits of the case, but rather on what types of
26 questions, “common or individual,” are likely to arise in the action. *Sav-On Drug Store, Inc. v.*
27 *Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated primarily on Betz’s alleged
28 failure to include the value of free meals in the “regular rate” when calculating employees’

overtime wages and meal period premium wages and alleged failure to provide legally-compliant meal periods. Such claims are commonly held proper for class certification. *See, e.g., Carlino v. CHG Medical Staffing, Inc.*, No. 1:17-cv-01323-DAD-JLT, 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Named Plaintiff's Claims Are Typical

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 Betz as a non-exempt employee in California during the Class Period, and he was injured by the same challenged policies that allegedly injured the Settlement Class as a whole. *See* Declaration of Scott Llewellyn, ¶¶ 2-3. Thus, typicality is satisfied.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

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

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by Betz. *See* Settlement, § 8.4. 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 Phoenix Settlement Administrators, ("Phoenix") an experienced class action settlement administrator. *See* Declaration of Jodey Lawrence ("Lawrence

1 Declaration”) and exhibits. Settlement Class members’ addresses will be ascertainable through
2 Betz’s records. Phoenix will also run all addresses through the U.S. Postal Service National
3 Change of Address database and/or perform “skip traces” to obtain current addresses. See
4 Settlement, § 8.4.2 and 8.4.3.

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

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

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

17 **V. CONCLUSION**

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

21 Respectfully submitted,

22 Dated: July 5, 2024

ABRAMSON LABOR GROUP

23
24 By: Neil Larsen
25 Neil M. Larsen
26 Attorneys for Plaintiff
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