

Neil M. Larsen (SBN 276490)
neil@abramsonlabor.com
Meghan E. McNally (SBN 350701)
meghan@abramsonlabor.com
Jennifer Rivera (SBN 353268)
jennifer.r@abramsonlabor.com
ABRAMSON LABOR GROUP
1700 W. Burbank Blvd.
Burbank, California 91506
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARIA ARCE, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

BEZSAM, INC., a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 37-2023-00018538-CU-OE-CTL

CLASS ACTION

*[Assigned for all purposes to Hon. Wendy
M. Behan, Dept. C-66]*

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

Date: June 14, 2024
Time: 9:30 a.m.
Dept.: C-66

Action Filed: May 2, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on a date and time to be determined by the Court, in Department C-66 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Maria Arce ("Plaintiff") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiff and Defendant Bezsam, Inc. ("Bezsam" 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 Bezsam in California at any time from May 2, 2019 through November 22, 2023 (the "Class Period").
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Neil M. Larsen, Meghan E. McNally, and Jennifer 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 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 Meghan McNally; the declaration of Jennifer Rivera; the declaration of Jodey Lawrence and exhibits attached thereto; the declaration of Plaintiff; the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: May 20, 2024

Respectfully Submitted,
ABRAMSON LABOR GROUP

Neil Larsen

Neil M. Larsen
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. FACTUAL AND PROCEDURAL BACKGROUND.....	2
B. PLAINTIFF’S CLAIMS AND BEZSAM’S DEFENSES	2
1. Claim for Underpaid Overtime Based on Regular Rate Miscalculation.....	2
2. Meal Period Claim	3
3. Rest Period Claim	3
4. Claim for Failure to Reimburse Business Expenses.....	4
5. 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, Enhancement Award and PAGA Payment	7
IV. ARGUMENT.....	9
A. PRELIMINARY APPROVAL IS WARRANTED	9
1. Standard for Preliminary Approval.....	9
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.....	10
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.....	12

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

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Federal Cases

<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	14
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	9
<i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	11
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	9

State Cases

<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013).....	13
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	13
<i>Brinker Restaurant Corp. v. Sup. Ct.</i> , 53 Cal.4th 1004 (2012).....	3
<i>Capital People First v. State Dept. of Develop. Svcs.</i> , 155 Cal.App.4th 676 (2007)	13
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	5
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (Cal.App. 1 Dist.,2008).....	9
<i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996)	10
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	7
<i>Kao v. Joy Holiday</i> , 12 Cal.App.5th 947 (2017)	5
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	9, 11, 12
<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016).....	9
<i>McGhee v. Bank of Am.</i> , 60 Cal.App.3d 442 (1976)	13
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	5
<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....	9
<i>Sav-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004).....	13
<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010).....	12
<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112 (2012)	5
<i>Wershba v. Apple Computer, Inc</i> , 91 Cal.App.4th 224 (2001).....	10

Federal Statutes & Rules

Fed. R. Civ. Proc. Rule 23	9
----------------------------------	---

1	<u>State Statutes and Rules</u>	
2	8 Cal. Code Regs. § 13520.....	5
3	Cal. Code Civ. Proc. § 382	12
4	Cal. Rule of Court 3.766	14
5	Cal. Rule of Court 3.769	9, 14
6	Cal. Labor Code § 203	4, 5
7	Cal. Labor Code § 226	4
8	Cal. Labor Code § 2699	5, 8
9	<u>Unpublished Cases</u>	
10	<i>Carlino v. CHG Medical Staffing, Inc.</i> ,	
11	No. 1:17-cv-01323-DAD-JLT, 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019)	13
12	<i>Chu v. Wells Fargo Inv., LLC</i>	
13	No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011)	8
14	<i>Fleming v. Covidien, Inc.</i>	
15	No. ED CV 10-01487 RGK, 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011)	5
16	<u>Other Citations</u>	
17	<i>Manual for Complex Litig.</i> , § 30.41 (3rd Ed. 1995)	11
18	<i>Newberg on Class Actions</i> , §§ 11:24-25 (4th Ed. 2013).....	12
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria Arce (“Plaintiff”) seeks preliminary approval of a class action settlement
4 agreement (“Settlement”) with Defendant Bezsam, Inc. (“Bezsam” or “Defendant”) (together
5 with Plaintiff, the “Parties”). The Settlement resolves a class and representative action pending
6 before this Court (the “Action”), in which Plaintiff alleges that Bezsam failed to incorporate shift
7 differentials, commissions, and other forms of compensation into the “regular rate,” resulting in
8 underpaid overtime and meal period premiums; failed to provide legally compliant meal periods;
9 failed to authorize and permit all rest periods; failed to reimburse employees for business
10 expenses; and failed to issue accurate itemized wage statements. Plaintiff further alleges that as
11 a result of these violations, Bezsam failed to comply with its final payment and wage statement
12 obligations, failed to maintain accurate payroll records, and is liable for civil penalties under the
13 Private Attorneys General Act (“PAGA”).

14 Plaintiff now respectfully requests that this Court preliminarily approve this non-
15 reversionary, common-fund class action Settlement,¹ in which Bezsam has agreed to pay
16 \$465,000.00 to the following Settlement Class, which is estimated to consist of 420 individuals:

17 All current and former non-exempt employees who worked for Bezsam in
18 California at any time from May 2, 2019 through November 22, 2023 (the “Class
Period”).

19 The Settlement was reached after the parties engaged in mediation with Hon. Steven R.
20 Denton (Ret.), an experienced wage and hour class action mediator. In connection with mediation,
21 Bezsam provided Plaintiff with extensive informal discovery, including timekeeping and payroll
22 records for a sampling of putative class members; a detailed class list that included each
23 Settlement Class members’ hire date, termination date (if applicable), and average rate of pay;
24 relevant written policies; and additional relevant data and information. After extensive research
25 and investigation, including a detailed analysis of Bezsam’s potential exposure made with the
26 assistance of an expert data analyst, the mediation session was held with Judge Denton on
27 November 22, 2023. The Parties did not reach a resolution at mediation, but they continued their

28 _____
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 to the Settlement.

1 negotiations and, with the mediator’s assistance, eventually reached a settlement in principle.
2 Over the following months, the Parties negotiated the finer terms of the settlement, ultimately
3 resulting in the Settlement.

4 Notably, Settlement Class members need not submit a claim to receive a payment
5 (“Settlement Award”). After deductions for proposed administration costs, attorney fees and
6 costs, Plaintiff’s service award, and the LWDA’s share of PAGA civil penalties, the average
7 Settlement Award is estimated to be at least \$565.48. For the reasons discussed herein, Plaintiff
8 respectfully requests that the Court grant preliminary approval of the Settlement.

9 **II. SUMMARY OF THE LITIGATION**

10 **A. FACTUAL AND PROCEDURAL BACKGROUND**

11 Bezsam is a transportation non-profit in the San Diego metropolitan area. *See* Declaration
12 of Neil M. Larsen (“Larsen Decl.”), ¶ 7. Plaintiff is a former non-exempt employee who worked
13 for Bezsam in California during the Class Period. *Id.*

14 On May 2, 2023, Plaintiff filed this Action, alleging claims for failure to pay overtime
15 wages, meal and rest period violations, failure to reimburse business expenses, wage statement
16 penalties, waiting time penalties, and unfair business practices. Larsen Decl., ¶ 8. Plaintiff
17 subsequently filed a First Amended Complaint adding a claim for PAGA civil penalties for the
18 aforementioned Labor Code violations as well as Bezsam’s failure to maintain accurate records
19 (including but not limited to records of actual hours worked). *Id.*, ¶ 9.

20 **B. PLAINTIFF’S CLAIMS AND BEZSAM’S DEFENSES**

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

22 Plaintiff alleges Bezsam failed to incorporate shift differentials, commissions, and other
23 non-excludable forms of compensation in employees’ “regular rate” and, as a result, under-paid
24 overtime and meal period premiums. Larsen Decl., ¶ 10. Bezsam contends that the payments in
25 question were discretionary, were not tied to the quantity or quality of work performed, and were
26 therefore excludable from the regular rate. *Id.* Bezsam further argues that any overtime under-
27 payments were *de minimis* and not recoverable. *Id.* Bezsam also maintains that employees
28 received different types of remuneration throughout the Class Period, thus creating substantive

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

3 **2. Meal Period Claim**

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

20 **3. Rest Period Claim**

21 Plaintiff alleges that, as with meal periods, Bezsam failed to authorize and permit a legally
22 compliant 10-minute rest periods due to the excessive workload imposed by Bezsam. Larsen
23 Decl., ¶ 12; *Brinker*, 53 Cal.4th at 1028-32 (discussing rest period requirements). Bezsam asserts
24 it has always maintained legally compliant rest period policies, and that, in practice, it has always
25 authorized and permitted all required rest periods to non-exempt employees; that it informs
26 employees of their right to rest periods; and that any failure to take a rest period is the result of
27 employee choice rather than any policy or practice of Bezsam. Larsen Decl., ¶ 12. Bezsam further
28 argues this claim is not amenable to class treatment as individualized inquiries would be required

1 to determine whether individual employees in different job positions and under different
2 supervisors were in fact authorized and permitted to take rest periods on any given shift, under
3 various supervisors and time periods, thus precluding class certification. *Id.* These manageability
4 concerns are particularly present with respect to rest periods, Bezsam contends, since rest periods
5 are not (and need not be) recorded. *Id.*

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

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

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

24 As a result of its alleged failure to pay all overtime wages, as well as its failure to provide
25 all meal and rest periods, Plaintiff asserts that Bezsam failed to comply with its final payment
26 and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively.
27 Larsen Decl., ¶¶ 14-15. Finally, Plaintiff seeks civil penalties under the PAGA based on the
28 aforementioned claims and Bezsam’s failure to maintain accurate payroll records in violation of
Labor Code §§ 1174 and 1198. *Id.* at ¶ 16.

1 Bezsam argues that Plaintiff’s derivative claims fail for the same reasons her underlying
2 claims fail. Bezsam further asserts it has strong, good-faith defenses to Plaintiff’s underlying
3 claims, precluding waiting time penalties. Larsen Decl., ¶ 15; *see also* 8 Cal. Code Regs. § 13520
4 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”);
5 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded
6 imposition of waiting time penalties).

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

20 C. **DISCOVERY AND MEDIATION**

21 In preparation for mediation, the Parties engaged in extensive informal discovery. Bezsam
22 provided Plaintiff’s counsel with several data points, including the number of class members,
23 workweeks worked, average rate of pay, and other relevant metrics. Bezsam also produced a
24 sampling of timekeeping and payroll records for putative class members, a detailed class list that
25 included each Settlement Class members’ hire date, termination date (if applicable), and average
26 rate of pay, its applicable wage and hour policies, and other information. Larsen Decl., ¶ 17.
27 Plaintiff’s counsel hired an expert data analyst to analyze and extrapolate the data produced by
28 Bezsam. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims

and Bezsam’s defenses, as well as the chances for class certification. *Id.*

The Parties attended a mediation with Judge Denton on November 22, 2023. At mediation the Parties vigorously debated Plaintiff’s claims and Bezsam’s defenses, the potential value of Plaintiff’s claims, and the chances of certification. Larsen Decl., ¶ 18. The Parties did not reach a resolution at mediation. *Id.* However, the Parties continued their negotiations with Judge Denton’s assistance and eventually agreed to a resolution 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, Bezsam will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$465,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$465,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$155,000.00
• Minus Court-approved costs (up to):	\$25,000.00
• Minus Court-approved Service Award:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$40,000.00
• <u>Minus estimated Settlement Administration costs:</u>	<u>\$10,000.00</u>
Net Settlement Amount (“NSA”):	\$227,500.00
PLUS 25% of PAGA penalties (“PAGA Amount”):	\$10,000.00
Total Amount Paid to Settlement Class:	\$237,500.00

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved Class Representative Service Award, administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, Bezsam will pay at least \$237,500.00 to Settlement Class members. *See* Settlement, § 4(C). Bezsam represents that there are approximately 420 Settlement Class members. *Id.*, § 1. Thus, **the average Settlement Award is estimated to be \$565.48.** Larsen Decl., ¶ 20.

All Participating Class Members will receive a payment from the NSA based on each Participating Class Member’s proportionate number of Workweeks worked for Defendant as a non-exempt employee in California during the Class Period. *See* 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 Workweeks worked during the Class Period, and the denominator of which

1 is the total Workweeks worked by all Participating Class Members during the Class Period. *Id.*

2 In addition, all Settlement Class members (regardless whether they opt out) who were
3 employed by Bezsam in California at any time between May 2, 2022 and November 22, 2023 (the
4 “PAGA Period”), will receive a portion of the \$10,000 PAGA Amount, based on their
5 proportionate number of pay periods worked during the PAGA Period. *See* Settlement, § 6(C).

6 Payments from the NSA will be treated as 33.33% wages reported on a Form W-2, with
7 the remaining 66.67% treated as interest and penalties and reported on a Form 1099. *See*
8 Settlement, § 6(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.*
9 Bezsam will separately pay the employer’s share of payroll taxes on the amount designated as
10 “wages,” in addition to the GSA. *Id.*, § 4(D). Settlement Class members will have 60 days from
11 the Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing
12 ample time to review the Notice without unduly delaying the Settlement. *See Id.*, § 11(C)-(E).

13 Participating Class Members will be bound by the Settlement and will release all claims
14 that were alleged in the Action, or that could have been alleged based on the facts alleged in the
15 Action, during the Class Period (“Released Class Claims”). *See* Settlement, § 2. In addition, all
16 Settlement Class members (regardless whether they opt out) who worked for Bezsam in California
17 during the PAGA Period, will release all claims against Bezsam for PAGA penalties based on the
18 allegations in the Action, that arose during the PAGA Period (“PAGA Released Claims”). *Id.*

19 **2. Attorneys’ Fees and Costs, Service Award, and PAGA Payment**

20 At final approval, Plaintiff will apply for a Class Representative Service Award in the
21 amount of \$7,500. *See* Settlement, § 4(C)(iii). “[I]ncentive awards are fairly typical in class action
22 cases...and are intended to compensate class representatives for work done on behalf of the class
23 [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re*
24 *Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010).

25 As will be fully briefed at final approval, Plaintiff’s requested payment is in recognition
26 of the time and effort she expended on behalf of the Settlement Class, including providing factual
27 information and documents to counsel, discussing with counsel the claims and theories at issue
28 in the litigation, identifying potential witnesses, attending multiple telephonic meetings with my

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

12 The Parties have also designated \$40,000 of the GSA as PAGA penalties, of which
13 \$30,000 (75%) will be paid to the LWDA, with the remaining \$10,000 (25%) distributed to
14 Settlement Class members (*see* Settlement, § 4(C)(v)), consistent with the PAGA’s requirement
15 that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to
16 aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is
17 appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells*
18 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011)
19 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement); *Hudson v. Libre*
20 *Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13, 2020)
21 (approving \$21,250 PAGA payment from \$4235,000 settlement).

22 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
23 (currently estimated at \$155,000.00), and up to \$25,000 in litigation costs. Larsen Decl., ¶ 30; *see*
24 *also* Settlement, § 4(C)(iv). The requested fee is fair compensation for undertaking complex,
25 risky, expensive, and time-consuming litigation on a contingent basis. Larsen Decl., ¶ 30.
26 Plaintiff’s counsel have incurred substantial attorneys’ fees conducting pre-filing investigation
27 and legal research; analyzing timekeeping, payroll, and other data with Plaintiff’s data expert to
28 create a comprehensive damages model; preparing for and attending mediation; negotiating and

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

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

13 **IV. ARGUMENT**

14 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

26 **1. Standard for Preliminary Approval**

27 To make a fairness determination, the Court should consider several factors, including:
28 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further

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

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

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

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

14 Although the Parties engaged in significant informal discovery, they had not completed
15 formal written and deposition discovery, which would have required expenditure of substantial
16 time and resources. Larsen Decl., ¶ 32. Plaintiff also still had to file for class certification. *Id.*
17 Even if Plaintiff obtained certification, the Parties would incur considerable fees and costs through
18 a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id.*
19 The Settlement avoids those risks and the accompanying expense.

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

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

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

27 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
28 for disputed claims. As detailed in the Larsen Declaration, and with the assistance of an expert

1 data analyst, Plaintiff conducted an analysis of potential damages due to Bezsam's allegedly
2 unlawful policies and practices. After applying reasonable discounts for risks of not obtaining
3 class certification and risks of losing on the merits, Plaintiff estimated his claims had a realistic
4 potential value of approximately \$837,718. Larsen Decl., ¶¶ 17, 21-29. The proposed settlement
5 of \$465,000.00 therefore represents about 55.5% of Plaintiff's reasonably forecasted classwide
6 recovery. *Id.*, ¶ 29. Prior to acceptance of the Settlement, Bezsam provided Plaintiff with financial
7 documents, so that Plaintiff may analyze the financials and confirm Bezsam's representations
8 regarding its financial condition. *Id.* With assistance of a forensic accountant, Plaintiff confirmed
9 Bezsam's representations regarding its financial condition, which further supported the
10 reasonableness of the proposed Settlement. *Id.* As noted above, payments under the Settlement
11 will average \$565.48. Preliminary approval is appropriate as the Settlement provides significant
12 monetary relief to the 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; Declaration of Meghan E. McNally, ¶¶ 2-5;
19 Declaration of Jennifer Rivera, ¶¶ 2-5. Counsel conducted an in-depth review of Bezsam's
20 policies, timekeeping and payroll records, and other relevant data, and drew on their extensive
21 experience to assess Plaintiff's claims. Larsen Decl., ¶¶ 6, 17-18, 21-29. The Settlement was also
22 reached after a mediation session with Hon. Steven R. Denton (Ret.), an experienced and well-
23 respected wage and hour class action mediator. *Id.*, ¶ 18. This strongly supports preliminary
24 approval. *Kullar*, 168 Cal.App.4th at 130.

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

26 The Court can grant preliminary approval of a proposed settlement and direct that notice
27 be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the
28 product of serious, informed negotiations; and (3) has no obvious deficiencies. *See Manual for*

1 *Complex Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013).

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

3 As noted, the Settlement reflects about 55.5% of the realistic estimated recovery on
4 Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage
5 claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

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

7 The Settlement resulted from an exchange of substantial information, arm's-length
8 negotiations, mediation with an experienced mediator, and months of additional negotiations.
9 Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the relevant data
10 and information. Larsen Decl., ¶¶ 21-29. The Settlement is thus entitled to a presumption of
11 fairness. *Kullar*, 168 Cal.App.4th at 130.

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

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

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

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

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

23 A class is "ascertainable" where members "may be readily identified without unreason-
24 able expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189
25 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked
26 for Bezsam in California during the Class Period, and thus can be readily identified from
27 Bezsam's records. Bezsam represents there are about 420 Settlement Class members, rendering
28 it impracticable to bring them all before the Court. 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 claims are predicated primarily on Bezsam’s
5 allegedly unlawful failure to include all non-discretionary compensation in the “regular rate” and
6 allegedly unlawful meal and rest period policies/practices. Such claims are commonly held proper
7 for class certification. *See, e.g., Carlino v. CHG Medical Staffing, Inc.*, No. 1:17-cv-01323-DAD-
8 JLT, 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v.*
9 *Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest
10 period claims).

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

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

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

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

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10

11
12
13
14
15
16
17
18
19

20

21
22

23

24

25

26

27

28