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

11 SAYEDHASIB SADAT, on behalf of himself
12 and all others similarly situated,

13
14 Plaintiff,

15 vs.
16

17 ISLAND AUTO TOWING, INC. f/k/a ISLAND
18 AUTO REPAIR, INC., a California corporation;
19 and DOES 1 through 100, inclusive,

20 Defendants.
21
22

Case No.: 23CV036438

CLASS ACTION

*[Assigned for all purposes to Hon.
Michael Markman, Dept. 23]*

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

Reservation No.: 833713223604

Date: December 12, 2024
Time: 10:00 a.m.
Dept.: 23

Action Filed: June 20, 2023
Trial Date: None Set

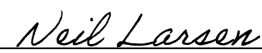
PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on December 12, 2024 at 10:00 a.m., in Department 23 of the above-entitled Court, located at the Rene C. Davidson Courthouse, 1221 Oak Street, Oakland, California, 94612, Plaintiff Sayedhasib Sadat (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant Island Auto Towing, Inc. f/k/a Island Auto Repair, Inc., (“Island Auto” 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 Island Auto in California at any time from June 20, 2019 through February 19, 2024 (the “Class Period”);
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Neil M. Larsen, Jennifer Rivera, and Eli Drummond 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 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: November 14, 2024

Respectfully Submitted,
ABRAMSON LABOR GROUP


Neil M. Larsen
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Sayedhasib Sadat (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Island Auto Towing, Inc. f/k/a Island Auto Repair, Inc.,
5 (“Defendant” or “Island Auto”) (together with Plaintiff, the “Parties”). The Settlement resolves a
6 class and representative action pending before this Court (the “Action”), in which Plaintiff alleges
7 that Defendant failed to pay overtime at the regular rate of compensation; failed to authorize and
8 permit all rest periods; failed to reimburse employees for business expenses; and failed to timely
9 pay wages during employment. Plaintiff further alleges that as a result of these violations,
10 Defendant failed to issue accurate itemized wage statements, failed to pay all wages on
11 termination of employment, engaged in unfair competition, and is liable for civil penalties under
12 the Private Attorneys General Act (“PAGA”).

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action Settlement,¹ in which Defendant has agreed to pay
15 \$350,000.00 to the following Settlement Class, which is estimated to consist of approximately
16 132 individuals:

17 All current and former non-exempt employees who worked for Island Auto in
18 California at any time from June 20, 2019 through February 19, 2024 (the “Class
Period”).

19 The Settlement was reached after the parties engaged in mediation with Hon. Steven R.
20 Denton (Ret.) an experienced and respected wage and hour class action mediator. In connection
21 with mediation, Defendant provided Plaintiff with extensive informal discovery, including nearly
22 all timekeeping and payroll records for putative class members during the Class Period; a detailed
23 Class List that included each employees’ hire date and termination date (if applicable); relevant
24 written policies; and additional relevant data and information. After extensive research and
25 investigation, including a detailed analysis of Defendant potential exposure made with the
26 assistance of an expert data analyst, the mediation session was held with Judge Denton on
27 February 12, 2024. At the mediation, the Parties reached to a class-wide settlement in principle.

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, respectively, to the Settlement.

Over the following months, the Parties negotiated the finer terms of the settlement, 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, attorney fees and costs, Plaintiff’s service award, and the LWDA’s share of PAGA civil penalties, the average Settlement Award is estimated to be **\$1,237.37**. 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 is a towing and auto repair company in California. *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 June 20, 2023, Plaintiff filed this Action, alleging claims for failure to pay overtime wages at the regular rate of compensation, rest period violations, wage statement violations, failure to reimburse business expenses, failure to pay wages during employment, waiting time penalties, and unfair business practices. Larsen Decl., ¶ 8.

On August 21, 2023, Plaintiff filed a First Amended Complaint adding a claim for PAGA civil penalties. *Id.*, ¶ 9.

B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES

1. Claim for Underpaid Wages Based on Regular Rate Miscalculation

Plaintiff alleges that Defendant miscalculated Plaintiff’s and other employees’ “regular rate” or pay, which resulted in an underpayment of overtime wages. Larsen Decl., ¶ 10. Specifically, Plaintiff alleges that during certain pay periods Defendant paid Plaintiff and other non-exempt employees non-discretionary bonuses and/or other forms of pay not excludable from the regular rate, but when it paid overtime wages, Defendant consistently paid overtime wages at 1.5 times employees’ *base rates* of pay and failed to incorporate non-discretionary bonuses and/or other forms of pay when calculating the regular rate of pay. *Id.*; *see Alvarado v. Dart Container Corp. of Calif.*, 4 Cal.5th 542, 544 (2018) (“Not all employees earn at a fixed pay rate throughout

1 a pay period, and therefore regular rate of pay is a *weighted average* reflecting work done at
2 varying times, under varying circumstances, and at varying rates.”) (emphasis in original) (citing
3 to DLSE Enforcement Manual § 49.2.5). Larsen Decl., ¶ 10.

4 Defendant contends that the bonus payments in question were discretionary, and/or were
5 not tied to the quantity or quality of work performed, and were therefore excludable from the
6 regular rate. *Id.* Defendant further contends that any overtime under-payments were *de minimis*
7 and not recoverable. *Id.* Defendant further contends that employees received different types of
8 remuneration throughout the Class Period, thus creating substantive differences among the
9 putative class members with respect to the payments received as well as the expectations
10 regarding those payments, making class certification unlikely. *Id.*

11 **2. Rest Period Claim**

12 Plaintiff alleges that Defendant often failed to authorize and permit net 10-minute rest
13 periods to him and other employees as a result of the workload imposed them. Larsen Decl., ¶ 11;
14 *Brinker*, 53 Cal.4th at 1028-32 (discussing rest period requirements).

15 Defendant asserts that, in practice, they have always authorized and permitted all required
16 rest periods to non-exempt employees; that they inform employees of their right to rest periods;
17 and that any failure to take a rest period is the result of employee choice rather than any practice
18 of Defendant. *Id.* Defendant further argues that this claim is not amenable to class treatment
19 because individualized inquiries would be required to determine whether individual employees
20 working varying shifts, working under different managers and supervisors, and in different time
21 periods during the Class Period, were in fact authorized and permitted to take rest periods on any
22 given shift, thus precluding class certification. *Id.* These manageability concerns are particularly
23 present with respect to rest periods, Defendant contends, since rest periods are not (and need not
24 be) recorded. *Id.*

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

26 Plaintiff alleges that Defendant failed to indemnify him and other employees for the use
27 of their personal cell phones for work purposes. Larsen Decl., ¶ 12. Defendant argues that
28 employees did not need to use their personal cell phones in connection with their job duties, and

1 that if they did, there are procedures in place for employees to request reimbursement of work-
2 related expenses. *Id.* Defendant also argues that employees are provided with any equipment
3 necessary to perform their job duties. *Id.* Defendant further argues that this claim would not be
4 certified, as it would require hundreds of individualized inquiries as to whether employees
5 incurred business-related expenses, whether they were reimbursed, whether Defendant knew (or
6 reasonably should have known) about the expense, and whether the expense was “necessary”
7 under the circumstances. *See Gattuso v. Hart-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)
8 (“In calculating the reimbursement amount due under section 2802, the employer may consider
9 not only the actual expenses that the employee incurred, but also whether each of those expenses
10 was ‘necessary,’ which in turn depends on the reasonableness of the employee’s choices.”);
11 *Grissom v. Vons Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991) (under § 2802, “ascertaining what
12 was a necessary expenditure will require an inquiry into what was reasonable under the
13 circumstances”).

14 **4. Claims Under Lab. Code § 204**

15 Plaintiff further alleged that Defendant failed to pay Plaintiff and other non-exempt
16 employees in a timely manner, in violation of Labor Code § 204. Specifically, Defendant,
17 consistently paid wages 8 days after the close of the pay period, resulting in late paid wages during
18 employment in violation of section 204. Larsen Decl., ¶ 13. Defendant contends that any alleged
19 act or omission was inadvertent, the result of clerical error, not willful or intentional, in good faith
20 (including, but not limited to, a good faith dispute concerning the date wages became due), and/or
21 Defendant had reasonable grounds for believing in good faith that their conduct did not violate
22 any provision of applicable federal or state law, including the applicable wage orders. *Id.*

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 rest periods, Plaintiff asserts that Defendant failed to comply with its final payment and wage
26 statement obligations, in violation of Cal. Labor Code §§ 201-203 and 226, respectively. Larsen
27 Decl., ¶ 14. Finally, Plaintiff seeks civil penalties under PAGA based on the above claims. *Id.*

28 ///

1 Defendant argues that Plaintiff’s derivative claims fail for the same reasons his underlying
2 claims fail. Defendant further asserts it has strong, good-faith defenses to Plaintiff’s underlying
3 claims, precluding waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a “good faith dispute
4 that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*,
5 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting
6 time penalties). Defendant further contends that any alleged wage statement violations were not
7 “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show
8 he or other employees “suffer[ed] injury” due to alleged wage statement violations, as required
9 by Lab. Code § 226(e); and that employee wage statements always accurately reflect amounts
10 *paid* to employees. Larsen Decl., ¶ 15; *Naranjo v. Spectrum Security Svcs., Inc.*, 15 Cal.5th 1056,
11 1091 (2024) (holding that an employee’s “good faith” belief that it is not violating Labor Code
12 Section 226 precludes a finding of a knowing and intentional violation). *see also Maldonado v.*
13 *Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to
14 ‘document the *paid wages* to ensure the employee is fully informed regarding the calculation of
15 those wages.”) (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

16 Finally, Defendant contends Plaintiff’s PAGA claim fails because the underlying claims
17 fail. *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the
18 underlying causes of action fail, the derivative PAGA claims also fail.”). Defendant further
19 maintains that given its strong defenses and good-faith attempts to comply with the law, the Court
20 would substantially reduce PAGA penalties even if it found in Plaintiff’s favor on his underlying
21 claims. Larsen Decl., ¶ 15; *see also* Lab. Code § 2699(e)(2) (authorizing discretionary reduction
22 in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012)
23 (affirming reduction of PAGA penalties because, *inter alia*, “the evidence showed...defendants
24 took their obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien,*
25 *Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing
26 PAGA penalties by over 82% in part because employer was “not aware” of violations);
27 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just
28 \$5 per pay period where employer made “good faith attempts” to comply with the law).

1 **C. DISCOVERY AND MEDIATION**

2 In preparation for mediation, the Parties engaged in extensive informal discovery.
3 Defendant produced a class list with putative class members’ hire dates, termination dates (if
4 applicable), and other information. Defendant also produced nearly all timekeeping and payroll
5 records for putative class members during the Class Period, Defendant’s relevant wage and hour
6 policies, and other information. Larsen Decl., ¶ 16. Plaintiff’s counsel hired an expert data analyst
7 to analyze the data produced by Defendant. *Id.* This discovery allowed the Parties to assess the
8 merits and value of Plaintiff’s claims and Defendant’s defenses, as well as the chances for class
9 certification. *Id.*

10 The Parties attended a mediation with Judge Denton on February 12, 2024. At mediation
11 the Parties vigorously debated Plaintiff’s claims and Defendant’s defenses, the potential value of
12 Plaintiff’s claims, and the chances of certification. Larsen Decl., ¶ 17. At the mediation, the
13 Parties reached a settlement in principle on a class-wide basis. Over the following months, the
14 Parties negotiated the finer terms of the settlement agreement, ultimately resulting in the
15 Settlement. *Id.*

16 **III. THE PROPOSED SETTLEMENT**

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

18 Under the Settlement, Defendant will pay a non-reversionary Gross Settlement Amount
19 (“GSA”) of \$350,000.00. The monetary terms of the Settlement are summarized below:

20	• Gross Settlement Amount (“GSA”):	\$350,000.00
21	• Minus Court-approved attorneys’ fees (one-third):	\$116,666.67
22	• Minus Court-approved costs (up to):	\$20,000.00
23	• Minus Court-approved Service Payment:	\$10,000.00
24	• Minus Amount Set Aside as PAGA penalties:	\$30,000.00
25	• <u>Minus estimated settlement administration costs (up to):</u>	<u>\$10,000.00</u>
26	Net Settlement Amount (“NSA”):	\$163,333.33
27	PLUS 25% of PAGA penalties (“PAGA Amount”):	\$7,500.00
28	Total Amount Paid to Settlement Class:	\$170,833.33

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

2 As noted above, after deducting amounts for a court-approved Class Representative
3 Service Payment, administration costs, attorneys’ fees and costs, and PAGA payment to the
4 LWDA, Defendant will pay at least \$163,333.33 to Settlement Class members. Settlement, § 6(C).

Defendant represents that there are approximately 132 Settlement Class members. *Id.*, § 1. Thus, **the average Settlement Award is estimated to be \$1,237.37.** Larsen Decl., ¶ 19.

In addition, all Settlement Class members (regardless whether they opt out) who were employed by Defendant in California at any time from June 20, 2022 to February 19, 2024 (the “PAGA Period”), will receive a portion of the \$7,500 PAGA Amount, based on their proportionate number of pay periods worked during the PAGA Period. Settlement, §§ 2, 6(C), 8(C).

Payments from the NSA will be treated as 33% wages reported on a Form W-2, 33% treated as interest, and 34% treated as penalties and reported on a Form 1099. *See* Settlement, § 8(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* Defendant will separately pay the employer’s share of payroll taxes on the amount designated as “wages,” in addition to the GSA. *Id.*, § 6(D). 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. *Id.*, § 13(C)-(E).

Participating Class Members will be bound by the Settlement and will release any and all claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands, or suits which arise from or reasonably relate to the facts and allegations asserted in the First Amended Complaint in the Action or that could have been alleged based on the facts alleged in the First Amended Complaint in the Action, arising from their employment with Defendant. Settlement, § 3. 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 allegations in the Action, that arose during the PAGA Period (“PAGA Released Claims”). Settlement, § 3.

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 \$10,00. Settlement, § 6(C)(iii). “[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*

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

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

17 The Parties have also designated \$30,000 of the GSA as PAGA penalties, of which
18 \$22,500 (75%) will be paid to the LWDA, with the remaining \$7,500 (25%) distributed to
19 Settlement Class members (see Settlement, § 6(C)(v)), consistent with the PAGA's requirement
20 that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to
21 aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is
22 appropriate in light of other settlements allocating penalties to the LWDA. See, e.g., *Chu v. Wells*
23 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011)
24 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement); *Hudson v. Libre*
25 *Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13, 2020)
26 (approving \$21,250 PAGA payment from \$425,000 settlement).

27 At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA
28 (currently estimated at \$116,666.67), and up to \$20,000 in litigation costs. Settlement, § 6(C)(iv).

1 The requested fee is fair compensation for undertaking complex, risky, expensive, and time-
2 consuming litigation on a contingent basis. Plaintiff's counsel has incurred substantial attorneys'
3 fees conducting pre-filing investigation and legal research; analyzing timekeeping, payroll, and
4 other data with Plaintiff's data expert to create a comprehensive damages model; preparing for
5 and attending mediation; negotiating and preparing the short-form MOU and the long-form
6 Settlement Agreement; preparing this Motion; and otherwise prosecuting this case. Larsen Decl.,
7 ¶ 30. Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone
8 calls from Settlement Class members, preparing the Final Approval Motion, and appearing at the
9 Final Approval Hearing. *Id.*

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

18 **IV. ARGUMENT**

19 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

1 presumption of fairness when a settlement is negotiated at arm's length by counsel. *See, e.g.,*
2 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

3 **1. Standard for Preliminary Approval**

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

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

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

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

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

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

26 Plaintiff had not yet filed his class certification motion, and as such, the extent to which
27 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there
28 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 Larsen Declaration, and with the assistance of an expert data analyst, Plaintiff conducted an analysis of potential damages due to Defendant's allegedly unlawful policies and practices. After applying reasonable discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiff estimated his claims had a realistic potential value of approximately \$419,629. Larsen Decl., ¶¶ 21-28. The proposed settlement of \$350,000 therefore represents approximately 83.4% of Plaintiff's reasonably forecasted classwide recovery. *Id.* As noted above, payments under the Settlement will average nearly \$1,237.37. 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 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., ¶¶ 16; 21-28. The Settlement was also reached after a mediation session with Hon. Steven R. Denton (Ret.) 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*

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 approximately 83.4% of the realistic estimated recovery
4 on Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage
5 claims. Accordingly, Plaintiff submits that 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., ¶¶ 16, 21-28. 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 his
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 Defendant in California during the Class Period, and thus can be readily identified from
27 Defendant's records. Defendant represents there are about 132 Settlement Class members,
28 rendering 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 Defendant’s
5 alleged failure to pay overtime wages based upon the correct “regular rate” of pay and alleged
6 rest period policies/practices. Such claims are commonly held proper for class certification. *See,*
7 *e.g., Carlino v. CHG Medical Staffing, Inc.*, No. 1:17-cv-01323-DAD-JLT, 2019 WL 1005070
8 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v. Telecom Network Specialists,*
9 *Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

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

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

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

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

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

27 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
28 mailing addresses provided by Defendant. Settlement, § 13. This is the “best notice practicable”

1 under the circumstances, as it provides “individual notice to all members who can be identified
2 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
3 proposes the Settlement be administered by Pheonix Settlement Administrators, an experienced
4 class action settlement administrator. See Jodey Lawrence Declaration and exhibits. Settlement
5 Class members’ addresses will be ascertainable through Defendant’s records. Phoenix will also
6 run all addresses through the U.S. Postal Service National Change of Address database and/or
7 perform “skip traces” to obtain current addresses. Settlement, § 13(B) & (F).

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

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

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

20 **V. CONCLUSION**

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

24
25 Dated: November 14, 2024

Respectfully Submitted,
ABRAMSON LABOR GROUP

26 
27 Neil M. Larsen
28 Attorneys for Plaintiff