JUSTICE FOR WORKERS, P.C.
William C. Sung SB# 280792
E-Mail: william@justiceforworkers.com
Tiffany L. Luu SB# 335127
E-Mail: tluu@justiceforworkers.com
9575 Bolsa Avenue
Westminster, CA 92683
Tel: 323-922-2000
Fax: 323-922-2000

Attorneys for Plaintiff AMAYA NELSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

AMAYA NELSON, an individual and on behalf of all others similarly situated; Plaintiff, vs. CLAIR GLOBAL CORP., a Pennsylvania corporation; and DOES 1 through 50, Defendants.	Case No.: 24STCV14597 [Assigned for All Purposes to: Hon. Laura A. Seigle, Dept. 17] **CLASS ACTION** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** (Filed concurrently with Supporting Declarations and [Proposed] Order) DATE: April 24, 2025 TIME: 9:00 a.m. DEPT: 17 Action Filed: June 10, 2024 Trial Date: Not Set

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 24, 2025 at 9:00 a.m. in Department 17 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Amaya Nelson ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;

2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Class defined as follows:

> All current and former non-exempt employees who worked for Defendant Clair Global Corp. within the State of California at any time during the Class Period of June 10, 2020 to April 22, 2025.

3. Preliminary appointment of Plaintiff as Class Representative;

4. Preliminary appointment of William C. Sung and Tiffany L. Luu of Justice for Workers, P.C. as Class Counsel;

5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Service Payment to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys' fees and costs to Class Counsel;

6. Appointment of Phoenix Settlement Administrators as the third-party Administrator for mailing notices and administering the Settlement; and

7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Class as provided in the Settlement Agreement.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of William C. Sung, Tiffany L. Luu, Plaintiff Amaya Nelson, and Jodey Lawrence for Phoenix Settlement Administrators, and the exhibits attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

/ / /

/ / /

DATED: March 14, 2025

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff AYAMA NELSON

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

Federal Cases

Statutes

Regulations and Court Rules

Unpublished Cases

Treatises

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Amaya Nelson ("Plaintiff") brought this wage and hour class and representative action on behalf of a Class of current and former non-exempt employees of Defendant Clair Global Corp. ("Defendant") in California from June 10, 2020 to April 22, 2025 (the "Class Period"). The primary issues in this case pertain to Defendant's alleged failure to provide compliant meal periods, failure to reimburse cellphone expenses, failure to pay overtime and meal period premiums at the regular rate of pay/compensation when Class Members earned two different rates in the same workweek, and failure pay overtime premiums to Class Members who worked on the road. Plaintiff contends Defendant is also liable for inaccurate wage statement penalties, waiting time penalties, and civil penalties under the California Private Attorneys' General Act ("PAGA"). Plaintiff now requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement[1], in which Defendant has agreed to pay the Gross Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents ($450,000.00) to approximately 328 Class Members.

After deducting administration costs, Plaintiff's requested Class Representative Service Payment, the amount set aside as PAGA Penalties, and requested Class Counsel Fees Payment and Litigation Expense Payment, the Net Settlement Amount of approximately $233,750.00 will be distributed to all Class Members who do not opt out of the Settlement based on the proportionate number of Workweeks worked by each Class Member during the Class Period. Employees with standing for PAGA Penalties will receive additional consideration for their release of PAGA claims.

Significantly, all Class Members will automatically receive a payment unless they affirmatively opt-out. There are approximately 328 Class Members, and **the average payment to participating Class Members is projected to be approximately $730.34**. This is an excellent result for Class Members, who will be releasing only those claims alleged or which could have been alleged in the Action. The proposed Settlement is within the range of possible approval in light of

---

[1] The Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Agreement") is attached to the Declaration of William C. Sung as **Exhibit 1**. The proposed Class Notice is attached to the Agreement as **Exhibit A**. All defined terms in this motion have the same definition as that in the Agreement. A redline version of the Agreement based on the Court's template agreement is attached as **Exhibit 2**.

the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by Plaintiff and the Class. For the reasons discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendant operates a live production equipment rental company with locations throughout California. Declaration of William C. Sung ("Sung Decl."), ¶ 9. Defendant employed Plaintiff as a non-exempt employee from approximately July 2022 to approximately August 8, 2024 as a warehouse technician in Valencia, California. Declaration of Amaya Nelson ("Nelson Decl."), ¶ 2.

On March 26, 2024, Plaintiff sent a notice letter under PAGA to the Labor and Workforce Development Agency ("LWDA"). Sung Decl., ¶ 10, **Exhibit 3** (PAGA Notice). On June 10, 2024, Plaintiff commenced this Action by filing a Class and Representative Action Complaint alleging causes of action against Defendant for (1) Meal Period Violations; (2) Wage Statement Penalties; (3) Failure to Reimburse Necessary Business Expenses; (4) Unfair Competition; and (5) Civil Penalties Under the PAGA. Sung Decl., ¶ 11.

On February 25, 2025, with leave of the Court, Plaintiff filed the operative First Amended Class and Representative Complaint ("FAC") adding causes of action for (6) Overtime Wage Violations and (7) Waiting Time Penalties, and adding allegations of first meal period violations. Sung Decl., ¶ 12, **Exhibit 4** (FAC).

B. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Meal Period Violations

Plaintiff contends that Class Members, including Plaintiff, were frequently unable to take compliant meal periods, including second meal periods when they worked over 10 hours in a day. Sung Decl., ¶ 13. Defendant counters that it has maintained compliant written meal period policies throughout the Class Period and has always provided compliant meal periods in line with those policies. *Ibid; see Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040-1041 (holding employers need only "provide" meal periods to employees and are not obligated to "police" meal periods). Defendant further contends that the total meal period non-compliance rate was less than 5% by shift and from October 25, 2021 through August 11, 2024, it paid a total of 5,337 meal period premiums to 247 Class Members, totaling approximately $140,000.00, which supports its defense on meal period compliance. Sung Decl., ¶ 13. Finally, Defendant maintains Plaintiff's meal period claim is not suited for class certification since individual inquiries would be needed to assess which employees, if any, took non-compliant meal periods, how many meal periods were non-compliant, and the reasons why a particular employee did not take a meal period on a particular shift and a meal period premium was not paid. *Ibid.*

2. Failure to Reimburse Necessary Business Expenses

Plaintiff alleges that Class Members, including Plaintiff, were required to use their personal cellphones to clock in and out of their shifts and were not reimbursed for their cellphone expenses. Sung Decl., ¶ 14. Defendant counters that it provided tablets and/or computers in the worksite for Class Members to clock in and out of their shifts and many Class Members, including Plaintiff, voluntarily chose to use their personal cellphones to clock in and out. *Ibid*; *see* Lab. Code § 2802(a) (An employer shall indemnify his or her employee for all "necessary expenditures"). Defendant further contends that any damages are limited because it began reimbursing non-exempt employees for use of their voluntary use of their personal cellphones on July 7, 2024. Sung Decl., ¶ 14. Defendant thus contends that Plaintiff's reimbursement claim is individualized and not suited for class certification since there is no evidence of a common policy or practice of failing to reimburse Class Members and numerous individual inquiries would be needed to assess which Class Members, if any, incurred unreimbursed expenses, how often, and whether the cellphone usage was a necessary expenditure. *Ibid*.

3. Underpaid Wages Due to Regular Rate Violations

Plaintiff contends that Defendant failed to pay all overtime and meal period premium wages owed to Class Members by failing to calculate the regular rate of pay/compensation of dual-rate employees based on the weighted average method. Sung Decl., ¶ 15; *see Gen. Atomics v. Superior Ct.* (2021) 64 Cal.App.5th 987, 996 ("As explained in the DLSE's enforcement manual, 'Where two rates of pay are paid during a workweek, the California method for determining the regular rate of pay for calculating overtime in that workweek mirrors the federal method, based upon the weighted average of all hourly rates paid'") (citing DLSE, The 2002 Update of the DLSE Enforcement Policies and Interpretations Manual (Revised) (Aug. 2019) § 49.2.5; 29 C.F.R. § 778.115 (2019)). Specifically, during the Class Period, some Class Members worked both in the facilities as well as on the road (i.e., managing Defendant's rental equipment at events) and received two different rates: a lower Hourly rate and a higher Road Pay rate. Sung Decl., ¶ 15. Under California law, their regular rate is the weighted average of multiple rates. *Ibid.* However, Defendant utilized instead the "rate-in-effect" method which pays overtime hours worked and meal period premiums incurred on Hourly shifts at the Hourly rate and on Road Pay shifts at the Road Pay rate. *Ibid.* As a result, Class Members were underpaid their overtime and meal period premium wages during some pay periods. *Ibid.*

In response, Defendant contends that it properly utilized the rate-in-effect method when calculating the regular rate for dual-rate Class Members. *Ibid.* Specifically, Defendant argues that California law does not mandate the use of the weighted average method, and where dual rate employees received net greater overtime pay under the rate-in-effect method than they would have received under the weighted average method, the rate-in-effect method may be used. *Ibid.*; *see Levanoff v. Dragas* (2021) 280 Cal.Rptr.3d 610, 614 (review denied and depublished on Sept. 29, 2021). Defendant further contends that, under the rate-in-effect method, it sometimes overpaid Class Members compared to the weighted average method. Sung Decl., ¶ 15. As such, Plaintiff's damages exposure is inflated and Defendant is entitled to an offset. *Ibid.*

4. Failure to Pay Overtime Premiums to Road Staff

Plaintiff alleges that Defendant paid certain Class Members who worked on the road a flat rate regardless of the number of hours worked without payment of overtime premiums, resulting in unpaid overtime to those Class Members. Sung Decl., ¶ 16. In response, Defendant contends that these Class Members traveled and worked at events outside of California and are not subject to the California Labor Code and Wage Orders' requirements on overtime pay. *Ibid.* Defendant further contends that this theory is not suitable for class certification because Plaintiff did not travel outside of California to work on these types of events. *Ibid.*

5. Waiting Time and Wage Statement Penalties

As a result of the unpaid wages and meal period premium wages described above, Plaintiff contends that Defendant failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 203 to former employees and failed to issue accurate itemized wage statements to Class Members as set forth in Labor Code § 226(a). Sung Decl., ¶ 17. Thus, the claims for waiting time and wage statement penalties are derivative of the underlying claims. *Ibid.* Defendant argues that it possesses strong, good faith defenses to Plaintiff's underlying claims and these claims cannot meet the willfulness standard in Labor Code § 203 or the knowing and intentional standard in Labor Code § 226(e). *Ibid*. Notably, Defendant relied on the California Supreme Court decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, which held that an employer's good-faith defenses precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the imposition of statutory penalties. *Ibid.* Defendant further asserts that Plaintiff's waiting time and wage statement penalty exposure was inflated as not every employee experienced the alleged Labor Code violations. *Ibid.*

6. PAGA Civil Penalties

Plaintiff further contends that, as a result of the foregoing Labor Code violations, Defendant is liable for civil penalties under the PAGA. Sung Decl., ¶ 18. Since Plaintiff's PAGA claims are derivative of Plaintiff's underlying wage claims, Defendant asserts the PAGA claim would fail with those claims. *Ibid*; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant further maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. Sung Decl., ¶ 18; *see* Lab. Code § 2699(e)(2) (pre-2024 amendment); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, the Parties engaged in informal discovery. Sung Decl., ¶ 19. Defendant produced (1) a class list with Class Members' employee number, job title, and dates of employment; (2) a random 25% sampling of employee time and payroll records exported on Excel; (3) statistics regarding the amount of meal period premiums paid and cellphone reimbursement paid; (4) various policies and procedural documents, including employee handbooks and relevant policies and procedures; and (4) Plaintiff's personnel records. *Ibid.* The Parties selected the random sampling by sorting Class Members in the class list numerically, and starting with the second employee in the list, selected one out of every four employees in the list. *Ibid.*

Plaintiff submits that a 25% sampling of records is statistically significant and reliable. *Ibid.* The timekeeping data and payroll data produced for mediation were generated from uniform timekeeping and payroll systems, which allowed Plaintiff to extrapolate his findings with confidence. *Ibid.* Class Members worked in similar job positions and were subject to the same wage and hour policies and procedures. *Ibid.* Given these circumstances, the experiences of a subset of employees – the sampling – can be probative as to the experiences of all Class Members. *See e.g., Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence was admissible to prove liability and damages across a class, thereby allowing it to support class certification); *Lubin v. The Wackenhut Corp*. (2016) 5 Cal.App.5th 926, 938 (following *Tyson* and finding that a sampling of class records is probative as to the experience of the entire class).

In preparation for mediation, Plaintiff's counsel engaged and worked with an expert data analyst to conduct a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Defendant to create a detailed exposure analysis for all claims at issue. Sung Decl., ¶ 20. This discovery and analysis allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses. *Ibid.*

On February 6, 2025, the Parties participated in a full-day mediation with Steven Pearl, Esq. a well-respected wage and hour class action mediator. Sung Decl., ¶ 21. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class and PAGA settlement at the mediation. *Ibid*. The Parties then finalized the terms of the Settlement and executed Agreement now before the Court. *Ibid*; *see* Sung Decl., ¶ 21, **Exhibit 1** (Agreement).

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Defendant will pay a Gross Settlement Amount of $450,000.00. Agreement, § 1.22 (Ex. 1 to Sung Decl.). Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Settlement Payments. Agreement, § 3.1. Each Class Member will automatically receive an Individual Settlement Payments unless they affirmatively opt out of the Settlement. Agreement, § 7.5. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount:	$450,000.00
Minus Court-approved attorneys' fees:	$150,000.00
Minus Court-approved verified costs (up to):	$20,000.00
Minus Court-approved Service Payment:	$7,500.00
Minus estimated settlement administration costs:	$7,950.00
Minus amount set aside as PAGA penalties:	$25,000.00
Net Settlement Amount:	$239,550.00
Plus 25% "PAGA Penalties" to Class:	$6,250.00
Total Amount Paid to Class Members:	**$245,800.00**

Sung Decl., ¶ 22.

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Payment to Plaintiff, the amount set aside as PAGA Penalties, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount of at least **$239,550.00** to all Class Members who do not timely opt-out. Agreement, § 3.2. The Net Settlement Amount shall be distributed to participating Class Members as Individual Class Payment, calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Agreement, § 3.2.4. Additionally, $6,250.00 of the Gross Settlement Amount has been designated as Individual PAGA Payments to Aggrieved Employees and shall be distributed to Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) who were employed during the PAGA Period proportionally based on the number of Pay Periods worked during the PAGA Period. Agreement, §§ 3.2.5, 7.5.4. In addition to the Gross Settlement Amount, Defendant is obligated to pay the employer's share of payroll taxes on Individual Class Payments allocated to settlement of wage claims. Agreement, § 3.1.

According to Defendant, there are approximately 328 Class Members. Sung Decl., ¶ 23. Therefore, the average Individual Class Payment from the Net Settlement Amount is projected to be approximately **$730.34**. *Ibid.* There are also approximately 263 Aggrieved Employees during the PAGA Period who will each receive an average of approximately **$23.76** as Individual PAGA Payments. *Ibid.* Class Members will have 45 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Agreement, §§ 1.43, 7.5, 7.3.

Effective on the date when Defendant fully funds the Gross Settlement Amount and Employer Taxes, Participating Class Members will release all claims that were alleged, or reasonably could have been alleged, based on the facts and legal theories contained in the Operative Complaint; and all Aggrieved Employees are deemed to release all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts and theories contained in the Operative Complaint and PAGA Notice. Agreement, §§ 5.2, 5.3.

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

Plaintiff will apply for Class Representative Service Payment at the time of seeking final approval of the proposed class action settlement in the amount of $7,500.00 for Plaintiff's service to the Class. *See* Agreement, § 3.2.1. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested Service Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of Plaintiff's claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case as a current employee of Defendant. *See* Nelson Decl., ¶¶ 4-7.

Class Counsel will also apply for an attorneys' fees award of one-third (33 1/3%) of the Gross Settlement Amount, which is equivalent to $150,000.00, and up to $20,000.00 in verified costs reimbursement. *See* Agreement, § 3.2.2. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Sung Decl., ¶ 24. Class Counsel have incurred substantial attorneys' fees and costs conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, conducting extensive informal discovery, analyzing Class Members' time and payroll records, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Agreement, preparing this Motion, and otherwise litigating the case. *Ibid.* Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Class Notice process and fielding questions from Class Members, preparing the Final Approval papers, and attending the Final Approval hearing. *Ibid.*

California courts recognize that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement*. See, e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the Gross Settlement Amount is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking Final Approval.

Additionally, the parties have agreed to designate $25,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $18,750.00 (75%) will be paid to the LWDA, with the remaining $6,250.00 (25%) for distribution to the Aggrieved Employees, as the pre-July 1, 2024 amendment PAGA requires such penalties to be allocated per Labor Code § 2699(i). Agreement, § 3.2.5. Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

IV. <u>LEGAL ARGUMENT</u>

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlo*n, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

To make a fairness determination, the Court should consider "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

1. The Strength of Plaintiff's Case and Risk, Expense, Complexity, and Duration of Further Litigation

Although Plaintiff maintains that Plaintiff's claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification and ultimately trial, success was far from certain. Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete if the Action did not resolve. Sung Decl., ¶ 25. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Ibid.* Even if Plaintiff were to certify the class, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Ibid.* This Settlement avoids those risks and the accompanying expense. *Ibid.*

Plaintiff has not yet filed a motion for class certification, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Defendant with individual class members by way of *Pick Up Stix*-type[2] settlement agreements), and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick Up Stix* process. Sung Decl., ¶ 26.

---

[2] In *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration.

Thus, this factor, too, supports preliminary approval of the settlement.

2. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Class in the face of disputed claims. Plaintiff conducted a detailed analysis of alleged unpaid wages and meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

Meal Period Violations: **$46,743.23**

Plaintiff contends that Class Members were frequently unable to take compliant meal periods, including second meal periods when they worked over 10 hours in a day. Sung Decl., ¶ 27. Based on Plaintiff's expert's analysis of the sampling time and payroll records, and after accounting for meal period premiums paid, approximately 4.80% of shifts evidence non-compliant meal period punches. *Ibid.* Extrapolating the sampling analysis across the full Class, Plaintiff estimates Defendant's maximum exposure for unpaid meal period premiums as $124,648.63. *Ibid.*

As discussed above, Defendant counters that it provided meal periods consistent with its compliant policies; the sub-5% meal period non-compliance rate and the fact that it paid over 5,300 meal period evidence superior compliance with its obligation to provide (but not police) meal periods; and the meal period claim is not suited for class certification since individual inquiries would predominate. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $46,743.23. *Ibid.*

Failure to Reimburse Business Expenses: **$61,260.58**

Plaintiff alleges that Class Members were required to use their personal cellphone to clock in and out of their shifts and were not reimbursed. Sung Decl., ¶ 28. Estimating a cellphone reimbursement rate of $50 per month per Class Member, Plaintiff estimates Defendant's maximum exposure for unreimbursed business expenses to be $163,361.54. *Ibid.* As discussed above, Defendant contends that it provided computers in the workplace for Class Members to clock in and out of their shifts; Class Members voluntarily chose to use their cellphones to clock in and out; and the reimbursement claim is not suited for class certification since individual inquiries would predominate. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $61,260.58. *Ibid.*

Underpaid Wages Due to Regular Rate Violations: **$38,893.15**

Plaintiff alleges that Defendant failed to pay all overtime and meal period premium wages owed to Class Members by failing to calculate the regular rate of pay/compensation of dual-rate employees based on the weighted average method. Sung Decl., ¶ 29. Based on Plaintiff's expert's analysis, and extrapolated across the Class, Plaintiff's maximum exposure for underpayment of wages totals $69,143.38, broken down as $46,868.63 in underpaid overtime, $9,672.75 in underpaid double time, and $12,601.99 in underpaid meal period premiums. *Ibid.* As discussed above, Defendant contends that it properly utilized the rate-in-effect method to calculate overtime and meal period premium rates; Class Members were some time overpaid wages based on this method as compared to the weighted average method; and Defendant is entitled to an offset. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-certification, and an additional 25% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $38,893.15. *Ibid.*

Failure to Pay Overtime Premiums to Road Staff: **$372,611.84**

Plaintiff alleges that Defendant paid certain Class Members who worked on the road a flat rate regardless of the number of hours worked without payment of overtime premiums, resulting in unpaid overtime to those Class Members. Sung Decl., ¶ 30. Based on Plaintiff's expert's analysis and extrapolated to the Class, Plaintiff estimates Defendant's maximum exposure for unpaid overtime to road staff to be approximately $662,421.04. *Ibid.* In response, Defendant contends that these Class Members traveled and worked at events outside of California and are not subject to the California Labor Code and Wage Orders' requirements on overtime paya and that this theory is not suitable for class certification because Plaintiff did not travel outside of California to work on these types of events. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-certification, and an additional 25% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $372,611.84.

Waiting Time Penalties: **$37,923.48**

As a result of the unpaid wages and meal period premiums described above, Plaintiff contends that Defendant failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 203 to former employees. Sung Decl., ¶ 31. Plaintiff's expert's analysis found approximately 64% of Class Members were impacted by these claims. *Ibid.* There are approximately 44 Class Members who were former employees during the applicable limitations period. *Ibid.* At 64% of the former employees, 8-hour shifts, and an average hourly rate of $30.21, Plaintiff estimates Defendant's maximum exposure for waiting time penalties to be approximately $202,258.57. *Ibid.*

Defendant presented several defenses, including that because they possessed good-faith defenses to the underlying wage claims, any failure to pay wages was not "willful" as a matter of law; Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations; and because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to the underlying claims. *Ibid.* To account for Defendant's defenses, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification and an additional 75% for the risk of losing on the merits and/or not receiving the maximum penalties sought to arrive at an estimated exposure of approximately $37,923.48. *Ibid.*

Wage Statement Penalties: **$39,731.38**

Plaintiff alleges that Defendant is liable for wage statement penalties as a result of the unpaid wages and meal period premiums. Sung Decl., ¶ 32. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. Lab. Code § 226(e). Defendant's data reflected there were approximately 9,234 wage statements issued to Class Members during the limitations period. *Ibid*. At $50 for the first pay period and $100 for each subsequent pay period, Plaintiff estimates Defendant's maximum exposure for wage statement penalties are approximately $211,900.70. *Ibid.*

As discussed above, Defendant presented several defenses, most notably its assertion that because they possessed good-faith defenses to the underlying claims for meal period violations and any failure to pay wages was not "knowing and intentional" as a matter of law and because the wage statement claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to his underlying claims. *Ibid.* To account for Defendant's defenses, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification and an additional 75% for the risk of losing on the merits and/or not receiving the maximum penalties sought to arrive at an estimated exposure of approximately $39,731.38. *Ibid.*

<u>PAGA Penalties:</u> **$159,173.74**

Based on Plaintiff's expert's analysis, Plaintiff estimated a maximum total PAGA penalty exposure of approximately $795,868.68. Sung Decl., ¶ 33; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Defendant disputes vigorously. Sung Decl., ¶ 33*; see e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendant also asserts that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Sung Decl., ¶ 33 *see also Thurman*, 203 Cal.App.4th at 1135 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum figure by 80% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period and to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $159,173.74. Sung Decl., ¶ 33.

<u>Conclusion</u>

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Class would be approximately $$756,337.40. Sung Decl., ¶ 34. The proposed Settlement of $450,000.00 represents approximately 59.50% of the reasonably forecasted recovery for the Class. *Ibid.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class, which is consistent with what Plaintiff's counsel believes could have been recovered had the case proceeded through trial. *Ibid.*

3. 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 *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel. *See* Sung Decl., ¶¶ 2-7; Declaration of Tiffany L. Luu ("Luu Decl."), ¶¶ 2-6; Class Counsel conducted an in-depth review of class records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. Sung Decl., ¶ 21. This factor strongly supports preliminary approval of the Settlement. *See Kullar,* 168 Cal.App.4th at 130.

4. The Preliminary Approval Standard Is Met

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

The proposed Settlement reflects approximately 59.50% of the estimated recovery the Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc*. (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is wellsettled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial"). The average Individual Class Payment of approximately **$730.34** far exceeds average payments achieved in other wage and hour class action settlements.[3] Thus, the proposed settlement is within the range of possible approval, such that notice should be provided to the Class Members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, analyzed extensive sampling time and payroll data, and conducted a detailed damages analysis to arrive at the estimated class-wide damages figures. *See* Sung Decl., ¶¶ 27-35. Thus, this factor supports preliminary approval.

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to the Class. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiff's Class Representative Service Payment, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

---

[3] *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc*., Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately $80); *Doty v. Costco Wholesale Corp*., Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately $60); *Schiller v. David's Bridal, Inc*., Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately $198.70…[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than $90…[T]he Court finds that the results achieved are good"); and *Williams v. Centerplate, Inc*., Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately $108).

B. THE COURT SHOULD CERTIFY THE CLASS

The Class satisfies the criteria for certification of a settlement class under California law because: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Class Members; and (4) Plaintiff and Class Counsel will fairly and adequately represent Class Members' interest. *See* Code Civ. Proc. § 382.

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the Class is defined as all current and former non-exempt employees who worked for Defendant in California during the Class Period. Therefore, Class Members can be identified from Defendant's personnel and employment records. Defendant represents that the Class consists of approximately 328 current and former non-exempt employees. Sung Decl., ¶ 23. It would therefore be impracticable to bring all Class Members before the Court or for each Class Member to bring an individual lawsuit. Thus, the proposed Class satisfies numerosity. *See, e.g., Bowles v. Superior Court* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

The focus in a certification dispute is not on the merits but rather on what types of questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Plaintiff's claims are predicated on, among other issues, Defendant's uniform policy and practice regarding provision of meal periods, regular rate of pay, timekeeping, reimbursements, and provision of wage statements and final wages. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (certifying meal and rest period claims*); Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 324 (certifying exemption misclassification and unpaid overtime claim).

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191

Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the Class Members. First, Defendant employed Plaintiff as non-exempt employee during the Class Period, and Plaintiff was subject to Defendant's wage and hour policies at issue in this case. Nelson Decl., ¶¶ 2-3. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Class as a whole: meal period violations, unpaid overtime, unreimbursed personal cellphone expenses, and derivative statutory and civil penalties. Nelson Decl., ¶ 3. Because Plaintiff has suffered the same injuries as the other members of the Class, the typicality requirement is satisfied.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiff and Plaintiff's counsel will adequately represent the Class, as there are no conflicts between Plaintiff and the proposed Class, and Plaintiff possesses claims that are in line with those of the Class. Sung Decl., ¶ 36; Nelson Decl., ¶ 5; *see McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were 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. *See* Sung Decl., ¶¶ 2-7; Luu Decl., ¶¶ 2-6.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

This Court should order distribution to the Class of the proposed Class Notice by U.S. Mail, postage prepaid using the last known mailing address information provided by Defendant. *See* Agreement, §§ 1.8, 7.4.2, **Exhibit A** (Class Notice). The Class Notice will be distributed in English and Spanish. Agreement, § 1.11. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, the Parties have agreed that the Settlement be administered by Phoenix Settlement Administrators ("Administrator"), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence ("Administrator Decl.") and attached exhibits. Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to the Administrator within 15 days of preliminary approval of the Settlement. Agreement, § 4.2 Within 14 days of receipt of the Class Members' addresses, the Administrator will run the names of all Class Members through the National Change of Address database to update addresses and mail the Class Notice to all Class Members. Agreement, § 7.4.2. To the extent that any notices are returned, the Administrator will perform a "skip trace" to track any Class Member's current mailing address and remail the notice within 3 business days. Agreement, § 7.4.3.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Agreement if they do not opt-out. *See* Agreement, **Exhibit A** (Class Notice). The proposed Class Notice will also notify Class Members of the final approval hearing date and provides the Class contact information for Class Counsel and advises Class Members that they may enter an appearance through counsel if they wish to. *Ibid.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for Final Approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

V. CONCLUSION

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

/ / /

/ / /

/ / /

DATED: March 14, 2025

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff AMAYA NELSON