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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JANNETTE FRAZIER, on behalf of herself and all others similarly situated, Plaintiff, vs. JUSTFOODFORDOGS, LLC.; and DOES 1-100, inclusive, Defendants.	Case No.: 23STCV23085 **CLASS AND PAGA REPRESENTATIVE ACTION** *[Assigned for all purposes to Hon. Carolyn B. Kuhl, Dept. 12]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: October 23, 2025 Time: 10:30 a.m. Dept.: SSC-12 Action Filed: September 25, 2023 Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 23, 2025 at 10:30 a.m., in Department SSC-12 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Janette Frazier ("Plaintiff") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiff and Defendant JustFoodForDogs, LLC ("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 Defendant JustFoodForDogs, LLC ("Defendant") in California at any time from September 25, 2019 until the date of Preliminary Approval (the "Class Period"), who did not otherwise accept a release agreement from Defendant which released their Class claims in this Action.**
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment 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 Kevin Lee 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: August 11, 2025

Respectfully Submitted,
ABRAMSON LABOR GROUP
Neil Larsen
Neil M. Larsen
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jannette Frazier ("Plaintiff") seeks preliminary approval of a class action and PAGA settlement agreement ("Settlement") with Defendant JustFoodForDogs, LLC ("Defendant") (together with Plaintiff, the "Parties"). The Settlement resolves a class and representative action pending before this Court (the "Action"), in which Plaintiff alleges that Defendant failed to incorporate bonuses and other payments into the "regular rate," resulting in underpaid overtime, meal period premiums, and sick pay; failed to provide all meal periods; failed to authorize and permit all rest periods; and failed to reimburse employees for business expenses. Plaintiff further alleges that as a result of these violations, Defendant failed to issue accurate itemized wage statements, failed to pay all wages on termination of employment, and is liable for civil penalties under the Private Attorneys General act ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action Settlement,[1] in which Defendant has agreed to pay $500,000.00 to the following Settlement Class, which is estimated to consist of 737 individuals:

All current and former non-exempt employees who worked for Defendant JustFoodForDogs, LLC ("Defendant") in California at any time from September 25, 2019 until the date of Preliminary Approval (the "Class Period"), who did not otherwise accept a release agreement from Defendant which released their Class claims in this Action.

The Settlement was reached after the parties engaged in mediation with Kelly A. Knight, Esq., an experienced and respected wage and hour class action mediator. In connection with mediation, Defendant provided Plaintiff with extensive informal discovery, including: (1) approximately 962 of 1,021 putative class's employees' timekeeping records in excel format for the time period January 1, 2021 to July 31, 2024, and payroll records in excel format for all putative class members for the time period December 29, 2018 to July 6, 2024; (2) an anonymized Class List that included Class Member's hire dates, terminate dates (if applicable), and job titles; (3) Plaintiff's wage statements; (4) documents contained in Plaintiff's Personnel File; and (5)

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

Defendant's Employee Handbooks dated December 2021 and January 2023, which include all of Defendant's relevant wage and hour policies in effect during the entirety of the Class Period. After extensive research and investigation, including a detailed analysis of Defendant's potential exposure made with the assistance of an expert data analyst (Berger Consulting Group), the mediation session was held with Mr. Knight on September 5, 2024. The Parties did not reach a resolution at mediation, but they continued their negotiations and, with the mediator's assistance, eventually reached a settlement in principle. Over the following months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement.

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 JustFoodForDogs, LLC ("Defendant") is a fresh pet food retailer in California. *See* Declaration of Neil M. Larsen ("Larsen Decl."), ¶ 7. Plaintiff worked for Defendant as a non-exempt employee from approximately February 2022 until January 2023. *Id*.

On September 25, 2023, Plaintiff, through my office, filed a Class Action Complaint alleging causes of action against Defendant for: (1) minimum wage violations (Labor Code Sections 204, 558, 1182.12, 1194, 1194.2, 1197, 1198); (2) failure to pay overtime wages (Labor Code Sections 204, 510, 558, 1194, 1198); (3) meal period violations (Labor Code Sections 226.7, 512, 1198); (4) rest period violations (Labor Code Sections 226.7, 516, 1198); (5) wage statement violations (Labor Code Section 226, et seq.); (6) waiting time penalties (Labor Code Sections 201-203); (7) failure to reimburse business expenses (Labor Code Sections 2802, 2804); and (8) unfair competition (Business & Professions Code Section 17200, *et seq*.). Larsen Decl., ¶ 8.

On November 27, 2023, Plaintiff filed a First Amended Complaint adding a claim for PAGA civil penalties (Labor Code Section 2698, et seq.) against Defendant. *Id*., ¶ 9.

On July 30, 2025, the Court granted Plaintiff leave to file a Second Amended Complaint ("SAC") to add a claim for: (1) failure to pay California Paid Sick Leave Labor Code Sections 245 *et seq*., and (2) failure to maintain accurate and complete records Labor Code Section 1174 and 1174.5. *Id*., ¶ 10. On July 31, 2025, Plaintiff filed the operative SAC.

B. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Underpaid Wages - Regular Rate

Plaintiff alleges that Defendant miscalculated Plaintiff's and other employees' "regular rate" of pay, which resulted in an underpayment of overtime wages. Larsen Decl., ¶ 11. Specifically, Plaintiff alleges that Defendant failed to include non-discretionary bonuses and/or other remuneration that it is not excludable from the regular rate when calculating overtime wages. *See Alvarado v. Dart Container Corp. of Calif*., 4 Cal.5th 542, 544 (2018) ("Not all employees earn at a fixed pay rate throughout a pay period, and therefore regular rate of pay is a weighted average reflecting work done at varying times, under varying circumstances, and at varying rates.") (emphasis in original) (citing to DLSE Enforcement Manual § 49.2.5). *Id*.

Defendant contends that the bonus payments in question were discretionary, were not tied to the quantity or quality of work performed and were therefore excludable from the regular rate. *See* 29 C.F.R. §§ 778.208, 778.211 (excluding "discretionary" bonuses from regular rate). Defendant argues that other payments in question were a "bona fide plan" excludable from the regular rate pursuant to 29 C.F.R. § 778.215(a)(5). Defendant further argues that any overtime under-payments were *de minimis* and not recoverable. Larsen Decl., ¶ 11. Defendant also maintains that employees received different types of remuneration throughout the Class Period, thus creating substantive differences among the putative class members with respect to the payments received as well as the expectations regarding those payments, making class certification unlikely. *Id*. Defendant further argued that Plaintiff will be unable to establish that any violation was willful and, accordingly, no penalties will be available in connection with this claim.

2. Underpaid Wages – Off The Clock

Plaintiff alleges that Defendant failed to pay her and other employees for all hours worked. Larsen Decl., ¶ 12. Specifically, Plaintiff alleges that she and other employees were frequently underpaid by approximately 15 minutes per shift, as Defendant allegedly required Plaintiff and other employees to arrive 15 minutes early to complete pre-shift duties, such as opening the registers, turning off the store alarms, and other store opening tasks. *Id*.

Defendant contends that it pays employees for all hours worked, that employees are not authorized or required to work off the clock. *Id*. Defendant further argues that this claim would not be certified, as it would require individual inquiries into each unique event and each employee, as to whether the employee worked off the clock, how much time was worked, and whether such work was reported to Defendant. *Id*. Defendant further argued that there is no evidence of a corporate-wide directive that pushed supervisors to demand off-the-clock work. Defendant argued that, to the contrary, Defendant's Employee Handbook directs that "**Under no circumstances are employees permitted or required to work off the clock** (*i.e.*, without recording the time worked) (bold in original)" and expressly provides that even where employees work unauthorized overtime, they still "will be paid for all hours worked." Thus, Defendant argued that Plaintiff's contention that she worked off-the-clock, even if true, occurred in direct violation of JFFD's policies.

3. <u>Meal Period Claim</u>

Plaintiff alleges that she and other non-exempt employees were not provided with all required meal periods. Larsen Decl., ¶ 13. Defendant argues that it has maintained legally-compliant meal period policies and practices throughout the Class Period, and that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure" they are taken. Larsen Decl., ¶ 13; *see also Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting "ensure" standard). Defendant further argues that, throughout the relevant time period, it automatically paid thousands of premiums for missed, shortened, or late meal periods, and that the maximum potential rate of non-compliance in a mere ***2.6 percent*** of meal eligible shifts. *Id*. Defendant additionally argues that individualized inquiries would be required to determine whether individual employees, in different job positions and under different managers, did not take meal period on each individual shift, and why any meal period was missed, thereby precluding certification of this claim. *Id.*

4. <u>Rest Period Claim</u>

Plaintiff alleges that Defendant failed to authorize and permit legally compliant rest periods. Larsen Decl., ¶ 14; *Brinker*, 53 Cal.4th at 1028-32 (discussing rest period requirements). Defendant argues it has always maintained legally compliant rest period policies, and that, in practice, it has always authorized and permitted all required rest periods to non-exempt employees; that it informs employees of their right to rest periods; and that any failure to take a rest period is the result of employee choice rather than any policy or practice of Defendant. *Id*. Defendant further argues that managers strictly complied with both meal and rest break policies, and were expected to and did post daily schedules that included breaks. Defendant argues this claim is not amenable to class treatment as individualized inquiries would be required to determine whether individual employees in different job positions and under different supervisors were in fact authorized and permitted to take rest periods on any given shift, under various supervisors and time periods, thus precluding class certification. *Id*. These manageability concerns are particularly present with respect to rest periods, Defendant contends, since rest periods are not (and need not be) recorded. *Id*.

5. <u>Claim for Failure to Reimburse Business Expenses</u>

Plaintiff alleges that Defendant failed to indemnify her and other employees for the use of their personal cell phones for work purposes, including to clock-in and clock-out of shifts, and to communicate with managers and supervisors. Larsen Decl., ¶ 15. Defendant contends that its non-exempt employees are not required to use their personal cell phones in connection with their job duties, and that if they actually did, there are procedures in place for employees to request reimbursement of work-related expenses. *Id*. Defendant also contends that employees are provided with any equipment necessary to perform their job duties. *Id*. Defendant further contends that this claim would not be certified, as it would require hundreds of individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, whether Defendant knew (or reasonably should have known) about the expense, and whether the expense was "necessary" under the circumstances. *See Gattuso v. Hart-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices."); *Grissom v. Vons Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991) (under § 2802, "ascertaining what was a necessary expenditure will require an inquiry into what was reasonable under the circumstances").

6. Claims Under Lab. Code §§ 203, 226, and the PAGA

As a result of its alleged failure to pay all overtime wages, as well as its alleged failure to provide all meal and rest periods, Plaintiff asserts that Defendant failed to comply with its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. Larsen Decl., ¶ 16. Finally, Plaintiff seeks civil penalties under the PAGA based on the aforementioned claims. *Id*.

Defendant argues that Plaintiff's derivative claims fail for the same reasons her underlying claims fail. Defendant further asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties). Defendant further contends that any alleged wage statement violations were not "knowing and intentional," particularly given its good-faith defenses; that Plaintiff cannot show she or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e); and that employee wage statements always accurately reflect amounts *paid* to employees. Larsen Decl., ¶ 17; *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) ("The purpose of section 226 is to '*document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

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

C. DISCOVERY AND MEDIATION

Prior to mediation, the Parties engaged in extensive informal discovery. Defendant provided Plaintiff’s counsel with several data points, including the number of class members, workweeks worked, average rate of pay, and other relevant metrics. Defendant also produced: (1) approximately 962 of 1,021 putative class’s employees’ timekeeping records in excel format for the time period January 1, 2021 to July 31, 2024, and payroll records in excel format for all putative class members for the time period December 29, 2018 to July 6, 2024; (2) an anonymized Class List that included Class Member’s hire dates, terminate dates (if applicable), and job titles; (3) Plaintiff’s wage statements; (4) documents contained in Plaintiff’s Personnel File; and (5) Defendant’s Employee Handbooks dated December 2021 and January 2023, which include all of Defendant’s relevant wage and hour policies in effect during the entirety of the Class Period. Larsen Decl., ¶ 18. Plaintiff’s counsel hired an expert data analyst (Berger Consulting Group) to analyze and extrapolate the data produced by Defendant. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims and Defendant’s defenses, as well as the chances for class certification. *Id*.

The Parties attended a mediation with Kelly A. Knight, Esq. on September 4, 2024. At the mediation, the Parties vigorously debated Plaintiff’s claims and Defendant’s defenses, the potential value of Plaintiff’s claims, and the chances of certification. The Parties did not reach a resolution at mediation. Larsen Decl., ¶ 19. However, the Parties continued their negotiations with Mr. Knight’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*.

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III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Defendant will pay a non-reversionary Gross Settlement Amount ("GSA") of $500,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	$500,000.00
• Minus Court-approved attorneys' fees (one-third):	$166,666.67
• Minus Court-approved costs (up to):	$25,000.00
• Minus Court-approved Service Payment:	$7,500.00
• Minus Amount Set Aside as PAGA penalties:	$50,000.00
• Minus estimated settlement administration costs:	$11,500.00
Net Settlement Amount ("NSA"):	**$239,333.33**
PLUS 25% of PAGA penalties ("PAGA Amount"):	$12,500.00
Total Amount Paid to Settlement Class:	**$251,833.33**

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for attorney fees, litigation costs, Plaintiff's Class Representative Service Payment, PAGA penalties, and administration costs, the Settlement provides for distribution of approximately $239,333.33 to be paid to the Settlement Class. *See* Settlement, §§ 1.28, 3.1, 3.2.1-3.2.5. Defendant represents that there are approximately 737 Settlement Class members. Thus, the average Settlement Award is estimated to be $324.74. Larsen Decl., ¶ 21.

The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class members who do not opt out of the Settlement) as follows: The NSA will be distributed to all Participating Class Members based on each Participating Class Member's proportional number of workweeks worked for Defendant during the Class Period. *See* Settlement, §§ 1.9, 1.23, 1.28. The Settlement Administrator will calculate each Participating Class Member's payment from the NSA by multiplying the NSA by a fraction, the numerator of which is the participating Class Member's number of workweeks, and the denominator of which is the total workweeks worked by all Participating Class Members. *Id.* In addition, all Settlement Class members (regardless whether they opt out) who were employed by Defendant in California at any time between September 22, 2022 to the date of Preliminary Approval of the Settlement (the "PAGA Period"), will receive a portion of the $12,500 PAGA Amount, based on their proportionate number of pay periods worked during the PAGA Period. *See* Settlement, §§ 1.24, 1.30.

Payments from the NSA will be treated as one-third wages reported on a Form W-2, with the remaining two-thirds treated as interest and penalties and reported on a Form 1099. *See* Settlement, § 3.2.4.1. 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*, § 3.2.5.2.

Settlement Class members will have 60 days from the Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing ample time to review the Notice without unduly delaying the Settlement. *See* Settlement, § 1.43, 7.4.4.

Participating Class Members will be bound by the Settlement and will release all claims that were alleged in the Action, or that could have been pled based on the facts alleged in the Action, during the Class Period ("Released Class Claims"). *See* Settlement, §§ 1.39, 5.2.

In addition, all Aggrieved Employee (regardless whether they opt-out from the Class Action portion of the Settlement) 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"). *See* Settlement, § 1.40, 5.3.

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 $7,500. *See* Settlement, §§ 1.14, 3.2.1. "[I]ncentive awards are fairly typical in class action cases…and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010).

As will be fully briefed at final approval, Plaintiff's requested payment is in recognition of the time and effort she expended on behalf of the Settlement Class, including providing factual information and documents to counsel, discussing with counsel the claims and theories at issue in the litigation, reviewing Defendant's written discovery requests, responding to Defendant's written discovery requests, reviewing Defendant's written discovery responses, reviewing the settlement agreement, and otherwise actively participating in the prosecution of this case, as well as her general release of claims and waiver of Civil Code § 1542. *See* Settlement, §§ 3.2.1, 5.1; Frazier Decl., ¶¶ 4-6; Larsen Decl., ¶ 33. Plaintiff respectfully submits that the requested payment is well within the range of approval. *See, e.g., Bellinghausen v. Tractor Supply Company,* 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving $15,000 payment to named plaintiff from wage and hour class action settlement, including $10,000 incentive payment and additional $5,000 for his general release, where payments to class members averaged just over $450); *Martinez v. Knight Transportation*, No. 1:16-cv-01730, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (approving $10,000 award to plaintiff in $400,000 wage and hour class action settlement where payments to class members averaged about $127).

The parties have also designated $50,000 of the GSA as PAGA penalties, of which $37,500 (75%) will be paid to the LWDA, with the remaining $12,500 (25%) distributed to Settlement Class members (*see* Settlement, §§ 1.34, 3.2.5), consistent with the PAGA's requirement that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of $7,500 to LWDA from $6.9 million settlement); *Hudson v. Libre Technology, Inc.*, No. 3:18-cv-1371-GPC, 2020 WL 2467060 at *8 (S.D. Cal. May 13, 2020) (approving $21,250 PAGA payment from $425,000 settlement).

At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the GSA (currently estimated at $166,666.67), and up to $25,000 in litigation costs. *See* Settlement, §§ 1.7, 3.2.2. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel have incurred substantial attorneys' fees conducting pre-filing investigation and legal research; analyzing timekeeping, payroll, and other data with Plaintiff's data expert (Berger Consulting Group) to create a comprehensive damages model; preparing for and attending mediation; negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Larsen Decl., ¶ 32. Counsel will also incur future attorneys' fees in overseeing the Notice process, fielding phone calls from Settlement

Class members, preparing the Final Approval Motion, and appearing at the Final Approval Hearing. *Id*.

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

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

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

1. Standard for Preliminary Approval

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

a. The Strength of Plaintiff's Case

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

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

The Parties engaged in significant formal and informal discovery. Larsen Decl., ¶ 34. However, the Parties still had much formal discovery remaining and Plaintiff still had to file for class certification. *Id*. Even if Plaintiff obtained certification, the Parties would incur considerable fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id*. The Settlement avoids those risks and the accompanying expense.

c. Risk of Maintaining Class Action Status

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

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class for disputed claims. As detailed in the 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 her claims had a realistic potential value of approximately $614,886. Larsen Decl., ¶¶ 22-31. The proposed settlement of $500,000.00 therefore represents about 83.3% of Plaintiff's reasonably forecasted classwide recovery. Larsen Decl., ¶ 31. As noted above, payments under the Settlement will average $324.74. Preliminary approval is appropriate as the Settlement will provide significant monetary relief to the Settlement Class.

e. <u>The Experience and Views of Counsel</u>

"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 has extensive experience litigating wage and hour class actions, and has been appointed class counsel in numerous cases alleging similar claims. *See* Declaration of Neil M. Larsen, ¶¶ 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., ¶¶ 6, 18, 22-30. The Settlement was also reached after a mediation session with Kelly A. Knight, Esq., an experienced and well-respected wage and hour class action mediator. *Id.*, ¶ 19. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

2. <u>The Preliminary Approval Standard Is Met</u>

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

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

As noted, the Settlement reflects about 83.3% of the realistic estimated recovery on Plaintiff's claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

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

The Settlement resulted from an exchange of substantial information, arm's-length negotiations, mediation with an experienced mediator, and months of additional negotiations.

Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the relevant data and information. Larsen Decl., ¶¶ 22-31. The Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

c. The Settlement Is Devoid of Obvious Deficiencies

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

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

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

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked for Defendant in California during the Class Period, and thus can be readily identified from Defendant's records. Defendant represents there are about 737 Settlement Class members, rendering it impracticable to bring them all before the Court. Numerosity is therefore satisfied.

2. Common Issues of Law and Fact Predominate

The focus on certification is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated primarily on Defendant's allegedly unlawful failure to include bonuses and other payments in the "regular rate" and allegedly unlawful meal and rest period policies/practices. Such claims are commonly held proper for class certification. *See, e.g., Carlino v. CHG Medical Staffing, Inc.,* No. 1:17-cv-01323-DAD-JLT, 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v.*

Telecom Network Specialists, Inc. 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Named Plaintiff's Claims Are Typical

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

4. Plaintiff and Class Counsel Will Adequately Represent the Class

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

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

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

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

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

V. CONCLUSION

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

Respectfully submitted,

Dated: August 11, 2025

ABRAMSON LABOR GROUP

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