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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

KAREN SAN JUAN, an individual, and
ARGELIA B. REYES SAN JUAN, an
individual, on behalf of themselves and all
others similarly situated,

Plaintiff,

v.

SAN MARCOS GROWERS, a California
Corporation; and DOES 1 through 20, inclusive,

Defendants.

CASE NO.: 56-2020-00542257-CU-OE-VTA

Assigned to Hon. Matthew P. Guasco

CLASS ACTION

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
DECLARATIONS IN SUPPORT
THEREOF; [PROPOSED] ORDER**

Reservation No.: 2549569

HEARING INFO

Date: April 12, 2021

Time: 8:30 a.m.

Dept.: 20

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 12, 2021, at 8:3 a.m. or as soon thereafter as the matter may be heard by the Honorable Matthew P. Guasco in Department 20 of the Ventura County Superior Court, located at 800 S. Victoria Ave., Ventura, California 93009, Plaintiffs Karen San Juan and Argelia B. Reyes, individually and on behalf of all others similarly situated, will and hereby do move the Court for entry of an Order preliminarily approving the Parties' Stipulated Settlement Agreement and Release of Claims ("Settlement Agreement" and/or "Settlement"), including:

1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiffs Karen San Juan and Argelia B. Reyes as Class Representatives for purposes of settlement only;
3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Jonathan Melmed of Melmed Law Group, P.C. as Class Counsel for purposes of settlement only;
4. Preliminarily approving the class action Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Notice Packet, including notice of the opportunity to exclude oneself from, or object to, the Settlement;
6. Setting a date for a final fairness hearing to determine, following dissemination of the Notice Packet, whether to grant final approval of the Settlement.

This motion is based upon this Memorandum of Points and Authorities in support thereof; the Declarations of Mehrdad Bokhour, Jonathan Melmed, Karen San Juan, and Argelia B. Reyes San Juan in support thereof; the Settlement Agreement; the proposed Order granting Preliminary Approval of the Class Action Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: March 18, 2021

BOKHOUR LAW GROUP, P.C.

/s/ Mehrdad Bokhour

BY: _____

Mehrdad Bokhour, Esq.

Attorneys for Plaintiffs and the Putative Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiffs Karen San Juan and Argelia B. Reyes (collectively
4 “Plaintiffs”), individually and on behalf of all others similarly situated, seek preliminary
5 approval of a \$300,000 wage-and-hour class action settlement (the “Settlement Amount”)
6 between the Settlement Class Members and Defendant San Marcos Growers (“Defendant”).

7 Plaintiffs seek to represent a class of similarly situated current and former non-exempt
8 employees employed by Defendant San Marcos Growers, Inc. at any time from June 10, 2016,
9 through December 31, 2020. (the “Class Period”).

10 The Stipulated Settlement Agreement and Release of Claims is attached as Exhibit “A”
11 to the Declaration of Mehrdad Bokhour (“Bokhour Decl.”) submitted herewith, and is hereinafter
12 referred to as the “Settlement Agreement” or the “Settlement” The proposed class Notice Packet
13 is attached to the Bokhour Declaration as Exhibit “B.”

14 Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsels’
15 application for a reasonable award of Attorney’s Fees not to exceed one third of the Settlement
16 Amount, Class Counsels’ litigation Costs not to exceed \$12,000.00, Settlement Administration
17 Costs not to exceed \$10,000.00, PAGA penalties of \$5,000.00 (of which \$3,750 or 75% will be
18 paid to the LWDA and the remaining \$1,250.00 or 25% will be paid to the Settlement Class
19 Members), and Service Awards not to exceed \$10,000.00 to each of the named Plaintiffs. (S.A.
¶ 44(a)-(h)), as follows:

	Total Amount
<i>Settlement Amount</i>	\$300,000.00
Attorneys’ Fees (33.33%)	\$100,000.00
Litigation Costs (not to exceed)	\$12,000.00
Administrator Costs (not to exceed)	\$5,000.00
PAGA payment to LWDA (75% of 5k award)	\$3,750.00
Plaintiffs’ Service Awards (not to exceed 10k each)	\$20,000.00
<i>Net Settlement Amount</i>	\$159,250.00

25 (Bokhour Decl. ¶ 7.)

26 The Settlement Class includes approximately 74 non-exempt employees who all work
27 and/or worked for Defendant San Marcos Growers in California during the Class Period.
28 Regardless of their roles, all non-exempt employees worked under the same workplace policies

1 and scheduling practices, and therefore, the Individual Settlement Amounts will be paid on a pro-
2 rata basis based on the number of Weeks Worked during the Class Period. Assuming a total class
3 size of 74 Settlement Class Members, the average payment to each Settlement Class Member will
4 be approximately \$2,152. Of course, those with more Weeks Worked stand to recover
5 proportionally more. (Bokhour Decl. ¶ 8.)

6 The Settlement is non-reversionary and Settlement Class Members will not be required to
7 submit claim forms to receive payment, but each Settlement Class Member will receive the Notice
8 Packet containing information about his/her share, the opportunity to dispute the number of
9 Weeks Worked by the Settlement Class Member, and the opportunity to opt-out or object to the
10 Settlement. All Settlement Class Members who do not affirmatively opt-out will receive a
11 settlement check upon the Court granting final approval. (Bokhour Decl. ¶ 9.)

12 Because the Settlement is fair and reasonable and was negotiated at arm's length by
13 experienced counsel and an experienced mediator following a sufficient exchange of information
14 and documents in advance of mediation, it should be preliminarily approved. Plaintiffs
15 respectfully request that the Court enter an order preliminarily approving the Settlement,
16 conditionally certifying the Settlement Class under Code of Civil Procedure § 382 for settlement
17 purposes, approving the proposed Notice Packet, appointing Plaintiffs' counsel as Class Counsel,
18 appointing Simpluris as the Settlement Administrator, and scheduling a hearing for the final
19 approval of the Settlement. (Bokhour Decl. ¶ 10)

20 **II. BACKGROUND**

21 **A. THE PARTIES AND THE PROPOSED SETTLEMENT CLASS**

22 Defendant is a wholesale plant nursery headquartered in Santa Barbara, California.
23 Defendant sells its products to retail nurseries and landscape professionals throughout California.
24 Plaintiffs and the Settlement Class Members worked for Defendant as non-exempt employees
25 during the Class Period. The putative Class consists of:

26 current and former non-exempt employees employed by Defendant
27 San Marcos Growers, Inc. at any time from June 10, 2016, through
28 December 31, 2020. (S.A. ¶¶ 5, 34).

1 **B. PROCEDURAL HISTORY**

2 On June 10, 2020, Plaintiffs filed their Class Action Complaint against Defendant in the
3 Ventura Superior Court. Approximately 65 days after filing their Private Attorneys General Act
4 (“PAGA”) Notice with the Labor and Workforce Development Agency (“LWDA”), Plaintiffs
5 amended their complaint to add a claim for civil penalties under PAGA. (“Operative Complaint”)
6 (Bokhour Decl. ¶ 12.)

7 The claims alleged in the Operative Complaint include (a) failure to pay overtime wages,
8 (b) failure to provide meal periods, (c) failure to provide rest breaks, (d) failure to provide accurate
9 itemized wage statements, (e) failure to reimburse business expenses, (f) failure to timely pay
10 final wages pursuant to Labor Code §§ 201 – 203, (g) failure to timely pay wages, (h) unfair and
11 unlawful competition, and (i) civil penalties under PAGA. San Marcos Growers, Inc. filed an
12 Answer on September 2, 2020. (*Id.*)

13 Defendant retained counsel, denied the allegations, and vowed to vigorously defend
14 against it. However, before engaging in protracted litigation, the Parties agreed to explore
15 resolution through private mediation. In preparation for mediation, the Parties agreed to an
16 informal discovery process where information was exchanged relating to the applicable policies
17 and procedures, substantial payroll and time keeping records, size of the class, compensation
18 policies and practices, and potential value of the case. The sampling enabled Plaintiffs’ counsel
19 and its expert to fully evaluate the potential claims and extrapolate the data to the entire Settlement
20 Class. During this process, Plaintiffs and their counsel analyzed, researched, and investigated the
21 potential claims of all similarly situated employees. (Bokhour Decl. ¶ 13.)

22 On December 2, 2020, Plaintiffs and Defendant participated in private mediation before
23 Bruce Friedman, Esq., who is an experienced class action mediator in California. After a full-
24 day mediation, the Parties reached a Settlement and then memorialized the terms of the Settlement
25 in a long-form Settlement Agreement. (Bokhour Decl., ¶ 14, Exhibit “A”)

26 The Parties now seek the Court’s preliminary approval of the Settlement.

27 ///

28 ///

1 **C. SUMMARY OF PLAINTIFFS' CLAIMS**

2 Plaintiffs allege numerous wage and hour violations on behalf of the non-exempt
3 employees who worked at Defendant's facility during the Class Period. (Bokhour Decl. ¶ 15.)

4 First, Plaintiffs allege they, along with the Settlement Class were not compensated for all
5 overtime and/or double-time hours worked. (*Id.*)

6 Second, Plaintiffs allege that they, along with the Settlement Class were not provided
7 timely compliant meal periods and were not provided with a one-hour wage premium pursuant to
8 Labor Code § 226.7 on each such occasion. Specifically, Defendant maintained an unlawful
9 policy and/or practice that required Plaintiffs and the Settlement Class to work shifts over 5 hours
10 and shifts over 10 hours without receiving timely, off-duty, and/or otherwise compliant meal
11 periods. (*Id.*)

12 Next, Plaintiffs alleges that Plaintiffs and the Settlement Class were not provided with
13 complaint rest periods and were not provided with a one-hour wage premium pursuant to Labor
14 Code § 226.7 on each such occasion. Plaintiffs allege that Defendant's regularly required
15 Settlement Class Members to work through their rest periods. (Bokhour Decl. ¶ 16.)

16 Plaintiffs allege that Defendant does not maintain an expense reimbursement policy and/or
17 practice stated that Defendant will affirmatively reimburse Plaintiffs and the Settlement Class for
18 a reasonable portion of their monthly personal cell phone bills and other expenses necessarily
19 incurred in the discharge of their duties. (*Id.*)

20 Finally, Plaintiffs allege that Defendant failed to provide accurate itemized wage
21 statements, failed to provide timely pay upon separation of employment, and alleged various
22 PAGA claims arising out of the alleged labor code violations. (Bokhour Decl. ¶ 17)

23 **D. SUMMARY OF DEFENDANT'S DEFENSES**

24 Defendant contested and denied each of Plaintiffs' material allegations on the merits and
25 as to the propriety of the class and representative action.

26 First, Defendant argued that its overtime policies did not result in any underpayments and
27 that it paid Class Members for all hours worked. Defendant also argued that its meal and rest
28 period policies were compliant with California law, that it provided and made available 30-minute

meal and 10 minute rest breaks to all employees, and that employees did in fact take their required meal and rest periods. (Bokhour Decl. ¶ 18.)

As it pertains to Plaintiff's rest period claims, Defendant argued that it was permitted, and authorized rest breaks and employees were allowed to leave the premises.

Further, Defendant argued that claims for wage statements, waiting time penalties and PAGA penalties were derivative of other claims, which it argued have no merit. Defendant further contended that Plaintiffs' waiting time penalty and wage statement claims based on the underlying meal and rest period violations were unfounded based on the recent authority in *Naranjo, et al. v. Spectrum Security Services, Inc.* (2019) No. B256232, holding that "Labor Code section 226.7 actions do not entitle employees to pursue the derivative penalties in section 203 and 226." (Bokhour Decl. ¶¶ 19-20).

Defendant also contended that Plaintiffs' claims were not suitable for class certification because individual inquiries would be required to establish, amongst other things, which employees, if any, took meal periods of less than 30-minutes and why a particular employee received a meal period of less than 30-minutes on a particular shift. (Bokhour Decl. ¶ 21).

III. SUMMARY OF THE PROPOSED SETTLEMENT

The following is a summary of the principal terms of the Settlement Agreement.

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The \$300,000 Settlement Amount is non-reversionary and will be paid out to Settlement Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiffs' Attorneys' Fees and Costs, as approved by the Court; (2) Service Awards of \$10,000.00 to each of the named Plaintiffs, as approved by the Court; (3) Settlement Administration Costs, not to exceed \$5,000.00; as approved by the Court (4) a \$5,000.00 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 44.)

After all Court-approved deductions from the Settlement Amount, it is estimated that \$159,250.00 will be available to pay the Individual Settlement Amounts to approximately 74

1 Settlement Class Members. As noted above, the average Individual Settlement Amount to
2 Settlement Class Members is approximately \$2,152 each, which is a fair and reasonable recovery.
3 (Bokhour Decl. ¶ 7)

4 **B. NOTICE PROCEDURES**

5 The proposed Notice Packet will be provided to the Settlement Class Members showing
6 the estimated amount that each Settlement Class Member will receive and the number of Weeks
7 Worked and for which he/she will be credited (Exhibit “B” to the Bokhour Decl.). Within 10
8 days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the
9 Settlement Administrator with a list of all Settlement Class Members containing names, social
10 security numbers, dates of employment, last-known addresses, phone numbers and Weeks
11 Worked (the “Class Data”). (S.A. ¶¶ 4, 57).

12 Within 10 days after receipt of the Class Data, the Settlement Administrator shall calculate
13 the number of Weeks Worked for each Settlement Class Member, populate the Notice Packet,
14 and send each Settlement Class Member the Notice Packet via first-class, United States mail, in
15 English and Spanish. (S.A. ¶ 58).

16 In the event that any Notice Packet mailed to a Settlement Class Member is returned as
17 having been undelivered by the U.S. Postal Service, the Settlement Administrator shall use
18 standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class
19 Members if any envelopes are returned. (S.A. ¶ 58).

20 **C. EXCLUSION AND OBJECTION PROCEDURES**

21 Settlement Class Members who do not timely Opt-Out of the Settlement will be deemed
22 to participate in the Settlement and shall become Participating Class Members without having to
23 submit a claim form or take any other action. The Notice Packet shall inform the Settlement Class
24 Members of their right to Opt-Out of the Settlement. To do so, the Settlement Class Member
25 must submit a written request to the Settlement Administrator no later than 45 days after being
26 mailed the Notice Packet by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶
27 18). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be invalid.
28

1 The Notice Packet shall inform the Settlement Class Members of their right to object to
2 the Settlement. Any Settlement Class Member who wishes to object to the Settlement must
3 submit a written objection to the Settlement Administrator no later than the Notice Response
4 Deadline. The objection must include the full name, address, telephone number, dates of
5 employment with Defendant of the Objecting Settlement Class Member, the case name and
6 number, the basis for the objection, including any legal support and each specific reason in
7 support of the objection, as well as any documentation or evidence in support thereof, and, if the
8 Objecting Settlement Class Member is represented by counsel, the name and address of his or her
9 counsel. (S.A. ¶ 62(c)).

10 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

11 The Individual Settlement Amount for each Settlement Class Member will be calculated
12 by the Settlement Administrator using the Class Data provided by Defendant as follows.
13 Compensable workweeks will be all Weeks Worked by the Settlement Class Members during the
14 Class Period. The dollars per compensable workweek will be calculated by dividing the total
15 Weeks Worked by Settlement Class Members into the Net Settlement Amount to determine a per
16 workweek value (“Workweek Value”). The Workweek Value will be multiplied by the number
17 of Weeks Worked by each Participating Class Member during the Class Period to determine the
18 distribution, prior to legal deductions, for each Participating Class Member. If there are any timely
19 submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the
20 Individual Settlement Amounts for each Participating Class Member so that the amount actually
21 distributed to Participating Class Members equals 100% of the Net Settlement Amount. (S.A. ¶
22 44(c)). The Notice Packet will inform Settlement Class Members of his/her estimated share and
23 the number of Work Weeks he/she worked during the Class Period. Settlement Class Members
24 may dispute their Weeks Worked if they feel they worked more weeks in the Class Period in
25 California than Defendant’s records show by timely submitting evidence to the Settlement
26 Administrator.

27 ///

28 ///

1 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

2 Within 10 days after Final Approval of the Settlement, Defendant will fund the Settlement
3 Amount and shall separately pay its share of employer payroll taxes as calculated and directed by
4 the Settlement Administrator. (S.A. ¶ 64.) The Settlement Amount will be used to fund: (i)
5 Individual Settlement Amounts of the Participating Class Members; (ii) amounts awarded to
6 Class Counsel for Attorneys' Fees and Costs, (iii) the Service Award to the Plaintiffs, (iv) the
7 payment to the LWDA to resolve claims under the PAGA, and (v) Settlement Administration
8 Costs. The Settlement Administrator will issue the court-approved payments within 10 days of
9 receipt of funds from Defendant into the Qualified Settlement Fund. (S.A. ¶ 65.)

10 Settlement Class Members will have 180 days after mailing by the Settlement
11 Administrator to cash his/her settlement checks. If any Participating Class Member's check is not
12 cashed within that period, the check will be void and a stop-payment will be issued, and the
13 Settlement Administrator shall issue the unclaimed funds to the State of California Unclaimed
14 Property Fund. (S.A. ¶ 66.)

15 **F. TAX TREATMENT**

16 The Individual Settlement Amounts will be allocated based on the allegations in the
17 Action as follows: twenty percent (20%) will be paid as wages subject to withholding of all
18 applicable local, state and federal taxes; and eighty percent (80%) will be paid as interest and as
19 penalties from which no taxes will be withheld. The Settlement Administrator will issue to each
20 Settlement Class Member an Internal Revenue Service Form W-2 and comparable state forms
21 with respect to the wage allocation and a Form 1099 with respect to the penalties and interest
22 allocations. (S.A. ¶ 44(d).)

23 **G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

24 In exchange for these payments, the Settlement Agreement ¶ 25 provides that upon the date
25 Defendant fully funds the settlement, Participating Class Members will release the Release Parties¹

26 _____
27 ¹ "Released Parties" means Defendant and its present and former officers, directors, members,
28 managers, shareholders, agents, subsidiaries, insurers, operators, partners, professional
employment organizations, successors and assignees. (S.A. ¶ 26.)

1 from all claims alleged in the operative Complaint along with related claims that could have been
2 alleged based on the facts alleged in the operative Complaint including (a) failure to pay overtime
3 wages, (b) failure to provide meal periods, (c) failure to provide rest breaks, (d) failure to provide
4 accurate itemized wage statements, (f) failure to timely pay final wages pursuant to Labor Code
5 §§ 201–203 (g) failure to timely pay wages, (h) failure to reimburse business expenses (i) unfair
6 and unlawful competition, (j) all other civil and statutory penalties, including those recoverable
7 under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”), and applicable
8 IWC Order(s), based on the facts or claims alleged in the operative Complaint. The release shall
9 include a release under California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7,
10 510, 512(a), 558, 1194, 1194.2, 1197, and 2802, Business and Professions Code §§ 17200 *et seq.*
11 (S.A. ¶ 47.)

12 It is understood and agreed that the Settlement Agreement will not release any person,
13 party or entity from claims, if any, by Settlement Class Members for workers compensation,
14 unemployment, or disability benefits of any nature, nor does it release any claims, actions, or
15 causes of action which may be possessed by Settlement Class Members under state or federal
16 discrimination statutes including, without limitation, the Cal. Fair Employment and Housing Act,
17 the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act, the Cal. Civil Code § 51,
18 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000,
19 *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the
20 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; and
21 all of their implementing regulations and interpretive guidelines.

22 In addition to the foregoing release, the named Plaintiffs also agreed to execute a separate
23 General Release set forth in the Settlement Agreement. (S.A. ¶ 51.)

24 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
25 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
26 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

27 California Rule of Court 3.769(d) provides that the Court may make an order approving
28 certification of a provisional settlement class at the preliminary approval stage. It is well-

1 established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
2 of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996)
3 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in a settlement
4 class, so the case management issues inherent in determining if the class should be certified need
5 not be confronted; and the trial court’s fairness review of the settlement protects the interests of
6 the non-representative Class Members. *Id.*; see also *Officers for Justice v. Civil Service Com.* (9th
7 Cir. 1982) 688 F.2d 615, 633 (“Th[e] relationship between the certification determination and the
8 merits of the case is further attenuated within the context of the settlement evaluation process . .
9 . [C]ertification issues raised by class action litigation that is resolved short of a decision on the
10 merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S.
11 591, 620 (“Confronted with a request for settlement-only class certification, a district court need
12 not inquire whether the case, if tried, would present intractable management problems . . . for the
13 proposal is that there be no trial.”). As discussed below, for the purposes of this Settlement only,
14 Plaintiffs request that this Court provisionally certify the Settlement Class, as defined above,
15 under Code of Civil Procedure § 3150.

16 **A. NUMEROSITY AND ASCERTAINABILITY**

17 Numerosity is met if a proposed class is so large that joinder of all members would be
18 impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
19 the Class Members can be objectively identified and given notice of the litigation without
20 unreasonable time or expense. See *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
21 89, 101. Here, according to Defendant’s records, there are approximately 74 Settlement Class
22 Members. This figure undoubtedly satisfies the numerosity requirement.

23 **B. WELL-DEFINED COMMUNITY OF INTEREST**

24 **1. Commonality**

25 To justify certification, the class proponent must show that questions of law or fact
26 common to the class predominate over the questions affecting the individual members. See *Arenas*
27 *v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v.*
28 *Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiffs contend that the Settlement Class was

1 subject to common policies and practices relating to the provision of meal and rest periods and
2 payment of overtime wages, among other things. While the Parties dispute whether a class would
3 be appropriate if the litigation were to continue, they agree to class certification for the purposes
4 of this Settlement only.

5 2. Typicality

6 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
7 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*
8 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiffs’
9 claims are typical of the Settlement Class for the purposes of any continued litigation of the
10 Action, but agree for the purposes of this Settlement only, that Plaintiffs assert claims regarding
11 Defendant’s overtime payment policies, meal and rest break practices, wage statements, and the
12 provisions governing the timely and complete payment of wages, which are at the core of the
13 lawsuit.

14 3. Adequacy of Representation

15 The proposed Class Representatives must establish that they will adequately represent the
16 proposed Settlement Class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th
17 540, 546. Specifically, Plaintiffs are adequate to represent the Settlement Class because they
18 were both employed by Defendant during the Class Period, experienced the same wage and hour
19 practices as the rest of the Settlement Class, understands their duties as Class Representatives,
20 have been willing to undergo the risk of litigation, and have no conflicts of interest.

21 Adequacy may be established by the fact that counsels are experienced practitioners. See
22 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
23 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive experience
24 in wage and hour class and PAGA actions like the instant matter. (Bokhour Decl. ¶¶ 2-5; Melmed
25 Decl. ¶¶ 2-5)

26 4. Superiority

27 Certification of the Settlement Class for settlement purposes is superior here because there
28 will be a global resolution of all claims at once, which fosters judicial economy. Class certification

for settlement purposes is also vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 13150. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court’s approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

The decision to approve or reject a proposed settlement lies within the Court’s sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute.” *Officers for Justice*, 688 F.2d at 625.

The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable” standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only after determining that it is ““fair, adequate and reasonable,”” considering factors such as the ““risk, expense, [and] complexity”” of continued litigation) (citations omitted). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

[T]he 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, the experience and views of counsel . . . and the reaction of the Class Members to the proposed settlement.

Dunk, supra (setting forth a non-exhaustive list of factors for the court’s consideration at final approval).

The above factors are not exclusive “and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra* (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS

The Settlement was the product of extensive arm’s length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and

professional, the Settlement negotiations were adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiffs and counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any of its defenses, the Class Members may not have received any substantial monetary recovery. (Bokhour Decl. ¶ 35.)

C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT

Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. As described above, the Settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial exchange of information relating to Plaintiffs and the Settlement Class Members prior to mediation. (Bokhour Decl. ¶¶ 13, 22-36.)

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

To evaluate a settlement, the parties must provide the trial court with “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that the class could recover was not necessary:

Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims – a number which appears nowhere in the record of the case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.

1 A settlement is not judged against what might have been recovered had a plaintiff
2 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
3 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 250
4 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
5 by the proposed settlement is substantially narrower than it would be if the suits were to be
6 successfully litigated, this is no bar to a class settlement because the public interest may indeed
7 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
8 litigation.”)

9 Of relevance to the reasonableness of the proposed Settlement is the fact that significant
10 legal and factual grounds for defending this action exist. As further detailed below, in addition
11 to disputing the merits of Plaintiffs’ claims, Defendant disputed whether Plaintiffs could obtain
12 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant
13 further argued that it complied with the applicable law, that all Settlement Class Members actually
14 took their meal and rest periods, and that any purported deviations therefrom were individualized
15 in nature, thereby limiting Plaintiffs’ ability to certify the Settlement Class. While Plaintiffs assert
16 that this is a suitable case for certification, they realize that there is always a significant risk
17 associated with class certification proceedings, which could significantly limit the claims that
18 they could pursue on a class basis. (Bokhour Decl. ¶¶ 18-22.)

19 Considering the uncertainties of protracted litigation, this negotiated Settlement reflects
20 the best practicable recovery for the Settlement Class. While the total Settlement Amount is, of
21 course, a compromise figure, the potential risks and opportunities of both parties were effectively
22 weighed and considered by the Parties, resulting in a fair and equitable Settlement. (Bokhour
23 Decl. ¶¶ 39-40.)

24 Based upon detailed data obtained through informal discovery and information exchanges,
25 and factoring in claim certification probabilities and liability probabilities, Class Counsel
26 formulated detailed damages models to evaluate the claims in preparation for mediation and in
27 order to reach a realistic and reasonable resolution as further detailed below. (Bokhour Decl. ¶
28 22.)

1 Plaintiffs first allege that Plaintiffs and the other Settlement Class Members were not paid
2 all minimum and overtime wages owed due to Defendant's policies and/or practices. Based on
3 data and information gathered in discovery and informally prior to mediation, as well as an
4 analysis of such data by a retained expert, Plaintiffs allege that the Settlement Class Members
5 were underpaid for approximately 657 overtime hours. Because the average hourly rate is
6 approximately \$14.21, the maximum potential damages for the overtime claims are \$14,000 (657
7 x \$21.31).

8 This maximum figure ignores Defendant's multiple defenses to the underpayment of
9 overtime claims. As such, Defendant argued that this constituted precisely the type of
10 individualized inquiry that is not appropriate for certification because the court would have to
11 conduct a person-by-person analysis to determine if the Settlement Class Member was correctly
12 paid.

13 Based on this argument, and others, Plaintiffs assigned a 10% risk that the Court would
14 deny class certification on the underpayment of overtime claims. Additionally, Defendant alleged
15 that, if certification were granted, it would defeat the overtime claims on the merits at summary
16 judgment or at trial because its policies and/or practices were, always, facially neutral in
17 compliance with *See's I*. Plaintiffs assigned an additional 10% discount for risks at the merits
18 stage, resulting in a total risk-adjusted value for the overtime claims of \$11,343. (Bokhour Decl.
19 ¶ 23-25.)

20 With respect to the waiting time penalty claim, there were approximately 26 Settlement
21 Class Members that separated from their employment with Defendant during the statutory period.
22 As such, the maximum potential penalty under Labor Code § 201 – 203 is \$94,212.30 (26
23 employees x 8.5 hours per day² x average rate of \$14.21 x 30 days). However, Defendant argued
24 that it would defeat the waiting time penalty claim as to Plaintiffs' underpayment of overtime
25 claims because the failure to pay wages, if any, was not willful given Defendant's alleged facially
26 neutral policy. Furthermore, Defendant argued that it would defeat liability as to waiting time
27

28 ² As extrapolated from the pre-mediation sampling provided by Defendant.

penalties arising out of the other unpaid wage claims as well as unavailability of derivative claims for meal and rest violations. Plaintiffs applied a 20% risk of defeat at the class certification stage, and an additional 25% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of \$56,527 for waiting time penalty claims. (Bokhour Decl. ¶ 26.)

With respect to Plaintiffs' meal and rest break claims, the Settlement Class Members worked 59,430 shifts during the applicable period. Based on an alleged 84.4% violation rate for the meal period and rest period claims, as extrapolated from the pre-mediation sampling, the maximum potential damages are \$1,425,516, respectively. (Bokhour Decl. ¶ 27.)

However, Defendant vehemently opposed these claims based on the argument that Plaintiffs' meal and rest period claims fall directly into the category of "individualized issues," claiming that its policies were compliant, and the employees had ample latitude regarding whether, when, and how they took their breaks. Therefore, Defendant asserted that a fact-finder would have to determine for each Settlement Class Member whether a break was missed and why, and why a break was noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the Defendant. Based on these arguments, Plaintiffs believe there is a 40% risk that the Court would deny class certification on these meal period claims and a 40% risk as to the rest break claims. (Bokhour Decl. ¶ 28.)

Defendant also argued that, even if certification were granted, it would defeat these claims on the merits because Defendant utilized compliant policies and practices and it would present sufficient evidence that the workers were properly provided with all breaks. Moreover, Defendant argued that Plaintiffs would be unable to present sufficient evidence establishing the number of meal and rest period violations in order to allow a fact-finder to appropriately determine damages. Plaintiffs acknowledged the risks and incorporated a further 50% reduction. Plaintiffs therefore calculate the risk-adjusted value of the meal and rest claims to be \$256,592. (Bokhour Decl. ¶ 29.)

Finally, Plaintiffs estimate that the maximum potential penalties for the wage statement claims as \$159,350.00 (based on approximately 1,624 allegedly violative wage statements issued during the Class Period). In calculating Defendant's exposure, Plaintiffs gave Defendant the

benefit of assuming Plaintiffs could only obtain the “initial” wage statement penalty of \$50 per violation, for a total of \$159,350.00 in potential wage statement penalties. (*Id.*; see also Lab. Code § 226(e) (providing for \$50 penalty for “initial” violations); *Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that “initial” violation rate applies until the employer has been notified that it is violating a Labor Code provision.) (Bokhour Decl. ¶ 30.)

In response to Plaintiffs’ wage statement claims, Defendant contended that any alleged violations were not “knowing and intentional,” that Plaintiffs could not establish that they or anyone else suffered “injury” as a result of any alleged wage statement violations, and that no wage statement penalties can be recovered for failure to pay meal and rest period premium wages pursuant to *Gustavo Naranjo, et al. v. Spectrum Security Services, Inc.*, holding that “section 226.7 actions do not entitle employees to pursue the derivative penalties in section 203 and 226.” Further, Defendant relied on its defenses to Plaintiffs’ underlying claims both on the merits and to class certification. As such, Plaintiffs discounted the calculated maximum exposure by 50% for risk of non-certification, and by an additional 50% for risk of being unsuccessful on the merits, to arrive at an estimated total of \$39,837.50. (Bokhour Decl. ¶ 31.)

In sum when factoring in defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as follows:

Unpaid Overtime Claim:	\$11,343
Labor Code §§ 201 – 203 Claims:	\$56,527
Meal and Rest Period Claims:	\$256,592
Wage Statement Claims:	\$39,837.50
<u>Total Risk-Adjusted Penalties and Damages:</u>	\$ 364,299

Plaintiffs also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be “stacked.” See *Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) (“‘stacking’ PAGA penalties is not inappropriate under California law”). Assuming that a PAGA penalty is available in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA penalty would be \$162,400.00 per claim for the 1,624 pay periods in the PAGA period. See Cal.

Lab. Code. § 2699(f)(2). (Bokhour Decl. ¶¶ 32-33.)

However, this maximum figure fails to account for numerous unclear issues relating to PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for purely derivative penalties). Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a reduction in PAGA penalties would be “appropriate” based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer did not “deliberately evad[e] a clear obligation to provide legally required pay and benefits to employees,” (ii) the employer did not “negligently fail to learn about its obligations under the wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because “there is no straight answer to the question.”).

Given the realistic value of Plaintiffs’ claims, the \$300,000 Settlement is an excellent result for the Settlement Class, considering that the Settlement amount totals approximately 82% of Plaintiffs’ risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class. (Bokhour Decl. ¶ 34.)

For these reasons, the Parties submit that the agreed-upon Settlement is fair and reasonable.

E. PLAINTIFFS’ COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of counsel”) (internal quotation and citation omitted).

1 Plaintiffs' counsel are also highly experienced in Class and PAGA litigation, having
2 litigated upwards of 50 class actions and PAGA cases, having been named "Super Lawyers Rising
3 Stars" in employment litigation (a distinction awarded to only 5% of litigators), and having
4 achieved large class action settlements in California. (Bokhour Decl. ¶¶ 2-5). Plaintiffs' counsel,
5 operating at arm's length, weighed the strengths and risks of this case, and are of the view that
6 this is a fair and reasonable settlement in light of the nature of the claims, realistic risk adjusted
7 value of damages, complexities of the case, the state of the law, and uncertainties of class
8 certification and litigation. (Bokhour Decl. ¶¶ 34-36).

9 **F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

10 The proposed Notice Packet should be approved, as it fully informs the Settlement Class
11 Members of the nature of the lawsuit and each Settlement Class Members' rights under the terms
12 of the Settlement Agreement and applicable law. The manner in which the Notice Packet shall be
13 disseminated, as outlined above, shall ensure that all or nearly all of the Settlement Class Members
14 shall be properly notified of the proposed Settlement.

15 The proposed Notice Packet and proposed plan for the Settlement Administrator to mail
16 the Notice Packet to the last known address of all Settlement Class Members complies with all
17 the requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
18 Notice Packet include (1) the material terms of the Settlement; (2) the proposed Attorneys' Fees
19 and Costs and the Settlement Administration Costs; (3) details about the final fairness hearing
20 and how Settlement Class Members may elect to exclude themselves or make an objection; and
21 (4) how Settlement Class Members can obtain additional information. See Notice Packet
22 (Bokhour Decl. ¶ 9, Exhibit B). In addition, it will inform Settlement Class Members of their
23 estimated settlement share.

24 The Court has wide discretion in approving the means of providing notice, so long as the
25 class representative "provide(s) meaningful notice in a form that should have a reasonable chance
26 of reaching a substantial percentage of Class Members." *Archibald v. Cinerama Hotels*, (1976)
27 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
28 disseminated directly to the Settlement Class Members by first class mail by the Settlement

1 Administrator, since Defendant has the last known addresses of all Settlement Class Members
2 and the Settlement Administrator will perform a skip trace and update those addresses for any
3 Notice Packets that are returned and re-send the Notice Packet.

4 The Notice Packet satisfies the requirements of Rule of Court 3.766 and affords Settlement
5 Class Members with all due process protections required by the United States Constitution.
6 Moreover, the contents of the Notice Packet are in compliance with Cal. R. Ct. 3.766(d), because
7 the Notice Packet includes, without limitation (1) a detailed explanation of the case, including the
8 basic contentions or denials of the Parties; (2) a statement that the court will exclude the
9 Settlement Class Member if the Settlement Class Member so requests by a specified date; (3) a
10 procedure for the Settlement Class Members to follow in requesting exclusion from the
11 Settlement Class; (4) a statement that the judgment, whether favorable or not, will bind all
12 Settlement Class Members who do not request exclusion; and (5) a statement that any Class
13 Member who does not request exclusion may, if the Settlement Class Member so desires, enter
14 an appearance through counsel. The 45-day deadline for Settlement Class Members to exclude
15 themselves is reasonable, as it provides Settlement Class Members with sufficient time to do so
16 and, if they so choose, to seek independent legal advice in the interim. If a Settlement Class
17 Member does not opt-out, then he or she will automatically be sent a settlement check.

18 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
19 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

20 The fact that each Settlement Class Member who does not opt out of the Settlement shall
21 be mailed a check ensures that every Settlement Class Member will be paid unless he or she
22 affirmatively acts to exclude himself or herself. Moreover, the Settlement Amount is non-
23 reversionary, which means that no Settlement funds will revert to Defendant; instead, if any
24 checks are not cashed before the objection deadline, the funds will be transferred to the State’s
25 unclaimed property department subject to approval of the Court. Such terms are favored by Courts
26 and demonstrate that there was no collusion between counsel for the Parties and that the
27 Settlement is fair and favorable to the Settlement Class Members.

1 **H. THE ATTORNEYS' FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
2 **FAIR**

3 Under the terms of the Settlement Agreement, Class Counsel is requesting \$100,000.00
4 in Attorneys' Fees, which is equal to one-third (33.33%) of the Settlement Amount. (See, e.g.
5 *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33
6 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for
7 the benefit of the Class Members, the trial court may determine the amount of a reasonable fee
8 by choosing an appropriate percentage of the fund created); see also *Stuart v. RadioShack Corp.*
9 (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3
10 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of
11 1/3 of the total settlement was "well within the range of percentages which courts have upheld as
12 reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1,
13 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of
14 the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No.
15 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage
16 and hour class action, noting: "[f]ee awards in class actions average around one-third of the
17 recovery."); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-
18 6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund). (Bokhour Decl.
19 ¶¶ 44-45.)

20 Once the Court grants preliminary approval of the Settlement Agreement and Notice
21 Packet is disseminated, Plaintiffs' counsels will submit a request for Attorneys' Fees and Costs
22 with its final approval motion.

23 **I. THE CLASS REPRESENTATIVE SERVICE AWARDS ARE FAIR AND APPROPRIATE**

24 The Settlement Agreement provides for Service Awards to the named Plaintiffs in the
25 amount of \$10,000.00 each. The proposed Service Awards are reasonable given the time and
26 effort Plaintiffs devoted to this case. Plaintiffs' efforts included: providing factual background
27 for the Settlement Class and PAGA complaint; providing documents and information about
28 Defendant's compensation plan; participating in phone calls to discuss litigation and settlement

strategy; making themselves available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation and being available during mediation; and reviewing the Settlement documents. The Plaintiffs also assumed significant risk in bringing this litigation—namely, had they lost, they could have been ordered to pay Defendant’s costs.

The requested Service Awards fall within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving \$11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association* (N.D. Cal. 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action).

VI. THE COURT SHOULD APPOINT SIMPLURIS AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to Simpluris to serve as the Settlement Administrator. Simpluris is experienced in administering class action settlements and will cost less than \$5,000 to administer this class action Settlement. (Bokhour Decl. ¶ 46.)

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the Settlement may explain and describe its terms and conditions and offer argument in support of approval, and Settlement Class Members or their counsel may be heard in support of or in opposition to the Settlement. Subject to the Court’s approval, the Settlement Agreement stipulates that the Court schedule a hearing for final approval in accordance with the following schedule:

1	April 12, 2021	Preliminary Approval (PA) hearing
2	May 3, 2021	Deadline for Settlement Administrator to complete
3	(20 days after PA)	first mailing of the Notice Packet to all Settlement
4	June 17, 2021	Class Members.
5	(45 days after mailing Class Notice)	Deadline for Settlement Class Members to submit
6	16 court days before Final Approval	Requests for Exclusion and Objections to the
7	hearing	Settlement.
8	9 court days before Final Approval	Deadline for Plaintiffs to file and serve Motion for
9	hearing	Final Approval of Settlement and application for
10	5 court days before final approval	award of attorneys' fees, costs and service
11	hearing	payments.
12	TBD (Approximately July 16, 2021)	Deadline for filing of any written opposition to
13	10 calendar days thereafter	Plaintiffs' Motion for Final Approval of
14	10 calendar days thereafter	Settlement or filing any response to an objection to
15		the Settlement.
16		Deadline for filing of any written reply to
17		opposition Motion for Final Approval of
18		Settlement.
19		Final Approval Hearing.
20		Defendant to deliver court approved funds to
21		Settlement Administrator
22		Settlement Administrator to issue checks.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully requests that the Court grant their Motion for Preliminary Approval of Settlement.

Dated: March 18, 2021

BOKHOUR LAW GROUP, P.C.

/s/ Mehrdad Bokhour

BY:

Mehrdad Bokhour, Esq.
Attorneys for Plaintiffs and the Putative
Class