

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq. (CA Bar No. 285256)

mehrdad@bokhourlaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, P.C.

Joshua S. Falakassa, Esq. (CA Bar No. 295045)

josh@falakassalaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

NICHOLAS B. TOY, on behalf of himself and
all others similarly situated;

Plaintiff,

v.

MYERS & SONS CONSTRUCTION, LLC, a
California Limited Liability Company; MYERS
& SONS, L.P., a California Limited Partnership;
and DOES 1-50, inclusive;

Defendants.

CASE NO.: 34-2020-00279448

Assigned to the Hon. Richard K. Sueyoshi

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

*[Declarations of Mehrdad Bokhour, Joshua
Falakassa and [Proposed] Order filed
concurrently herewith]*

HEARING INFO

Date: September 29, 2021

Time: 9:00 a.m.

Dept.: 54

RES: 2576961

Complaint Filed: May 26, 2020

Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 29, 2021 at 9:00 a.m. or as soon thereafter as the matter may be heard by Department 54 of the Sacramento County Superior Court, located at 720 Ninth Street, Sacramento, California 95814, Plaintiff Nichols B. Toy, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Parties' Class Action Settlement Agreement and Release of Claims ("Settlement Agreement" and/or "Settlement"), including:

1. Certifying the Class for purposes of settlement only;
2. Preliminarily appointing Plaintiff Nicholas B. Toy as Class Representative for purposes of settlement only;
3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C. as Class Counsel for purposes of settlement only;
4. Preliminarily approving the 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; and
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 and Joshua Falakassa in support thereof; the Settlement Agreement; the proposed Order; 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: September 7, 2021

BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

BY:

MEHRDAD BOKHOUR
JOSHUA FALAKASSA
Attorneys for Plaintiff and the Putative Class

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
	A. THE PARTIES AND THE PROPOSED CLASS	2
	B. PROCEDURAL HISTORY.....	3
	C. SUMMARY OF PLAINTIFF’S CLAIMS.....	3
	D. SUMMARY OF DEFENDANT’S DEFENSES	4
III.	SUMMARY OF THE PROPOSED SETTLEMENT	
	A. SETTLEMENT CONSIDERATION AND ALLOCATION	5
	B. NOTICE PROCEDURES	5
	C. EXCLUSION AND OBJECTION PROCEDURES	6
	D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	7
	E. TIMING OF SETTLEMENT DISBURSEMENTS	7
	F. TAX TREATMENT	10
	G. SETTLEMENT CLASS MEMBERS’ RELEASE OF CLAIMS.....	10
IV.	PROVISIONAL CERTIFICATION OF THE CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	11
	A. NUMEROSITY AND ASCERTAINABILITY	11
	B. WELL-DEFINED COMMUNITY OF INTEREST	10
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	11
	A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT	11
	B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON- COLLUSIVE NEGOTIATIONS.....	15
	C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT.....	13
	D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS.....	13
	E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION.....	21
	F. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES.....	17
	G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS	19
	H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR	19
	I. THE CLASS REPRESENTATIVE SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE.....	20
VI.	THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT THE ADMINISTRATOR	20
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING.....	20
VIII.	CONCLUSION.....	21

POINTS AND AUTHORITIES

1		
2	<i>Amaral v. Cintas Corp. No. 2</i> , (2008) 163 Cal.App4th 1157	19
3	<i>Amchem Pords., Inc. v. Windsor</i> (1997) 521 U.S. 591.	11
4	<i>Archibald v. Cinerama Hotels</i> (1976) 15 Cal.3d 853	22
5	<i>Arenas v. El Torito Rests., Inc.</i> (2010) 183 Cal.App.4th 723.	12
6	<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4 th 540	12
7	<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS	24
8	<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4 th 1374	13
9	<i>Cho v. Seagate Tech. Holdings, Inc.</i> (2009) 117 Cal.App.4 th 734	14
10	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.	11, 14, 15
11	<i>Ellis v. Naval Air Rework Facility (Aff'd 9th Cir. 1981)</i> 661 F.2d 939	21
12	<i>Kullar v. Food Locker Retail Inc.</i> (2008) 168 Cal.App.4 th 116.....	16, 21
13	<i>Laffitte v. Robert Half Int'l Inc.</i> (2016) 1 Cal. 5 th 480.....	23
14	<i>Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> (9 th Cir. 2001)	
15	244 F.3d 1152	13
16	<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VR	24
17	<i>Medraza v. honda of N. Hollywood</i> (2008) 166 Cal.App.4th 89.	12
18	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles.</i> (2010) 186 Cal.App.4 th 399.....	16
19	<i>Naranjo, et al v. Spectrum Security Services, Inc.</i> (2009) No. B256232.....	5, 20
20	<i>Officers for Justice v. Civil Service Com.</i> (9 th Cir. 1982) 688 F.2d 615	11, 14
21	<i>Romero v. Producers Dairy Foods, Inc.</i> (e.d. Cal. Nov. 14, 2007) No. 1:05CV0484 DLB.....	24
22	<i>Ross v. US Bank National Association</i> (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI.....	24
23	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM),	24
24	<i>Stuart v. RadioShack Corp.</i> (N.D. Cal. Aug. 9 2010) No. C-07-4499 EMC 2010 WL 315564523	
25	<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 4150, 493.....	24
26	<i>Washington Mut. Bank v. Superior Court</i> (2001) 24 Cal.4th 906.	12
27	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4 th 224.....	13, 14, 16
28		

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

CODE SECTIONS

California Labor Code §2699(i).....5

Code of Civil Procedure §3150.....11

Labor Code §203.....4

Labor Code §226(e)19

Labor Code §226.7.....5, 20

RULES OF COURT

California Rule of Court 3.766(b).....22

California Rule of Court 3.769(a).....13

California Rule of Court 3.769(d).....11

California Rule of Court 3.769(c).....13

California Rule of Court 3.79(f)22

OTHER AUTHORITIES

Manual for Complex Litigations (Third) §30.41 (1995)14

Newberg on Class Actions (4th ed. 2002) §3:1312

Newberg on Class Actions (4th ed. 2002) §11:2514

Newberg on Class Actions (4th ed. 2002) §11:4115

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Nicholas B. Toy (“Plaintiff”), individually and on behalf of all
4 others similarly situated, seeks preliminary approval of the Class Action Settlement Agreement and
5 Release of Claims. Subject to Court approval, Plaintiff and Defendants Myers & Sons Construction,
6 LLC and Myers & Sons Construction, LP (“Defendants”) have agreed to settle their claims and the
7 proposed Class Members’ claims against Defendants for a Maximum Settlement Amount of
8 \$350,000.

9 Plaintiff seeks to represent a Class of similarly situated current and former non-exempt
10 employees who worked for Defendants within the State of California at any time from May 26, 2016
11 through September 20, 2021.

12 The Class Action Settlement Agreement and Release of Claims is attached as Exhibit “A” to
13 the Declaration of Mehrdad Bokhour (“Bokhour Decl.”) submitted herewith and is hereinafter
14 referred to as the “Settlement Agreement”, “S.A.” or the “Settlement”. The proposed Notice Packet
15 is attached to the Bokhour Decl. as Exhibit “B.”

16 Under the terms of the Settlement Agreement, Defendants will not oppose Class Counsel’s
17 application for a reasonable award of attorneys’ fees not to exceed one third of the Settlement
18 Amount, Class Counsel’s litigation costs not to exceed \$15,000.00, Settlement Administration Costs
19 not to exceed \$15,000, PAGA penalties of \$10,000 (of which \$7,500.00 or 75% will be paid to the
20 LWDA and the remaining \$2,500 or 25% will be paid to the Settlement Class Members), and a
21 Service Award not to exceed \$10,000 to the named Plaintiff (S.A. ¶ 48(a)-(h)), as follows:

22

	Total Amount
<i>Settlement Amount</i>	\$350,000.00
Attorneys’ Fees	\$116,666.66
Litigation Costs (not to exceed)	\$15,000.00
Administrator Costs (not to exceed)	\$15,000.00
PAGA payment to LWDA (75% of 10k award)	\$7,500.00
Plaintiff’s Service Award	\$10,000.00
<i>Net Settlement Amount</i>	\$180,833.34

23
24
25
26
27

1 The Class includes approximately 1,508 non-exempt employees who all work and/or worked
2 for Defendants in California during the Class Period. Regardless of their roles, all non-exempt
3 employees worked under the same workplace policies and practices, and therefore, the Individual
4 Settlement Payments will be paid on a pro-rata basis based on the number of Workweeks during the
5 Class Period. (Bokhour Decl. ¶ 10.)

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

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 and
14 documents in advance of mediation, it should be preliminarily approved. Plaintiff respectfully
15 requests that the Court enter an order preliminarily approving the Settlement, conditionally certifying
16 the Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed
17 Notice Packet, appointing Plaintiff's counsels as Class Counsel, appointing Phoenix as the Settlement
18 Administrator, and scheduling a hearing for the final approval of the Settlement. (Bokhour Decl. ¶
19 11; Declaration of Joshua Falakassa in Support of Motion for Preliminary Approval of Class Action
20 Settlement ("Falakassa Decl."), ¶ 12.)

21 **II. BACKGROUND**

22 **A. THE PARTIES AND THE PROPOSED CLASS**

23 Defendants provide civil construction services, including but not limited to, highway,
24 transportation, and street construction services across California and within the United States.
25 (Bokhour Decl. ¶ 12). The putative Class consists of all current and former hourly-paid or non-
26 exempt employees who worked for Defendants within the State of California at any time from May
27 26, 2016 through September 20, 2021. (S.A. ¶¶ 7, 38.)

1 **B. PROCEDURAL HISTORY**

2 On March 26, 2020, Plaintiff Nicholas Toy filed a putative wage-and-hour class action lawsuit
3 in the Sacramento County Superior Court against Myers & Sons Construction, LLC and Myers and
4 Sons Construction, LP, stemming from its (1) failure to issue accurate itemized wage statements, (2)
5 failure to provide meal periods or compensation lieu thereof, (3) failure to provide rest periods or
6 compensation in lieu thereof, (4) failure to pay all earned wages due to separated employees, (5)
7 failure to reimburse necessary business expense; and (7) unfair competition. (Bokhour Decl. ¶ 6.)

8 However, due to the existence of valid Collective Bargaining Agreements precluding various
9 claims, Plaintiff's dismissed without prejudice his meal and rest period claims and waiting time
10 penalty claims. (Bokhour Decl. ¶ 7.)

11 On or about October 20, 2020, Plaintiff filed a Second Amended Class and Representative
12 PAGA claims, including: (1) failure to provide complete and accurate itemized wage statements, (2),
13 failure to reimburse business expenses (3) unfair business practices, and (4) PAGA Payments based
14 on the foregoing Labor Code violations. (S.A. ¶ 41).

15 Throughout the litigation, Defendants denied the allegations, and vowed to vigorously defend
16 against it. However, before engaging in protracted litigation, the Parties agreed to explore resolution
17 through private mediation. (Bokhour Decl. ¶ 15; Falakassa Decl. ¶ 13.) In preparation for mediation,
18 the Parties agreed to an informal discovery process where information was exchanged relating to the
19 applicable policies and procedures, analysis of wage statements, size of the Class, compensation
20 policies and practices, and potential value of the case. (*Id.*) The informal discovery enabled Plaintiff's
21 counsel to fully evaluate the potential claims and extrapolate the data to the entire Class. During this
22 process, Plaintiff and his counsel analyzed, researched, and investigated the potential claims of all
23 similarly situated employees. (*Id.*)

24 On July 20, 2021, Plaintiff and Defendants participated in a private mediation before Tripper
25 Ortman, Esq. ("Mediator"), a highly experienced and knowledgeable wage and hour class action
26 mediator. (Bokhour Decl. ¶ 16, Exhibit "A".) After a full-day mediation, the Parties ultimately reached
27 a Settlement and then memorialized the terms of the Settlement in a long-form Settlement Agreement.
28 (*Id.*)

1 The Parties now seek the Court's preliminary approval of the Settlement Agreement.

2 **C. SUMMARY OF PLAINTIFF'S CLAIMS**

3 Plaintiff alleges two distinct wage and hour violations on behalf of the non-exempt employees
4 who worked for Defendants during the Class Period. (Bokhour Decl. ¶ 17.)

5 First, Plaintiff alleges the wage statements issued by Defendants fail to include the name and
6 address of the legal entity that is the employer in Labor Code § 226(a)(8).

7 Second, Plaintiff alleges that Defendants uniformly fail to reimburse all class members for
8 use of their personal cell phones for business purposes in violation of Labor Code § 2802.

9 Finally, based on the above claims, Plaintiff brings a cause of action for civil penalties under
10 the PAGA. (Bokhour Decl. ¶¶ 18-19.)

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

12 Defendants contested and denied each of Plaintiff's material allegations on the merits and as
13 to the propriety of the class and PAGA action.

14 First, Defendants argued that the large majority of wage statements issued to Class Members
15 were compliant with Labor Code § 226(a)(8) because the electronic wage statements issued to Class
16 Members included all information required under the law, including the proper name and address of
17 the legal entity that is the employer. (Bokhour Decl. ¶ 20.)

18 Second, as it pertains to Plaintiff's reimbursement claim, Defendants argued that it did not
19 require its employees to incur business expenses for cell phone use, that it had a valid reimbursement
20 policy, and that it issued company paid work cell phones to numerous class members during the Class
21 Period. (Bokhour Decl. ¶ 21.)

22 Finally, Defendants also contended that Plaintiff's claims were not suitable for class
23 certification because individual inquiries would be required to establish, amongst other things, which
24 employees, if any, received non-compliant wage statements or used personal cell phones for business
25 purposes without reimbursement. (Bokhour Decl. ¶ 22.)

26 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

27 The following is a summary of the principal terms of the Settlement Agreement.
28

1 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

2 The \$350,000 Settlement Amount is non-reversionary and will be paid out to Class Members
3 without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's
4 attorneys' fees and costs, as approved by the Court; (2) a Service Award not to exceed \$10,000 to
5 the named Plaintiff, as approved by the Court; (3) Settlement Administration Costs, not to exceed
6 \$15,000, as approved by the Court; (4) a \$7,500 PAGA Payment, 75 percent of which is to be paid
7 to the LWDA pursuant to California Labor Code § 2699(i); and (5) the aggregate of all Individual
8 Settlement Payments of the Settlement Class Members. (S.A. ¶ 43.)

9 After all Court-approved deductions from the Maximum Settlement Amount, it is estimated
10 that approximately \$180,833.34 will be available to pay the Individual Settlement Payments to
11 approximately 1,508 Settlement Class Members. As noted above, the average Individual Settlement
12 Payment to Settlement Class Members is approximately \$120 each, which is a fair and reasonable
13 recovery. (Bokhour Decl. ¶ 10.)

14 **B. NOTICE PROCEDURES**

15 The proposed Notice Packet will be provided to the Class Members showing the estimated
16 amount that each Class Member will receive and the number of Compensable Workweeks and for
17 which he/she will be credited (Exhibit "B" to the Bokhour Decl.). Within thirty (30) calendar days
18 after entry by the Court of its Order of Preliminary Approval, Defendants shall provide the Settlement
19 Administrator with a list of all Class Members containing each Class Members' full name; last known
20 address; telephone number; Social Security Number; the start and end dates of employment with
21 Defendant, and any other relevant information needed by the Settlement Administrator to calculate
22 Individual Settlement Payments (the "Class Data"). (S.A. ¶¶ 6, 62).

23 Within ten (10) calendar days after receipt of the Class Data, the Settlement Administrator
24 shall calculate the number of Compensable Workweeks for each Class Member, populate the Notice
25 Packet, and send each Class Member the Notice Packet via first-class, United States mail. (S.A. ¶
26 63).

27 In the event that any Notice Packet mailed to a Class Member is returned as having been
28 undelivered by the U.S. Postal Service, the Settlement Administrator shall use standard devices,

1 including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are
2 returned. (*Id.*)

3 Any Notice Packets returned to the Settlement Administrator as non-delivered on or before
4 the Notice Response Deadline as defined in Paragraph 23 of this Settlement Agreement shall be re-
5 mailed to the forwarding addresses affixed thereto. If no forwarding address is provided, the
6 Settlement Administrator will take steps to ensure that the Notice Packet is received by all Class
7 Members, including the utilization of the National Change of Address Database maintained by the
8 U.S. Postal Service and shall make reasonable efforts, conducting a “skip-trace” to obtain an updated
9 mailing address for a Class Member and, if applicable to update the mailing addresses within five (5)
10 business days of receiving the returned Notice Packet. If the Settlement Administrator learns of a
11 failed mailing and obtains a forwarding or updated address for that Class Member, the Notice Packet
12 will be re-mailed to that Class Member within three (3) business days of receipt of the updated
13 address. The address identified by the Settlement Administrator as the current mailing address shall
14 be presumed to be the best mailing address for each Class Member. The re-mailed Notice Packet
15 shall be identical to the original Notice Packet, except that it shall notify the Class Member that the
16 exclusion (opt-out) request or objection must be returned by the Notice Response Deadline or fifteen
17 (15) calendar days after the postmark date of the re-mailed Notice Packet, whichever is later. (S.A. ¶
18 64).

19 **C. EXCLUSION AND OBJECTION PROCEDURES**

20 Class Members who do not timely opt-out of the Settlement will be deemed to participate in
21 the Settlement and shall become Settlement Class Members without having to submit a claim form
22 or take any other action. The Notice Packet shall inform the Class Members of their right to opt-out
23 of the Settlement. To do so, the Class Member must submit a written Request for Exclusion to the
24 Settlement Administrator no later than 45 days after being mailed the Notice Packet by the Settlement
25 Administrator (“Notice Response Deadline”). (S.A. ¶ 68(a)).

26 The Notice Packet shall inform the Class Members of their right to object to the Settlement.
27 Any Class Member who wishes to object to the Settlement must submit a written objection to the
28 Settlement Administrator no later than the Notice Response Deadline. The objection must include

1 the full name, address, telephone number, dates of employment with Defendants of the Objecting
2 Class Member, the case name and number, the basis for the objection, including any legal support
3 and each specific reason in support of the objection, as well as any documentation or evidence in
4 support thereof, and, if the objecting Class Member is represented by counsel, the name and address
5 of his or her counsel. (S.A. ¶ 68(c).)

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

7 The Individual Settlement Payment for each Settlement Class Member will be calculated by
8 the Settlement Administrator using the Class Data provided by Defendants as follows. Using the Class
9 Data or using the Workweeks that were disputed and subsequently approved, while also accounting
10 for any timely submitted Requests for Exclusion, the Settlement Administrator will calculate the total
11 Compensable Workweeks for all Settlement Class Members. The respective Compensable
12 Workweeks for each Settlement Class Member will be divided by the total Compensable Workweeks
13 for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member.
14 Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement
15 Amount to calculate each Settlement Class Member's Individual Settlement Payment. (S.A. ¶
16 48(c)(ii).) The Notice Packet will inform Class Members of his/her estimated share and the number
17 of Weeks Worked during the Class Period. Class Members may dispute their Compensable
18 Workweeks if they feel they worked more weeks in the Class Period in California than Defendants'
19 records show by timely submitting evidence to the Settlement Administrator.

20 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

21 Defendants shall make a one-time deposit into the QSF of the Maximum Settlement Amount,
22 as described in Paragraph 48(a) that is necessary to make all payments required under this Settlement
23 Agreement, within ten (10) calendar days after the Final Effective Date. Defendants shall also be
24 solely responsible for the amount owed for the employer's share of payroll taxes due on the wage
25 portion of the Individual Settlement Amounts (as calculated by the Settlement Administrator). (S.A.
26 ¶ 71.)

27 The Maximum Settlement Amount will be used to fund: (i) Individual Settlement Payments
28 of the Settlement Class Members; (ii) amounts awarded to Class Counsel for attorneys' fees and costs,

1 (iii) the Service Award to the Plaintiff; (iv) the payment to the LWDA to resolve claims under the
2 PAGA; and (v) Settlement Administration Costs. No later than fourteen (14) calendar days after the
3 deposit of each payment into the Qualified Settlement Fund, the Settlement Administrator will mail
4 the payments to the Settlement Class Members, the payment for the attorneys' fees and costs to Class
5 Counsel, any Service Award to the Class Representative, the payment to the LWDA for PAGA
6 penalties, and will pay itself the Settlement Administration Costs. In the event that any settlement
7 check is returned to the Settlement Administrator within 180 days of mailing, the Settlement
8 Administrator will, within five (5) business days of receipt of the returned settlement check, perform
9 a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If
10 a new address is located by these means, the Settlement Administrator will have ten (10) business
11 days to re-issue the check. (S.A. ¶ 72.)

12 Settlement Class Members shall have 180 calendar days after mailing by the Settlement
13 Administrator to cash their settlement checks. If any Settlement Class Member's check is not cashed
14 within that period, the check will be void and the Settlement Administrator shall issue the unclaimed
15 funds, plus any accrued interest that has not otherwise been distributed will be paid to the California
16 State Controller's Unclaimed Property Fund in the name of the Settlement Class Member such that
17 the Settlement Class Member may claim the money until such time as the money escheats to the State
18 pursuant to the Unclaimed Property Law. The Release will be binding upon all Settlement Class
19 Members, including those who do not cash their checks within the 180-day period. (S.A. ¶ 67.)

20 **F. TAX TREATMENT**

21 The Individual Settlement Amounts will be allocated based on the allegations in the Action
22 which involved penalties for wage statement violations and reimbursement of incurred business
23 expenses. Thus, payments will thus be paid as penalties, interest and other payments from which no
24 taxes will be deducted or withheld. To the extent required, the Settlement Administrator will issue to
25 each Settlement Class Member an Internal Revenue Service Form 1099 with respect to the penalties
26 and interest allocations. (S.A. ¶ 48(d).)

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

2 In exchange for these payments, the Settlement Agreement ¶ 48 provides that the Participating
3 Class Members will release the Released Parties of the claims alleged or could have been alleged
4 based on the facts stated in the operative complaint as follows:

5 any and all claims which were pled in the Complaint or that could have been pled based
6 on the facts alleged therein, including but not limited to claims for (1) failure to provide
7 complete and accurate itemized wage statements, (2), failure to reimburse business
8 expenses (3) unfair business practices, and (4) PAGA Payments based on Labor Code
9 violations alleged in the Complaint (the "Released Claims").

10 In addition to the foregoing release, the named Plaintiff has also agreed to enter into a separate
11 General Release as set forth in the Settlement Agreement. (S.A. ¶¶ 55-57.)

12 **IV. PROVISIONAL CERTIFICATION OF THE CLASS UNDER THE LESSER**
13 **STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS**
14 **APPROPRIATE FOR PURPOSES OF SETTLEMENT**

15 California Rule of Court 3.769(d) provides that the Court may make an order approving
16 certification of a provisional settlement class at the preliminary approval stage. It is well-established
17 that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying
18 a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
19 1794, 1807 at n.19. The reasons include that no trial is anticipated in a settlement class, so the case
20 management issues inherent in determining if the class should be certified need not be confronted;
21 and the trial court's fairness review of the settlement protects the interests of the non-representative
22 Class Members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615,
23 633 ("Th[e] relationship between the certification determination and the merits of the case is further
24 attenuated within the context of the settlement evaluation process . . . [C]ertification issues raised by
25 class action litigation that is resolved short of a decision on the merits must be viewed in a different
26 light."); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for
27 settlement-only class certification, a district court need not inquire whether the case, if tried, would
28 present intractable management problems . . . for the proposal is that there be no trial."). As discussed
below, for the purposes of this Settlement only, Plaintiff requests that this Court provisionally certify

1 the Class, as defined above, under Code of Civil Procedure § 3150.

2 **A. NUMEROSITY AND ASCERTAINABILITY**

3 Numerosity is met if a proposed class is so large that joinder of all members would be
4 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the
5 class members can be objectively identified and given notice of the litigation without unreasonable
6 time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. Here,
7 according to Defendants’ records, there are approximately 1,508 Class Members. This figure
8 undoubtedly satisfies the numerosity requirement.

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

10 **1. Commonality**

11 To justify certification, the class proponent must show that questions of law or fact common
12 to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito*
13 *Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001)
14 24 Cal.4th 906, 913. Plaintiff contends that the Class was subject to violations relating to issuance
15 of wage statements and necessary business reimbursements, among other things. While the Parties
16 dispute whether a class would be appropriate if the litigation were to continue, they agree to class
17 certification for the purposes of this Settlement only.

18 **2. Typicality**

19 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims and
20 the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg on Class*
21 *Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiff’s claims are
22 typical of the Class for the purposes of any continued litigation of the Action, but agree for the
23 purposes of this Settlement only, that Plaintiff asserts claims regarding Defendants’ policies/practices
24 concerning reimbursement of necessary business expenditures, and issuance of accurate itemized
25 wage statements, which are at the core of the lawsuit.

26 **3. Adequacy of Representation**

27 The proposed class representative must establish that he/she will adequately represent the
28 proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th

1 540, 546. Here, Plaintiff is adequate to represent the Class because he was employed by both
2 Defendants during the Class Period, experienced the same wage and hour practices as the rest of the
3 Class, understands his duties as Class Representative, has been willing to undergo the risk of
4 litigation, and has no conflicts of interest.

5 Adequacy may be established by the fact that counsels are experienced practitioners. *See*
6 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244
7 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience in wage
8 and hour class and PAGA actions like the instant matter. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶
9 2-7.)

10 4. Superiority

11 Certification of the Class for settlement purposes is superior here because there will be a
12 global resolution of all claims at once, which fosters judicial economy. Class certification for
13 settlement purposes is also vastly superior to litigation of numerous individual claims because most
14 of the claims are too small to litigate outside of the class context.

15 V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, 16 WHICH IS FAIR, ADEQUATE, AND REASONABLE

17 A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL 18 UNDER THE CALIFORNIA RULES OF COURT

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

27 The decision to approve or reject a proposed settlement lies within the Court's sound
28 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. Nevertheless,

1 in considering a potential settlement for approval, a court is not to turn the approval hearing “into a
2 trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested
3 issues of fact and law which underlie the merits of the dispute.” *Officers for Justice*, 688 F.2d at 625.

4 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
5 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable”
6 standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
7 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
8 after determining that it is ““fair, adequate and reasonable,”” considering factors such as the ““risk,
9 expense, [and] complexity”” of continued litigation) (citations omitted). The Court has broad
10 discretion in making its fairness determination, and should consider factors including:

11 [T]he strength of Plaintiffs’ case, the risk, expense, complexity and likely
12 duration of further litigation, the risk of maintaining class action status through
13 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.

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

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

22 At the preliminary approval stage, the Court need only determine that the settlement falls
23 within the “range of possible judicial approval,” so that notice to the class and the scheduling of the
24 fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant preliminary
25 approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the
26 settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation*
27 (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption of fairness exists where:
28 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
2 litigation; and (4) the percentage of objectors is small.” *Dunk, supra* (citing *Newberg* § 11:41).

3 As shown below, the Settlement falls well within the range of approval because there are no
4 grounds to doubt its fairness.

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

7 The Settlement was the product of extensive arm’s length negotiations between counsel and
8 was facilitated by Tripper Ortman, Esq., an experienced wage-and-hour class action mediator.
9 Though cordial and professional, the Settlement negotiations were adversarial and non-collusive in
10 nature. The Settlement reached is the product of substantial effort by the Parties and their counsel.
11 Although Plaintiff and Class Counsel believed that there was a possibility of certifying the claims,
12 they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
13 decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or
14 on an appeal that can take several more years to litigate. In addition, if Defendants prevailed on any
15 of their defenses, the Class Members may not have received any substantial monetary recovery.
16 (Bokhour Decl. ¶ 30.)

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

19 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and weaknesses
20 of this case before reaching the Settlement. As described above, the Settlement was reached after
21 extensive investigation and research, thorough calculations and risk evaluation, and a substantial
22 exchange of information relating to Plaintiff and the Class Members prior to mediation. (Bokhour
23 Decl. ¶¶ 13, 23-36; Falakassa Decl. ¶¶ 13, 18-22)

24 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

25 To evaluate a settlement, the parties must provide the trial court with “basic information about
26 the nature and magnitude of the claims in question and the basis for concluding that the consideration
27 being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot*
28 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was further explained

1 in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, which held
2 that an explicit statement of the maximum theoretical amount that the class could recover was not
3 necessary:

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

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

18 Of relevance to the reasonableness of the proposed Settlement is the fact that significant legal
19 and factual grounds for defending this action exist. As further detailed below, in addition to disputing
20 the merits of Plaintiff’s claims, Defendants disputed whether Plaintiff could obtain class certification,
21 arguing a lack of commonality of the legal claims and injuries. Defendants further argued that it
22 complied with the applicable law, that it had complaint wage statements, policies and procedures
23 regarding reimbursement of business expenses, and that any purported deviations therefrom were
24 individualized in nature, thereby limiting Plaintiff’s ability to certify the Class. While Plaintiff asserts
25 that this is a suitable case for certification, he realizes that there is always a significant risk associated
26 with class certification proceedings, which could significantly limit the claims that he could pursue
27 on a class basis. (Bokhour Decl. ¶¶ 18-22.)

28 Considering the uncertainties of protracted litigation, this negotiated Settlement reflects the
best practicable recovery for the Class. While the total Maximum Settlement Amount is, of course,
a compromise figure, the potential risks and opportunities of both parties were effectively weighed

1 and considered by the Parties, resulting in a fair and equitable Settlement. (Bokhour Decl. ¶¶ 41-42.)

2 Based upon detailed data obtained through informal discovery and information exchanges,
3 and factoring in claim certification probabilities and liability probabilities, Class Counsel formulated
4 detailed damages models to evaluate the claims in preparation for mediation and in order to reach a
5 realistic and reasonable resolution as further detailed below. (Bokhour Decl. ¶ 23.)

6 Primarily, Plaintiff alleges that Defendants failed to issue accurate itemized wage statements
7 that include the name and address of the legal entity that is the employer in violation of Labor Code
8 § 226(a)(8) during the relevant liability period. Based on the data produced by Defendants, Plaintiff
9 estimates that the maximum potential penalties for the wage statement claims is \$257,300 (based on
10 approximately 5,146 allegedly violative wage statements issued during the Class Period). In
11 calculating Defendants' exposure, Plaintiff gave Defendants the benefit of assuming Plaintiff could
12 only obtain the "initial" wage statement penalty of \$50 per violation, in potential wage statement
13 penalties. (*Id.*; see also Lab. Code § 226(e) (providing for \$50 penalty for "initial" violations);
14 *Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation
15 rate applies until the employer has been notified that it is violating a Labor Code provision.) (Bokhour
16 Decl. ¶ 24.)

17 In response to Plaintiff's wage statement claims, Defendants contended that only a small
18 fraction of all wage statements were inadequate, if any. Defendants further contended that it cured
19 any alleged violations under the PAGA, therefore limiting any liability to the cure date. Finally,
20 Defendants contended that its violations were not "knowing and intentional," that Plaintiff could not
21 establish that they or anyone else suffered "injury" because of any alleged wage statement violations.

22 Accordingly, Plaintiff discounted the calculated maximum exposure by 40% for risk of non-
23 certification, and by an additional 40% for risk of being unsuccessful on the merits, to arrive at an
24 estimated total of \$92,628. (Bokhour Decl. ¶ 25.)

25 Next, Plaintiff also alleges that Defendants failed to reimburse Plaintiffs and Class Members
26 for all necessary business expenses, including necessary expenses incurred for personal cell phone
27 use for business purposes during the Class Period. Based on Defendants' calculations, there are a
28 total of 53,113 weekly pay periods during the entire Class Period. Plaintiff assumed that Class

1 Members should have been paid \$10.00 per weekly pay period (\$40.00/month) as a reasonable
2 portion of their cell phone bills, Plaintiff calculates a total of \$531,130 in unreimbursed necessary
3 business expenses. (Bokhour Decl. ¶ 26.)

4 In response, Defendants contended that Plaintiff and other Class Members were not actually
5 required to use their personal cell phones for business purposes. Defendants contended that the
6 California Labor Code only requires reimbursement of “necessary” expenses—as opposed to any
7 expense that is incurred in the course of performing work—and argued that distinguishing a
8 necessary expense from an unnecessary one would require individualized inquiry. *Id.*; *See*, Cal. Lab.
9 Code § 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

10 Defendants further argued that they issued company phones to those employees who required
11 phones for work purposes, and that Class Members never requested reimbursement from Defendants
12 pursuant to its reimbursement policy. Further, Defendants argued that they did not know and had no
13 reason to know that the alleged business-related expenses were incurred and not reimbursed. Finally,
14 Defendants contended that the reason for why a putative class member undertook certain expenses,
15 while not others, and failed to receive reimbursement for certain expenses while not others, would
16 raise individual issues that could not be certified. *Id.* (Bokhour Decl. ¶ 27.)

17 Indeed, Defendants argued that whether or not an expense was necessary, would depend, in
18 part, on the reasonableness of the employee’s choice, and whether or not an expense was incurred,
19 would have to be established by way of extensive individual factual inquiry and/or statistical
20 evidence. *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137.

21 In light of these defenses and arguments, Plaintiff discounted Defendants’ maximum
22 exposure by 50% for the risk of non-certification to arrive at an estimated total of \$265,565. (Bokhour
23 Decl. ¶ 28.)

24 In sum when factoring in defenses and risks of ongoing litigation, Plaintiff estimates the risk-
25 adjusted class recovery as follows:

26	• Wage Statement Claims:	\$92,628
27	• Business reimbursement	\$265,565
28	• <u>Total Risk-Adjusted Penalties and Damages:</u>	\$358,193

1 Given the realistic value of Plaintiff's claims, the \$350,000 Maximum Settlement Amount is
2 an excellent result for the Class considering that the Maximum Settlement Amount totals
3 approximately 95% of Plaintiff's risk-adjusted value of the case. Preliminary approval is appropriate
4 since the Settlement will provide significant monetary relief to the Class. (Bokhour Decl. ¶ 27.)

5 For these reasons, Plaintiff submits that the agreed-upon Settlement is fair and reasonable.

6 **E. PLAINTIFF'S COUNSELS ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
7 **LITIGATION**

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

13 Plaintiff's counsels are also highly experienced in class and PAGA litigation, having litigated
14 upwards of 50 class actions and PAGA cases, having been named "Super Lawyers Rising Stars" in
15 employment litigation (a distinction awarded to only 2.5% of litigators), and having achieved large
16 class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-7). Plaintiff's
17 counsels, operating at arm's length, weighed the strengths and risks of this case, and are of the view
18 that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk adjusted
19 value of damages, complexities of the case, the state of the law, and uncertainties of class certification
20 and litigation. (Bokhour Decl. ¶¶ 38-40; Falakassa Decl. ¶¶ 25-27).

21 **F. THE NOTICE PACKET CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

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

27 The proposed Notice Packet and proposed plan for the Settlement Administrator to mail the
28 Notice Packet to the last known address of all Class Members complies with all the requirements of

1 California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Notice Packet include
2 (1) the material terms of the Settlement; (2) the proposed attorneys' fees and costs and the Settlement
3 Administration Costs; (3) details about the final fairness hearing and how Class Members may elect
4 to exclude themselves or make an objection; and (4) how Class Members can obtain additional
5 information. (Bokhour Decl. ¶ 11, Exhibit B). In addition, it will inform Class Members of their
6 estimated settlement share.

7 The Court has wide discretion in approving the means of providing notice, so long as the
8 class representative "provide(s) meaningful notice in a form that should have a reasonable chance of
9 reaching a substantial percentage of Class Members." *Archibald v. Cinerama Hotels*, (1976) 15
10 Cal.3d 853, 861. Here, the Parties' notice plan is that notice of the Settlement will be disseminated
11 directly to the Class Members by first class mail by the Settlement Administrator, since Defendants
12 have the last known addresses of all Class Members, and the Settlement Administrator will perform
13 a skip trace and update those addresses for any Notice Packets that are returned and re-send the
14 Notice Packet.

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

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

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

11 **H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
12 **FAIR**

13 Under the terms of the Settlement Agreement, Class Counsel is requesting an amount not to
14 exceed \$116,666.66 in attorneys’ fees. (See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th.
15 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, when class action
16 litigation establishes a monetary fund for the benefit of the Class Members, the trial court may
17 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created);
18 see also *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL
19 3155645 (approving fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the
20 court noted that the fee award of 1/3 of the total settlement was “well within the range of percentages
21 which courts have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson*
22 *and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving
23 fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov.
24 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in
25 a wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the
26 recovery.”. (Bokhour Decl. ¶¶ 38-40; Falakassa Decl. ¶¶ 25-27.) Once the Court grants preliminary
27 approval of the Settlement Agreement and the Notice Packet is disseminated, Plaintiff’s counsels
28 will submit a request for attorneys’ fees and costs with its final approval motion.

1 **I. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND APPROPRIATE**

2 The Settlement Agreement provides for a Service Award to the named Plaintiff in the amount
3 not to exceed \$10,000. The proposed Service Award is reasonable given the time and effort Plaintiff
4 devoted to this case. Plaintiff's efforts included: providing factual background for the class and
5 PAGA complaint; providing documents and information about Defendants' compensation plan;
6 participating in phone calls to discuss litigation and settlement strategy; making himself available
7 throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel
8 prepare for the mediation and being available during mediation; and reviewing the Settlement
9 documents. The Plaintiff also assumed significant risk in bringing this litigation—namely, had he
10 lost, he could have been ordered to pay Defendants' costs.

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

19 **VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT**
20 **ADMINISTRATOR**

21 Subject to the Court's approval, the parties stipulated to Phoenix to serve as the Settlement
22 Administrator. Phoenix is experienced in administering class action settlements and will no more
23 than \$15,000 to administer this class action Settlement. (Bokhour Decl. ¶ 41.)

24 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

25 The last step in the approval process is the formal hearing, whereby proponents of the
26 Settlement may explain and describe its terms and conditions and offer argument in support of
27 approval, and Class Members or their counsel may be heard in support of or in opposition to the
28 Settlement. Subject to the Court's approval, the Settlement Agreement stipulates that the Court

1 schedule a hearing for final approval in accordance with the following schedule:

2	3	September 29, 2021	Preliminary Approval (PA) hearing
4	5	November 8, 2021 (within 10 calendar days after receipt of Class Data)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Class Members.
6	7	December 23, 2021 (45 days after mailing Notice Packet)	Deadline for Class Members to submit Requests for Exclusion and Objections to the Settlement.
8	9	16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
10	11	9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs' Motion for Final Approval of Settlement or filing any response to an objection to the Settlement.
12	13	5 court days before final approval hearing	Deadline for filing of any written reply to opposition to Motion for Final Approval of Settlement.
14	15	TBD (January 19, 2022, suggested)	Final Approval Hearing
16	17	Within 10 calendar days after the Final Effective Date	Defendants to deliver court approved funds to Settlement Administrator
18	19	No later than 14 calendar days after the deposit of funds from Defendant	Settlement Administrator to issue checks

20 **VIII. CONCLUSION**

21 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the Motion
22 for Preliminary Approval of Class Action Settlement.

23 Dated: September 7, 2021

BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

24 BY:

25 _____
MEHRDAD BOKHOUR
JOSHUA FALAKASSA
Attorneys for Plaintiff and the Putative Class