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Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MAYRA OSORIO, on behalf of herself and all
others similarly situated;

Plaintiff,

v.

ISC ENGINEERING, LLC, a Delaware Limited
Liability Company; MUSTARD SEED
TECHNOLOGIES, INC., a California
Company, and DOES 1 through 50 inclusive,

Defendants.

CASE NO.: 30-2021-01188961-CU-OE-CXC

Assigned to Hon. Peter Wilson

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

*[Declarations of Mehrdad Bokhour and Jake
Finkel and [Proposed] Order filed
concurrently herewith]*

HEARING INFO

Date: August 24, 2023
Time: 2:00 p.m.
Dept.: CX101

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 24, 2023, at 2:00 p.m. or as soon thereafter
3 as the matter may be heard by Honorable Peter Wilson in Department CX101 of the of the
4 Orange County Superior Court, Civil Complex Center, located at 751 W. Santa Ana Blvd.,
5 Santa Ana, California 92701, Plaintiffs Mayra Osorio and Troy Blanton, individually and on
6 behalf of all others similarly situated, will and hereby move the Court for entry of an order
7 preliminarily approving the parties' Class Action and PAGA Settlement Agreement
8 ("Settlement Agreement" and/or "Settlement"), including:

- 9 1. Certifying the Settlement Class for purposes of settlement only;
- 10 2. Preliminarily appointing Plaintiffs Mayra Osorio and Troy Blanton as Class
11 Representatives for purposes of settlement only;
- 12 3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Jake D. Finkel
13 of The Finkel Firm as Class Counsel for purposes of settlement only;
- 14 4. Preliminarily approving the Settlement as fair, adequate, and reasonable and in
15 the best interests of the Settlement Class as a whole, based upon the terms set forth in the
16 Settlement Agreement;
- 17 5. Directing distribution of the Notice Packet, including notice of the opportunity to
18 exclude oneself from, or object to, the Settlement;
- 19 6. Setting a date for a final fairness hearing to determine, following dissemination
20 of the Notice Packet, whether to grant final approval of the Settlement.

21 This motion is based upon this Memorandum of Points and Authorities in support
22 thereof; the Declarations of Mehrdad Bokhour, Jake Finkel, and Plaintiffs Mayra Osorio and
23 Troy Blanton in support thereof and all exhibits thereto; the Settlement Agreement; the
24 proposed Order; all other records, pleadings, and papers filed in this action; and upon such other
25 evidence or argument as may be presented to the Court at the hearing of this motion.

1 Dated: June 22, 2023

BOKHOUR LAW GROUP, P.C.

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3 BY:

4 MEHRDAD BOKHOUR

5 *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 Mayra Osorio and Troy Blanton (“Plaintiffs”), individually
4 and on behalf of all others similarly situated, seek preliminary approval of the Class Action and
5 PAGA Settlement Agreement¹ and to certify a class of all persons who are or were previously
6 employed by Defendants ISC Engineering, LLC and Mustard Seed Technologies, Inc.
7 (“Defendants”) in California classified as a non-exempt, hourly employee any time from March 15,
8 2017 through May 31, 2023 (the “Class Period”), to be referred to as (the “Settlement Class” and
9 “Settlement Class Members”). The allegedly aggrieved employees are non-exempt, hourly
10 employees who work or worked for Defendants in California during any time from September 25,
11 2019 through May 31, 2023 (the “PAGA Period”), to be referred to as (the “Allegedly Aggrieved
12 Employees”).

13 Subject to the Court’s approval, Plaintiffs and Defendants have agreed to settle Plaintiffs’
14 and the proposed Settlement Class Members’ claims against Defendants for a Gross Settlement
15 Amount of \$850,000 (the “Gross Settlement Amount”).

16 Under the terms of the Settlement Agreement, Defendants will not oppose application for a
17 reasonable award of attorneys’ fees not to exceed one third of the Gross Settlement Amount by
18 Mehrdad Bokhour of Bokhour Law Group, P.C. and Jake D. Finkel of The Finkel Firm (“Class
19 Counsel”), Class Counsel’s litigation costs not to exceed \$20,000, Settlement Administration Costs
20 not to exceed \$10,000, PAGA penalties of \$25,000 (of which \$18,750 or 75% will be paid to the
21 Labor Workforce Development Agency (LWDA) and the remaining \$6,250 or 25% will be paid to
22 the Settlement Class Members), and a Service Payment not to exceed \$7,500 to each named
23 Plaintiff (S.A. ¶ 47(a)-(h)), as follows:

24
25
26
27 ¹ The Class Action and PAGA Settlement Agreement is attached as Exhibit A to the Declaration of
28 Mehrdad Bokhour (“Bokhour Decl.”) submitted herewith and is hereinafter referred to as the
“Settlement Agreement”. “S.A.” or the “Settlement.”

	Total Amount
<i>Gross Settlement Amount</i>	\$850,000.00
Attorneys' Fees (not to exceed 1/3 of GSA)	\$283,333.33
Litigation Costs (not to exceed)	\$20,000.00
Administrator Costs (not to exceed)	\$10,000.00
PAGA payment to LWDA (75% of \$10k award)	\$18,750.00
Plaintiffs' Service Payment	\$15,000.00
<i>Net Settlement Amount</i>	\$502,916.67

The Class includes approximately 359 non-exempt employees who worked approximately 32,402 workweeks in California during the Class Period. Plaintiffs contend that, regardless of their roles, all non-exempt employees worked under the same workplace policies and scheduling practices, and therefore, the Individual Settlement Payments, as calculated pursuant to paragraph 47(d) of the Settlement Agreement, will be paid on a pro-rata basis based on the number of compensable workweeks during the Class Period. Assuming a total class size of 359 Settlement Class Members, the average payment to each Settlement Class Member will be approximately \$1,428 and the highest payment estimated to be approximately \$4,440. Of course, those with more compensable workweeks stand to recover proportionally more from the Settlement. (Bokhour Decl. ¶ 12.)

The Settlement is non-reversionary, and Settlement Class Members will not be required to submit claim forms to receive payment, but each Settlement Class Member will be mailed the Notice Packet containing information about his/her share, the opportunity to dispute the number of compensable workweeks worked by the Settlement Class Member, and the opportunity to opt-out or object to the Settlement.² All Settlement Class Members who do not affirmatively opt out will receive a settlement check upon the Court granting final approval of the Settlement. (Bokhour Decl. ¶ 11.)

Because the Settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents in advance of mediation, it should be preliminarily approved. Plaintiffs respectfully

² The proposed Notice Packet is attached to the Bokhour Decl. as Exhibit B.

1 request that the Court enter an order preliminarily approving the Settlement, conditionally
2 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
3 proposed Notice Packet, appointing Plaintiffs' counsel as Class Counsel, appointing ILYM Group,
4 Inc. as the Settlement Administrator, and scheduling a hearing for the final approval of the
5 Settlement. (Bokhour Decl. ¶ 13)

6 **II. BACKGROUND**

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

8 During the Class Period, Plaintiffs and the putative class members consisted of
9 manufacturing employees working at Defendants' facilities located at Orange, California. Plaintiffs
10 and other non-exempt employees were responsible for certain aspects of Defendants' business
11 operations. However, in these roles, the Plaintiffs and the putative class members were allegedly
12 subjected to numerous violations of the Labor Code and Wage Orders. (Bokhour Decl. ¶ 16.)

13 The putative Settlement Class consists of all current and former individuals who are or
14 previously were employed by Defendants in California who were classified as non-exempt
15 employees under California law during the Class Period (*i.e.*, March 15, 2017 through May 31,
16 2023.) (S.A. ¶¶ 7, 38.)

17 **B. PROCEDURAL HISTORY**

18 On or about March 15, 2021, Plaintiff Mayra Osorio filed a Class Action Complaint in the
19 Court against Defendants, including causes of action asserting: (1) failure to pay minimum wages,
20 (2) failure to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) wage
21 statement violations, (6) waiting time penalties, (7) unfair competition, and (8) PAGA penalties. On
22 December 21, 2022, Plaintiffs filed the First Amended Complaint that added Troy Blanton as a
23 named class representative and a failure to pay all sick time wages claim. (S.A. ¶ 40.) (Bokhour
24 Decl. ¶ 17.)

25 Throughout the litigation and to date, Defendants denied and deny all of Plaintiffs' claims
26 and allegations and maintain that this action is meritless and not suitable for class certification
27 and/or representative treatment. (S.A. ¶ 41.) However, before engaging in protracted litigation, the
28 parties agreed to explore resolution through private mediation. (Bokhour Decl. ¶ 18.) In preparation

1 for mediation, the parties agreed to an informal discovery process where information was
2 exchanged relating to the applicable policies and procedures, payroll and time keeping records, size
3 of the putative class, compensation policies and practices, and potential value of the case. (*Id.*) The
4 sampling enabled Plaintiffs' counsel and expert to fully evaluate the potential claims and
5 extrapolate the data to the entire Class. During this process, Plaintiffs and counsel analyzed,
6 researched, and investigated the potential claims of all similarly situated employees. (*Id.*)

7 On September 26, 2022, and February 17, 2023, the parties participated in mediation before
8 Hon. Margaret Nagle (Ret.), a highly experienced class and PAGA/representative action mediator.
9 After two full-days of mediation and the issuance of a mediator's proposal, the parties reached a
10 settlement and then memorialized the terms of the settlement in a long-form Settlement Agreement.
11 (Bokhour Decl., ¶ 19, Exhibit A.) (*Id.*)

12 The parties now seek the Court's preliminary approval of the Settlement Agreement.

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

14 Plaintiffs allege numerous wage and hour violations on behalf of the non-exempt employees
15 who worked for Defendants during the Class Period. (Bokhour Decl. ¶ 20.)

16 First, Plaintiffs claim that employees were not paid for all hours worked or when they were
17 subject to the control of Defendants due to Defendants' allegedly unlawful rounding policy and
18 practice, which rounded all time entries to the nearest 15-minute interval. (Bokhour Decl. ¶ 21.)

19 Further, Plaintiffs claim they and other non-exempt employees were not properly paid at the
20 correct overtime and sick pay rate for all hours worked in excess of eight hours per workday or 40
21 hours per workweek due to Defendants' alleged failure to properly calculate the "regular rate of
22 pay." (Bokhour Decl. ¶ 22.)

23 Moreover, Plaintiffs claim Defendants maintained deficient meal and rest period policies
24 and practices that allegedly failed to allow and permit Class Members to take timely and code-
25 compliant meal and rest periods or pay compensation in lieu thereof at the "regular rate of pay."
26 Plaintiffs further contend that Defendants failed to timely pay non-exempt employees their final
27 wages upon separation from employment. (Bokhour Decl. ¶ 23.)

1 Finally, Plaintiffs allege that Defendants failed to provide accurate itemized wage
2 statements and additionally seek civil penalties under the PAGA claims arising out of the alleged
3 Labor Code violations set forth above. (Bokhour Decl. ¶ 24.)

4 **D. SUMMARY OF DEFENDANTS' DEFENSES**

5 Defendants contested and denied each of Plaintiffs' material allegations on the merits and as
6 to the propriety of the class and PAGA action. (Bokhour Decl. ¶ 25.)

7 First, Defendants argued that its pay practices were neutral, and that any underpayment as a
8 result of rounding was *de minimis*. Defendants further argued that its meal and rest period policies
9 and practices were compliant with California law, and that non-exempt employees were at all times
10 allowed and permitted to take their meal and rest periods. (Bokhour Decl. ¶ 26.)

11 Defendants further contended that Plaintiffs' waiting time penalty and wage statement
12 claims based on the underlying meal and rest period violations were unfounded as these violations
13 did not entitle employees to pursue the derivative penalties under Labor Code sections 203 and 226.
14 (Bokhour Decl. ¶ 27.)

15 Defendants also contended that Plaintiffs' claims were not suitable for class certification
16 because individualized inquiries would be required to establish, amongst other things, which
17 employees, if any, took meal periods of less than 30-minutes and why a particular employee
18 received a meal period of less than 30-minutes on a particular shift. (Bokhour Decl. ¶ 28.)

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

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

21 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

22 The \$850,000 Settlement Amount is non-reversionary and will be paid out to Settlement
23 Class Members without the need to submit a claim form or take any affirmative action. It includes
24 (1) Plaintiffs' attorneys' fees and costs, as approved by the Court; (2) a Service Payment not to
25 exceed \$7,500 to each named Plaintiff, as approved by the Court; (3) Settlement Administration
26 Costs, not to exceed \$10,000, as approved by the Court; (4) a \$25,000 PAGA Payment, 75 percent
27 of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the
28 aggregate of all Individual Settlement Payments of the Settlement Class Members. (S.A. ¶ 47.)

1 Each Defendant will separately pay its respective share of the applicable employer payroll taxes on
2 the portion of the Individual Settlement Amounts that are allocated as wages subject to
3 withholdings.

4 After all Court-approved deductions from the Settlement Amount, it is estimated that
5 \$502,916.67 will be available to pay the Individual Settlement Payments to approximately 359
6 Settlement Class Members. As noted above, the average Individual Settlement Payment to
7 Settlement Class Members is approximately \$1,428 and the highest payment estimated to be
8 approximately \$4,440], which is a fair and reasonable recovery.

9 **B. NOTICE PROCEDURES**

10 The proposed Notice Packet will be provided to the Settlement Class Members showing the
11 estimated number of compensable workweeks for which he/she will be credited (Exhibit B to the
12 Bokhour Decl.). Within fourteen (14) days after entry by the Court of its Order of Preliminary
13 Approval, Defendants shall provide the Settlement Administrator with a list of all Settlement Class
14 Members containing each Settlement Class Members' full names; last known addresses; telephone
15 numbers; Social Security Numbers; and dates of employment and/or number of workweeks worked
16 (as defined by paragraph 39 of the Settlement Agreement) as non-exempt employees of Defendants
17 in California during the Class Period and the PAGA Period for each Settlement Class Member, and
18 any other relevant information needed by the Settlement Administrator to calculate Individual
19 Settlement Payments (the "Class Data"). (S.A. ¶¶ 6, 64.)

20 Within seven (7) seven days after receipt of the Class Data, the Settlement Administrator
21 shall calculate the number of compensable workweeks for each Settlement Class Member, populate
22 the Notice Packet (if necessary), and send each Settlement Class Member the Notice Packet via
23 first-class, United States mail. (S.A. ¶ 65.)

24 If any Notice Packet mailed to a Settlement Class Member is returned as having been
25 undelivered by the U.S. Postal Service, the Settlement Administrator shall use standard devices,
26 including a skip trace, to obtain forwarding addresses of Settlement Class Members if any
27 envelopes are returned. (S.A. ¶ 65.)

1 Any Notice Packets returned to the Settlement Administrator as non-delivered on or before
2 the Notice Response Deadline as defined at Paragraph 19 of the Settlement Agreement shall be re-
3 mailed to the forwarding addresses affixed thereto. If no forwarding address is provided, the
4 Settlement Administrator will take steps to ensure that the Notice Packet is mailed to all Settlement
5 Class Members, including the utilization of the National Change of Address Database maintained
6 by the U.S. Postal Service and shall make reasonable efforts, conducting a “skip-trace” to obtain an
7 updated mailing address for a Class Member and, if applicable to update the mailing addresses
8 within ten (10) calendar days of receiving the returned Notice Packet.

9 If the Settlement Administrator learns of a failed mailing and obtains a forwarding or
10 updated address for that Class Member, the Notice Packet will be re-mailed to that Settlement
11 Class Member within ten (10) calendar days of receipt of the updated address. The address
12 identified by the Settlement Administrator as the current mailing address shall be presumed to be
13 the best mailing address for each Class Member. The re-mailed Notice Packet shall be identical to
14 the original Notice Packet, except that it shall notify the Class Member that the exclusion (opt-out)
15 request or objection must be returned by the later of the Notice Response Deadline or fifteen (15)
16 days after the remailing of the Notice. (S.A. ¶ 66.)

17 **C. EXCLUSION AND OBJECTION PROCEDURES**

18 Settlement Class Members who do not timely opt-out of the Settlement will be deemed to
19 participate in the Settlement and shall become Settlement Class Members without having to submit
20 a claim form or take any other action. The Notice Packet shall inform the Settlement Class
21 Members of their right to opt out of the Settlement. To do so, the Settlement Class Member must
22 submit a written Request for Exclusion to the Settlement Administrator no later than sixty (60) days
23 after being mailed the Notice Packet by the Settlement Administrator (“Notice Response
24 Deadline”). (S.A. ¶ 20,69(a).)

25 The Notice Packet shall inform the Settlement Class Members of their right to object to the
26 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
27 objection to the Settlement Administrator no later than the Notice Response Deadline. The
28 objection must include the Objecting Class Member’s full name, address, telephone number, dates

1 of employment with Defendant, the case name and number, the basis for the objection, including
2 any legal support and each specific reason in support of the objection, as well as any documentation
3 or evidence in support thereof, and, if the objecting Settlement Class Member is represented by
4 counsel, the name and address of his or her counsel. (S.A. ¶ 69(c).)

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

6 The Individual Settlement Payment for each Settlement Class Member will be calculated by
7 the Settlement Administrator using the Class Data provided by Defendants as follows. Using the
8 Class Data or using the compensable workweeks that were disputed and subsequently approved,
9 while also accounting for any timely submitted Requests for Exclusion, the Settlement
10 Administrator will calculate the total compensable workweeks for all Settlement Class Members (if
11 necessary). Each Participating Settlement Class Member's Individual Settlement Amount shall be
12 based on his or her proportionate Workweeks Worked during the Class Period compared to the total
13 number of Workweeks Worked by all Participating Class Members during the Class Period. (S.A.
14 ¶¶ 26; 39, 47(d)(ii).)

15 The Notice Packet will inform Settlement Class Members of his/her estimated number of
16 Workweeks Worked (S.A. ¶ 39) during the Class Period. Settlement Class Members may dispute
17 their estimated Workweeks Worked if they feel they worked more weeks in the Class Period in
18 California than Defendants' records show by timely submitting evidence to the Settlement
19 Administrator.

20 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

21 Defendants jointly and severally shall make a one-time deposit into the QSF of the Gross
22 Settlement Amount, as described in Paragraph 47(a) within fourteen (14) calendar days after the
23 Effective Date, plus Defendants shall jointly and severally separately pay their respective share of
24 employer payroll taxes as calculated and directed by the Settlement Administrator. (S.A. ¶ 71.)
25 Prior to the disbursement of any funds, the Settlement Administrator will provide a disbursement
26 summary of the calculations for the payments described above for review and approval by Class
27 Counsel and Defendants' Counsel. Following approval by Class Counsel and Defendants' Counsel,
28 and no later than fourteen (14) calendar days after deposit of the Gross Settlement Payment into the

1 QSF, the Settlement Administrator will mail the payments to the Participating Settlement Class
2 Members, Allegedly Aggrieved Employees, the payment for the attorneys' fees and costs to Class
3 Counsel, any Service Payment to the Class Representatives, the payment to the LWDA for PAGA
4 penalties, and will pay itself the Settlement Administration Costs. (S.A. ¶ 72.)

5 The Gross Settlement Amount will be used to fund: (i) Individual Settlement Payments to
6 the Settlement Class Members; (ii) amounts awarded to Class Counsel for attorneys' fees and costs,
7 (iii) the Service Award to the Plaintiff; (iv) the payment to the LWDA to resolve claims under the
8 PAGA; and (v) Settlement Administration Costs. (S.A. ¶ 47(a).)

9 If any settlement check is returned to the Settlement Administrator within 180 days of
10 mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned
11 settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and
12 Class Counsel of the results. If a new address is located by these means, the Settlement
13 Administrator will have ten (10) business days to re-issue the check. (S.A. ¶ 73.)

14 Settlement Class Members shall have 180 calendar days after the mailing by the Settlement
15 Administrator to cash their settlement checks. (S.A. ¶ 73.) If any Settlement Class Member's check
16 is not cashed within that period, the check will be void and the Settlement Administrator shall issue
17 the unclaimed funds, plus any accrued interest that has not otherwise been distributed will be paid to
18 the California State Controller's Unclaimed Property Fund in the name of the Settlement Class
19 Member such that the Settlement Class Member may claim the money until such time as the money
20 escheats to the State pursuant to the Unclaimed Property Law. (S.A. ¶ 73.) The Release will be
21 binding upon all Settlement Class Members, including those who do not cash their checks within the
22 180-day period. (S.A. ¶ 73.)

23 **F. TAX TREATMENT**

24 The Individual Settlement Amounts will be allocated for tax purposes based on the
25 allegations in the Action as follows: one third (33.33%) will be paid as wages subject to
26 withholding of all applicable local, state, and federal taxes; one third (33.33%) will be paid as
27 interest; and one third (33.34%) will be paid as penalties. Pursuant to, *e.g.*, California Labor Code
28 Sections 203 and 226, no taxes will be withheld from the two thirds (66.67%) that will be paid as

1 interest and as civil penalties. The Settlement Administrator will issue to each Participating Class
2 Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the
3 wage allocation, and a Form 1099 with respect to the civil penalties and interest allocations. (S.A. ¶
4 47(e).)

5 **G. PARTICIPATING SETTLEMENT CLASS MEMBERS' RELEASE OF CLAIMS**

6 In exchange for these payments, the Settlement Agreement ¶ 51 provides that the
7 Participating Settlement Class Members will release the Released Parties (S.A. ¶ 31) of the claims
8 alleged or could have been alleged based on the facts stated in the operative complaint as follows:

9 all claims that were pled in the original Complaint and First Amended Complaint
10 based on the facts alleged therein, or that could have been alleged based upon the facts
11 asserted therein or that arise from, are attributable to, or are related to the facts asserted
12 therein, except the claim under the PAGA, including claims for (1) failure to pay
13 minimum wages, (2) failure to pay overtime wages and/or failure to pay such wages at
14 the correct rate(s) of pay, (3) failure to pay all sick time wages and/or failure to pay
15 such wages at the correct rate(s) of pay, (4) meal and rest break violations, failure to
16 pay meal and rest break premium pay and/or failure to pay such premium pay at the
17 correct rate(s) of pay, (6) failure to provide accurate itemized wage statements, (7)
18 failure to timely pay all wages upon separation of employment, and (8) unfair and
19 unlawful business practices.

20 In addition to the foregoing release, the named Plaintiffs have also agreed to enter a separate
21 General Release as set forth in the Settlement Agreement. (S.A. ¶¶ 59-60.)

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

25 California Rule of Court 3.769(d) provides that the Court may make an order approving
26 certification of a provisional settlement class at the preliminary approval stage. It is well-
27 established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
28 of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48
Cal.App⁴ 1794, 1807 at n.19.

The reasons include that no trial is anticipated in a settlement class, so the case management
issues inherent in determining if the class should be certified need not be confronted; and the trial
court’s fairness review of the settlement protects the interests of the non-representative Class

1 Members. *Id.*; see also *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633
2 (“Th[e] relationship between the certification determination and the merits of the case is further
3 attenuated within the context of the settlement evaluation process . . . [C]ertification issues raised
4 by class action litigation that is resolved short of a decision on the merits must be viewed in a
5 different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a
6 request for settlement-only class certification, a district court need not inquire whether the case, if
7 tried, would present intractable management problems . . . for the proposal is that there be no
8 trial.”).

9 As discussed below, for the purposes of this Settlement only, Plaintiffs request that this
10 Court provisionally certify the Settlement Class, as defined above, under Code of Civil Procedure §
11 3150.

12 **A. NUMEROSITY AND ASCERTAINABILITY**

13 Numerosity is met if a proposed class is so large that joinder of all members would be
14 impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the
15 class members can be objectively identified and given notice of the litigation without unreasonable
16 time or expense. See *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.Ap^p4th 89, 101.

17 Here, according to Defendants’ records, there are approximately 220 Settlement Class
18 Members. Plaintiffs argue that this figure undoubtedly satisfies the numerosity requirement.

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

20 **1. Commonality**

21 To justify certification, the class proponent must show that questions of law or fact common
22 to the class predominate over the questions affecting the individual members. See *Arenas v.*
23 *El Torito Rests., Inc.* (2010) 183 Cal.Ap^p4th 723, 732 (citing *Washington Mut. Bank v. Superior*
24 *Court* (2001) 24 Ca^l4th 906, 913).

25 Here, Plaintiffs contend that the Settlement Class was subject to common policies and
26 practices relating to the provision of meal and rest periods and payment of minimum and overtime
27 wages, among other things. While the parties dispute whether a class would be appropriate if the
28 litigation were to continue, they agree to class certification for the purposes of this Settlement only.

1 2. Typicality

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

10 3. Adequacy of Representation

11 The proposed class representatives must establish that they will adequately represent the
12 proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.Ap⁴th
13 540, 546. Specifically, Plaintiffs’ position is that they are adequate to represent the Settlement
14 Class because they were employed by Defendants during the Class Period, experienced the same
15 wage and hour practices as the rest of the Settlement Class, understand their duties as Class
16 Representatives, have been willing to undergo the risk of litigation, and have no conflicts of
17 interest.

18 Adequacy may be established by the fact that counsels are experienced practitioners. *See*
19 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
20 244 F.3d 1152, 1162. Here, Plaintiffs assert that they are represented by Class Counsel with
21 extensive experience in wage and hour class and PAGA actions like the instant matter.

22 4. Superiority

23 Plaintiffs further contend that certification of the Class for settlement purposes is superior
24 here because there will be a global resolution of all claims at once, which fosters judicial economy.
25 Plaintiffs contend that class certification for settlement purposes is also vastly superior to litigation
26 of numerous individual claims because most of the claims are too small to litigate outside of the
27 class context.

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

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

5 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.Ap^P4th 1374, 13150.
6 This is particularly true in class actions where substantial resources can be conserved by avoiding
7 the time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
8 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
9 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
10 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
11 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
12 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

13 The decision to approve or reject a proposed settlement lies within the Court's sound
14 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.Ap^P4th 224. Nevertheless, in
15 considering a potential settlement for approval, a court is not to turn the approval hearing "into a
16 trial or rehearsal for trial on the merits [or] to reach any ultimate conclusions on the contested
17 issues of fact and law which underlie the merits of the dispute." *Officers for Justice*, 688 F.2d at
18 625.

19 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
20 reasonable. *See Dunk*, 48 Cal.Ap^P4th at 1801 (setting forth the "fair, adequate, and reasonable"
21 standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
22 Cal.Ap^P4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
23 after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "risk,
24 expense, [and] complexity" of continued litigation) (citations omitted). The Court has broad
25 discretion in making its fairness determination, and should consider factors including:

26 [T]he strength of Plaintiffs' case, the risk, expense, complexity and likely
27 duration of further litigation, the risk of maintaining class action status
28 through trial, the amount offered in settlement, the extent of discovery

1 completed and the stage of the proceedings, the experience and views of
2 counsel . . . and the reaction of the Class Members to the proposed settlement.
3 *Dunk, supra* (setting forth a non-exhaustive list of factors for the court’s consideration at final
4 approval).

5 The above factors are not exclusive “and the court is free to engage in a balancing and
6 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.Ap⁴th at
7 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
8 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent
9 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
10 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal quotation
11 marks omitted).

12 At the preliminary approval stage, the Court need only determine that the settlement falls
13 within the “range of possible judicial approval,” so that notice to the class and the scheduling of the
14 fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant preliminary
15 approval if there are no “grounds to doubt its fairness or other obvious deficiencies ... and [the
16 settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation*
17 (Third) § 30.41 (1995); *see Dunk*, 48 Cal.Ap⁴th at 1802. A “presumption of fairness exists
18 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
19 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
20 experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra* (citing
21 *Newberg* § 11:41). As shown below, the Settlement falls well within the range of approval because
22 there are no grounds to doubt its fairness.

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

25 The Settlement was the product of extensive arm’s length negotiations between counsel and
26 was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
27 professional, the Settlement negotiations were adversarial and non-collusive in nature. The
28 Settlement reached is the product of substantial effort by the parties and their counsel. Although
Plaintiffs and Class Counsel believed that there was a possibility of certifying the claims, they

1 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
2 decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or
3 on an appeal that can take several more years to litigate. In addition, if Defendants prevailed on
4 any of its defenses, the putative class members may not have received any substantial monetary
5 recovery.

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

8 Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and
9 weaknesses of this case before reaching the Settlement. As described above, the Settlement was
10 reached after extensive investigation and research, thorough calculations and risk evaluation, and a
11 substantial exchange of information relating to Plaintiffs and the putative class members prior to
12 mediation.

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

14 To evaluate a settlement, the parties must provide the trial court with “basic information
15 about the nature and magnitude of the claims in question and the basis for concluding that the
16 consideration being paid for the release of those claims represents a reasonable compromise.”
17 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
18 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
19 399, which held that an explicit statement of the maximum theoretical amount that the class could
20 recover was not necessary:

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

28 A settlement is not judged against what might have been recovered had a plaintiff prevailed
at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 250 (“Compromise is

1 inherent and necessary in the settlement process ... even if the relief afforded by the proposed
2 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
3 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
4 settlement in which each side gives ground in the interest of avoiding litigation.”)

5 Of relevance to the reasonableness of the proposed Settlement is the fact that significant
6 legal and factual grounds for defending this action exist. As further detailed below, in addition to
7 disputing the merits of Plaintiffs’ claims, Defendants disputed whether Plaintiffs could obtain class
8 certification, arguing *inter alia* a lack of commonality of the legal claims and injuries. Defendants
9 further argued that it complied with the applicable law, that all putative class members were
10 provided the opportunity to take their meal and rest periods, and that any purported deviations
11 therefrom were individualized in nature, thereby limiting Plaintiffs’ ability to certify the Class.
12 While Plaintiffs assert that this is a suitable case for certification, they realize that there is always a
13 significant risk associated with class certification proceedings, which could significantly limit the
14 claims that he could pursue on a class basis.

15 Considering the uncertainties of protracted litigation, this negotiated Settlement reflects the
16 best practicable recovery for the Class. While the total Settlement Amount is, of course, a
17 compromise figure, the potential risks and opportunities were effectively weighed and considered
18 by the parties, resulting in a fair and equitable Settlement.

19 Based upon Plaintiffs’ independent investigation and detailed data obtained through
20 informal discovery and information exchanges, and factoring in claim certification probabilities
21 and liability probabilities, Class Counsel formulated detailed damages models to evaluate the
22 claims in preparation for mediation and to reach a realistic and reasonable resolution as further
23 detailed below.

24 **1. Failure to Pay All Wages Due to Rounding**

25 First, Plaintiffs alleged that Defendants’ allegedly non-neutral rounding practice/policy
26 results in a systemic failure to pay all wages due. Based on Plaintiffs’ analysis of the payroll
27 records and data produced, Plaintiffs conclude that the rounding policy resulted in several putative
28 class members being underpaid, for a net average of 1.5 minutes of unpaid time per shift for a total

1 of approximately 1,145 hours of unpaid time. This results in a total of \$61,616.96 in unpaid wage
2 damages (1,145 hours x \$24.55 (OT hourly rate) = \$28,109. (Bokhour Decl. ¶ 30.)

3 However, this maximum figure ignores Defendants' defenses to Plaintiffs' rounding claim.
4 In this regard, Defendants argued that this constituted precisely the type of individualized inquiry
5 that is not appropriate for certification because the court would have to conduct a person-by-person
6 analysis to determine if the Class Member was correctly paid. (Bokhour Decl. ¶ 31.)

7 Based on this argument, and others, Plaintiffs assigned a 25% risk that the Court would
8 deny class certification on Plaintiffs' rounding claim. Additionally, Defendants alleged that, if
9 certification were granted, it would defeat the rounding claim on the merits at summary judgment
10 or at trial because its policies and/or practices were, always, facially neutral in compliance with
11 *See's I.* (Bokhour Decl. ¶ 32.)

12 Therefore, Plaintiffs assigned an additional 35% discount for risks at the merits stage,
13 resulting in a total risk-adjusted value for the rounding claims of \$13,703. (Bokhour Decl. ¶ 33.)

14 **2. Failure to Pay for Overtime and Sick Time Wages at the Correct Rate**

15 Further, Plaintiffs alleged that Defendants failed to account for non-discretionary bonuses
16 and other incentive pay when calculating the "regular rate of pay" when paying overtime and sick
17 time wages. However, Defendants argued that it correctly calculated the "regular rate of pay," and
18 that any underpayment was in good faith and *de minimums*, if any. (Bokhour Decl. ¶ 34.)

19 Indeed, Defendants' sampling of pay records revealed that any such underpayment of
20 minimum and overtime wages was minimal. (Bokhour Decl. ¶ 35.)

21 Due to this and in light of Defendants' other defenses, Plaintiffs completely discounted this
22 claim keeping in mind that the true significant value of these unpaid wages claims lies in the
23 derivative claims for waiting time penalties under Labor Code § 203 and wage statement violations
24 under Labor Code § 226 as discussed below. (Bokhour Decl. ¶ 36.)

25 **3. Waiting Time Penalties**

26 With respect to Plaintiffs' waiting time penalty claim, there were approximately 198
27 putative class members that separated from their employment with Defendants during the relevant
28 statutory period. As such, the maximum potential penalty under Labor Code § 201 – 203 is

1 \$365,378 (93 employees x 8.0 hours per day x average rate of \$16.37 x 30 days). (Bokhour Decl. ¶
2 37.)

3 In response, Defendants argued that it would defeat the waiting time penalty claim as to
4 Plaintiffs' rounding claim because any failure to pay wages was not willful and occurred prior to
5 the waiting time penalty liability period. Further, Defendants contended that it complied with the
6 law because it had an alleged facially neutral rounding policy/practice. (Bokhour Decl. ¶ 38.)

7 Defendants further argued that it would defeat liability as to waiting time penalties arising
8 out of Plaintiffs' meal and rest period claims. (Bokhour Decl. ¶ 39.)

9 Therefore, Plaintiffs applied a 40% risk of defeat at the class certification stage, and an
10 additional 35% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-
11 adjusted value of \$142,497 for Plaintiffs' waiting time penalty claim. (Bokhour Decl. ¶ 40.)

12 **4. Failure to Provide Meal and Rest Periods**

13 With respect to Plaintiffs' meal and rest period violation claims, the putative class members
14 worked 110,966 shifts during the Class Period. Based on an alleged 50% violation rate for the
15 meal period claims and an alleged 33% violation rate for the rest period claims, as extrapolated
16 from the pre-mediation sampling of Defendants' payroll and timekeeping records, the maximum
17 potential damages totalled \$908,256 for the meal period claim and \$599,449 for the rest period
18 claim, respectively. (Bokhour Decl. ¶ 41.)

19 However, Defendants vehemently opposed these claims based on the following arguments:
20 (1) Plaintiffs' meal and rest period claims fall directly into the category of "individualized issues,"
21 (2) that its written policies and practices were compliant with California law, and (3) putative class
22 members had ample latitude regarding whether, when, and how they took their meal and rest
23 breaks. Therefore, Defendants asserted that a factfinder would have to determine for each Class
24 Member whether a break was missed and why, and why a break was noncompliant/nonexistent,
25 because if it was by the employee's choice, no liability attaches to the Defendant. Based on these
26 arguments, Plaintiffs believe there is a 35% risk that the Court would deny class certification on
27 these meal periods and rest break claims. (Bokhour Decl. ¶ 42.)

1 Defendants further argued that, even if certification were granted, it would defeat these
2 claims on the merits because Defendants utilized compliant meal and rest period policies and
3 practices and it would present sufficient evidence that the putative class members were properly
4 provided with all breaks or paid compensation in lieu thereof. Moreover, Defendants argued that
5 Plaintiffs would be unable to present sufficient evidence establishing the number of meal and rest
6 period violations to allow a factfinder to appropriately determine damages.

7 Plaintiffs acknowledged the risks and incorporated a further 25% reduction. Plaintiffs
8 therefore calculates the risk-adjusted value of the meal period claims to be \$438,481 and rest period
9 claims to be \$292,231. (Bokhour Decl. ¶ 43.)

10 **5. Failure to Provide Accurate Itemized Wage Statements**

11 Plaintiffs estimate that the maximum potential penalties for the derivative wage statement
12 claim as \$291,900 (based on approximately 5,838 allegedly violative wage statements issued
13 during the Class Period). In calculating Defendants' exposure, Plaintiffs gave Defendants the
14 benefit of assuming Plaintiffs could only obtain the "initial" wage statement penalty of \$50 per
15 violation, for a total of \$330,700 in potential wage statement penalties. *Id.*, Lab. Code § 226(e)
16 (providing for \$50 penalty for "initial" violations); *Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th
17 1157, 1207 (2008) (finding that "initial" violation rate applies until the employer has been notified
18 that it is violating a Labor Code provision.) (Bokhour Decl. ¶ 44.)

19 In response to Plaintiffs' wage statement violation claim, Defendants contended that any
20 alleged violations were not "knowing and intentional," that Plaintiffs could not establish that he or
21 anyone else suffered "injury" because of any alleged wage statement violations. Further,
22 Defendants relied on its defenses to Plaintiffs' underlying claims both on the merits and to class
23 certification. (Bokhour Decl. ¶ 45.)

24 As such, Plaintiffs discounted the calculated maximum exposure by 30% for risk of non-
25 certification, and by an additional 20% for risk of being unsuccessful on the merits, to arrive at an
26 estimated total of \$163,464. (Bokhour Decl. ¶ 46.)

27 Plaintiffs also sought PAGA penalties for each violation for which they are available and
28 alleged that these penalties can be "stacked." *See Gonzalez v. Corecivic of Tennessee, LLC*, No.

1 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) (“‘stacking’ PAGA
2 penalties is not inappropriate under California law”). Assuming that a PAGA penalty is available
3 in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA
4 penalty would be \$583,800 for the pay periods in the PAGA period. *See* Cal. Lab. Code. §
5 2699(f)(2). (Bokhour Decl. ¶ 47.)

6 However, this maximum figure fails to account for numerous unclear issues relating to
7 PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would
8 award penalties in such a way (especially for purely derivative penalties). Second, the maximum
9 figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties
10 “based on the facts and circumstances of a particular case” and if “to do otherwise would result in
11 an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h); *Cotter v.*
12 *Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving
13 settlement that a reduction in PAGA penalties would be “appropriate” based on the “unjust,
14 arbitrary and oppressive, or confiscatory” factors because (i) the employer did not “deliberately
15 evad[e] a clear obligation to provide legally required pay and benefits to employees,” (ii) the
16 employer did not “negligently fail to learn about its obligations under the wage and hour laws,” and
17 (iii) the employer’s obligations were “genuinely unclear” because “there is no straight answer to
18 the question.”). (Bokhour Decl. ¶ 48.)

19 Here, there were approximately 5,838 pay periods within the applicable PAGA period.
20 Assuming a \$100.00 initial violation for each pay period results in a total maximum value for this
21 claim of \$583,800. However, considering Defendants’ defenses to the PAGA claim, Plaintiffs
22 ascribed the very real risk of a court reducing the amount of awarded PAGA penalties, especially
23 considering that the PAGA penalties themselves rival the amount of wages actually owed. For
24 that reason, Plaintiffs followed *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529
25 and ascribed a settlement value of \$5.00 per pay period for a total realistic exposure of \$29,190.
26 For these reasons, the parties submit that the agreed-upon PAGA allocation of \$25,000 is fair and
27 reasonable. (Bokhour Decl. ¶ 49.)
28

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

3	• Rounding Claim:	\$13,703
4	• Regular Rate Claim:	\$0
5	• Labor Code §§ 201 – 203 Claims:	\$142,497
6	• Meal Period Claims:	\$438,481
7	• Rest Break Claims:	\$292,231
8	• Wage Statement Claims:	\$163,464
9	• PAGA Penalties	\$29,190
10	• <u>Total Risk-Adjusted Penalties and Damages:</u>	\$1,079,566

11 Given the realistic value of Plaintiffs’ claims, the \$850,000 Settlement Amount is an
12 excellent result for the Class considering that the Settlement Amount totals approximately 78% of
13 Plaintiffs’ risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement
14 will provide significant monetary relief to the Class. (Bokhour Decl. ¶ 50.)

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

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

18 The view of the attorneys actively conducting the litigation is entitled to significant weight
19 in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980)
20 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
21 Cal.App.4th 116, 128 (court must consider “the experience and view of counsel”) (internal
22 quotation and citation omitted).

23 Plaintiffs’ counsel are also highly experienced in class and PAGA litigation, having
24 litigated upwards of 75 class actions and PAGA cases, having been named “Super Lawyers Rising
25 Stars” in employment litigation (a distinction awarded to only 2.5% of litigators), and having
26 achieved large class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Finkel Decl. ¶¶ 2-5.).
27 Plaintiffs’ counsel, operating at arm’s length, weighed the strengths and risks of this case, and are
28 of the view that this is a fair and reasonable Settlement in light of the nature of the claims, realistic

1 risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of
2 class certification and litigation.

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

4 The proposed Notice Packet should be approved, as it fully informs the Settlement Class
5 Members of the nature of the lawsuit and each Settlement Class Member's rights under the terms of
6 the Settlement Agreement and applicable law. The manner in which the Notice Packet shall be
7 disseminated, as outlined above, shall ensure that all or nearly all of the Settlement Class Members
8 shall be properly notified of the proposed Settlement.

9 The proposed Notice Packet and proposed plan for the Settlement Administrator to mail the
10 Notice Packet to the last known address of all Settlement Class Members complies with all the
11 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Notice
12 Packet include (1) the material terms of the Settlement; (2) the proposed attorneys' fees and costs
13 and the Settlement Administration Costs; (3) details about the final fairness hearing and how
14 Settlement Class Members may elect to exclude themselves or make an objection; and (4) how
15 Settlement Class Members can obtain additional information. (Bokhour Decl. ¶ 49, Exhibit B). In
16 addition, it will inform Settlement Class Members of their estimated settlement share.

17 The Court has wide discretion in approving the means of providing notice, so long as the
18 class representative "provide(s) meaningful notice in a form that should have a reasonable chance
19 of reaching a substantial percentage of Class Members." *Archibald v. Cinerama Hotels*, (1976) 15
20 Cal.3d 853, 861.

21 Here, the parties' notice plan is that notice of the Settlement will be disseminated directly to
22 the Settlement Class Members by first class mail by the Settlement Administrator, since
23 Defendants has the last known addresses of all Settlement Class Members, and the Settlement
24 Administrator will perform a skip trace and update those addresses for any Notice Packets that are
25 returned and re-send the Notice Packet.

26 The Notice Packet satisfies the requirements of Rule of Court 3.766 and affords Class
27 Members with all due process protections required by the United States Constitution. Moreover,
28 the contents of the Notice Packet are in compliance with Cal. R. Ct. 3.766(d), because the Notice

1 Packet includes, without limitation (1) a detailed explanation of the case, including the basic
2 contentions or denials of the parties; (2) a statement that the court will exclude the Settlement Class
3 Member if the Settlement Class Member so requests by a specified date; (3) a procedure for the
4 Settlement Class Members to follow in requesting exclusion from the Class; (4) a statement that the
5 judgment, whether favorable or not, will bind all Settlement Class Members who do not request
6 exclusion; and (5) a statement that any Settlement Class Member who does not request exclusion
7 may, if the Class Member so desires, enter an appearance through counsel. The 60-day deadline
8 for Settlement Class Members to exclude themselves is reasonable, as it provides Settlement Class
9 Members with sufficient time to do so and, if they choose, to seek independent legal advice in the
10 interim. If a Settlement Class Member does not opt-out, then he or she will automatically be sent a
11 settlement check.

12 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES MAXIMAL**
13 **RECOVERY FOR SETTLEMENT CLASS MEMBERS**

14 The fact that each Settlement Class Member who does not opt out of the Settlement shall be
15 mailed a check ensures that every Settlement Class Member will be paid unless they affirmatively
16 act to exclude himself or herself. Moreover, the Gross Settlement Amount is non-reversionary,
17 which means that no Settlement funds will revert to Defendants; instead, if any checks are not
18 cashed before the objection deadline, the funds will be transferred to the State’s unclaimed property
19 department subject to approval of the Court. Such terms are favored by Courts and demonstrate that
20 there was no collusion between counsel for the parties and that the Settlement is fair and favorable
21 to the Settlement Class Members.

22 **H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
23 **FAIR**

24 Under the terms of the Settlement Agreement, Class Counsel is requesting an amount not to
25 exceed one third of the Settlement Amount in attorneys’ fees. (See, e.g., *Laffite v. Robert Half Int’l*
26 *Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar
27 multiplier, when class action litigation establishes a monetary fund for the benefit of the Class
28 Members, the trial court may determine the amount of a reasonable fee by choosing an appropriate

percentage of the fund created); *see also* *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

Once the Court grants preliminary approval of the Settlement Agreement and the Notice Packet is disseminated, Plaintiffs’ counsel will submit a request for attorneys’ fees and costs with its final approval motion.

I. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND APPROPRIATE

The Settlement Agreement provides for a Service Payment to each named Plaintiff in an amount not to exceed \$7,500. The proposed Service Payment is reasonable given the time and effort Plaintiffs devoted to this case. Plaintiffs’ efforts included: providing factual background for the class and PAGA complaint; providing documents and information about Defendants’ 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 Defendants’ costs. (*See* Declaration of each Plaintiff submitted in support of the Motion for Preliminary Approval of Class Action Settlement)

The requested Service Payment falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*

1 *Inc.* (E.D. Cal. 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (approving \$11,250
2 service award to each of the two class representatives in a trucker meal break class action; *Ross v.*
3 *US Bank National Association* (N.D. Cal. 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2
4 (approving \$20,000 enhancement award to Class Representative in California wage-and-hour class
5 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493
6 (approving service awards in the amount of \$15,000 each from a \$300,000 settlement fund in a
7 wage/hour class action).

8 **VI. THE COURT SHOULD APPOINT ILYM GROUP, INC. AS SETTLEMENT**
9 **ADMINISTRATOR**

10 Subject to the Court's approval, the parties stipulated to ILYM Group, Inc. to serve as the
11 Settlement Administrator. ILYM Group, Inc. is experienced in administering class action
12 settlements and will not exceed \$10,000 to administer this class action Settlement.

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

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

19 **VIII. CONCLUSION**

20 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant
21 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

22
23 Dated: June 22, 2023

BOKHOUR LAW GROUP, P.C.

24 BY:

25 
26 MEHRDAD BOKHOUR
27 *Attorneys for Plaintiffs and the Putative Class*
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