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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

JESSIE DELGADO, on behalf of himself and all others similarly situated, Plaintiff, v. MOSAIC DENTAL COLLECTIVE, LLC, a California Limited Liability Corporation; and DOES 1-50, inclusive. Defendants.	CASE NO.: 23CV005660 *Assigned to Hon. Lauri A. Damrell, Dept. 22* **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** [*Declarations of Mehrdad Bokhour, Joshua Falakassa, Jessie Delgado, and [Proposed] Order filed concurrently herewith*] **<u>HEARING INFORMATION</u>** Date: May 30, 2025 Time: 1:30 p.m. Dept.: 22

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 30, 2025, at 1:30 p.m., or as soon thereafter as the matter may be heard in Department 22 of the Sacramento County Superior Court, located at 720 Ninth Street, Sacramento, California 95814, before the Honorable Lauri A. Damrell, Plaintiff Jessie Delgado, individually and on behalf of all others similarly situated, will and hereby does move the Court for an order:

1. Certifying the proposed class for settlement purposes only;

2. Preliminarily appointing Plaintiff Jessie Delgado as the Class Representative for settlement purposes only;

3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C., and Joshua Falakassa of Falakassa Law, P.C., as Class Counsel for settlement purposes only;

4. Preliminarily approving the Class Action and PAGA Settlement Agreement as fair, reasonable, and adequate;

5. Approving the form and manner of the Class Notice and directing its dissemination to Class Members, including notice of their right to request exclusion from or object to the Settlement;

6. Setting a date for the final fairness hearing to determine whether the Settlement should be granted final approval.

This Motion is based upon the accompanying Memorandum of Points and Authorities, the Declarations of Mehrdad Bokhour, Joshua Falakassa, and Plaintiff Jessie Delgado, the Settlement Agreement, the [Proposed] Order, the pleadings and records on file in this action, and such other oral or documentary evidence as may be presented at the hearing.

Pursuant to Local Rule 1.06(A), the Court will issue a tentative ruling by 2:00 p.m. on the court day before the hearing. Tentative rulings may be accessed online via the Court's website. Parties without internet access may obtain the ruling by calling the department's dedicated telephone number, listed in the local telephone directory, between 2:00 p.m. and 4:00 p.m. on the court day before the hearing. If no party contacts the Court and opposing counsel by 4:00 p.m. the day before the hearing, the matter will be deemed submitted, and no oral argument will be heard.

Dated: May 6, 2025,

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

BY: ______________________________

Mehrdad Bokhour, Esq.
Joshua Falakassa, Esq.
Attorneys for Plaintiff and the Putative Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this motion, Plaintiff Jessie Delgado ("Plaintiff"), individually and on behalf of all others similarly situated, seeks preliminary approval of the Class Action and PAGA Settlement Agreement. Subject to Court approval, Plaintiff and Defendant Mosaic Dental Collective, LLC ("Defendant" and/or "Mosaic") have agreed to settle their claims and the proposed Class Members' claims against Defendant for a Gross Settlement Amount of $240,000.

Plaintiff seeks to represent a Class of all persons who are or were previously employed by Defendant in California and classified as non-exempt employees at any time from July 28, 2019, through December 31, 2024 (the "Class" or "Class Members"). Likewise, the PAGA Members include all persons who are or were previously employed by Defendant in California and classified as non-exempt employees at any time from July 26, 2022, through December 31, 2024. ("PAGA Members").[1]

Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel's application for a reasonable award of attorney's fees not to exceed one-third of the Settlement Amount, Class Counsel's litigation costs not to exceed $20,000, Settlement Administration Costs not to exceed $10,000, PAGA penalties of $10,000 (of which $7,500 or 75% will be paid to the LWDA and the remaining $2,500 or 25% will be paid to the PAGA Members), and a Service Award not to exceed $10,000 to the Class Representative. S.A. ¶ 3 *et seq*., as follows:

	Total Amount
Gross Settlement Amount	$240,000
Class Counsel Litigation Expenses Payment	$20,000.00
Class Counsel Fees Payment	$80,000.00
Administration Expenses Payment	$7,500.00
PAGA Penalties to LWDA	$7,500.00

[1] The Class Action and PAGA Settlement Agreement and Release of Claims is attached as **Exhibit "A"** to the Declaration of Mehrdad Bokhour ("Bokhour Decl.") submitted herewith and is hereinafter referred to as the "Settlement Agreement". "S.A." or the "Settlement". The proposed Notice Packet is attached to the Bokhour Decl. as **Exhibit "B."**

PAGA Penalties to PAGA Members	$2,500.00
Class Representative Service Award	$10,000.00
Net Settlement Amount	**$112,500.00**

The Settlement Class consists of approximately 438 non-exempt employees who worked for Defendant in California during the Class Period. Plaintiff alleges that, regardless of job title or position, all non-exempt employees were subject to the same wage and hour policies and practices. Accordingly, Individual Settlement Payments will be distributed pro-rata, calculated according to the number of workweeks each Class Member worked during the Class Period. Based on the estimated Class size of 438 individuals, the average payment is approximately **$256.85**, with the highest estimated individual payment of approximately **$1,081**. Class Members who worked more workweeks will receive proportionally larger payments. (Bokhour Decl. ¶ 11.)

The Settlement is non-reversionary, and Settlement Class Members are not required to submit Claim Forms to receive payment. Each Settlement Class Member will be mailed a Class Notice containing information about their estimated Individual Settlement Amount, the opportunity to dispute the number of Workweeks credited to them during the Class Period, and instructions on how to submit a Request for Exclusion or an Objection to the Settlement. All Settlement Class Members who do not timely submit a valid Request for Exclusion will automatically receive their Individual Settlement Payment after the Court grants Final Approval. PAGA Members eligible for payments under the PAGA portion of the Settlement may not opt out and will receive their share of the PAGA Amount regardless of participation in the class settlement. (Bokhour Decl. ¶ 12.)

Because the Settlement is fair, reasonable, and the result of arm's-length negotiations between experienced counsel with the assistance of an experienced mediator, following an appropriate and thorough exchange of relevant information and documents, it warrants preliminary approval. Plaintiff respectfully requests that the Court enter an order: (1) preliminarily approving the Settlement; (2) conditionally certifying the Settlement Class pursuant to California Code of Civil Procedure § 382 for settlement purposes only; (3) approving the form and content of the proposed Class Notice; (4) appointing Plaintiff's counsel as Class Counsel; (5) appointing ILYM Group, Inc. as the Settlement Administrator; and (6) scheduling a Final Approval Hearing. (Bokhour Decl. ¶ 13.)

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED CLASS

Defendant Mosaic is a dental services organization managing approximately 40 different practices at multiple locations across California, including, general dentistry, periodontics, orthodontics, endodontics, prosthodontics, and oral surgery. (Bokhour Decl. ¶ 14.)

Plaintiff worked for Defendants as a "surgical assistant" out of Sacramento, California, from around March 15, 2022, until her separation of employment on or about May 9, 2023. Plaintiff and other non-exempt employees (including, but not limited to, front office staff, receptionists, hygienists, surgical assistants, coordinators, and all other non-exempt positions) were responsible for all aspects of Defendant's business operations in California. However, in performing these duties, Plaintiff and other non-exempt employees were not consistently afforded all rights and protections guaranteed by the California Labor Code and applicable wage orders. (Bokhour Decl. ¶ 15.)

The putative Settlement Class consists of all individuals who are or were employed by Defendant in California as non-exempt employees at any time during the Class Period, defined as July 28, 2019, through December 31, 2024.

B. PROCEDURAL HISTORY

On July 28, 2023, Plaintiff filed suit in Sacramento County Superior Court, asserting claims based on Mosaic Dental's alleged: (1) failure to pay all overtime and sick wages; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to provide accurate itemized wage statements; (5) failure to pay all wages due upon separation of employment; (6) failure to reimburse necessary business expenses; and (7) violation of California's Unfair Competition Law, Business & Professions Code 17200 *et seq*. ("UCL"). On September 29, 2023, Plaintiff filed a First Amended Complaint ("FAC") alleging a cause of action of the Private Attorneys General Act of 2004, Labor Code section 2698 *et. seq*. (Bokhour Decl. ¶ 16; S.A., Recitals.)

Throughout the investigation and litigation, Defendant denied Plaintiff's allegations and indicated it would vigorously defend against them. However, before engaging in protracted litigation, the Parties agreed to explore early resolution through private mediation. (Bokhour Decl. ¶ 17.)

The Parties conducted a thorough investigation into the facts and legal issues in this Action. This included interviews with putative class members, an investigation of Defendant's operations and pay practices, and the informal but extensive exchange of discovery materials, including Defendant's written policies and practices, as well as a representative randomized sampling of payroll and timekeeping records for Settlement Class Members and PAGA Members. Class Counsel has extensive experience in wage and hour litigation and has conducted substantial research regarding the legal claims and potential defenses at issue. Class Counsel has diligently investigated the claims asserted on behalf of the Settlement Class Members and PAGA Members. (Bokhour Decl. ¶ 18.)

Based on this investigation and their own independent evaluation, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members and PAGA Members, especially in light of the risks and uncertainties associated with continued litigation, Defendant's asserted defenses, and potential appellate issues. (Bokhour Decl. ¶ 19.)

Prior to mediation, Plaintiff obtained from Defendant, through informal, but extensive, discovery, information sufficient to meaningfully evaluate the claims at issue in the Action, including applicable written documents regarding Defendant's wage and hour policies and practices in effect during the relevant period, Plaintiff's personnel file, and a randomized sample of time and corresponding payroll records for roughly twenty percent (20%) of Class Members and Aggrieved Employees. (Bokhour Decl. ¶ 20.)

On June 20, 2024, the Parties participated in an all-day mediation presided over by David A. Lowe, Esq., an experienced and neutral class and PAGA action mediator, which led to this Agreement to settle this matter. (Bokhour Decl. ¶ 21, Ex. A.) (*Id*.)

The Parties now respectfully request that the Court grant preliminary approval of the Settlement Agreement.

C. SUMMARY OF PLAINTIFF'S CLAIMS

Plaintiff alleges various wage and hour violations on behalf of non-exempt employees who worked for Defendant in California during the Class Period (i.e., Settlement Class Members). (Bokhour Decl. ¶ 22.)

First, Plaintiff alleges that Defendant failed to pay all overtime wages due to its implementation of an invalid Alternative Workweek Schedule. Plaintiff further contends that Defendant failed to properly calculate and pay overtime and sick pay wages by excluding non-discretionary bonuses and other forms of remuneration from the "regular rate of pay." (Bokhour Decl. ¶ 23.)

Additionally, Plaintiff alleges that Defendant maintained deficient meal and rest break policies and practices that failed to provide Class Members with timely, duty-free, and compliant meal periods, or premium wages at the "regular rate of pay" in lieu thereof. Plaintiff also asserts that Class Members were not provided with duty-free rest periods of at least ten (10) minutes for every four (4) hours worked, or major fraction thereof, due to unlawful policies that required employees to remain on duty and/or on the premises during rest periods. (Bokhour Decl. ¶ 24.)

Plaintiff further alleges that Defendant failed to pay all final wages upon separation of employment and did not furnish accurate, itemized wage statements in compliance with Labor Code § 226. Finally, Plaintiff brings representative claims under the Private Attorneys General Act ("PAGA") for civil penalties based on the alleged Labor Code violations described above. (Bokhour Decl. ¶ 25.)

D. SUMMARY OF DEFENDANT'S DEFENSES

Defendant contested and denied all material allegations raised by Plaintiff, both on the merits and with respect to the propriety of class certification and PAGA representative treatment. (Bokhour Decl. ¶ 26.)

First, Defendant argued that its implementation of an Alternative Workweek Schedule

("AWS") was lawful and properly adopted in accordance with California law. Defendant denied that the AWS resulted in any failure to pay overtime wages and asserted that all overtime was paid in compliance with applicable Labor Code provisions. (Bokhour Decl. ¶ 27.)

Defendant further contended that it correctly calculated and paid all overtime and sick pay wages using the appropriate "regular rate of pay," inclusive of all non-discretionary bonuses and other forms of compensation. Defendant denied excluding any required remuneration from its regular rate calculations. (Bokhour Decl. ¶ 28.)

Additionally, Defendant maintained that its written meal and rest period policies complied with California law and that, in practice, Settlement Class Members were provided the opportunity to take timely, duty-free, uninterrupted meal and rest periods. Defendant denied having any policy or practice requiring employees to remain on duty or on the premises during rest periods. (Bokhour Decl. ¶ 29.)

Defendant also argued that Plaintiff's claims for wage statement violations, waiting time penalties, and PAGA penalties were derivative of other claims it contended were meritless. Accordingly, Defendant denied any violations that would give rise to penalties under Labor Code sections 203 or 226. (Bokhour Decl. ¶ 30.)

Finally, Defendant asserted that individualized inquiries would be necessary to determine liability, such as whether and why specific employees took shortened or untimely meal periods, and how break compliance was managed by different supervisors. Defendant emphasized that putative Class Members held different positions, performed different duties, worked in various locations, and were subject to diverse managerial practices. Defendant argued that this variability rendered the case unsuitable for class or representative treatment. (Bokhour Decl. ¶ 31.)

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The $240,000 Gross Settlement Amount is non-reversionary and will be paid out to Settlement Class Members without the need to submit a claim form or take any affirmative action. The Gross Settlement Amount will cover the following, subject to Court approval:

- Class Counsel's attorneys' fees, not to exceed $80,000 (33.33% of the Gross Settlement Amount), and litigation expenses, not to exceed $20,000;
- A Service Award to the Class Representative, not to exceed $10,000;
- Settlement Administration Costs, not to exceed $7,500, except upon a showing of good cause;
- PAGA Penalties totaling $10,000, of which 75% ($11,250) will be paid to the California Labor and Workforce Development Agency (LWDA) pursuant to Labor Code § 2699(i), and 25% ($2,500) will be distributed to PAGA Members as Individual PAGA Payments; and
- The Net Settlement Amount, which will be distributed as Individual Settlement Payments to Participating Class Members on a pro-rata basis based on the number of Workweeks worked during the Class Period. Defendant will separately pay the employer's share of payroll taxes on the portion of the Individual Settlement Payments allocated as wages.

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that approximately $112,500 will remain as the Net Settlement Amount, available to fund Individual Settlement Payments to approximately 438 Participating Class Members. As a result, the average Individual Settlement Payment is estimated to be approximately $256.85, with the highest estimated payment around $1,081, depending on the number of workweeks worked. (Bokhour Decl. ¶ 7.)

B. <u>NOTICE PROCEDURES</u>

The proposed Class Notice, once approved by the Court, will be distributed to Settlement Class Members and will include, among other information, the estimated number of Workweeks and PAGA Pay Periods credited to each individual for settlement allocation purposes. (S.A. ¶¶ 1.7, 7.4.2; Bokhour Decl., Ex. B.) Within fourteen (14) calendar days after the Court grants Preliminary Approval, Defendant shall provide the Settlement Administrator with the Class Data, including each Class Member's name, last-known mailing address, telephone number, Social Security number, and the number of Workweeks and PAGA Pay Periods worked during the respective Class and PAGA Periods. (S.A. ¶ 1.7.)

C. <u>Exclusion and Objection Procedures</u>

Settlement Class Members who do not timely submit a valid Request for Exclusion will automatically be deemed Participating Class Members and entitled to receive an Individual Class Payment without the need to submit a claim form or take any other affirmative action. The Class Notice will advise Settlement Class Members of their right to opt out of the Settlement. To do so, a Class Member must submit a written Request for Exclusion to the Settlement Administrator that is signed and postmarked, faxed, or emailed no later than forty-five (45) calendar days after the initial mailing of the Class Notice (the "Response Deadline"). (S.A. ¶¶ 1.42 ["Response Deadline"], 7.45, 7.6.)

The Class Notice will also inform Settlement Class Members of their right to object to the Settlement. To object, a Class Member must submit a written objection to the Settlement Administrator by fax, email, or mail, such that it is postmarked or otherwise received no later than the Response Deadline. The objection must include the objector's full name and must reasonably communicate the basis for the objection. It must also identify the case name and number: *Jessie Delgado v. Mosaic Dental Collective, LLC, Sacramento County Superior Court Case No. 23-CV-005660*, and be signed by the Class Member or their legal representative. The objection may also include supporting documents, legal arguments, and, if represented by counsel, the name and contact information of the objector's attorney. (S.A. ¶ 7.6.2.)

D. <u>Settlement Allocation Formula for Settlement Shares</u>

The Individual Class Payment for each Participating Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant, as updated to reflect any timely and valid Workweek disputes. After excluding any individuals who submit valid and timely Requests for Exclusion, the Settlement Administrator will determine the total number of Workweeks worked by all Participating Class Members during the Class Period. Each Participating Class Member's share of the Net Settlement Amount will then be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all

Participating Class Members, and multiplying the result by the number of Workweeks worked by that Participating Class Member.

The Class Notice will inform each Settlement Class Member of the estimated number of Workweeks worked during the Class Period, based on Defendant's records. If a Settlement Class Member believes the number of credited Workweeks is inaccurate and that they worked more Workweeks during the Class Period than stated in the Class Notice, they may dispute the estimate by submitting documentation to the Settlement Administrator by fax, email, or mail, postmarked or received on or before the Response Deadline. The Settlement Administrator will review the dispute, may request additional documentation, and, in the absence of contrary evidence, is entitled to rely on the Class Data. The Administrator's determination of the number of Workweeks credited to each Class Member will be final, binding, and not subject to appeal.

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant shall make a one-time deposit of the Gross Settlement Amount into the Qualified Settlement Fund ("QSF") within thirty (30) calendar days after the Effective Date, as set forth in 1.16 . of the Settlement Agreement. In addition, Defendant shall separately pay the employer-side payroll taxes on the portions of the Individual Class Payments allocated as wages, in an amount calculated and provided by the Settlement Administrator to Defendant within three (3) calendar days of the Effective Date. (S.A. ¶ 4.3.)

The Settlement Administrator shall deposit the Gross Settlement Amount into an interest-bearing, FDIC-insured QSF, from which all payments will be made in accordance with the Settlement Agreement. If the Settlement is voided for any reason, all funds deposited by Defendant into the QSF, including any accrued interest, shall be returned to Defendant. (S.A. ¶ 4.3.)

The Gross Settlement Amount shall be used to fund: (i) Individual Class Payments to Participating Class Members and Individual PAGA Payments to PAGA Members; (ii) Court-approved attorneys' fees and litigation expenses to Class Counsel; (iii) the Court-approved Class Representative Service Payment; (iv) the payment to the California Labor and Workforce Development Agency ("LWDA") for its 75% share of the PAGA Penalties; and (v) Settlement

Administration Expenses. (S.A. ¶ 3.2 *et seq*.)

Within fourteen (14) calendar days after Defendant funds the QSF, the Settlement Administrator shall issue and mail: (a) Individual Class Payments to Participating Class Members and Individual PAGA Payments to PAGA Members; (b) the Court-approved Class Representative Service Payment; (c) the Court-approved attorneys' fees and litigation expenses to Class Counsel; (d) the LWDA's share of the PAGA Penalties; and (e) the Court-approved Settlement Administration Expenses. (S.A. ¶ 4.4.)

Participating Class Members shall have 180 calendar days from the date of mailing to cash their settlement checks. If any check is returned undelivered during that period, the Settlement Administrator shall conduct a Class Member Address Search within five (5) business days, notify Class Counsel and Defense Counsel, and, if a new address is identified, re-issue and mail a replacement check within ten (10) business days. Participating Class Members shall have 180 calendar days from the date of mailing to cash their settlement checks. If a check is returned within that 180-day period, the Settlement Administrator shall conduct a skip trace within five (5) business days, notify Class Counsel and Defense Counsel, and, if a new address is located, re-issue and mail a replacement check within ten (10) business days. (S.A. ¶ 4.4.)

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the Void Date, the Administrator shall transmit the funds represented by such checks to the parties' mutually agreed-upon designated *cy pres* recipient Legal Aid at Work, subject to the requirements of California Code of Civil Procedure Section 384, subd. (b) and the Court's approval. (S.A. ¶ 4.4.3.)

F. TAX TREATMENT

The Individual Class Payments made to Participating Class Members for the settlement of Class Claims will be allocated for tax purposes as follows: twenty percent (20%) will be allocated as wages, subject to applicable local, state, and federal tax withholdings, and eighty percent (80%) will be allocated as interest and penalties, which are not subject to withholding. (S.A. ¶ 3.2.4.1.) The Settlement Administrator shall be responsible for calculating and withholding applicable taxes on the wage portion and, to the extent required by law, shall issue an IRS Form W-2 for the wage portion and an IRS Form 1099 for the interest and penalty portion to each Participating Class Member, along with any corresponding state tax forms.

G. <u>PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS</u>

In exchange for the settlement payments, the Settlement Agreement provides that Participating Class Members will release all claims and/or causes of action against the Released Parties asserted in the Operative Complaint, or that could have been in asserted in the Operative Complaint, based on the facts alleged in the Operative Complaint under any federal, state or local law, Industrial Welfare Commission Wage Order, or administrative order, including, but not limited to, the failure to pay minimum wages, the failure to pay overtime compensation, failure to pay sick time pay, the failure to provide timely, uninterrupted meal periods (or meal period premiums in lieu thereof), the failure to provide timely, uninterrupted paid rest periods (or rest period premiums in lieu thereof), the failure to indemnify necessary business expenses, the failure to provide accurate itemized statements, the failure to timely pay wages throughout employment, the failure to timely pay all wages upon separation of employment, the failure to pay waiting-time penalties, and any other claims whatsoever that were alleged in the Operative Complaint or which arise out of such facts, including, without limitation, all related claims for restitution and other equitable relief under Business and Professions Code §§ 17200, et seq., liquidated damages, punitive damages, attorneys' fees, costs, interest, and penalties, and arising from their work for Defendant in California during the Class Period ("Released Class Claims"). The Released Class Claims exclude any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or any claims based on occurrences outside of the Class Period. (S.A. ¶ 5.2.)

In accordance with California Labor Code § 2699(l), and as set forth in the Settlement Agreement (¶ 5.3), the PAGA claims of all (regardless whether they opt out of the settlement of the class claims) release the Released Parties of all claims and/or causes of action for civil penalties (and associated attorneys' fees, costs, and interest) under the PAGA that are based on the claims for Labor Code violations (as set forth in Paragraph 5.2 of the Settlement Agreement) and alleged in Plaintiff's PAGA Notice arising during their work for Defendant in California during the PAGA Period ("Released PAGA Claims"). The Released PAGA Claims exclude any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or any claims based on occurrences outside of the PAGA Period.

In addition to this class release, Plaitniff has agreed to a broader General Release of all known and unknown claims, including a waiver of rights under California Civil Code section 1542. (S.A. ¶ 5.1.)

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

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 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 Members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case if tried, would 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 the Class, as defined above, under Code of Civil Procedure § 3150.

A. NUMEROSITY AND ASCERTAINABILITY

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. Here, according to Defendant's records, there are approximately 438 Class Members. Plaintiff contends that this figure undoubtedly satisfies the numerosity requirement.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiff contends that the Class was subject to common policies and practices relating to the provision of meal and rest periods, time keeping, calculation of the "regular rate of pay," and payment of wages, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this Settlement only.

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this Settlement only, that Plaintiff asserts claims regarding Defendant's wage payment policies/practices, the calculation of the "regular rate of pay," meal and rest break policies/practices, wage statements, and the provisions governing the timely and complete payment of wages, which are at the core of the Action.

3. Adequacy of Representation

The proposed class representative must establish that he/she will adequately represent the proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Specifically, Plaintiff's position is that she is adequate to represent the Class because she was employed by Defendant during the Class Period, were subject to the same wage and hour policies/practices as the rest of the Class, understand her duties as Class Representative, has been willing to undergo the risk of litigation, and has no conflicts of interest.

Adequacy may be established by the fact that counsels are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiff asserts that she is represented by Class Counsel with extensive experience in wage and hour class and PAGA actions like the instant matter. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-11.)

4. *Superiority*

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

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

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

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

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

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

> [T]he strength of Plaintiff' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the Class Members to the proposed settlement.

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

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

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

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

The Settlement was the product of extensive arm's-length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiff and Class Counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any of its defenses, the Class Members may not have received any substantial monetary recovery. At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. With the assistance of the mediator, the Parties were able to resolve the Action. (Bokhour Decl. ¶ 35.)

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

Plaintiff thoroughly investigated and evaluated this case's factual and legal strengths and weaknesses before reaching the Settlement.

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk, supra*, 48 Cal.App.4th at 1801. The Parties engaged in extensive informal discovery prior to reaching a settlement. Prior to the mediation, Defendant produced a randomized 20% sampling of time and payroll records for all pay periods at issue. The 20% sampling included employees employed during the identified pay periods and the Parties made efforts to ensure that the sampling included pay periods throughout the class period to ensure that it was a large enough and representative sampling to ensure they could analyze the claims of the class in a representative fashion.

Plaintiff contends that a 20% sampling of records is statistically significant and reliable. See e.g., *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016) [the Supreme Court held that statistical evidence was admissible to prove liability and damages across a class, thereby allowing it to support class certification]. The timekeeping data and payroll data produced for mediation were generated from uniform timekeeping and payroll systems, which allowed Plaintiff's counsel to extrapolate his findings with confidence. ((Bokhour Decl. ¶ 16.)

In addition, Defendant also produced its employee handbooks, which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages, and other relevant areas of investigation. Defendant also produced information regarding the number of putative class members, the number of current versus former employees, the total workweeks and pay periods worked by the Class, and the average rate of pay for hourly employees during the class period. This informal discovery and investigation allowed Plaintiff's Counsel to perform a comprehensive damages analysis and estimate Defendant's potential liability. *Id.*

In sum, the Settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial exchange of information and documents relating to Plaintiff and the Class Members prior to mediation.

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

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

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

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

Of relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. Defendant further disputed whether Plaintiff could obtain class certification, arguing, *inter alia,* a lack of commonality of the legal claims and injuries. Defendant further argued that it complied with the applicable law, had compliant written policies, that all Class Members were provided the opportunity to take their meal and rest periods (*e.g.*, because many Class Members worked remotely during the class period), and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff' ability to certify the Class. While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that he could pursue on a class basis.

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

Based upon Plaintiff's and her counsels' independent investigation and detailed data obtained through informal discovery and information exchanges, and factoring in claim certification probabilities and liability probabilities, Class Counsel formulated detailed damages models to evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable resolution as further detailed below. (Bokhour Decl. ¶ 32.)

1. <u>Failure to Pay for all Overtime Wages due to an Invalid Workweek Schedule</u>

First, Plaintiff alleged that Defendant's use of an unlawful and invalid Alternative Workweek Schedule ("AWS") at various facilities resulted in the systemic underpayment of overtime wages in violation of California law. Plaintiff contends that the AWS was not properly adopted in accordance with the Labor Code and applicable Wage Orders, and therefore any hours worked in excess of eight per day should have been paid at the applicable overtime rate. Based on Plaintiff's analysis of the timekeeping and payroll records produced during informal discovery, Plaintiff estimates that approximately 5,592 hours of overtime were underpaid due to the AWS, at an average hourly overtime rate of $30. This results in an estimated maximum value of $97,355 in unpaid overtime wages attributable to the AWS claim. (Bokhour Decl. ¶ 33.)

However, this maximum figure does not account for Defendant's defenses to Plaintiff's AWS claim. Defendant asserted that the AWS was properly adopted pursuant to applicable Labor Code requirements and that all overtime was paid in compliance with California law. Defendant also argued that individualized inquiries would be required to determine the hours worked and whether any overtime was, in fact, unpaid for each employee, undermining the suitability of the claim for class certification.

Based on this argument and other related risks, Plaintiff assigned a 30% risk that the Court would deny class certification of the AWS claim. Therefore, Plaintiff estimates a risk-adjusted value of $68,148 for the AWS Claim. (Bokhour Decl. ¶ 34.)

2. **Failure to Pay for Overtime Wages at the Correct "Regular Rate of Pay"**

Next, Plaintiff alleged that Defendant failed to properly calculate the "regular rate of pay" by excluding non-discretionary bonuses, commissions, and other incentive payments when paying overtime and sick pay wages. Plaintiff contends that these exclusions resulted in a systemic underpayment of compensation, in violation of California law.

Based on a review of the payroll and paystub data produced in discovery, Plaintiff estimates that Defendant's failure to include all required forms of remuneration in the regular rate of pay led to underpayment of both overtime and sick pay wages across the Class. (Bokhour Decl. ¶ 35.)

In response, Defendant argued that many of the incentive payments at issue were discretionary and therefore properly excluded from regular rate calculations. Defendant further asserted that all overtime and sick pay was lawfully calculated and paid in good faith, and that any potential underpayment, if it occurred, was minimal and non-systemic. (Bokhour Decl. ¶ 36.)

While Plaintiff maintains that the bonuses and incentive payments at issue were non-discretionary and therefore required to be included in the regular rate of pay, Plaintiff also acknowledges the litigation risks associated with this claim. These risks include the possibility that the Court could deny class certification based on individual variations in pay structures and the nature of the bonuses. Additionally, there is risk on the merits, including the potential for summary judgment or an unfavorable outcome at trial. In light of these risks, Plaintiff applied a discount to the estimated value of the claim to account for the potential that certification may be denied or the claim may not succeed on the merits. (Bokhour Decl. ¶ 37.)

3. Waiting Time Penalties

Plaintiff also alleged that Defendant failed to timely pay all wages due at separation of employment, entitling former employees to waiting time penalties under Labor Code §§ 201–203. Based on Defendant's records, there were approximately 122 Settlement Class Members who separated from their employment during the applicable statutory period. Using the statutory maximum of 30 days, with an assumed 8-hour workday and an average hourly rate of $30.00, the total maximum potential exposure for waiting time penalties is approximately $874,400 (122 employees × 8 hours/day × $30/hour × 30 days). (Bokhour Decl. ¶ 38.)

Defendant disputed this claim and asserted that any failure to pay wages at separation was not willful and, therefore, did not give rise to waiting time penalties under the Labor Code. Defendant also contended that it maintained facially neutral and compliant payroll practices and would defeat any underlying wage claims on the merits or at class certification. (Bokhour Decl. ¶ 39.)

To account for these risks, Plaintiff applied an equitable discount reflecting the risk of denial at class certification, as well as an additional discount for the risk of defeat at summary judgment or trial. Applying a combined 75% discount, Plaintiff estimates a risk-adjusted value of $219,600 for the waiting time penalty claim. (Bokhour Decl. ¶ 40.)

4. Failure to Provide Meal and Rest Periods or Premium Pay in Lieu Thereof

With respect to Plaintiff's meal and rest period claims, the Class Members collectively worked approximately 91,204 shifts during the Class Period. Based on Plaintiff's analysis of a representative sample of Defendant's timekeeping and payroll records produced prior to mediation, Plaintiff applied an estimated 20% violation rate for meal periods and 33% violation rate for rest periods. Using the applicable premium rate of $30 per missed break, the maximum potential damages are estimated at approximately $547,224 for the meal period claim (91,204 shifts × 20% × $30) and $902,919 for the rest period claim (91,204 shifts × 33% × $30). (Bokhour Decl. ¶ 41.)

Defendant contested liability for both claims, asserting that meal and rest period issues presented individualized questions inappropriate for class certification. Defendant maintained that its written policies were facially compliant with California law and that employees were provided flexibility to take breaks at their discretion. It further argued that manager-specific practices, job duties, and employee choices varied significantly, requiring individualized inquiries into whether breaks were missed or voluntarily skipped. Based on these risks, Plaintiff acknowledged that there was a significant chance that the Court could deny class certification. (Bokhour Decl. ¶ 42.)

Defendant also asserted that, even if certification were granted, it would prevail on the merits by showing that it either provided compliant breaks or paid the required premium compensation. Defendant contended that Plaintiff would be unable to present reliable, representative evidence sufficient to establish liability or support a classwide damages award.

In light of these risks, Plaintiff acknowledged the risks and incorporated a 80% reduction, and calculates a risk-adjusted value of $109,444 for the meal period claims and $180,583 for the rest period claims. (Bokhour Decl. ¶ 43.)

5. <u>Failure to Provide Accurate Itemized Wage Statements</u>

Finally, Plaintiff alleged that Defendant issued non-compliant wage statements in violation of Labor Code § 226, based on the same facts underlying Plaintiff's claims for unpaid wages, meal and rest period premiums, and failure to include all forms of compensation in the regular rate of pay. Plaintiff estimates that approximately 4,529 allegedly violative wage statements were issued during the Class Period. In calculating Defendant's maximum potential exposure, Plaintiff conservatively assumed that only the "initial" penalty of $50 per violation would apply, in accordance with Labor Code § 226(e) and case law holding that higher penalties apply only after an employer has been notified of the violations. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008). This results in a maximum potential penalty of $226,450 (4,529 × $50). (Bokhour Decl. ¶ 44.)

Defendant disputed this claim and asserted that its wage statements fully complied with the requirements of Labor Code § 226. Defendant further argued that, even if there were any errors, they were not "knowing and intentional," and that Plaintiff could not establish the required element of injury. Defendant also relied on its defenses to the underlying wage and hour claims and to class certification. (Bokhour Decl. ¶ 45.)

In light of these risks, Plaintiff applied a reasonable discount of 75% to account for the possibility of denial at the class certification stage, as well as an additional discount for the risk of loss on the merits. Applying these risk adjustments, Plaintiff calculates a risk-adjusted value of $56,612 for the wage statement penalty claim. (Bokhour Decl. ¶ 46.)

6. <u>PAGA Penalties</u>

Plaintiff also sought civil penalties under the Private Attorneys General Act of 2004 ("PAGA") for each Labor Code violation for which such penalties are available, and alleged that these penalties could be assessed on a cumulative or "stacked" basis. See *Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425, at *12 (E.D. Cal. Sept. 12, 2018) ("'stacking' PAGA penalties is not inappropriate under California law"). Assuming application of the default penalty of $100 per pay period pursuant to Labor Code § 2699(f)(2), and that penalties are not subject to reduction or judicial discretion, the maximum potential exposure for PAGA penalties could reach approximately $452,900 (4,529 pay periods × $100). (Bokhour Decl. ¶ 47.)

However, this theoretical maximum does not account for significant legal uncertainties. First, courts are divided on whether stacking PAGA penalties across multiple violations within a single pay period is permissible, particularly where the violations are derivative in nature. Second, Labor Code § 2699(e)(2) grants courts broad discretion to reduce civil penalties where necessary to avoid an award that is "unjust, arbitrary and oppressive, or confiscatory." See *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (approving reduction of PAGA penalties where the employer did not act willfully or negligently, and legal obligations were unclear). (Bokhour Decl. ¶ 48.)

In recognition of these risks, including the likelihood of judicial reduction and the challenges of prevailing on the merits of the underlying claims, Plaintiff applied significant discounts to the estimated penalty exposure. After accounting for these risks, Plaintiff estimated a reasonable potential value of $131,420 in PAGA penalties. However, in light of the Parties' mutual desire to resolve the matter without protracted litigation, they agreed to allocate $10,000 of the Gross Settlement Amount toward resolution of the PAGA claim, which Plaintiff believes is fair and reasonable under the circumstances. (Bokhour Decl. ¶ 49.)

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

- AWS Claim: $68,148
- Regular Rate of Pay Claim: $0 (discounted)
- Labor Code §§ 201 – 203 Claims: $219,600
- Meal Period Claims: $109,444
- Rest Break Claims: $180,583
- Wage Statement Claims: $56,612
- PAGA Penalties $10,000
- **<u>Total Risk-Adjusted Penalties and Damages</u>: $644,387**

Given the realistic value of Plaintiff's claims, the $240,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 37% of Plaintiff's risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class. (Bokhour Decl. ¶ 50.) For these reasons, Plaintiff submits that the agreed-upon Settlement is fair and reasonable.

E. <u>Plaintiff's Counsel Is Experienced in Similar Wage-And-Hour Litigation</u>

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

Plaintiff's counsel are also highly experienced in class and PAGA litigation, having litigated upwards of 100 class actions and PAGA cases, having been named "Super Lawyers" in employment litigation (a distinction awarded to only 2.5% of litigators), and having achieved large class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶2-10.). Plaintiff's counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation.

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

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

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

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

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

G. THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

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

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

Under the terms of the Settlement Agreement, Class Counsel requests an amount not exceeding one third of the Settlement Amount in attorneys' fees. (S*ee, e.g., Laffite v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of $6.33 million at a 2.13

lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the Class 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). (Bokhour Decl. ¶¶ 44-45.)

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

I. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND APPROPRIATE

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

(*See*, The Declaration of Plaintiff in Support of Preliminary Approval of Class Action Settlement filed herewith.)

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

V. <u>THE COURT SHOULD APPOINT ILYM GROUP, INC. AS THE SETTLEMENT ADMINISTRATOR</u>

Subject to the Court's approval, the parties have stipulated that ILYM Group, Inc. be appointed as the Settlement Administrator. ILYM is experienced in administering class action settlements and has agreed to cap its fees at $7,500 for administering this Settlement. (Bokhour Decl. ¶ 46.)

VI. <u>TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING</u>

The final step in the approval process is the formal hearing, during which proponents of the Settlement may explain and describe its terms and conditions, and offer arguments in support of approval. Class Members or their counsel may also be heard in support of or in opposition to the Settlement.

VII. <u>CONCLUSION</u>

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

Dated: May 06, 2025

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

BY: ______________________________

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