Michael Nourmand, Esq. (SBN 198439)
James A. De Sario, Esq. (SBN 262552)
THE NOURMAND LAW FIRM, APC
8822 West Olympic Boulevard
Beverly Hills, California 90211
Telephone (310) 553-3600
Facsimile (310) 553-3603

Attorneys for Plaintiffs, CARLOS A. VAZQUEZ FIERROS and the Putative Class

Additional counsel on the following page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CARLOS A. VAZQUEZ FIERROS, an individual, on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated,

Plaintiffs,

v.

RGH ENTERPRISES, LLC, an Ohio Limited Liability Corporation doing business as HHI Enterprises, LLC; and DOES 1 TO 50,

Defendants.

CASE NO.: CIVSB2320906

(Consolidated Case No. CIVSB2322845)

Assigned to the Hon. Jeffrey R. Erickson

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

Hearing

Date: September 3, 2025
Time: 8:30 a.m.
Dept.: S14

Mehrdad Bokhour (CA Bar No. 285256)
mehrdad@bokhourlaw.com
BOKHOUR LAW GROUP, P.C.
1901 Avenue of the Stars, Suite 920
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Michelle Eshaghian Bokhour (CA Bar No. 291688)
michelle@eshlegal.com
ESHAGHIAN LAW, PC
1901 Avenue of the Stars, Suite 920
Los Angeles, California 90067
Tel: (310) 531-8090; Fax: (310) 531-8070

Attorneys for Plaintiffs IMELDA PARRA CORONA and the Putative Class

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 3, 2025 at 8:30 a.m. to be set by the by the Honorable Jeffrey R. Erickson in Department S14 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiffs Carlos A. Vasquez and Imelda Parra Corona, individually and on behalf of all others similarly situated, will and hereby do move the Court for entry of an Order preliminarily approving the Parties' class action settlement, including:

1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiffs as class representatives for settlement purposes;
3. Appointing Plaintiffs' counsel as class counsel for purposes of settlement only;
4. Preliminarily approving the class action settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the settlement; and
6. Setting a date for a final fairness hearing to determine, following dissemination of the Class Notice, whether to grant final approval of the Settlement.

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declarations of Plaintiffs' counsel (Mehrdad Bokhour and Michael Nourmand); and Plaintiffs (Carlos A. Vasquez and Imelda Parra Corona); as well as the Class Action and PAGA Settlement Agreement (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and other evidence as may be presented to the Court at the hearing of this motion.

Dated: June 26, 2025

BOKHOUR LAW GROUP, P.C.

BY: ______________________

Mehrdad Bokhour, Esq.
Attorneys for Plaintiffs and the Proposed Settlement Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

TREATISES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Following the Court's approval to consolidate two separate actions, Plaintiffs Carlos A. Vasquez and Imelda Parra Corona seek preliminary approval of a $1,300,000 wage-and-hour class action and PAGA settlement on behalf of approximately 1,194 Class Members, which includes all current and former non-exempt hourly-paid employees who worked for Defendant RGH Enterprises, LLC ("Defendant") within the State of California at any time from December 18, 2020, through April 11, 2025 (the "Class Period").

Under the terms of the Settlement Agreement,[1] Defendant will not oppose Plaintiffs' Counsel's application for a reasonable award of attorney's fees not to exceed $433,333.33 (1/3 of the Gross Settlement Amount), litigation expenses not to exceed $30,000, Settlement Administrator Costs of $10,000, PAGA penalties of $50,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment of $10,000 to each Plaintiff (aka "Class Representative"). (S.A. ¶ 3 et seq).

After all Court-approved deductions from the Settlement Amount, it is estimated that $756.666.67 will be available to pay the Class Members, as follows:

Gross Settlement Amount	**$ 1,300,000.00**
Attorneys' Fees (1/3)	$ 433,333.33.00
Litigation Costs (not to exceed)	$ 30,000.00
Administrator Costs (not to exceed)	$ 10,000.00
PAGA Penalties	$ 50,000.00
Class Representative Service Awards ($10k each)	$ 20,000.00
Net Settlement Amount	**$ 756.666.67**

Assuming 1,194 Class Members, the average payment to each class member will be approximately $633.72 ($756,666.67 / 1,194). Of course, the actual payment will be calculated on a pro-rata basis according to the number of Workweeks, with each Workweek having a value of approximately $14.27 ($756,666.67 / 53,000 total Workweeks). In addition, the Aggrieved Employees will receive a share of the $12,500 PAGA Penalties (25% of the total $50,000 PAGA allocation), calculated pro rata based on the number of Pay Periods worked during the PAGA

[1] The Class Action and PAGA Settlement Agreement (the "Settlement Agreement" or "S.A.") is attached as Exhibit 2 to the Declaration of Mehrdad Bokhour ("Bokhour Decl.")

Period.

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 prior to mediation, it should be preliminarily approved. Plaintiffs respectfully request that the Court enter an order preliminarily approving the settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Class Notice, appointing Plaintiffs' counsel as class counsel, appointing ILYM Group as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

II. BACKGROUND

A. THE SETTLEMENT CLASS

The Class is defined as follows:

> All individuals who are or were employed by RGH Enterprises, LLC in California as non-exempt employees at any time during the Class Period of December 18, 2020, through April 11, 2025. (S.A. ¶ 1.5, 1.12).

B. PROCEDURAL HISTORY

On August 31, 2023, Plaintiff Carlos A. Vazquez Fierros ("Fierros") filed a putative wage and hour class action complaint against Defendant RGH Enterprises, LLC ("Defendant") in the Superior Court of California, County of San Bernardino, Case No. CIVSB2320906 (the "Fierros Action"). On September 19, 2023, Plaintiff Imelda Parra Corona ("Corona") filed a separate putative wage and hour class action and representative action under the California Private Attorneys General Act of 2004 ("PAGA") against Defendant in the same court, Case No. CIVSB2322845 (the "Corona Action"). On December 20, 2023, Plaintiff Fierros filed a First Amended Class Action Complaint in the Fierros Action, adding a cause of action for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (Bokhour Decl. ¶ 13).

On March 7, 2024, the Parties stipulated to consolidate the Fierros Action and the Corona Action. As part of the stipulation, the Parties agreed that Plaintiff Corona would be added as a named plaintiff and class representative in the Fierros Action via a Second Amended Complaint, and that the Corona Action would be dismissed without prejudice. (Bokhour Decl. ¶ 14).

On March 20, 2024, Plaintiffs filed a Second Amended Consolidated Class and PAGA Representative Complaint, alleging multiple wage and hour violations under the California Labor Code, the Unfair Competition Law, and PAGA, including claims for unpaid minimum and overtime wages, missed meal and rest period premiums, inaccurate wage statements, unreimbursed business expenses, and waiting time penalties. (Bokhour Decl. ¶ 15).

On April 8, 2025, Plaintiffs filed a stipulation seeking leave to file a Third Amended Complaint to add new factual allegations and an additional cause of action for failure to pay all sick pay wages. Plaintiffs have filed the Third Amended Complaint, which will serve as the operative complaint in this Action. (Bokhour Decl. ¶ 16).

Defendant aggressively defended each of the cases. However, prior to engaging in a contested class certification motion, counsel for the parties met and conferred and discussed staying formal discovery in order to exchange informal discovery in preparation for mediation. (Bokhour Decl. ¶ 17).

In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk, including policies and procedures pertaining to each claim alleged, and statistics relating to the number of current and former employees, weeks worked, and other things. Defendant also provided its written policies and practices and a robust sampling of payroll and timekeeping records for over 25% of the Class Members. This information enabled both parties to conduct a thorough review of the claims. Additionally, during this process, Plaintiffs and their counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. Plaintiffs also retained an expert to perform a statistical analysis of the claims and violations. (Bokhour Decl. ¶ 18).

On September 26, 2024, the Parties participated in an all-day mediation with Steve Serratore, Esq., a respected mediator of wage and hour representative and class actions. The case did not settle at mediation but several months after the mediation, each side, represented by its respective counsel, was able to agree to settle the Action based upon a mediator's proposal, which was memorialized in the form of a Memorandum of Understanding. The Settlement Agreement replaces and supersedes that Memorandum of Understanding and any other agreements, understandings, or representations between the Parties regarding the same. (Bokhour Decl. ¶ 19). The Parties now seek the Court's preliminary approval of the Settlement.

C. <u>SUMMARY OF THE CLAIMS AND DEFENSES</u>

Plaintiffs alleged numerous wage and hour violations on behalf of the putative Class, which consists of approximately 1,194 similarly situated persons. However, Defendant vigorously contested and denied the allegations on the merits and as to the propriety of a class action or PAGA representative action on behalf of the putative class and allegedly Aggrieved Employees. (Bokhour Decl. ¶ 20).

One of the primary claims in this Action was based on Defendant's alleged failure to pay all required wages under California law. Plaintiffs alleged several distinct violations giving rise to this claim. First, Plaintiffs alleged that Defendant failed to properly calculate the regular rate of pay by excluding nondiscretionary bonuses from overtime and sick pay calculations. Third, Plaintiffs asserted that, during the COVID-19 pandemic, Defendant required Class Members to complete pre-shift temperature checks and health screenings prior to clocking in, without pay. Finally, Plaintiffs also alleged that Defendant utilized a rounding practice during the early part of the class period that may have resulted in uncompensated work time. Defendant disputed these allegations and argued that it properly paid all non-exempt employees at the proper rate of pay for all hours worked. (Bokhour Decl. ¶ 21).

Plaintiff also argued that the Class Members were often denied compliant meal and rest breaks due to the nature of the work. However, Defendant argued that it provided and made available meal and rest breaks to all employees, and any employee who did not take a meal or rest break did so entirely of his or her own volition. In this regard, Defendant produced its written policies and practices, which it argued show full compliance with the law. As such, Defendant argued that these claims were without merit because, for each violation, a fact-finder would have to determine why a break was noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the Defendant. (Bokhour Decl. ¶ 22).

Plaintiff also alleged various other Class and PAGA claims, such as the failure to reimburse business expenses, failure to timely pay all wages owed upon termination, failure to provide accurate itemized wage statements, and other claims related to the alleged violations mentioned above. However, Defendant argued that these other claims, as well as the "derivative" claims, have no merit. (Bokhour Decl. ¶ 23).

Despite the disputed nature of the claims, the Parties concluded that further litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled to limit further risk, expense, and protracted litigation. (Bokhour Decl. ¶ 24).

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 $1,300,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiffs' attorneys' fees not to exceed one third of the Settlement Amount and costs not to exceed $30,000, as approved by the Court; (2) a service award of $10,000 to each Plaintiff, subject to approval by the Court; (3) Settlement Administrator Costs not to exceed $10,000; (4) a $50,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual Class Amounts of the Participating Class Members. (S.A. ¶ 3 and subparts). Defendant will separately pay its share of employer payroll taxes and withholdings.

B. NOTICE PROCEDURES

The proposed Class Notice will be provided to the Class Members showing the estimated amount that each Class Member will receive and the credited number of Weeks Worked (Exhibit B to the Bokhour Decl.). Within 21 days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of Class Members containing names, addresses, telephone numbers, Social Security Numbers, and the total Weeks Worked in the Class Period and Pay Periods worked in the PAGA Period (the "Class Data"). (S.A.

¶¶ 1.8, 4.2).

Within 14 days of receipt of the Class Data, the Settlement Administrator shall calculate the number of Weeks Worked for each Class Member, populate the Class Notice for each, and send each Class Member the Class Notice via first-class, United States mail in English and Spanish. (S.A. ¶ 8.4).

In the event that any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. (S.A. ¶ 8.4).

C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member must submit a written request to the Settlement Administrator no later than 45 days after being mailed by the Settlement Administrator ("Response Deadline"). Any Opt-Out request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 8.5).

The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement may submit a written objection to the Settlement Administrator no later than the Response Deadline. (S.A. ¶ 8.7).

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Class Member's Individual Class Payment is tied to the number of Workweeks worked by each Class Member for Defendant in California during the Class Period. Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's Workweeks worked.

Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the $12,500 PAGA Penalties allocated to the Aggrieved

Employees will be divided and paid according to the number of Pay Periods they worked in the PAGA Period.

The Class Notice will inform Class Members of the estimated share and the number of Workweeks he/she worked during the Class Period. Class Members may dispute their Workweeks if they feel they worked more in the Class or PAGA Periods than Defendant's records show by timely submitting evidence to the Settlement Administrator.

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant is required to deposit the Settlement Amount, along with the employers' share of payroll taxes owed, with the Settlement Administrator, within 60 calendar days after the "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as approved by the Court; (2) the service awards, as approved by the Court; (3) administrative expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual Settlement Amounts of participating Class Members. Within 10 days after receiving the funds, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 4.3).

Class Members and Aggrieved Employees will have 180 days to cash the settlement check. If a Class Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the California State Controller in the name of the individual so that they can reclaim the funds at a later date. (S.A. ¶ 5.4).

F. TAX TREATMENT

The Parties agree that 10% of each Individual Class Payment will be allocated as wages subject to withholding of all applicable local, state and federal taxes (the "Wage Portion"); and 90% will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 226, etc.) from which no taxes will be withheld (the "Non-Wage Portion"). (S.A. ¶ 3.2(5)(i)). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (*Id.*)

Defendant will separately pay its share of employer payroll taxes on the sum allocated to wages.

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for these payments, the Settlement Agreement at ¶ 6.2 provides that the Participating Class Members will release the Released Parties of:

> any and all causes of action, claims, rights, damages, and penalties arising at any time during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint in the Action including, inter alia, all claims arising under California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, and 2802; the Applicable Wage Orders, California Business and Professions Code §§17200-17208; California Civil Code §§ 3287, 3288, and 3289; California Code of Civil Procedure §1021.5, and any other applicable state or federal law, including the Fair Labor Standards Act, and any other statute, ordinance, rule and/or regulation, including the IWC Wage Orders, imposing liability and/or obligations that could be brought, for any and all of the following claims relating to (1) failure to pay proper minimum and overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (2) failure to pay sick wages at the proper legal rate; (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (5) failure to timely pay wages and failure to pay all wages due and owing during employment and at separation in violation of Labor Code sections 201-204; (6) failure to provide complete and accurate wage statements and maintain accurate records in violation of Labor Code sections 226, 226.3, and 1174; (7) failure to reimburse necessary business expenses; (8) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (9) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698- 2699.6); and (9) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

Aside from Plaintiffs individually, the Settlement Agreement will not release any person, party or entity from claims, if any, by Class Members for any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS

The Settlement Agreement at ¶ 6.3 also defines the "Release by Aggrieved Employees" as follows:

> any and all rights and claims for civil penalties pursuant to PAGA during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint in the Action and the PAGA Notice including, inter alia, all claims arising under California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, and 2802 and the Applicable Wage Orders for any and all of the following claims relating to (1) failure to pay proper minimum and overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (2) failure to pay sick wages at the proper legal rate; (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (5) failure to timely pay wages and failure to pay all wages due and owing during employment and at separation in violation of Labor Code sections 201-204; (6) failure to provide complete and accurate wage statements and maintain accurate records in violation of Labor Code sections 226, 226.3, and 1174; (7) failure to reimburse necessary business expenses; (8) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (9) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698- 2699.6); and (9) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the Released PAGA Claims by Aggrieved Employees to the fullest extent permitted by law and will still receive a pro-rata share of PAGA Penalties.

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS 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; *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 ("[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, Plaintiffs request that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 382.

A. ASCERTAINABILITY AND NUMEROSITY

In determining whether a class is ascertainable, the court considers "(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members." *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense). Here, according to Defendant's records, there are approximately 1,194 Class Members that are easily identifiable and fall within the defined Class. Thus, Plaintiffs' proposed Class meets the ascertainability and numerosity requirements.

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. *Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732. Here, Plaintiffs contend that the Class was subjected to common policies and practices relating to payment of wages, meal/rest breaks, wage statements, and so on. 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 Plaintiffs' 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 Plaintiffs assert claims regarding Defendant's pay policies, meal and rest break practices, wage statements, and the provisions governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. <u>Adequacy of Representation</u>

The proposed class representative must establish that he or she will adequately represent the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Specifically, Plaintiffs are adequate to represent the class because they were employed by Defendant during the Class Period, experienced the same alleged wage and hour practices as the rest of the Class, understood their duties as Class Representatives, have been willing to undergo the risks of litigation, and have no conflict of interest.

Adequacy may be established by the fact that counsel 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, Plaintiffs are represented by Class Counsel with extensive experience in wage and hour class actions like the instant matter. (Bokhour Decl. ¶¶ 2-6; Nourmand Decl. ¶¶ 5).

4. <u>Superiority</u>

Certification of the Class for settlement purposes is superior here because it will result in a global resolution of all claims at once, which promotes judicial economy. Class certification for settlement purposes is also vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context.

V. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE</u>

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

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

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

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

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

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

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

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

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

The settlement was the product of extensive arm's length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although Plaintiffs and their 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 the defenses, the employees may not have received any monetary recovery.

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

Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the settlement with the assistance of an experienced mediator. As described above, the settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial exchange of information relating to 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.

However, 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,* 91 Cal.App.4th at 250 ("Compromise is inherent and necessary in [settlement] … 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 particular relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. Plaintiffs engaged in extensive analysis of Defendants' records prior to mediation and settlement including reviewing a significant volume of documents and data. (See Bokhour Decl. ¶ 13). In fact, the sampling of timekeeping and payroll data covered over 40,000 shifts and 10,000 workweeks. Plaintiffs' expert reviewed and analyzed the data, allowing Plaintiffs' counsel to formulate detailed damages models to value the claims in preparation for mediation and to reach a realistic and reasonable resolution. (Bokhour Decl. ¶ 13).

At mediation, in addition to disputing the merits of Plaintiffs' claims, Defendant strongly disputed that Plaintiffs could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendant further argued that it complied with the applicable law and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiffs' ability to certify the class. While Plaintiffs assert that this is a suitable case for certification, they realize that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that they could pursue on a class basis.

In light of the uncertainties of 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 detailed data obtained through informal discovery and information exchanges, Plaintiffs' counsel estimated the following data points through the date of mediation: (1) 813 Class Members, (2) 53,000 workweeks, (3) 237,105 shifts, and (4) 15,686 pay periods during the PAGA Period. (Bokhour Decl. ¶ 25).

Here, Plaintiffs alleged a variety of claims against Defendant, which boil down to these primary categories: (1) unpaid wages, (2) meal and rest break violations, (3) waiting time penalties under Labor Code §§ 201 – 203, (4) wage statement penalties under § 226(e), and (5) PAGA civil penalties for the claims discussed herein. (Bokhour Decl. ¶ 26).

Plaintiffs' unpaid wage claims had several distinct theories of liability, including but not limited to: (1) rounding for a limited period, (2) alleged regular rate violations, and (3) uncompensated pre-shift temperature checks during the COVID-era. However, Defendant vehemently opposed these unpaid wage claims on the merits and as to the propriety of class certification. On this point, Defendant raised several strong defenses and, as a result, for mediation and settlement purposes, Plaintiff and Class Counsel applied appropriate risk reductions from the maximum potential unpaid wages to account for risks of defeat at class certification and on the merits. (Bokhour Decl. ¶ 27).

Plaintiffs also alleged meal and rest break claims against Defendant. Based on the pre-mediation analysis and investigation, and when incorporating violation rates from expert review of the timekeeping records and other evidence, Class Counsel estimated a 20% violation rate for meal periods and a similar violation rate for rest breaks. However, Defendant raised numerous arguments in response to this claim, including that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendant. These defenses are factored into Plaintiffs' analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified. Second, these defenses also address the merits, given the evidentiary question of proving the number of meal and rest violations. As such, Plaintiffs and Class Counsel considered these risks and defenses, along with the relatively low violation rates and, for purposes of mediation and settlement, applied appropriate risk reductions regarding the risks of defeat at class certification and on the merits. (Bokhour Decl. ¶ 28).

Plaintiffs also alleged claims for waiting time penalties and wage statement violations, including failure to accurately state all applicable hourly rates and total hours worked. Some of these claims were derivative of the claims above, meaning that they only had merit if the claims for unpaid wages or meal/rest breaks were successful. But Defendant raised a variety of defenses to these derivative claims that impacted the valuation. Namely, as to the wage statement violations, Defendant argued that its wage statements did not violate Labor Code § 226 and even if there was a "technical" violation, that Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements. Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding of a "willful" violation since they had compliant written policies, and any deviations therefrom were inadvertent and unintentional. (Bokhour Decl. ¶ 29).

While the theoretical and maximum potential Class damages may stretch into the mid 7-figures, that figure fails to account for the various risks at class certification, on the merits, and the many evidentiary issues present in a class action of this size. For that reason, the settlement presented to the Court is fair, adequate, and reasonable when applying all risks and considering the potential outcomes at class certification and trial. (Bokhour Decl. ¶ 30).

Likewise, while the PAGA penalties had a maximum value of approximately $1,500,000, this also fails to incorporate the risks above and, further, fails to acknowledge that courts have wide latitude to reduce the civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims and particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that this settlement is fair and reasonable. (Bokhour Decl. ¶ 31).

E. <u>PLAINTIFFS' COUNSEL IS EXPERIENCED IN 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; *Kullar,* 168 Cal.App.4th at 128 (court must take into account "the experience and view of counsel").

Plaintiffs' Counsel are also highly experienced in Class/PAGA litigation. (Bokhour Decl. ¶¶ 2-6; Nourmand Decl. ¶¶ 5). Plaintiffs' 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 considering the nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law, and uncertainties of class certification and litigation.

F. <u>The Class Notice Conforms to All Applicable Statutes and Rules</u>

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 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 3.769(f) and 3.766(b). The contents of the proposed Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (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. *See* Class Notice (Exhibit A to the Bokhour Declaration). 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 notice.

The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Settlement Class Members with 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 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 member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the 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 so 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 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 uncashed by the deadline, the funds will be transferred to the State Controller's Office 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 ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR

Under the terms of the Settlement Agreement, Class Counsel is requesting $433,333.33 in attorneys' fees, which is equal to one-third of the Settlement Amount. See, *e.g.*, *Laffitte 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) 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) 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), 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) 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

Additionally, Plaintiffs' counsel may collectively seek up to $30,000 in litigation costs, pursuant to the Settlement Agreement.

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

I. THE REQUESTED SERVICE AWARDS ARE FAIR AND APPROPRIATE

The Settlement Agreement provides an incentive award payment of $10,000 to each Class Representative, which is reasonable given the large recovery, as well as the time and effort they devoted to this case. As set forth in their declarations, their 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 reviewing the settlement documents. The Class Representatives also assumed significant risk in bringing this litigation, namely, had they lost, they could have been ordered to pay Defendant's costs.

The requested service 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) 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) 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); *West v. Circle K Stores, Inc*. (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 ("the court finds Plaintiff's enhancement payments of $ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*. (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of $25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc*. (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving "$25,000 incentive award for each Class Representative" in wage an hour settlement).

VI. THE COURT SHOULD APPOINT ILYM GROUP AS SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties stipulated to ILYM Group serving as the Settlement Administrator. ILYM Group is experienced in administering class action settlements and has provided a "not to exceed" proposal (i.e., flat fee) to administer this settlement for $10,000. (Bokhour Decl. ¶ 39).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing for final approval approximately 140 days after the Preliminary Approval Date, as follows:

September 3, 2025	Preliminary Approval Date (PA)
35 days after PA	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
45 days after mailing Class Notice	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.

9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs' Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately 140 days after Preliminary Approval is granted)	Final Approval Hearing.

VIII. <u>CONCLUSION</u>

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant the motion for preliminary approval of the settlement.

Dated: June 26, 2025

BOKHOUR LAW GROUP, P.C.

BY: ______________________

Mehrdad Bokhour, Esq.
Attorneys for Plaintiffs and the Proposed Settlement Class