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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ELIJAH BROWN, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

VEORIDE, INC., a Delaware Limited Liability
Company; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 23CV421642

Assigned to the Hon. Theodore C. Zayner

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

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

HEARING INFORMATION

Date: November 5, 2025

Time: 1:30 p.m.

Dept.: 19

Complaint Filed: August 29, 2023

FAC Filed: November 6, 2023

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

2 **PLEASE TAKE NOTICE** that on November 5, 2025, at 1:30 p.m. or as soon thereafter
3 as the matter may be heard by Honorable Theodore C. Zayner in Department 19 of the Santa
4 Clara County Superior Court, located at 191 North First Street San Jose, California 95113,
5 Plaintiff Elijah Brown, individually and on behalf of all others similarly situated, will and hereby
6 does moves the Court for entry of an Order preliminarily approving the Parties' Class Action and
7 PAGA Settlement Agreement, including:

8 A. Certifying the Class for purposes of settlement only;

9 B. Preliminarily appointing Plaintiff as Class Representative for purposes of
10 settlement only;

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

13 D. Preliminarily approving the Settlement as fair, adequate, and reasonable, based
14 upon the terms set forth in the Settlement Agreement;

15 E. Directing distribution of the Notice, including notice of the opportunity to exclude
16 oneself from, or object to, the Settlement;

17 F. Setting a date for a final fairness hearing to determine, following dissemination of
18 the Notice, whether to grant final approval of the Settlement.

19 This motion is based upon this Memorandum of Points and Authorities in support thereof;
20 the Declarations of Mehrdad Bokhour, Joshua Falakassa, and Plaintiff Elijah Brown in support
21 thereof; the Settlement Agreement; the proposed Order; all other records, pleadings, and papers
22 filed in this action; and upon such other evidence or argument as may be presented to the Court
23 at the hearing of this motion.

24 Dated: October 10, 2025

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

25
26 BY:

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this motion, Plaintiff Elijah Brown (“Plaintiff”), individually and on behalf of all others similarly situated, seeks preliminary approval of the Class Action and PAGA Settlement Agreement.¹ Subject to Court approval, Plaintiff and Defendant Veoride, Inc. (“Defendant”) have agreed to settle their claims and the proposed Class Members’ claims for a Gross Settlement Amount of \$625,000.

Plaintiff seeks to represent a Class of all persons who are or were employed by Defendant in California and classified as non-exempt or hourly employees at any time during the Class Period from August 29, 2019, through June 17, 2025 (the “Class” or “Class Members”). Likewise, the Aggrieved Employees include all persons who are or were employed by Defendant in California and classified as non-exempt or hourly employees at any time during the Class Period from August 29, 2022, through June 17, 2025. (“Aggrieved Employees”). (Bokhour Decl. ¶ 9.)

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 \$25,000, Settlement Administration Fees not to exceed \$5,000, PAGA penalties of \$20,000 (of which \$15,000 or 75% will be paid to the LWDA and the remaining \$5,000 or 25% will be paid to the Aggrieved Employees), and an Incentive Award not to exceed \$10,000 to the named Plaintiff (S.A. ¶ 47(a)-(h); Bokhour Decl. ¶ 9), as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$625,000
Attorneys’ Fees (not to exceed 1/3 of GSA)	\$208,333.33
Litigation Costs (not to exceed)	\$25,000.00
Settlement Administration Fees (not to exceed)	\$5,000.00
PAGA payment to LWDA (75% of \$20k award)	\$15,000.00
PAGA payment to Aggrieved Employees (25% of \$20k award)	\$5,000.00
Plaintiff’s Incentive Award	\$10,000.00
<i>Net Settlement Amount</i>	\$356,666.67

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 is attached to the Bokhour Decl. as **Exhibit “B.”**

1 As of the Parties' mediation, the Class includes approximately 222 non-exempt employees
2 who all worked for Defendant in California during the Class Period. Plaintiff contends that,
3 regardless of their roles, all non-exempt employees were subject to the same wage and hour
4 policies and payroll/scheduling practices, and therefore, the Individual Settlement Payments will
5 be paid on a pro-rata basis based on the number of Compensable Workweeks during the Class
6 Period. Assuming a total class size of approximately 222 Settlement Class Members, the average
7 payment to each Settlement Class Member will be approximately \$1,606.60, with the highest
8 payment estimated to be \$14,632.48. Of course, those with more Compensable Workweeks stand
9 to recover proportionally more. (Bokhour Decl. ¶ 10.)

10 The Settlement is non-reversionary, and Class Members will not be required to submit
11 claim forms to receive payment, but each Class Member will be mailed the Notice containing
12 detailed information about his/her share, the opportunity to dispute the number of Compensable
13 Workweeks worked by the Class Member, and the opportunity to opt out or object to the
14 Settlement. (S.A. ¶ 48, 66-68.) All Class Members who do not affirmatively opt out will receive
15 a settlement check upon the Court granting final approval of the Settlement. (Bokhour Decl. ¶
16 11.) Aggrieved Employees will not be able to opt out and will receive settlement checks.

17 Because the Settlement is fair and reasonable and was negotiated at arm's length by
18 experienced counsel and an experienced mediator following an appropriate and comprehensive
19 exchange of information and documents in advance of mediation, it should be preliminarily
20 approved. Plaintiff respectfully requests that the Court enter an order preliminarily approving the
21 Settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement
22 purposes, approving the proposed Notice, appointing Plaintiff's counsel as Class Counsel,
23 appointing Phoenix Class Action Administration Solutions as the Settlement Administrator, and
24 scheduling a hearing for the final approval of the Settlement. (Bokhour Decl. ¶ 12.)

25 **II. BACKGROUND**

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

27 Defendant is a micro-mobility company operating electric scooters and bikes in cities and
28 universities across the State of California. The putative Class consists of all persons who are or

were employed by Defendant in California and classified as non-exempt or hourly employees at any time during the Class Period from August 29, 2019, through June 17, 2025, excluding any individuals who previously executed a severance agreement with Defendant that included a general release of claims. (S.A. ¶¶ 7, 39.)

B. PROCEDURAL HISTORY

On or about August 29, 2023, Plaintiff filed a class action complaint in the Court against Defendant, including allegations of: (1) failure to pay overtime wages, (2) failure to pay all sick time, (3) meal period violations, (4) rest period violations, (5) wage statement violations, (6) waiting time penalties, (7) failure to reimburse business expenses, and (8) unfair competition.

On or about November 6, 2023, Plaintiff filed a First Amended Complaint to add a cause of action for PAGA penalties based on the foregoing Labor Code violations. (Bokhour Decl. ¶ 13; S.A. ¶ 41.)

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

The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting interviews with putative class members, investigation of Defendant and its operations, and its pay policies/procedures, exchange of informal discovery, including Defendant's written policies and practices, and the production of a statistically significant sampling of payroll and timekeeping records for Settlement Class Members and Aggrieved

1 Employees. Class Counsel is both knowledgeable about and has done extensive research with
2 respect to the applicable law and potential defenses to the claims of the Settlement Class Members
3 and Aggrieved Employees. Class Counsel has diligently investigated the Class Members' claims
4 against Defendant. (Bokhour Decl. ¶ 15.)

5 Based on the foregoing data and their own independent investigation and evaluation, Class
6 Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms
7 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest
8 of the Settlement Class Members and Aggrieved Employees, in light of all known facts and
9 circumstances, including the risk of significant delay and uncertainty associated with litigation,
10 various defenses asserted by Defendant, and numerous potential appellate issues. (Bokhour Decl.
11 ¶ 16.)

12 On April 18, 2025, the Parties participated in mediation before David Phillips, Esq., a
13 highly experienced class action mediator. After a full-day mediation and the issuance of a
14 mediator's proposal, the Parties reached a settlement and memorialized the terms of the Settlement
15 in a long-form Settlement Agreement. (Bokhour Decl., ¶ 17, Exhibit "A".) (*Id.*)

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

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

18 Plaintiff alleged various wage and hour violations on behalf of the non-exempt employees
19 who worked for Defendant during the Class Period (*i.e.*, Class Members). (Bokhour Decl. ¶ 18.)

20 First, Plaintiff alleged that Defendant failed to pay all wages due as a result of its unlawful
21 and uneven time rounding practice. (Bokhour Decl. ¶ 19.)

22 Next, Plaintiff alleged that Defendant's deficient meal and rest period policies and
23 practices failed to allow and permit Class Members to take timely and compliant meal periods or
24 pay premium pay in lieu thereof. (Bokhour Decl. ¶ 20.) Likewise, Plaintiff contended that the
25 Class Members were not provided with duty-free rest periods of at least ten (10) minutes for each
26 four (4) hour work period, or major fraction thereof, due to Defendant's operational requirements
27 at the direction of their supervisors. (*Id.*)

28 Plaintiff further alleged that Defendant failed to pay all final wages at separation of

1 employment and provide accurate itemized wage statements that comply with all requirements of
2 Labor Code Section 226. Plaintiff also alleged that Defendant failed to reimburse Class Members
3 for all necessary business expenses in violation of Labor Code Sections 2802-2804, and also
4 brought a claim for civil penalties under the PAGA arising from the alleged Labor Code violations
5 set forth above. (Bokhour Decl. ¶ 21.)

6 **D. SUMMARY OF DEFENDANT’S DEFENSES**

7 Defendant contested and denied each of Plaintiff’s material allegations on the merits and
8 as to the propriety of the class and PAGA representative action. (Bokhour Decl. ¶ 22.)

9 First, Defendant argued that it always paid employees for all hours worked and its
10 timekeeping and pay practices/policies did not result in any underpayment to Class Members.
11 Further, Defendant argued that even if there was any underpayment, it did not count as
12 compensable time and resulted in *de minimis* damages, if any. (Bokhour Decl. ¶ 23.)

13 Next, Defendant argued that, at all relevant times, its written meal and rest period policies
14 were compliant with California law. Defendant also contended that, in practice, Class Members
15 regularly were permitted to be free of any duties during meal and rest periods and were not
16 constrained due to operational requirements of the job. (Bokhour Decl. ¶ 24.) With regard to the
17 failure to pay necessary business expenses, Defendant argued that Class Members were not
18 required to use their personal cell phones, and that it adequately reimbursed for necessary
19 expenses pursuant to its reimbursement policy. (Id.)

20 Moreover, Defendant argued that claims for wage statement violations, waiting time
21 penalties, and PAGA penalties were derivative of other claims, which they argued had no merit.
22 Defendant further contended that Plaintiff’s waiting time penalty and wage statement claims
23 based on the underlying meal and rest period violations were unfounded and did not entitle Class
24 Members to pursue the derivative penalties under Labor Code sections 203 and 226. (Bokhour
25 Decl. ¶ 25.)

26 Defendant also generally argued that individualized inquiries would be required to
27 establish liability, including amongst other things, which employees, if any, took meal periods of
28 less than 30 minutes, why a particular employee took a meal period of less than 30 minutes on a

1 particular shift, and whether a particular employee remained under the control of Defendant
2 during rest periods. (Bokhour Decl. ¶ 26.)

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

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

5 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

6 The \$625,000 Settlement Amount is non-reversionary and will be paid out to Class
7 Members without the need to submit a claim form or take any affirmative action. It includes (1)
8 Plaintiff's reasonable attorneys' fees not to exceed 1/3rd of the Settlement, costs not to exceed
9 \$25,000, as approved by the Court; (2) Incentive Award not to exceed \$10,000 to the named
10 Plaintiff, as approved by the Court; (3) Settlement Administration Fees, not to exceed \$5,000, as
11 approved by the Court; (4) a \$20,000 PAGA Penalties payment, 75 percent (75%) of which is to
12 be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the aggregate of all
13 Individual Settlement Payments of the Settlement Class Members. Defendant's employer's share
14 of payroll taxes on the portion of the Individual Settlement Amounts that are allocated as wages
15 subject to withholdings will be paid separately by Defendant. (S.A. ¶ 47, *et seq.*)

16 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
17 that \$356,666.67 will be available to pay the Individual Settlement Payments to approximately
18 222 Settlement Class Members. As noted above, the average Individual Settlement Payment to
19 Settlement Class Members is approximately \$1,607, which is a fair and reasonable recovery.
20 (Bokhour Decl. ¶ 10.)

21 **B. NOTICE PROCEDURES**

22 The proposed Notice, as approved by the Court, will be provided to the Class Members
23 showing the estimated number of Compensable Workweeks for which he/she will be credited
24 (Exhibit "B" to the Bokhour Decl.). Within thirty (30) days after entry by the Court of its Order
25 of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of all
26 Class Members containing Class Members' full names; last known mailing addresses; Social
27 Security Numbers; and number of Class Period Workweeks and PAGA Pay Periods (the "Class
28 Data"). (S.A. ¶¶ 6, 62.)

1 Within fourteen (14) days after receipt of the Class Data, the Settlement Administrator
2 shall calculate the number of Compensable Workweeks for each Class Member, populate the
3 Notice (if necessary), and send each Class Member the Notice via first-class, United States mail,
4 in English. (S.A. ¶ 63.)

5 In the event that any Notice mailed to a Class Member is returned as undeliverable by the
6 U.S. Postal Service, the Settlement Administrator shall use standard devices, including a skip
7 trace, to obtain forwarding addresses of Class Members if any envelopes are returned as
8 undeliverable. (*Id.*)

9 Any Notice returned to the Settlement Administrator as undeliverable on or before the
10 Notice Response Deadline, as defined in Paragraph 20 of the Settlement Agreement, shall be re-
11 mailed to the forwarding addresses affixed thereto. If no forwarding address is provided, the
12 Settlement Administrator will take steps to ensure that the Notice is mailed to all Class Members,
13 including the utilization of the National Change of Address Database maintained by the U.S.
14 Postal Service and shall make reasonable efforts, conducting a “skip-trace” to obtain an updated
15 mailing address for a Class Member and, if applicable to update the mailing addresses within ten
16 (10) calendar days of receiving the returned Notice.

17 If the Settlement Administrator learns of a failed mailing and obtains a forwarding or
18 updated address for that Class Member, the Notice will be re-mailed to that Class Member within
19 ten (10) calendar days of receipt of the updated address. The address identified by the Settlement
20 Administrator as the current mailing address shall be presumed to be the best mailing address for
21 each Class Member. The re-mailed Notice shall be identical to the original Notice, except that it
22 shall notify the Class Member that the exclusion (opt-out) request or objection must be returned
23 by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.
24 (S.A. ¶ 64.)

25 **C. EXCLUSION AND OBJECTION PROCEDURES**

26 Class Members who do not timely opt-out of the Settlement will be deemed to participate
27 in the Settlement and shall become Settlement Class Members without having to submit a claim
28 form or take any other action. The Notice shall inform the Class Members of their right to opt out

1 of the Settlement. To do so, Any Settlement Class Member, other than Plaintiff, may request to
2 be excluded from the Participating Settlement Class by submitting a “Request for Exclusion” to
3 the Settlement Administrator, postmarked on or before 45 days after being mailed the Notice by
4 the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 20, 68(a).) Any Request for
5 Exclusion must include the full name, address, telephone number, last four digits of the social
6 security number or date of birth, and signature of the Settlement Class Member requesting
7 exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator
8 at the specified address. Any Settlement Class Member who timely requests exclusion in
9 compliance with these requirements: (i) will not have any rights under the Settlement Agreement
10 with respect to the Class Claims, including the right to object, appeal, or comment on the
11 Settlement; (ii) will not be entitled to receive any payments under the Settlement Agreement with
12 respect to Class Claims; and (iii) will not be bound by the Settlement Agreement, or the Judgment,
13 with respect to the Class Claims. (*Id.*)

14 The Notice shall inform the Class Members of their right to object to the Settlement. Any
15 Class Member who wishes to object to the Settlement must submit a written objection to the
16 Settlement Administrator no later than the Notice Response Deadline. The objection must include
17 the full name, address, telephone number, dates of employment with Defendant of the Objecting
18 Class Member, the case name and number, and the basis for the objection, including any legal
19 support and each specific reason in support of the objection, as well as any documentation or
20 evidence in support thereof, and, if the objecting Class Member is represented by counsel, the
21 name and address of his or her counsel. (S.A. ¶ 68(c).) Settlement Class Members and Aggrieved
22 Employees may not object to or opt out of the Settlement with respect to the PAGA Claims. (*Id.*)

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

24 The Individual Settlement Payment for each Settlement Class Member will be calculated
25 by the Settlement Administrator using the Class Data provided by Defendant. Using the Class
26 Data or using the Compensable Workweeks that were disputed and subsequently approved, while
27 also accounting for any timely submitted Requests for Exclusion, the Settlement Administrator
28 will calculate the total Compensable Workweeks for all Settlement Class Members (if necessary).

Each Participating Class Member’s Individual Settlement Amount shall be based on his/her/their proportionate Workweeks during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member’s total Workweeks during the Class Period, and the denominator of which is the total Workweeks by all Participating Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims. (S.A. ¶ 47(d)(ii).) The Notice will inform Class Members of his/her estimated number of Workweeks Worked during the Class Period. Class Members may dispute their estimated Workweeks Worked if they feel they worked more weeks in the Class Period in California than Defendant’s records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 61.)

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant shall make a one-time deposit into the Qualified Settlement Fund (“QSF”) of the Gross Settlement Amount, from which all other payments required under the Settlement Agreement shall be made, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by transmitting the funds to the Settlement Administrator no later than (30) days after the Effective Date.² (S.A. ¶ 71.)

The Settlement Administrator shall deposit the payments into an interest-bearing qualified settlement account (“Qualified Settlement Fund”) with an FDIC insured banking institution from which the Settlement Administrator will have authority to distribute money in accordance with the terms of the Settlement Agreement. In the event the Settlement Agreement becomes null and

² “Effective Date” means the latter of (a) the Court’s final approval of the settlement if no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. “Final” means that the Settlement has been granted “Final Approval” by the Court and the “Effective Date” has occurred. (S.A. ¶ 13.)

void, all monies deposited by Defendant into the Qualified Settlement Fund including any interest accrued, shall be returned to Defendant. (S.A. ¶ 71.)

No later than seven (7) calendar days after the deposit of the payment into the Qualified Settlement Fund, the Settlement Administrator will mail the payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Incentive Award to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Fees. (S.A. ¶ 72.)

Final Settlement Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. (S.A. ¶ 73.) If any Final Settlement Class Member's check is not cashed within that period, the check will be void, and a stop-payment will be issued. All unclaimed funds shall will revert to *cy pres* recipient Legal Aid at Work. The release will be binding upon all Final Settlement Class Members who do not cash their checks within the 180-day period. If any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check and notify the Parties counsels that a re-issued check has been sent. Without limiting the foregoing, in the event that a Final Settlement Class Member notifies the Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check-in question has not been negotiated before the stop payment order, the Settlement Administrator will issue a replacement check. (*Id.*)

F. TAX TREATMENT

The Individual Settlement Amounts paid to Participating Class Members for Class Claims will be allocated for tax purposes based on the allegations in the Action as follows: twenty percent (20%) will be allocated as wages subject to withholdings of all applicable local, state, and federal taxes; and eighty percent (80%) will be allocated as interest and as civil penalties (pursuant to, *e.g.*, California Labor Code sections 203, 226) from which no taxes will be withheld. (S.A. ¶ 47(e).) To the extent required, the Settlement Administrator will issue to each Settlement Class

Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations. (*Id.*)

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for these payments, the Settlement Agreement ¶ 50 provides that the Plaintiff and the Participating Class Members will release the Released Parties³ from all claims alleged or that could have been alleged based on the facts stated in the operative complaint, as follows:

all claims, transactions, or occurrences, including but not limited to: (a) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including claims for (1) failure to pay overtime wages; (2) failure to pay sick wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to furnish accurate itemized wage statements; (6) failure to timely pay final wages at the time of termination/end of employment; (7) failure to reimburse business expenses; and, (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). The Released Class Claims specifically include alleged violations of, without limitation California Labor Code §§ 200–204, 210, 226, 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199, 2802, 2698 et seq. and Civil Code §§ 3287 and 3289, and unfair and unlawful business practices.

(S.A. ¶¶ 4, 50-51.)

H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS

The Settlement Agreement at ¶ 23 also defines the “Released PAGA Claims” as follows:

any and all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698–2699.5, that were alleged in the PAGA Notice submitted to the California Labor and Workforce Development Agency (“LWDA”), or that reasonably could have been alleged based on the facts stated therein, during the PAGA Period. These include, without limitation, claims for civil penalties arising from the alleged failure to pay overtime wages; failure to provide compliant meal periods or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to pay sick leave wages; failure to timely pay all wages due upon separation of employment; failure to furnish accurate, itemized wage statements; failure to reimburse necessary business expenses; and any unfair, unlawful, or deceptive business practices based on the foregoing conduct. The Released PAGA Claims specifically include alleged violations of, and civil penalties arising under,

³ “Released Parties” means VeoRide, Inc., and its former, present, and future owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives. (S.A. ¶ 32.)

without limitation, California Labor Code §§ 200–204, 210, 226, 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1198, and 2802, as well as all applicable provisions of Labor Code §§ 2698–2699.5.

In addition to the foregoing release, the named Plaintiff has also agreed to a General Release as set forth in the Settlement Agreement. (S.A. ¶¶ 57-58.)

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 request 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

1 the class members can be objectively identified and given notice of the litigation without
2 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
3 89, 101. Here, according to Defendant’s records, there are approximately 222 Class Members.
4 Plaintiff argues that this figure undoubtedly satisfies the numerosity requirement.

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

6 *1. Commonality*

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

15 *2. Typicality*

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

24 *3. Adequacy of Representation*

25 The proposed class representative must establish that he/she will adequately represent the
26 proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th
27 540, 546. Specifically, Plaintiff’s position is that he is adequate to represent the Class because he
28 was employed by Defendant during the Class Period, was subject to the same wage and hour

1 policies/practices as the rest of the Class, understands his duties as Class Representatives, has
2 been willing to undergo the risk of litigation, and has no conflicts of interest.

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

8 4. Superiority

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

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

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

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

26 The decision to approve or reject a proposed settlement lies within the Court's sound
27 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224. Nevertheless, in
28 considering a potential settlement for approval, a court is not to turn the approval hearing "into a

1 trial or rehearsal for trial on the merits [or] to reach any ultimate conclusions on the contested
2 issues of fact and law which underlie the merits of the dispute.” *Officers for Justice*, 688 F.2d at
3 625.

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

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

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

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

24 At the preliminary approval stage, the Court need only determine that the settlement falls
25 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
26 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
27 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies
28 ... and [the settlement] appears to fall within the range of possible approval.” *Manual For*

1 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption
2 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
3 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
4 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
5 *supra* (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of
6 approval because there are no grounds to doubt its fairness.

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

9 The Settlement was the product of extensive arm’s length negotiations between counsel
10 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
11 professional, the Settlement negotiations were adversarial and non-collusive in nature. The
12 Settlement reached is the product of substantial effort by the Parties and their counsel. Although
13 Plaintiff and Class Counsel believed that there was a possibility of certifying the claims, they
14 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
15 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
16 and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed
17 on any of its defenses, the Class Members may not have received any substantial monetary
18 recovery. (Bokhour Decl. ¶ 48.)

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

21 Plaintiff and his counsel thoroughly investigated and evaluated this case’s factual and
22 legal strengths and weaknesses before reaching the Settlement. As described above, the
23 Settlement was reached after extensive investigation and research, thorough calculations and risk
24 evaluation, and a substantial exchange of information and documents relating to Plaintiff and the
25 Class Members prior to mediation.

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

27 To evaluate a settlement, the parties must provide the trial court with “basic information
28 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, and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff’s 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.

1 Considering the uncertainties of continued protracted litigation, this negotiated Settlement
2 reflects the best practicable recovery for the Class. While the total Settlement Amount is, of
3 course, a compromise figure, the potential risks and opportunities of both parties were effectively
4 weighed and considered by the Parties, resulting in a fair and equitable Settlement. (Bokhour
5 Decl. ¶¶ 16, 53.)

6 Based upon detailed data obtained through informal discovery and information exchanges,
7 Plaintiff’s counsel estimated the following big-picture data points through the date of mediation:
8 222 Class Members who worked approximately 7,020 workweeks. (Bokhour Decl. ¶ 27.)

9 **1. Failure to Pay Overtime and Sick Wages at the “Regular Rate of Pay”**

10 First, Plaintiff alleged that Defendant failed to account for non-discretionary bonuses and
11 other incentive pay when calculating the “regular rate of pay” when paying overtime and sick pay
12 wages. However, Defendant argued that it correctly calculated the “regular rate of pay,” and that
13 any underpayment was in good faith and *de minimis*. (Bokhour Decl. ¶ 28.)

14 While Defendant’s sampling of pay records revealed “regular rate of pay” violations, the
15 underpayments of overtime and sick wages were minimal throughout the Class Period. (Bokhour
16 Decl. ¶ 29.)

17 Due to this and in light of Defendant’s other defenses, Plaintiff completely discounted
18 these two claims, keeping in mind that the true significant value of this unpaid wages claim lies
19 in the derivative claims for waiting time penalties under California Labor Code Section 203 and
20 wage statement violations under California Labor Code Section 226(a) as discussed below.
21 (Bokhour Decl. ¶ 30.)

22 **2. Waiting Time Penalties**

23 With respect to Plaintiff’s waiting time penalty claim, there were approximately 151 Class
24 Members who separated from their employment with Defendant, and who worked an average of
25 7.4 hours per day, during the relevant statutory period. As such, the maximum potential penalty
26 under Labor Code § 201 – 203 is \$709,579 (151 employees x 8 hours per day x average rate of
27 \$19.58 x 30 days). (Bokhour Decl. ¶ 31.)

1 However, Defendant argued that it would defeat the waiting time penalty claim as to
2 Plaintiff's unpaid wage claim because Defendant would prevail on the merits of these claims,
3 including that it complied with the law because it had an alleged facially neutral pay
4 policy/practice. Finally, Defendant argued that any failure to pay final wages was not willful and
5 occurred before the waiting time penalty liability period.. (Bokhour Decl. ¶ 32.)

6 Therefore, Plaintiff applied a 30% discount to account for the risk of defeat at the class
7 certification stage and an additional discount of 25% for the risk of defeat at the summary
8 judgment stage or on the merits, resulting in the risk-adjusted value of \$372,528 for Plaintiff's
9 waiting time penalty claim. (Bokhour Decl. ¶ 33.)

10 **3. Failure to Provide Meal and Rest Periods or Compensation in Lieu**
11 **Thereof at the "Regular Rate of Pay"**

12 With respect to Plaintiff's meal and rest period violation claims, the Class Members
13 worked 35,000 shifts during the Class Period. Based on an alleged 50% violation rate based on
14 the sampling for the meal period claims and an alleged 33% violation rate for the rest period
15 claims, as extrapolated from the pre-mediation sampling of Defendant's timekeeping and payroll
16 records, the maximum potential damages totalled \$342,650 for the meal period claim and
17 \$226,149 for the rest period claim, respectively. (Bokhour Decl. ¶ 34.)

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

27 Defendant further argued that, even if certification were granted, it would defeat these
28 claims on the merits because Defendant utilized compliant policies and practices, and it would

1 present sufficient evidence that employees were properly provided with all breaks or paid
2 compensation in lieu thereof. Moreover, Defendant argued that Plaintiff would be unable to
3 present sufficient evidence establishing the number of meal and rest period violations to allow a
4 factfinder to determine damages appropriately. (Bokhour Decl. ¶ 36.)

5 In light of these defenses and arguments, Plaintiff discounted Defendant's maximum
6 exposure by 40% for the risk of non-certification, and an additional 50% to account for
7 Defendant's defenses on the merits, to arrive at the risk-adjusted value of the meal period claims
8 to be \$68,530 and the rest period claims to be \$67,844. (Bokhour Decl. ¶ 37.)

9 **4. Failure to Provide Accurate Itemized Wage Statements**

10 Plaintiff estimates that the maximum potential penalties for the derivative wage statement
11 claim are \$200,00 (based on approximately 4,000 allegedly violative wage statements issued
12 during the Class Period). In calculating Defendant's exposure, Plaintiff gave Defendant the
13 benefit of assuming Plaintiff could only obtain the "initial" wage statement penalty of \$50 per
14 violation. *Id.*, Lab. Code § 226(e) (providing for a \$50 penalty for "initial" violations); *Amaral v.*
15 *Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate
16 applies until the employer has been notified that it is violating a Labor Code provision.) (Bokhour
17 Decl. ¶ 38.)

18 In response, Defendant contended that its wage statements fully complied with the law,
19 that any alleged violations were not "knowing and intentional," and that Plaintiff could not
20 establish that they or anyone else suffered "injury" because of any alleged wage statement
21 violations. Further, Defendant relied on its defenses to Plaintiff's underlying claims on the merits
22 and to class certification. (Bokhour Decl. ¶ 39.)

23 As such, Plaintiff discounted the calculated maximum exposure by 30% for risk of non-
24 certification, and by an additional 20% for risk of being unsuccessful on the merits, to arrive at
25 an estimated total of \$112,000. (Bokhour Decl. ¶ 40.)

26 **5. Failure to Reimburse for Necessary Business Expenses**

27 Plaintiff alleged that necessary business expenses were incurred by Plaintiff and Class
28 Members but were not reimbursed by Defendant. These necessary expenses included, but are not

1 limited to, costs associated with cellphone use and mileage. Plaintiff calculated Defendant's
2 maximum exposure under this theory of liability to be \$35,000 (\$20 unreimbursed business
3 expenses x 1,750 pay periods). (Bokhour Decl. ¶ 41.)

4 Defendant contended that Plaintiff and other Class Members never requested
5 reimbursement from Defendant, and thus, Defendant did not know and had no reason to know
6 that the alleged business-related expenses were incurred and not reimbursed. Defendant further
7 contended that this claim would raise individual issues that could not be certified, including
8 whether employees were required to use their personal cellphones for work-related purposes, and
9 whether any given employee applied for and received reimbursement. (Bokhour Decl. ¶ 42.)

10 In light of these defenses and arguments, Plaintiff discounted Defendant's maximum
11 exposure by 60% for the risk of non-certification, and an additional 40% to account for
12 Defendant's defenses on the merits, to arrive at an estimated total of \$8,400. (Bokhour Decl. ¶
13 43.)

14 **6. PAGA Penalties**

15 Plaintiff also sought PAGA penalties for each violation for which they are available and
16 alleged that these penalties can be "stacked." *See Gonzalez v. Corecivic of Tennessee, LLC*, No.
17 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) ("stacking" PAGA
18 penalties is not inappropriate under California law"). Assuming that a PAGA penalty is available
19 in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA
20 penalty would be \$400,000 for the pay periods in the PAGA period. *See* Cal. Lab. Code. §
21 2699(f)(2). (Bokhour Decl. ¶ 44.)

22 However, this maximum figure fails to account for numerous unclear issues relating to
23 PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would
24 award penalties in such a way (especially for purely derivative penalties). (Bokhour Decl. ¶ 45.)

25 Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce
26 the amount of civil penalties "based on the facts and circumstances of a particular case" and if "to
27 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
28 Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting

1 in the context of approving settlement that a reduction in PAGA penalties would be “appropriate”
2 based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer
3 did not “deliberately evad[e] a clear obligation to provide legally required pay and benefits to
4 employees,” (ii) the employer did not “negligently fail to learn about its obligations under the
5 wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because
6 “there is no straight answer to the question.”). Therefore, Plaintiff discounted the maximum
7 figure to account for the risk of losing on the merits and applied an additional discount to
8 account for the possibility of this Court reducing penalties to arrive at an estimated exposure of
9 \$50,000. (Bokhour Decl. ¶ 46.)

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

12	• Failure to Pay Overtime and Sick Wages:	<i>discounted</i>
13	• Labor Code §§ 201 – 203 Claims:	\$372,528
14	• Meal Period Claims:	\$68,530
15	• Rest Break Claims:	\$67,844
16	• Wage Statement Claims:	\$112,000
17	• Reimbursement Claims:	\$8,400
18	• PAGA Penalties	\$50,000
19	• <u>Total Risk-Adjusted Penalties and Damages:</u>	\$747,832

20 Given the realistic value of Plaintiff’s claims, the \$625,000 Settlement Amount is an
21 excellent result for the Class, considering that the Settlement Amount totals approximately 83%
22 of Plaintiff’s risk-adjusted value of the case. Preliminary approval is appropriate since the
23 Settlement will provide significant monetary relief to the Class. (Bokhour Decl. ¶ 47.)

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

25 **E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
26 **LITIGATION**

27 The view of the attorneys actively conducting the litigation is entitled to significant weight
28 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 is 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 NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The proposed 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 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 Notice and proposed plan for the Settlement Administrator to mail the 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 Notice include (1) the material terms of the Settlement; (2) the proposed Attorneys’ Fees and Costs and the Settlement Administration Fees; (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)

1 15 Cal.3d 853, 861. Here, the Parties' notice plan is that notice of the Settlement will be
2 disseminated directly to the Class Members by first class mail by the Settlement Administrator,
3 since Defendant has the last known addresses of all Class Members, and the Settlement
4 Administrator will perform a skip trace and update those addresses for any Notices that are
5 returned and re-send the Notice.

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

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

21 The fact that each Class Member who does not opt out of the Settlement shall be mailed
22 a check ensures that every Class Member will be paid unless he or she affirmatively acts to
23 exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which means
24 that no Settlement funds will revert to Defendant; instead, if any checks are not cashed before the
25 objection deadline, the funds will be transferred to the *cypres* recipient Legal Aid at Work, subject
26 to approval of the Court. (S.A. ¶¶ 48, 73.) Such terms are favored by Courts and demonstrate that
27 there was no collusion between counsel for the Parties and that the Settlement is fair and favorable
28 to the Class Members.

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

3 Under the terms of the Settlement Agreement, Class Counsel is requesting an amount not
4 to exceed one-third of the Settlement Amount in attorneys' fees. (*See, e.g., Laffite v. Robert Half*
5 *Int'l Inc.* (2016) 1 Cal. 5th 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13
6 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the
7 Class Members, the trial court may determine the amount of a reasonable fee by choosing an
8 appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug.
9 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total
10 maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the
11 total settlement was "well within the range of percentages which courts have upheld as reasonable
12 in other class action lawsuits"); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No.
13 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the
14 common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No.
15 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage
16 and hour class action, noting: "[f]ee awards in class actions average around one-third of the
17 recovery."); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-
18 6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of the common fund). (Bokhour
19 Decl. ¶¶ 56-57.)

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

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

24 The Settlement Agreement provides for an Incentive Award to the named Plaintiff in the
25 amount not to exceed \$10,000. (S.A. ¶ 47(f).) The proposed Incentive Award is reasonable given
26 the time and effort the named Plaintiff devoted to this case. Plaintiff's efforts included: providing
27 factual background for the class and PAGA complaint; providing documents and information
28 about Defendant's compensation plan and wage and hour policies/practices; participating in

1 phone calls to discuss litigation and settlement strategy; making himself available throughout the
2 litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the
3 mediation and being available during mediation; and reviewing the Settlement documents.
4 Plaintiff also assumed significant risk in bringing this litigation—namely, had he lost, he could
5 have been ordered to pay Defendant’s costs. (Bokhour Decl., ¶ 55; *See* Declaration of Plaintiff
6 Elijah Brown in Support of Preliminary Approval of Class Action Settlement filed herewith.)

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

16 **V. THE COURT SHOULD APPOINT PHOENIX AS THE SETTLEMENT**
17 **ADMINISTRATOR**

18 Subject to the Court’s approval, the parties stipulated that Phoenix Class Action
19 Administration Solutions serve as the Settlement Administrator. Phoenix is experienced in
20 administering class action settlements and will not exceed \$5,000 to administer this class action
21 Settlement. (Bokhour Decl. ¶ 58.)

22 **VI. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

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

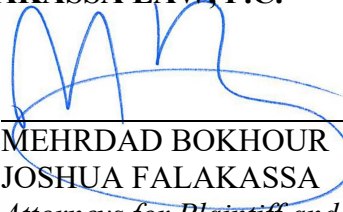
27 **VII. CONCLUSION**

28 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant his

1 Motion for Preliminary Approval of Class Action Settlement.

2
3 Dated: October 10, 2025

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4
5 BY: 

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