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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

SEAN VANDERVEEN, on behalf of himself and all others similarly situated,

Plaintiff,

v.

WOODMONT REAL ESTATE SERVICES, L.P. a California Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 23-CIV-05747

Assigned to Hon. Nina Shaprishteyn

CLASS ACTION

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

Hearing Information:

Date: August 7, 2025
Time: 3:00 p.m.
Dept.: 11

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 7, 2025, at 3:00 p.m. or as soon thereafter as the matter may be heard by the Honorable Nina Shapirshteyn in Department 11 of the San Mateo County Superior Court in the State of California, located at 1050 Mission Road, San Mateo, California 94080, Plaintiff Sean Vanderveen, individually and on behalf of all others similarly situated, will move the Court for entry of an Order granting preliminarily approval of the Parties' Joint Stipulation of Class Action and PAGA Settlement and Release ("Stipulation of Settlement" and/or the "Settlement"), including:

1. Certifying the Class for purposes of settlement only;

2. Preliminarily appointing Plaintiff Sean Vanderveen as the Class Representative for purposes of settlement only;

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

4. Preliminarily approving the Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Stipulation of Settlement;

5. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or to 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 the accompanying Memorandum of Points and Authorities; the Declarations of Mehrdad Bokhour, Joshua Falakassa, and Sean Vanderveen in support thereof; the Stipulation of Settlement; the proposed Order; all other records, pleadings, and papers filed; and upon such other evidence or argument as may be presented to the Court at the hearing.

Dated: July 11, 2025

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

By: ______________________________

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

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I. INTRODUCTION

Through this motion, Plaintiff Sean Vanderveen ("Plaintiff"), individually and on behalf of all others similarly situated, seeks preliminary approval of a $530,000 wage-and-hour class action settlement (the "Settlement Amount") between the Settlement Class Members and Defendant Woodmont Real Estate Services, L.P. ("Defendant" or "Woodmont").

Specifically, Plaintiff seeks to represent: all persons employed by Defendant in California as a non-exempt hourly employee ("Settlement Class" or "Class Members") from December 5, 2022 to February 24, 2025 (the "Class Period"); the Settlement Class does not include persons who submit valid Requests for Exclusion (as explained below), or who previously settled, released or received awards for claims covered by the Settlement. (Declaration of Mehrdad Bokhour in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Bokhour Decl."), ¶ 6.)

Likewise, Plaintiff seeks to represent Class Members who worked any hours for Defendant in California ("PAGA Members") during any workweek from December 5, 2022 to February 24, 2025 (the "PAGA Period"). (Id.)

The Joint Stipulation of Class Action and PAGA Settlement and Release is attached as Exhibit "A" to the Bokhour Decl. submitted herewith and referred to as the "Stipulation of Settlement," or, at times, the "Settlement." The proposed Notice of Proposed Class Action Settlement and Hearing Date for Final Court Approval of Settlement ("Class Notice") is attached to the Bokhour Declaration as Exhibit "B."

Under the terms of the Stipulation of Settlement, Defendant will not oppose Class Counsel's request for a reasonable award of attorney's fees not to exceed 33.33% of the Settlement Amount, Class Counsel's reasonable litigation costs not to exceed $20,000, Settlement Administrator costs not to exceed $7,500, California Labor Code Private Attorneys General Act of 2004 ("PAGA") penalties of $30,000 (of which $22,500 or 75% will be paid to the California Labor and Workforce Development Agency ("LWDA") and the remaining $7,500 or 25% will be paid to the PAGA Members), and a Class Representative Service Award to Plaintiff not to exceed $5,000, as follows:

	Total Amount
Maximum Settlement Amount	$530,000.00
Attorneys' Fees (33.33%)	$176,666.67
Litigation Costs (not to exceed)	$20,000.00
Settlement Administrator Costs (not to exceed)	$7,500.00
PAGA Penalties to LWDA (75% of $30k allocation)	$22,500.00
PAGA Shares to PAGA Members	$7,500.00
Class Representative Service Award	$5,000.00
Net Settlement Amount	**$290,833.33**

(Bokhour Decl. ¶ 7.)

As of the date of the parties' mediation, the Settlement Class includes approximately 474 non-exempt employees who all worked for Defendant in California during the Class Period. (Sipulation to Settlement ¶ 15(c)(ix); Bokhour Decl. ¶ 8.) Regardless of their roles, all non-exempt employees were subject to the same workplace policies and practices. (Bokhour Decl. ¶ 8.) Accordingly, the Settlement Awards will be distributed on a *pro rata* basis, determined by the number of workweeks each individual participating Class Member worked during the Class Period. (Id.) Assuming a total of 474 Settlement Class Members, the average payment to each member is estimated to be approximately **$613.57**. (Id.) Naturally, Settlement Class Members who worked more workweeks will receive proportionally greater payments. Based on this allocation method, the highest estimated individual recovery could be as much as **$1,211.81** (*Id.*)

The Settlement is non-reversionary, and Settlement Class Members will not be required to submit claim forms to receive payment, but each Settlement Class Member will receive the Class Notice containing information about his/her share, the opportunity to dispute the number of workweeks worked by the Settlement Class Member, and the opportunity to opt-out or object to the Settlement. (Sipulation to Settlement ¶¶ 15(c), (c)(i).) All Settlement Class Members who do not affirmatively opt out will receive a settlement check upon the Court granting final approval of the Settlement. (Bokhour Decl. ¶ 9.)

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 before mediation, it should be preliminarily approved. Plaintiff respectfully requests that the Court enter an order preliminarily approving the Settlement, conditionally certifying the Settlement Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Class Notice, appointing Plaintiff's counsel as Class Counsel, appointing ILYM Group, Inc. as the Settlement Administrator, and scheduling a hearing for the final approval of the Settlement. (Bokhour Decl. ¶ 10.)

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED SETTLEMENT CLASS

Defendant is a real estate management firm in Northern California, managing a diverse portfolio of office, retail, industrial, and multifamily properties in California. (Bokhour Decl. ¶ 11.)

Plaintiff was employed by Defendant as a non-exempt employee with the title of "Lead Maintenance Technician" out of San Jose, California, beginning on November 22, 2021, until his separation from employment on September 22, 2023. (Bokhour Decl. ¶ 12.) Plaintiff and other Class Members (including, but not limited to, Service Technician, Assistant Manager, A/P Specialist, Assistant Property Manager, and all other non-exempt positions) were responsible for all aspects of Defendant's business in the State of California. (Id.)

B. PROCEDURAL HISTORY

On December 5, 2023, Plaintiff filed suit in San Mateo County Superior Court, asserting class action claims for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest periods violations; (5) failure to pay all sick time; (6) wage statement violations; (7) waiting time penalties; (8) failure to reimburse necessary business expenses; and (9) unfair competition in violation of California Business and Professions Code section 17200, *et seq*.

On March 26, 2024, Plaintiff filed a First Amended Complaint adding a cause of action against Defendant for violation of the Private Attorneys General Act, Labor Code §§ 2698. *et seq*. ("PAGA").

On January 9, 2025, the Parties filed a stipulation permitting the filing of Plaintiff's Second Amended Complaint, which alleged all Released Class Claims (defined below) and Released PAGA Claims (defined below). The Second Amended Complaint is the operative complaint in this Action. (Bokhour Decl. ¶ 13.)

From the start, Defendant retained counsel, denied the allegations, and vigorously defended against the allegations. The Parties conducted a thorough investigation into the facts of the Action. This investigation included informal discovery, and meet and confer efforts, as well as Defendant's disclosure of information and materials in informal discovery for the mediation. The discovery and disclosures included, amongst other things, Defendant's written wage and hour policies/procedures, and payroll and timekeeping data and records for Settlement Class Members and PAGA Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class Members and PAGA Members. Class Counsel has diligently investigated the Class Members' claims against Defendant. Based on the data and information disclosed, and on Class Counsel's own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Stipulation of Settlement are fair, reasonable, and adequate, as well as in the best interest of the Settlement Class Members and PAGA Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues. (Bokhour Decl. ¶ 14.)

On November 20, 2024, the Parties participated in an all-day private mediation presided over by Daniel Turner, Esq., an experienced California wage and hour mediator. After a full-day mediation, followed by the mediator's proposal, the Parties reached a settlement. (Bokhour Decl. ¶ 15, Exhibit "A".) The Parties subsequently memorialized the terms of the Settlement in a long-form Stipulation of Settlement. (*Id*.) The Parties now seek the Court's preliminary approval of the Settlement.

C. <u>Summary of Plaintiff's Claims</u>

Plaintiff alleged numerous wage and hour violations on behalf of the non-exempt employees who worked for Defendant during the Class Period (*i.e.*, Class Members). (Bokhour Decl. ¶ 16.)

First, Plaintiff alleged that Defendant failed to pay all minimum and overtime wages due to Defendant's failure to pay for all employees who were required to work off-the-clock. (Bokhour Decl. ¶ 17.)

Next, Plaintiff alleged that Defendant failed to include all non-discretionary bonuses and other pay in the "regular rate of pay" for purposes of overtime, sick pay, and premium pay calculations. (Bokhour Decl. ¶ 18.)

Moreover, Plaintiff alleged that he and the Settlement Class were not provided timely compliant meal periods and were not provided with a one-hour wage premium at the "regular rate of pay" pursuant to Labor Code § 226.7 on each such occasion. Specifically, Plaintiff alleged that he and other non-exempt employees were forced to remain "on call" during their meal periods, cut their meal periods short and/or take them late in order to meet the arduous work demands imposed by Defendant. (Bokhour Decl. ¶ 19.)

Next, Plaintiff alleged that he and the Settlement Class were not provided with compliant rest periods or a one-hour wage premium at the "regular rate of pay" pursuant to Labor Code § 226.7 on each occasion. Specifically, Plaintiff alleges that Defendant prevented the Settlement Class from taking complaint rest periods due to work demands. Moreover, Plaintiff alleged that Defendant failed to allow the Settlement Class to take a third rest period for more than 10.5-hour shifts. Plaintiff also alleges that Defendant allegedly failed to pay Plaintiff and the Settlement Class California Paid Sick Leave and failed to reimburse Plaintiff and the Settlement Class' reasonable business expenses. (Bokhour Decl. ¶ 20.)

Based on the above violations, Plaintiff alleged that Defendant failed to provide accurate itemized wage statements and to pay all wages owed and due upon separation of employment. (Bokhour Decl. ¶ 21.)

Finally, Plaintiff also sought PAGA penalties arising out of the alleged Labor Code violations. (Id.)

D. SUMMARY OF DEFENDANT'S DEFENSES

Defendant contested and denied each of Plaintiff's material allegations on the merits and as to the propriety of the class and representative action, and asserted affirmative defenses to the claims alleged. (Bokhour Decl. ¶ 22.)

First, Defendant argued that it always paid employees all wages owed, and that its pay policies and practices correctly paid non-exempt employees for all time worked, and that it correctly paid overtime, sick pay, meal period premiums at the proper "regular rate of pay." Defendant further argued that its written policies expressly prohibit employees from working off-the-clock and that any employee "on call" time was properly compensated pursuant to company policies and California law. Next, Defendant contended that its meal and rest period policies/practices were compliant with California law and that it provided and made available all required meal and rest breaks to all non-exempt employees. Additionally, Defendant contended that any purported failure to reimburse Plaintiff and the Class Members for necessary business expenses they incurred was a product of individualized error and not due to class-wide violations. (Bokhour Decl. ¶ 23.)

Defendant argued that it properly paid Plaintiff and the Class Members for all time worked, including time for which these employees were "on call" pursuant to company policies and handbooks. Defendant further argued that Plaintiff's claims for wage statements, waiting time penalties and PAGA penalties were derivative of other claims, and had no merit. (Bokhour Decl. ¶ 24.) Additionally, Defendant argued that vast majority of putative class members had signed arbitration agreements containing class action waivers, which Defendant contended further undermined the propriety of class certification and representative claims. Finally, Defendant contended that Plaintiff's claims were not suitable for class certification because individualized inquiries would be required to establish, amongst other things, which employees, if any, took meal periods of less than 30 minutes and why a particular employee received a meal period of less than 30 minutes on a particular shift. (Bokhour Decl. ¶ 25.)

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The $530,000 Maximum Settlement Amount, which will be paid, is non-reversionary and will be paid out to Settlement Class Members without the need to submit a claim form or take any affirmative action. (Stipulation of Settlement ¶¶ 15(c), (c)(i), (c)(v), (c)(vi); Bokhour Decl. ¶ 26.) It includes (1) Plaintiff's attorneys' fees up to 33.33% of the Maximum Settlement Amount and litigation costs up to $20,000, as approved by the Court; (2) a Class Representative Service Award of $5,000 to Plaintiff, as approved by the Court; (3) Settlement Administrator costs, not to exceed $7,500, as approved by the Court (4) a $30,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i), as approved by the Court; and (5) the aggregate of all Settlement Awards of the participating Class Members. (Id.)

After all Court-approved deductions from the Settlement Amount, it is estimated that $290,833.33 will be available to pay the Settlement Awards to approximately 474 Settlement Class Members. As noted above, the average individual Settlement Awards to Settlement Class Members is approximately **$613.57** each, which is a fair and reasonable recovery. (Bokhour Decl. ¶ 8.)

The Maximum Settlement Amount is based on Plaintiff's calculation based on data provided by Defendant of the actual number of weeks worked by the Settlement Class through mediation. Defendant represented that the Class Members consist of 474 employees who have worked 30,000 workweeks from December 5, 2022 to November 20, 2024. The Parties further agreed that if the final number of workweeks from December 5, 2022 to November 20, 2024, which formed the basis of the Settlement, increases by more than ten percent (10%) above 30,000 workweeks (*e.g.*, to greater than 33,000 workweeks), Defendant at its sole discretions shall either: (1) increase the Maximum Settlement amount by the proportional amount for the percentage of workweeks above ten percent (10%) (*i.e.*, by the percentage of workweeks above 33,000 workweeks); or (2) end the Class Period at the point in time where workweeks equal 33,000 workweeks. (Stipulation of Settlement ¶ 15(c)(ix); Bokhour Decl. ¶ 62.)

Furthermore, if more than five percent (5%) of the Settlement Class opts out of the Settlement by submitting valid and timely Requests for Exclusion as set forth in the Class Notice, Defendant shall have the right (but need not) in its sole discretion to rescind and void the Settlement, before final approval by the Court, by providing written notice to Class Counsel no later than fourteen (14) calendar days after the opt-out deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement administration incurred up to that date, but not to include Class Counsel's fees and costs. (Stipulation of Settlement ¶ 15(e); Bokhour Decl. ¶ 63.)

B. NOTICE PROCEDURES

The proposed Class Notice (Exhibit "B" to the Bokhour Decl.) will be provided to the Settlement Class Members showing the estimated amount that each Settlement Class Member will receive and the number of weeks worked and for which he/she will be credited. Within thirty (30) days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of all Settlement Class Members and PAGA Members containing names, social security numbers, last-known addresses, and number of Class Period workweeks and PAGA pay periods (the "Class Data"). (Stipulation of Settlement ¶ 19(a).)

Within forty-five (45) days after entry by the Court of its Order of Preliminary Approval, the Settlement Administrator shall send each Settlement Class Member and PAGA Member the Class Notice via first-class, United States mail. (Id.)

The Settlement Administrator will take steps to ensure that the Notice is correctly mailed to all Settlement Class Members, including utilization of the National Change of Address Database ("NCOA") maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. (Id.) If the Settlement Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members and PAGA Members entitled to the same rights as other Class Members and PAGA

Members, and the Settlement Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.

Class Notices returned to the Settlement Administrator as non-delivered shall be resent to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the Settlement Administrator will do an NCOA check and will skip-trace return mail and re-mail within three (3) business days of receipt using the Class Member's Social Security Number; this search will be performed only once per Class Member by the Settlement Administrator. Class Members and PAGA Members will have a maximum of fifteen (15) calendar days from the date of the re-mailing due to an undeliverable notice to cure the deficiency, or until the end of the opt out deadline, whichever is later. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Class and PAGA Notice to the affected member of the Settlement Class. The affected member of the Settlement Class shall remain a member of the Settlement Class and shall be bound by all the terms of the Stipulation of Settlement and the Court's Order and Final Judgment. (Stipulation of Settlement ¶ 19(b).)

C. EXCLUSION AND OBJECTION PROCEDURES

Settlement Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become participating Class Members without having to submit a claim form or take any other action. (Stipulation of Settlement ¶ 15(c)(i).) The Class Notice shall inform the Settlement Class Members of their right to Opt-Out of the Settlement. To do so, the Settlement Class Member must submit a written request to the Settlement Administrator no later than 45 days after being mailed the Class Notice by the Settlement Administrator ("Notice Response Deadline"). (Stipulation of Settlement ¶ 22.) The written request ("Requests for Exclusion") should state that he/she has received the "Notice of Proposed Class Action Settlement and Hearing Date for Final Court Approval of Settlement," he/she has decided not to participate in the Settlement, and words to the effect that he/she desires to be excluded from the Settlement. The Request for Exclusion must also state the individual's full name and dates he/she worked as a Class Member for Defendant in California. The Request for Exclusion must be signed, dated, and mailed by First-Class U.S. Mail, or the equivalent, to the Settlement Administrator. Any Opt-Out request that is not postmarked by the Notice Response Deadline will be invalid. (Id.)

The Class Notice shall inform the Settlement Class Members of their right to object to the Settlement. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Settlement Administrator no later than the Notice Response Deadline. (Stipulation of Settlement ¶ 23.) To object, the individual must file a written objection and a notice of intention to appear at the Final Approval hearing with the Clerk of the San Mateo County Superior Court of the State of California and send copies to the Settlement Administrator, Class Counsel and counsel for Defendant. (Id.) Any written objection must state each specific reason in support of the objection and any legal support for each objection. The individual must state his/her full name, address, date of birth, and dates he/she worked as a Class Member in California for Defendant. (Id.)

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The individual Settlement Award for each Settlement Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant as follows: dividing the Net Settlement Amount by the total number of workweeks worked by all participating Class Members during the Class Period, and multiplying the result by the number of workweeks worked by each individual participating Class Member during the Class Period. (Stipulation of Settlement ¶ 15(c)(i).)

If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Settlement Awards for each participating Class Member so that the amount distributed to participating Class Members equals 100% of the Net Settlement Amount. The Class Notice will inform Settlement Class Members of his/her estimated share and the number of workweeks he/she worked during the Class Period. Settlement Class Members may dispute their weeks worked if they feel they worked more workweeks in the Class Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator.

Similarly, PAGA Shares will be calculated by the Settlement Administrator as follows: dividing the amount of the PAGA Member's 25% share of PAGA penalties ($7,500) by the total number of PAGA Period pay periods worked by all PAGA Members during the PAGA Period and multiplying the result by each PAGA Member's PAGA Period pay periods. (Stipulation of Settlement ¶ 15(c)(ii).) If the Court approves PAGA penalties of less than the amount requested, the Settlement Administrator will allocate the remainder to the Net Settlement Amount. The Settlement Administrator will report the PAGA Shares on IRS 1099 Forms. (Stipulation of Settlement ¶ 15(c)(iii).)

E. TIMING OF SETTLEMENT DISBURSEMENTS

Within thirty (30) days of the Effective Date[1], Defendant shall make a one-time deposit into the Qualified Settlement Fund of the Maxmimum Settlement Amount as well as Defendant's share of employer payroll taxes as calculated and directed by the Settlement Administrator. The Settlement Amount will be used to fund: (i) Settlement Awards of the participating Class Members; (ii) amounts awarded to Class Counsel for attorneys' fees and costs, (iii) the Class Representative Service Award to the Plaintiff, (iv) the payment to the LWDA to resolve claims under the PAGA, and (v) Settlement Administrator costs. (Stipulation of Settlement ¶ 21.) The Settlement Administrator will issue the court-approved payments within thirty-five (35) days of receipt of funds from Defendant into the Qualified Settlement Fund. (Stipulation of Settlement ¶¶ 15(c)(viii), 16.)

Settlement Class Members will have 120 days after mailing by the Settlement Administrator to cash his/her settlement checks. (Stipulation of Settlement ¶ 21.) The Settlement

[1] The "Effective Date" means when all of the following events have occurred: (i) this Stipulation of Settlement has been executed by all Parties and by counsel for Plaintiff and Defendant; (ii) the Court has given preliminary approval to the Settlement; (iii) the class settlement notice has been provided to the Settlement Class, providing them with an opportunity to opt out of or to object to the Settlement; (iv) the Court has held a formal Final Fairness hearing and entered a final order and judgment certifying the Settlement Class and finally approving this Stipulation of Settlement, and without objection from the LWDA; and (v) in the event there are objections to the Settlement which are not later withdrawn, the later of the following events: when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief. (Stipulation of Settlement ¶ 15(b).)

Administrator will send one (1) reminder notice to all Class Members and PAGA Members who have not cashed the Settlement Award or PAGA Share check thirty (30) calendar days prior to the deadline; upon the deadline to cash the Settlement Award and PAGA Share checks, the checks will automatically be cancelled by the Settlement Administrator if not cashed by the Class Member or the PAGA Member within that time, at which point the Class Members' and PAGA Members' claims will be deemed void and of no further force or effect, and the Class Members' and PAGA Members' claims will remain released by the Settlement. (Id.) If any participating Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued.

Expired Settlement Award and PAGA Share checks will not be reissued, except for good cause and as mutually agreed by the Parties in writing. (Id.) Any residue from uncashed Settlement Award or PAGA Share checks after the expiration date will be paid within fourteen (14) calendar days after the one hundred twenty (120)-day check cashing period expires pursuant to California Code of Civil Procedure section 384(b)(3) with 50 percent to Koinonia Family Services, a non-profit 501(c)(3) organization for child advocacy programs in the State of California, and 50 percent to Legal Aid at Work for labor rights advocacy programs in the State of California, as the *cy pres* recipients, subject to Court approval. Any residue received by Koinonia Family Services and Legal Aid at Work shall be ordered by the Court to be used solely for child advocacy and labor rights advocacy programs within the State of California pursuant to California Code of Civil Procedure section 384(b). (Id.)

F. TAX TREATMENT

The Settlement Awards will be allocated for tax purposes based on the allegations in the Action as follows: fifteen percent (15%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes; and eighty-five percent (85%) will be paid as interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 226) from which no taxes will be withheld. (Stipulation of Settlement ¶ 15(c)(iii).) The Settlement Administrator will issue to each participating Class Member an Internal Revenue Service ("IRS") Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the civil penalties and interest allocations. (Id.)

G. Participating Class Members' Release of Claims

In consideration for their awarded individual Settlement Awards, as of the date the Settlement becomes finally approved by the Court and has been fully funded, the Settlement Class and each member of the Class who has not submitted a valid Request for Exclusion shall fully release and discharge the Released Parties[2] from all claims under state, federal, and local law that were or could have been reasonably asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 200-204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.4, 1174.5, 1182.12, 1192, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800-2804 and 2698, *et seq.*, California Industrial Commission Wage Orders, Division of Labor Standards Enforcement Manual, 4.3.4, Cal. Code Regs., Title 8, section 11040, *et seq.*, California Employment Development Department guidance, 29 C.F.R. sections 778.110 and 778.111, California Business and Professions Code section 17200, *et seq.*, California Civil Code sections 3287 and 3289 and California Code of Civil Procedure section 1021.5, and including all claims for or related to alleged unpaid wages, on call time, off the clock work, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, housing credit/value of housing/rent offset, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, unreimbursed business expenses, meal periods and meal period premiums, rest breaks and rest break premiums, failure to pay sick pay wages, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, declaratory relief,

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[2] "Released Parties" means (i) Defendant; (ii) each of Defendant's past and present parents, subsidiaries, partners, affiliates and clients, including, without limitation, and any corporation, limited liability company or partnership; (iii) each of Defendant's past and present board members, director, officers, agents, attorneys, insurers, members, clients, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing. (Stipulation of Settlement, preamble.)

penalties of any nature (including but not limited to civil penalties, waiting-time penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action that arose during the Class Period (collectively "Released Class Claims"). (Stipulation of Settlement ¶ 24.) Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers' compensation, and claims outside the Released Class Claims. (Id.)

Likewise, in consideration for their awarded individual PAGA Share, as of the date the Settlement becomes finally approved by the Court and has been fully funded, Plaintiff and the PAGA Members shall release all claims arising during the PAGA Period seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), that Plaintiff as proxy for the State of California and/or the California Labor and Workforce Development Agency ("LWDA"), to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Action and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code including, but not limited to, sections 200-204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.4, 1174.5, 1182.12, 1192, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800-2804 and 2698, *et seq.*, and the wage orders of the California Industrial Welfare Commission, based on the facts alleged in the Action (collectively "Released PAGA Claims"). (Stipulation of Settlement ¶ 25.) The Settlement shall release and bar all Released PAGA Claims by or on behalf of Plaintiff and all PAGA Members during the PAGA Period ("PAGA Release Period"), and for the entire PAGA Release Period, regardless of whether Plaintiff and/or a PAGA Member negotiates (cashes) their/his/her settlement checks sent pursuant to the Settlement and regardless of whether any such PAGA Member opts out or attempts to exclude themselves/himself/herself from the Settlement. (Id.)

In addition to the foregoing release, the named Plaintiff has also executed a separate general release as set forth in the Stipulation of Settlement—expressly waiving and relinquishing the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code.[3].

[3] Plaintiff understands that Section 1542 gives the right not to release existing claims of which he is not now aware, unless Plaintiff voluntarily chooses to waive this right. Having been so apprised, Plaintiff

(Stipulation of Settlement ¶ 26.)

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT 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 Settlement Class, as defined above, under Code of Civil Procedure § 3150.

A. NUMEROSITY AND ASCERTAINABILITY

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the Class Members can be objectively identified and given notice of the litigation without

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nevertheless voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, known or unknown.

unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. Here, according to Defendant's records, there are approximately 474 Settlement Class Members. This figure undoubtedly satisfies the numerosity requirement.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913.

Here, Plaintiff contends that he and the Settlement Class were subject to common policies and practices relating to timekeeping and payroll, the provision of meal and rest periods, the calculation of the "regular rate of pay," and the payment of minimum and overtime wages, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this Settlement only.

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 3:13 (4th ed. 2002).

Again, the Parties dispute whether Plaintiff's claims are typical of the Settlement Class for the purposes of any continued litigation of the Action, but agree, for the purposes of this Settlement only, that Plaintiff asserts claims regarding Defendant's timekeeping and payroll practices, alleged failure to pay all minimum and overtime wages, meal and rest break policies/practices, wage statements, and the provisions governing the timely and complete payment of final wages, which are at the core of the lawsuit.

3. Adequacy of Representation

The proposed Class Representatives must establish that they will adequately represent the proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Here, Plaintiff is adequate to represent the Settlement Class because he was employed by Defendant during the Class Period, experienced the same wage and hour practices as the rest of the Settlement Class, understands his duties as Class Representative, has been willing to undergo the risk of litigation, and has no conflicts of interest.

Moreover, adequacy may be established because 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, Plaintiff is represented by Class Counsel with extensive experience in wage and hour class and PAGA actions like the instant matter. (Bokhour Decl. ¶¶ 2-4.); (Declaration of Joshua Falakassa in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Falakassa Decl."). ¶¶ 2-8.)

4. Superiority

Certification of the Settlement 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 litigating numerous individual claims, as most of the claims are too small to be litigated outside of the class context.

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

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

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

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 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 (setting forth a non-exhaustive list of factors for the court's consideration at final approval).

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

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

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

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

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

Plaintiff thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. As described above, the Settlement was reached after extensive investigation and research, informal discovery, thorough calculations and risk evaluation, and a substantial exchange of information relating to Plaintiff and the Settlement Class Members prior to mediation.

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

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

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

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

Of relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this Action exist. As further detailed below, in addition to disputing the merits of Plaintiff's claims, Defendant disputed whether Plaintiff could obtain class certification, arguing a lack of commonality of the legal claims and injuries. (Bokhour Decl. ¶¶ 28-44.) Defendant further argued that it complied with the applicable law, that all Settlement Class Members actually took their meal and rest periods, and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the Settlement Class. (Id.)

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. (Bokhour Decl. ¶¶ 28-49.) Considering the uncertainties of protracted litigation, this negotiated Settlement reflects the best practicable recovery for the Settlement Class. (Id.) 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. (Bokhour Decl. ¶ 53.)

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff's counsel estimated the following big-picture data points through the mediation date: (1) 474 Class Members who worked approximately 30,000 workweeks and 141,000 shifts during the Class Period. (Bokhour Decl. ¶ 27.)

Failure to Pay All Minimum and Overtime Wages

Plaintiff contended that his strongest claims were for unpaid wages arising from two distinct violations. First, Plaintiff argued that Defendant failed to accurately record all time worked by Plaintiff and other Class Members because Defendant failed to record and pay Class Members for all hours worked, including meal and rest periods during which these employees were "on call," but not compensated, and time worked which often extended prior to or after their scheduled shifts for which they were not paid. (Bokhour Decl. ¶ 28.)

In this regard, Defendant argued that its written policies expressly prohibit employees from working off-the-clock and that any employee "on call" time was properly compensated pursuant to company policies and California law. Defendant further argued that this constituted precisely the type of individualized inquiry that is not appropriate for certification because the court would have to conduct a person-by-person analysis to determine if the Class Member was correctly paid. Based on this argument, and others, Plaintiff believed that the Court would deny class certification on Plaintiff's off the clock claim. (Bokhour Decl. ¶ 29.)

Second, Plaintiff alleged that Defendant failed to account for non-discretionary bonuses and other incentive pay when calculating the "regular rate of pay" when paying overtime and sick pay and meal premium wages. However, Defendant argued that it correctly paid premium pay, including overtime and missed meal premiums, at the regular rate of pay. Indeed, Defendant's sampling of pay records revealed that any underpayment of overtime wages as a result of the "regular rate of pay" violations was minimal. (Bokhour Decl. ¶ 30.)

Due to this, and in light of Defendant's other defenses, Plaintiff completely discounted these two claims keeping in mind that the true significant value of these unpaid wages claims lies in the derivative claims for waiting time penalties under Labor Code § 203 and wage statement violations under Labor Code § 226 as further discussed below. (Bokhour Decl. ¶ 31.)

<u>Failure to Provide Meal Periods or Compensation in Lieu Thereof</u>

With respect to Plaintiff's meal period violation claims, Settlement Class Members worked approximately 140,957 shifts during the Class Period. (Bokhour Decl. ¶ 32.) Based on the sampling of data provided by Defendant, there was an approximately 9.1% violation rate of non-compliant meal periods during the Class Period. (*Id.*) Therefore, Plaintiff calculated Defendant's maximum exposure under this theory of liability at $473,704 (140,957 meal-eligible shifts x 9.1% violation rate x $36.93 meal period premium). (*Id.*)

However, Defendant asserted that it maintained legally compliant meal period policies and practices throughout the Class Period. (Bokhour Decl. ¶ 33.) Defendant also contended that this claim would not be certified due to the lack of any common evidence tying together the reason that Settlement Class Members experienced a meal period violation. (*Id.*) Lastly, Defendant asserted that the presence of these affirmative defenses as to the voluntariness of a particular meal period decision would preclude class certification. *Id.; See Duran v. U.S. Bank National Association (2014) 59 Cal.* 4th 1, 25.

In light of these defenses and arguments, Plaintiff discounted Defendant's maximum exposure by 70% for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits to arrive at an estimated total of $71,055.65. (Bokhour Decl. ¶ 34.)

Failure to Provide Rest Breaks or Compensation in Lieu Thereof

Similarly, Plaintiff alleged that Defendant failed to authorize and permit all legally compliant rest periods throughout the Class Period. (Bokhour Decl. ¶ 35.) Specifically, Plaintiff alleged that Defendant failed to allow and permit all net-ten minute rest periods and, in practice, did not allow Settlement Class Members to leave the premises during rest periods. (*Id.*) Likewise, to the extent Settlement Class Members worked shifts in excess of 10.5 hours, no third rest period was ever authorized or permitted. (*Id.*) According to the data provided by Defendant, there were approximately 133,213 rest period eligible shifts, and Plaintiff assumed a 15% violation rate. (*Id.*) As such, Plaintiff calculated Defendant's maximum exposure on this claim at $737,933.41 (133,213 shifts x 15% violation rate x $36.93 rest period premium). (*Id.*)

However, Defendant asserted that it maintained compliant rest period policies throughout the Class Period and authorized and permitted all rest periods to Settlement Class Members. (Bokhour Decl. ¶ 36.) Further, Defendant contended that this claim is not amenable to class treatment because individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. (*Id.*)

As such, Plaintiff discounted Defendant's maximum exposure by 75% to account for the risk of non-certification, and an additional 70% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of approximately $55,345.01. (*Id.*)

Waiting Time Penalties

With respect to the waiting time penalty claim, approximately 148 Settlement Class Members separated from their employment with Defendant during the statutory period. (Bokhour Decl. ¶ 37.) As such, the maximum potential penalty under Labor Code § 201 – 203 is $1,311,753.60 (148 employees x 8.0 hours per day x average rate of $36.93 x 30 days). (*Id.*) However, Defendant argued that it would defeat the waiting time penalty claim as to Plaintiff's underpayment of overtime claims because the failure to pay wages, if any, was not willful. (*Id.*) Furthermore, Defendant argued that it would defeat liability as to waiting time penalties arising from the other unpaid wage claims and unavailability of derivative claims for meal and rest violations. (*Id.*)

Therefore, Plaintiff applied a 70% risk of defeat at the class certification stage, and an additional 50% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $196,763.04 for waiting time penalty claims. (*Id.*)

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

Finally, Plaintiff alleged that Defendant issued non-compliant wage statements in violation of Labor Code § 226, based on the same facts underlying Plaintiff's claims for unpaid wages, meal and rest period premiums, and failure to include all forms of compensation in the regular rate of pay. Plaintiff estimates that approximately 15,423 allegedly violative wage statements were issued during the Class Period. In calculating Defendant's maximum potential exposure, Plaintiff conservatively assumed that only the "initial" penalty of $50 per violation would apply, in accordance with Labor Code § 226(e) and case law holding that higher penalties apply only after an employer has been notified of the violations. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008). This results in a maximum potential penalty of $771,150 (15,423 × $50). (Bokhour Decl. ¶ 38.)

Defendant disputed this claim and asserted that its wage statements fully complied with the requirements of Labor Code § 226. Defendant contends that employees were fully compensated, and any violations were rare and minor, if they occurred at all. As a result, Defendant argues there were no wage statement violations and thus no basis for penalties. Further, even if there were any errors, they were not "knowing and intentional" because Defendant was unaware of any issues and believed it was in compliance and Plaintiff could not establish the required element of injury. Defendant also relied on its defenses to the underlying wage and hour claims and class certification. (Bokhour Decl. ¶ 39.)

In light of these risks, Plaintiff discounted Defendant's maximum exposure by 50% for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits, to arrive at an estimated total of a risk-adjusted value of $192,787.50 for the wage statement penalty claim. (Bokhour Decl. ¶ 40.)

PAGA Penalties

Plaintiff also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be "stacked." (Bokhour Decl. ¶ 41; *See Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) ("'stacking' PAGA penalties is not inappropriate under California law"). Assuming that a PAGA penalty is available in the default amount of $100 per pay period and is not reduced, the maximum potential PAGA penalty would be $1,542,300 for the 15,423 pay periods in the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2). (*Id.*)

However, this maximum figure fails to account for numerous unclear issues relating to PAGA claims. (Bokhour Decl. ¶ 42.) First, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for purely derivative penalties). (*Id.*) Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce the amount of 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." *Id.*; Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a reduction in PAGA penalties would be "appropriate" based on the "unjust, arbitrary and oppressive, or confiscatory" factors because (i) the employer did not "deliberately evad[e] a clear obligation to provide legally required pay and benefits to employees," (ii) the employer did not "negligently fail to learn about its obligations under the wage and hour laws," and (iii) the employer's obligations were "genuinely unclear" because "there is no straight answer to the question.").

In recognition of these risks—including the likelihood of judicial reduction and the challenges of prevailing on the merits of the underlying claims—Plaintiff applied significant discounts to the estimated penalty exposure. After accounting for these risks, Plaintiff estimated a reasonable potential value of $138,807.00 in PAGA penalties. However, in light of the Parties' mutual desire to resolve the matter without protracted litigation, and they agreed to allocate $30,000 of the Maximum Settlement Amount toward resolution of the PAGA claim, which Plaintiff believes is fair and reasonable under the circumstances. (Bokhour Decl. ¶ 43.)

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

• Unpaid Wages:	$0 (discounted)
• Meal Period Claims:	$71,055.65
• Rest Period Claims:	$55,345.01
• Reimbursement Claims:	$57,836.25
• Labor Code §§ 201 – 203 Claims:	$196,763.04
• Wage Statement Violation Claims:	$192,787.50
• PAGA Claim:	$138,807.00
• **Total Risk-Adjusted Penalties and Damages**:	$712,594.44

(Bokhour Decl. ¶ 44.)

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 74% of the risk-adjusted class damages and penalties. (Bokhour Decl. ¶ 45.) And while the PAGA penalties had a maximum value of $1,542,300, this 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, particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. (Id.)

In addition, Defendant contended that most putative class members had executed arbitration agreements containing class action waivers, which posed a substantial risk to class certification and further diminished the likelihood of recovery on a classwide basis.

For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable. (Id.) Preliminary approval is thus appropriate since the Settlement will provide significant monetary relief to the Settlement Class.

E. PLAINTIFF'S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

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

Plaintiff's counsel are also highly experienced in Class and PAGA litigation, having litigated upwards of 150 class actions and PAGA cases, having been named "Super Lawyers Rising Stars" in employment litigation (a distinction awarded to only 2.5% of attorneys), and having achieved class action settlements in California. (Bokhour Decl. ¶¶ 2-4; Falakassa Decl. ¶¶ 2-8.)

Plaintiff's counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (Bokhour Decl. ¶¶ 16-49; Falakassa Decl. ¶¶ 35-42.)

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

The proposed Class Notice should be approved, as it fully informs the Settlement Class Members of the nature of the lawsuit and each Settlement Class Members' rights under the terms of the Stipulation of Settlement 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 Settlement 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 Settlement 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 include (1) the material terms of the Settlement; (2) the proposed attorneys' fees and costs and the Settlement Administrator costs; (3) details about the final fairness hearing and how

Settlement Class Members may elect to exclude themselves or make an objection; and (4) how Settlement Class Members can obtain additional information. *See* Class Notice (Bokhour Decl. ¶ 10, Exhibit B.) In addition, it will inform Settlement 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 Settlement Class Members by first class mail by the Settlement Administrator, since Defendant has the last known addresses of all Settlement Class Members and the Settlement Administrator will perform a skip trace and update those addresses for any Class Notices that are returned and re-send the Class Notice.

The Class Notice satisfies the requirements of Rule of Court 3.766 and affords 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 Class Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the Parties; (2) a statement that the court will exclude the Settlement Class Member if the Settlement Class Member so requests by a specified date; (3) a procedure for the Settlement Class Members to follow in requesting exclusion from the Settlement Class; (4) a statement that the judgment, whether favorable or not, will bind all Settlement Class Members who do not request exclusion; and (5) a statement that any Class Member who does not request exclusion may, if the Settlement Class Member so desires, enter an appearance through counsel.

The 45-day response deadline for Settlement Class Members to exclude themselves is reasonable, as it provides Settlement Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. If a Settlement 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 the approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the parties and that the Settlement is fair and favorable to the Class Members.

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

Under the terms of the Stipulation of Settlement, Class Counsel is requesting $176,666.67 in attorneys' fees, which is equal to one-third (33.33%) of the Maximum Settlement Amount. (Bokhour Decl. ¶ 54.) (S*ee, 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) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc*. (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

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

I. <u>THE CLASS REPRESENTATIVE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE</u>

The Stipulation of Settlement provides for a Class Representative Service Award to the named Plaintiff of $5,000. (Stipulation of Settlement ¶ 15(c)(vi); Bokhour Decl. ¶ 7.) The proposed Class Representative Service Award is reasonable given the time and effort Plaintiff devoted to this case. Plaintiff's efforts included: providing factual background for the complaints and PAGA notices; providing documents and information about Defendant's compensation plan, timekeeping, meal and rest period policies, and operations; participating in phone calls to discuss litigation and settlement strategy; responding to discovery; speaking with fellow putative Class Members; making himself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation and participating during mediation; and reviewing the Settlement documents. Plaintiff also assumed significant risk in bringing this litigation—namely, had he lost, he could have been ordered to pay Defendant's costs. (Bokhour Decl. ¶¶ 55-56; *see also* Declaration of Plaintiff Sean Vanderveen in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement concurrently filed in support of the instant motion.)

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

VI. THE COURT SHOULD APPOINT ILYM AS THE SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties stipulated that ILYM Group, Inc. ("ILYM") will serve as the Settlement Administrator. ILYM is experienced in administering class action settlements and will not exceed $7,500 to administer this class action Settlement. (Bokhour Decl. ¶ 59.)

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 Settlement Class Members or their counsel may be heard in support of or in opposition to the Settlement. Subject to the Court's approval, the Stipulation of Settlement stipulates that the Court schedule a hearing for final approval in accordance with the following schedule:

a.	August 7, 2025	Preliminary Approval Date
b.	Deadline for Defendant to Submit Class Member and PAGA Member Information to Settlement Administrator	30 calendar days after Order Granting Preliminary Approval
c.	Deadline for Settlement Administrator to Mail Class Notice to Class Members and PAGA Members	45 calendar days after Order Granting Preliminary Approval
d.	Deadline for Class Members to Postmark Requests for Exclusion	45 calendar days after mailing of Class Notice
e.	Deadline for Defendant to provide written Notice of Rescission of Settlement to Class Counsel (if applicable)	14 calendar days after the opt-out deadline
f.	Deadline for Receipt by Court, Settlement Administrator, and Counsel of any Objections to Settlement	45 calendar days after mailing of Class Notice
g.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for attorneys' fees and costs, and Service Award	16 Court days before Final Approval Hearing

h.	Deadline for Settlement Administrator to file Declaration of Due Diligence and Proof of Mailing	16 Court days before Final Approval Hearing
i.	Final Fairness Hearing and Final Approval	TBD
j.	Deadline for Defendant to fund the Maximum Settlement Amount	30 calendar days after Effective Date
k.	Deadline for Settlement Administrator to mail Settlement Awards and Service Award, and to wire transfer attorneys' fees and costs (if Settlement is Effective)	35 calendar days after Effective Date
l.	Deadline for Class Members and PAGA Members to cash Settlement checks (if Settlement is Effective)	120 calendar days after Settlement Administrator mails Settlement Awards and Enhancement Award
m.	Deadline for Settlement Administrator to distribute uncashed Settlement checks amount to *cy pres* beneficiary (if Settlement is Effective)	14 calendar days after deadline for class members to cash Settlement checks
n.	Settlement Administrator to File Proof of Payment of Settlement Awards, Service Award, attorneys' fees and costs, *cy pres* payment, and payment to LWDA (if Settlement is Effective)	21 calendar days after deadline for Settlement Administrator to pay any unclaimed residue from uncashed Settlement checks to *cy pres* beneficiary

VIII. <u>CONCLUSION</u>

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

Dated: July 11, 2025

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

By: ______________________________
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