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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

RUBYSELA CISNEROS, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

ENGLEWOOD MARKETING GROUP, INC.,
a Delaware Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: CIVSB2404080

Assigned to the Hon. Wilfred J. Schneider, Jr.

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

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

HEARING INFORMATION

Date: September 9, 2025

Time: 8:30 a.m.

Dept.: S32

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

2 **PLEASE TAKE NOTICE** that on September 9, 2025, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard in Department S32 of the San Bernardino County Superior Court,
4 located at 247 West 3rd Street, San Bernardino, California 92415, before the Honorable Wilfred
5 J. Schneider, Jr., Plaintiff Ruby Cisneros, individually and on behalf of all others similarly
6 situated, will and hereby does move the Court for an order:

- 7 1. Certifying the proposed class for settlement purposes only;
- 8 2. Preliminarily appointing Plaintiff Ruby Cisneros as Class Representative for
9 settlement purposes only;
- 10 3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa
11 of Falakassa Law, P.C. as Class Counsel for settlement purposes only;
- 12 4. Preliminarily approving the Class Action and PAGA Settlement Agreement as
13 fair, reasonable, and adequate;
- 14 5. Approving the form and manner of the Class Notice and directing its dissemination
15 to Class Members, including notice of their right to request exclusion from or object to the
16 Settlement;
- 17 6. Setting a date for the final fairness hearing to determine whether the Settlement
18 should be granted final approval.

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

23
24 Dated: July 15, 2025

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

25
26
27 By: 
28 Mehrdad Bokhour, Esq.
 Joshua Falakassa, Esq.
 Attorneys for Plaintiff and the Putative Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ruby Cisneros (“Plaintiff”), individually and on behalf of all others similarly
4 situated, seeks preliminary approval of the Class Action and PAGA Settlement Agreement.
5 Subject to Court approval, Plaintiff and Defendant Englewood Marketing Group, Inc.
6 (“Defendant”)¹ have agreed to settle their claims and the proposed Class Members’ claims against
7 Defendant for a Gross Settlement Amount of \$450,000.

8 Plaintiff seeks to represent a Class of all individuals who are or were employed by
9 Defendant as non-exempt hourly employees in California at any time during the period January
10 29, 2020, through March 23, 2025, except as set forth in the Escalator Provision defined below
11 (the “Class” or “Class Members”). Likewise, the PAGA Members include all individuals who are
12 or were employed by Defendant as non-exempt hourly employees in California at any time during
13 the period January 26, 2023, through March 23, 2025, except as set forth in the Escalator Provision
14 defined below (“PAGA Members”). (Declaration of Mehrdad Bokhour (“Bokhour Decl.”) ¶ 9.)

15 Under the terms of the Settlement Agreement², Defendant will not oppose Class Counsel’s
16 application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement
17 Amount (*i.e.*, the sum of One Hundred Fifty Thousand Dollars and Zero Cents, or \$150,000),
18 Class Counsel’s litigation costs not to exceed \$25,000, Administrator Expense Payment not to
19 exceed \$6,000, Private Attorney General Act of 2004 (“PAGA”) Penalties of \$10,000 (of which
20 \$7,500 or 75% will be paid to the Labor Workforce Development Agency (the “LWDA”) and the
21 remaining \$2,500 or 25% will be paid to the PAGA Members), and a Class Representative Service
22 Payment not to exceed \$10,000 to the named Plaintiff (see S.A. ¶¶ 3.1, 3.2.1-3.2.3, 3.2.6; and
23 Bokhour Decl. ¶ 10):

24
25 _____
26 ¹ As defined in the Settlement Agreement, the settlement includes both named-Defendant Englewood
Marketing Group, Inc. as well as its parent company/companies, affiliates, subsidiaries, divisions, holding
companies, predecessors, successors, assigns, and joint ventures.

27 ² The Class Action and PAGA Settlement Agreement and Release of Claims is attached as Exhibit “A” to
28 the Declaration of Mehrdad Bokhour submitted herewith, and is hereinafter referred to as the “Settlement
Agreement,” “S.A.” or the “Settlement.” The proposed Class Notice is attached to the Settlement
Agreement as Exhibit “A” thereto.

	Total Amount
<i>Gross Settlement Amount</i>	\$450,000.00
Class Counsel Fees Payment (not to exceed 1/3 of GSA)	\$150,000.00
Class Counsel Litigation Expenses Payment (not to exceed)	\$25,000.00
Administrator Expense Payment (not to exceed)	\$6,000.00
PAGA Penalties to LWDA (75% of \$10k award)	\$7,500.00
PAGA Penalties to PAGA Members (25% of \$10k award)	\$2,500.00
Class Representative Service Payment	\$10,000.00
<i>Net Settlement Amount</i>	\$249,000.00

Based on Plaintiff's review of a sampling of Defendant's data, Plaintiff estimated at the time of mediation that the Settlement Class consisted of approximately 133 Class Members. Defendant does not challenge the estimate. Plaintiff alleges that, regardless of job title or position, all Class Members were subject to the same wage and hour policies and practices. Accordingly, Individual Class Payments will be distributed on a pro-rata basis, calculated according to the number of Workweeks each Class Member worked during the Class Period. Based on Class size represented at the time of mediation (133), the average payment is approximately \$1,872.18, with the highest estimated potential individual payment of approximately \$7,323.53. Class Members who worked more Workweeks will receive proportionally larger payments. (Bokhour Decl. ¶ 11.)

The Settlement is non-reversionary, and Settlement Class Members are not required to submit claim forms to receive payment. (S.A. ¶¶ 1.2.1, 3.1; Bokhour Decl. ¶ 12.) Each Settlement Class Member will be mailed a notice ("Class Notice") containing information about their estimated Individual Settlement Amount, will be given the opportunity to dispute the number of Workweeks credited to them during the Class Period, and will be provided the opportunity and instructions on how to submit a Request for Exclusion or an Objection to the Settlement. (S.A. ¶¶ 7.4-7.7; Bokhour Decl. ¶ 12.) All Settlement Class Members who do not timely submit a valid Request for Exclusion will automatically receive their Individual Settlement Payment after the Court grants Final Approval. (S.A. ¶ 4.5.3; Bokhour Decl. ¶ 12.) PAGA Members eligible for payments under the PAGA portion of the Settlement may not opt out and will receive their share

of the PAGA Amount regardless of participation in the class settlement. (S.A. ¶ 5.3; Bokhour Decl. ¶ 12.)

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

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED CLASS

Defendant is a national distribution, marketing, and logistics solutions provider focused on kitchen, home, and personal care products. It provides marketing and logistic services catering to retail and manufacturing partners. Defendant offers third-party logistics, a customized go-to-market product distribution strategy with back-office support, integrated sales and hybrid solutions, and direct-to-consumer fulfillment, connecting brands and related item content with key e-commerce retailers. (Bokhour Decl. ¶ 14.)

Plaintiff was employed by Defendant as a non-exempt employee with the title of "Inventory Clerk" beginning on January 18, 2021, at its Bloomington, California warehouse. Plaintiff and other Settlement Class Members (including, but not limited to, Warehouse Associate, Order Picker, E-commerce Specialist, Customer Service Representative, Loader Operator, Accounts Receivable Clerk, Inventory Clerk, and all other non-exempt positions) were responsible for all aspects of the Defendant's business in the State of California. (Bokhour Decl. ¶ 15.)

The putative Settlement Class consists of all individuals who are or were employed by Defendant as non-exempt hourly employees in California at any time during the period January

29, 2020, through March 23, 2025, except as set forth in the Escalator Provision defined below. (S.A. ¶¶ 1.4, 1.11; Bokhour Decl. ¶ 9.)

B. PROCEDURAL HISTORY

On January 29, 2024, Plaintiff filed a class action complaint in San Bernardino County Superior Court, asserting claims based on Defendant’s alleged: (1) failure to pay all overtime and sick wages; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to provide accurate itemized wage statements; (5) failure to pay all wages due upon separation of employment; (6) failure to reimburse necessary business expenses; and (7) violation of California’s Unfair Competition Law (“Original Complaint”). (S.A. ¶ 2.1; Bokhour Decl. ¶ 16.)

On January 29, 2024, Plaintiff submitted a letter (the “PAGA Notice”) to the LWDA and Defendant for civil penalties under the PAGA alleging claims against Defendant based on violations of the Labor Code described in the Original Complaint. (S.A. ¶. 1.3.2; Bokhour Decl. ¶ 17.)

On April 2, 2024, Plaintiff filed a First Amended Complaint (the “Operative Complaint”) to add a cause of action for PAGA penalties based on the Labor Code violations alleged in the PAGA Notice. (S.A. ¶ 2.1; Bokhour Decl. ¶ 18.)

Throughout the investigation and litigation, Defendant denied, and still denies, Plaintiff’s allegations and indicated it would vigorously defend against them. However, before engaging in protracted litigation, the Parties agreed to explore early resolution through private mediation and informal exchange of information/data. (Bokhour Decl. ¶ 19.)

The Parties conducted a thorough investigation into the facts and legal issues in this Action. This included interviews with putative class members, an investigation of Defendant’s operations and pay practices, and the informal exchange of discovery materials, including Defendant’s written policies and practices, as well as a representative sampling of approximately 25% of payroll and timekeeping records for Settlement Class Members and PAGA Members. (Bokhour Decl. ¶ 20.) Class Counsel has extensive experience in wage and hour litigation and has conducted substantial research regarding the legal claims and potential defenses at issue. Class

Counsel has diligently investigated the claims asserted on behalf of the Settlement Class Members and PAGA Members. (Id.)

Based on this investigation and their own independent evaluation, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members and PAGA Members, especially in light of the risks and uncertainties associated with continued litigation, Defendant’s asserted defenses, and potential appellate issues. (Bokhour Decl. ¶ 21.)

On January 24, 2025, the Parties participated in a full-day mediation with Phillip Cha, Esq., an experienced and respected mediator in wage and hour class actions, which resulted in this Settlement. (S.A. ¶ 2.4; Bokhour Decl. ¶ 22.)

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

C. SUMMARY OF PLAINTIFF’S CLAIMS

Plaintiff alleges various wage and hour violations on behalf of non-exempt employees who worked for Defendant in California during the Class Period (*i.e.*, Settlement Class Members). (Bokhour Decl. ¶ 23.)

First, Plaintiff alleges that Defendant failed to pay all wages due as a result of an unlawful and uneven rounding practice. Plaintiff further contends that Defendant failed to properly calculate and pay overtime and sick wages by, *inter alia*, its failure to include all forms of compensation, including, but not limited to, bonus earnings, in calculating the “regular rate of pay” for purposes of overtime compensation. (Bokhour Decl. ¶ 24.)

Next, Plaintiff alleges that Defendant maintained deficient meal period policies and practices that failed to provide Class Members with timely, duty-free, and compliant meal periods, or premium wages in lieu thereof. Plaintiff also asserts that Class Members were not provided with duty-free rest periods of at least ten (10) minutes for every four (4) hours worked, or major fraction thereof, due to unlawful policies that required non-exempt employees to remain on duty and/or on the premises during rest periods. (Bokhour Decl. ¶ 25.)

1 Plaintiff also alleges that Defendant failed to properly reimburse for necessary business
2 expenses, including, for the use of personal cell phone for work purposes. (Bokhour Decl. ¶ 26.)

3 Plaintiff further alleges that Defendant failed to pay all final wages upon separation of
4 employment and did not furnish accurate itemized wage statements in compliance with Labor
5 Code § 226. (Bokhour Decl. ¶ 27.)

6 Finally, Plaintiff brings representative claims under the PAGA for civil penalties based
7 on the alleged Labor Code violations described above. (Id.)

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

9 Defendant contested and denied all material allegations raised by Plaintiff, both on the
10 merits and with respect to the propriety of class certification and PAGA representative treatment.
11 (Bokhour Decl. ¶ 28.)

12 First, Defendant argued that its timekeeping practices did not violate California law or
13 cause employees to lose compensable time. (Bokhour Decl. ¶ 29.)

14 Second, Defendant further contended that it correctly calculated and paid all overtime and
15 sick pay wages using the appropriate “regular rate of pay,” inclusive of all non-discretionary
16 bonuses and other forms of compensation. Defendant denied excluding any required
17 remuneration from its “regular rate of pay” calculations. (Id.)

18 Third, Defendant argued it maintained that its written meal and rest period policies
19 complied with California law and that, in practice, Settlement Class Members were provided the
20 opportunity to take timely, duty-free meal and rest periods. Defendant denied having any policy
21 or practice requiring employees to remain on duty or on the premises during rest periods.
22 (Bokhour Decl. ¶ 30.)

23 Fourth, as it pertains to Plaintiff’s claim for failure to reimburse necessary business
24 expenditures, Defendant claimed the no cell phone use was necessary for business reasons, and
25 that it had a reimbursement policy that allowed employees to request reimbursement. (Bokhour
26 Decl. ¶ 31.)

27 Fifth, Defendant argued that Plaintiff’s claims for wage statement violations, waiting time
28 penalties, and PAGA penalties were derivative of other claims it contended were meritless.

Accordingly, Defendant denied any violations that would give rise to penalties under Labor Code §§ 203 or 226. (Bokhour Decl. ¶ 32.)

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The \$450,000 Gross Settlement Amount is non-reversionary and will be paid out to Settlement Class Members without the need to submit a claim form or take any affirmative action. (S.A. ¶ 3.1; Bokhour Decl. ¶ 8.) The Gross Settlement Amount will cover the following, subject to Court approval:

- Class Counsel’s attorneys’ fees, not to exceed \$150,000 (33.33% of the Gross Settlement Amount), and litigation expenses, not to exceed \$25,000 (S.A. ¶ 3.2.2);
- A Service Award to the Class Representative, not to exceed \$10,000 (S.A. ¶ 3.2.1);
- Settlement Administration Costs, not to exceed \$6,000, except upon a showing of good cause (S.A. ¶ 3.2.3);
- PAGA penalties totaling \$10,000, of which 75% (\$7,500) will be paid to the LWDA pursuant to Labor Code § 2699(i), and 25% (\$2,500) will be distributed to PAGA Members as Individual PAGA Payments (S.A. ¶¶ 3.2.6); and
- The Net Settlement Amount, which will be distributed as Individual Class Payments to Participating Class Members on a pro-rata basis based on the number of Workweeks worked during the Class Period (S.A. ¶¶ 1.22, 1.26.)

Importantly, Defendant will separately pay the employer’s share of payroll taxes on the portion of the Individual Class Payments allocated as wages. (S.A. ¶ 3.1.)

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that approximately \$249,000.00 will remain as the Net Settlement Amount, available to fund Individual Class Payments to approximately 133 Participating Class Members. (Bokhour Decl. ¶¶ 10, 11.).

The Gross 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.

1 Plaintiff calculates, and Defendant does not contest, that there were approximately 8,500
2 Workweeks worked by Class Members during the Class Period. If the number of qualifying
3 Workweeks worked by the Class Members during the Class Period is greater than 10% above
4 Plaintiff's calculation (*i.e.*, if the Workweeks exceeds 9,350), then the portion of the Gross
5 Settlement Amount attributable to non-PAGA claims (*i.e.*, the Gross Settlement Amount less the
6 PAGA penalties) shall be increased proportionately for each additional Workweek above the 10%
7 buffer. If the number of PAGA Pay Periods worked by the PAGA Members is greater than 10%
8 above Plaintiff's calculation, then the portion of the Gross Settlement Amount attributable to
9 PAGA claims (*i.e.*, the PAGA penalties) shall be increased proportionately for each additional
10 pay period worked above the 10% buffer. In lieu of proportional increases to the Gross Settlement
11 Amount for pay periods above the 10% buffer, Defendant shall have the option to adjust the
12 Release Period to coincide with the 8,500 Workweek count and/or the number of pay periods
13 worked by the PAGA Members ("Escalator Provision"). (S.A. ¶ 8; Bokhour Decl. ¶ 72.)

14 **B. CLASS NOTICE PROCEDURES**

15 The proposed Class Notice, once approved by the Court, will be distributed to Settlement
16 Class Members and will include, among other information, the estimated number of Workweeks
17 and PAGA Pay Periods for which each individual will be credited. (S.A. ¶¶ 1.10, 7.4, Ex. A.)
18 Within twenty-one (21) days after the Court grants Preliminary Approval and enters a protective
19 order regarding the use of the Class Data, Defendant shall provide the Settlement Administrator
20 with Class Data. (S.A. ¶¶ 1.7, 4.2.) The Class Data will be password protected and formatted in a
21 readable Microsoft Office Excel spreadsheet and will include each Class Member's (1) full name;
22 (2) last known home address; (3) last known telephone number; (4) Social Security number; (5)
23 total number of Workweeks worked during the Class Period and PAGA Period; and (6) any other
24 information required by the Settlement Administrator in order to effectuate the terms of the
25 Settlement. (Id.) The Class Data will only be provided to the Settlement Administrator and will
26 be treated as confidential by the Settlement Administrator. (Id.) The Class Data will not be
27 disclosed to anyone, except as may be required to applicable tax authorities, pursuant to
28 Defendant's express written consent, by order of the Court, or to carry out the reasonable steps

described in this Settlement to locate missing Class Members. (Id.)

Within fifteen (15) calendar days after receiving the Class Data, the Settlement Administrator shall update addresses using the National Change of Address database, calculate each Settlement Class Member's credited Workweeks and PAGA Pay Periods, and mail the Class Notice via first-class U.S. Mail. (S.A. ¶¶ 1.9, 1.4.2.) The Class Notice shall include the estimated Individual Class and PAGA Payments. The Class Notice will also inform Class Members that, in order to receive the Individual Class Payment and Individual PAGA Payment, they do not need to do anything except keep the Settlement Administrator apprised of their current mailing addresses. Each Class Notice will provide: (1) information regarding the nature of the Action; (2) a summary of the Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated Individual Class Payment and the formula for calculating Individual Class Payments, if they do not request to be excluded; (5) each PAGA Settlement Employee's estimated Individual PAGA Payment and the formula for calculating Individual PAGA Payments; (6) the dates that comprise the Class Period and PAGA Period; (7) instructions on how to submit a valid Request for Exclusion or Notice of Objection; (8) the deadline by which the Class Member must submit a Request for Exclusion or Notice of Objection; (9) the date for the final approval hearing; and (10) the claims to be released. The Class Notice will also inform Class Members that, in order to receive the Individual Class Payment and Individual PAGA Payment, they do not need to do anything except keep the Settlement Administrator apprised of their current mailing addresses (Id.)

If a Class Notice is returned as undeliverable with a forwarding address, the Settlement Administrator shall re-mail the Class Notice within five (5) business days following the Settlement Administrator's learning of the failed mailing and its receipt of the updated address. (S.A. ¶ 7.4.3.) If the United States Postal Service ("USPS") does not provide a forwarding address, the Settlement Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (Id.) If the USPS does not provide a forwarding address and the Settlement Administrator's Class Member Address Search does not result in any updated address, the Settlement Administrator shall re-mail the Class Notice to the

original address. (Id.) The Settlement Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (Id.) The Class Notice shall be identical to the original Class Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. (S.A. ¶ 7.4.4.)

C. EXCLUSION AND OBJECTION PROCEDURES

Settlement Class Members who do not timely submit a valid Request for Exclusion will be deemed to participate in the Settlement and will become Participating Class Members, without the need to submit a claim form or take any other affirmative action. (S.A. ¶ 4.5.3.) The Class Notice will inform Settlement Class Members of their right to opt out of the Settlement. (S.A. ¶ 7.5.1.) To do so, a Class Member must submit a written Request for Exclusion to the Settlement Administrator, postmarked no later than forty-five (45) calendar days after the initial mailing of the Class Notice, plus a 14-day extension for Class Member whose Class Notice is re-mailed (the “Notice Response Deadline”). (S.A. ¶¶ 7.4.4, 7.5.1.)

The Class Notice will also inform Settlement Class Members of their right to object to the Settlement. (S.A. ¶ 7.7.2.) To do so, a Class Member must return by mail a written statement of objection to the Settlement Administrator at the specified address by the Notice Response Deadline. (Id.) Class Member who does not submit a timely Notice of Objection may nevertheless appear at the Final Approval Hearing and present an oral objection to the Settlement. (S.A. ¶ 7.7.2.) At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or appeal from the Order and Judgment. (S.A. ¶ 12.2.) Class Counsel shall not represent any Class Members with respect to any such objections to this Settlement. (Id.) Any Class Member who submits a valid Request for Exclusion shall not be allowed to object to this Settlement. (S.A. ¶ 7.5.4.)

Not later than 10 days after the expiration of the deadline for submitting Requests for Exclusion, the Settlement Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely

submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid). (S.A. ¶ 7.5.5.) Counsel for the Parties may file a response to any objections submitted by Objecting Settlement Class Members at least five (5) court days before the date of the Final Approval Hearing. (S.A. ¶ 10.1.)

The Settlement Administrator will, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undeliverable by USPS, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA pay periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA payments (“Weekly Reports”). The Weekly Reports must include the Settlement Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. (S.A. ¶ 7.8.2.)

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The Individual Class Payment for each Participating Class Member will be calculated by the Settlement Administrator based on the Class Data provided by Defendant. (S.A. ¶¶ 1.22-1.23, 7.4.2.) After accounting for any approved Workweek disputes and excluding individuals who timely submit valid Requests for Exclusion, the Settlement Administrator will determine the total number of Workweeks worked by all Participating Class Members during the Class Period. (S.A. ¶¶ 1.22, 1.26.) Each Participating Class Member’s share of the Net Settlement Amount will then be calculated based on the number of Workweeks he or she worked during the Class Period, as a proportion of the total Workweeks worked by all Participating Class Members. (Id., S.A. ¶ 3.2.4.)

The Class Notice will inform each Settlement Class Member of the estimated number of Workweeks worked during the Class Period. (Id.) If a Settlement Class Member believes the estimate is incorrect and that they worked more Workweeks in California during the Class Period than shown in the Class Notice, they may submit documentation to the Settlement Administrator, postmarked on or before the Notice Response Deadline, to dispute the credited Workweeks. (S.A.

¶ 7.6.) The Settlement Administrator shall review the documentation in consultation with Class Counsel and Defense Counsel and shall make a final and binding determination. (Id.)

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant shall make a one-time deposit into the Qualified Settlement Fund (“QSF”) in the amount of the Gross Settlement Amount within thirty (30) calendar days after the Effective Date³. (S.A. ¶¶ 4.3, 7.3.) In addition, Defendant shall separately pay the employer-side payroll taxes on the portion of the Gross Settlement allocated as wages, as calculated and directed by the Settlement Administrator. (S.A. ¶ 3.1.)

The Gross Settlement Amount shall be used to fund: (i) Individual Class Payments to Participating Class Members and Individual PAGA Payments to PAGA Members; (ii) Court-approved attorneys’ fees and costs to Class Counsel; (iii) the Service Payment to the Class Representative; (iv) the payment to the LWDA for its 75% share of PAGA penalties; and (v) Settlement Administration Costs. (S.A. ¶ 1.21.)

Within ten (10) calendar days after the Gross Settlement Amount is deposited into the QSF, the Settlement Administrator shall issue and mail (S.A. ¶ 4.4):

- (a) Individual Class Payments to Participating Class Members and Individual PAGA Payments to PAGA Members;
- (b) the Court-approved Service Payment to the Class Representative;
- (c) attorneys’ fees and litigation costs to Class Counsel;
- (d) the PAGA payment to the LWDA; and
- (e) Court-approved Administrator Expense Payment to itself.

Participating Class Members and PAGA Members shall have at least 180 calendar days from the date of mailing to cash their settlement checks. (S.A. ¶ 4.4.1.) Within seven (7) days of receiving a returned check, the Settlement Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search, or failing both, re-mailing to the original address. The Settlement Administrator need not

³ The “Effective Date” is the date by when both the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final.

1 take further steps to deliver checks to Class or PAGA Members whose re-mailed checks are
2 returned as undeliverable. The Settlement Administrator shall promptly send a replacement check
3 to any Class or PAGA Member whose original check was lost or misplaced, requested by the
4 Class or PAGA Member prior to the void date. (S.A. ¶ 4.4.2.)

5 If a Participating Class Member or PAGA Member fails to cash their check within 180
6 days, the check will be void. (Id.) The unclaimed funds, including any accrued interest not
7 otherwise distributed, shall be transmitted to the California Controller's Unclaimed Property Fund
8 in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements
9 of California Code of Civil Procedure § 384(b). (S.A. ¶ 4.4.3.) Importantly, the release of claims
10 remains binding on all Participating Class Members and PAGA Members, including those who
11 do not cash their checks. (S.A. ¶ 7.5.3.)

12 **F. TAX TREATMENT**

13 The Individual Class Payments paid to Participating Class Members for Class Claims will
14 be allocated for tax purposes based on the nature of the allegations in the Action as follows:
15 twenty percent (20%) will be allocated as wages, subject to applicable local, state, and federal tax
16 withholdings; and eighty percent (80%) will be allocated as interest and civil penalties (including
17 amounts under California Labor Code sections 203 and 226), which are not subject to
18 withholding. (S.A. ¶ 3.2.4.1.) The Settlement Administrator shall be responsible for calculating
19 and withholding applicable taxes on the wage portion, and, to the extent required by law, shall
20 issue each Participating Class Member an IRS Form W-2 for the wage portion and an IRS Form
21 1099 for the interest and penalty portion, along with any applicable state tax forms. (Id.) Likewise,
22 the Settlement Administrator shall, to the extent required by law, report the Individual PAGA
23 Payments and issue an IRS Form 1099 to each PAGA Member.

24 **G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

25 In exchange for their awarded Individual Class Payment, as of the date the Settlement
26 becomes final and has been fully funded, all Participating Class Members, on behalf of themselves
27 and their respective current and former representatives, agents, attorneys, heirs, executors,
28 administrators, successors and assigns, release all claims against Defendant and the Released

Parties⁴ that were or reasonably could have been alleged arising out of or related to the same operative facts set forth in the Operative Complaint and/or PAGA Notice that arose during the Class Period and/or PAGA Period, including but not limited to claims for: (1) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (2) failure to pay sick wages at the proper legal rate; (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (5) failure to pay all wages due and owing during employment and at separation in violation of Labor Code sections 201-204, including any claims of improper rounding; (6) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; (7) failure to reimburse necessary business expenses; (8) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (9) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and (9) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing. (S.A. ¶ 5.2.)

In accordance with California Labor Code § 2699(l), and as set forth in the Settlement Agreement, in consideration for their awarded Individual PAGA Payment, as of the date the Settlement becomes final, Plaintiff and the LWDA will release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, executors, administrators, successors and assigns, any and all claims for civil penalties under PAGA against Defendant and the Released Parties that arise out of or reasonably relate to the claims alleged in the Action or that could have been alleged based on the factual allegations in the Action (the “Released PAGA Claims”). All PAGA Members, on behalf of themselves and their respective current and former representatives, agents, attorneys, heirs, executors, administrators, successors and assigns, will

⁴ “Released Parties” means Englewood Marketing Group, Inc., and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.

1 release the PAGA claims described herein against Defendant and the Released Parties and will
2 receive a portion of the amount set aside as PAGA penalties, regardless of whether they opt out
3 of the release of the Class claims. (S.A. ¶ 5.3.)

4 In addition to this class and PAGA release, the Class Representative has agreed to a
5 broader General Release—expressly waiving and relinquishing the provisions, rights, and
6 benefits, if any, of section 1542 of the California Civil Code. (S.A. ¶ 5.1.)

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

10 California Rule of Court 3.769(d) provides that the Court may make an order approving
11 certification of a provisional settlement class at the preliminary approval stage. It is well-
12 established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
13 of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996)
14 48 Cal.App.4th 1794, 1807 at n.19.

15 The reasons include that no trial is anticipated in a settlement class, so the case
16 management issues inherent in determining if the class should be certified need not be confronted;
17 and the trial court’s fairness review of the settlement protects the interests of the non-
18 representative Class Members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th Cir.
19 1982) 688 F.2d 615, 633 (“Th[e] relationship between the certification determination and the
20 merits of the case is further attenuated within the context of the settlement evaluation process . .
21 . [C]ertification issues raised by class action litigation that is resolved short of a decision on the
22 merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S.
23 591, 620 (“Confronted with a request for settlement-only class certification, a district court need
24 not inquire whether the case if tried, would present intractable management problems . . . for the
25 proposal is that there be no trial.”).

26 As discussed below, for the purposes of this Settlement only, Plaintiff requests that this
27 Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 3150.
28

1 **A. NUMEROSITY AND ASCERTAINABILITY**

2 Numerosity is met if a proposed class is so large that joinder of all members would be
3 impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
4 the class members can be objectively identified and given notice of the litigation without
5 unreasonable time or expense. See *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
6 89, 101. A class is sufficiently numerous to warrant class treatment when it is impracticable to
7 bring all class members before the court. (Code Civ. Proc., § 382.) While “[n]o set number is
8 required as a matter of law for the maintenance of a class action,” case law indicates that 30-40
9 class members satisfies the numerosity requirement because at that point, joinder is not practical.
10 See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.

11 Here, based on Plaintiff’s review of a sampling of Defendant’s data, there are
12 approximately 133 Class Members. Plaintiff contends that this figure undoubtedly satisfies the
13 numerosity requirement.

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

15 1. Commonality

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

25 2. Typicality

26 Typicality “focuses on whether there exists a relationship between the Plaintiff” claims
27 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*
28 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, while Defendant denies Plaintiff’s

1 contentions and the Parties dispute whether Plaintiff's claims are typical of the Class for the
2 purposes of any continued litigation of the Action, the Parties agree that for the sole purpose of
3 this Settlement only, that Plaintiff's asserted claims regarding Defendant's timekeeping and wage
4 payment policies/practices, meal and rest break policies/practices, calculation of the "regular rate
5 of pay," reimbursement policies/practices, wage statements, and the provisions governing the
6 timely and complete payment of wages are typical and at the core of the Action.

7 3. Adequacy of Representation

8 The proposed class representative must establish that he/she will adequately represent the
9 proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th
10 540, 546. Plaintiff contends that she is adequate to represent the Class because she was employed
11 by Defendant during the Class Period, was subject to the same wage and hour policies/practices
12 as the rest of the Class, understands her duties as Class Representative, has been willing to
13 undergo the risk of litigation, and has no conflicts of interest.

14 Adequacy may be established by the fact that counsels are experienced practitioners. *See*
15 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
16 244 F.3d 1152, 1162. Here, Plaintiff and Defendant are represented by counsel with extensive
17 experience in wage and hour class and PAGA actions, similar to the instant matter. (Bokhour
18 Decl. ¶¶ 2-6; Falakassa Decl. ¶¶ 2-11.)

19 4. Superiority

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

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

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

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

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

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

[T]he strength of Plaintiff’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

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

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

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

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

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

1 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
2 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
3 and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed
4 on any of its defenses, the Class Members may not have received any substantial monetary
5 recovery. (Bokhour Decl. ¶ 59.)

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

8 Plaintiff and her counsel thoroughly investigated and evaluated this case’s factual and
9 legal strengths and weaknesses before reaching the Settlement. As described above, the
10 Settlement was reached after extensive investigation and research, thorough calculations and risk
11 evaluation, and a substantial exchange of information and documents relating to Plaintiff and the
12 Class Members prior to mediation.

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

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

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

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

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

6 Of relevance to the reasonableness of the proposed Settlement is the fact that significant
7 legal and factual grounds for defending this action exist. (*See generally* Bokhour Decl. ¶¶ 33-64.)
8 Defendant disputed whether Plaintiff could obtain class certification, arguing, *inter alia*, a lack of
9 commonality of the legal claims and injuries. (*Id.*) Defendant further argued that it complied with
10 the applicable law, had compliant written policies, that all Class Members were provided the
11 opportunity to take their meal and rest periods, and that any purported deviations therefrom were
12 individualized in nature, thereby limiting Plaintiff’s ability to certify the Class. While Plaintiff
13 asserts that this is a suitable case for certification, she realizes that there is always a significant
14 risk associated with class certification proceedings, which could significantly limit the claims that
15 she could pursue on a class basis. (*Id.*)

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

20 Based upon Plaintiff’s and her counsel’s independent investigation and detailed data
21 obtained through informal discovery and information exchanges, and factoring in claim
22 certification probabilities and liability probabilities, Class Counsel formulated detailed damages
23 models to evaluate the claims in preparation for mediation and in order to reach a realistic and
24 reasonable resolution as further detailed below. (Bokhour Decl. ¶ 33.)

25 **1. Failure to Pay for all Wages due to Rounding**

26 First, Plaintiff alleged that Defendant’s non-neutral rounding policy/practice resulted in
27 the systematic underpayment of wages in violation of the Labor Code. Based on Plaintiff’s
28 analysis of the payroll records and timekeeping data produced prior to mediation, Plaintiff

1 concluded that the rounding practice led to several Class Members being underpaid, amounting
2 to approximately 1,295 hours of unpaid compensable time across the Class. Based on the payroll
3 data provided by Defendant, Plaintiff estimates that a total of 60% of all non-exempt employees
4 were underpaid as a result of rounding, yielding total potential rounding-related damages of
5 approximately \$40,000. (Bokhour Decl. ¶ 34.)

6 However, this projected figure does not account for Defendant's asserted defenses. In
7 particular, Defendant argued that its wage and hour policies are compliant and that all time was
8 properly recorded and compensated. If any rounding occurred (which Defendant does not
9 concede), Defendant contends the policy was neutral—rounding both up and down—and is lawful
10 because it does not systematically favor the employer (*See's Candy Shop v. Superior Court* (2012)
11 210 Cal.App.4th 889, 902). While the California Supreme Court may eventually rule that
12 rounding resulting in employee loss is unlawful, no such decision has been issued. (Bokhour Decl.
13 ¶ 35.)

14 Further, Plaintiff's rounding claim would require highly individualized inquiries,
15 including a shift-by-shift and person-by-person analysis, to determine whether any alleged
16 underpayment occurred and whether each employee was fully compensated. Defendant asserted
17 that this level of individual scrutiny made the claim unsuitable for class treatment. (Bokhour Decl.
18 ¶ 36.)

19 To account for these risks, Plaintiff applied an equitable discount reflecting the risk of
20 denial at class certification, as well as an additional discount for the risk of defeat at summary
21 judgment or trial. To account for Defendant's defenses, Plaintiff discounted the maximum
22 exposure by 40% for the risk of non-certification, and an additional 50% for risk of losing on the
23 merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of
24 \$12,000 for the unpaid wages due to rounding claim. (Bokhour Decl. ¶ 37.)

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

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

1 systemic underpayment of compensation, in violation of California law. (Bokhour Decl. ¶ 38.)
2 Based on a review of the payroll and paystub data produced in discovery, Plaintiff estimates that
3 Defendant’s failure to include all required forms of remuneration in the “regular rate of pay” led
4 to underpayment of both overtime and sick pay wages across the Class. (Id.)

5 In response, Defendant argued its wage and hour policies are compliant and that all time
6 was properly recorded and compensated. In addition, any incentive payments at issue were
7 discretionary and, therefore, properly excluded from regular rate calculations. Defendant further
8 asserted that all overtime and sick pay was lawfully calculated and paid in good faith, and that
9 any potential underpayment, if it occurred, was *de minimis* and non-systemic. (Bokhour Decl. ¶
10 39.)

11 While Plaintiff maintains that the bonuses and incentive payments at issue were non-
12 discretionary and therefore required to be included in the “regular rate of pay,” Plaintiff also
13 acknowledges the litigation risks associated with this claim. These risks include the possibility
14 that the Court could deny class certification based on individual variations in pay structures and
15 the nature of the bonuses. Additionally, there is risk on the merits, including the potential for
16 summary judgment or an unfavorable outcome at trial. (Bokhour Decl. ¶ 40.)

17 To account for these risks, Plaintiff applied an equitable discount reflecting the risk of
18 denial at class certification, as well as an additional discount for the risk of defeat at summary
19 judgment or trial. Plaintiff calculated that based on 4,174 pay periods, and the blended ratio of
20 straight-time hours to overtime-hours compared to “bonus” and “incentive” payments remitted to
21 the Class Members over the Class Period, there was a total of \$40,161.00, in unpaid overtime,
22 sick pay and meal premiums.

23 However, to account for Defendant’s defenses, Plaintiff discounted the maximum
24 exposure by 40% for the risk of non-certification, and an additional 60% for risk of losing on the
25 merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of
26 \$9,638.64 for failure to pay wages violations. (Bokhour Decl. ¶ 41.)
27
28

1 **3. Waiting Time Penalties**

2 Plaintiff also alleged that Defendant failed to timely pay all wages due at separation of
3 employment, entitling former employees to waiting time penalties under Labor Code §§ 201–
4 203. Based on Plaintiff’s review of Defendant’s records, there were approximately 52 Settlement
5 Class Members who separated from their employment during the applicable statutory period.
6 Using the statutory maximum of 30 days, with an assumed 8-hour workday and an average hourly
7 rate of \$18.43, the total maximum potential exposure for waiting time penalties is approximately
8 \$230,006.40 (52 employees × 8 hours/day × \$18.43/hour × 30 days). (Bokhour Decl. ¶ 42.)

9 Defendant disputed this claim and asserted that any failure to pay wages at separation was
10 not willful and, therefore, did not give rise to waiting time penalties under the Labor Code—a
11 good faith dispute and absence of willfulness negates a claim for waiting time penalties. *See e.g.*
12 *Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065. Defendant also contended
13 that it maintained facially neutral and compliant payroll practices and would defeat any
14 underlying wage claims on the merits or at class certification. (Bokhour Decl. ¶ 43.)

15 To account for these risks, Plaintiff applied an equitable discount reflecting the risk of
16 denial at class certification, as well as an additional discount for the risk of defeat at summary
17 judgment or trial. To account for Defendant’s defenses, Plaintiff discounted the maximum
18 exposure by 10% for the risk of non-certification, and an additional 10% for risk of losing on the
19 merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of
20 \$186,304 for the waiting time penalty claim. (Bokhour Decl. ¶ 44.)

21 **4. Failure to Provide Meal and Rest Periods or Compensation in Lieu**
22 **Thereof at the “Regular Rate of Pay”**

23 With respect to Plaintiff’s meal and rest period claims, Defendant’s sampling
24 demonstrated that the Class Members collectively worked approximately 36,106 shifts during the
25 Class Period requiring at least one meal period, and 37,461 shifts during the Class Period
26 requiring at least one rest break. Based on Plaintiff’s analysis of a representative sample of
27 Defendant’s timekeeping and payroll records, Plaintiff applied an estimated 32.9% violation rate
28 for meal periods and a 33% violation rate for rest periods. Using the applicable premium rate of

1 \$18.43 per missed break, the maximum potential damages are estimated at approximately
2 \$218,928 for the meal period claim (36,106 shifts × 32.9% × \$18.43) and \$227,834.00 for the rest
3 period claim (37,461 shifts × 33% × \$18.43). (Bokhour Decl. ¶ 45.)

4 However, Defendant contested liability for both claims, asserting that it maintains
5 compliant policies and offers employees uninterrupted meal periods as required by law. Further,
6 meal and rest period issues presented individualized questions inappropriate for class
7 certification. It further argued that manager-specific practices, job duties, and employee choices
8 varied significantly, requiring individualized inquiries into whether meal and rest breaks were
9 missed or voluntarily skipped. Based on these risks, Plaintiff acknowledged that there was a
10 significant chance that the Court could deny class certification. (Bokhour Decl. ¶ 46.)

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

16 In light of these risks, Plaintiff discounted Defendant's maximum exposure by 30% for
17 the risk of non-certification, and an additional 30% to account for Defendant's defenses on the
18 merits, to arrive at an estimated total of \$107,274.72 for the meal period claims and \$111,640.13
19 for the rest period claims. (Bokhour Decl. ¶ 47.)

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

21 Plaintiff further alleged that Defendant issued non-compliant wage statements in violation
22 of Labor Code § 226, based on the same facts underlying Plaintiff's claims for unpaid wages,
23 meal and rest period premiums, and failure to include all forms of compensation in the regular
24 rate of pay. Plaintiff estimates that approximately 1,905 allegedly violative wage statements were
25 issued during the Class Period. In calculating Defendant's maximum potential exposure, Plaintiff
26 conservatively assumed that only the "initial" penalty of \$50 per violation would apply in
27 accordance with Labor Code § 226(e) and case law holding that higher penalties apply only after
28 an employer has been notified of the violations. See *Amaral v. Cintas Corp. No. 2*, 163

1 Cal.App.4th 1157, 1207 (2008). This results in a maximum potential penalty of \$186,400 (1,905
2 × \$50). (Bokhour Decl. ¶ 48.)

3 However, again, Defendant disputed this claim and asserted that its wage statements fully
4 complied with the requirements of Labor Code § 226. Defendant contends that Class Members
5 were fully compensated, and any violations were rare and minor, if they occurred at all. As a
6 result, Defendant argues there were no wage statement violations and thus no basis for penalties.
7 Further, even if there were any errors, they were not “knowing and intentional” because
8 Defendant was unaware of any issues and believed it was in compliance and Plaintiff could not
9 establish the required element of injury. Defendant also relied on its defenses to the underlying
10 wage and hour claims and class certification. (Bokhour Decl. ¶ 49.)

11 In light of these risks, Plaintiff discounted Defendant’s maximum exposure by 30% for
12 the risk of non-certification, and an additional 30% to account for Defendant’s defenses on the
13 merits, to arrive at an estimated total of a risk-adjusted value of \$91,336 for the wage statement
14 penalty claim. (Bokhour Decl. ¶ 50.)

15 **6. Failure to Reimburse Necessary Business Expenses**

16 Plaintiff alleges that Defendant failed to reimburse Plaintiff and Class Members for
17 necessary expenditures incurred as a direct consequence and requirement of performing their job
18 duties, including the costs associated with using their personal cell phones for work purposes.
19 (Bokhour Decl. ¶ 51.) Plaintiff alleges that she and Class Members were using their phones for
20 amongst other things, calls, texts, using Defendant’s applications, and communicating with co-
21 workers and supervisors. Plaintiff was regularly required to use her personal cell phones to make
22 company-related calls, to contact employees and other managers on a daily basis. (Id.)

23 Defendant contended that Plaintiff and other Class Members never requested
24 reimbursement from Defendant for these items, and Defendant did not know and had no reason
25 to know that the alleged business-related expenses were incurred and not reimbursed. (Bokhour
26 Decl. ¶ 52).

27 Defendant further contended that the reason why a putative class member undertook
28 certain expenses, while not others, and failed to receive reimbursement for certain expenses, while

not others, would raise individual issues that could not be certified. (Id.) Moreover, Defendant contended that the California Labor Code only requires reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. *Id.*; *See*, Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary, would depend, in part, on the reasonableness of the employee’s choice, and whether or not an expense was incurred, would have to be established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137. (Id.)

Plaintiff estimated an average of \$15.00 per pay period for which Defendant failed to reimburse for the foregoing business expenses incurred. Thus, Plaintiff and the Class Members would be entitled to recover a total of \$63,750 in unreimbursed expenses (calculated at a \$15 per pay period).

In light of these defenses and arguments, Plaintiff discounted Defendant’s maximum exposure by 30% 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 \$22,313 for the unreimbursed business expenses claim. (Bokhour Decl. ¶ 53.)

7. PAGA Penalties

Plaintiff also sought civil penalties under PAGA for each Labor Code violation for which such penalties are available, and alleged that these penalties could be assessed on a cumulative or “stacked” basis. *See Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425, at *12 (E.D. Cal. Sept. 12, 2018) (“‘stacking’ PAGA penalties is not inappropriate under California law”). Assuming application of the default penalty of \$100 per pay period pursuant to Labor Code § 2699(f)(2), and that penalties are not subject to reduction or judicial discretion, the maximum potential exposure for PAGA penalties could reach approximately \$190,500 (1,905 PAGA pay periods × \$100). (Bokhour Decl. ¶ 54.)

However, this theoretical maximum does not account for significant legal uncertainties. First, courts are divided on whether stacking PAGA penalties across multiple violations within a

single pay period is permissible, particularly where the violations are derivative in nature. Second, Labor Code § 2699(e)(2) grants courts broad discretion to reduce civil penalties where necessary to avoid an award that is “unjust, arbitrary and oppressive, or confiscatory.” See *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (approving reduction of PAGA penalties where the employer did not act willfully or negligently, and legal obligations were unclear). (Bokhour Decl. ¶ 55.)

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 \$47,625 in PAGA penalties. However, in light of the Parties’ mutual desire to resolve the matter without protracted litigation, they agreed to allocate \$10,000 of the Gross Settlement Amount toward resolution of the PAGA claim, which Plaintiff believes is fair and reasonable under the circumstances. (Bokhour Decl. ¶ 56.)

In sum, when factoring in defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows (Bokhour Decl. ¶ 57):

• Rounding Claim:	\$12,000.00
• Regular Rate of Pay Claim:	\$9,638.64
• Labor Code §§ 201 – 203 Claims:	\$186,304
• Meal Period Claims:	\$107,274.72
• Rest Break Claims:	\$111,640.13
• Reimbursement Claim:	\$22,312.50
• Wage Statement Claims:	\$91,336.00
• PAGA Penalties	\$47,625.00

<u>Total Risk-Adjusted Penalties and Damages:</u>	\$588,131
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Given the realistic value of Plaintiff’s claims, the \$450,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 76.5% of Plaintiff’s risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class. (Bokhour Decl. ¶ 58.) For these

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

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 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. ¶¶ 2-6; Falakassa Decl. ¶¶ 2-10.) Plaintiff’s counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation.

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

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

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all Class Members complies with all the requirements of California Rule of Court 3.79(f) and 3.766(b). Each Class Notice will provide: (1) information regarding the nature of the Action; (2) a summary of the Settlement’s principal terms; (3) the Class definition; (4) each Class Member’s estimated Individual Class Payment and the formula for calculating Individual Class Payments, if they do not request to be excluded; (5)

1 each PAGA Settlement Employee’s estimated Individual PAGA Payment and the formula for
2 calculating Individual PAGA Payments; (6) the dates that comprise the Class Period and PAGA
3 Period; (7) instructions on how to submit a valid Request for Exclusion or Notice of Objection;
4 (8) the deadline by which the Class Member must submit a Request for Exclusion or Notice of
5 Objection; (9) the date for the final approval hearing; and (10) the claims to be released. The Class
6 Notice will also inform Class Members that, in order to receive the Individual Class Payment and
7 Individual PAGA Payment, they do not need to do anything except keep the Settlement
8 Administrator apprised of their current mailing addresses. In addition, it will inform Class
9 Members of their estimated settlement share.

10 The Court has wide discretion in approving the means of providing notice, so long as the
11 class representative “provide(s) meaningful notice in a form that should have a reasonable chance
12 of reaching a substantial percentage of Class Members.” *Archibald v. Cinerama Hotels*, (1976)
13 15 Cal.3d 853, 861. Here, the Parties’ notice plan is that notice of the Settlement will be
14 disseminated directly to the Class Members by first class mail by the Settlement Administrator,
15 since Defendant has the last known addresses of all Class Members, and the Settlement
16 Administrator will perform a skip trace and update those addresses for any Class Notices that are
17 returned and re-send the Class Notice.

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

1 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically
2 be sent a settlement check.

3 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
4 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

5 The fact that each Class Member who does not opt out of the Settlement shall be mailed
6 a check ensures that every Class Member will be paid unless he or she affirmatively acts to
7 exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which means
8 that no Settlement funds will revert to Defendant; instead, if any checks are not cashed before the
9 objection deadline, the funds will be transferred to California Controller’s Unclaimed Property
10 Fund in the name of the Class Member. Such terms are favored by Courts and demonstrate that
11 there was no collusion between counsel for the Parties and that the Settlement is fair and favorable
12 to the Class Members.

13 **H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
14 **FAIR**

15 Under the terms of the Settlement Agreement, Class Counsel requests an amount not
16 exceeding one third of the Gross Settlement Amount in attorneys’ fees. (*See, e.g., Laffite v. Robert*
17 *Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13
18 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the
19 Class Members, the trial court may determine the amount of a reasonable fee by choosing an
20 appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug.
21 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total
22 maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the
23 total settlement was “well within the range of percentages which courts have upheld as reasonable
24 in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No.
25 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the
26 common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No.
27 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and
28 hour class action, noting: “[f]ee awards in class actions average around one-third of the

recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

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

I. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND APPROPRIATE

The Settlement Agreement provides for a Class Representative Service Payment to the named Plaintiff in the amount not to exceed \$10,000. (S.A. ¶ 3.2.1.) The proposed Class Representative Service Payment is reasonable given the time and effort Plaintiff devoted to this case. Plaintiff’s efforts included: providing factual background for the class and PAGA complaints; providing documents and information about Defendant’s compensation, bonus, overtime payment; participating in phone calls to discuss litigation and settlement strategy and mediation; making herself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation and being available during mediation; and reviewing the Settlement documents. Plaintiff also assumed significant risk in bringing this litigation—had she lost, she could have been ordered to pay Defendant’s costs. (*See* Declaration of Plaintiff in Support of Preliminary Approval of Class Action Settlement filed herewith; and Bokhour Decl. ¶¶ 65-66.)

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

1 **V. THE COURT SHOULD APPOINT ILYM GROUP, INC. AS THE SETTLEMENT**
2 **ADMINISTRATOR**

3 Subject to the Court's approval, the parties have stipulated that ILYM Group, Inc. be
4 appointed as the Settlement Administrator. ILYM is experienced in administering class action
5 settlements and has agreed to cap its fees at \$6,000 for administering this Settlement. (Bokhour
6 Decl. ¶ 69.)

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

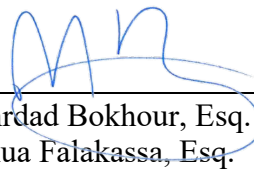
8 The final step in the approval process is the formal hearing, during which proponents of
9 the Settlement may explain and describe its terms and conditions and offer arguments in support
10 of approval. Class Members or their counsel may also be heard in support of or in opposition to
11 the Settlement.

12 **VII. CONCLUSION**

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

15
16 Dated: July 15, 2025

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

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