BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, Esq. (CA Bar No. 285256)
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 520
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, P.C.
Joshua S. Falakassa, Esq. (CA Bar No. 295045)
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 520
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DANIEL GONZALEZ, on behalf of himself and all others similarly situated,

Plaintiff,

v.

VORTEX INDUSTRIES, LLC, a California Limited Liability Company; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 24CV431369

Assigned to the Hon. Beth McGowen

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

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

<u>HEARING INFORMATION</u>

Date: April 2, 2026
Time: 1:30 p.m.
Dept.: 22

Complaint Filed:	February 22, 2024
FAC Filed:	April 29, 2024
SAC Filed:	August 21, 2024
TAC Filed:	November 4, 2025

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 2, 2026, at 1:30 p.m. or as soon thereafter as the matter may be heard by Honorable Beth McGowen in Department 22 of the Santa Clara County Superior Court, located at 191 North First Street San Jose, California 95113, Plaintiff Daniel Gonzalez, individually and on behalf of all others similarly situated, will and hereby does moves the Court for entry of an Order preliminarily approving the Parties' Class Action and PAGA Settlement Agreement, including:

A. Certifying the Class for purposes of settlement only;

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

C. 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;

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

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

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

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

Dated: March 9, 2026

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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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this motion, Plaintiff Daniel Gonzalez ("Plaintiff"), individually and on behalf of all others similarly situated, seeks preliminary approval of the Class Action and PAGA Settlement Agreement.[1] Subject to Court approval, Plaintiff and Defendant Vortex Industries, LLC ("Defendant") (collectively the "Parties") have agreed to settle their claims and the proposed Class Members' claims for a Gross Settlement Amount of $1,100,000.

Plaintiff seeks to represent a Class of all persons who are or were employed by Defendant in California and classified as non-exempt or hourly employees at any time during the Class Period from August 1, 2021, through November 18, 2025 (the "Class" or "Class Members"). Likewise, the Aggrieved Employees include all persons who are or were employed by Defendant in California and classified as non-exempt or hourly employees at any time during the Class Period from February 23, 2023, through November 18, 2025. ("Aggrieved Employees"). (Bokhour Decl. ¶ 9.)

Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel's application for a reasonable award of attorney's fees not to exceed one-third of the Settlement Amount, Class Counsel's litigation costs not to exceed $40,000, Settlement Administration Fees not to exceed $8,000, PAGA penalties of $100,000 (of which $75,000 or 75% will be paid to the LWDA and the remaining $25,000 or 25% will be paid to the Aggrieved Employees), and an Incentive Award not to exceed $5,000 to the named Plaintiff (S.A. ¶ 54(a)-(h); Bokhour Decl. ¶ 10), as follows:

	Total Amount
Gross Settlement Amount	$1,100,000
Attorneys' Fees (not to exceed 1/3 of GSA)	$366,666.67
Litigation Costs (not to exceed)	$40,000.00
Settlement Administration Fees (not to exceed)	$8,000.00
PAGA payment to LWDA (75% of $100k award)	$75,000.00

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

PAGA payment to Aggrieved Employees (25% of $100k award)	$25,000.00
Plaintiff's Incentive Award	$5,000.00
Net Settlement Amount	**$580,333.33**

As of the Parties' mediation, the Class includes approximately 581 non-exempt employees who all worked for Defendant in California during the Class Period. Plaintiff contends that, regardless of their roles, all non-exempt employees were subject to the same wage and hour policies and payroll/scheduling practices, and therefore, the Individual Settlement Payments will be paid on a pro-rata basis based on the number of Compensable Workweeks during the Class Period. Assuming a total class size of approximately 581 Settlement Class Members, the average payment to each Settlement Class Member will be approximately $998, with the highest payment estimated to be $1,814. Of course, those with more Compensable Workweeks stand to recover a proportionally greater amount. (Bokhour Decl. ¶ 11.)

The Settlement is non-reversionary, and Settlement Class Members will not be required to submit claim forms to receive payment. (S.A. ¶ 55.) Instead, each Settlement Class Member will be mailed the Notice containing detailed information regarding his or her estimated Individual Settlement Amount, the number of Workweeks during the Class Period and Pay Periods during the PAGA Period, the opportunity to dispute the number of Workweeks and or Pay Periods, and the opportunity to request exclusion or object to the Settlement. (S.A. ¶¶ 70, 73, 75.) All Settlement Class Members who do not timely submit a valid Request for Exclusion will automatically receive their Individual Settlement Amount following the Effective Date and funding of the Gross Settlement Amount. (S.A. ¶¶ 29, 78, 80.)

Aggrieved Employees may not opt-out of the Settlement with respect to the PAGA Claims and will receive their Individual Settlement Amount attributable to the PAGA Penalties Payment. (S.A. ¶¶ 24, 59, 75(c).)

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

II. BACKGROUND

A. The Parties and the Proposed Class

1. Defendant provides commercial and industrial door repair, service, and installation services across the State of California. Plaintiff was employed by Defendant as a non-exempt employee with the title of "Service Technician" out of its San Jose, California location, beginning in March 2020, until his separation from employment on February 1, 2024. Plaintiff and other non-exempt employees (including, but not limited to, Customer Service Representative, Service Technician, Installation Technician, Warehouse Associate, Field Marketer, Commercial Door Technician, and all other non-exempt positions) were responsible for all aspects of Defendant's business in California. As such, the putative Class consists of all persons who are or were employed by Defendant in California and classified as non-exempt or hourly employees at any time during the Class Period from August 1, 2021, through November 18, 2025.

B. Procedural History

On or about February 22, 2024, Plaintiff filed a Class Action Complaint in the Superior Court of the State of California, County of Santa Clara, in the matter entitled *Daniel Gonzalez v. Vortex Industries, LLC*, Case No. 24CV431369, including allegations of: (1) failure to pay minimum wages; (2) failure to pay overtime wages and sick pay; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) failure to reimburse business expenses; and (8) unfair competition. (Bokhour Decl. ¶ 14; S.A. ¶ 44.)

On or about April 29, 2024, Plaintiff filed a First Amended Complaint ("FAC") adding a cause of action for civil penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA") based on the foregoing Labor Code violations. (S.A. ¶ 44.) On or about August 21, 2024, Plaintiff filed a Second Amended Complaint dismissing his class claims without prejudice and alleging a single cause of action for PAGA penalties based on the foregoing Labor Code violations. (S.A. ¶ 44.)

On or about May 5, 2025, Plaintiff filed a separate action (the "B&P Action") entitled *Daniel Gonzalez v. Vortex Industries, LLC*, Case No. 25CV465140, in the Superior Court of the State of California, County of Santa Clara, alleging: (1) unlawful inclusion, enforcement, and or attempted enforcement of non compete, non solicitation, and other restrictive covenants in violation of Business and Professions Code sections 16600, 16600.1, and 16600.5; and (2) unlawful and unfair business practices in violation of Business and Professions Code section 17200 et seq. (S.A. ¶ 45.)

On or about November 5, 2025, Plaintiff filed the operative Third Amended Complaint ("TAC") in the Action encompassing all alleged class, representative, and Business and Professions Code claims. (S.A. ¶ 10.) Plaintiff's TAC alleges causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime wages and sick pay; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) failure to reimburse business expenses; (8) unlawful inclusion, enforcement, and/or attempted enforcement of non-compete, non-solicitation, and other restrictive covenants; (9) unfair competition; and (10) PAGA penalties.

In preparation for mediation, the Parties engaged in an extensive informal discovery process. Defendant produced written policies and practices, compensation policies, and a statistically significant sampling of payroll and timekeeping records sufficient to evaluate class size, workweeks, pay practices, and potential damages exposure. Plaintiff's counsel and their expert analyzed the data and extrapolated it to the Settlement Class. Plaintiff and counsel also conducted interviews, researched applicable law, investigated Defendant's operations, and evaluated potential defenses. (Bokhour Decl. ¶ 15; S.A. ¶ 47.)

Based on this investigation and analysis, Class Counsel concluded that the Settlement is fair, reasonable, and adequate in light of the risks of continued litigation, the defenses asserted by Defendant, the uncertainties of class certification and representative treatment, and the potential for delay and appellate review. (Bokhour Decl. ¶ 16; S.A. ¶ 47.)

On February 21, 2025, the Parties participated in mediation before Steve Serratore, Esq., which did not result in a settlement.

On August 13, 2025, the Parties participated in a second mediation before Daniel Turner, Esq. After a full day mediation and the issuance of a mediator's proposal, the Parties reached an agreement to settle the Action and the B & P Action on a class and representative basis. (Bokhour Decl. ¶ 17; S.A. ¶¶ 48–49.)

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

C. SUMMARY OF PLAINTIFF'S CLAIMS

In the operative TAC, Plaintiff alleges that Defendant engaged in systemic wage and hour violations affecting non-exempt employees in California during the applicable statutory periods.

First, Plaintiff alleges that Defendant failed to pay all minimum and overtime wages by failing to accurately record and compensate all hours worked, including time during which employees were under Defendant's control, including all time spent working on call pursuant to Defendant's on-call policy.

Second, Plaintiff alleges that Defendant failed to properly pay overtime wages by failing to calculate the "regular rate of pay" correctly by excluding non-discretionary bonuses and other forms of remuneration when computing overtime and sick pay.

Third, Plaintiff alleges that Defendant failed to provide legally compliant meal periods and failed to pay meal period premium wages at the regular rate of pay when compliant meal periods were not provided. Plaintiff further alleges that Defendant failed to authorize and permit compliant duty-free rest periods and failed to pay rest period premiums at the regular rate of pay when required.

Moreover, as a result of the above violations, Plaintiff alleges that Defendant failed to furnish accurate and complete itemized wage statements in violation of Labor Code section 226, and failed to timely pay all wages due upon separation of employment in violation of Labor Code sections 201 through 203. Defendant also alleges the Defendant failed to reimburse employees for all necessary business expenses in violation of Labor Code sections 2802 through 2804.

In addition to the wage and hour claims, Plaintiff alleges that Defendant unlawfully included, maintained, and or attempted to enforce non-compete and non-solicitation provisions and other restrictive covenants in violation of Business and Professions Code sections 16600, 16600.1, and 16600.5, and failed to provide the mandatory individualized written notice required by statute.

Finally, Plaintiff brings a representative claim for civil penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA") based on the alleged Labor Code violations described above.

D. SUMMARY OF DEFENDANT'S DEFENSES

Defendant denies each of Plaintiff's material allegations and disputes that this matter is appropriate for class certification or representative treatment under PAGA.

Defendant contends that it properly recorded and paid non-exempt employees for all hours worked, including minimum wages, overtime wages, and sick pay, and that its timekeeping and pay practices, including its on-call policy, complied with California law. Defendant further asserts that any alleged unpaid time would be noncompensable or *de minimis*.

Defendant further maintains that its written meal and rest period policies were lawful and that employees were authorized and permitted to take compliant, duty-free meal and rest periods. Defendant also contends that it maintained lawful reimbursement policies and fully reimbursed any necessary business expenses.

Defendant argues that the wage statement and waiting time penalty claims are derivative and fail because there was no underlying violation. Defendant also disputes liability under the Business and Professions Code and denies any unlawful enforcement of restrictive covenants.

Finally, Defendant contends that individualized issues would predominate, including whether particular employees were on-call, missed meal or rest periods, worked uncompensated time, incurred unreimbursed expenses, or suffered any penalty triggering violations, thereby defeating class and representative treatment.

In addition, a significant factor supporting the reasonableness of the Settlement is Defendant's contention that a substantial portion of the Settlement Class Members executed arbitration agreements containing class and representative action waivers. Defendant asserted that these agreements were enforceable and would require many Class Members' claims to be resolved on an individual basis in arbitration, thereby precluding classwide relief. Plaintiff disputes Defendant's position and contends that the arbitration agreements and class waivers are unenforceable under applicable law. Nevertheless, Plaintiff recognizes that the enforceability of such agreements presents a material litigation risk, particularly given the evolving and fact-intensive nature of arbitration jurisprudence, and the Court's Order enforcing the agreement, which Plaintiff intended to challenge on appeal prior to reaching a resolution.

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The $1,100,000 Gross Settlement Amount is non-reversionary and will be paid to Settlement Class Members without the need to submit a claim form or take any affirmative action. (S.A. ¶¶ 40, 54(a), 55.) Subject to Court approval, the Gross Settlement Amount includes: (1) attorneys' fees to Class Counsel not to exceed 33.33% of the Settlement Amount and litigation costs not to exceed $40,000; (2) a Service Award to the Class Representative not to exceed $5,000; (3) Settlement Administration Fees not to exceed $8,000; (4) $100,000 allocated to PAGA Penalties, of which $75,000 will be paid to the LWDA and $25,000 will be distributed to Aggrieved Employees; and (5) the Net Settlement Amount to be distributed to Participating Class Members as Individual Settlement Amounts based on their proportionate Workweeks during the Class Period. (S.A. ¶¶ 19, 54(c)–(i).) Defendant will separately pay its employer share of applicable payroll taxes on the wage portion of the Individual Settlement Amounts. (S.A. ¶ 54(a).)

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that $580,333.33 will be available to pay the Individual Settlement Payments to approximately 581 Settlement Class Members. As noted above, the average Individual Settlement Payment to Settlement Class Members is approximately $998, which is a fair and reasonable recovery. (Bokhour Decl. ¶ 11.)

B. NOTICE PROCEDURES

Within 30 days after entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with the Class Data, including each Settlement Class Member's name, last known mailing address, Social Security number, and number of Workweeks during the Class

Period and Pay Periods during the PAGA Period. (S.A. ¶¶ 7, 69.) The Class Data provided to the Settlement Administrator will not be provided to Class Counsel, and it will remain confidential; it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. (S.A. ¶ 69.)

Within 14 calendar days after receipt of the Class Data, the Settlement Administrator will mail the Court-approved Notice to Settlement Class Members by first-class mail, in English with a Spanish translation. (S.A. ¶ 70.) The Notice will advise each Settlement Class Member of his or her estimated Individual Settlement Amount, the number of Workweeks during the Class Period, and the number of Pay Periods during the PAGA Period. (S.A. ¶ 73.)If any Notice is returned as undeliverable, the Settlement Administrator will use standard procedures, including the National Change of Address database and skip-trace efforts, to obtain an updated address and re-mail the Notice within 10 calendar days of obtaining a new address. (S.A. ¶ 71.) For any re-mailed Notice, the deadline to request exclusion, object, or dispute Workweeks and/or Pay Periods will be extended by 15 days beyond the original Notice Response Deadline. (*Id.*) It will be conclusively presumed that if an envelope has not been returned within thirty (30) days of the mailing, the Settlement Class Member received the Notice. (*Id.* at ¶ 72.)

The Settlement Administrator shall establish, maintain and use an internet website to post information of interest to Settlement Class Members including the date, time and location for the Final Approval Hearing and copies of the Agreement; Motion for Preliminary Approval; Preliminary Approval Order; Class Notice; Motion for Final Approval; Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Incentive Award; the Final Approval Order; and the Judgment. The Settlement Administrator shall also maintain and monitor an email address and a toll-free telephone number to receive Settlement Class Member calls, faxes and emails. (*Id.* at ¶ 67.)

Any and all disputes relating to the administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of the Agreement until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. (*Id.* at ¶ 68.) Before presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. (*Id.*) The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final Settlement Class Members, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to the Agreement. (*Id.*) The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities. (*Id.*)

If the 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 shall expeditiously meet and confer in good faith in an effort to agree on whether to include them as Class Members. (*Id.* at ¶ 77.) If the Parties agree, such persons shall be Class Members entitled to the same rights as other Class Members, and the Administrator shall send, via email or overnight delivery, a Class Notice requiring them to exercise options under the Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later. (*Id.*)

C. EXCLUSION AND OBJECTION PROCEDURES

Settlement Class Members who do not timely submit a valid Request for Exclusion will automatically participate in the Settlement and be bound by its terms without submitting a claim form. (S.A. ¶¶ 29, 75.) Any Settlement Class Member, other than Plaintiff, may request exclusion by submitting a written Request for Exclusion to the Settlement Administrator, postmarked no later than 45 calendar days after the Notice is mailed. (S.A. ¶¶ 21, 75(a).) A valid Request for Exclusion must include the Settlement Class Member’s name, address, telephone number, last four digits of the Social Security number or date of birth, and signature. (S.A. ¶ 75(a).)

Settlement Class Members who do not opt out may submit a written objection to the Settlement by the Notice Response Deadline. The objection must include the information required by the Settlement Agreement. (S.A. ¶ 75(c).) The Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or Requests for Exclusion were timely submitted every week and upon the request of Class Counsel or Defense Counsel. (*Id.* at ¶ 76.) 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. (*Id.* at ¶ 75(e).)

Settlement Class Members and Aggrieved Employees may not opt out of or object to the Settlement with respect to the PAGA Claims. (S.A. ¶ 75(c).)

If ten percent (10%) or more of the Settlement Class Members timely submit a Request for Exclusion, Defendant shall have the option of terminating or modifying the Agreement without prejudice to its pre-settlement positions and defenses in the instant matter. (S.A. ¶ 90.) If Defendant exercises such option, it shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement Administrator within ten (10) days of being notified by the Settlement Administrator of a 5% or greater opt-out rate. In such an event, the Parties shall be restored to their respective positions in all respects as though the contemplated settlement never occurred. The Parties agree not to solicit opt-outs, directly or indirectly, through any means. (*Id.*)

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

Each Participating Class Member's Individual Settlement Amount will be calculated based on his or her proportionate number of Workweeks during the Class Period. The Net Settlement Amount will be multiplied by a fraction, the numerator of which is the Participating Class Member's total Workweeks during the Class Period and the denominator of which is the total Workweeks of all Participating Class Members. (S.A. ¶ 54(d)(ii).)

If the Court reduces the requested attorneys' fees and litigation costs, Incentive Award, Settlement Administration Fees, or increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly. (*Id.* at ¶ 54(c).) Any Court order awarding less than the below allocations of the attorneys' fees and litigation costs, Incentive Award, Settlement Administration Fees, or PAGA penalties shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. (*Id.* at ¶ 54(g).) If, after the exhaustion of any such appellate review, additional amounts not awarded to as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Aggrieved Employees. (*Id.*)

If there are timely Requests for Exclusion, the Settlement Administrator will proportionately increase the Individual Settlement Amounts of Participating Class Members so that 100% of the Net Settlement Amount allocated to Released Class Claims is distributed. (*Id.*) The Notice will inform Settlement Class Members of their estimated Workweeks and Pay Periods, and they may dispute those figures by submitting timely evidence to the Settlement Administrator. (S.A. ¶ 73.) Defendant's records will be presumed determinative absent reliable evidence to rebut the Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to the Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks/Pay Periods and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel cannot agree, they agree to submit the dispute to the Court to render a final decision. Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks/Pay Periods, object, or opt out, unless extended by the Court or if Notice is re-mailed. If the Settlement Administrator increases the number of Workweeks for any Settlement Class Member, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross Settlement Amount. (*Id.*)

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant will fund the Gross Settlement Amount and its share of payroll taxes no later than 30 days after the Effective Date by transmitting the funds to the Settlement Administrator for deposit into the Qualified Settlement Fund. (S.A. ¶ 78.)

No later than 7 calendar days after deposit into the Qualified Settlement Fund, the Settlement Administrator will issue payments to Participating Class Members, Class Counsel for approved fees and costs, the Class Representative for any approved Incentive Award, the LWDA for the PAGA Payment, and itself for approved Settlement Administration Fees. (S.A. ¶ 80.)

Settlement checks will remain negotiable for 180 calendar days after mailing. (S.A. ¶ 81.) Any uncashed funds will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Settlement Class Member. (*Id*.) The release remains binding even if a Settlement Class Member does not cash his or her check. (*Id*.)

If a check is returned or reported lost, the Settlement Administrator will conduct skip tracing and, if appropriate, reissue the check in accordance with the Settlement Agreement. (*Id*.)

F. TAX TREATMENT

For tax purposes, 20% of each Individual Settlement Amount attributable to Class Claims will be treated as wages subject to applicable withholdings and reported on a Form W 2, and 80% will be treated as interest and civil penalties reported on a Form 1099. (S.A. ¶ 54(e).) Amounts allocated to the PAGA Payment payable to Aggrieved Employees will be treated as civil penalties and reported on a Form 1099. (S.A. ¶ 54(d)(i).)

Class Counsel, Defendant, and Defendant's Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for under the terms of the Agreement.(*Id.* at ¶ 54(j).) Plaintiff and Final Settlement Class Members will be solely responsible for paying any taxes and penalties assessed on their respective Individual Settlement Amounts described herein. (*Id.*) Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. (*Id.*) Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with the Agreement. (*Id.*) If the Code, the regulations promulgated thereunder, or other applicable tax law are changed after the date of this Agreement, the processes set forth in the Agreement may be modified to bring Defendant into compliance with any such changes. (*Id.*)

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for the consideration described above, upon the Effective Date, Plaintiff and all Participating Class Members will release the Released Parties from the Released Class Claims for the Class Release Period. (S.A. ¶¶ 5, 57–58.) The "Released Parties" shall mean Vortex Industries, LLC, and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, affiliates, sectors, divisions, assigns, joint venturers, third parties, and other related entities, as well as each of their present and/or future officers, directors, administrators, trustees, staff, members, managers, employees, agents, representatives, attorneys, insurers, re-insurers, partners, investors, and shareholders, as well as any individual or entity which could be jointly liable with Vortex Industries, LLC. (S.A. ¶ 35.)

The "Released Class Claims" include all claims, transactions, or occurrences that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaints, including but not limited to claims for: (1) failure to pay minimum wages, overtime wages, and sick wages; (2) failure to provide meal periods or pay premium wages in lieu thereof; (3) failure to authorize and permit rest periods or pay premium wages in lieu thereof; (4) failure to furnish accurate itemized wage statements; (5) failure to timely pay final wages; (6) failure to reimburse business expenses; (7) unlawful inclusion, enforcement, or failure to provide statutory notice regarding non compete, non solicitation, or other restrictive covenants; and (8) unlawful or unfair business practices. (S.A. ¶ 5.)

The release specifically includes alleged violations of, without limitation, California Labor Code sections 200–204, 210, 226, 226.3, 226.7, 227.3, 246, 248.5, 510, 512, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2698, *et seq.*, California Civil Code sections 3287 and 3289, and California Business and Professions Code sections 16600, 16600.1, 16600.5, and 17200–17210. (*Id.*) Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it. (*Id.* at ¶ 58.)

H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS

Upon the Effective Date, Plaintiff, the Aggrieved Employees, and the LWDA will release the Released Parties from the Released PAGA Claims for the PAGA Release Period. (S.A. ¶¶ 24, 59–60.)

The "Released PAGA Claims" include any and all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698–2699.5, that were alleged in the operative pleadings or in the PAGA Notice submitted to the LWDA, or that reasonably could have been alleged based on the facts stated therein, during the PAGA Period. (S.A. ¶ 24.)

These claims include, without limitation, civil penalties arising from alleged failures to pay minimum wages, overtime wages, and sick leave wages; failures to provide compliant meal or rest periods or premium wages in lieu thereof; failures to timely pay wages upon separation; failures to furnish accurate wage statements; failures to reimburse necessary business expenses; and related unlawful business practices. (*Id.*) The Released PAGA Claims specifically include alleged violations of, and civil penalties arising under, without limitation, California Labor Code §§ 200–204, 210, 226, 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1198, and 2802, as well as all applicable provisions of Labor Code §§ 2698–2699.5. Plaintiff, the Aggrieved Employees, and the LWDA will be deemed to have made the foregoing Release as if by manually signing it. (*Id.* at ¶ 60.)

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

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

The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted;

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

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

A. NUMEROSITY AND ASCERTAINABILITY

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101.

Here, according to Defendant's records, there are approximately 581 Class Members. Plaintiff argues that this figure undoubtedly satisfies the numerosity requirement.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

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

2. Typicality

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

3. Adequacy of Representation

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

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

4. Superiority

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

Approval, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the issue of whether or not class certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its right and declares that it will continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification, representative treatment, and a trial should the Court fail to issue Final Approval.

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 counsel . . . and the reaction of the Class Members to the proposed settlement.

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

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

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

B. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations

The Settlement was the product of extensive arm's-length negotiations between counsel and was facilitated by an experienced wage-and-hour class-action mediator after multiple mediations. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiff and Class Counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial, and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any of its defenses, the Class Members may not have received any substantial monetary recovery. (Bokhour Decl. ¶ 44.)

C. The Extent of the Investigation was More than Sufficient to Permit Preliminary Approval of the Settlement

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

D. The Settlement is a Reasonable Compromise of Claims

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

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

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

Of relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. Defendant further disputed whether Plaintiff could obtain class certification, arguing, *inter alia,* that the legal claims and injuries were not common to the class. Defendant further argued that it complied with the applicable law, had compliant written policies, that all Class Members were provided the opportunity to take their meal and rest periods, and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the Class. While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that he could pursue on a class basis.

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

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff's counsel estimated the following big-picture data points through the date of mediation: 581 Class Members who worked approximately 71,629 workweeks. (Bokhour Decl. ¶ 18.) The Parties agree that if the number of workweeks is ten percent (10%) higher than the current estimate (*i.e.*, more than 78,792 qualifying workweeks worked), then Defendant shall have the option, at Defendant's election, to either: (1) a pro-rata increase in the Gross Settlement Amount equal to the percentage increase in workweeks above 71,629 (i.e., if the total workweeks increases by 11%, then a 1% increase to the Gross Settlement Amount); or (2) a cut-off of the Class Period to end on the date that total workweeks reaches 78,792. (S.A. ¶ 54(b).)

1. <u>Failure to Pay All Overtime and Sick Wages at the Proper "Regular Rate of Pay"</u>

First, 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 wages. However, Defendant argued that it correctly calculated the "regular rate of pay," and that any underpayment was in good faith and *de minimis*. (Bokhour Decl. ¶ 19.)

While Defendant's sampling of pay records revealed "regular rate of pay" violations, the underpayments of overtime and sick wages were minimal throughout the Class Period. (Bokhour Decl. ¶ 20.)

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 this unpaid wages claim lies in the derivative claims for waiting time penalties under California Labor Code Section 203 and wage statement violations under California Labor Code Section 226(a) as discussed below. (Bokhour Decl. ¶ 21.)

2. <u>Failure to Pay All Minimum and Overtime Wages</u>

Next, Plaintiff alleges Defendant maintained uniform timekeeping and on-call policies that systematically resulted in unpaid minimum wages and overtime compensation for non-exempt employees. Specifically, Plaintiff alleges that Defendant required employees to record their time based on scheduled shifts rather than actual hours worked, resulting in uncompensated off-the-clock work. Plaintiff further alleges that Defendant required technicians to remain on-call and available to respond within 60 minutes during designated on-call periods without compensating employees for the full time spent under Defendant's control.

Plaintiff alleges that Defendant's On-Call Calendar policy, which required service center leadership to publish on-call schedules and required technicians to respond to after-hours calls within 60 minutes. Plaintiff contends these restrictions significantly limited employees' ability to use on-call time for their own purposes and therefore constituted compensable hours worked under California law. However, Defendant disputes that the on-call time was sufficiently restrictive to be compensable and contends that employees were paid for all hours worked. (Bokhour Decl. ¶ 22)

Based on Defendant's workforce size, wage rates, and the applicable statutory penalty framework, Plaintiff estimates Defendant's maximum potential exposure for unpaid minimum and overtime wages to be approximately $741,734 based on 30 minutes of unpaid time per eligible on-call shift. (Bokhour Decl. ¶ 23)

However, continued litigation presents significant risks. Defendant denies liability and asserts several defenses, including that: (1) employees accurately recorded their time; (2) any off-the-clock work was minimal or unauthorized; (3) on-call time was not sufficiently restrictive to qualify as compensable hours worked; and (4) individualized inquiries would be required to determine whether employees actually worked off-the-clock or were under sufficient employer control during on-call periods. Defendant also would likely challenge class certification and argue that damages cannot be established through common proof. In addition to these liability and certification risks, Plaintiff faces the substantial risks, delay, and expense associated with continued litigation, including extensive class discovery, expert analysis of timekeeping data, contested class certification proceedings, and potential appeals. (Bokhour Decl. ¶ 24.)

Therefore, Plaintiff applied a 50% discount to account for the risk of defeat at the class certification stage and an additional discount of 35% for the risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $241,063.55 for Plaintiff's off-the-clock claim. (Bokhour Decl. ¶ 25.)

3. Waiting Time Penalties

With respect to Plaintiff's waiting time penalty claim, there were approximately 175 Class Members who separated from their employment with Defendant, and who worked an average of 8 hours per day, during the relevant statutory period. As such, the maximum potential penalty under Labor Code § 201 – 203 is $1,344,000 (175 employees x 8 hours per day x average rate of $32 x 30 days). (Bokhour Decl. ¶ 26.)

However, Defendant argued that it would defeat the waiting time penalty claim as to Plaintiff's unpaid wage claim because Defendant would prevail on the merits of these claims, including that it complied with the law because it had an alleged facially neutral pay policy/practice. Finally, Defendant argued that any failure to pay final wages was not willful and occurred before the waiting time penalty liability period. (Bokhour Decl. ¶ 27.)

Therefore, Plaintiff applied a 30% discount to account for the risk of defeat at the class certification stage and an additional discount of 50% for the risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $470,400 for Plaintiff's waiting time penalty claim. (Bokhour Decl. ¶ 28.)

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

With respect to Plaintiff's meal and rest period violation claims, the Class Members worked 154,000 shifts during the Class Period. Based on an alleged 15% violation rate based on the sampling for the meal period claims and an alleged 33% violation rate for the rest period claims, as extrapolated from the pre-mediation sampling of Defendant's timekeeping and payroll records, the maximum potential damages totalled $739,200 for the meal period claim and $1,626,240 for the rest period claim, respectively. (Bokhour Decl. ¶ 29.)

However, Defendant vehemently opposed these claims, arguing that the claims fall directly within the category of "individualized issues," that its written policies and practices were compliant with California law, and that the employees had ample latitude regarding when, where, and how they took their meal and rest breaks. Therefore, Defendant asserted that a factfinder would have to determine for each Class Member whether a break was missed and why, and why a break was non-compliant/non-existent, because if it was by the employee's choice, no liability attaches to Defendant. Based on these arguments, Plaintiff believes there is a risk that the Court would deny class certification on these meal period and rest break claims. (Bokhour Decl. ¶ 30.)

Defendant further argued that, even if certification were granted, it would defeat these claims on the merits because Defendant utilized compliant policies and practices, and it would present sufficient evidence that employees were properly provided with all breaks or paid compensation in lieu thereof. Moreover, Defendant argued that Plaintiff would be unable to present sufficient evidence establishing the number of meal and rest period violations to allow a factfinder to determine damages appropriately. (Bokhour Decl. ¶ 31.)

In light of these defenses and arguments, Plaintiff discounted Defendant's maximum exposure by 40% for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits, to arrive at the risk-adjusted value of the meal period claims to be $221,760 and the rest period claims to be $487,872. (Bokhour Decl. ¶ 32.)

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

Plaintiff estimates that the maximum potential penalties for the derivative wage statement claim are $1,617,550 (based on approximately 32,351 allegedly violative wage statements issued during the Class Period). In calculating Defendant's exposure, Plaintiff gave Defendant the benefit of assuming Plaintiff could only obtain the "initial" wage statement penalty of $50 per violation. *Id.*, Lab. Code § 226(e) (providing for a $50 penalty for "initial" violations); *Amaral v. Cintas Corp*. No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate applies until the employer has been notified that it is violating a Labor Code provision.) (Bokhour Decl. ¶ 33)

In response, Defendant contended that its wage statements fully complied with the law, that any alleged violations were not "knowing and intentional," and that Plaintiff could not establish that they or anyone else suffered "injury" because of any alleged wage statement violations. Further, Defendant relied on its defenses to Plaintiff's underlying claims on the merits and to class certification. (Bokhour Decl. ¶ 34.)

As such, Plaintiff discounted the calculated maximum exposure by 80% for risk of non-certification, and by an additional 20% for risk of being unsuccessful on the merits, to arrive at an estimated total of $258,808. (Bokhour Decl. ¶ 35.)

6. <u>Failure to Reimburse for Necessary Business Expenses</u>

Plaintiff alleged that necessary business expenses were incurred by Plaintiff and Class Members but were not reimbursed by Defendant. These necessary expenses included, but were not limited to, cellphone use and mileage costs. Plaintiff calculated Defendant's maximum exposure under this theory of liability to be $358,140 ($20 unreimbursed business expenses x 17,907 pay periods). (Bokhour Decl. ¶ 36.)

Defendant contended that Plaintiff and other Class Members never requested reimbursement from Defendant, and thus, Defendant did not know and had no reason to know that the alleged business-related expenses were incurred and not reimbursed. Defendant further contended that this claim would raise individual issues that could not be certified, including whether employees were required to use their personal cellphones for work-related purposes, and whether any given employee applied for and received reimbursement. (Bokhour Decl. ¶ 37.)

In light of these defenses and arguments, Plaintiff discounted Defendant's maximum exposure by 60% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits, to arrive at an estimated total of $85,953. (Bokhour Decl. ¶ 38.)

7. <u>Business and Professions Code Claims</u>

Plaintiff alleged that Defendant maintained unlawful non-compete and non-solicitation provisions in violation of Business and Professions Code sections 16600, 16600.1, and 16600.5. Defendant denies that any unlawful enforcement occurred and contends that any challenged provisions were lawful or not enforced. Because these claims primarily seek injunctive and declaratory relief and would present significant proof and standing issues, Plaintiff did not assign an independent monetary value to these claims for purposes of settlement valuation. (Bokhour Decl. ¶ 39.)

8. <u>PAGA Penalties</u>

Plaintiff also sought PAGA penalties for each available violation and alleged that these penalties could be "stacked." *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 $3,235,100 for the pay periods in the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2). (Bokhour Decl. ¶ 40.)

However, this maximum figure fails to account for numerous unresolved issues regarding PAGA claims. 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). (Bokhour Decl. ¶ 41.)

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." 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."). Therefore, Plaintiff discounted the maximum figure to account for the risk of losing on the merits and applied an additional discount to account for the possibility of this Court reducing penalties to arrive at an estimated exposure of $100,000. (Bokhour Decl. ¶ 42.)

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

- Failure to Pay Overtime and Sick Wages: *discounted*
- Failure to Pay all Wages for Off-the-Clock Work: $241,063.55

- Labor Code §§ 201 – 203 Claims: $470,400
- Meal Period Claims: $221,760
- Rest Break Claims: $487,872
- Wage Statement Claims: $258,808
- Reimbursement Claims: $85,953
- PAGA Penalties $100,000
- **<u>Total Risk-Adjusted Penalties and Damages</u>**: **$1,865,856.55**

Given the realistic value of Plaintiff's claims, the $1,100,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 58.9% 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. ¶ 43.)

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

E. <u>PLAINTIFF'S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION</u>

The attorneys' view of 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 some of the largest class action settlements in California in 2021-2024. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-10.) Plaintiff's counsel, operating at arm's length, weighed the strengths and risks of this case and is of the view that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk-adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation.

F. THE NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The proposed Notice should be approved because it fully informs Settlement Class Members of the nature of the Action, the terms of the Settlement, and their rights and options. The method of dissemination is reasonably calculated to provide the best practicable notice under the circumstances and will ensure that all or nearly all Settlement Class Members receive notice of the proposed Settlement.

The Notice will be mailed by first class mail to the last known addresses of all Settlement Class Members using updated address information and National Change of Address procedures. For any Notice returned as undeliverable, the Settlement Administrator will conduct skip trace efforts and promptly re mail the Notice to any updated address obtained. This procedure satisfies due process and complies with California Rules of Court 3.766 and 3.769. *See Archibald v. Cinerama Hotels*, (1976) 15 Cal.3d 853, 861.

The contents of the Notice comply with California Rule of Court 3.766(d). Specifically, the Notice includes: (1) a description of the Action and the Parties' respective positions; (2) a summary of the material terms of the Settlement, including the Gross Settlement Amount and its allocation; (3) the amount of attorneys' fees and costs that will be requested, the proposed Incentive Award, and the Settlement Administration Fees; (4) an estimate of each Settlement Class Member's Individual Settlement Amount and the number of Workweeks and Pay Periods credited; (5) the date, time, and location of the final approval hearing; (6) clear instructions for requesting exclusion or submitting an objection; (7) a statement that the Judgment will bind all Settlement Class Members who do not timely request exclusion; and (8) information regarding how to obtain additional details about the Settlement. (Ex. B.)

The 45-day Notice Response Deadline provides Settlement Class Members with ample time to review the Notice, seek independent legal advice, dispute Workweeks or Pay Periods if necessary, request exclusion, or submit an objection. Settlement Class Members who do not timely opt out will automatically receive their Individual Settlement Amount without the need to submit a claim form.

Accordingly, the proposed Notice and notice procedure satisfies all applicable statutory and constitutional requirements and should be approved.

G. The Non-Reversionary "Checks Cashed" Distribution Ensures Maximal Recovery for Class Members

No later than seven (7) calendar days after the deposit of the payment into the Qualified Settlement Fund ("QSF"), the Settlement Administrator will mail the payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Incentive Award to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Fees. (S.A. ¶ 80.) The Settlement provides for automatic distribution of Individual Settlement Amounts to all Settlement Class Members who do not timely request exclusion. No claim form is required. Accordingly, every participating Settlement Class Member will be mailed a settlement check without having to take any affirmative action. This structure maximizes participation and recovery.

The Gross Settlement Amount is entirely non-reversionary. No portion of the Settlement will revert to Defendant under any circumstances. (S.A. ¶¶ 40, 54.) Defendant is required to fully fund the Gross Settlement Amount, and the Net Settlement Amount will be distributed in its entirety to Participating Class Members.

Settlement checks will remain negotiable for 180 calendar days. If a check is not cashed within that period, the funds will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Settlement Class Member, and the release will remain binding. (S.A. ¶ 81.) Thus, even uncashed funds remain allocated for the benefit of the individual Class Member rather than reverting to Defendant.

If any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. (S.A. ¶ 81.) If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check and notify Defense Counsel and Class Counsel that a re-issued check has been sent. (*Id.*)

Courts favor non-reversionary settlements with automatic distribution because they ensure maximum participation and eliminate the risk that settlement funds will return to the employer.

The structure here strongly supports a finding that the Settlement is fair, reasonable, and free of collusion.

H. <u>THE ATTORNEYS' FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR</u>

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

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

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

The Settlement Agreement provides for a Service Award to the named Plaintiff in the amount not to exceed $5,000. (S.A. ¶ 54(f).) The proposed Service Award is reasonable given the time and effort the named Plaintiff devoted to this case. Plaintiff's efforts included: providing factual background for the class and PAGA complaint; providing documents and information about Defendant's compensation plan and wage and hour policies/practices; participating in phone calls to discuss litigation and settlement strategy; making himself 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—namely, had he lost, he could have been ordered to pay Defendant's costs. (Bokhour Decl., ¶ 50; *See* Declaration of Plaintiff Daniel Gonzalez in Support of Preliminary Approval of Class Action Settlement filed herewith.)

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

V. <u>THE COURT SHOULD APPOINT PHOENIX AS THE SETTLEMENT ADMINISTRATOR</u>

Subject to the Court's approval, the parties stipulated that Phoenix Class Action Administration Solutions serve as the Settlement Administrator. Phoenix is experienced in administering class action settlements and will not exceed $8,000 to administer this class action Settlement. (Bokhour Decl. ¶ 54.)

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

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

VII. CONCLUSION

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

Dated: March 9, 2026

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

BY: ______________________________
MEHRDAD BOKHOUR
JOSHUA FALAKASSA
Attorneys for Plaintiff and the Putative Class