BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, Esq. (CA Bar No. 285256)
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 920
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 920
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 LOS ANGELES

JANO MARTINEZ, on behalf of himself and all others similarly situated, Plaintiff, v. SWANER HARDWOOD CO., INC., a California Corporation; and DOES 1-50, inclusive. Defendants.	CASE NO.: 24STCV04249 *Assigned to the Hon. Elihu M. Berle* **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** [*Declarations of Mehrdad Bokhour, Joshua Falakassa, and Jano Martinez and [Proposed] Order filed concurrently herewith*] **<u>HEARING INFO</u>** Date: September 30, 2025 Time: 11:00 a.m. Dept.: 6

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 30, 2025, at 11:00 a.m. or as soon thereafter as the matter may be heard by the Honorable Elihu M. Berle in Department 6 of the Los Angeles County Superior Court for the State of California, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Jano Martinez, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" and/or "Settlement"), including:

1. Certifying the Class for purposes of the Settlement only;

2. Preliminarily appointing Plaintiff Jano Martinez as Class Representative for purposes of settlement only;

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

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

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

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

This motion is based upon this Memorandum of Points and Authorities in support thereof; the Declarations of Mehrdad Bokhour, Joshua Falakassa, and Jano Martinez 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: September 2, 2025

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

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

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I. INTRODUCTION

Through this motion, Plaintiff Jano Martinez ("Plaintiff"), individually and on behalf of all others similarly situated, seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement Agreement" and/or "Settlement"). Subject to Court approval, Plaintiff and Defendant Swaner Hardwood Co., Inc. ("Defendant" or "Swaner") have agreed to settle Plaintiff's and the proposed Class Members' claims against Defendant for a gross settlement amount of $372,500 ("Gross Settlement Amount").

Plaintiff seeks to represent a Class of all current and former non-exempt employees who worked for Swaner in California at any time between February 20, 2020, through August 20, 2025 ("Class Period") (the "Class Members"). Likewise, the allegedly aggrieved employees include all current and former non-exempt employees of Swaner who worked for BQE in California from February 20, 2023, through August 20, 2025 ("PAGA Members").[1]

Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel's request for a reasonable award of attorney's fees not to exceed one-third of the Settlement Amount and litigation costs not to exceed $25,000, Settlement Administration Costs not to exceed $5,000, PAGA penalties of $20,000 (of which $15,000 or 75% will be paid to the LWDA and the remaining $5,000 or 25% will be paid to the PAGA Members) ("Individual PAGA Payments"), and a Class Representative Service Payment not to exceed $10,000 to the named Plaintiff as follows:

	Total Amount
Gross Settlement Amount	$372,500.00
Attorneys' Fees (not to exceed 1/3 of GSA)	$124,166.67
Litigation Costs (not to exceed)	$25,000.00
Administrator Costs (not to exceed)	$6,000.00
PAGA payment to LWDA (75% of $20k award)	$15,000.00
PAGA payment to PAGA Members (25% of 20k	$5,000.00

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

award)	
Class Representative Service Payment	$10,000.00
Net Settlement Amount	**$187,333.33**

The Class includes approximately 112 Class Members who worked for Defendant during the Class Period. Plaintiff contends that, regardless of their roles, all non-exempt employees worked under the same wage and hour policies and practices, and therefore, the individual class payments will be paid on a pro-rata basis based on the number of weeks during which a Class Member worked for Swaner for at least one day during the Class Period ("Workweeks") worked during the Class Period (the "Individual Class Payments"). Assuming a total class size of 112 Class Members, the average payment to each will be approximately $1,672.61. Of course, those with more Workweeks stand to recover proportionally more from the Settlement. (Bokhour Decl. ¶ 12.)

The Settlement is non-reversionary, and Class Members will not be required to submit claim forms to receive payment, but each Class Member will be mailed the Class Notice containing information about his/her share, the opportunity to dispute the number of Workweeks by the Class Member, and the opportunity to opt out or object to the Settlement. All Class Members who do not affirmatively opt out will receive an Individual Class Payment upon the Court granting final approval. (Bokhour Decl. ¶ 13.)

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

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED CLASS

Defendant manufactures and distributes hardwood products, including hardwood flooring and custom moldings for industry, cabinet and furniture manufacturers, architectural millwork, and movie studios.

Plaintiff was employed by Defendant as a non-exempt employee with the title of "Lumber" out of its Burbank, California, location beginning on December 20, 2022, until his separation from employment on January 25, 2024. Plaintiff and other non-exempt employees (including, but not limited to, Packaging/Shipping Clerk, Receiving Clerk, Stocker, Truck Driver, Warehouse Associate, and all other non-exempt positions) were responsible for all aspects of Defendant's business in California

However, in these roles, Plaintiff alleges that he and the putative Class Members were subjected to numerous violations of the California Labor Code and applicable Industrial Welfare Commission Wage Orders ("Wage Orders").

The putative Class consists of all current and former individuals who are or previously were employed by Defendant in California, and who were classified as non-exempt employees during the Class Period (*i.e.*, February 20, 2020, through August 20, 2025). (S.A. ¶¶ 1.4 and 1.11.)

B. PROCEDURAL HISTORY

On or about February 20, 2024, Plaintiff filed suit in Los Angeles County Superior Court against Defendant, asserting the following claims under the California Labor Code: (1) failure to pay minimum and overtime wages; (2) failure to pay sick time wages, (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to provide accurate itemized wage statements; (6) failure to pay all wages due upon separation of employment; (7) failure to reimburse necessary business expenses. Plaintiff also asserted a claim for alleged violation of California's Unfair Competition Law. (Bokhour Decl. ¶ 15.)

On or about February 20, 2024, Plaintiff submitted the PAGA Notice to the LWDA, asserting various allegations under the Private Attorneys General Act ("PAGA") and providing notice of intent to file a representative action on behalf of the LWDA and other allegedly aggrieved non-exempt California employees of BQE. (Bokhour Decl. ¶ 16.)

On July 29, 2024, Plaintiff filed a First Amended Complaint to add a claim for civil penalties pursuant to PAGA. (Bokhour Decl. ¶ 17.)

Defendant has denied and continues to deny the allegations throughout the litigation and vowed to defend against the claims vigorously. However, before engaging in protracted litigation, the Parties agreed to explore resolution through private mediation. (Bokhour Decl. ¶ 18.) In preparation for mediation, the Parties agreed to an informal discovery process where information relating to the applicable policies and procedures, a robust sampling of payroll and timekeeping records, size of the Class, compensation policies and practices, and other data points bearing on the potential settlement value of the case were exchanged. (*Id.*) The time and pay data sampling enabled Plaintiff's counsel and their expert to fully evaluate the potential claims and extrapolate the data to the entire Class. During this process, Plaintiff and his counsel analyzed, researched, and investigated the potential claims of all similarly situated employees. (*Id.*)

On June 20, 2025, the Parties participated in mediation before Kelly Knight, Esq., an experienced class action mediator, which culminated in the Parties reaching the settlement memorialized in this Agreement. (Bokhour Decl., ¶ 19, Exhibit "A".) (*Id.*) The Parties now seek the Court's preliminary approval of the Settlement Agreement.

C. Summary of Plaintiff's Claims

Plaintiff alleges numerous wage and hour violations on behalf of the Class.

First, Plaintiff claims he and other Class Members were not paid for all minimum and overtime wages based on Defendant's uneven time rounding practice, and failure to properly calculate the "regular rate of pay." (Bokhour Decl. ¶ 21.)

Moreover, Plaintiff claims Defendant maintained deficient meal and rest period policies and practices that failed to allow and permit Class Members to take timely and code-compliant meal and rest periods or pay compensation in lieu thereof at the "regular rate of pay." (Bokhour

Decl. ¶ 22.) Plaintiff further contends that Defendant failed to pay non-exempt employees their final wages in a timely manner upon separation from employment. (Bokhour Decl. ¶ 23.)

Finally, Plaintiff alleges that Defendant failed to provide accurate itemized wage statements and seeks civil penalties under the PAGA claims arising from the alleged Labor Code violations set forth above. (Bokhour Decl. ¶ 24.)

D. SUMMARY OF DEFENDANT'S DEFENSES

Defendant contested and denied each of Plaintiff's material allegations on the merits and the propriety of the Action. (Bokhour Decl. ¶ 25.)

First, Defendant argued that its timekeeping and pay practices were compliant with California law, that the calculation of the "regular rate of pay" was proper, and that any resulting underpayments were *de minimis*.

Defendant further argued that its meal and rest period policies and practices were compliant with California law and that non-exempt employees were at all times allowed and permitted to take their meal and rest periods in compliance with California law. (Bokhour Decl. ¶ 26.) Defendant further contended that Plaintiff's waiting time penalty and wage statement claims based on the alleged underlying meal and rest period violations were unfounded, as these alleged violations did not entitle employees to pursue the derivative penalties under Labor Code sections 203 and 226. (Bokhour Decl. ¶ 27.)

Moreover, Defendant contended that Plaintiff's claims were highly individualized, that the putative Class Members would not be entitled to late pay penalties, and that there was no stand-alone cause of action for Plaintiff's sick pay claim.

Finally, Defendant generally contended that Plaintiff's claims were not suitable for class certification because individualized inquiries would be required to establish, amongst other things, which employees, if any, took meal periods of less than 30 minutes and why a particular employee received a meal period of less than 30 minutes on a particular shift. (Bokhour Decl. ¶ 28.)

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. <u>SETTLEMENT CONSIDERATION AND ALLOCATION</u>

The $372,500 Gross Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's Attorneys' Fees and Costs, as approved by the Court; (2) a Class Representative Service Payment not to exceed $10,000 to the named Plaintiff, as approved by the Court; (3) Settlement Administration Costs, not to exceed $6,000, as approved by the Court; (4) a $20,000 PAGA Payment, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the aggregate of all Individual Class Payments of the Participating Class Members and PAGA Members. (Settlement Agreement "S.A." ¶ 3.1 *et seq*.)

After all Court-approved deductions from the Settlement Amount, it is estimated that $187,333.33 will be available to pay the Individual Class Payments to approximately 112 Class Members. As noted above, the average Individual Class Payment to Class Members is estimated to be approximately $1,672.61, which is a fair and reasonable recovery.

B. <u>NOTICE PROCEDURES</u>

The proposed Class Notice will be provided to the Class Members showing the estimated number of Workweeks for which he/she will be credited (**Exhibit "B"** to the Bokhour Decl.). Within fifteen (15) business days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of all Class Members containing each Class Member's full names, last known mailing addresses, Social Security Numbers, and number of Workweeks and PAGA Pay Periods worked for each Class Member (the "Class Data"), and any other relevant information needed by the Settlement Administrator to calculate Individual Class Payments. (S.A. ¶¶ 1.7, 4.2.)

Within fourteen (14) days after receipt of the Class Data, the Settlement Administrator will populate the Class Notice and send each Class Member the Class Notice via first-class, United States mail, which shall include the number of Workweeks estimated for each Class Member. (S.A. ¶ 7.4.2.)

If any Class Notice mailed to a Class Member is returned to the Settlement Administrator as undelivered by the U.S. Postal Service, within five (5) business days of receipt, the Settlement Administrator shall use standard methods, including the use of a skip trace, to obtain forwarding addresses of Class Members. (S.A. ¶ 7.4.3.)

If the Settlement Administrator learns of an undelivered mailing and obtains a forwarding or updated address for that Class Member, the Class Notice will be re-mailed to the Class Member within five (5) business days of receipt of the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member. The deadlines for Class Members' written objections, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond time otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline by re-mailing the Class Notice.

C. Exclusion and Objection Procedures

Class Members who do not opt out of the Settlement in a timely manner will be deemed to participate in the Settlement and shall become Participating Class Members without having to submit a claim form or take any other action. The Class Notice shall inform the Class Members of their right to opt out of the Settlement. To do so, the Class Member must submit a written Request for Exclusion to the Settlement Administrator no later than 45 days after being mailed the Class Notice by the Settlement Administrator ("Class Notice Response Deadline"). (S.A. ¶ 7.5.)

The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement must submit a written objection to the Settlement Administrator no later than the Class Notice Response Deadline. The objection must include the Objecting Class Member's full name, address, telephone number, approximate dates of employment with Defendant, social security number for verification purposes, the case name and number, the basis for the objection, and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if counsel represents the objecting Class Member, the name and address of his or her counsel. (S.A. ¶ 7.7.)

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The Individual Class Payment for each Participating Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant as follows. Using the Class Data and using any Workweeks that were disputed and subsequently approved while also accounting for any timely submitted Requests for Exclusion, the Settlement Administrator will calculate the total Workweeks for all Class Members (if necessary). Each Participating Class Member's Individual Class Payment shall be based on his or her proportionate Workweeks worked during the Class Period compared to the total number of Workweeks by all Participating Class Members during the Class Period. The Class Notice will inform Class Members of his/her estimated number of Workweeks worked during the Class Period. Class Members may dispute their estimated Workweeks worked if they feel they worked more weeks in the Class Period than Defendant's records show by timely submitting evidence to the Settlement Administrator.

E. TIMING OF SETTLEMENT DISBURSEMENTS

The Settlement Administrator will establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation section 468B-1 and will provide Defendant with wire transfer information within three (3) days after the Effective Date. Defendant shall make a one-time deposit into the QSF of the Gross Settlement Amount as described in the Settlement Agreement that is necessary to make all payments required under the Settlement Agreement, within thirty (30) days after the Effective Date, as defined in the Settlement Agreement. (S.A. ¶ 4.3.) No later than ten (10) calendar days after deposit of the payment into the QSF, the Settlement Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment, and will retain its Settlement Administration Costs payment. (S.A. ¶ 4.4.) Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (*Id.*)

The Settlement Administrator must conduct a Class Member address search for all other

Class Members whose checks are returned undelivered without a United States mail forwarding address. (S.A. ¶ 4.4.3.) Within seven (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member address search. (*Id.*) The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. (*Id.*) The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member before the void date. (*Id.*)

Participating Class Members shall have 180 calendar days from the date of mailing by the Settlement Administrator to cash their settlement checks. If any Class Member's check is not cashed within that period, the check will be void, and all unclaimed funds shall be submitted to the California Controller's Unclaimed Property Fund in the name of the Class Member (S.A. ¶ 4.4.3.) The Class Member Release will be binding upon all Participating Class Members, including those who do not cash their checks within the 180 days.

F. TAX TREATMENT

The Individual Class Payments paid to Participating Class Members will be allocated for tax purposes based on the allegations in the Action as follows: ten (10%) will be allocated as wages subject to withholdings of all applicable local, state, and federal taxes; and ninety (90%) will be allocated as interest and as civil penalties (pursuant to, e.g., California Labor Code Sections 203 and 226) from which no taxes will be withheld. (S.A. ¶ 3.2.4.1.) To the extent required, the Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms concerning the wage allocation and a Form 1099 concerning the penalties and interest allocations. (*Id.*)

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for these payments, the Settlement Agreement provides that the Participating Class Members will release Defendant Swaner Hardwood Co., Inc., and any of its respective current or former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit plans, representatives, servants, employees, attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint venturers, predecessors, related entities, and assigns, and all other individuals and entities acting on their behalf (collectively, the "Released Parties") of the claims alleged or could have been alleged based on the facts stated in the operative complaint as follows:

> In consideration for their awarded Individual Class Payment, as of the date the Settlement becomes Final and *has been fully funded*, all Participating Class Members, on behalf of themselves and their respective current and former spouses, representatives, agents, attorneys, heirs, executors, administrators, successors, and assigns release all claims against Swaner and the Released Parties 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 Minimum Wages in violation of Labor Code sections 1197, 1182.12, 1194, 1194.2(a) and the applicable IWC Wage Orders; (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (3) 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); (4) 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); (5) failure to pay sick wages at the proper legal rate under Labor Code section 246, 558, 1194.2, 1197.1, 1198, and 1199 and the applicable IWC Wage Order(s); (6) failure to provide complete and accurate itemized wage statements in violation of Labor Code sections 226 and 226.3; (7) waiting time penalties for failure to pay all wages due and owing during employment and at separation in violation of Labor Code sections 201-204; (8) failure to reimburse for necessary business expenses in violation of Labor Code 2802; (9) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (10) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and (11) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing. (S.A. ¶ 5.2.)

Likewise, the PAGA Members will release all PAGA Claims as follows:

> 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 current and former spouses, representatives, agents, attorneys, heirs, executors, administrators, successors, and assigns, any and all claims for civil penalties under PAGA against Swaner 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 spouses, representatives, agents, attorneys, heirs, executors, administrators, successors, and assigns, will release the PAGA claims described herein against Swaner and the Released Parties and will receive a portion of the amount set aside as PAGA Penalties, regardless of whether they opt out of the release of the Class Claims. (S.A. ¶ 5.3.)

In addition to the foregoing release, the Plaintiff has also agreed to enter a separate General Release as set forth in the Settlement Agreement. (S.A. ¶ 5.1.)

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, instead of 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.

In the present case, according to Defendant's records, there are approximately 112 Class Members. Plaintiff contends that this figure undoubtedly satisfies the numerosity requirement.

B. Well-Defined Community of Interest

1. *Commonality*

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

Here, Plaintiff contends that the Class was subject to common policies and practices relating to the provision of meal and rest periods and payment of minimum and overtime wages, provision of wage statements, and final pay upon separation/termination, 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*

Typically, "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, among other things, Defendant's wage payment policies, timkeeping, calculation of the "regular rate of pay," meal and rest period policies/practices, wage statements, and the provisions governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. *Adequacy of Representation*

The proposed class representative must establish that they will adequately represent the proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179

Cal.App.4th 540, 546. Specifically, Plaintiff's position is that he is adequate to represent the Class because Defendant employed him during the Class Period, experienced the same wage and hour 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; see also Declaration of Joshua Falakassa in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Falakassa Decl.") ¶¶ 2-8.)

4. *Superiority*

Plaintiff further contends that class certification for settlement purposes is superior here because it will result in a global resolution of all claims simultaneously, thereby promoting judicial economy. Class certification for settlement purposes is also vastly superior to litigating numerous individual claims because most of the claims are too small to be litigated outside of the class context.

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

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

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374,1382. 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, just 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 Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the Class Members to the proposed settlement.

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

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

At the preliminary approval stage, the Court needs only to determine that the settlement falls within the "range of possible judicial approval" so that notice to the class and the scheduling of the fairness hearing is worthwhile. *See Newberg* § 11:2, 5. Indeed, the Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies … and [the settlement] appears to fall within the range of possible approval." *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A "presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, *supra* (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

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

The Settlement was the product of extensive arm's length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiff and 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. ¶ 35.)

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

Plaintiff 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 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 11, 6, 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 this 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*, 91 Cal.App.4th at 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 Settlement here is the fact that significant legal and factual grounds for defending this action exist. As further detailed below, in addition to disputing the merits of Plaintiff's claims, Defendant disputed whether Plaintiff could obtain class certification, arguing *inter alia* a lack of commonality of the legal claims and injuries. Defendant further argued that it complied with the applicable law, that all Class Members were paid all of their wages owed, and allowed to take their meal and rest periods, and that any purported deviations were individualized, 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 he could pursue on a class basis.

Considering the uncertainties of protracted litigation, this negotiated Settlement reflects the best practicable recovery for the Class. While the Gross Settlement Amount is a compromise figure, the Parties effectively weighed and considered the potential risks and opportunities, resulting in a fair and equitable settlement.

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff's counsel estimated the following big-picture data points through the mediation date: (1) 112 Class Members who worked approximately 17,794 workweeks during the Class Period. (Bokhour Decl. ¶ 20.)

1. <u>Failure to Pay for All Wages Due to Uneven Rounding</u>

First, Plaintiff alleged that Defendant's non-neutral time rounding policy resulted in the systematic underpayment of wages in violation of the Labor Code. Based on Plaintiff's analysis of the payroll records and timekeeping data produced during discovery, Plaintiff concluded that the rounding practice led to several Class Members being underpaid in the amount of approximately 2,712 hours during the Class Period.

Based on the payroll data provided by Defendant, Plaintiff estimates that a total of 40% of applicable shifts and Class Members were underpaid as a result of rounding, yielding total potential rounding-related damages at approximately $105,973. (Bokhour Decl. ¶ 21.)

However, this projected figure does not account for Defendant's asserted defenses. Defendant argued that its wage and hour policies are compliant and that all time was properly recorded and compensated. If any rounding occurred (which it does not concede), Defendant contends the policy was neutral—rounding both up and down—and is lawful because it does not systematically favor the employer (*See's Candy Shop v. Superior Court (2012) 210 Cal.App.4th 889, 902).* While the California Supreme Court may eventually rule that rounding resulting in employee loss is unlawful, no such decision has been issued. (Bokhour Decl. ¶ 22.)

Further, Plaintiff's rounding claim would require highly individualized inquiries, including a shift-by-shift and person-by-person analysis, to determine whether any alleged underpayment occurred and whether each employee was fully compensated. Defendant asserted that this level of individual scrutiny made the claim unsuitable for class treatment. (Bokhour Decl. ¶ 23.)

To account for these risks, Plaintiff applied an equitable discount reflecting the risk of denial at class certification, as well as an additional discount for the risk of defeat at summary judgment or trial. To account for Defendant's defenses, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional 50% for the risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of $21,194 for the unpaid wages due to rounding claim. (Bokhour Decl. ¶ 24.)

2. <u>Failure to Pay for All Overtime Wages</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. ¶ 25.)

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. ¶ 26.)

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 as discussed below. (Bokhour Decl. ¶ 27.)

3. <u>Waiting Time Penalties</u>

With respect to Plaintiff's waiting time penalty claim, approximately 44 Class Members separated from their employment with Defendant during the relevant statutory period. As such, the maximum potential penalty under Labor Code § 201 – 203 is $221,020 (44 employees x 8.0 hours per day x average hourly rate of $20.93 x 30 days). (Bokhour Decl. ¶ 28.)

In response, Defendant argued that it would defeat the waiting time penalty claim because any failure to pay wages was not willful and occurred before the waiting time penalty liability period. (Bokhour Decl. ¶ 29.) Defendant further argued that it would defeat liability for waiting time penalties arising from Plaintiff's meal and rest period claims. (Bokhour Decl. ¶ 29.) Taking these arguments into acccount, Plaintiff applied a 10% risk of defeat at the class certification stage and an additional 10% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $179,026 for Plaintiff's waiting time penalty claim. (Bokhour Decl. ¶ 30.)

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

With respect to Plaintiff's meal and rest period violation claims, the Class Members worked 79,115 shifts during the Class Period. Based on Defendant's sampling of employment records, there was an alleged 80% violation rate for the meal period claims and an alleged assumed 33% violation rate for the rest period claims, as extrapolated from the pre-mediation sampling of Defendant's payroll and timekeeping records. Given the total number of shifts at issue (approximately 79,115), this established maximum values of $1,324,701 for the meal period claims (79,115 total shifts x 80% violation rate x $20.93 per LC § 226.7) and $546,439 for rest period claims (79,115 total shifts x 33% violation rate x $20.93 per LC § 226.7). (Bokhour Decl. ¶ 31.)

However, Defendant vehemently opposed Plaintiff's meal and rest period claims based on the following arguments: (1) Plaintiff's meal and rest period claims fall directly into the category of "individualized issues," (2) that its written policies and practices were compliant with California law, and (3) putative class members had ample latitude regarding whether, when, and how they took their meal and rest breaks. Based thereon, Defendant asserted that a factfinder would have to determine for each Class Member whether a break was missed and why a break was noncompliant/nonexistent because if it was by the employee's choice, no liability attaches to Defendant. (Bokhour Decl. ¶ 32.)

Based on these arguments, Plaintiff believes there is a 75% risk that the Court would deny class certification on these meal period and rest period violation claims. (Bokhour Decl. ¶ 33.) Defendant further argued that, even if class certification were granted, it would defeat these claims on the merits because Defendant utilized compliant meal and rest period policies and practices, and it would present sufficient evidence that the putative Class Members were properly provided with all breaks or paid compensation in lieu thereof. Moreover, Defendant argued that Plaintiff could not present sufficient evidence establishing the number of meal and rest period violations to allow a fact-finder to determine damages appropriately. Plaintiff acknowledged these risks and incorporated a further 50% reduction. Plaintiff, therefore, calculates the risk-adjusted value of the meal period claims to be $165,587, and the rest period claims to be $68,304. (Bokhour Decl. ¶ 34.)

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

Plaintiff estimates that the maximum potential penalties for the derivative wage statement claim are $167,650 (based on approximately 3,353 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, for a total of $167,650 in potential wage statement penalties. *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. ¶ 35.)

In response to Plaintiff's wage statement violation claim, Defendant contended that any alleged violations were not "knowing and intentional," and that Plaintiff could not establish that he 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 the propriety of class certification. (Bokhour Decl. ¶ 36.)

As such, Plaintiff discounted the calculated maximum exposure by 40% for the risk of non-certification and by an additional 20% for the risk of being unsuccessful on the merits to arrive at an estimated total of $80,472. (Bokhour Decl. ¶ 37.)

Plaintiff also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be "stacked." *See Gonzalez v. Corecivic of Tennessee, LLC* (E.D. Cal., Sept. 13, 2018, No. 116CV01891DADJLT) 2018 WL 4388425 ("'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 $335,300 for the pay periods during the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2). (Bokhour Decl. ¶ 38.)

However, this maximum figure fails to account for numerous unclear issues relating to PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for the purely derivative penalties). (Bokhour Decl. ¶ 39.)

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 the 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.* (N.D. Cal. 2016) 193 F. Supp. 3d 1030, 1037 (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 legal obligation to provide legally required pay and benefits to employees," (ii) the employer did not "negligently failed 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."). (Bokhour Decl. ¶ 40.)

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

- Unpaid Wages (Rounding) $21,194
- Regular Rate of Pay Claim: $0 (discounted)
- Labor Code §§ 201 – 203 Claims: $179,026
- Meal Period Claims: $165,587

- Rest Break Claims: $68,304
- Labor Code § 226 Claims: $80,472
- PAGA Claims: $335,300
- **Total Risk-Adjusted Penalties and Damages**: **$849,883**

(Bokhour Decl. ¶ 37.)

Given the realistic value of Plaintiff's claims, the $372,500 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 43% 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. ¶ 41.)

For these reasons, the Parties submit that the agreed-upon Settlement is fair and reasonable.

E. PLAINTIFF'S COUNSEL ARE 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 views of counsel") (internal quotation and citation omitted).

Plaintiff's counsel is also highly experienced in class and PAGA litigation, having litigated upwards of 100 class actions and PAGA cases, having been named "Super Lawyers Rising Stars" in employment litigation (a distinction awarded to only 2.5% of litigators), and having achieved large class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-5.) 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 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). The contents of the proposed Class Notice include (1) the material terms of the Settlement; (2) the proposed attorneys' fees and costs and the Settlement Administration Costs; (3) details about the final fairness hearing and how Class Members may elect to exclude themselves or make an objection; and (4) how Class Members can obtain additional information. (Bokhour Decl., Exhibit B). In addition, it will inform Class Members of their estimated settlement share.

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

The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Class Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the Parties; (2) a statement that the court will exclude the Class Member if the Class Member so requests by a specified date; (3) a procedure for the Class Members to follow in requesting exclusion from the Class; (4) a statement that the judgment, whether favorable or not, will bind all Class Members who do not request exclusion; and (5) a statement that any Class Member who does not request exclusion may if the Class Member so desires, enter an appearance through counsel. The 60-day deadline for Class Members to exclude themselves is reasonable, as it provides Class Members with sufficient time to do so and, if they choose, to seek independent legal advice in the interim. If a Class Member does not opt out, then he or she will automatically be sent a settlement check.

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

The fact that each Class Member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless he or she affirmatively acts to exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no Settlement funds will revert to Defendant; instead, if any checks are not cashed before the objection deadline, the Settlement Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, as set forth in the Settlement Agreement subject to approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the Parties and that the Settlement is fair and favorable to the Class Members.

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

Under the terms of the Settlement Agreement, Class Counsel requests an amount not exceeding one third of the Settlement Amount in attorneys' fees. *See, 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-821-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. ¶¶ 44-45.)

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 exceeding $10,000. 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 complaint; providing documents and information about Defendant's compensation plans and meal/rest policies/procedures; 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. The Plaintiff also assumed significant risk in bringing this litigation—had he lost, he could have been ordered to pay Defendant's costs. (*See* Declaration of Jano Martinez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement).

The requested Class Representative Service Payment falls within the 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., Sept. 29, 2010, No. C07-

02951SI) 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. 482, 493 (approving service awards in the amount of $15,000 each from a $300,000 settlement fund in a wage/hour class action).

VI. THE COURT SHOULD APPOINT ILYM GROUP AS SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties have selected ILYM Group to serve as the Settlement Administrator. ILYM Group is experienced in administering class action settlements and will not exceed $6,000 to administer this class action Settlement. (Bokhour Decl. ¶ 46.)

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last 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. Subject to the Court's approval, the Settlement Agreement stipulates that the Court schedules a hearing for final approval.

VIII. CONCLUSION

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

Dated: September 2, 2025

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

BY: ______________________

MEHRDAD BOKHOUR
JOSHUA FALAKASSA
Attorneys for Plaintiff and the Putative Class