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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ARTEM TOGONIDZE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

KLA CORPORATION, a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 24CV431363

Assigned to the Hon. Theodore C. Zayner

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

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

HEARING INFO

Date: January 14, 2026

Time: 1:30 p.m.

Dept.: 19

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 14, 2026, at 1:30 p.m. or as soon thereafter as the matter may be heard by the Honorable Theodore C. Zayner in Department 19 of the Santa Clara County Superior Court for the State of California, located at 191 North First Street, San Jose, CA 95113, Plaintiff Artem Togonidze, 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 settlement only;
2. Preliminarily appointing Plaintiff Artem Togonidze as Class Representative for purposes of settlement only;
3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C., Joshua Falakassa of Falakassa Law, P.C., Maggie K. Realin of Cohelan Khoury & Singer, David R. Markham and Lisa R. Brevard of The Markham Law Firm 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 Artem Togonidze 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 arguments as may be presented to the Court at the hearing of this motion.

1 Dated: December 17, 2025

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

2
3 BY:

4 MEHRDAD BOKHOUR
5 JOSHUA FALAKASSA

6 *Attorneys for Plaintiff and the Putative Class*
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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	2
A.	THE PARTIES AND THE PROPOSED CLASS.....	2
B.	PROCEDURAL HISTORY	3
C.	SUMMARY OF PLAINTIFF’S CLAIMS	4
D.	SUMMARY OF DEFENDANT’S DEFENSES	5
III.	SUMMARY OF THE PROPOSED SETTLEMENT	6
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	6
B.	NOTICE PROCEDURES	7
C.	EXCLUSION AND OBJECTION PROCEDURES	8
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	9
E.	TIMING OF SETTLEMENT DISBURSEMENTS.....	9
F.	TAX TREATMENT	10
G.	PARTICIPATING CLASS MEMBERS’ RELEASE OF CLAIMS	10
IV.	PROVISIONAL CERTIFICATION OF THE CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	11
A.	NUMEROSITY AND ASCERTAINABILITY	12
B.	WELL-DEFINED COMMUNITY OF INTEREST	13
1.	Commonality	13
2.	Typicality.....	13
3.	Adequacy of Representation.....	13
4.	Superiority	14
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE.....	14
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT.....	14

1	B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE	
2	NEGOTIATIONS	16
3	C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT	
4	PRELIMINARY APPROVAL OF THE SETTLEMENT.....	16
5	D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS.....	16
6	1. Failure to Pay for All Wages	18
7	2. Waiting Time Penalties	18
8	3. Failure to Provide Meal and Rest Periods or Pay Compensation in Lieu Thereof at the	
9	“Regular Rate of Pay”	19
10	4. Failure to Provide Accurate Itemized Wage Statements	20
11	5. Failure to Reimburse for Necessary Business Expenses	20
12	6. PAGA Penalties	21
13	E. PLAINTIFF’S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION....	23
14	F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES.....	23
15	G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES MAXIMAL	
16	RECOVERY FOR CLASS MEMBERS	24
17	H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR	25
18	I. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND APPROPRIATE	25
19	VI. THE COURT SHOULD APPOINT CPT CLASS ACTION SETTLEMENT	
20	ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR	26
21	VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING	27
22	VIII. CONCLUSION	27

TABLE OF AUTHORITIES

CASES

<i>Amchem Prods., Inc. v. Windsor</i> (1997) 521 U.S. 591, 620	12
<i>Archibald v. Cinerama Hotels</i> , (1976) 15 Cal.3d 853, 861	24
<i>Arenas v. El Torito Rests., Inc.</i> (2010) 183 Cal.App.4th 723, 732	13
<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4th 540, 546	13
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. 2011) No. 1:09-cv-1662 OWW MJS, 2011	26
<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4th 1374, 13150	14
<i>Cho v. Seagate Tech. Holdings, Inc.</i> (2009) 177 Cal.App.4th 734, 742-43	15
<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016).....	22
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1807 at n.19	12, 15, 16
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15, 18, <i>aff'd</i> (9th Cir. 1981).....	23
<i>Gonzalez v. Corecivic of Tennessee, LLC</i> , No. 1:16-cv-01891 (E.D. Cal. Sept. 12, 2018).....	21
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 133.....	16, 23
<i>Laffite v. Robert Half Int'l Inc.</i> (2016) 1 Cal.5th. 480	25
<i>Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> (9th Cir. 2001) 244 F.3d 1152, 1162	14
<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal. Dec. 31, 2008) No. C 06-6883	25
<i>Medraza v. Honda of N. Hollywood</i> (2008) 166 Cal.App.4th 89, 101	12
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	17
<i>Officers for Justice v. Civil Service Com.</i> (9th Cir. 1982) 688 F.2d 615, 633	12, 15
<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484, 2007.....	25
<i>Ross v. US Bank National Association</i> (N.D. Cal. 2010) No. C 07-02951 SI, 2010	26
<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM)	25
<i>Stuart v. RadioShack Corp.</i> (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 315564525	
<i>Washington Mut. Bank v. Superior Court</i> (2001) 24 Cal.4th 906, 913	13
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	14, 15, 17

STATUTES

California Code of Civil Procedure § 382	2, 12
California Labor Code § 201 – 203	18
California Labor Code § 203	18
California Labor Code § 226	18
California Labor Code § 226(e).....	20
California Labor Code § 2699(h).....	21
Private Attorneys General Act	5

OTHER AUTHORITIES

<i>Manual For Complex Litigation</i> (Third) § 30.41 (1995).....	15
Newberg & Alba Conte, <i>Newberg on Class Actions</i> (“Newberg”) § 3:13 (4th ed. 2002) 13, 15, 16	

RULES

California Rule of Court 3.766	24
California Rule of Court 3.766(d),.....	24
California Rule of Court 3.769(a).....	14
California Rule of Court 3.769(c).....	14
California Rule of Court 3.769(d).....	12
California Rule of Court 3.769(e-g).....	14

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Artem Togonidze (“Plaintiff”), individually and on behalf
4 of all others similarly situated, seeks preliminary approval of the Class Action and PAGA
5 Settlement Agreement. Subject to Court approval, Plaintiff and Defendant KLA Corporation
6 (“Defendant”) have agreed to settle Plaintiff’s and the proposed Class Members’ claims against
7 Defendant for a Gross Settlement Amount of \$4,100,000.

8 Plaintiff seeks to represent a Class of similarly situated persons who are or were previously
9 employed by Defendant in California and classified as non-exempt employees from February 20,
10 2020 to June 13, 2025. (“Class Period”). Likewise, the Aggrieved Employees include all persons
11 who are or were previously employed by Defendant in California and classified as a non-exempt
12 employee at any time from February 11, 2023 to June 13, 2025 (“Aggrieved Employees”).¹

13 Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s
14 application for a reasonable award of attorney’s fees not to exceed 35% of the Settlement Amount,
15 Class Counsel’s litigation costs not to exceed \$30,000, Settlement Administration Costs not to
16 exceed \$12,000, PAGA penalties of \$205,000 (of which \$153,750 or 75% will be paid to the
17 LWDA and the remaining \$51,250 or 25% will be paid to the Allegedly Aggrieved Employees),
18 and a Service Award not to exceed \$10,000 to the named Plaintiff as follows:

19

	Total Amount
<i>Gross Settlement Amount</i>	\$4,100,000.00
Attorneys’ Fees (not to exceed 35% of GSA)	\$1,435,000.00
Litigation Costs (not to exceed)	\$30,000.00
Administrator Costs (not to exceed)	\$12,000.00
PAGA payment to LWDA (75% of \$205,000)	\$153,750.00
PAGA payment to Aggrieved Employees (25% of 205,000)	\$51,250.00
Plaintiff’s Service Award	\$10,000.00
<i>Net Settlement Amount</i>	\$2,408,000

25

26

27 ¹ The Class Action and PAGA Settlement Agreement is attached as Exhibit “A” to the Declaration
28 of Mehrdad Bokhour (“Bokhour Decl.”) submitted herewith and is hereinafter referred to as the
“Settlement Agreement”. “S.A.” or the “Settlement”. The proposed Class Notice is attached to the Bokhour
Decl. as Exhibit “B.”

As of the Parties' mediation, the Class included approximately 1,138 non-exempt employees who all work and/or worked for Defendant in California during the Class Period. Plaintiff contends that, regardless of their roles, all non-exempt employees worked under the same workplace policies and practices, and therefore, the Individual Settlement Payments will be paid on a pro-rata basis based on the number of workweeks during the Class Period. Assuming a total class size of 1,138 Settlement Class Members, the average payment to each will be approximately \$2,115, and the highest payment is estimated to be approximately \$5,000. 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 worked 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 a settlement check 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, approving the proposed Class Notice, appointing Plaintiff's counsel as Class Counsel, appointing CPT Group, Inc. ("CPT") as the Settlement Administrator, and scheduling a hearing for the final approval of the Settlement.

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED CLASS

During the Class Period, Plaintiff and other putative Class Members were employed by Defendant in various non-exempt positions, including, but not limited to, LKS Technical Instructors, Laboratory Service Engineers, HPC Engineering Technicians, Associate Test Engineers, Engineering Tool Managers, and other similar roles. In these positions, Plaintiff and

the putative Class Members performed a range of duties supporting Defendant’s business operations, including the provision of process control and yield management systems for the semiconductor and related nanoelectronics industries.

Plaintiff alleges that, during the Class Period, Defendant failed to comply with multiple provisions of the California Labor Code and applicable Industrial Welfare Commission Wage Orders, resulting in unpaid wages, meal and rest period violations, and other related statutory violations. Defendant denies all allegations of wrongdoing and liability.

The proposed Class consists of all current and former individuals who were employed by Defendant in California, classified as non-exempt employees, at any time during the period from February 20, 2020 to June 13, 2025. (S.A. ¶ 1.3.)

B. PROCEDURAL HISTORY

On February 8, 2024, Plaintiff submitted his PAGA Notice to the LWDA and alleged claims under the California Labor Code. (Bokhour Decl. ¶ 13.)

On February 20, 2024, Plaintiff filed a wage-and-hour class action Complaint alleging causes of action for: failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); and Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). (Bokhour Decl. ¶ 14.)

On April 16, 2024, Plaintiff filed a First Amended Class Action and Representative Action Complaint (“FAC”) and asserted a fifth cause of action for violations of the PAGA. Plaintiff later filed a Second Amended Complaint (“SAC”) asserting claims for unpaid minimum and overtime wages, meal and rest period violations, sick pay violations, inaccurate wage statements, untimely payment of wages during employment and upon separation, failure to indemnify business expenses, failure to maintain and provide required employment records, Wage Order violations, Labor Code sections 558 and 558.1 violations, and unfair competition. The SAC conforms the class definition to the definition set forth in this Agreement and is the operative complaint in the action (the “Operative Complaint”). (Bokhour Decl. ¶ 15.)

Defendant denied 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. ¶ 16.) In preparation for mediation, the Parties agreed to an informal discovery process where information relating to the applicable policies and procedures, a robust (25%) sampling of payroll and timekeeping records, the 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 February 13, 2025, the Parties participated in a mediation session before mediator Daniel Turner, Esq., an experienced mediator who has mediated numerous wage-hour class actions. The case resolved after Mr. Turner issued a mediator’s proposal that the Parties accepted on March 13, 2025. (Bokhour Decl., ¶ 17, Exhibit “A”). (*Id.*)

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

C. SUMMARY OF PLAINTIFF’S CLAIMS

Plaintiff alleges multiple wage and hour violations on behalf of himself and other non-exempt employees who worked for Defendant during the Class Period. (Bokhour Decl. ¶ 18.)

First, Plaintiff claims that he and other non-exempt employees were not compensated for all hours worked due to Defendant’s alleged unlawful timekeeping practices. (Bokhour Decl. ¶ 19.)

Next, Plaintiff asserts that Defendant failed to pay overtime at the correct rate for all hours worked beyond eight hours in a workday or 40 hours in a workweek because of its alleged miscalculation of the “regular rate of pay.” (Bokhour Decl. ¶ 20.)

Moreover, Plaintiff contends that Defendant maintained deficient meal and rest period policies and practices that failed to provide Class Members with timely, compliant meal and rest periods or compensate them in lieu thereof at the correct “regular rate of pay.” (Bokhour Decl. ¶ 21.) In addition, Plaintiff brought a claim for Defendant’s failure to reimburse for necessary

business expenditures. (Bokhour Decl. ¶ 22.)

As a result of the above violations, Plaintiff alleges that Defendant failed to pay final wages in a timely manner upon employees' separation from employment. Plaintiff also asserts that Defendant failed to provide accurate, itemized wage statements and seeks civil penalties under the Private Attorneys General Act (PAGA) for the alleged Labor Code violations set forth above. (Bokhour Decl. ¶ 23.)

D. SUMMARY OF DEFENDANT'S DEFENSES

Defendant contested and denied each of Plaintiff's allegations on the merits and the propriety of the class and PAGA action. (Bokhour Decl. ¶ 24.)

First, Defendant argued that their timekeeping and pay policies and practices were compliant with California law, and that the calculation of the "regular rate of pay" properly excluded non-discretionary bonus payments and other compensation. (Bokhour Decl. ¶ 25.)

Defendant further argued that their meal and rest period policies and practices complied with California law and that non-exempt employees were at all times provided with meal periods and authorized and permitted to take rest periods. Defendant claimed that it also posted the applicable Wage Order in prominent locations at each worksite. Defendant further contended that Plaintiff's wage-and-hour claims failed because Plaintiff and non-exempt employees attested that: (1) their hours worked were accurate, (2) they were provided compliant meal periods, and (3) they were authorized and permitted to take compliant rest periods. (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, given that Plaintiff and non-exempt employees did not suffer underlying meal and rest period violations. (Bokhour Decl. ¶ 27.)

Moreover, Defendant also argued that it had a good faith dispute defense as to waiting time penalty and wage statement claims, based on its lawful wage-and-hour policies and practices, as well as Plaintiff and non-exempt employees' attestations as to the underlying claims that could trigger these penalties. (Bokhour Decl. ¶ 28.)

Furthermore, Defendant contended that Plaintiff's claims were highly individualized, that

1 non-exempt employees would not be entitled to late pay penalties, and that there was no stand-
2 alone cause of action for Plaintiff's sick pay claim. (Bokhour Decl. ¶ 29.) The putative class
3 included over 80 unique job positions across different operational projects at various worksites,
4 with over 250 different managers and work arrangements. (Bokhour Decl. ¶ 30.) Specifically,
5 Defendant contended that Plaintiff's claims were not suitable for class certification because
6 individualized inquiries would be required to establish, amongst other things, which employees,
7 if any, took meal periods of less than 30 minutes and why a particular employee received a meal
8 period of less than 30 minutes on a particular shift; which non-exempt employees, if any, had a
9 non-compliant rest period, on which shift, and the reason for each purported non-compliant rest
10 period; and which non-exempt employees, if any, worked off the clock in violation of its policies
11 and practices, particularly given non-exempt employees' attestations that their hours worked were
12 accurate (and attested they did not suffer meal or rest period violations). (Bokhour Decl. ¶ 31)

13 Finally, Defendant argued that PAGA penalties, if any, are subject to the discretion of the
14 Court and would be reduced, based on the defenses set forth above and the evidence it produced
15 prior to mediation. (Bokhour Decl. ¶ 32.)

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

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

18 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

19 The \$4,100,000 Settlement Amount is non-reversionary and will be paid out to Class
20 Members without the need to submit a claim form or take any affirmative action. It includes (1)
21 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a Service Award not to exceed
22 \$10,000 to the named Plaintiff, as approved by the Court; (3) Settlement Administration Costs,
23 not to exceed \$12,000, as approved by the Court; (4) a \$205,000 PAGA Payment, 75 percent of
24 which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the
25 aggregate of all Individual Settlement Payments of the Settlement Class Members. (S.A. ¶¶ 5-8
26 *et seq.*)

27 After all Court-approved deductions from the Settlement Amount, it is estimated that
28 \$2,408,000 will be available to pay the Individual Settlement Payments to approximately 904

1 Settlement Class Members. As noted above, the average Individual Settlement Payment to
2 Settlement Class Members is approximately \$2,663, and the highest payment is estimated to be
3 approximately \$5,200, which is a fair and reasonable recovery.

4 **B. NOTICE PROCEDURES**

5 The proposed Class Notice will be provided to the Class Members showing the estimated
6 number of Compensable Workweeks for which he/she will be credited (**Exhibit “B”** to the
7 Bokhour Decl.). Within thirty (30) days after entry by the Court of its Order of Preliminary
8 Approval, Defendant shall provide the Settlement Administrator with a list of all Class Members
9 containing each Class Member’s full names, last known addresses, telephone numbers, Social
10 Security Numbers, and dates of employment and/or number of Workweeks Worked as non-
11 exempt employees of Defendant in California during the Class Period and the PAGA Period for
12 each Settlement Class Member, and any other relevant information needed by the Settlement
13 Administrator to calculate Individual Settlement Payments (the “Class Data”). (S.A. ¶ 13.2.)

14 No later than fourteen (14) days after receiving the Class Data, the Settlement
15 Administrator shall prepare and mail the Court-approved Class Notice to all Class Members via
16 first-class U.S. mail. The Settlement Administrator will populate the Class Notice with each Class
17 Member’s information, including the number of Compensable Workweeks, as reflected in
18 Defendant’ records. (S.A. ¶ 13.3.4.)

19 If any Class Notice mailed to a Class Member is returned as undelivered by the U.S.
20 Postal Service, the Settlement Administrator shall use standard devices, including a skip trace, to
21 obtain forwarding addresses of Class Members if any envelopes are returned.

22 Any Class Notices returned to the Settlement Administrator as non-delivered on or before
23 the Response Deadline, as defined in Paragraph 1.40 of the Settlement Agreement, shall be
24 remailed to the forwarding addresses affixed thereto. If no forwarding address is provided, the
25 Settlement Administrator will take steps to ensure that the Class Notice is mailed to all Class
26 Members, including the utilization of the National Change of Address Database maintained by
27 the U.S. Postal Service and shall make reasonable efforts, conducting a “skip-trace” to obtain an
28 updated mailing address for a Class Member and, if applicable to update the mailing addresses

1 within ten (10) calendar days of receiving the returned Class Notice.

2 If the Settlement Administrator learns of a failed mailing and obtains a forwarding or
3 updated address for that Class Member, the Class Notice will be re-mailed to the Class Member
4 within ten (10) calendar days of receipt of the updated address. The address identified by the
5 Settlement Administrator as the current mailing address shall be presumed to be the best mailing
6 address for each Class Member. The re-mailed Class Notice shall be identical to the original Class
7 Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or
8 objection must be returned by the later of the Response Deadline or fourteen (14) days after the
9 remailing of the Notice.

10 **C. EXCLUSION AND OBJECTION PROCEDURES**

11 Class Members who do not opt out of the Settlement in a timely manner will be deemed
12 to participate in the Settlement and shall become Settlement Class Members without having to
13 submit a claim form or take any other action. The Class Notice shall inform the Class Members
14 of their right to opt out of the Settlement. To request exclusion, a Class Member must timely
15 submit a written Request for Exclusion by fax, email, or mail to the Settlement Administrator by
16 the Response Deadline.

17 The Class Notice shall inform the Class Members of their right to object to the
18 Settlement. Any Participating Class Member may object to the Settlement by submitting a written
19 objection by fax, email, or mail to the Settlement Administrator no later than the Response
20 Deadline. The objection must include the case name and number and must set forth, in clear and
21 concise terms, the reasons the objector believes the Settlement is not fair, reasonable, and
22 adequate, including the legal and factual arguments supporting the objection. The Settlement
23 Administrator will promptly serve copies of any objections on Class Counsel and Defendant's
24 counsel. Class Members are entitled to appear at the Final Approval Hearing, either in person or
25 through counsel retained at their own expense, regardless of whether they submitted a timely
26 written objection. The exclusion and objection procedures described herein are intended to
27 conform to Paragraph 13 of the Settlement Agreement.

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The Individual Settlement Payment for each Settlement Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant as follows: using the Class Data or using the Compensable Workweeks, while also accounting for any timely submitted Requests for Exclusion, the Settlement Administrator will calculate the total Compensable Workweeks for all Settlement Class Members (if necessary). Each Participating Class Member's Individual Settlement Amount shall be based on his or her proportionate Workweeks Worked during the Class Period compared to the total number of Workweeks Worked 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 in California than Defendant's records show by timely submitting evidence to the Settlement Administrator.

E. TIMING OF SETTLEMENT DISBURSEMENTS

Within 45 calendar days after the Effective Date, Defendant will deposit money into an account, through the Settlement Administrator, in an amount equal to the GSA. (S.A. ¶ 10.1.) Within ten (10) days after Defendant fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. 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. (S.A. ¶ 10.3.)

If any settlement check is returned to the Settlement Administrator within 120 days of mailing, the Settlement Administrator will, within seven (7) days of receipt of the returned settlement check, perform a skip trace to locate the individual, notify Defense Counsel and Class Counsel of the results, and re-mail the returned check to the new address.

Settlement checks will be void 180 calendar days after the date of mailing. Any Individual

Class Payment or Individual PAGA Payment not cashed within that 180-day period will be transmitted to the cy pres recipient, Legal Aid at Work, subject to California Code of Civil Procedure section 384, subdivision (b). The releases will remain binding on all Settlement Class Members, including those who do not cash their checks. If an amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to submit a proposed amended judgment.

F. TAX TREATMENT

The Individual Settlement Amounts paid to Participating Class Members for Class Claims will be allocated for tax purposes based on the allegations in the Action as follows: twenty percent (20%) will be allocated as wages subject to withholdings of all applicable local, state, and federal taxes; and eighty percent (80%) will be allocated as interest and as civil penalties (pursuant to, *e.g.*, California Labor Code Sections 203 and 226) from which no taxes will be withheld. (S.A. ¶ 11.4.) This allocation reasonably reflects the nature of the claims asserted and resolved. The Wage Portion is tied to the disputed wage components of the case, including alleged unpaid straight time and overtime wages and related regular rate issues. The Non-Wage Portion reflects the predominance of statutory remedies asserted in the Action, including penalties and interest associated with alleged waiting time and wage statement violations and other statutory claims. In addition, consistent with the Settlement Agreement, Defendant will pay any applicable employer side payroll taxes in addition to the Gross Settlement Amount.”

To the extent required, the Settlement Administrator will issue each Settlement Class Member an Internal Revenue Service Form W-2 and comparable state forms concerning the wage allocation and Form 1099 concerning the penalties and interest allocations.

G. PARTICIPATING CLASS MEMBERS’ RELEASE OF CLAIMS

In exchange for these payments, the Settlement Agreement provides that the Participating Class Members will release the Released Parties of the claims alleged or could have been alleged based on the facts stated in the operative complaint as follows:

By operation of the entry of the Court’s Final Approval Order and judgment, each Participating Class Member and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians

will release the Released Parties from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind or nature, contingent or accrued, and irrespective of theory of recovery, that arose during the Class Period and which were or could have been brought based on the facts or claims alleged in any version of the complaints filed in the Action. The released claims means any and all claims that were pled or could have been pled, based on, or which arise out of or relate to, the facts alleged in the Operative Complaint in the Action, arising during the Class Settlement Period including failure to pay minimum and straight time wages; failure to pay overtime wages; failure to provide compliant meal periods or pay meal period premiums; failure to authorize and permit rest periods or pay rest period premiums; failure to timely pay wages at termination; failure to provide accurate itemized wage statements; failure to indemnify employees for expenditures; failure to pay sick pay; failure to pay vacation wages; failure to pay split shift premiums and/or shift differentials; off-the-clock wages; regular rate of pay violations; failure to pay wages timely during employment; failure to keep requisite payroll records; and unfair business practices. This also includes, but is not limited to, claims arising under California Labor Code sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 226, 226.7, 227.3, 246, 510, 512, 516, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802; the applicable IWC Wage Orders, including but not limited to IWC Wage Order 1-2001 and 4-2001; the California Unfair Competition Law; and Business and Professions Code section 17200, *et seq.* Participating Class Members shall further waive their right to pursue individual lawsuits as to any of the claims released herein against the Released Parties to the extent such claims accrued during the Class Period. The release of claims shall include a Civil Code Section 1542 release as to the released claims only.

(S.A. ¶ 12.1.)

Likewise, the Aggrieved Employees will release all PAGA Claims as follows:

As to claims for civil or statutory penalties for violation of PAGA, the State of California (through Plaintiff as a Private Attorney General) and all Aggrieved Employees including Plaintiff shall release the Released Parties for all claims for penalties under the PAGA during the PAGA Period that were or could have been alleged in the Action based on, or which arise out of or relate to, the facts or claims alleged in any version of the Complaint and/or the LWDA Letters irrespective of the underlying theory of recovery supporting the claim for PAGA penalties. This includes, but is not limited to, PAGA claims based on California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6, 226, 226.7, 227.3, 246, 510, 512, 516, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2800, 2802; and the applicable IWC Wage Orders. The release of claims shall include a Civil Code Section 1542 release as to the released claims only.

(S.A. ¶ 12.2.)

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

1 **APPROPRIATE FOR PURPOSES OF SETTLEMENT**

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

7 The reasons include that no trial is anticipated in a settlement class, so the case
8 management issues inherent in determining if the class should be certified need not be confronted;
9 and the trial court’s fairness review of the settlement protects the interests of the non-
10 representative Class Members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th Cir.
11 1982) 688 F.2d 615, 633 (“Th[e] relationship between the certification determination and the
12 merits of the case is further attenuated within the context of the settlement evaluation process . .
13 . [C]ertification issues raised by class action litigation that is resolved short of a decision on the
14 merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S.
15 591, 620 (“Confronted with a request for settlement-only class certification, a district court need
16 not inquire whether the case if tried, would present intractable management problems . . . for the
17 proposal is that there be no trial.”).

18 As discussed below, for the purposes of this Settlement only, Plaintiff requests that this
19 Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 382.

20 **A. NUMEROSITY AND ASCERTAINABILITY**

21 Numerosity is met if a proposed class is so large that joinder of all members would be
22 impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if
23 the class members can be objectively identified and given notice of the litigation without
24 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
25 89, 101.

26 According to Defendant’ records, there are approximately 904 Class Members. Plaintiff
27 contends that this figure undoubtedly satisfies the numerosity requirement.

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

2 1. Commonality

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

7 Here, Plaintiff contends that the Class was subject to common policies and practices
8 relating to the provision of meal and rest periods and payment of minimum and overtime wages,
9 provision of wage statements, calculation of the “regular rate of pay,” and final pay upon
10 separation/termination, among other things. While the Parties dispute whether a class would be
11 appropriate if the litigation were to continue, they agree to class certification for the purposes of
12 this Settlement only.

13 2. Typicality

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

22 3. Adequacy of Representation

23 The proposed class representative must establish that they will adequately represent the
24 proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th
25 540, 546. Specifically, Plaintiff’s position is that he is adequate to represent the Class because
26 Defendant employed him during the Class Period, he experienced the same wage and hour
27 practices as the rest of the Class, he understands his duties as Class Representative, has been
28 willing to undergo the risk of litigation, and has no conflicts of interest.

Adequacy may be established by the fact that counsel is an experienced practitioner. *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 there will be a global resolution of all claims at once, which fosters judicial economy. 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.

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

1 625.

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

9 [T]he strength of Plaintiffs' case, the risk, expense, complexity and likely
10 duration of further litigation, the risk of maintaining class action status
11 through trial, the amount offered in settlement, the extent of discovery
12 completed and the stage of the proceedings, the experience and views of
13 counsel . . . and the reaction of the Class Members to the proposed
14 settlement.
15 *Dunk, supra* (setting forth a non-exhaustive list of factors for the court's consideration at final
16 approval).

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

24 At the preliminary approval stage, the Court needs only to determine that the settlement
25 falls within the "range of possible judicial approval" so that notice to the class and the scheduling
26 of the fairness hearing is worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
27 preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies
28 ... and [the settlement] appears to fall within the range of possible approval." *Manual For
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 demonstrated 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 their defenses, the Class Members may not have received any substantial monetary recovery.

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 116, 133. The *Kullar* requirement was further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th

399, which held that an explicit statement of the maximum theoretical amount that the class could recover was not necessary:

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

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

Of relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. As further detailed below, in addition to disputing the merits of Plaintiff’s claims, Defendant disputed whether Plaintiff could obtain class certification, arguing *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 total Settlement Amount is a compromise figure, the Parties effectively weighed and considered the potential risks and opportunities,

1 resulting in a fair and equitable Settlement.

2 Based on detailed data obtained through informal discovery and information exchanges,
3 Plaintiff's counsel estimates the following key figures through the mediation date: (1)
4 approximately 1,138 Class Members who worked approximately 137,320 workweeks. (Bokhour
5 Decl. ¶ 33.)

6 **1. Failure to Pay for All Wages**

7 Plaintiff alleges that Defendant failed to include non-discretionary bonuses and other
8 forms of incentive compensation when calculating the employees' "regular rate of pay" for
9 purposes of overtime and sick pay wages. Defendant disputes these allegations, asserting that they
10 properly adjusted overtime rates where required, correctly excluded certain payments consistent
11 with applicable law, and that any potential underpayments were made in good faith and were de
12 minimis. (Bokhour Decl. ¶ 34.)

13 While Plaintiff believes that Defendant's sampling of pay records revealed "regular rate
14 of pay" violations, the underpayments of overtime and sick wages were minimal throughout the
15 Class Period. (Bokhour Decl. ¶ 35.)

16 Due to this and in light of Defendant's other defenses, Plaintiff completely discounted
17 these two claims, keeping in mind that the true significant value of these unpaid wages claims lies
18 in the derivative claims for waiting time penalties under Labor Code § 203 and wage statement
19 violations under Labor Code § 226 as discussed below. (Bokhour Decl. ¶ 36.)

20 **2. Waiting Time Penalties**

21 With respect to Plaintiff's waiting time penalty claim, approximately 256 Class
22 Members were separated from their employment with Defendant during the relevant statutory
23 period. As such, the maximum potential penalty under Labor Code § 201 – 203 is \$2,576,793.60
24 (256 employees x 8 hours per day x average hourly rate of \$41.94 x 30 days). (Bokhour Decl. ¶
25 37.)

26 However, in response, Defendant argued that it would defeat the waiting time penalty
27 claim because any failure to pay wages was not willful, and in good faith, and occurred before
28 the waiting time penalty liability period. (Bokhour Decl. ¶ 25.) Defendant further argued that it

would defeat liability for waiting time penalties arising from Plaintiff's meal and rest period claims. (Bokhour Decl. ¶ 38.)

Therefore, Plaintiff applied a 50% risk of defeat at the class certification stage and an additional 50% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of \$644,198 for Plaintiff's waiting time penalty claim. (Bokhour Decl. ¶ 39.)

3. Failure to Provide Meal and Rest Periods or Pay 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 582,321 shifts during the Class Period. Based on Defendant's sampling of employee time and payroll records, the pre-mediation sampling indicated an alleged 54% violation rate for meal period claims and an alleged 25% violation rate for rest period claims. Given the total number of shifts at issue (approximately 582,321), this established maximum values of \$13,188,173 for the meal period claims (582,321 total shifts x 54% violation rate x \$41.94 per LC § 226.7) and \$6,105,635 for rest period claims (582,321 total shifts x 25% violation rate x \$41.94 per LC § 226.7). (Bokhour Decl. ¶ 40.)

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, if so, why it was noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to Defendant. (Bokhour Decl. ¶ 41.)

Based on these arguments, Plaintiff believes there is a 35% risk that the Court would deny class certification on these meal period and rest period violation claims. (Bokhour Decl. ¶ 42.)

Defendant further argued that, even if certification were granted on these claims, 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

1 were adequately provided with all breaks or paid compensation in lieu thereof. Moreover,
2 Defendant argued that Plaintiff could not present sufficient evidence establishing the number of
3 meal and rest period violations to allow a factfinder to determine damages appropriately. Plaintiff
4 acknowledged these risks and incorporated a further 50% reduction. Plaintiff, therefore, calculates
5 the risk-adjusted value of the meal period claims to be \$4,286,156, and the rest period claims to
6 be \$1,984,331. (Bokhour Decl. ¶ 43.)

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

8 Plaintiff estimates that the maximum potential penalties for the derivative wage statement
9 claim are \$1,044,450 (based on approximately 20,889 allegedly violative wage statements issued
10 during the Class Period). In calculating Defendant's exposure, Plaintiff gave Defendant the
11 benefit of assuming Plaintiff could only obtain the "initial" wage statement penalty of \$50 per
12 violation, for a total of \$1,044,450 in potential wage statement penalties. Lab. Code § 226(e)
13 (providing for a \$50 penalty for "initial" violations); *Amaral v. Cintas Corp.* No. 2, 163
14 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate applies until the employer has
15 been notified that it is violating a Labor Code provision.) (Bokhour Decl. ¶ 44.)

16 In response to Plaintiff's wage statement violation claim, Defendant contended that any
17 alleged violations were not "knowing and intentional," and that Plaintiff could not establish that
18 he or anyone else suffered "injury" because of any alleged wage statement violations. Further,
19 Defendant relied on their defenses to Plaintiff's underlying claims on the merits and the propriety
20 of class certification. (Bokhour Decl. ¶ 45.)

21 As such, Plaintiff discounted the calculated maximum exposure by 40% for the risk of
22 non-certification and by an additional 75% for the risk of being unsuccessful on the merits to
23 arrive at an estimated total of \$156,667. (Bokhour Decl. ¶ 46.)

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

25 Plaintiff alleged that he and the Class Members were not reimbursed for necessary
26 business expenses incurred while working for Defendant, which included reimbursement for
27 personal cell phone use for work purposes. Based on Defendant's data, there was a total of
28 approximately 1,138 non-exempt employees and 137,320 workweeks during the Class Period.

Assuming \$10.00 weekly pay for cell phone use, Plaintiff calculated that Defendant would be liable for a total of \$1,373,200 in unreimbursed business expenses. (Bokhour Decl. ¶ 47.)

However, Defendant argued that Plaintiff and the Class were not required to use their cell phones for work purposes and that it was thus not a necessary business expense. Further, Defendant argued that Plaintiff and the Class were adequately reimbursed for cell phone use to the extent they even used phones at all. Finally, Defendant argued that any reimbursement claim required an individualized inquiry and that these claims were therefore not suitable for class certification. (Bokhour Decl. ¶ 48.)

Accordingly, Plaintiff discounted this maximum amount by 80% for risk of non-certification and by an additional 40% for risk of being unsuccessful on the merits to arrive at an estimated exposure of \$44,784. (Bokhour Decl. ¶ 49.)

6. PAGA Penalties

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*, 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 \$3,533,900 for the pay periods during the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2). (Bokhour Decl. ¶ 50.)

However, this maximum figure does not account for significant legal and factual uncertainties regarding the assessment and potential reduction of PAGA penalties. First, while Plaintiff asserts that stacking of penalties is permissible, the extent to which a court would allow multiple penalties per pay period remains unsettled. Courts have discretion to determine whether stacking is appropriate, particularly when penalties arise from derivative violations. Second, Labor Code § 2699(h) grants courts broad authority to reduce PAGA penalties if awarding the full amount would be “unjust, arbitrary and oppressive, or confiscatory.” Courts have exercised this discretion in similar cases, recognizing that full penalties are not always warranted when an employer did not act in bad faith, deliberately evade clear obligations, or negligently fail to

understand its wage-and-hour responsibilities. See *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (finding PAGA penalty reductions appropriate where legal obligations were genuinely unclear and strict enforcement would be excessive). (Bokhour Decl. ¶ 51.)

Considering these risks, including the possibility of judicial reduction of penalties and Defendant's anticipated defenses, Plaintiff applied an 80% discount to the maximum PAGA exposure. This discount accounts for the uncertainty of penalty stacking and the likelihood that the court would exercise its discretion to reduce penalties based on the specific circumstances of the case. Accordingly, Plaintiff estimates the reasonable PAGA penalty exposure to be \$706,780 after applying this discount. (Bokhour Decl. ¶ 52.)

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

•	Overtime Regular Rate Claim:	\$0 (<i>discounted</i>)
•	Labor Code §§ 201 – 203 Claims:	\$644,198
•	Meal Period Claims:	\$4,286,156
•	Rest Break Claims:	\$1,984,331
•	Labor Code § 226 Claims:	\$156,667
•	Reimbursement Claims:	\$373,200
•	PAGA Penalties	\$706,780
•	<u>Total Risk-Adjusted Penalties and Damages:</u>	\$8,151,332

(Bokhour Decl. ¶ 53.)

Given the realistic value of Plaintiff's claims, the \$4,100,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 50% 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. ¶ 54.)

Settlements achieving between 25% and 60% of the estimated risk-adjusted exposure are routinely approved as fair and reasonable in California wage-and-hour actions (see *Wershba*, supra; *Kullar*, supra). For these reasons, the Parties submit that the agreed-upon Settlement is fair and reasonable.

1 **E. PLAINTIFF’S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
2 **LITIGATION**

3 The view of the attorneys actively conducting the litigation is entitled to significant
4 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
5 Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.*
6 (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of
7 counsel”) (internal quotation and citation omitted).

8 Plaintiff’s counsel is also highly experienced in class and PAGA litigation, having
9 litigated upwards of 100 class actions and PAGA cases, having been named “Super Lawyers
10 Rising Stars” in employment litigation (a distinction awarded to only 2.5% of litigators), and
11 having achieved large class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa
12 Decl. ¶¶ 2-5.) Plaintiff’s counsel, operating at arm’s length, weighed the strengths and risks of
13 this case and is of the view that this is a fair and reasonable Settlement in light of the nature of
14 the claims, realistic risk-adjusted value of damages, complexities of the case, the state of the law,
15 and uncertainties of class certification and litigation.

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

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

22 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
23 the Class Notice to the last known address of all Class Members complies with all the
24 requirements of California Rule of Court. The contents of the proposed Class Notice include (1)
25 the material terms of the Settlement; (2) the proposed attorneys’ fees and costs and the Settlement
26 Administration Costs; (3) details about the final fairness hearing and how Class Members may
27 elect to exclude themselves or make an objection; and (4) how Class Members can obtain
28 additional information. (Bokhour Decl., Exhibit B). In addition, it will inform Class Members of

1 their estimated settlement share.

2 The Court has wide discretion in approving the means of providing notice, so long as
3 the class representative “provides meaningful notice in a form that should have a reasonable
4 chance of reaching a substantial percentage of Class Members.” *Archibald v. Cinerama Hotels*,
5 (1976) 15 Cal.3d 853, 861. Here, the Parties’ notice plan is that notice of the Settlement will be
6 disseminated directly to the Class Members by first-class mail by the Settlement Administrator,
7 since Defendant have the last known addresses of all Class Members, and the Settlement
8 Administrator will perform a skip trace and update those addresses for any Class Notices that are
9 returned and re-send the Class Notice.

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

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

25 The fact that each Class Member who does not opt out of the Settlement shall be mailed
26 a check ensures that every Class Member will be paid unless he or she affirmatively acts to
27 exclude himself or herself. If any Settlement Class Member’s check is not cashed within that
28 period, the check will be void, and any remaining funds represented by such checks will be

1 donated to *cy pres* recipient Legal Aid at Work, as set forth in the Settlement Agreement subject
2 to approval of the Court. Such terms are to demonstrate that there was no collusion between
3 counsel for the Parties and that the Settlement is fair and favorable to the Class Members.

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

6 Under the terms of the Settlement Agreement, Class Counsel requests an amount not
7 exceeding 35% of the Settlement Amount in attorneys' fees. (*See, e.g., Laffite v. Robert Half Int'l*
8 *Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar
9 multiplier, when class action litigation establishes a monetary fund for the benefit of the Class
10 Members, the trial court may determine the amount of a reasonable fee by choosing an appropriate
11 percentage of the fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010)
12 No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum
13 settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total settlement
14 was "well within the range of percentages which courts have upheld as reasonable in other class
15 action lawsuits"); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-1501-
16 IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund);
17 *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007
18 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting:
19 "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx*
20 *Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL
21 5478576, at *8 (approving fees of 1/3 of the common fund).

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

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

26 The Settlement Agreement provides a Service Award to the named Plaintiff in the
27 amount not exceeding \$10,000. The proposed Service Award is reasonable given the time and
28 effort Plaintiff devoted to this case. Plaintiff's efforts included providing factual background for

the class and PAGA complaint and PAGA Letter; 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 and potentially excluded from other similar jobs in the industry. (*See* Declaration of Artem Togonidze in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement)

The Service Award requested 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. 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). The proposed \$10,000 service payment represents less than .002% of the total settlement fund and compensates Plaintiff for assisting counsel, participating in discovery, and accepting reputational risk.

VI. THE COURT SHOULD APPOINT CPT CLASS ACTION SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties have selected CPT to serve as the Settlement Administrator. CPT is experienced in administering class action settlements and will not exceed \$12,000 to administer this class action Settlement. CPT has agreed to perform all administration duties, including mailing notice, processing exclusions and objections, calculating settlement shares, and issuing payments.

1 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

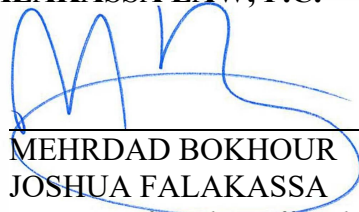
2 The final step in the approval process is the formal hearing, during which proponents of
3 the Settlement may explain and describe its terms and conditions and offer arguments in support
4 of approval. Class Members or their counsel may also be heard in support of or in opposition to
5 the Settlement. Subject to the Court's approval, the Settlement Agreement stipulates that the
6 Court schedules a hearing for final approval.

7 **VIII. CONCLUSION**

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

10
11 Dated: December 17, 2025

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

12
13 BY: 

14 MEHRDAD BOKHOUR
15 JOSHUA FALAKASSA

Attorneys for Plaintiff and the Putative Class