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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

SHAROLIN SARKIS and ANA CABRERA, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

MILTENYI BIOTEC, INC., a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 24CV430462

Assigned to the Hon. Theodore C. Zayner

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

*[Declarations of Mehrdad Bokhour, Joshua
Falakassa, Sharolin Sarkis, and Ana
Cabrera, and [Proposed] Order filed
concurrently herewith]*

HEARING INFORMATION

Date: January 28, 2026

Time: 1:30 p.m.

Dept.: 19

Complaint Filed: February 5, 2024

FAC Filed: December 12, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 28, 2026, at 1:30 p.m. or as soon thereafter as the matter may be heard by Honorable Theodore C. Zayner in Department 19 of the Santa Clara County Superior Court, located at 191 North First Street San Jose, California 95113, Plaintiffs Sharolin Sarkis and Ana Cabrera, individually and on behalf of all others similarly situated, will and hereby does moves the Court for entry of an Order preliminarily approving the Parties' Class Action and PAGA Settlement Agreement, including:

- A. Certifying the Class for purposes of settlement only;
- B. Preliminarily appointing Plaintiffs as Class Representatives for purposes of settlement only;
- C. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C. as Class Counsel for purposes of settlement only;
- D. Preliminarily approving the Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
- E. Directing distribution of the Notice, including notice of the opportunity to exclude oneself from, or object to, the Settlement;
- F. Setting a date for a final fairness hearing to determine, following dissemination of the Notice, whether to grant final approval of the Settlement.

This motion is based upon this Memorandum of Points and Authorities in support thereof; the Declarations of Mehrdad Bokhour, Joshua Falakassa, and Plaintiffs Sharolin Sarkis and Ana Cabrera 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: January 5, 2026

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

BY: _____

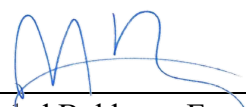

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Joshua Falakassa, Esq.
Attorneys for Plaintiffs and the Putative Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiffs Sharolin Sarkis and Ana Cabrera (“Plaintiffs”),
4 individually and on behalf of all others similarly situated, seek preliminary approval of the Class
5 Action and PAGA Settlement Agreement.¹ Subject to Court approval, Plaintiffs and Defendant
6 Miltenyi Biotec, Inc. (“Defendant”) have agreed to settle their claims and the proposed Class
7 Members’ claims for a Gross Settlement Amount of \$2,100,000.

8 Plaintiffs seek to represent a Class of all persons who are or were employed by Defendant
9 in California and classified as non-exempt or hourly employees at any time during the Class Period
10 from February 5, 2020 through August 12, 2025 (the “Class” or “Class Members”). Likewise, the
11 Aggrieved Employees include all persons who are or were employed by Defendant in California
12 and classified as non-exempt or hourly employees at any time during the Class Period from
13 February 5, 2023 through August 12, 2025. (“Aggrieved Employees”). (Bokhour Decl. ¶ 9.)

14 Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s
15 application for a reasonable award of attorney’s fees not to exceed one-third of the Settlement
16 Amount, Class Counsel’s litigation costs not to exceed \$40,000, Settlement Administration Fees
17 not to exceed \$6,000, PAGA penalties of \$100,000 (of which \$75,000 or 75% will be paid to the
18 LWDA and the remaining \$25,000 or 25% will be paid to the Aggrieved Employees), and an
19 Incentive Award not to exceed \$10,000 to each named Plaintiffs (S.A. ¶ 48(a)-(h); Bokhour Decl.
20 ¶ 9), as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$2,100,000
Attorneys’ Fees (not to exceed 1/3 of GSA)	\$700,000.00
Litigation Costs (not to exceed)	\$40,000.00
Settlement Administration Fees (not to exceed)	\$6,000.00
PAGA payment to LWDA (75% of \$100k award)	\$75,000.00
PAGA payment to Aggrieved Employees (25% of \$100k award)	\$25,000.00
Plaintiffs’ Service Payments	\$20,000.00

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

Net Settlement Amount

\$ 1,234,000

As of the Parties' mediation, the Class includes approximately 231 non-exempt employees who all worked for Defendant in California during the Class Period. Plaintiffs contend that, regardless of their roles, all non-exempt employees were subject to the same wage and hour policies and payroll/scheduling practices, and therefore, the Individual Settlement Payments will be paid on a pro-rata basis based on the number of Workweeks during the Class Period. Assuming a total class size of approximately 231 Settlement Class Members, the average payment to each Settlement Class Member will be approximately **\$5,300**, with the highest payment estimated to be **\$10,536**. Of course, those with more Workweeks stand to recover proportionally more. (Bokhour Decl. ¶ 10.)

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 Notice containing detailed 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. (S.A. ¶ 48, 66-68.) All Class Members who do not affirmatively opt out will receive a settlement check upon the Court granting final approval of the Settlement. (Bokhour Decl. ¶ 11.) Aggrieved Employees will not be able to opt out and will receive settlement checks.

Because the Settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following an appropriate and comprehensive exchange of information and documents in advance of mediation, it should be preliminarily approved. Plaintiffs respectfully request that the Court enter an order preliminarily approving the Settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Notice, appointing Class Counsel as Class Counsel, appointing Phoenix Class Action Administration Solutions as the Settlement Administrator, and scheduling a hearing for the final approval of the Settlement. (Bokhour Decl. ¶ 12.)

1 **II. BACKGROUND**

2 **A. THE PARTIES AND THE PROPOSED CLASS**

3 Defendant is a global biotechnology company that provides products and services for
4 scientists, clinical researchers, and physicians to use in basic, translational, and clinical research.
5 With key locations in Auburn, San Jose and Santa Barbara, California, they are a global biotech
6 company providing products and services for biomedical research and cell/gene therapy,
7 supporting basic, translational, and clinical research with expertise in immunology, stem cells,
8 neuroscience, and cancer.

9 The putative Class consists of all persons who are or were employed by Defendant in
10 California and classified as non-exempt or hourly employees at any time during the Class Period
11 from February 5, 2020 through August 12, 2025. (S.A. ¶¶ 7, 39.)

12 **B. PROCEDURAL HISTORY**

13 On or about February 5, 2024, Plaintiff Sharolin Sarkis filed a class action complaint in
14 the Court against Defendant, including class allegations for: (1) failure to timely pay wages, (2)
15 failure to pay minimum wages, (3) failure to pay overtime wages, (4) meal period violations, (5)
16 rest period violations, (6) failure to pay all sick time, (7) wage statement violations, (8) waiting
17 time penalties, (9) failure to reimburse business expenses, and (10) unfair competition.

18 On December 12, 2024, Plaintiff filed a First Amended Complaint (“FAC”) alleging the
19 same claims and adding Plaintiff Ana Cabrera as an additional class representative and adding a
20 cause of action for PAGA penalties based on the foregoing Labor Code violations. (Bokhour Decl.
21 ¶ 13; S.A. ¶ 41.)

22 During Plaintiffs’ investigation and throughout the litigation, Defendant denied Plaintiffs’
23 allegations and vowed to vigorously defend against them. Defendant retained counsel, denied
24 liability, and asserted various defenses. While continuing to litigate the case, the Parties also
25 agreed to explore resolution through private mediation. In preparation for mediation, the Parties
26 engaged in discovery and exchanged information relating to Defendant’s applicable policies and
27 procedures, substantial payroll and timekeeping records, the size and composition of the putative
28 class, compensation policies and practices, and the potential value of the case. The sampling and

1 data exchange enabled Class Counsel and their expert to evaluate the potential claims and to
2 extrapolate the data to the entire Settlement Class. During this process, Plaintiffs and counsel
3 analyzed, researched, and investigated the potential claims of all similarly situated employees.
4 (Bokhour Decl. ¶ 14.).

5 The Parties have conducted a thorough investigation into the facts of the Action. This
6 includes interviews with putative class members, investigation of Defendant and its operations
7 and pay policies and procedures, and extensive formal and informal discovery. The Parties
8 exchanged substantial written discovery, including interrogatories, requests for production, and
9 requests for admission, and Defendant produced a statistically significant sampling of payroll and
10 timekeeping records for Settlement Class Members and Aggrieved Employees, as well as written
11 policies and practices. The Parties also conducted meaningful written discovery, and multiple
12 depositions, including the depositions of the named Plaintiffs and Defendant's persons most
13 knowledgeable. (Bokhour Decl. ¶ 15.)

14 Moreover, the Parties implemented a *Belaire West* notice process and opt out procedure
15 to obtain contact information and facilitate outreach to putative class members. Based on this
16 record, the Parties were prepared to proceed with class certification and continued litigation
17 through dispositive motion practice and trial if the case did not resolve. Class Counsel is
18 knowledgeable about the applicable law and potential defenses and has diligently investigated the
19 claims asserted on behalf of the Settlement Class Members and Aggrieved Employees. (Bokhour
20 Decl. ¶ 16.)

21 Based on the foregoing data, discovery and their own independent investigation and
22 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
23 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
24 adequate and is in the best interest of the Settlement Class Members and Aggrieved Employees,
25 in light of all known facts and circumstances, including the risk of significant delay and
26 uncertainty associated with litigation, various defenses asserted by Defendant, and numerous
27 potential appellate issues. (Bokhour Decl. ¶ 17.)

28 On November 19, 2024, the Parties participated in a first mediation with mediator Tripper

1 Ortman, Esq., and on May 29, 2025, the Parties participated in a second mediation before Eve
2 Wagner, Esq. Mr. Ortman and Ms. Wagner are both highly experienced wage and hour class
3 action mediators. After two full days of mediation and the issuance of a mediator's proposal by
4 Ms. Wagner, the Parties reached a settlement. (Bokhour Decl. ¶ 18, Exhibit A.) (Id.)

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

6 **C. SUMMARY OF PLAINTIFFS' CLAIMS**

7 Plaintiffs alleged various wage and hour violations on behalf of non-exempt employees
8 who worked for Defendant during the Class Period, that is, the Class Members. (Bokhour Decl. ¶
9 18.)

10 First, Plaintiffs alleged that Defendant failed to timely pay all wages due in violation of
11 Labor Code section 204. Under Labor Code section 204(d), employers using a weekly, biweekly,
12 or semimonthly payroll must pay wages no more than seven (7) calendar days following the close
13 of the payroll period. Plaintiffs alleged that, although Class Members were routinely paid on a
14 weekly payroll schedule, Defendant failed to pay all wages within the statutorily required
15 timeframe. Plaintiffs further alleged that, as a result of Defendant's timekeeping practices, Class
16 Members were not paid for all hours worked, including overtime and minimum wages when
17 applicable. (Bokhour Decl. ¶ 19.)

18 Next, Plaintiffs alleged that Defendant's meal and rest period policies and practices failed
19 to provide Class Members with timely and compliant meal periods, and failed to pay meal period
20 premiums when compliant meal periods were not provided. (Bokhour Decl. ¶ 20.) Plaintiffs also
21 alleged that Class Members were not authorized and permitted to take duty free rest periods of at
22 least ten minutes for each four hour work period, or major fraction thereof, due to Defendant's
23 operational requirements and supervisors' direction. (Id.)

24 Plaintiffs further alleged that Defendant failed to pay all final wages owed upon
25 separation, failed to provide accurate itemized wage statements as required by Labor Code section
26 226, and failed to reimburse Class Members for necessary business expenses in violation of Labor
27 Code sections 2802 through 2804. Plaintiffs also sought civil penalties under the PAGA based on
28 the alleged Labor Code violations described above. (Bokhour Decl. ¶ 21.)

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

2 Defendant contested and denied each of Plaintiffs’ material allegations on the merits and
3 as to the propriety of the class and PAGA representative action. (Bokhour Decl. ¶ 22.)

4 First, Defendant argued that it always paid employees for all hours worked and that its
5 timekeeping and pay practices and policies did not result in any underpayment to Class Members.
6 Further, Defendant argued that even if there was any underpayment, it did not constitute
7 compensable time and resulted in de minimis damages, if any. (Bokhour Decl. ¶ 23.)

8 Defendant also disputed Plaintiffs’ Labor Code section 204 claim and contended that its
9 pay schedule and payroll practices complied with California law. Defendant further asserted that
10 wages were timely paid within the applicable statutory timeframes, and that any alleged delay
11 was not systemic and, if it occurred at all, resulted from individualized circumstances or
12 administrative issues that did not give rise to liability or recoverable damages. Defendant further
13 contended that Plaintiffs could not establish that any Class Members suffered cognizable injury
14 or damages attributable to any alleged section 204 violation. (Bokhour Decl. ¶ 24.)

15 Next, Defendant argued that, at all relevant times, its written meal and rest period policies
16 were compliant with California law. Defendant also contended that, in practice, Class Members
17 regularly were permitted to be free of any duties during meal and rest periods and were not
18 constrained due to operational requirements of the job. (Bokhour Decl. ¶ 25.) With regard to the
19 failure to reimburse necessary business expenses, Defendant argued that Class Members were not
20 required to use their personal cell phones, and that it adequately reimbursed for necessary
21 expenses pursuant to its reimbursement policy. (Id.)

22 Moreover, Defendant argued that claims for wage statement violations, waiting time
23 penalties, and PAGA penalties were derivative of other claims, which Defendant contended had
24 no merit. Defendant further contended that Plaintiffs’ waiting time penalty and wage statement
25 claims based on the underlying meal and rest period violations were unfounded and did not entitle
26 Class Members to pursue derivative penalties under Labor Code sections 203 and 226. (Bokhour
27 Decl. ¶ 26.)
28

1 Defendant also generally argued that individualized inquiries would be required to
2 establish liability, including, among other things, which employees, if any, took meal periods of
3 less than 30 minutes, why a particular employee took a meal period of less than 30 minutes on a
4 particular shift, and whether a particular employee remained under Defendant's control during
5 rest periods. (Bokhour Decl. ¶ 27.)

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

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

8 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

9 The \$2,100,000 Settlement Amount is non-reversionary and will be paid out to Class
10 Members without the need to submit a claim form or take any affirmative action. It includes (1)
11 Class Counsel's reasonable attorneys' fees not to exceed 1/3rd of the Settlement, costs not to
12 exceed \$40,000, as approved by the Court; (2) Incentive Award not to exceed \$10,000 to each
13 named Plaintiff, as approved by the Court; (3) Settlement Administration Fees, not to exceed
14 \$6,000, as approved by the Court; (4) a \$100,000 PAGA Penalties payment, 75 percent (75%) of
15 which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the
16 aggregate of all Individual Settlement Payments of the Settlement Class Members. Defendant's
17 employer's share of payroll taxes on the portion of the Individual Settlement Amounts that are
18 allocated as wages subject to withholdings will be paid separately by Defendant. (S.A. ¶ 48, *et*
19 *seq.*)

20 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
21 that \$1,240,000 will be available to pay the Individual Settlement Payments to approximately 231
22 Settlement Class Members. As noted above, the average Individual Settlement Payment to
23 Settlement Class Members is approximately **\$5,300**, which is a fair and reasonable recovery.
24 (Bokhour Decl. ¶ 10.)

25 **B. NOTICE PROCEDURES**

26 The proposed Notice, as approved by the Court, will be provided to the Class Members
27 showing the estimated number of Workweeks for which he/she will be credited (Exhibit "B" to
28 the Bokhour Decl.). Within ten (10) days after entry by the Court of its Order of Preliminary

1 Approval, Defendant shall provide the Settlement Administrator with a list of all Class Members
2 containing Class Members' full names; last known mailing addresses; Social Security Numbers;
3 and number of Class Period Workweeks and PAGA Pay Periods (the "Class Data"). (S.A. ¶¶ 6,
4 63.)

5 Within fourteen (14) days after receipt of the Class Data, the Settlement Administrator
6 shall calculate the number of Workweeks for each Class Member, populate the Notice (if
7 necessary), and send each Class Member the Notice via first-class, United States mail, in English.
8 (S.A. ¶ 64.)

9 In the event that any Notice mailed to a Class Member is returned as undeliverable by the
10 U.S. Postal Service, the Settlement Administrator shall use standard devices, including a skip
11 trace, to obtain forwarding addresses of Class Members if any envelopes are returned as
12 undeliverable. (*Id.*)

13 Any Notice returned to the Settlement Administrator as undeliverable on or before the
14 Notice Response Deadline, as defined in Paragraph 20 of the Settlement Agreement, shall be re-
15 mailed to the forwarding addresses affixed thereto. If no forwarding address is provided, the
16 Settlement Administrator will take steps to ensure that the Notice is mailed to all Class Members,
17 including the utilization of the National Change of Address Database maintained by the U.S.
18 Postal Service and shall make reasonable efforts, conducting a "skip-trace" to obtain an updated
19 mailing address for a Class Member and, if applicable to update the mailing addresses within ten
20 (10) calendar days of receiving the returned Notice.

21 If the Settlement Administrator learns of a failed mailing and obtains a forwarding or
22 updated address for that Class Member, the Notice will be re-mailed to that Class Member within
23 ten (10) calendar days of receipt of the updated address. The address identified by the Settlement
24 Administrator as the current mailing address shall be presumed to be the best mailing address for
25 each Class Member. The re-mailed Notice shall be identical to the original Notice, except that it
26 shall notify the Class Member that the exclusion (opt-out) request or objection must be returned
27 by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.
28 (S.A. ¶ 65.)

1 **C. EXCLUSION AND OBJECTION PROCEDURES**

2 Class Members who do not timely opt out of the Settlement will be deemed to participate
3 in the Settlement and shall become Settlement Class Members without having to submit a claim
4 form or take any other action. The Notice shall inform the Class Members of their right to opt out
5 of the Settlement. To do so, any Settlement Class Member, other than Plaintiffs, may request to
6 be excluded from the Participating Settlement Class by submitting a “Request for Exclusion” to
7 the Settlement Administrator, postmarked on or before 45 days after being mailed the Notice by
8 the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 20, 69(a).)

9 Any Request for Exclusion must include the full name, address, telephone number, last
10 four digits of the social security number or date of birth, and signature of the Settlement Class
11 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
12 Settlement Administrator at the specified address. Any Settlement Class Member who timely
13 requests exclusion in compliance with these requirements: (i) will not have any rights under the
14 Settlement Agreement with respect to the Class Claims, including the right to object, appeal, or
15 comment on the Settlement; (ii) will not be entitled to receive any payments under the Settlement
16 Agreement with respect to Class Claims; and (iii) will not be bound by the Settlement Agreement,
17 or the Judgment, with respect to the Class Claims. (*Id.*)

18 The Notice shall inform the Class Members of their right to object to the Settlement. Any
19 Class Member who wishes to object to the Settlement must submit a written objection to the
20 Settlement Administrator no later than the Notice Response Deadline. The objection must include
21 the full name, address, telephone number, dates of employment with Defendant of the Objecting
22 Class Member, the case name and number, and the basis for the objection, including any legal
23 support and each specific reason in support of the objection, as well as any documentation or
24 evidence in support thereof, and, if the objecting Class Member is represented by counsel, the
25 name and address of his or her counsel. (S.A. ¶ 69(c).) Settlement Class Members and Aggrieved
26 Employees may not object to or opt out of the Settlement with respect to the PAGA Claims. (*Id.*)

27 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

28 The Individual Settlement Payment for each Settlement Class Member will be calculated

1 by the Settlement Administrator using the Class Data provided by Defendant. Using the Class
2 Data or using the Workweeks that were disputed and subsequently approved, while also
3 accounting for any timely submitted Requests for Exclusion, the Settlement Administrator will
4 calculate the total Workweeks for all Settlement Class Members (if necessary). Each Participating
5 Class Member's Individual Settlement Amount shall be based on his/her/their proportionate
6 Workweeks during the Class Period. This is determined by multiplying the Net Settlement
7 Amount by a fraction, the numerator of which is the Participating Class Member's total
8 Workweeks during the Class Period, and the denominator of which is the total Workweeks by all
9 Participating Class Members during the Class Period. If there are any timely submitted Requests
10 for Exclusion, the Settlement Administrator shall proportionately increase the Individual
11 Settlement Amounts for each Participating Class Member so that the amount distributed to
12 Participating Class Members equals 100% of the Net Settlement Amount allocated toward
13 Released Class Claims. (S.A. ¶ 47(d)(ii).) The Notice will inform Class Members of his/her
14 estimated number of Workweeks Worked during the Class Period. Class Members may dispute
15 their estimated Workweeks Worked if they feel they worked more weeks in the Class Period in
16 California than Defendant's records show by timely submitting evidence to the Settlement
17 Administrator. (S.A. ¶ 61.)

18 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

19 Defendant shall make a one-time deposit into the Qualified Settlement Fund ("QSF") of
20 the Gross Settlement Amount, from which all other payments required under the Settlement
21 Agreement shall be made, and also fund the amounts necessary to fully pay Defendant's share of
22 payroll taxes by transmitting the funds to the Settlement Administrator no later than fourteen (14)
23 days after the Effective Date. (S.A. ¶ 71.)

24 The Settlement Administrator shall deposit the payments into an interest-bearing qualified
25 settlement account ("Qualified Settlement Fund") with an FDIC insured banking institution from
26 which the Settlement Administrator will have authority to distribute money in accordance with
27 the terms of the Settlement Agreement. In the event the Settlement Agreement becomes null and
28

void, all monies deposited by Defendant into the Qualified Settlement Fund including any interest accrued, shall be returned to Defendant. (S.A. ¶ 72.)

No later than ten (10) calendar days after the deposit of the payment into the Qualified Settlement Fund, the Settlement Administrator will mail the payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Incentive Award to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Fees. (S.A. ¶ 72.)

Final Settlement Class Members will have 180 calendar days from the Settlement Administrator's mailing of their settlement checks to negotiate those checks. (S.A. ¶ 73.) Any check not negotiated within that 180 day period will be void and subject to stop payment. All amounts from uncashed checks will be distributed to the cy pres recipient, the Interdisciplinary Center for Healthy Workplaces at the University of California, Berkeley. The release will be binding on all Final Settlement Class Members, including those who do not negotiate their checks within 180 days. If a settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five business days of receipt, perform a skip trace to locate an updated address. If an updated address is identified, the Settlement Administrator will reissue the check within ten business days and will notify counsel for the Parties that a reissued check has been sent. If a Final Settlement Class Member reports that a check was lost or stolen, the Settlement Administrator will promptly place a stop payment on the check. If the check has not been negotiated before the stop payment is effectuated, the Settlement Administrator will issue a replacement check. (*Id.*)

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 five percent (25%) will be allocated as wages subject to withholdings of all applicable local, state, and federal taxes; and seventy five percent (75%) will be allocated as interest and as civil penalties (pursuant to, *e.g.*, California Labor Code sections 203, 226) from which no taxes will be withheld. (S.A. ¶ 48(e).) To the extent required, the Settlement Administrator will issue to each Settlement

Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations. (*Id.*)

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLASS CLAIMS

In exchange for these payments, the Settlement Agreement ¶ 50 provides that the Plaintiffs and the Participating Class Members will release the Released Parties² from all claims alleged or that could have been alleged based on the facts stated in the operative complaint, as follows:

all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the operative Complaint, including claims for (1) failure to timely pay wages; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide meal periods or pay a premium in lieu thereof; (5) failure to authorize and permit rest periods or pay a premium in lieu thereof; (6) failure to timely pay final wages at the time of termination/end of employment; (7) failure to pay all sick time wages; (8) failure to furnish accurate itemized wage statements; (9) failure to reimburse employees for business expenses; (10) unfair business practices; and, (11) claims for statutory penalties for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802-2804, Civil Code sections 3287 and 3289, and unfair and unlawful business practices.

(S.A. ¶¶ 4, 51-52.)

H. AGGRIEVED EMPLOYEES' RELEASE OF PAGA CLAIMS

The Settlement Agreement at ¶ 23 also defines the “Released PAGA Claims” as follows:

all claims for PAGA penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Complaint and the PAGA Notice including claims for (1) failure to timely pay wages; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide meal periods or pay a premium in lieu thereof; (5) failure to authorize and permit rest periods or pay a premium in lieu thereof; (6) failure to timely pay final wages at the time of termination/end of employment; (7) failure to pay all sick time wages; (8) failure to furnish accurate itemized wage statements; (9) failure to reimburse employees for business expenses; (10) unfair business practices;; and, (11) claims for statutory penalties for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226(a), 226(a)(6), 226(e),, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802-2804, Civil Code sections 3287 and 3289, and unfair and unlawful business practices.

² “Released Parties” means Miltenyi Biotec, Inc., and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant. (S.A. ¶ 32.)

1 In addition to the foregoing release, each named Plaintiffs have also agreed to a General
2 Release as set forth in the Settlement Agreement. (S.A. ¶¶ 57-58.)

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

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

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

22 As discussed below, for the purposes of this Settlement only, Plaintiffs request that this
23 Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 382.

24 **A. NUMEROSITY AND ASCERTAINABILITY**

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

89, 101. Here, according to Defendant’s records, there are approximately 231 Class Members. Plaintiffs contend that this figure undoubtedly satisfies the numerosity requirement.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

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

2. Typicality

Typicality “focuses on whether there exists a relationship between the Plaintiffs’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 Plaintiffs’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 Plaintiffs asserts claims regarding Defendant’s wage payment policies/practices, meal and rest break policies/practices, wage statements, reimbursements, and the provisions governing the timely and complete payment of wages, which are at the core of the Action.

3. Adequacy of Representation

The proposed class representative must establish that he/she will adequately represent the proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Specifically, Plaintiffs’ position is that they are each adequate to represent the Class because they were both employed by Defendant during the Class Period, were subject to the same wage and hour policies/practices as the rest of the Class, understand their respective duties as Class Representatives, have been willing to undergo the risk of litigation, and have no conflicts

1 of interest.

2 Adequacy may be established by the fact that counsels are experienced practitioners. *See*
3 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
4 244 F.3d 1152, 1162. Here, Plaintiffs asserts that they are represented by Class Counsel with
5 extensive experience in wage and hour class and PAGA actions like the instant matter. (Bokhour
6 Decl. ¶¶ 2-5; see also Falakassa Decl. ¶¶ 2-11.)

7 4. Superiority

8 Plaintiffs further contend that certification of the Class for settlement purposes is superior
9 here because there will be a global resolution of all claims at once, which fosters judicial
10 economy. Plaintiffs contend that class certification for settlement purposes is also vastly superior
11 to litigation of numerous individual claims because most of the claims are too small to litigate
12 outside of the class context.

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

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

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

25 The decision to approve or reject a proposed settlement lies within the Court's sound
26 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224. Nevertheless, in
27 considering a potential settlement for approval, a court is not to turn the approval hearing "into a
28 trial or rehearsal for trial on the merits [or] to reach any ultimate conclusions on the contested

1 issues of fact and law which underlie the merits of the dispute.” *Officers for Justice*, 688 F.2d at
2 625.

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

10 [T]he strength of Plaintiffs’s case, the risk, expense, complexity and likely
11 duration of further litigation, the risk of maintaining class action status
12 through trial, the amount offered in settlement, the extent of discovery
13 completed and the stage of the proceedings, the experience and views of
counsel . . . and the reaction of the Class Members to the proposed
settlement.

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

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

23 At the preliminary approval stage, the Court needs only to determine that the settlement
24 falls within the “range of possible judicial approval,” so that notice to the class and the scheduling
25 of the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
26 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies
27 ... and [the settlement] appears to fall within the range of possible approval.” *Manual For*
28 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption

1 of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2)
2 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
3 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
4 *supra* (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of
5 approval because there are no grounds to doubt its fairness.

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

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

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

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

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

26 To evaluate a settlement, the parties must provide the trial court with “basic information
27 about the nature and magnitude of the claims in question and the basis for concluding that the
28 consideration being paid for the release of those claims represents a reasonable compromise.”

1 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
2 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
3 399, which held that an explicit statement of the maximum theoretical amount that the class could
4 recover was not necessary:

5 Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in
6 all cases to contain evidence in the form of an explicit statement of the maximum
7 amount the Plaintiffs class could recover if it prevailed on all its claims – a number
8 which appears nowhere in the record of the case. But *Kullar* does not, as Greenwell
9 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.

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

18 Of relevance to the reasonableness of the proposed Settlement is the fact that significant
19 legal and factual grounds for defending this action exist. Defendant further disputed whether
20 Plaintiffs could obtain class certification, arguing, *inter alia*, a lack of commonality of the legal
21 claims and injuries. Defendant further argued that it complied with the applicable law, had
22 compliant written policies, that all Class Members were provided the opportunity to take their
23 meal and rest periods, and that any purported deviations therefrom were individualized in nature,
24 thereby limiting Plaintiffs’s ability to certify the Class. While Plaintiffs assert that this is a suitable
25 case for certification, they realize that there is always a significant risk associated with class
26 certification proceedings, which could significantly limit the claims that could be pursue on a
27 class basis.

28 Considering the uncertainties of continued protracted litigation, this negotiated Settlement

reflects the best practicable recovery for the Class. While the total Settlement Amount is, of course, a compromise figure, the potential risks and opportunities of both parties were effectively weighed and considered by the Parties, resulting in a fair and equitable Settlement. (Bokhour Decl. ¶¶ 16, 53.)

Based upon detailed data obtained through informal discovery and information exchanges, Class Counsel estimated the following big-picture data points through the date of mediation: 231 Class Members who worked approximately 30,600 workweeks. (Bokhour Decl. ¶ 28.)

1. Failure to Timely Pay All Wages

First, Plaintiffs alleged that Defendant adopted a weekly payroll schedule but regularly failed to pay all Class Members within seven (7) calendar days of the end of each pay period, in violation of Labor Code section 204(d). Plaintiffs contended that Defendant's payroll records reflect that Class Members were routinely paid nine (9) days or more after the close of the weekly payroll period. Plaintiffs therefore alleged that Defendant's uniform payroll practices violated Labor Code section 204 and entitled Class Members to recover civil penalties under Labor Code section 210, which Plaintiffs estimated at approximately \$1,510,575. (Bokhour Decl. ¶ 29.)

Defendant disputed these allegations and asserted that it maintained legally compliant payroll and compensation practices throughout the Class Period, including making paychecks available for pickup in a timely manner. (Bokhour Decl. ¶ 30.) Defendant also contended that the claim was not suitable for class treatment because individualized issues would predominate, including whether and why any particular Settlement Class Member received an allegedly untimely paycheck. Defendant further argued that Labor Code section 204 does not provide a private cause of action and that any recovery for an alleged violation would be limited, if at all, to a PAGA claim for civil penalties rather than a class claim for damages. (*Id.*)

In light of these defenses and arguments, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non certification and Defendant's merits defenses, resulting in an estimated total of \$1,132,931. (*Id.*)

1 **2. Failure to Pay Overtime and Sick Wages at the “Regular Rate of Pay”**

2 Next, Plaintiffs alleged that Defendant failed to account for non-discretionary bonuses and
3 other incentive pay when calculating the “regular rate of pay” when paying overtime and sick pay
4 wages. However, Defendant argued that it correctly calculated the “regular rate of pay,” and that
5 any underpayment was in good faith and *de minimis*. (Bokhour Decl. ¶ 31.)

6 While Defendant’s sampling of pay records revealed “regular rate of pay” violations, the
7 underpayments of overtime and sick wages were minimal throughout the Class Period. (Bokhour
8 Decl. ¶ 32.)

9 Due to this and in light of Defendant’s other defenses, Plaintiffs completely discounted
10 these two claims, keeping in mind that the true significant value of this unpaid wages claim lies
11 in the derivative claims for waiting time penalties under California Labor Code Section 203 and
12 wage statement violations under California Labor Code Section 226(a) as discussed below.
13 (Bokhour Decl. ¶ 33.)

14 **3. Waiting Time Penalties**

15 With respect to Plaintiffs’ waiting time penalty claims, there were approximately 98 Class
16 Members who separated from their employment with Defendant, and who worked an average of
17 8 hours per day, during the relevant statutory period. As such, the maximum potential penalty
18 under Labor Code §§ 201–203 is \$799,680 (98 employees x 8 hours per day x average rate of \$34
19 x 30 days). (Bokhour Decl. ¶ 34.)

20 However, Defendant argued that it would defeat the waiting time penalty claim as to
21 Plaintiffs’ unpaid wage claim because Defendant would prevail on the merits of these claims,
22 including that it complied with the law because it had an alleged facially neutral pay
23 policy/practice. Finally, Defendant argued that any failure to pay final wages was not willful and
24 occurred before the waiting time penalty liability period. (Bokhour Decl. ¶ 35.)

25 Therefore, Plaintiffs applied a 20% discount to account for the risk of defeat at the class
26 certification stage and an additional discount of 20% for the risk of defeat at the summary
27 judgment stage or on the merits, resulting in the risk-adjusted value of \$511,795 for Plaintiffs’
28 waiting time penalty claim. (Bokhour Decl. ¶ 36.)

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

3 With respect to Plaintiffs’ meal and rest period claims, the putative Class Members
4 worked approximately 138,000 shifts during the Class Period. Based on pre-mediation sampling
5 of Defendant’s timekeeping and payroll records, Plaintiffs estimated a 15% violation rate for meal
6 periods and a 33% violation rate for rest periods. Applying those rates, Plaintiffs calculated
7 maximum potential damages of approximately \$703,800 for the meal period claims and
8 \$1,548,360 for the rest period claims. (Bokhour Decl. ¶ 34.)

9 Defendant vigorously contested these claims. Defendant asserted that the meal and rest
10 period allegations present individualized factual issues unsuitable for classwide resolution,
11 including whether a particular break was missed, whether any non-compliance resulted from
12 employee choice rather than employer conduct, and whether compensation in lieu of a break was
13 properly provided. Defendant further maintained that its written policies and actual practices
14 complied with California law and afforded employees substantial discretion regarding the timing
15 and manner of their meal and rest periods. Based on these arguments, Plaintiffs recognized a
16 material risk that the Court could deny class certification as to these claims. (Bokhour Decl. ¶ 35.)

17 Defendant also argued that, even if class certification were granted, it would prevail on
18 the merits by presenting evidence that employees were authorized and permitted to take compliant
19 breaks or were paid the required premiums when breaks were not provided. Defendant further
20 contended that Plaintiffs would be unable to establish the number of alleged violations with
21 sufficient precision to support a reliable damages determination. (Bokhour Decl. ¶ 36.)

22 In light of these substantial litigation risks, Plaintiffs applied a conservative, risk-adjusted
23 discount to Defendant’s maximum potential exposure—reducing the estimated damages by 40%
24 to account for the risk of non-certification and by an additional 50% to account for the risk of
25 Defendant prevailing on the merits. Based on these adjustments, Plaintiffs reasonably assessed
26 the risk-adjusted value of the meal period claims at approximately \$211,140 and the rest period
27 claims at approximately \$464,508. (Bokhour Decl. ¶ 37.)

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

2 Plaintiffs estimate that the maximum potential penalties for the derivative wage statement
3 claim is \$359,800 (based on approximately 7,196 allegedly violative wage statements issued
4 during the applicable statutory period). In calculating Defendant’s exposure, Plaintiffs gave
5 Defendant the benefit of assuming Plaintiffs could only obtain the “initial” wage statement
6 penalty of \$50 per violation. *Id.*, Lab. Code § 226(e) (providing for a \$50 penalty for “initial”
7 violations); *Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that
8 “initial” violation rate applies until the employer has been notified that it is violating a Labor
9 Code provision.) (Bokhour Decl. ¶ 38.)

10 In response, Defendant contended that its wage statements fully complied with California
11 law, that any alleged violations were not “knowing and intentional,” and that Plaintiffs could not
12 establish that they or anyone else suffered “injury” because of any alleged wage statement
13 violations. Further, Defendant relied on its defenses to Plaintiffs’ underlying claims on the merits
14 and to class certification. (Bokhour Decl. ¶ 39.)

15 As such, Plaintiffs discounted the calculated maximum exposure by 30% for the risk of
16 non-certification and by an additional 20% for the risk of being unsuccessful on the merits, to
17 arrive at an estimated total of \$201,488. (Bokhour Decl. ¶ 40.)

18 **6. Failure to Reimburse for Necessary Business Expenses**

19 Plaintiffs alleged that Defendant failed to reimburse Plaintiffs and putative Class Members
20 for necessary business expenses incurred in the course of their employment, including—but not
21 limited to—cell phone usage and mileage expenses. Based on an estimated \$20 in unreimbursed
22 expenses per pay period across 7,196 pay periods, Plaintiffs calculated Defendant’s maximum
23 potential exposure for this claim to be approximately \$143,920. (Bokhour Decl. ¶ 41.)

24 Defendant disputed both liability and certifiability of this claim. Defendant asserted that
25 Plaintiffs and other Class Members did not submit reimbursement requests and that Defendant
26 therefore lacked actual or constructive knowledge of any unreimbursed expenses. Defendant
27 further argued that the claim raised individualized issues unsuitable for class treatment, including
28 whether employees were required to use personal cell phones for work-related purposes, whether

1 mileage was incurred for business reasons, and whether any given employee sought and received
2 reimbursement. (Bokhour Decl. ¶ 42.)

3 In light of these defenses and the attendant litigation risks, Plaintiffs applied a substantial
4 risk adjustment to Defendant’s maximum potential exposure—discounting the claim by 60% to
5 account for the risk of non-certification and by an additional 40% to reflect the risk of Defendant
6 prevailing on the merits. Based on these conservative assumptions, Plaintiffs reasonably estimated
7 the risk-adjusted settlement value of the unreimbursed business expense claim at approximately
8 \$34,540. (Bokhour Decl. ¶ 43.)

9 **7. PAGA Penalties**

10 Plaintiffs also sought PAGA penalties for each violation for which they are available and
11 alleged that these penalties can be “stacked.” *See Gonzalez v. Corecivic of Tennessee, LLC*, No.
12 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) (“‘stacking’ PAGA
13 penalties is not inappropriate under California law”). Assuming that a PAGA penalty is available
14 in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA
15 penalty would be \$719,600 for the pay periods in the PAGA period. *See* Cal. Lab. Code. §
16 2699(f)(2). (Bokhour Decl. ¶ 44.)

17 However, this maximum figure fails to account for numerous unresolved issues regarding
18 PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would
19 award penalties in such a way (especially for purely derivative penalties). (Bokhour Decl. ¶ 45.)

20 Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce
21 the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to
22 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
23 Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting
24 in the context of approving settlement that a reduction in PAGA penalties would be “appropriate”
25 based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer
26 did not “deliberately evad[e] a clear obligation to provide legally required pay and benefits to
27 employees,” (ii) the employer did not “negligently fail to learn about its obligations under the
28 wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because

“there is no straight answer to the question.”). Therefore, Plaintiffs discounted the maximum figure to account for the risk of losing on the merits and applied an additional discount to account for the possibility of this Court reducing penalties to arrive at an estimated exposure of \$100,000. (Bokhour Decl. ¶ 46.)

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

• Failure to Timely Pay Wages	\$1,132,931
• Failure to Pay Overtime and Sick Wages:	<i>discounted</i>
• Labor Code §§ 201 – 203 Claims:	\$511,795
• Meal Period Claims:	\$211,140
• Rest Break Claims:	\$464,508
• Wage Statement Claims:	\$201,488
• Reimbursement Claims:	\$34,540
• PAGA Penalties	\$100,000
• <u>Total Risk-Adjusted Penalties and Damages:</u>	\$2,656,402

Given the realistic value of Plaintiffs’ claims, the \$2,100,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 79% of Plaintiffs’ risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class. (Bokhour Decl. ¶ 47.)

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

E. CLASS COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

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

Class Counsel are also highly experienced in class and PAGA litigation, having litigated upwards of 100 class actions and PAGA cases, having been named “Super Lawyers” in

1 employment litigation (a distinction awarded to only 2.5% of litigators), and having achieved
2 large class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-10.) Class
3 Counsel, operating at arm's length, weighed the strengths and risks of this case and is of the view
4 that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk-
5 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class
6 certification and litigation.

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

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

13 The proposed Notice and proposed plan for the Settlement Administrator to mail the
14 Notice to the last known address of all Class Members complies with all the requirements of
15 California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Notice include (1)
16 the material terms of the Settlement; (2) the proposed Attorneys' Fees and Costs and the
17 Settlement Administration Fees; (3) details about the final fairness hearing and how Class
18 Members may elect to exclude themselves or make an objection; and (4) how Class Members can
19 obtain additional information. (Bokhour Decl. ¶ 49, Exhibit B). In addition, it will inform Class
20 Members of their estimated settlement share.

21 The Court has wide discretion in approving the means of providing notice, so long as the
22 class representative "provides meaningful notice in a form that should have a reasonable chance
23 of reaching a substantial percentage of Class Members." *Archibald v. Cinerama Hotels*, (1976)
24 15 Cal.3d 853, 861. Here, the Parties' notice plan is that notice of the Settlement will be
25 disseminated directly to the Class Members by first-class mail by the Settlement Administrator,
26 since Defendant has the last known addresses of all Class Members, and the Settlement
27 Administrator will perform a skip trace and update those addresses for any Notices that are
28 returned and re-send the Notice.

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

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

16 The fact that each Class Member who does not opt out of the Settlement shall be mailed
17 a check ensures that every Class Member will be paid unless he or she affirmatively acts to
18 exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, meaning that
19 no Settlement funds will revert to Defendant; instead, if any checks are not cashed before the
20 check cashing deadline, the funds will be transferred to the cy pres recipient, Interdisciplinary
21 Center for Healthy Workplaces at the University of California, Berkeley, subject to the Court’s
22 approval. (S.A. ¶¶ 48, 74.) Such terms are favored by Courts and demonstrate that there was no
23 collusion between counsel for the Parties and that the Settlement is fair and favorable to the Class
24 Members.

25 **H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
26 **FAIR**

27 Under the terms of the Settlement Agreement, Class Counsel is requesting an amount not
28 to exceed one-third of the Settlement Amount in attorneys’ fees. (*See, e.g., Laffite v. Robert Half*

1 *Int'l Inc. (2016) 1 Cal. 5th. 480* (approving 1/3 fee in the amount of \$6.33 million at a 2.13
2 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the
3 Class Members, the trial court may determine the amount of a reasonable fee by choosing an
4 appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug.
5 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total
6 maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the
7 total settlement was “well within the range of percentages which courts have upheld as reasonable
8 in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No.
9 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the
10 common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No.
11 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage
12 and hour class action, noting: “[f]ee awards in class actions average around one-third of the
13 recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-
14 6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of the common fund). (Bokhour
15 Decl. ¶¶ 56-57.)

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

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

20 The Settlement Agreement provides for a Service Payment to each named Plaintiff in an
21 amount not to exceed \$10,000. (S.A. ¶ 48(f).) The requested Service Payment is reasonable in
22 light of the significant time, effort, and personal commitment each named Plaintiff devoted to this
23 action. Plaintiffs’ efforts included providing factual background for the class and PAGA claims,
24 including the FAC; producing documents and information concerning Defendant’s compensation
25 plan and wage and hour policies and practices; participating in calls regarding litigation strategy
26 and settlement negotiations; sitting for depositions and responding to extensive discovery
27 requests; making themselves available throughout the litigation to assist Class Counsel in
28 evaluating the claims and defenses; assisting in preparation for mediation and remaining available

1 during mediation; and reviewing the Settlement documents. (Bokhour Decl. ¶ 55; see
2 Declarations of Plaintiffs Sharolin Sarkis and Ana Cabrera in Support of Preliminary Approval
3 of Class Action Settlement filed herewith.)

4 The named Plaintiffs also assumed meaningful risks in bringing this litigation. Had the
5 action been unsuccessful, Plaintiffs faced the possibility of being ordered to pay Defendant's
6 costs, in addition to potential reputational and employment related risks associated with serving
7 as class representatives. These risks further support the reasonableness of the requested Service
8 Payments.

9 The requested Service Payments fall well within the range of service payments commonly
10 approved in comparable wage and hour class actions. See, e.g., *Bond v. Ferguson Enterprises,*
11 *Inc.* (E.D. Cal. 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (approving \$11,250
12 service award to each of two class representatives in a meal break class action); *Ross v. U.S. Bank*
13 *National Association* (N.D. Cal. 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 (approving
14 \$20,000 incentive award to class representative in California wage and hour class action);
15 *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service
16 awards of \$15,000 each from a \$300,000 settlement fund in a wage and hour class action).

17 **VI. THE COURT SHOULD APPOINT PHOENIX AS THE SETTLEMENT**
18 **ADMINISTRATOR**

19 Subject to the Court's approval, the parties stipulated that Phoenix Class Action
20 Administration Solutions serve as the Settlement Administrator. Phoenix is experienced in
21 administering class action settlements and will not exceed \$6,000 to administer this class action
22 Settlement. (Bokhour Decl. ¶ 58.)

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

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

1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their
3 Motion for Preliminary Approval of Class Action Settlement.

4
5 Dated: January 5, 2026

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6
7 BY: 

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