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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

| | |
|---|---|
| IGNACIO GARATE, on behalf of himself and all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>LINCARE, INC., a Delaware Corporation; and DOES 1-50, inclusive.<br><br>Defendants. | CASE NO.: 37-2024-00026882-CU-OE-CT<br><br>*Assigned to Hon. Marcella O. McLaughlin*<br><br>**PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**<br><br>[*Declarations of Mehrdad Bokhour, Joshua Falakassa, Ignacio Garate, and [Proposed] Order filed concurrently herewith*]<br><br>**HEARING INFORMATION**<br><br>Date: April 17, 2026<br>Time: 9:30 a.m.<br>Dept.: C-72<br><br>Complaint Filed: June 3, 2024 |

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

**PLEASE TAKE NOTICE** that on April 17, 2026, at 9:30 a.m. or as soon thereafter as the matter may be heard by Honorable Marcella O. McLaughlin in Department C-72 of the Sant Diego County Superior Court, located at 330 W Broadway San Diego, CA 92101, Plaintiff Ignacio Garate, individually and on behalf of all others similarly situated, will and hereby do move the Court for entry of an Order preliminarily approving the Parties' Class Action and PAGA Settlement Agreement, including:

1. Certifying the Class for purposes of settlement only;
2. Preliminarily appointing Plaintiff as Class Representative for purposes of settlement only;
3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C. as Class Counsel for purposes of settlement only;
4. Preliminarily approving the Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Notice Packet, 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 Notice Packet, whether to grant final approval of the Settlement.

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

Dated: March 25, 2026,

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

BY: ______________________

Mehrdad Bokhour, Esq.
Joshua Falakassa, Esq.
Attorneys for Plaintiff and the Putative Class

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Through this motion, Plaintiff Ignacio Garate ("Plaintiff"), individually and on behalf of all others similarly situated, seeks preliminary approval of the Class Action and PAGA Settlement Agreement. Subject to Court approval, Plaintiff and Defendant Construction Lincare, Inc. ("Defendant") have agreed to settle their claims and the proposed Class Members' claims against Defendant for a Gross Settlement Amount of $730,000.

Plaintiff seeks to represent a Class of all persons who are or were previously employed by Defendant in California classified as a non-exempt employee during August 12, 2022, through March 4, 2026 (the "Class" or "Class Members").

Likewise, the Aggrieved Employees include all persons who are or were previously employed by Defendant in California and classified as non-exempt employees during March 27, 2023, through March 4, 2026 ("Aggrieved Employees").[1]

Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel's application for a reasonable award of attorney's fees not to exceed one-third of the Settlement Amount, Class Counsel's litigation costs not to exceed $30,000, Settlement Administration Costs not to exceed $8,000, PAGA penalties of $20,000 (of which $15,000 or 75% will be paid to the LWDA and the remaining $5,000 or 25% will be paid to the Aggrieved Employees), and a Service Award not to exceed $10,000 to the named Plaintiff (S.A. ¶ 49(a)-(h)), as follows:

| | **Total Amount** |
|---|---|
| *Gross Settlement Amount* | $730,000 |
| Attorneys' Fees (not to exceed 1/3 of GSA) | $243,333.33 |
| Litigation Costs (not to exceed) | $30,000.00 |
| Administrator Costs (not to exceed) | $8,000.00 |
| PAGA payment to LWDA (75% of $20k award) | $15,000.00 |
| PAGA payment to aggrieved employees | $5,000.00 |
| Plaintiff's Service Award | $10,000.00 |
| ***Net Settlement Amount*** | **$418,666.67** |

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

The Class consists of approximately 503 non-exempt employees who worked for Defendant in California during the Class Period. Plaintiff contends that, regardless of job title or role, all non-exempt employees were subject to the same workplace wage and hour policies and practices. As a result, Individual Settlement Payments will be distributed on a pro-rata basis, determined by the number of Compensable Workweeks worked during the Class Period. Assuming a total of approximately 503 Settlement Class Members, the average payment is estimated at $838, with the highest individual payment at approximately $2,000 to $2,200. Class Members with more Compensable Workweeks will receive proportionally higher payments. (Bokhour Decl. ¶ 10.)

The Settlement is non-reversionary, and Settlement Class Members are not required to submit Claim Forms to receive payment. Each Settlement Class Member will be mailed a Notice Packet containing information about their estimated Individual Settlement Amount, the opportunity to dispute the number of Workweeks credited to them during the Class Period, and instructions on how to submit a Request for Exclusion or an Objection to the Settlement. All Settlement Class Members who do not timely submit a valid Request for Exclusion will automatically receive their Individual Settlement Payment after the Court grants Final Approval. Aggrieved Employees eligible for payments under the PAGA portion of the Settlement may not opt out and will receive their share of the PAGA Amount regardless of participation in the class settlement. (Bokhour Decl. ¶ 11.)

Because the Settlement is fair, reasonable, and the result of arm's-length negotiations between experienced counsel with the assistance of an experienced mediator, following an appropriate and thorough exchange of relevant information and documents, it warrants preliminary approval. Plaintiff respectfully requests that the Court enter an order: (1) preliminarily approving the Settlement; (2) conditionally certifying the Settlement Class pursuant to California Code of Civil Procedure § 382 for settlement purposes only; (3) approving the form and content of the proposed Notice Packet; (4) appointing Plaintiff's counsel as Class Counsel; (5) appointing ILYM Group, Inc. as the Settlement Administrator; and (6) scheduling a Final Approval Hearing. (Bokhour Decl. ¶ 12.)

## II. BACKGROUND

### A. THE PARTIES AND THE PROPOSED CLASS

Defendant offers respiratory care, infusion therapy, and medical equipment to patients across the State of California and United States.

Plaintiff was employed by Defendant as a non-exempt employee with the title of "Service Representative." Plaintiff began working for Defendant on December 16, 2023, until his separation from employment on March 1, 2024.

Plaintiff and other aggrieved employees (including, but not limited to, Home Medical Equipment Lead, Tractor Trailer Driver, CDL Delivery Driver, Service Driver, Shipping Clerk, and all other nonexempt positions) were responsible for all aspects of Defendant's business in California. However, Plaintiff contends that in these roles, Plaintiff and aggrieved employees were often not afforded all protections and rights conferred under the California Labor Code and applicable wage orders. Defendant denies Plaintiff's allegations and contends that it fully complied with California law.

The putative Settlement Class consists of all individuals who are or were employed by Defendant in California as non-exempt employees at any time during the Class Period, defined as August 12, 2022, through March 4, 2026. (S.A. ¶¶ 7 ["Class Period"], 39 ["Settlement Class Members"].)

### B. PROCEDURAL HISTORY

On March 27, 2024, Plaintiff filed a putative wage and hour class action in the San Diego County Superior Court against Defendant. Plaintiff's class action alleged that Defendant failed to pay all minimum and overtime wages, failed to provide compliant rest periods and pay missed rest break premiums, failed to provide compliant meal periods and pay missed meal period premiums, failed to pay all sick time, failed to pay all wages due and owing during employment and at separation, failed to provide complete and accurate wage statements, failed to reimburse necessary business expenses, and engaged in unfair competition (Class Action).

On April 29, 2024, Defendant removed the action to the United States District Court for the Southern District of California and, thereafter, on May 24, 2024, filed its Motion to Compel

Arbitration, Case No. 3:24-cv-0768-CAB-MSB, which was denied by the USDC on September 10, 2024. On October 10, 2024, Defendant appealed the order denying Defendant's Motion to Compel Arbitration to the United States Court of Appeals for the Ninth Circuit, Case No. 24-6238 (hereinafter the "Appeal"). As a result of the Appeal, the Class Action was automatically stayed on November 14, 2024.

On June 3, 2024, Plaintiff filed this separate complaint asserting a claim for civil penalties pursuant to the Private Attorneys General Act, San Diego Superior Court Case No. 37-2024-00026882-CU-OE-CTL (PAGA Action) The Parties have agreed to stipulate to stay the Class Action, and the Appeal, and to amend the complaint in the PAGA Action to include the allegations asserted in the Class Action for purposes of obtaining Court approval of this Settlement in the PAGA Action. (Bokhour Decl. ¶ 13; S.A. ¶ 41.)

Throughout the investigation and litigation, Defendant denied Plaintiff's allegations and indicated they would vigorously defend against them. However, before engaging in protracted litigation, the Parties agreed to explore early resolution through private mediation.

The Parties conducted a thorough investigation into the facts and legal issues in this Action. This included interviews with putative class members, an investigation of Defendant's operations and pay practices, and the informal exchange of discovery materials, including Defendant's written policies and practices, as well as payroll and timekeeping records for Settlement Class Members and Aggrieved Employees. Class Counsel has extensive experience in wage-and-hour litigation and has conducted substantial research on the legal claims and potential defenses at issue. Class Counsel has diligently investigated the claims asserted on behalf of the Settlement Class Members and Aggrieved Employees. (Bokhour Decl. ¶ 14.)

Based on this investigation and their own independent evaluation, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members and Aggrieved Employees, especially in light of the risks and uncertainties associated with continued litigation, Defendant's asserted defenses, and potential appellate issues. (Bokhour Decl. ¶ 15.)

On December 4, 2025, the Parties participated in a full-day mediation before Steve

Serratore, Esq., an experienced class action mediator. After a full-day mediation and the issuance of a mediator's proposal, the Parties reached a settlement. (Bokhour Decl. ¶ 16, Ex. A.) (*Id.*)

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

### C. <u>SUMMARY OF PLAINTIFF'S CLAIMS</u>

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

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

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

Plaintiff alleges that Defendant failed to pay all final wages upon separation of employment and did not furnish accurate, itemized wage statements in compliance with California Labor Code § 226. Finally, Plaintiff brings representative claims under the Private Attorneys General Act ("PAGA") for civil penalties based on the alleged Labor Code violations described above.

### D. <u>SUMMARY OF DEFENDANT'S DEFENSES</u>

Defendant contested and denied all material allegations raised by Plaintiff, both on the merits and with respect to the propriety of class certification and PAGA representative treatment. Defendant argued that their pay practices were lawful, denied maintaining any policy that resulted in any failure to pay wages, and asserted that all wages were paid in compliance with applicable Labor Code provisions. Defendant further contended that it correctly calculated and paid all overtime and sick pay wages using the proper "regular rate of pay," including all forms of non-discretionary compensation. Defendant denied that any bonuses or other forms of remuneration were improperly excluded from those calculations.

Additionally, Defendant maintained that their written meal and rest period policies were compliant with California law and that, in practice, Settlement Class Members were provided the opportunity to take timely, duty-free meal and rest periods. Defendant asserted that it had no policy or practice requiring employees to remain on duty or on premises during rest periods.

Defendant also argued that Plaintiff's claims for wage statement violations, waiting time penalties, and PAGA penalties were derivative of other claims it contended were meritless. Defendant denied that any violations occurred that would support derivative penalties under Labor Code sections 203, 204, 210 or 226.

Finally, Defendant asserted that individual inquiries would be necessary to determine liability—such as whether and why specific employees took shortened or untimely meal periods, and how break compliance was managed under various supervisors. Defendant emphasized that putative Class Members held different positions with different job duties, worked in different locations, and were subject to varying managerial practices. Defendant argued that this variability rendered the case unsuitable for class or representative treatment.

## III. SUMMARY OF THE PROPOSED SETTLEMENT

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

### A. SETTLEMENT CONSIDERATION AND ALLOCATION

The $730,000 Gross Settlement Amount is non-reversionary and will be paid out to Settlement Class Members without the need to submit a claim form or take any affirmative action. It includes: (1) Plaintiff's reasonable attorneys' fees and litigation costs, as approved by the Court; (2) a Service Award not to exceed $10,000 to the Class Representative, as approved by the Court; (3) Settlement Administration Costs, not to exceed $8,000, as approved by the Court; (4) a $20,000 PAGA Payment, 75 percent of which ($15,000) will be paid to the California Labor and Workforce Development Agency pursuant to Labor Code § 2699(i), and 25 percent ($5,000) to be distributed to Aggrieved Employees; and (5) the aggregate of all

Individual Settlement Payments to Participating Class Members. Defendant will separately pay the employer's share of payroll taxes on the portion of the Individual Settlement Amounts allocated as wages. (S.A. ¶ 50 *et seq*.)

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that $418,666.67 will be available to pay the Individual Settlement Payments to approximately 503 Settlement Class Members. As noted above, the average Individual Settlement Payment to Settlement Class Members is approximately **$834**, which is a fair and reasonable recovery. (Bokhour Decl. ¶ 7.)

### B. NOTICE PROCEDURES

The proposed Notice Packet, once approved by the Court, will be provided to Settlement Class Members and will include the estimated number of Workweeks for which each individual will be credited. (Exhibit "B" to the Bokhour Decl.) Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Data, which will include each Settlement Class Member's full name, last known address, telephone number, Social Security number, and dates of employment and/or number of Workweeks worked as a non-exempt employee in California during the Class Period and PAGA Period, along with any other information necessary for the Settlement Administrator to calculate Individual Settlement Amounts. Class Data will not be provided to Class Counsel and will remain confidential for administrative purposes only. (S.A. ¶¶ 6, 65.)

Within fourteen (14) calendar days of receiving the Class Data, the Settlement Administrator shall calculate the number of Workweeks for each Settlement Class Member, populate the Notice Packet accordingly, and mail the Notice Packet via first-class U.S. Mail, in English, to all Settlement Class Members. (S.A. ¶ 66.)

If any Notice Packet is returned as undeliverable, the Settlement Administrator shall use standard procedures, including skip tracing, to obtain updated or forwarding addresses. (S.A. ¶ 67.) If a forwarding address is provided on the returned envelope or located via skip trace, the Settlement Administrator shall re-mail the Notice Packet within ten (10) calendar days of receipt of the updated address.

For Notice Packets returned as undeliverable on or before the Notice Response Deadline (as defined in S.A. ¶ 20), the Settlement Administrator shall continue to make reasonable efforts to update addresses using the National Change of Address Database and shall re-mail the Notice Packet as soon as reasonably practicable. The re-mailed Notice Packet shall be identical to the original but shall include a notice that any Request for Exclusion or Objection must be submitted by the later of the original Notice Response Deadline or fourteen (14) days after the date of re-mailing. (S.A. ¶ 66.) The address most recently confirmed by the Settlement Administrator shall be presumed the best mailing address for each Settlement Class Member.

### C. EXCLUSION AND OBJECTION PROCEDURES

Settlement Class Members who do not timely submit a valid Request for Exclusion will be deemed to participate in the Settlement and shall become Participating Class Members without having to submit a claim form or take any other affirmative action. The Notice Packet will inform Settlement Class Members of their right to opt out of the Settlement. To do so, a Settlement Class Member must submit a written Request for Exclusion to the Settlement Administrator, postmarked no later than forty-five (45) calendar days after the initial mailing of the Notice Packet (the "Notice Response Deadline"). (S.A. ¶ 71(a).)

The Notice Packet will also inform Settlement Class Members of their right to object to the Settlement. Any Settlement Class Member who wishes to object must submit a written objection to the Settlement Administrator, postmarked no later than the Notice Response Deadline. The objection must include the objector's full name, address, telephone number, dates of employment with Defendant, and the case name and number. The objection may also include a detailed statement of the basis for the objection, any legal support, specific reasons for the objection, supporting documentation or evidence, and, if represented by counsel, the name and contact information of the objector's attorney. (S.A. ¶ 71(c).)

### D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The Individual Settlement Payment for each Participating Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant. Taking into account any approved disputes regarding Workweeks and excluding any individuals who timely submit valid Requests for Exclusion, the Settlement Administrator will calculate the total number of Workweeks worked by all Participating Class Members during the Class Period. Each Participating Class Member's Individual Settlement Amount will then be determined based on the proportion of Workweeks that he or she worked during the Class Period relative to the total number of Workweeks worked by all Participating Class Members during the same period. (S.A. ¶ 50(d)(ii).)

The Notice Packet will inform each Settlement Class Member of the estimated number of Workweeks worked during the Class Period. If a Settlement Class Member believes the estimate is incorrect and that they worked more Workweeks in California during the Class Period than reflected in the Notice Packet, they may timely submit documentation to the Settlement Administrator to dispute the number of credited Workweeks.

### E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant shall make a one-time deposit into the Qualified Settlement Fund ("QSF") in the amount of the Gross Settlement Amount, as described in Paragraph 50(a) of the Settlement Agreement, within sixty calendar days plus five court days after entry of judgment. In addition, Defendant shall separately pay their share of employer-side payroll taxes on the portion of the Individual Settlement Amounts allocated as wages, as calculated and directed by the Settlement Administrator. (S.A. ¶¶ 50(a), 73.)

The Settlement Administrator shall deposit the Gross Settlement Amount into an interest-bearing, FDIC-insured Qualified Settlement Fund account, from which all payments will be made in accordance with the terms of the Settlement Agreement. (S.A. ¶ 74.) In the event the Settlement is voided, all funds deposited by Defendant into the Qualified Settlement Fund, including any accrued interest, shall be returned to Defendant.

The Gross Settlement Amount will be used to fund: (i) Individual Settlement Amounts to Participating Class Members and Aggrieved Employees; (ii) attorneys' fees and costs awarded to Class Counsel; (iii) the Service Payment to the Class Representative; (iv) the payment to the California Labor and Workforce Development Agency ("LWDA") for PAGA penalties; and (v) Settlement Administration Costs. No later than fourteen (14) calendar days after the Gross Settlement Amount is deposited into the Qualified Settlement Fund, the Settlement Administrator shall issue and mail: (a) Individual Settlement Payments to Participating Class Members and Aggrieved Employees; (b) the Court-approved Service Payment to the Class Representative; (c) the payment to Class Counsel for attorneys' fees and litigation costs; (d) the payment to the LWDA; and (e) payment of the Court-approved Settlement Administration Costs to itself. (S.A. ¶ 75.)

Participating Class Members shall have 180 calendar days from the date of mailing to cash their settlement checks. If any settlement check is returned to the Settlement Administrator within this 180-day period, the Settlement Administrator shall, within five (5) business days of receipt, conduct a skip trace to obtain an updated address and notify Class Counsel and Defense Counsel of the result. If a new address is identified, the Settlement Administrator shall re-issue and mail a replacement check within ten (10) business days. (S.A. ¶ 76.)

If a Participating Class Member fails to cash their check within the 180-day period, the check will be voided, and the unclaimed funds shall escheat to the California State Controller's Unclaimed Property Fund, subject to court approval. The release of claims described in the Settlement Agreement will remain binding on all Participating Class Members, including those who do not cash their checks. (S.A. ¶ 76.)

### 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: ten percent (10%) will be allocated as wages, subject to withholding of all applicable local, state, and federal taxes; and ninety percent (90%) will be allocated as interest and civil penalties (pursuant to, for example, California Labor Code sections 203 and 226), from which no taxes will be withheld. To the extent required, the Settlement Administrator will issue to each Participating Class Member an IRS Form W-2 for the wage portion and a Form 1099 for the penalties and interest portion, along with any comparable state tax forms. (S.A. ¶ 50(e).)

### G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for the settlement payments, the Settlement Agreement provides that Plaintiff and each Participating Class Member, for themselves and their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Release Period. (S.A. ¶ 53.)

In accordance with California Labor Code § 2699(l), and as set forth in the Settlement Agreement (¶ 55), the PAGA claims of all Aggrieved Employees will also be released upon the Effective Date.

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

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

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

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

### A. Numerosity and Ascertainability

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

Here, according to Defendant’s records, there are approximately 503 Class Members. Plaintiff contends that this figure undoubtedly satisfies the numerosity requirement.

### B. Well-Defined Community of Interest

#### *1. Commonality*

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiff contends that the Class was subject to common policies and practices relating to the provision of meal and rest periods, time keeping, calculation of the “regular rate of pay,” and payment 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*

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

*3. Adequacy of Representation*

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

Adequacy may be established by the fact that 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; Falakassa Decl. ¶¶ 2-11.)

4. *Superiority*

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

## 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 saved by avoiding the time, costs, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

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

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

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

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

As shown below, the Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

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

The Settlement was the product of extensive arm's-length negotiations between counsel and was facilitated by an experienced wage-and-hour class-action mediator. Though cordial and professional, the Settlement negotiations were adversarial and noncollusive. 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. (Bokhour Decl. ¶ 35.)

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

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

### D. The Settlement is a Reasonable Compromise of Claims

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

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

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

Of relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. Defendant further disputed whether Plaintiff could obtain class certification, arguing, *inter alia,* that the legal claims and injuries lacked commonality. Defendant further argued that it complied with the applicable law, had compliant written policies, that all Class Members were provided the opportunity to take their meal and rest periods (*e.g.*, because many Class Members worked remotely during the class period), and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the Class. While Plaintiff asserts that this is a suitable case for certification, she recognizes that class certification proceedings carry a significant risk that could limit the claims she could pursue on a class basis.

Considering the uncertainties of continued protracted litigation, this negotiated Settlement reflects the best practicable recovery for the Class. While the total Settlement Amount is, of course, a compromise figure, the potential risks and opportunities of both parties were effectively weighed and considered by the Parties, resulting in a fair and equitable Settlement. (Bokhour Decl. ¶¶ 39-40.)

Based upon Plaintiff's and his counsel's independent investigation and detailed data obtained through informal discovery and information exchanges, and factoring in claim certification probabilities and liability probabilities, Class Counsel formulated detailed damages models to evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable resolution as further detailed below. (Bokhour Decl. ¶ 17.)

**1. Failure to Pay for Overtime Wages at the Correct "Regular Rate of Pay"**

First, Plaintiff alleged that Defendant failed to properly calculate the "regular rate of pay" by excluding non-discretionary bonuses, commissions, and other incentive payments when paying overtime and sick pay wages. Plaintiff contends that this exclusion resulted in systemic underpayment of both types of compensation in violation of California law. (Bokhour Decl. ¶ 18.)

In response, Defendant argued that it rarely, if ever, paid any such bonuses, and that all of the bonus and incentive payments at issue were discretionary in nature and, therefore, lawfully excluded from regular rate calculations. Defendant further contended that it correctly paid all overtime and sick pay in accordance with the Labor Code and that any potential underpayment was neither prevalent nor minimal and was made in good faith. (Bokhour Decl. ¶ 19.)

Accordingly, and based on Defendant's sampling of payroll records, Plaintiff significantly discounted the value of the regular rate claim in light of Defendant's defenses, keeping in mind that the primary value associated with this claim lies in the potential recovery of derivative waiting time penalties. (Bokhour Decl. ¶ 20.)

**2. Waiting Time Penalties**

Plaintiff also alleged that Defendant failed to timely pay all wages due upon separation from employment, thereby entitling former employees to waiting time penalties under Labor Code §§ 201–203. Based on Defendant's records, there were approximately 306 Settlement Class Members who separated from their employment during the applicable statutory period. Using the statutory maximum of 30 days, with an assumed 8-hour workday and an average hourly rate of $23.45, the total maximum potential exposure for waiting-time penalties is approximately $1,722,168 (306 employees × 8 hours/day × $23.45/hour × 30 days). (Bokhour Decl. ¶ 21.)

Defendant disputed this claim and asserted that any failure to pay wages upon separation was not willful and therefore did not give rise to waiting time penalties under the Labor Code. Defendant also contended that it maintained facially neutral and compliant payroll practices and would defeat any underlying wage claims on the merits or at the class certification stage. (Bokhour Decl. ¶ 22.)

To account for these risks, Plaintiff applied a 50% risk of defeat at the class certification stage and an additional 40% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $516,650 for Plaintiff's waiting time penalty claim. (Bokhour Decl. ¶ 23.)

### 3. Failure to Provide Meal and Rest Periods

With respect to Plaintiff's meal and rest period claims, the Class Members collectively worked approximately 160,000 shifts during the Class Period. Based on Plaintiff's analysis of a representative sample of Defendant's timekeeping and payroll records produced prior to mediation, Plaintiff applied an estimated 15% violation rate for meal periods and a 25% violation rate for rest periods. Using the applicable premium rate of $21 per missed break, the maximum potential damages are estimated at $562,800 for the meal period claim (160,000 shifts × 15% × $23.45) and $938,000 for the rest period claim (160,000 shifts × 25% × $23.45). (Bokhour Decl. ¶ 24.)

However, Defendant contested liability on both claims, asserting that meal and rest-period issues presented individualized questions inappropriate for class certification. Defendant maintained that their written policies were facially compliant with California law and that employees were provided flexibility to take breaks at their discretion. It further argued that manager-specific practices, job duties, and employee choices varied significantly, requiring individualized inquiries into whether breaks were missed or voluntarily skipped. Based on these risks, Plaintiff acknowledged that there was a decent chance that the Court could deny class certification. (Bokhour Decl. ¶ 25.)

Based on these arguments, Plaintiff believes there is a 75% risk that the Court would deny class certification on these meal period and rest period violation claims. Defendant also asserted that, even if certification were granted, it would prevail on the merits by showing that it either provided compliant breaks or paid the required premium compensation. Defendant contended that Plaintiff would be unable to present reliable, representative evidence sufficient to establish liability or support a classwide damages award. Plaintiff acknowledged these risks and incorporated a further 50% reduction. Plaintiff, therefore, calculates the risk-adjusted value of the meal-period claims to be $70,350 and the rest-period claims to be $117,250. (Bokhour Decl. ¶ 26.)

### 4. Failure to Provide Accurate Itemized Wage Statements

Plaintiff further alleged that Defendant issued non-compliant wage statements in violation of Labor Code § 226, based on the same facts underlying Plaintiff's claims for unpaid wages, meal and rest period premiums, and failure to include all forms of compensation in the regular rate of pay. Plaintiff estimates that approximately 14,407 allegedly violative wage statements were issued during the Class Period. In calculating Defendant's maximum potential exposure, Plaintiff conservatively assumed that only the "initial" penalty of $50 per violation would apply, in accordance with Labor Code § 226(e) and case law holding that higher penalties apply only after an employer has been notified of the violations. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008). This results in a maximum potential penalty of $720,350 (14,407 × $50). (Bokhour Decl. ¶ 27.)

Defendant disputed this claim, asserting that their wage statements fully complied with the requirements of Labor Code § 226. Defendant further argued that, even if there were any errors, they were not "knowing and intentional," and Plaintiff could not establish the required element of injury. Defendant also relied on their defenses to the underlying wage-and-hour claims and to class certification. (Bokhour Decl. ¶ 28.)

As such, Plaintiff discounted the calculated maximum exposure by 40% for the risk of non-certification and by an additional 50% for the risk of being unsuccessful on the merits to arrive at an estimated total of $216,105. (Bokhour Decl. ¶ 29.)

**5. <u>PAGA Penalties</u>**

Plaintiff also sought civil penalties under the Private Attorneys General Act of 2004 ("PAGA") for each violation for which such penalties are available, and alleged that these penalties could be assessed on a cumulative or "stacked" basis. See *Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425, at *12 (E.D. Cal. Sept. 12, 2018) ("'stacking' PAGA penalties is not inappropriate under California law"). Assuming application of the default penalty of $100 per pay period pursuant to Labor Code § 2699(f)(2), and that penalties are not subject to reduction or judicial discretion, the maximum potential exposure for PAGA penalties could reach approximately $1,440,700 (14,407 pay periods × $100). (Bokhour Decl. ¶ 30.)

However, this theoretical maximum does not account for significant legal uncertainties.

First, courts are divided on whether "stacking" PAGA penalties across multiple violations in a single pay period is appropriate, especially when the violations are derivative. Second, Labor Code § 2699(e)(2) grants courts broad discretion to reduce civil penalties where doing so would avoid an award that is "unjust, arbitrary and oppressive, or confiscatory." See *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (approving reduction of PAGA penalties where the employer did not act willfully or negligently, and legal obligations were unclear). (Bokhour Decl. ¶ 31.)

In recognition of these risks, including the likelihood of judicial reduction and the difficulties of prevailing on the merits of the underlying claims, Plaintiff applied significant discounts to the estimated exposure. After accounting for these risks, Plaintiff estimates a reasonable potential value of $100,000 in PAGA penalties. However, in light of the Parties' mutual desire to resolve the matter without protracted litigation, they agreed to allocate $20,000 of the Gross Settlement Amount toward resolution of the PAGA claim, which Plaintiff believes is fair and reasonable under the circumstances. (Bokhour Decl. ¶ 32.)

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

- Regular Rate Claims: *discounted*
- Labor Code §§ 201 – 203 Claims: $516,650
- Meal Period Claims: $70,350
- Rest Break Claims: $117,250
- Wage Statement Claims: $216,105
- PAGA Penalties $100,000
- **<u>Total Risk-Adjusted Penalties and Damages</u>: $1,020,355**

Given the realistic value of Plaintiff's claims, the $730,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 71% 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. ¶ 33.)

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

### E. Plaintiff's Counsel Is Experienced in Similar Wage-And-Hour Litigation

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

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

### F. The Notice Packet Conforms to All Applicable Statutes and Rules

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

The proposed Notice Packet and the proposed plan for the Settlement Administrator to mail the Notice Packet to the last known address of all Class Members comply with all requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Notice Packet include (1) the material terms of the Settlement; (2) the proposed attorneys' fees and costs and the Settlement Administration Costs; (3) details about the final fairness hearing and how Class Members may elect to exclude themselves or make an objection; and (4) how

Class Members can obtain additional information. (Bokhour Decl. ¶ 49, Exhibit B). In addition, it will inform Class Members of their estimated settlement share.

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

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

### G. <u>THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS</u>

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

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

Under the terms of the Settlement Agreement, Class Counsel is requesting an amount not to exceed one-third of the Settlement Amount in attorneys' fees. (S*ee, e.g., Laffite v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of $6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the Class Members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp*. (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc*. (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of the common fund). (Bokhour Decl. ¶¶ 44-45.)

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

## I. <u>THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND APPROPRIATE</u>

The Settlement Agreement provides for a Service Award to the named Plaintiff in the amount not to exceed $10,000. The proposed Service Award is reasonable given the time and effort Plaintiff devoted to this case. Plaintiff's efforts included: providing factual background for the class and PAGA complaint; providing documents and information about Defendant's compensation plan; participating in phone calls to discuss litigation and settlement strategy; making themselves available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation and being available during mediation; and reviewing the Settlement documents. The Plaintiff also assumed significant risk in bringing this litigation—had he lost, he could have been ordered to pay Defendant's costs. (See Declaration of Plaintiff in Support of Preliminary Approval of Class Action Settlement filed herewith.)

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

## VI. <u>THE COURT SHOULD APPOINT ILYM AS THE SETTLEMENT ADMINISTRATOR</u>

Subject to the Court's approval, the parties have stipulated to appoint ILYM Group, Inc. as the Settlement Administrator. ILYM is experienced in administering class action settlements and has agreed to cap its fees at $8,000 for administering this Settlement. (Bokhour Decl. ¶ 46.)

## VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

## VIII. CONCLUSION

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

Dated: March 25, 2026

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

BY: ______________________________

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