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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SHASTA

DONALD MANION, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

HAT CREEK CONSTRUCTION &
MATERIALS, INC., a California Corporation;
and DOES 1-50, inclusive.

Defendants.

CASE NO.: 24CV-0205505

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

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

Date: January 26, 2026

Time: 9:00 a.m.

Dept.: 64

Complaint Filed: July 12, 2024

FAC Filed: February 11, 2025

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

2 **PLEASE TAKE NOTICE** that on January 26, 2026, at 9:00 a.m. or as soon thereafter as
3 the matter may be heard in Department 64 of the Shasta County Superior Court, located at 1515
4 Court Street, Redding, CA 96001, Plaintiff Donald Manion, individually and on behalf of all
5 others similarly situated, will and hereby moves the Court for entry of an Order preliminarily
6 approving the Parties' Class Action and PAGA Settlement Agreement, including:

7 A. Certifying the Class for purposes of settlement only;

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

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

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

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

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

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

23 Dated: December 31, 2025

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

24
25 BY:

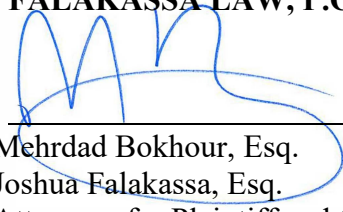
26 
27 Mehrdad Bokhour, Esq.
28 Joshua Falakassa, Esq.
 Attorneys for Plaintiff and the Putative Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Donald Manion (“Plaintiff”), individually and on behalf of
4 all others similarly situated, seeks preliminary approval of the Class Action and PAGA Settlement
5 Agreement.¹ Subject to Court approval, Plaintiff and Defendant Hat Creek Construction &
6 Materials, Inc. (“Defendant”) have agreed to settle their claims and the proposed Class Members’
7 claims against Defendant for a Gross Settlement Amount of \$480,000.

8 Plaintiff seeks 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 July 12, 2020, through October 21, 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 from May 6, 2023, through October 21, 2025.
13 (“Aggrieved Employees”). (Bokhour Decl. ¶ 11.)

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 \$25,000, Settlement Administration Costs
17 not to exceed \$8,000, PAGA penalties of \$20,000 (of which \$15,000 or 75% will be paid to the
18 LWDA and the remaining \$5,000 or 25% will be paid to the Aggrieved Employees), and a Service
19 Payment not to exceed \$10,000 to the named Plaintiff (S.A. ¶ 47(a)-(h); Bokhour Decl. ¶ 9), as
20 follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$480,000
Attorneys’ Fees (not to exceed 1/3 of GSA)	\$160,000
Litigation Costs (not to exceed)	\$25,000.00
Settlement Administration Costs (not to exceed)	\$8,000.00
PAGA payment to LWDA (75% of \$20k award)	\$15,000.00
PAGA payment to Aggrieved Employees (25% of \$20k award)	\$5,000.00
Plaintiff’s Service Payment	\$10,000.00

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

<i>Net Settlement Amount</i>	\$257,000
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As of the Parties' mediation, the Class includes approximately 309 non-exempt employees who all worked for Defendant in California during the Class Period. Plaintiff contends that, regardless of their roles, all non-exempt employees were subject to the same wage and hour policies and payroll/scheduling practices, and therefore, the Individual Settlement Payments will be paid on a pro-rata basis based on the number of Workweeks during the Class Period. Assuming a total class size of approximately 309 Settlement Class Members, the average payment to each Settlement Class Member will be approximately **\$831**, with the highest payment estimated to be **\$3,088**. 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 credited to 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. Plaintiff respectfully requests that the Court enter an order preliminarily approving the Settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the Class 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.)

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED CLASS

Defendant is a provider of road construction services for interstate highways in California,

1 producing and supplying its own raw materials—including rock products, asphalt, and concrete—
2 directly to customers. The putative Class consists of all non-exempt employees, including, but
3 not limited to, equipment technicians, carpenters, heavy equipment mechanics, maintenance
4 helpers, and electrical/instrumentation technicians who are or were employed by Defendant in
5 California at any time during the Class Period from July 12, 2020, through October 21, 2025.
6 (S.A. ¶¶ 7, 39.)

7 **B. PROCEDURAL HISTORY**

8 On or about July 12, 2024, Plaintiff filed a class action lawsuit against Defendant in the
9 Court asserting claims under the California Labor Code and California Private Attorneys General
10 Act of 2004 (“PAGA”). The operative complaint alleges, among other things: (1) failure to pay
11 prevailing, minimum, and overtime wages; (2) failure to pay sick pay at the proper rate; (3) meal
12 period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time
13 penalties; (7) failure to reimburse necessary business expenses; and (8) unfair competition in
14 violation of California Business and Professions Code §§ 17200–17210. (Bokhour Decl. ¶ 13;
15 S.A. ¶ 41.)

16 Defendant retained counsel, denied the allegations, and vowed to defend against the
17 allegations vigorously. However, before engaging in protracted litigation, the Parties agreed to
18 explore resolution through private mediation. In preparation for mediation, the Parties agreed to
19 an informal discovery process in which they exchanged information regarding applicable policies
20 and procedures, substantial payroll and timekeeping records, the size of the class, compensation
21 policies and practices, and the potential value of the case. The sampling enabled Class Counsel
22 and its expert to fully evaluate the potential claims and extrapolate the data to the entire Settlement
23 Class. During this process, Plaintiff and counsel analyzed, researched, and investigated the
24 potential claims of all similarly situated employees. (Bokhour Decl. ¶ 14.)

25 The Parties have conducted a thorough investigation into the facts of the Action. This
26 includes conducting interviews with putative class members, investigation of Defendant and its
27 operations, and its pay policies/procedures, exchange of informal discovery, including
28 Defendant’s written policies and practices, and the production of a statistically significant

1 sampling of payroll and timekeeping records for Settlement Class Members and Aggrieved
2 Employees. Class Counsel is both knowledgeable about and has done extensive research with
3 respect to the applicable law and potential defenses to the claims of the Settlement Class Members
4 and Aggrieved Employees. Class Counsel has diligently investigated the Class Members' claims
5 against Defendant. (Bokhour Decl. ¶ 15.)

6 Based on the foregoing data and their own independent investigation and evaluation, Class
7 Counsel believes that the settlement with Defendant for the consideration and on the terms set
8 forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
9 the Settlement Class Members and Aggrieved Employees, in light of all known facts and
10 circumstances, including the risk of significant delay and uncertainty associated with litigation,
11 various defenses asserted by Defendant, and numerous potential appellate issues. (Bokhour Decl.
12 ¶ 16.)

13 On August 21, 2025, the Parties participated in mediation before Marc Feder, Esq., a
14 highly experienced class action mediator. After a full-day mediation and the issuance of a
15 mediator's proposal, the Parties settled and memorialized the terms of the Settlement in a long-
16 form Settlement Agreement. (Bokhour Decl., ¶ 17, Exhibit "A".) (*Id.*)

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

18 **C. SUMMARY OF PLAINTIFF'S CLAIMS**

19 Plaintiff alleged various wage and hour violations on behalf of the non-exempt employees
20 who worked for Defendant during the Class Period (i.e., Class Members). (Bokhour Decl. ¶ 18.)

21 First, Plaintiff alleged that Defendant failed to pay all prevailing wages at the appropriate
22 rate. (Bokhour Decl. ¶ 19.)

23 Next, Plaintiff alleged that Defendant's deficient meal and rest period policies and
24 practices failed to allow and permit Class Members to take timely and compliant meal periods or
25 pay premium pay in lieu thereof. (Bokhour Decl. ¶ 20.) Likewise, Plaintiff contended that the
26 Class Members were not provided with duty-free rest periods of at least ten (10) minutes for each
27 four (4) hour work period, or major fraction thereof, due to Defendant's operational requirements
28 at the direction of their supervisors. (*Id.*)

1 Plaintiff further alleged that Defendant failed to pay all final wages at separation of
2 employment and provide accurate itemized wage statements that comply with all requirements of
3 Labor Code Section 226. Plaintiff also alleged that Defendant failed to reimburse Class Members
4 for all necessary business expenses, and also brought a claim for civil penalties under the PAGA
5 arising from the alleged Labor Code violations set forth above. (Bokhour Decl. ¶ 21.)

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

7 Defendant contested and denied each of Plaintiff’s material allegations on the merits and
8 as to the propriety of the class and PAGA representative action. (Bokhour Decl. ¶ 22.)

9 First, Defendant argued that it always paid employees the proper prevailing wages, and
10 for all hours worked. Defendant also argued that its timekeeping and pay practices/policies did
11 not result in any underpayment to Class Members. Defendant argued that even if there was any
12 underpayment, it did not constitute compensable time and, if any, resulted in de minimis damages.
13 (Bokhour Decl. ¶ 23.)

14 Next, Defendant contended that, at all relevant times, its written meal and rest period
15 policies complied with California law. Defendant argued that, in practice, Class Members
16 regularly were permitted to be free of any duties during meal and rest periods and were not
17 constrained due to any operational or supervisory requirements. (Bokhour Decl. ¶ 24.) With
18 regard to the failure to pay necessary business expenses, Defendant argued that Class Members
19 were not required to use their personal cell phones, and that it adequately reimbursed them for
20 necessary expenses pursuant to its reimbursement policy and procedures. (Ibid.)

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

27 Defendant also generally argued that a myriad of individualized inquiries would be
28 required to establish liability, including amongst other things, which employees, if any, took meal

1 periods of less than 30 minutes, why a particular employee took a meal period of less than 30
2 minutes on a particular shift, and whether a particular employee remained under the control of
3 Defendant during rest periods. (Bokhour Decl. ¶ 26.)

4 Defendant further argued that Plaintiff and a substantial portion of the putative class had
5 executed arbitration agreements containing class and representative action waivers. Defendant
6 contended that these agreements barred class treatment of the asserted claims and required
7 individualized arbitration. Defendant maintained that enforcement of the arbitration agreements
8 would substantially limit or eliminate Plaintiff's ability to proceed on a class or representative
9 basis and would significantly reduce potential exposure. (Bokhour Decl. ¶ 27.)

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

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

12 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

13 The \$480,000 Settlement Amount is non-reversionary and will be paid out to Class
14 Members without the need to submit a claim form or take any affirmative action. It includes (1)
15 Plaintiff's reasonable attorneys' fees not to exceed 33.33% of the Settlement Amount and costs
16 not to exceed \$25,000, as approved by the Court; (2) a Service Payment not to exceed \$10,000 to
17 the named Plaintiff, as approved by the Court; (3) Settlement Administration Costs, not to exceed
18 \$8,000, as approved by the Court; (4) a \$20,000 PAGA Penalties payment, 65 percent (65%) of
19 which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the
20 aggregate of all Individual Settlement Payments of the Settlement Class Members. Defendant's
21 employer's share of payroll taxes on the portion of the Individual Settlement Amounts that are
22 allocated as wages subject to withholdings will be paid separately by Defendant. (S.A. ¶ 47, *et*
23 *seq.*)

24 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
25 that \$257,000 will be available to pay the Individual Settlement Payments to approximately 309
26 Settlement Class Members. As noted above, the average Individual Settlement Payment to
27 Settlement Class Members is approximately \$831, which is a fair and reasonable recovery.
28 (Bokhour Decl. ¶ 10.)

1 The Settlement is non reversionary and provides for automatic distribution without claim
2 forms. Following final approval and the Effective Date, the Settlement Administrator will mail
3 settlement checks to Participating Class Members based on their credited Workweeks. This
4 structure is intended to maximize participation and recovery, because Settlement Class Members
5 receive payments unless they timely request exclusion.

6 **B. NOTICE PROCEDURES**

7 The Class Notice , as approved by the Court, will be provided to the Settlement Class
8 Members and will state each person's estimated number of Workweeks and estimated Individual
9 Settlement Amount (Exhibit B to the Bokhour Declaration). The Notice will also advise
10 Settlement Class Members of their rights to dispute Workweeks, request exclusion from the
11 settlement of the Class Claims, and object to the settlement of the Class Claims. (S.A. ¶¶ 19, 20,
12 66, 68.)

13 Within ten (10) business days after entry of the Preliminary Approval Order, Defendant
14 shall provide the Settlement Administrator the Class Data in a single spreadsheet, including
15 Settlement Class Members' full names, last known addresses, telephone numbers, Social Security
16 Numbers, and dates of employment and or number of Workweeks during the Class Period and
17 the PAGA Period. (S.A. ¶¶ 6, 62.)

18 Within fourteen (14) calendar days after receipt of the Class Data, the Settlement
19 Administrator shall mail the Notice to the Settlement Class Members by first class mail, in
20 English. (S.A. ¶ 63.) The Settlement Administrator will check addresses against the United States
21 Postal Service National Change of Address database and will use standard methods, including
22 skip tracing, to obtain updated addresses if mail is returned. (S.A. ¶¶ 62 to 64.)

23 If the Settlement Administrator learns of a failed mailing and obtains a forwarding or
24 updated address for that Settlement Class Member, the Settlement Administrator will re mail the
25 Notice within ten calendar days of receipt of the updated address. The re mailed Notice will be
26 identical to the original Notice, except that it will advise the Settlement Class Member that any
27 request for exclusion or objection must be returned by the later of the original Notice Response
28 Deadline or fifteen days after the re mailing. (S.A. ¶ 64.)

1 **C. EXCLUSION AND OBJECTION PROCEDURES**

2 Settlement Class Members who do not timely request exclusion from the settlement of the
3 Class Claims will be deemed Participating Class Members and will receive an Individual
4 Settlement Amount automatically, without submitting a claim form. (S.A. ¶¶ 26, 48, 68.)

5 Any Settlement Class Member, other than Plaintiff, may request to be excluded from the
6 settlement of the Class Claims by submitting a Request for Exclusion to the Settlement
7 Administrator, postmarked on or before the Notice Response Deadline, which is forty five
8 calendar days from the date the Notice is mailed. (S.A. ¶¶ 20, 68(a).) Any Request for Exclusion
9 must include the Settlement Class Member's full name, address, telephone number, last four digits
10 of the Social Security Number or date of birth, and signature, and must be returned by mail to the
11 Settlement Administrator at the address stated in the Notice. (S.A. ¶ 68(a).) A Settlement Class
12 Member who timely requests exclusion will not receive any settlement payment for the Class
13 Claims and will not be bound by the settlement or judgment as to the Class Claims. (S.A. ¶ 68(a).)

14 Any Settlement Class Member, other than Plaintiff, may object to the settlement of the
15 Class Claims by submitting a written objection to the Settlement Administrator, postmarked on
16 or before the Notice Response Deadline. (S.A. ¶ 68(c).) The objection must include the objector's
17 full name, address, telephone number, dates of employment with Defendant, the case name and
18 number, and the basis for the objection. (S.A. ¶ 68(c).) Settlement Class Members and Aggrieved
19 Employees may not object to or opt out of the settlement with respect to the PAGA Claims. (S.A.
20 ¶ 68(c).)

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

22 The Settlement Administrator will calculate each Individual Settlement Amount using the
23 Class Data provided by Defendant. (S.A. ¶ 47(d).)

24 PAGA Allocation. Twenty thousand dollars of the Gross Settlement Amount is allocated
25 to PAGA penalties. Of that amount, thirteen thousand dollars will be paid to the LWDA and seven
26 thousand dollars will be distributed to Aggrieved Employees in proportion to their Workweeks
27 during the PAGA Period compared to the total Workweeks of all Aggrieved Employees during
28 the PAGA Period. (S.A. ¶¶ 47(d)(i), 47(i).)

1 The Net Settlement Amount will be allocated to Participating Class Members based on
2 each person's proportionate Workweeks during the Class Period. Specifically, the Settlement
3 Administrator will multiply the Net Settlement Amount by a fraction whose numerator is the
4 Participating Class Member's Workweeks during the Class Period and whose denominator is the
5 total Workweeks of all Participating Class Members during the Class Period. (S.A. ¶ 47(d)(ii).) If
6 there are timely Requests for Exclusion, the Settlement Administrator will proportionately
7 increase the Individual Settlement Amounts of Participating Class Members so that one hundred
8 percent of the Net Settlement Amount allocated to the Class Claims is distributed to Participating
9 Class Members. (S.A. ¶ 47(d)(ii).)

10 The Notice will inform Settlement Class Members of the estimated Workweeks attributed
11 to them during the Class Period and PAGA Period. Settlement Class Members may dispute their
12 Workweeks by timely submitting evidence to the Settlement Administrator. Defendant's records
13 are presumed determinative absent reliable evidence to rebut them, and counsel will meet and
14 confer regarding any dispute. If counsel cannot resolve the dispute, it will be submitted to the
15 Court for a final decision. Any adjustment of Workweeks for an individual will result in
16 recalculation of Individual Settlement Amounts, but will not require any increase to the Gross
17 Settlement Amount. (S.A. ¶ 66.)

18 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

19 Within seven (7) days after the Effective Date, Defendant shall make a one time deposit
20 into the Qualified Settlement Fund of the Gross Settlement Amount necessary to fund all
21 payments under the Settlement Agreement. Defendant will separately pay the employer share of
22 applicable payroll taxes as calculated and directed by the Settlement Administrator. (S.A. ¶ 70.)

23 No later than seven (7) calendar days after the deposit into the Qualified Settlement Fund,
24 the Settlement Administrator will mail payments to Participating Class Members, pay the
25 attorneys fees and costs award to Class Counsel, pay any Service Payment approved by the Court,
26 remit the LWDA payment for PAGA penalties, and pay Settlement Administration Costs. (S.A. ¶
27 72.)

28 Final Settlement Class Members will have one hundred eighty calendar days after mailing

1 to cash their settlement checks. If a check is not cashed within that period, it will be void and a
2 stop payment will be issued. Unclaimed funds will be paid to the cy pres recipient Legal Services
3 of Northern California. The release will be binding on Final Settlement Class Members who do
4 not cash their checks within the one hundred eighty day period. (S.A. ¶ 73.) If a settlement check
5 is returned within one hundred eighty days, the Settlement Administrator will perform a skip trace
6 within five business days to locate the individual. If a new address is found, the Settlement
7 Administrator will re issue the check within ten business days and notify Class Counsel and
8 Defense Counsel. If a Final Settlement Class Member reports a check lost or stolen, the Settlement
9 Administrator will stop payment and issue a replacement check if the original was not negotiated.
10 (S.A. ¶ 73.)

11 **F. TAX TREATMENT**

12 For tax purposes, each Participating Class Member's Individual Settlement Amount will
13 be allocated as follows: fifteen percent will be treated as wages subject to applicable withholdings,
14 and eighty-five percent will be treated as interest and civil penalties for which no taxes will be
15 withheld. The Settlement Administrator will issue a Form W-2 for the wage portion and a Form
16 1099 for the penalties and interest portion. (S.A. ¶ 47(e).)

17 **G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

18 In exchange for these payments, the Settlement Agreement provides that, upon the
19 Effective Date, Plaintiff and each Participating Class Member will release the Released Parties
20 from the Released Class Claims for the Class Release Period. (S.A. ¶¶ 4, 50 to 51.)

21 claims, rights, demands, liabilities, and causes of action that were alleged, or that
22 reasonably could have been alleged, arising out of or related to the facts,
23 transactions, or allegations set forth in the operative complaint that arose during the
24 Class Period, including but not limited to claims for: (1) failure to pay prevailing
25 wages in violation of Labor Code §§ 1720 et seq.; (2) failure to pay minimum and
26 overtime wages in violation of Labor Code §§ 510, 1194, 1197, and 1198, and
27 applicable IWC Wage Orders; (3) failure to pay sick wages at the proper legal rate
28 in violation of Labor Code § 246; (4) failure to provide compliant meal periods and
pay meal period premiums in violation of Labor Code §§ 226.7 and 512, and
applicable IWC Wage Orders; (5) failure to authorize and permit compliant rest
periods and pay rest break premiums in violation of Labor Code §§ 226.7 and 516,
and applicable IWC Wage Orders; (6) failure to pay all wages due during
employment and at separation, including waiting time penalties, in violation of
Labor Code §§ 201–204; (7) failure to provide complete and accurate itemized wage

1 statements in violation of Labor Code §§ 226 and 226.3; (8) failure to reimburse
2 necessary business expenses in violation of Labor Code §§ 2802–2804; (9) unfair,
3 deceptive, fraudulent, or otherwise unlawful business practices in violation of
4 California Business & Professions Code §§ 17200–17210; (10) statutory penalties
pursuant to the Private Attorneys General Act, Labor Code §§ 2698–2699.6; and
5 (11) all related claims for liquidated damages, restitution, penalties, interest,
attorneys’ fees, and costs.

6 (S.A. ¶ 4.)

7 **H. AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS**

8 The Settlement Agreement defines “Released PAGA Claims” as all claims for civil
9 penalties under PAGA, Labor Code sections 2698 to 2699.6, that were alleged or reasonably could
10 have been alleged based on the facts, transactions, or allegations set forth in the operative
11 complaint, arising during the PAGA Period. (S.A. ¶ 23.) Upon the Effective Date, Plaintiff and the
12 LWDA will release and discharge the Released Parties from the Released PAGA Claims for the
13 PAGA Release Period. (S.A. ¶¶ 52 to 53.)

14 In addition, the named Plaintiff agreed to a general release and a Civil Code section 1542
15 waiver as set forth in the Settlement Agreement. (S.A. ¶¶ 57 to 58.)

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

19 California Rule of Court 3.769(d) provides that the Court may make an order approving
20 certification of a provisional settlement class at the preliminary approval stage. It is well-
21 established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
22 of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996)
23 48 Cal.App.4th 1794, 1807 at n.19.

24 The reasons include that no trial is anticipated in a settlement class, so the case
25 management issues inherent in determining if the class should be certified need not be confronted;
26 and the trial court’s fairness review of the settlement protects the interests of the non-
27 representative Class Members. *Id.*; see also *Officers for Justice v. Civil Service Com.* (9th Cir.
28 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 request 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. § 382. 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 309 Class Members. Plaintiff argues that this figure undoubtedly satisfies the numerosity requirement.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

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

2. Typicality

Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*

1 on *Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiff’s
2 claims are typical of the Class for the purposes of any continued litigation of the Action, but agree
3 for the purposes of this Settlement only, that Plaintiff asserts claims regarding Defendant’s wage
4 payment policies/practices, meal and rest break policies/practices, wage statements,
5 reimbursements, and the provisions governing the timely and complete payment of wages, which
6 are at the core of the Action.

7 3. Adequacy of Representation

8 The proposed class representative must establish that he/she will adequately represent the
9 proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th
10 540, 546. Specifically, Plaintiff’s position is that he is adequate to represent the Class because he
11 was employed by Defendant during the Class Period, was subject to the same wage and hour
12 policies/practices as the rest of the Class, understands his duties as Class Representative, has been
13 willing to undergo the risk of litigation, and has no conflicts of interest.

14 Adequacy may be established by the fact that counsel is an experienced practitioner. *See*
15 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
16 244 F.3d 1152, 1162. Here, Plaintiff asserts that Class Counsel represents him with extensive
17 experience in wage and hour class and PAGA actions like the instant matter. (Bokhour Decl. ¶¶
18 2-5; Falakassa Decl. ¶¶ 2-11.)

19 4. Superiority

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

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

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

1 The law favors class action settlements where substantial resources can be conserved by
2 avoiding the time, cost, and rigors of formal litigation. However, a class action may not be
3 dismissed, compromised, or settled without the Court’s approval. Cal. R. Ct. 3.769(a). The
4 California Rules of Court set forth the procedures for court approval of a class action settlement:
5 (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed
6 by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of
7 the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

8 The decision to approve or reject a proposed settlement lies within the Court’s sound
9 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224. Nevertheless, in
10 considering a potential settlement for approval, a court is not to turn the approval hearing “into a
11 trial or rehearsal for trial on the merits [or] to reach any ultimate conclusions on the contested
12 issues of fact and law which underlie the merits of the dispute.” *Officers for Justice*, 688 F.2d at
13 625.

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

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

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

27 The above factors are not exclusive “and the court is free to engage in a balancing and
28 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at

245. However, in doing so, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal quotation marks omitted).

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

At the preliminary approval stage, the Court determines whether the proposed settlement is within the range of possible approval and whether the proposed notice plan is appropriate. Cal. R. Ct. 3.769(c). Plaintiff submits that the Settlement satisfies the preliminary approval standard and that the proposed Notice and dissemination plan comply with California Rule of Court 3.766 and due process.

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

The Settlement was the product of extensive arm’s-length negotiations between counsel and was facilitated by an experienced wage-and-hour class-action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive. 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

1 potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class
2 certification, summary judgment, at trial, and/or on the damages awarded, and/or on an appeal
3 that can take several more years to litigate. In addition, if Defendant prevailed on any of its
4 defenses, the Class Members may not have received any substantial monetary recovery. (Bokhour
5 Decl. ¶ 48.)

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

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

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

14 To evaluate a settlement, the parties must provide the trial court with “basic information
15 about the nature and magnitude of the claims in question and the basis for concluding that the
16 consideration being paid for the release of those claims represents a reasonable compromise.”
17 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
18 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
19 399, which held that an explicit statement of the maximum theoretical amount that the class could
20 recover was not necessary:

21 Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in
22 all cases to contain evidence in the form of an explicit statement of the maximum
23 amount the plaintiff class could recover if it prevailed on all its claims – a number
24 which appears nowhere in the record of the case. But *Kullar* does not, as Greenwell
25 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.

26 A settlement is not judged against what might have been recovered had a plaintiff
27 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
28 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 250

1 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
2 by the proposed settlement is substantially narrower than it would be if the suits were to be
3 successfully litigated, this is no bar to a class settlement because the public interest may indeed
4 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
5 litigation.”)

6 Of relevance to the reasonableness of the proposed Settlement is the fact that significant
7 legal and factual grounds for defending this action exist. Defendant further disputed whether
8 Plaintiff could obtain class certification, arguing, *inter alia*, a lack of commonality of the legal
9 claims and injuries. Defendant further argued that it complied with the applicable law, had
10 compliant written policies, that all Class Members were provided the opportunity to take their
11 meal and rest periods, and that any purported deviations therefrom were individualized in nature,
12 thereby limiting Plaintiff’s ability to certify the Class. While Plaintiff asserts that this is a suitable
13 case for certification, he realizes that there is always a significant risk associated with class
14 certification proceedings, which could significantly limit the claims that he could pursue on a
15 class basis.

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

20 Based upon detailed data obtained through informal discovery and information exchanges,
21 Class Counsel estimated the following big-picture data points through the date of mediation:

22 **309 Class Members who worked approximately 20,800 workweeks.**

23 **1. Failure to Pay Prevailing Wages on Public Works Projects**

24 First, Plaintiff alleged that Defendant failed to pay prevailing wages for work performed
25 on California public works projects, including failing to pay the applicable prevailing rate for all
26 hours worked, such as travel and preparation time, in violation of Labor Code sections 1720 et
27 seq., 1771, and 1774. Plaintiff contended that Defendant paid hourly rates substantially below the
28 prevailing total hourly rates published by the Department of Industrial Relations for the applicable

1 classifications and projects. (Bokhour Decl. ¶ 28.)

2 Defendant vigorously disputed these allegations, asserting that much of the work
3 performed by Class Members was not subject to the Prevailing Wage Law, that employees were
4 properly paid at the applicable prevailing wages, and that any alleged deficiencies were the result
5 of complex and evolving regulatory requirements governing public works projects rather than
6 willful misconduct. Defendant further contended that prevailing wage exposure was overstated
7 and that Plaintiff would face significant challenges proving liability, damages, and willfulness on
8 a classwide basis, particularly given variations in projects, job duties, classifications, and time
9 periods. (Bokhour Decl. ¶ 29.)

10 During the investigation and mediation process, Class Counsel analyzed Defendant's
11 payroll and timekeeping data, prevailing wage determinations, and representative pay records.
12 That analysis suggested that any potential prevailing wage exposure was not significant, that
13 establishing liability and damages through trial would require extensive expert testimony, project-
14 specific analysis, and resolution of complex legal issues regarding coverage, compensable time,
15 and applicable rates. (Bokhour Decl. ¶ 30.)

16 Therefore in light of Defendant's asserted defenses, Plaintiff discounted the prevailing
17 wage claims as any resulting damages were minimal and speculative. The settlement reflects a
18 negotiated resolution that accounts for the risk that Plaintiff might recover substantially less than
19 the estimated maximum exposure or potentially recover nothing at all after trial and appeal.
20 (Bokhour Decl. ¶ 31.)

21 **2. Failure to Pay For All Hours Worked**

22 Plaintiff further alleged that, during the Class Period, Defendant maintained a uniform
23 timekeeping practice that required non-exempt employees to enter their time manually and to
24 round reported time to fifteen-minute increments or to scheduled start and end times, which
25 Plaintiff contended resulted in uncompensated pre-shift and post-shift work. Plaintiff alleged that
26 employees performed required tasks before and after their shifts, including equipment
27 inspections, safety checks, and clean-up and documentation activities, and that this work was not
28 fully captured due to the unlawful timekeeping practice. Plaintiff contended that any such policy

1 must be neutral in practice and may not result in a failure to pay employees for all time worked.
2 (Bokhour Decl. ¶ 32.)

3 Defendant disputed that its timekeeping practices resulted in any underpayment.
4 Defendant argued that any rounding was lawful and neutral and that employees were paid for all
5 compensable time worked. Defendant further argued that any alleged off-the-clock time was not
6 required, was not performed as alleged, or was minimal to support liability or meaningful
7 damages, and that individualized inquiries would be necessary to determine what work, if any,
8 was performed outside recorded time and whether Defendant knew or should have known of any
9 such work. (Bokhour Decl. ¶ 33.)

10 Plaintiff also alleged that Defendant automatically deducted thirty minutes for meal
11 periods regardless of whether a full and compliant meal period was taken, which Plaintiff
12 contended independently resulted in unpaid time. Defendant denied these allegations and
13 maintained that its meal period policies were lawful and that employees were authorized and
14 permitted to take compliant meal periods. (Bokhour Decl. ¶ 34.)

15 Based on available data, Plaintiff initially estimated damages from the alleged rounding
16 and off-the-clock timekeeping practices to be approximately \$789,000, based on an assumption
17 of approximately 20 minutes of unpaid time per shift. However, for settlement valuation purposes,
18 Plaintiff applied a risk-adjusted discount of approximately 75% to account for Defendant's
19 defenses and the litigation risks associated with proving liability and damages on a classwide
20 basis. Therefore, Plaintiff valued this claim at approximately \$197,000. (Bokhour Decl. ¶ 35.)

21 **3. Waiting Time Penalties**

22 With respect to Plaintiff's waiting time penalty claim, there were approximately 59 Class
23 Members who separated from their employment with Defendant, and who worked an average of
24 7.4 hours per day, during the relevant statutory period. As such, the maximum potential penalty
25 under Labor Code § 201 – 203 is \$399,453 (59 employees x 8 hours per day x average rate of
26 \$28.2 x 30 days). (Bokhour Decl. ¶ 36.)

27 However, Defendant argued that it would defeat the waiting time penalty claim as to
28 Plaintiff's unpaid wage claim because Defendant would prevail on the merits of these claims and

1 because any failure to pay wages was not willful and occurred before the waiting time penalty
2 liability period. Further, Defendant contended that it complied with the law because it had an
3 alleged facially neutral pay policy/practice. (Bokhour Decl. ¶ 37.)

4 Therefore, Plaintiff applied a 30% discount to account for the risk of defeat at the class
5 certification stage and an additional discount of 25% for the risk of defeat at the summary
6 judgment stage or on the merits, resulting in the risk-adjusted value of \$201,324 for Plaintiff's
7 waiting time penalty claim. (Bokhour Decl. ¶ 38.)

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

10 With respect to Plaintiff's meal and rest period violation claims, the Class Members
11 worked 83,200 shifts during the Class Period. Based on an alleged 33% violation rate for the meal
12 period claims and an alleged 25% violation rate for the rest period claims, as extrapolated from
13 the pre-mediation sampling of Defendant's timekeeping and payroll records, the maximum
14 potential damages totalled approximately \$768,768 for the meal period claim and \$581,000 for
15 the rest period claim, respectively. (Bokhour Decl. ¶ 39.)

16 However, Defendant strongly opposed these claims, arguing that the claims fall directly
17 within the category of individualized issues, that its written policies and practices were compliant
18 with California law, and that the employees had ample latitude regarding when, where, and how
19 they took their meal and rest breaks. Defendant further contended that a substantial portion of the
20 putative class consisted of drivers whose meal and rest period claims were preempted under
21 applicable law. Therefore, Defendant asserted that a factfinder would have to determine for each
22 Class Member whether a break was missed and why, and whether any alleged noncompliance
23 resulted from the employee's own choice, because no liability would attach to Defendant under
24 those circumstances. Based on these arguments, Plaintiff believes there is a significant risk that
25 the Court would deny class certification on these meal period and rest break claims. (Bokhour
26 Decl. ¶ 40.)

27 Defendant further argued that, even if certification were granted, it would defeat these
28 claims on the merits because Defendant utilized compliant policies and practices, and it would

1 present sufficient evidence that employees were properly provided with all required breaks or
2 paid compensation in lieu thereof. Moreover, Defendant argued that Plaintiff would be unable to
3 present sufficient evidence establishing the number of meal and rest period violations to allow a
4 factfinder to determine damages appropriately. (Bokhour Decl. ¶ 41.)

5 In light of these defenses and arguments, Plaintiff discounted Defendant's maximum
6 exposure by 75% for the risk of non-certification, and an additional 50% to account for
7 Defendant's defenses on the merits, to arrive at the risk-adjusted value of the meal period claims
8 to be \$96,096 and the rest period claims to be \$72,625. (Bokhour Decl. ¶ 42.)

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

10 Plaintiff estimates that the maximum potential penalties for the derivative wage statement
11 claim are \$339,500 (based on approximately 6,790 allegedly violative wage statements issued
12 during the Class Period). In calculating Defendant's exposure, Plaintiff gave Defendant the
13 benefit of assuming Plaintiff could only obtain the "initial" wage statement penalty of \$50 per
14 violation. *Id.*, Lab. Code § 226(e) (providing for a \$50 penalty for "initial" violations); *Amaral v.*
15 *Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate
16 applies until the employer has been notified that it is violating a Labor Code provision.) (Bokhour
17 Decl. ¶ 43.)

18 In response to Plaintiff's wage statement violation claim, Defendant contended that its
19 wage statements fully complied with the law, that any alleged violations were not "knowing and
20 intentional," and that Plaintiff could not establish that they or anyone else suffered "injury"
21 because of any alleged wage statement violations. Further, Defendant relied on its defenses to
22 Plaintiff's underlying claims on the merits and to class certification. (Bokhour Decl. ¶ 45.)

23 As such, Plaintiff discounted the calculated maximum exposure by 30% for risk of non-
24 certification, and by an additional 50% for risk of being unsuccessful on the merits, to arrive at
25 an estimated total of \$118,825. (Bokhour Decl. ¶ 45.)

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

27 Plaintiff alleged that necessary business expenses were incurred by Plaintiff and Class
28 Members but were not reimbursed by Defendant. These necessary expenses included, but are not

1 limited to, costs associated with cellphone use and mileage for work purposes. Plaintiff calculated
2 Defendant's maximum exposure under this theory of liability to be \$104,000 (\$20 unreimbursed
3 business expenses x 5,200 pay periods). (Bokhour Decl. ¶ 46.)

4 Defendant contended that Plaintiff and other Class Members never requested
5 reimbursement from Defendant, and thus, Defendant did not know and had no reason to know
6 that the alleged business-related expenses were incurred and not reimbursed. Defendant further
7 contended that this claim would raise individual issues that could not be certified, including
8 whether employees were required to use their personal cellphones for work-related purposes, and
9 whether any given employee applied for and received reimbursement. Defendant further
10 contended that whether or not an expense was necessary would depend, in part, on the
11 reasonableness of the employee's choice, and whether or not an expense was incurred would have
12 to be established by way of extensive individual factual inquiry and/or statistical evidence.
13 *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137. (Bokhour Decl. ¶ 47.)

14 In light of these defenses and arguments, Plaintiff discounted Defendant's maximum
15 exposure by 60% for the risk of non-certification, and an additional 40% to account for
16 Defendant's defenses on the merits, to arrive at an estimated total of \$24,960. (Bokhour Decl. ¶
17 48.)

18 **7. PAGA Penalties**

19 Plaintiff also sought PAGA penalties for each violation for which they are available and
20 alleged that these penalties can be "stacked." *See Gonzalez v. Corecivic of Tennessee, LLC*, No.
21 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) ("'stacking' PAGA
22 penalties is not inappropriate under California law"). Assuming that a PAGA penalty is available
23 in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA
24 penalty would be \$200,000 for the pay periods in the PAGA period. *See* Cal. Lab. Code. §
25 2699(f)(2). (Bokhour Decl. ¶ 49.)

26 However, this maximum figure fails to account for numerous unresolved issues regarding
27 PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would
28 award penalties in such a way (especially for purely derivative penalties). (Bokhour Decl. ¶ 50.)

Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a reduction in PAGA penalties would be “appropriate” based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer did not “deliberately evad[e] a clear obligation to provide legally required pay and benefits to employees,” (ii) the employer did not “negligently fail to learn about its obligations under the wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because “there is no straight answer to the question.”). Therefore, Plaintiff discounted the maximum figure to account for the risk of losing on the merits and applied an additional discount to account for the possibility of this Court reducing penalties to arrive at an estimated exposure of \$20,000. (Bokhour Decl. ¶ 51.)

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

• Failure to Pay All Wages:	\$197,000
• Labor Code §§ 201 – 203 Claims:	\$201,324
• Meal Period Claims:	\$96,096
• Rest Break Claims:	\$72,625
• Wage Statement Claims:	\$118,825
• Reimbursement Claims:	\$24,960
• PAGA Penalties	\$20,000
• <u>Total Risk-Adjusted Penalties and Damages:</u>	\$730,830

Given the realistic value of Plaintiff’s claims, the \$480,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 66% 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. ¶ 52.)

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

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

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

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

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

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

21 The Class Notice and the proposed plan for the Settlement Administrator to mail the
22 Notice to the last known address of all Class Members comply with all the requirements of
23 California Rules of Court 3.766 and 3.769. The contents of the Class Notice include (1) the
24 material terms of the Settlement; (2) the proposed Attorneys' Fees and Costs and the Settlement
25 Administration Costs; (3) details about the final fairness hearing and how Class Members may
26 elect to exclude themselves or make an objection; and (4) how Class Members can obtain
27 additional information. (Bokhour Decl. ¶ 49, Exhibit B). In addition, it will inform Class Members
28 of their estimated settlement share.

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

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

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

24 The fact that each Class Member who does not opt out of the Settlement shall be mailed
25 a check ensures that every Class Member will be paid unless he or she affirmatively acts to
26 exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, meaning that
27 no Settlement funds will revert to Defendant; instead, if any checks are not cashed before the
28 objection deadline, the funds will be transferred to the *cy pres* recipient, Legal Services of

Northern California, subject to the Court's approval. (S.A. ¶¶ 48, 73.) 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. (*See, e.g., Laffite v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the Class Members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-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. ¶¶ 56-57.)

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

I. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND APPROPRIATE

The Settlement Agreement provides for a Service Payment to the named Plaintiff in the amount not to exceed \$10,000. (S.A. ¶ 47(f).) The proposed Service Payment is reasonable given

1 the time and effort the named Plaintiff devoted to this case. Plaintiff's efforts included: providing
2 factual background for the class action complaint and PAGA letter; providing documents and
3 information about Defendant's compensation plan; participating in phone calls to discuss
4 litigation and settlement strategy; making himself available throughout the litigation to assist with
5 analyzing the claims and defenses; helping Class Counsel prepare for the mediation and being
6 available during mediation; and reviewing the Settlement documents. Plaintiff also assumed
7 significant risk in bringing this litigation—namely, had he lost, he could have been ordered to pay
8 Defendant's costs. (Bokhour Decl., ¶ 60; *see also* Declaration of Plaintiff Donald Manion in
9 Support of Preliminary Approval of Class Action Settlement filed herewith.)

10 The requested Service Payment falls within the range of incentive payments typically
11 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*
12 *Inc.* (E.D. Cal. 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (approving \$11,250
13 service award to each of the two class representatives in a trucker meal break class action; *Ross*
14 *v. US Bank National Association* (N.D. Cal. 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2
15 (approving \$20,000 enhancement award to Class Representative in California wage-and-hour
16 class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482
17 (approving service awards in the amount of \$15,000 each from a \$300,000 settlement fund in a
18 wage/hour class action).

19 **VI. THE COURT SHOULD APPOINT PHOENIX AS THE SETTLEMENT**
20 **ADMINISTRATOR**

21 Subject to the Court's approval, the parties stipulated that Phoenix Class Action
22 Administration Solutions serve as the Settlement Administrator. Phoenix is experienced in
23 administering class action settlements and will not exceed \$8,000 to administer this class action
24 Settlement. (Bokhour Decl. ¶ 58.)

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

26 The final step in the approval process is the formal hearing, during which proponents of
27 the Settlement may explain and describe its terms and conditions, and offer arguments in support
28

1 of approval. Class Members or their counsel may also be heard in support of or in opposition to
2 the Settlement.

3 **VIII. CONCLUSION**

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

6
7 Dated: December 31, 2025

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8
9 BY: 

10 MEHRDAD BOKHOUR
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