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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

RUDOLPH FERGUSON, on behalf of himself and all others similarly situated,

Plaintiff,

v.

CITY BAKING COMPANY, a California Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: CGC-24-615568

Assigned to Hon. Ethan P. Schulman

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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

HEARING INFORMATION

Date: August 13, 2025
Time: 11:00 a.m.
Dept.: 304

[Date and Time has been approved by Dept. 304]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 13, 2025, at 11:00 a.m. or as soon thereafter as the matter may be heard by Honorable Ethan P. Schulman in Department 304 of the San Francisco County Superior Court, located at 400 McAllister St., San Francisco, California 94102, Plaintiff Rudolph Ferguson, individually and on behalf of all others similarly situated, will and hereby does move the Court for an order:

1. Certifying the proposed class for settlement purposes only;
2. Preliminarily appointing Plaintiff Rudolph Ferguson as the Class Representative for settlement purposes only;
3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C. as Class Counsel for settlement purposes only;
4. Preliminarily approving the Class Action and PAGA Settlement Agreement as fair, reasonable, and adequate;
5. Approving the form, content, and method of distribution of the Class Notice, including notice to Class Members of their rights to object to or request exclusion from the Settlement;
6. Setting a date for a final fairness hearing to determine, following dissemination of the Class Notice, whether to grant final approval of the Settlement.

This Motion is based upon the accompanying Memorandum of Points and Authorities, the Declarations of Mehrdad Bokhour, Joshua Falakassa, and Plaintiff Rudolph Ferguson, the fully executed Class Action and PAGA Settlement Agreement, the [Proposed] Order Granting Preliminary Approval, the pleadings and records on file in this action, and any oral or documentary evidence that may be presented at the hearing.

Dated: July 11, 2025,

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

BY: ________________________

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this Motion, Plaintiff Rudolph Ferguson ("Plaintiff"), individually and on behalf of all others similarly situated, seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement")[1].

Subject to the Court's approval, Plaintiff and Defendant City Baking Company ("Defendant" or "City Baking Company") have agreed to resolve all claims asserted on behalf of the proposed Settlement Class and PAGA Group for a non-reversionary Gross Settlement Amount of $600,000.

Plaintiff seeks to represent a Class comprised of:

> All individuals who were employed by City Baking Company as non-exempt hourly employees in California at any time from June 18, 2020, through June 4, 2025 (the "Class" or "Class Members")

In addition, the PAGA Members are defined as:

> All non-exempt hourly employees who worked for City Baking Company in California at any time from June 18, 2023, through June 4, 2025 (the "PAGA Members").

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 (1/3) of the Settlement Amount, Class Counsel's litigation costs not to exceed $20,000, Settlement Administration Costs not to exceed $7,500, PAGA penalties of $10,000 (of which $7,500 or 75% will be paid to the LWDA and the remaining $2,500 or 25% will be paid to the PAGA Members), and a Service Award not to exceed $10,000 to the named Plaintiff (S.A. ¶ 3 *et seq*., as follows:

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[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 Class Notice is attached to the Bokhour Decl. as **Exhibit "B."**

	Total Amount
Gross Settlement Amount	$600,000.00
Class Counsel Litigation Expenses Payment (not to exceed 1/3 of GSA)	$200,000
Class Counsel Fees Payment (not to exceed)	$25,000.00
Administration Expenses Payment (not to exceed)	$7,500.00
PAGA Penalties to LWDA (75% of $10k award)	$7,500.00
PAGA Penalties to PAGA Members	$2,500.00
Plaintiff's Service Awards	$10,000.00
Net Settlement Amount	**$347,500.00**

The Settlement Class consists of approximately 280 non-exempt employees who worked for Defendant in California during the Class Period. Plaintiff alleges that, regardless of job title or department, all non-exempt employees were subject to common wage-and-hour policies and practices that gave rise to the alleged violations. Individual Settlement Payments will be distributed on a pro rata basis, determined by the number of Compensable Workweeks each Class Member worked during the Class Period. Based on the estimated Net Settlement Amount of $347,500 and a Class size of approximately 280 individuals, the average individual payment is approximately $1,241 with the highest estimated payment being approximately $4,572. Class Members who worked more Compensable Workweeks will receive proportionally greater payments. (Bokhour Decl. ¶ 11.)

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 Class Notice containing information about their estimated Individual Class Payment, 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. PAGA Members 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. ¶ 12.)

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 Class Notice; (4) appointing Plaintiff's counsel as Class Counsel; (5) appointing Phoenix Class Action Administration Solutions as the Settlement Administrator; and (6) scheduling a Final Approval Hearing. (Bokhour Decl. ¶ 13.)

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED CLASS

Defendant produces and distributes baked goods such as rolls, muffins, cookies, bars, scones, croissants, and pastries out of its 33,000 square foot facility in South San Francisco, California.

Plaintiff was employed by Defendant as a non-exempt employee with the title of "Delivery Driver" beginning on September 9, 2021, until his separation from employment on October 10, 2023. Plaintiff and other non-exempt employees (including, but not limited to, Production and Distribution workers, Bakers, Sanitation Workers, Delivery Drivers, Millwrights, and all other non-exempt positions) were responsible for all aspects of Defendant's business in California. However, in these roles, Plaintiff and non-exempt employees were often not afforded all protections and rights conferred under the California Labor Code and applicable wage orders. (Bokhour Decl. ¶ 14.)

Plaintiff alleges that, in the course of performing their duties, she and other non-exempt employees were not consistently afforded all rights and protections guaranteed under the California Labor Code and applicable Industrial Welfare Commission wage orders, including rights related to minimum and overtime wages, meal and rest breaks, accurate wage statements, and reimbursement of business expenses.

The proposed Settlement Class includes all individuals employed by Defendant as non-exempt hourly employees in California at any time from June 18, 2020 through June 4, 2025.

B. Procedural History

On June 18, 2024, Plaintiff filed suit in San Francisco County Superior Court, asserting claims based on City Baking's alleged: (1) failure to pay all minimum and overtime wages; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to provide accurate itemized wage statements; (5) failure to pay sick wages, (6) failure to pay all wages due upon separation of employment; (7) failure to reimburse necessary business expenses; and (8) violation of California's Unfair Competition Law ("UCL").

On August 22, 2024, Plaintiff filed a First Amended Complaint ("FAC") alleging a cause of action for alleged PAGA penalties. (Bokhour Decl. ¶ 15; S.A., 2, Recitals.)

Throughout the investigation and litigation, Defendant denied Plaintiff's allegations and indicated it would vigorously defend against them. However, before engaging in protracted litigation, the Parties agreed to explore early resolution through private mediation. (Bokhour Decl. ¶ 16.)

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 a representative sampling of payroll and timekeeping records for Settlement Class Members and PAGA Members. Class Counsel has extensive experience in wage and hour litigation and has conducted substantial research regarding the legal claims and potential defenses at issue. Class Counsel has diligently investigated the claims asserted on behalf of the Settlement Class Members and PAGA Members. (Bokhour Decl. ¶ 17.)

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 PAGA Members, especially in light of the risks and uncertainties associated with continued litigation, Defendant's asserted defenses, and potential appellate issues. (Bokhour Decl. ¶ 18.)

On March 4, 2025, the Parties participated in an all-day mediation, presided over by the Honorable Brian Walsh (Ret.). Following that session, and after the issuance of a mediator's proposal, the Parties reached a settlement. (Bokhour Decl. ¶ 19, Ex. A.) (*Id.*)

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

C. SUMMARY OF PLAINTIFF'S CLAIMS

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

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." (Bokhour Decl. ¶ 21.)

Next, Plaintiff alleges that Defendant maintained deficient meal and rest break policies and practices that failed to provide Class Members with timely, duty-free, and compliant meal periods, or premium wages in lieu thereof at the "regular rate of pay." Plaintiff also asserts that Class Members were not provided with duty-free rest periods of at least ten (10) minutes for every four (4) hours worked, or major fraction thereof, due to unlawful policies that required employees to remain on duty and/or on the premises during rest periods. (Bokhour Decl. ¶ 22.)

Plaintiff further alleges that Defendant failed to pay all final wages upon separation of employment and did not furnish accurate, itemized wage statements in compliance with 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. (Bokhour Decl. ¶ 23.)

D. SUMMARY OF DEFENDANT'S DEFENSES

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. (Bokhour Decl. ¶ 24.)

First, Defendant argued that it correctly calculated and paid all overtime and sick pay wages using the appropriate “regular rate of pay,” inclusive of all non-discretionary bonuses and all other forms of compensation. Defendant denied excluding any required remuneration from its regular rate calculations. (Id.)

Additionally, Defendant maintained that its written meal and rest period policies complied with California law and that, in practice, Settlement Class Members were provided the opportunity to take timely, duty-free meal and rest periods. Defendant denied having any policy or practice requiring employees to remain on duty or on the premises during rest periods. (Bokhour Decl. ¶ 25.)

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. Accordingly, Defendant denied any violations that would give rise to penalties under Labor Code sections 203 or 226. (Bokhour Decl. ¶ 26.)

Finally, Defendant asserted that individualized 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 by different supervisors. Defendant emphasized that putative Class Members held different positions, performed different duties, worked in various locations, and were subject to diverse managerial practices. Defendant argued that this variability rendered the case unsuitable for class or representative treatment. (Bokhour Decl. ¶ 27.)

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 $600,000 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. The Gross Settlement Amount will cover the following, subject to Court approval:

- Class Counsel’s attorneys’ fees, not to exceed $200,000 (33.33% of the Gross Settlement Amount), and litigation expenses, not to exceed $25,000;
- A Service Award to the Class Representative, not to exceed $10,000;

- Settlement Administration Costs, not to exceed $7,500, except upon a showing of good cause;
- PAGA Penalties totaling $10,000, of which 75% ($7,500) will be paid to the California Labor and Workforce Development Agency (LWDA) pursuant to Labor Code § 2699(i), and 25% ($2,500) will be distributed to PAGA Members as Individual PAGA Payments; and
- The Net Settlement Amount, which will be distributed as Individual Settlement Payments to Participating Class Members on a pro-rata basis based on the number of Workweeks worked during the Class Period.

Defendant will separately pay the employer's share of payroll taxes on the portion of the Individual Settlement Payments allocated as wages.

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that approximately $347,500 will remain as the Net Settlement Amount, available to fund Individual Settlement Payments to approximately 280 Participating Class Members.

Based on a total of 19,000 workweeks, the average payment per workweek is approximately $18.28. As a result, the average Individual Settlement Payment is estimated to be approximately $1,241, with the highest estimated payment at $4,572, depending on the number of workweeks worked. (Bokhour Decl. ¶ 7.)

B. NOTICE PROCEDURES

The proposed Class Notice, once approved by the Court, will be distributed to Settlement Class Members and will include, among other information, the estimated number of Workweeks and PAGA Pay Periods for which each individual will be credited. (S.A. ¶ 7.4.2.). (Bokhour Decl., Ex. B.) Within seven (7) calendar days after the Court grants Preliminary Approval, Defendant shall provide the Settlement Administrator with the Class Data, including each Settlement Class Member's name, last-known mailing address, telephone number, Social Security number, and number of Workweeks and Pay Periods worked during the Class and PAGA Periods. (S.A. ¶¶ 1.7 ["Class Data"], 4.2.)

Within fifteen (15) calendar days after receiving the Class Data, the Settlement

Administrator shall update addresses using the National Change of Address database, calculate each Settlement Class Member's credited Workweeks and PAGA Pay Periods, and mail the Class Notice via first-class U.S. Mail, in both English and Spanish. The Notice shall include the estimated Individual Class and PAGA Payments. (S.A. ¶¶ 7.4.2, 7.4.4.)

If a Notice is returned as undeliverable with a forwarding address, the Administrator shall re-mail the Notice within five (5) business days. If no forwarding address is provided, the Administrator shall conduct a Class Member Address Search and re-mail the Notice to the most current address located. (S.A. ¶ 7.4.3; see also ¶ 1.9 ["Class Member Address Search"].)

If the Notice is re-mailed, the deadline to submit a Request for Exclusion, Objection, or Challenge to Workweeks or Pay Periods will be extended by fourteen (14) calendar days beyond the standard Response Deadline. The re-mailed Notice will inform Class Members of this extended deadline. (S.A. ¶¶ 1.43 ["Response Deadline"], 7.4.4.)

The most recently confirmed address in the Administrator's records shall be presumed the best available address for mailing any settlement checks or further notices. (S.A. ¶ 4.4.1.)

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 will become Participating Class Members, without the need to submit a claim form or take any other affirmative action. The Class Notice will inform Settlement Class Members of their right to opt out of the Settlement. To do so, a 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 Class Notice (the "Response Deadline"). (S.A. ¶¶ 1.43 ["Response Deadline"], 7.5.1, 7.5.2.)

The Class Notice will also inform Settlement Class Members of their right to object to the Settlement. To do so, a Class Member must submit a written objection to the Settlement Administrator, postmarked no later than the 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. It 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. ¶ 7.5.4.)

D. <u>SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES</u>

The Individual Settlement Payment for each Participating Class Member will be calculated by the Settlement Administrator based on the Class Data provided by Defendant. After accounting for any approved Workweek disputes and excluding individuals who timely submit valid Requests for Exclusion, the Settlement Administrator will determine the total number of Workweeks worked by all Participating Class Members during the Class Period. Each Participating Class Member's share of the Net Settlement Amount will then be calculated based on the number of Workweeks he or she worked during the Class Period, as a proportion of the total Workweeks worked by all Participating Class Members. (S.A. ¶ 7.6.1(d)(ii).)

The Class Notice 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 shown in the Class Notice, they may submit documentation to the Settlement Administrator, postmarked on or before the Response Deadline, to dispute the credited Workweeks. The Settlement Administrator shall review the documentation in consultation with Class Counsel and Defense Counsel and shall make a final and binding determination. (S.A. ¶ 7.6.2.).

E. <u>TIMING OF SETTLEMENT DISBURSEMENTS</u>

The Settlement Administrator will provide Defendant with wire transfer information within three (3) days after the Effective Date. Defendant shall fund the Gross Settlement Amount as follows: Two-thirds (2/3) of the total payment shall be made no later than May 4, 2026; and the remaining one-third (1/3) shall be paid no later than six (6) months thereafter, by November 4, 2026. (S.A. ¶ 4.3.)

Importantly, the remaining one-third (1/3) of the Gross Settlement Amount is allocated to Class Counsel's attorneys' fees, meaning that class members will receive their full individual settlement payments from the initial two-thirds disbursement. As such, class members will not be prejudiced by the deferred payment of the final installment. (S.A. ¶ 4.3.)

The Settlement Administrator shall deposit each payment of the Gross Settlement Amount into an interest-bearing, FDIC-insured QSF, from which all payments will be made in accordance with the Settlement Agreement. If the Settlement is voided for any reason, all funds deposited by Defendant into the QSF, including any accrued interest, shall be returned to Defendant. (S.A. ¶ 8.2.)

The Gross Settlement Amount shall be used to fund: (i) Individual Settlement Payments to Participating Class Members and PAGA Members; (ii) Court-approved attorneys' fees and costs to Class Counsel; (iii) the Service Payment to the Class Representative; (iv) the payment to the California Labor and Workforce Development Agency (LWDA) for its 75% share of PAGA penalties; and (v) Settlement Administration Costs. Within ten (10) calendar days after the Gross Settlement Amount is deposited into the QSF, the Settlement Administrator shall issue and mail:

(a) Individual Settlement Payments to Participating Class Members and PAGA Members;

(b) the Court-approved Service Payment to the Class Representative;

(c) attorneys' fees and litigation costs to Class Counsel;

(d) the PAGA payment to the LWDA; and

(e) Court-approved Settlement Administration Costs to itself.

Participating Class Members shall have 180 calendar days from the date of mailing to cash their settlement checks. If a check is returned within that 180-day period, the Settlement Administrator shall conduct a skip trace within five (5) business days, notify Class Counsel and Defense Counsel, and, if a new address is located, re-issue and mail a replacement check within ten (10) business days. (S.A. ¶ 8.6.)

If a Participating Class Member fails to cash their check within 180 days, the check will be void. The unclaimed funds, including any accrued interest not otherwise distributed, shall be distributed to Legal Aid at Work as the designated *cy pres* recipient, pursuant to California Code of Civil Procedure § 384(b). This distribution shall occur approximately 215 days after the initial mailing of the settlement checks. Importantly, the release of claims remains binding on all Participating Class Members, including those who do not cash their checks. (S.A. ¶ 4.4.3.)

F. TAX TREATMENT

The Individual Class Payments paid to Participating Class Members for Class Claims will be allocated for tax purposes based on the nature of the allegations in the Action as follows: twenty percent (20%) will be allocated as wages, subject to applicable local, state, and federal tax withholdings; and eighty percent (80%) will be allocated as interest and civil penalties (including amounts under California Labor Code sections 203 and 226), which are not subject to withholding. The Settlement Administrator shall be responsible for calculating and withholding applicable taxes on the wage portion, and, to the extent required by law, shall issue each Participating Class Member an IRS Form W-2 for the wage portion and an IRS Form 1099 for the interest and penalty portion, along with any applicable state tax forms. (S.A. ¶ 7.6.1(e).)

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for the settlement payments, the Settlement Agreement provides that Participating Class Members will release all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint that arose during the Class Period. (S.A. ¶ 5.2.)

In accordance with California Labor Code § 2699(l), and as set forth in the Settlement Agreement (¶ 5.3), the PAGA claims of all PAGA Members will also be released upon the Effective Date. The Released PAGA Claims include all claims for civil penalties under PAGA against City Baking and the Released Parties that arise out of or reasonably relate to the claims alleged in the Action or that could have been alleged based on the factual allegations in the Action (the "Released PAGA Claims"). All PAGA Members who worked for Defendant during the PAGA Period will release the PAGA claims described herein and will receive a portion of the amount set aside as PAGA penalties, regardless of whether they opt out of the release of the Class Claims.

In addition to this class release, the Class Representative has agreed to a broader General Release of all known and unknown claims, including a waiver of rights under California Civil

Code section 1542. (S.A. ¶ 5.1.)

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

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, 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 § 3150.

A. NUMEROSITY AND ASCERTAINABILITY

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

Here, according to Defendant's records, there are approximately 280 Class Members. Plaintiff contends that this figure undoubtedly satisfies the numerosity requirement.

B. <u>WELL-DEFINED COMMUNITY OF INTEREST</u>

1. <u>Commonality</u>

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, timekeeping, calculation of the "regular rate of pay," and payment of overtime and sick 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. <u>Typicality</u>

Typicality "focuses on whether there exists a relationship between the Plaintiff' 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's wage payment policies/practices, calculation of the "regular rate of pay,"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. <u>Adequacy of Representation</u>

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 Defendant employed him during the Class Period, were subject to the same wage and hour policies/practices as the rest of the Class, understand his duties as Class

Representative, has been willing to undergo the risk of litigation, and has no conflicts of interest.

Adequacy may be established by the fact that counsels are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiff asserts that Class Counsel represents him 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 conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224. Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice,* 688 F.2d at 625. The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk,* 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, 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 needs only to determine that the settlement falls within the "range of possible judicial approval," so that notice to the class and the scheduling of the fairness hearing 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.

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

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

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,* a lack of commonality of the legal claims and injuries. 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' ability to certify the Class. While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that he 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. ¶ 28.)

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

First, Plaintiff alleged that Defendant failed to properly calculate the "regular rate of pay" by excluding non-discretionary bonuses, and other incentive payments when paying overtime and sick pay wages. Plaintiff contends that these exclusions resulted in a systemic underpayment of compensation, in violation of California law.

Based on a review of the payroll and paystub data produced in discovery, Plaintiff estimates that Defendant's failure to include all required forms of remuneration in the "regular rate of pay" led to underpayment of both overtime and sick pay wages across the Class. (Bokhour Decl. ¶ 29.)

In response, Defendant argued that many of the incentive payments at issue were discretionary and therefore properly excluded from regular rate calculations. Defendant further asserted that all overtime and sick pay was lawfully calculated and paid in good faith, and that any potential underpayment, if it occurred, was minimal and non-systemic. (Bokhour Decl. ¶ 30.)

While Plaintiff maintains that the bonuses and incentive payments at issue were non-discretionary and therefore required to be included in the "regular rate of pay," Plaintiff also acknowledges the litigation risks associated with this claim. These risks include the possibility that the Court could deny class certification based on individual variations in pay structures and the potential discretionary nature of the bonuses. Additionally, there is a risk on the merits, including the potential for summary judgment or an unfavorable outcome at trial. In light of these risks, Plaintiff applied a discount to the estimated value of the claim to account for the potential that certification may be denied, or the claim may not succeed on the merits. (Bokhour Decl. ¶ 31.)

2. Waiting Time Penalties

Plaintiff also alleged that Defendant failed to timely pay all wages due at separation of employment, entitling former employees to waiting time penalties under Labor Code §§ 201–203. Based on Defendant's records, there were approximately 166 Settlement Class Members who separated from their employment during the applicable statutory period. Using the statutory maximum of 30 days, with an assumed 8.0-hour workday and an average hourly rate of $20.00, the total maximum potential exposure for waiting time penalties is approximately $796,800 (166 employees × 8 hours/day × $20/hour × 30 days). (Bokhour Decl. ¶ 32.)

However, Defendant disputed this claim and asserted that any failure to pay wages at 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 class certification. (Bokhour Decl. ¶ 33.)

To account for these risks, Plaintiff applied an equitable discount reflecting the risk of denial at class certification, as well as an additional discount for the risk of defeat at summary judgment or trial. Applying a combined 40% discount, Plaintiff estimates a risk-adjusted value of $478,080 for the waiting time penalty claim. (Bokhour Decl. ¶ 34.)

3. Failure to Provide Meal and Rest Periods

With respect to Plaintiff's meal and rest period claims, the Class Members collectively worked approximately 83,084 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 70% violation rate for meal periods and a 33% violation rate for rest periods. Using the applicable premium rate of $22.00 per missed break, the maximum potential damages are estimated at approximately $1,163,176 for the meal period claim (83,084 shifts × 70% × $20) and $543,354 for the rest period claim (83,084 shifts × 33% × $20). (Bokhour Decl. ¶ 35.)

However, Defendant contested liability for both claims, asserting that meal and rest period issues presented individualized questions inappropriate for class certification. Defendant maintained that its 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 significant chance that the Court could deny class certification. (Bokhour Decl. ¶ 36.)

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 class-wide damages award. In light of these risks, Plaintiff acknowledged the risks and incorporated a 75% reduction, and calculates a risk-adjusted value of $290,794 for the meal period claims and $135,838 for the rest period claims. (Bokhour Decl. ¶ 37.)

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

Finally, Plaintiff alleged that Defendant issued noncompliant 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 3,515 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 \$175,750 (3,515 × \$50). (Bokhour Decl. ¶ 38.)

Defendant disputed this claim and asserted that its 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 that Plaintiff could not establish the required element of injury. Defendant also relied on its defenses to the underlying wage and hour claims and to class certification. (Bokhour Decl. ¶ 39.)

In light of these risks, Plaintiff applied a reasonable discount to account for the possibility of denial at the class certification stage, as well as an additional discount for the risk of loss on the merits. Applying these risk adjustments, Plaintiff calculates a risk-adjusted value of \$70,300 for the wage statement penalty claim. (Bokhour Decl. ¶ 40.)

5. <u>PAGA Penalties</u>

Plaintiff also sought civil penalties under the Private Attorneys General Act of 2004 ("PAGA") for each Labor Code 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 those penalties are not subject to reduction or judicial discretion, the maximum potential exposure for PAGA penalties could reach approximately \$351,500 (3,515 pay periods × \$100). (Bokhour Decl. ¶ 41.)

However, this theoretical maximum does not account for significant legal uncertainties. First, courts are divided on whether stacking PAGA penalties across multiple violations within a single pay period is permissible, particularly where the violations are derivative in nature. Second, Labor Code § 2699(e)(2) grants courts broad discretion to reduce civil penalties where necessary to 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. ¶ 42.)

In recognition of these risks—including the likelihood of judicial reduction and the challenges of prevailing on the merits of the underlying claims—Plaintiff applied significant discounts to the estimated penalty exposure. After accounting for these risks, Plaintiff estimated a reasonable potential value of $87,875 in PAGA penalties. However, in light of the Parties' mutual desire to resolve the matter without protracted litigation, they agreed to allocate $10,000 of the Gross Settlement Amount toward resolution of the PAGA claim, which Plaintiff believes is fair and reasonable under the circumstances. (Bokhour Decl. ¶ 43.)

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

- "Regular Rate of Pay" Claim: $0 (discounted)
- Labor Code §§ 201 – 203 Claims: $478,080
- Meal Period Claims: $290,794
- Rest Break Claims: $135,838
- Wage Statement Claims: $70,300
- PAGA Penalties $10,000
- **Total Risk-Adjusted Penalties and Damages**: **$985,012**

Given the realistic value of Plaintiff's claims, the $600,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 60% 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. ¶ 44.) 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 are of the view that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation.

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

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

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all Class Members complies with all the requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Class Notice include (1) the material terms of the Settlement; (2) the proposed attorneys' fees and costs and the Settlement Administration Costs; (3) details about the final fairness hearing and how Class Members may elect to exclude themselves or make an objection; and (4) how Class Members can obtain additional information. (Bokhour Decl. ¶ 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 Class Notices that are returned and re-send the Class Notice.

The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Class Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the Parties; (2) a statement that the court will exclude the Class Member if the Class Member so requests by a specified date; (3) a procedure for the Class Members to follow in requesting exclusion from the Class; (4) a statement that the judgment, whether favorable or not, will bind all Class Members who do not request exclusion; and (5) a statement that any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through counsel. The 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. THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

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

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

Under the terms of the Settlement Agreement, Class Counsel requests an amount not exceeding one third of the Settlement Amount in attorneys' fees. (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 common fund). (Bokhour Decl. ¶¶ 44-45.)

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

I. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND APPROPRIATE

The Settlement Agreement provides for a Service Award to each 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).

V. THE COURT SHOULD APPOINT PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties have stipulated that Phoenix Class Action Administration Solutions be appointed as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has agreed to cap its fees at $7,500 for administering this Settlement. (Bokhour Decl. ¶ 46.)

VI. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

VII. CONCLUSION

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

Dated: July 11, 2025

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

BY: ______________________

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