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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

KAINOA RUBIN, on behalf of himself and all others similarly situated, Plaintiff, v. WB WAREHOUSING & LOGISTICS, INC., a Wisconsin Corporation; and DOES 1-50, inclusive. Defendants	CASE NO.: CU24-04761 *Assigned to the Hon. David Power* **PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER** <u>Hearing</u> Date: November 17, 2025 Time: 9:00 a.m. Dept.: 5

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 17, 2025, at 9:00 a.m. or as soon thereafter as the matter may be heard by the Honorable David Power in Department 5 of the above-captioned court, located at 580 Texas St., Fairfield, CA 94533, Plaintiff Kainoa Rubin, individually and on behalf of all others similarly situated, will and hereby do move the Court for entry of an Order preliminarily approving the Parties' class action settlement, including:

1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiff as Class Representative for settlement purposes only;
3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
4. Preliminarily approving the class action settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the settlement;
6. Setting a date for a final fairness hearing to determine, following dissemination of the Class Notice, whether to grant final approval of the Settlement.

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declaration of Plaintiff's counsel (Joshua Falakassa and Mehrdad Bokhour) in support thereof; the Class Action and PAGA Settlement Agreement (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: October 21, 2025

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

BY: ______________________________
Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Proposed Settlement Class

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I. INTRODUCTION

Plaintiff seeks preliminary approval of a $350,000 wage-and-hour class action settlement on behalf of current and former non-exempt employees of WB Warehousing & Logistics, Inc. in the State of California, at any time between June 18, 2020, and July 5, 2025 (the "Class Period").

Under the terms of the Settlement Agreement,[1] Defendant will not oppose Plaintiff Counsel's application for a reasonable award of attorney's fees not to exceed 1/3 of the Gross Settlement Amount, litigation expenses not to exceed $25,000, Settlement Administrator Costs of $5,500, PAGA penalties of $10,000 (with 75% to the LWDA and 25% to the PAGA Members on a pro rata basis), and a Service Payment of $10,000 to the named Plaintiff ("Class Representative"). (S.A. ¶ 3.2 and subparts).

After all Court-approved deductions from the Gross Settlement Amount,[2] it is estimated that $182,845 will be available to pay the Class Members as follows:

Gross Settlement Amount	**$350,000.00**
Attorneys' Fees (1/3)	$116,655.00
Litigation Costs	$25,000.00
Administrator Costs	$5,500.00
PAGA Penalties	$10,000.00
Class Representative Service Awards	$10,000.00
Net Settlement Amount	**$182,845.00**

The Class includes approximately 74 Class Members who worked an estimated 7,483 Work Weeks during the Class Period. The payment to each Class Member will be calculated pro rata according to the Workweeks by each Class Member. In addition, PAGA Members will receive a share of the $2,500 PAGA Penalties (25% of the $10,000 PAGA allocation), distributed pro rata based on Workweeks during the PAGA Period. The average payment to each Class Member will be approximately **<u>$2,470</u>**; the highest payment is estimated at approximately **<u>$6,108.</u>** Of course, those with more Compensable Workweeks stand to recover proportionally more from

[1] The Class Action and PAGA Settlement Agreement (the "Settlement Agreement" or "S.A.") is attached as Exhibit A to the Declaration of Mehrdad Bokhour ("Bokhour Decl.")

[2] The Gross Settlement Amount is subject to increase if the "Escalator Clause" is triggered. *See* S.A. ¶ 8.

the Settlement.

Because the settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents before mediation, it should be preliminarily approved. Plaintiff respectfully requests that the Court enter an order preliminarily approving the settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Phoenix Class Action Administration Solutions ("Phoenix") as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

II. BACKGROUND

A. THE SETTLEMENT CLASS

The Class is defined as follows:

> all individuals who are or were employed by WB Warehousing & Logistics as non-exempt hourly employees in California from June 18, 2020, through July 5, 2025. (S.A. ¶ 1.4).

B. PROCEDURAL HISTORY

On or about June 18, 2024, Plaintiff sent a PAGA Notice to the Labor Workforce Development Agency ("LWDA"), authorizing him to represent the State of California as a private attorney general for the purposes of PAGA after the expiration of the applicable 65-day exhaustion period.

Plaintiff filed the Complaint in the Action on or about June 18, 2024.

On May 5, 2025, Plaintiff filed a First Amended Complaint to add a claim for PAGA penalties, and on July 11, 2025, Plaintiff filed a Second Amended Complaint ("Operative Complaint") to add additional claims. (Bokhour Decl. ¶ 12).

Plaintiff' Operative Complaint alleges causes of action for (1) failure to pay all minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to pay all sick time, (6) failure to provide accurate itemized wage statements; (7) failure to pay all wages due upon separation of employment; and (8) violation of

California's Unfair Competition Law ("UCL"). and (10) PAGA penalties for violation of the Private Attorneys General Act, Cal. Labor Code § 2698 *et seq*. (Bokhour Decl. ¶ 13).

Defendant retained counsel and immediately began to defend the case. Defendant vigorously denies each of the claims in the Operative Complaint and the PAGA Notices and further denies that it is liable to Plaintiff or the Class, the State of California, or the PAGA Members, and further denies that, for any purpose other than settling the Action, this Action is not appropriate for class or representative action treatment.

The Parties met and conferred and agreed that, given the size and scope of the class and PAGA claims in the case and the burden, expense, and risk associated with continuing to litigate this matter, the case was a candidate for mediation. Ultimately, the Parties scheduled mediation. (Bokhour Decl. ¶ 14).

In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate potential damages and evaluate potential risk, including policies and procedures pertaining to each claim alleged, and statistics relating to the number of current and former employees, number of shifts, pay periods worked, and other things. Defendant also provided its written policies and practices and a robust sampling of payroll and timekeeping records for Class Members. This information enabled both parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and their counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. (Bokhour Decl. ¶ 15).

On May 2, 2025, Plaintiff and Defendant participated in mediation before Daniel Turner, Esq., a highly experienced and respected class action mediator. The mediator issued a mediator's proposal, which was accepted by Plaintiff and Defendant. (Bokhour Decl. ¶ 16). The Parties now seek the Court's preliminary approval of the Settlement.

C. SUMMARY OF THE CLAIMS AND DEFENSES

Plaintiff alleged numerous wage and hour violations on behalf of the Class Members. However, Defendant vigorously contested and denied Plaintiff's material allegations on the merits and as to the propriety of a class action or PAGA representative action.

Plaintiff advanced several strong claims against Defendant. For instance, Plaintiff argued that there were distinct unpaid wage violations for which Defendant was liable, including uneven/unlawful rounding and its failure to include all earned non-discretionary bonuses in the "regular rate of pay" for purposes of overtime/sick pay calculations. Defendant opposed the unpaid wage claims on the merits and as to the propriety of class certification.

Plaintiff also alleged that they and the Class Members were often denied compliant meal and rest breaks and were not paid compensation in lieu thereof at the "regular rate of pay." However, Defendant argued that they provided and made all mandated meal and rest breaks available to the Class, and any employee who did not take a break did so entirely of their own volition. Thus, Defendant argued that these claims were without merit because, for each violation, a fact-finder would have to determine why a break was non-compliant, because if it was by the employee's choice, no liability attaches to Defendant.

Moreover, Defendant argued that the vast majority of putative class members had signed arbitration agreements containing class action waivers, which Defendant contended further undermined the propriety of class certification and representative claims.

Despite the disputed nature of the claims, the Parties concluded that further litigation of the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled to limit further risk, expense, and protracted litigation.

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 $350,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of $10,000 to the named Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed $5,500; (4) a $10,000 PAGA award, 65% of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 35% to the PAGA Members; and (5) the aggregate of all Individual Class Payments of the Participating Class Members. (S.A. ¶¶ 3.2 *et seq.)*. Defendant will separately pay their share of employer payroll tax obligations. (S.A. ¶ 3.1).

B. <u>Notice Procedures</u>

The proposed Class Notice[3] will be provided to the Class Members, showing the estimated amount, each Class Member will receive and the credited number of Workweeks.

Within 14 days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of Class Members containing names, addresses, Social Security Numbers, and total Workweeks during the PAGA Period and the Class Period. (S.A. ¶ 14.2).

Within 15 days of receipt of the "Class Data," the Settlement Administrator shall calculate the Workweeks for each Class Member, populate the Class Notice for each, and send each Class Member the Class Notice via first-class, U.S. mail. (S.A. ¶ 7.4.2).

If any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained.

C. <u>Exclusion and Objection Procedures</u>

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. To opt out of the Settlement, the Class Member must submit a written request to the Settlement Administrator no later than 45 days after being notified by mail by the Settlement Administrator ("Response Deadline"). (S.A. ¶ 7.5.1). Any Opt-Out request not postmarked by the Response Deadline will be invalid. (S.A. ¶ 16).

The Class Notice shall inform Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement may submit a written objection to the Settlement Administrator by the Response Deadline. (S.A. ¶¶ 7.7).

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[3] The proposed Class Notice is attached to the Bokhour Decl. as Exhibit B.

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Class Member's Individual Class Payment is tied to the number of Workweeks by each Class Member during the Class Period. Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks by all Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

Additionally, each "PAGA Member" will receive an Individual PAGA Payment as a share of the PAGA Penalties based on a pro-rata basis. Thus, the $3,500 PAGA Penalties allocated to the PAGA Members will be divided and paid on a pay period basis.

The Class Notice will inform Class Members of the estimated share and the number of Workweeks during the Class Period and PAGA Period. If Class Members believe they worked more in the Class or PAGA Periods than Defendant's records show, they may dispute the calculation by timely submitting evidence to the Settlement Administrator.

As noted, assuming that 74 Class Members collectively worked 7,483 Workweeks during the Class Period, then each Class Member will receive approximately $24.43 per Workweek. In addition, the PAGA Members will receive a share of the $3,500 PAGA Penalties (35% of the total $10,000 PAGA allocation), calculated pro rata based on the Workweeks during the PAGA Period.

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant must fund the settlement within 30 days after the Effective Date (S.A. ¶ 4.3, 10). These funds will be used to pay (1) the class attorneys' fees and expenses, as approved by the Court; (2) the class representative service awards, as approved by the Court; (3) administrative expenses, as approved by the Court; (4) the PAGA Penalties to the LWDA and PAGA Members; and (5) the aggregate of all Individual Class Payments of participating Class Members.

Class Members will have 180 days to cash their settlement checks. If a Class Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the California State Controller's Office, Unclaimed Property Division, in the name of the Class Member and/or PAGA Member. (S.A. ¶ 4.4.3).

F. TAX TREATMENT

The Parties agree that thirty-three percent (33%) of the NSA attributable to the Class settlement award will be allocated to the settlement of disputed claims for wages, and sixty-seven percent (67%) of the NSA attributable to the Class Settlement Award will be allocated to the settlement of disputed non-wage claims – i.e., penalties and interest. Additionally, the PAGA Penalties payable to the PAGA Members will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 3.24.1).

Defendant will separately pay its share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 3.1).

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for these payments, the Settlement Agreement at ¶ 5.2 provides that the Participating Class Members will release the Released Parties of:

> In consideration for their awarded Individual Class Payment, upon the Effective Date of the Settlement and is fully funded, all Participating Class Members release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Class Claims and the Released PAGA Claims, against Defendant and the Released Parties (the "Participating Class Members' Released Claims"). (S.A. ¶ 5.2).

H. PAGA MEMBERS' RELEASE OF CLAIMS

The Settlement Agreement at ¶ 5.3 also defines the "PAGA Released Claims" as follows:

> In consideration for their awarded Individual PAGA Payment, upon the Effective Date of the Settlement and is fully funded, all PAGA Members will release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released PAGA Claims against Defendant and the Released Parties. 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.

Moreover, even if a PAGA Member requests exclusion from the Class settlement, that individual will still be subject to the PAGA Released Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties.

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS 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; *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 ("[C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). As discussed below, for the purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 382.

A. Ascertainability and Numerosity

In determining whether a class is ascertainable, the court considers "(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members." *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense). Here, according to Defendant's records, there are approximately 74 Class Members that are easily identifiable and fall within the defined Class. Thus, Plaintiff's proposed Class meets the ascertainability and numerosity requirements.

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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. *Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class was subjected to common policies and practices relating to payment of wages, calculation of the "regular rate of pay," and meal/rest breaks, and so on. 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 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 assert claims regarding Defendant's pay practices, calculation of the "regular rate of pay," meal and rest break practices, wage statements, and the provisions governing the timely and complete payment of final wages, which are at the core of the lawsuit.

3. Adequacy of Representation

The proposed class representative must establish that he will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Specifically, Plaintiff contends that he is adequate to represent the class because he was employed by Defendant during the Class Period, allegedly experienced the same wage and hour practices as the rest of the Class, understood his duties as Class Representative, has been willing to undergo the risks of litigation, and has no conflict of interest.

Adequacy may be established by the fact that counsel 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 is represented by Class Counsel with extensive experience in wage and hour class actions like the instant matter. (Bokhour Decl. ¶¶ 2-6; Falakassa Decl. ¶¶ 15-20).

4. Superiority

Certification of the Class for settlement purposes is superior here because it will result in a global resolution of all claims simultaneously, fostering judicial economy. Class certification for settlement purposes is also vastly superior to litigating numerous individual claims, because most claims are too small to litigate outside 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. 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, 234-35. 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 enjoys broad discretion in making its fairness determination and should consider factors including, but not limited to:

> [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 (detailing the 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 their 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 the defenses, the employees may not have received any monetary recovery.

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

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

However, 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,* 91 Cal.App.4th at 250 ("Compromise is inherent and necessary in [settlement] … 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 particular relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. First, in addition to disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendant further argued that it complied with the applicable laws and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class. While Plaintiff asserts that this is a suitable case for certification, they realize that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that they could pursue on a class basis.

Considering the uncertainties of protracted litigation, this negotiated settlement reflects the best practicable recovery for the Class. While the total settlement amount is, 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.

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff’s counsel estimated the following big-picture data points through the date of mediation: (1) 74 Class Members who worked approximately 7,483 workweeks and 34,634 shifts during the Class Period. (Bokhour Decl. ¶ 22).

From these numbers, and by applying violation rates derived from analysis of extensive documents and data from the Defendant, Plaintiff calculated the potential maximum and risk-adjusted value of the claims as follows. (Bokhour Decl. ¶ 23).

Plaintiff contended that his strongest claim was for unpaid wages arising from Defendant’s uneven rounding practice and failure to account for non-discretionary bonuses and other incentive pay when calculating the “regular rate of pay” when paying overtime and sick wages. However, Defendant argued that it correctly calculated the “regular rate of pay” and that any underpayment was in good faith and *de minimis,* if any. Indeed, Defendant’s sampling of pay records revealed that any such underpayment of minimum and overtime wages was minimal. (Bokhour Decl. ¶ 24).

Due to this and in light of Defendant's other defenses, Plaintiff completely discounted these claims, keeping in mind that the true significant value of these unpaid wages claims lies in the derivative claims for waiting time penalties under Labor Code § 203 and wage statement violations under Labor Code § 226 as discussed below. (Bokhour Decl. ¶ 25.)

Plaintiff also alleged meal and rest break claims against Defendant. After expert review of the timekeeping records, Plaintiff's counsel estimated a 25% violation rate for meal periods and 33% for rest breaks. Given the total number of shifts at issue (approximately 34,634), this established maximum values of $184,166 for meal periods (34,634 total shifts x 25% violation rate x $21.27 per LC § 226.7) and $243,099 for rest breaks (34,634 total shifts x 33% violation rate x $21.27 per LC § 226.7). (Bokhour Decl. ¶ 26).

However, Defendant raised numerous arguments in response to this claim, including that they maintained fully compliant written meal and rest break policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiff placed a 40% risk at the class certification stage for meal periods and a 40% risk for rest breaks. Second, these defenses also go toward the merits given the evidentiary question of proving the number of meal and rest break violations. As such, Plaintiff placed a 40% risk on the merits for meal breaks, and an additional 40% risk on the merits for rest breaks, so this sets the risk-adjusted value for the meal claims as $110,499 ($184,166 x 40% class cert risk) and for the rest break claims as $145,859 ($243,099 x 40% class cert risk). (Bokhour Decl. ¶ 27).

Finally, Plaintiff alleged claims for waiting time penalties and wage statement violations deriving from the underlying wage violations and meal and rest period violations. But these claims were entirely derivative of the claims above, meaning that they only had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for these claims are as follows: (1) $199,087 [39 former employees x $21.27 per hour x 8 hours per day x 30 days], and (2) $143,850 for wage statement violations [2,877 wage statements at the $50 formula under § 226(e)]. (Bokhour Decl. ¶ 28).

However, Defendant raised a variety of defenses to these derivative claims that impacted the valuation. Namely, Defendant argued that the wage statements did not violate Labor Code § 226 and, even if there were a "technical" violation, Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements. Based on these facts and defenses, Plaintiff applied the 25% risk at class certification and estimated another 25% risk on the merits, leading to a risk-adjusted value of $80,915 for the wage statement claims. (Bokhour Decl. ¶ 29).

Next, as to the waiting time penalty claim, Plaintiff's valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest break claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (to the extent they existed) were "willful" under the meaning of Labor Code § 203. And, here, Defendant argued there was no "willful" violation since it had written policies in compliance and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff's counsel applied the 15% risk at class certification and a 20% risk on the merits, leading to a risk-adjusted value of $135,379. (Bokhour Decl. ¶ 30).

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

• Unpaid Wage Claims	$	*discounted*
• Meal and Rest Break Claims	$	256,358
• Wage Statement Claims	$	80,915
• Waiting Time Penalty Claims	$	135,379
• **Total Risk Adjusted Penalties and Damages**	**$**	**472,652**

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 74% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the low six figures, this fails to acknowledge that courts have wide latitude to reduce the 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(e)(2). Moreover, Defendant argued against the merits of the underlying claims, particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. In addition, Defendant contended that most putative class members had executed arbitration agreements containing class action waivers, which posed a substantial risk to class certification and further diminished the likelihood of recovery on a class-wide basis.

For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

E. PLAINTIFF'S COUNSEL IS EXPERIENCED IN 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; *Kullar,* 168 Cal.App.4th at 128 (court must take into account "the experience and view of counsel").

Plaintiff's counsel is also highly experienced in Class/PAGA litigation, having repeatedly been named "Super Lawyer" in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements, among other things. (Bokhour Decl. ¶¶ 2-6; Falakassa Decl. ¶¶ 3-9). Plaintiff's counsel, operating at arm's length, weighed the strengths and risks of this case and is of the view that this is a fair and reasonable settlement considering the nature of the claims, realistic risk-adjusted value, the complexities of the case, 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 3.769(f) and 3.766(b). The contents of the proposed Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (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. *See* Class Notice (Exhibit B to Bokhour Decl.). 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 "provides 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 notice.

The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Settlement Class Members with 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 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 member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the 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 so choose, to seek independent legal advice in the interim. If a Class Member does not opt out, then he or she will automatically be sent a settlement check.

G. <u>The Non-Reversionary "Checks Cashed" Distribution Ensures Maximal Recovery for Class Members</u>

The fact that each 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 uncashed by the deadline, the funds will be transferred to the State Controller's Office subject to the 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. <u>The Attorney's Fees and Costs Allocation is Fair</u>

Under the terms of the Settlement Agreement, Class Counsel is requesting $116,655 in attorneys' fees, which is equal to one-third of the Settlement Amount. *See*, *e.g.*, *Laffitte 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) 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) 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), 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) 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

Additionally, Class Counsel is seeking up to $25,000 in litigation costs, pursuant to the Settlement Agreement.

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

I. THE REQUESTED SERVICE AWARDS IS FAIR AND APPROPRIATE

The Settlement Agreement provides an incentive award payment of $10,000 to the Class Representative, which is reasonable given the large recovery Class Members will receive on average and the time and effort he 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 reviewing the settlement documents. The Class Representative also assumed significant risk in bringing this litigation—had he lost, he could have been ordered to pay Defendant's costs.

The requested service awards fall 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) 2011 WL 2648879 (approving $11,250 service award to each of the two Class Representative in a trucker meal break class action; *Ross v. US Bank National Association* (N.D. Cal. 2010) 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); *West v. Circle K Stores, Inc*. (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 ("the court finds Plaintiff' enhancement payments of $15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*. (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of $25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc*. (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving

"$25,000 incentive award for each Class Representative" in wage and hour settlement).

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

Subject to the Court's approval, the parties stipulated that Phoenix would serve as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat fee proposal to administer this settlement for $5,500. (Bokhour Decl. ¶ 44).

VII. <u>TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING</u>

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer arguments in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing for final approval approximately 130 days after the Preliminary Approval Date, as follows:

November 17, 2025	Preliminary Approval (PA) hearing
14 days after PA	Deadline for Defendant to Provide the Class Data to Settlement Administrator
15 days after Settlement Administrator Receives the Class Data	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Class Members.
45 days after mailing Class Notice	Deadline for Class Members to submit Requests for Exclusion, Objections, and Disputes to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for an award of attorney's fees, costs, and service payments.
9 court days before Final Approval hearing	Deadline for filing any written opposition to Plaintiff's Motion for Final Approval of Settlement or any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing any written reply to opposition Motion for Final Approval of Settlement.
TBD	Final Approval Hearing.

VIII. CONCLUSION

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

Dated: October 21, 2025,

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