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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ENRIQUE AGUILA, on behalf of himself and all others similarly situated,

Plaintiff,

v.

MAGNOLIA FOODS, LLC, a California limited liability company; and DOES 1-50, inclusive.

Defendants.

CASE NO.: CVRI2404553

Assigned to Hon. Harold W. Hopp

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

Hearing Information:

Date: July 2, 2025
Time: 8:30 a.m.
Dept.: 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 2, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard by the Honorable Harold W. Hopp in Department 1 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff Enrique Aguila, individually and on behalf of all others similarly situated, will and hereby does move this Court for:

- Granting preliminary approval of the proposed class action settlement reached and described herein and in the Declaration of Mehrdad Bokhour in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Declaration of Mehrdad Bokhour"), including the means of allocation and distribution of the Gross Settlement Amount and the Net Settlement Amount, and the allocations for the Class Counsel attorneys' fees and costs, Class Representative Service Award, PAGA Payment, and Settlement Administration Costs;
- Certifying the proposed Class for settlement purposes only;
- Preliminarily appointing Plaintiff Enrique Aguila as Class Representative;
- Preliminarily appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Sam Rezvani of Venture Law, P.C. as Class Counsel;
- Approving the Notice of Proposed Settlement of Class Action ("Class Notice") described herein and in the Declaration of Mehrdad Bokhour;
- Appointing ILYM Group ("ILYM") as the Settlement Administrator to handle the notice and administration process for the Settlement and preliminarily approving Settlement Administration Costs;
- Directing ILYM to mail the Class Notice to the proposed Class;
- Approving the proposed deadlines for the notice and administration process as reflected herein and in the Settlement Agreement; and
- Scheduling a hearing to consider final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel attorneys' fees and costs, Class Representative Service Payment, and Settlement Administration Costs.

This motion is based upon this accompanying memorandum of points and authorities, the settlement agreement, the Declarations of Mehrdad Bokhour and Sam Rezvani, Enrique Aguila, and Lisa Mullins of ILYM Group, Inc., in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court consider Plaintiff's entire memorandum of points and authorities.

Dated: June 5, 2025

BOKHOUR LAW GROUP, P.C.
VENTURE LAW, P.C.

By: ______________________________
Mehrdad Bokhour
Sam Rezvani
Attorneys for Plaintiff and the Putative Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Enrique Aguila ("Plaintiff") respectfully requests that this Court grant preliminary approval of the Settlement (also referred to as "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of the proposed Class, and Defendant Magnolia Foods, LLC ("Defendant").

Subject to Court approval, Plaintiff and Defendant ("Parties") have agreed to settle this lawsuit for a Gross Settlement Amount of $235,000 on a non-reversionary basis.[1] This amount is inclusive of all payments contemplated in this Settlement, excluding any employer-side payroll taxes due on the wage portion of the Individual Settlement Payments allocated as wages, which amount shall be separately paid by Defendant to the Settlement Administrator. [Settlement Agreement ¶ 50.] All of the Gross Settlement Amount will be disbursed pursuant to the Settlement Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant. [Settlement Agreement ¶ 51.]

The Parties reached the Settlement after engaging in extensive informal discovery, investigations, and arm's-length negotiations. The Settlement resulted from a formal mediation conducted by Daniel Turner, Esq., a well-respected mediator who is experienced in wage-and-hour class actions. The Settlement satisfies the criteria for approval and falls within the range of possible approval under California law.

Additionally, the contemplated Class Notice provides the best notice practicable under the circumstances and will allow each Class Member a full and fair opportunity to evaluate the Settlement and decide whether to participate in it. Accordingly, Plaintiff moves the Court to grant preliminary approval of the Settlement and the allocations for the Class Counsel Attorneys' Fees and Costs, Service Payment to Class Representative, and Settlement Administration Costs; certify the proposed Class for settlement purposes; direct distribution of the Class Notice; and set a Final Approval Hearing date.

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. Procedural History

Plaintiff and the putative class members consisted of food processors, production line workers, shipping and receiving clerks, supervisors, forklift drivers, warehouse associates, maintenance and repair technicians, and all other non-exempt positions at Defendant's food production and distribution facility in Jurupa Valley, California. ("Bokhour Decl.") ¶ 3.]

This Settlement settles the following Action filed on or about August 15, 2024, entitled *Aguila v. Magnolia Foods, LLC*, filed in the Riverside County Superior Court and assigned case number CVRI2404553. [Bokhour Decl., ¶ 5.] Plaintiff asserted claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide compliant meal periods; (4) failure to provide compliant rest breaks; (5) failure to reimburse necessary business expenses; (6) failure to pay due wages at separation of employment; (7) failure to provide accurate itemized wage statements; (8) failure to pay sick pay wages; and (9) unfair competition ("Original Complaint"). [Bokhour Decl., ¶ 6.]. Also, on August, 15, 2024, Plaintiff submitted a letter to the Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and simultaneously sent a letter to Defendant requesting the production of personnel and timekeeping records in order to further evaluate their wage and hour claims. [Bokhour Decl., ¶ 7.].

Thereafter, Plaintiff's Counsel discovered the existence of two prior settled actions entitled *Margarita Urrutia v. Magnolia Foods, LLC*, filed in San Bernardino Superior Court case number CIVSB2324321, and *Marisela Martinez de Ornelas v. Magnolia Foods, LLC*, filed in San Bernadino Superior Court case number CIVSB2308953 , that encompassed the claims asserted in Plaintiff's Original Complaint. In order to preserve judicial time and resources, Plaintiff agreed to dismiss his class claims without prejudice and pursue a PAGA-only action. [Bokhour Decl., ¶ 8.]

Thus, on or about October 23, 2024, the Court approved Plaintiff's Request for Dismissal of Class Claims Without Prejudice and Plaintiff filed a First Amended PAGA Representative Action Complaint ("FAC"), alleging PAGA-claims only. [Bokhour Decl., ¶ 9.]

On February 12, 2025, the Parties attended private mediation with a neutral mediator, Daniel Turner, Esq. In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the 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 his counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. Plaintiff also retained an expert to perform a statistical analysis of the claims and violations. [Bokhour Decl. ¶ 10.]

Through negotiations with the mediator's assistance, the Parties agreed to a tentative settlement addressing PAGA representative and class action allegations against Defendant. [Bokhour Decl. ¶ 11.]

On or about March 28, 2025, pursuant to the Parties' stipulation, the Court entered its Order allowing Plaintiff to file a Second Amended Class Action and Representative PAGA Complaint ("SAC"; the Original Complaint, FAC and SAC and referred to herein as the "Operative Complaint"), re-asserting class claims initially asserted but subject to commencing such claims as of the end of the Defendant liability release periods in the previously resolved prior actions. [Bokhour Decl. ¶ 12.] On or around April 8, 2025, Plaintiff filed a SAC. [Bokhour Decl. ¶ 13.]

B. <u>Plaintiff's Claims and Defendant's Defenses</u>

Plaintiff's core allegations are that Defendant violated the California Labor Code, *inter alia*, by failing to properly pay minimum and overtime wages, failing to provide compliant meal and rest periods or pay associated premiums, failing to provide compliant wage statements, failing to adequately reimburse incurred business expenses, failing to pay sick wages, and failing to timely pay final wages upon separation of employment and during employment. [Bokhour Decl., ¶ 14.] Plaintiff contends that Defendant's conduct constitutes unfair business practices and gives rise to penalties under PAGA. *Id.*

Specifically, Plaintiff alleges that Defendant's failure to properly pay all compensation due, arises from, *inter alia*, Defendant's timekeeping practices and policies resulting in failure to account for all hours worked and pay all wages. *Id*. Specifically, Plaintiff alleges he and the Class Members were not compensated at least the minimum wage for all hours worked because, in part, they were required to don and doff personal protective equipment (PPE) before clocking in and starting their shifts and to remove the same after clocking out. These mandatory procedures resulted in uncompensated time during which they were under the control of Defendant. Plaintiff further alleges these employees were not properly compensated at the correct overtime rate for hours worked beyond eight (8) hours per workday and/or forty (40) hours per workweek, due to Defendant's uniform failure to correctly calculate the "regular rate of pay" for overtime, sick pay, and missed meal premiums. *Id*. Plaintiff further alleges that Defendant failed to provide code compliant 30-minute off-duty meal periods due to its uniform meal period policies, rigid work demands, and operational requirements, and that these employees were not provided with mandated meal period premiums in lieu thereof. *Id*. Similarly, Plaintiff alleges that Defendant failed to provide two net 10-minute rest periods for each eight-hour shift and a third rest period for shifts exceeding ten hours, in violation of California law. *Id*. As a result, Plaintiff contends that he and the Class Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees. *Id*.

Defendant denies any liability of any kind associated with the claims and allegations and further denies that Plaintiff or the Class Members are entitled to any relief. [Bokhour Decl., ¶ 15.] Defendant also denies that the Action is appropriate for class or representative treatment for any purpose other than the Settlement. *Id*. Defendant maintains, among other things, that it has complied with California laws in all respects. *Id*.

C. <u>Discovery and Mediation</u>

Prior to mediation, the Parties engaged in informal discovery during which Defendant produced a sampling of timekeeping and payroll data, the relevant Employee Handbook, and wage and hour policies in effect during the Class Period, as well as other documents and information. [Bokhour Decl., ¶ 16.] Defendant's productions included hundreds of pages of documents and data. *Id.* Class Counsel performed extensive damages and valuation analysis based on class data and a sampling of time and pay data provided by Defendant. *Id*.

On February 12, 2025, the Parties participated in a private mediation before Daniel Turner, Esq., a well-respected mediator with experience in handling complex wage-and-hour matters. [Bokhour Decl., ¶ 17.] During the mediation, the Parties exchanged information and discussed various aspects of the case, including but not limited to, Plaintiff's claims on PAGA-wide and class-wide bases, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to Plaintiff's meal and rest periods, wage-and-hour enforcement, PAGA representative claims, the evidence produced and analyzed, and the possibility of appeals, among other things. *Id*.

After a full-day mediation and the issuance of a mediator's proposal, the Parties reached a settlement. *Id*.

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Class for Settlement Purposes

For settlement purposes only, the Parties agree to certification of the following Class (individual members of the Class are referred to as "Class Members"): All current and former hourly, non-exempt employees of Defendant Magnolia Foods, LLC who worked as direct hires in the State of California from March 16, 2024, through May 5, 2025 (the "Class Period"). The PAGA Employees means all current and former hourly, non-exempt employees of Defendant Magnolia Foods, LLC who worked as direct hires in the State of California from March 16, 2024, through May 5, 2025 (*i.e.*, the "PAGA Period")" [Settlement Agreement ¶¶ 2, 4, 8 and 27.] There are approximately 264 Class Members and 264 PAGA Employees. [Bokhour Decl., ¶ 19.]

B. Essential Terms of the Settlement

Defendant will pay a Gross Settlement Amount of $235,000 on a non-reversionary basis. The Net Settlement Amount means the amount remaining after deducting the following from the Gross Settlement Amount: (1) The Class Counsel Fees Payment of up to one-third of the Gross Settlement Amount (*i.e.*, $78,333.33) and the Class Counsel Litigation Costs of up to Fifteen Thousand Dollars ($15,000) to Class Counsel; (2) the Class Representative Service Award of up to Ten Thousand Dollars ($10,000) to Plaintiff Enrique Aguila; (3) the PAGA Award[2] in the amount of Twenty Thousand Dollars ($20,000); and (4) Settlement Administration Costs, which are currently estimated not to exceed Seven Thousand Five Hundred Dollars ($7,500). [Settlement Agreement ¶ 50.]

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[2] The Parties will seek approval from the Court for a PAGA Payment in the amount of $20,000 out of the Gross Settlement Amount, which shall be allocated as follows: $13,000 (*i.e.*, 65% of the PAGA Payment) as the LWDA's share for the settlement of civil penalties paid under this Agreement pursuant to the PAGA (the "LWDA Payment") and $7,000 (i.e., 35% of the PAGA Payment) to the Net Settlement Amount to be available for distribution to the PAGA Class Members.

	Total Amount
Gross Settlement Amount	$235,000.00
Attorneys' Fees (33.33%)	$78,333.33
Litigation Costs (not to exceed)	$15,000.00
Administrator Costs (not to exceed)	$7,500.00
PAGA payment to LWDA (65% of 20k allocation)	$13,000.00
Plaintiff's Service Award	$10,000.00
Net Settlement Amount	**$104,166.67**

Assuming the allocations towards these payments are awarded in full, the Net Settlement Amount that will be available to be allocated to Class Members who do not submit timely and valid Requests for Exclusion ("Participating Class Member(s)") is currently estimated to be at least ($104,166.67). The entire Net Settlement Amount will be distributed to Participating Class Members and PAGA Class Members, pursuant to the Settlement Agreement, and no portion shall revert to Defendant. [Settlement Agreement ¶ 51.]

The Settlement is based on Defendant's representations that there are approximately 8,625 Workweeks Worked by the Settlement Class Members during the period March 16, 2024 through February 12, 2025. In the event that the actual number of Workweeks Worked by all Settlement Class Members during the Class Period increases by more than 10%, then Defendant shall have the option to either: (i) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks Worked by the Class Members above 10% (for example, if the number of workweeks increases by 11%, the Gross Settlement Amount will increase by 1%) or (ii) shorten the Class Release Period to an earlier date at which only the represented number of workweeks plus 10% are covered by the Class Period. [Settlement Agreement ¶ 50(b).].

Calculation of Individual Settlement Shares

The Settlement Administrator shall calculate each Class Member's estimated individual Settlement Share as follows:

Individual Settlement Payment Calculation for Participating Class Members

Participating Class Members will receive Individual Settlement Payments after the Court issues a Final Approval Order and the Settlement becomes final and binding with no possibility of an appeal or further appeal (*i.e.*, the "Effective Date" of the Settlement is reached). The Settlement Administrator will calculate the total number of pay periods that all Class Members who do not opt out (i.e., "Participating Class Members") worked during the Class Period ("Total Class Pay Periods"). The "Class Period" is from March 16, 2024 through May 5, 2025. The value of each pay period shall be determined by the Settlement Administrator by dividing the Net Distribution Fund by the total number of Pay Periods Worked by Participating Class Members during the Class Period ("Class Pay Period Value"). Pay Periods Worked shall be calculated using a "Full Time Equivalent" methodology as opposed to a traditional calendar methodology. [Settlement Agreement ¶ 50(d).] "Pay Periods Worked" means any workweek during the Class Period (and/or the PAGA Period, as applicable), in which the Class Member (and/or PAGA Employee) was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek for or on behalf of Defendant for which a prior release of claims has not been signed. [Settlement Agreement ¶ 42.] Pay Periods Worked will be calculated based on Defendant's business records, and workweeks shall be calculated as follows: by dividing the total number of compensable hours worked by the employee during the relevant period by 40 (the standard full-time weekly hours. *Id*. To qualify as a workweek, the Class Member (and/or PAGA Employee) must have time worked in the week as recorded by Defendant's time and payroll system; time paid, but not worked, such as vacation, medical leave, or any other type of unpaid time off, does not qualify. *Id*. To determine each Participating Class Member's settlement payment, the Settlement Administrator will multiply the individual's Total Class Pay Periods Worked during the Class Period by the Class Pay Period Value (if the Class Member is a Participating Class Member). These payments will be subject to any legally required tax withholdings or deductions as calculated by the Settlement Administrator.

<u>Payment Calculation for PAGA Employees</u>

All PAGA Employees will receive payments after the Effective Date (defined above). "PAGA Pay Period" means any pay period during which a PAGA Employee worked for Defendant for at least one day during the PAGA Period. The Settlement Administrator will calculate the total number of PAGA Pay Periods that each PAGA Employee worked during the PAGA Period ("Total PAGA Pay Periods"). The PAGA Period is from March 16, 2024, through May 5, 2025. The Settlement

Administrator shall determine the value of each PAGA Pay Period by dividing the 35% of the PAGA Award allocated for PAGA Employees (*i.e.*, $7,000) by the Total PAGA Pay Periods for all PAGA Employees ("PAGA Pay Period Value"). To determine each PAGA Employee's payment for their prorated portion of the PAGA Distribution Fund (*i.e.*, $7,000), the Settlement Administrator will multiply the PAGA Employee's Total PAGA Pay Periods by the PAGA Pay Period value. A Class Member who is also a PAGA Employee will receive a payment under this section for their prorated portion of the PAGA Award even if they opt-out of the Class Settlement and will be bound by the release of the PAGA claims released through this Settlement.

Based on data known at the time of settlement, the total number of pay periods/workweeks worked by Class Members during the Class Period is approximately 8,625. Thus, if the Net Distribution fund is $104,166.67 (assuming the Court awards the maximum amounts requested for Fees, Costs, the Service Award, and Settlement Administration), then the Class Pay Period Value would be approximately $12.08 per Pay Period Worked (*i.e.*, $104,166.67 ÷ 8,625) subject to any adjustment necessary to account for updated figures through the end of the Class Period. A Participating Class Member who worked the average number of pay periods would then receive approximately **<u>$394</u>** (minus applicable withholdings for the wage portion of the payment). Based on the available data, the approximate range of Participating Class Member Individual Settlement Payments would be **<u>$50</u>** to **<u>$851</u>**. The average recovery by individual aggrieved employees is estimated to be $26.52 (*i.e.,* $7,000 / 264).

Individual Settlement Payments shall be allocated twenty percent (20%) as wages and eighty percent (80%) as interest and penalties. [Settlement Agreement ¶ 50(e).] The wage portion will be reported on an IRS Form W-2, and the portions allocated to interest and penalties will be reported on an IRS Form-1099. *Id.* The PAGA Employee payments will be allocated entirely as penalties and will be included on an IRS Form 1099 to each PAGA Class Member. *Id.*

According to Defendant, there are approximately 264 Class Members who worked approximately 8,625 workweeks from March 16, 2024 through February 12, 2025. [Bokhour Decl., ¶ 19.] As noted above, the average individual Settlement payment is projected to be approximately

$394. Of course, those with more workweeks stand to recover proportionally more from the Settlement.

D. Request for Exclusion and Objection Procedures

Class Members who wish to exclude themselves from the Settlement must mail a signed Request for Exclusion to the Settlement Administrator no later than forty-five (45) days after the Settlement Administrator mails the Class Notice. To be valid, a Request for Exclusion must be timely and comply with the Class Notice's instructions. If a question is raised about the authenticity of a signed Request for Exclusion, the Settlement Administrator will have the right to request additional proof of the Class Member's identity and will give the Class Member notice of the deficiency and the opportunity to cure. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. A Class Member who does not complete and mail a timely Request for Exclusion in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Participating Class Members, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit a Request for Exclusion shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections.

All Participating Class Members who do not submit a valid and timely Request for Exclusion will receive an Individual Settlement Payment, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement. PAGA Class Members will receive their respective share of the employee portion of the PAGA Award regardless of whether they submit a valid and timely Request for Exclusion.

The Class Notice will also provide that only Participating Class Members who wish to object to the Settlement may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator no later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets and must set forth the grounds for the objection and comply with the instructions in the Class

Notice. A Participating Class Member who does not submit an oral and/or a written objection in the manner and by the deadline specified in the Settlement Agreement and Class Notice, as described above, will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

Finally, each Class Member shall also have forty-five (45) days from the date of mailing the Class Notice Packet in which to dispute the number of pay periods/workweeks which the Class Notice allocates to them during the Class Period. Any Notice of Dispute shall be directed to the Settlement Administrator. In the event of any such dispute, the employment, time and payroll records of Defendant shall be entitled to a presumption of accuracy and any Class Member asserting a dispute shall have the burden to prove the accuracy of his or her claim and an opportunity to submit supporting documentation. Any dispute as to this allocation shall be resolved by the Settlement Administrator. In resolving any such dispute, the Settlement Administrator may request additional information from Defendant's Counsel and/or Class Counsel.

E. <u>Scope of the Release</u>

The Settlement provides that Participating Class Members will release the Released Parties[3] of: all claims that were pled or which could have been pled in the Action based on the factual allegations therein, including, but not limited to: (1) claims for unpaid wages, overtime, sick time, meal and rest period premiums, waiting time penalties, wage statements, unreimbursed business expenses; (2) any related wage, hour or related record keeping claims arising under the California Labor Code, the applicable wage orders of the California Industrial Welfare Commission, and any applicable state or federal law; (3) any claims for failure to indemnify necessary business expenses; (4) any related claims for unfair business practices (including unlawful, deceptive, or unfair business practices prohibited by the California Business and Professions Code §§ 17200, *et seq.*) arising out of alleged violations of wage, hour and related record-keeping provisions of the

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[3] "Released Party" means Defendant and any of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its shareholders, partners, members, managers, owners, officers, directors, employees, agents, attorneys, insurers, payroll providers, joint ventures, predecessors, successors, agents, and assigns, and any individual or entity that could be liable for any of the Released Claims. [Settlement Agreement ¶ 34.]

California Labor Code, the applicable wage orders of the California Industrial Welfare Commission, and any applicable state law; (5) any related claims that Defendant did not comply with laws, regulations and ordinances, and/or common law of California; (6) any related claims that Defendant did not comply with Federal laws, regulations and ordinances, and/or common law; (7) claims for civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq*.; and (8) claims for violation of Labor Code sections 200 through 204, 201, 202, 203, 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.4, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1199.5, 1182.12, 2800, 2802 and the applicable wage orders of the California Industrial Welfare Commission. [Settlement Agreement ¶ 5.]

As of the date the Judgment becomes Final and the Defendant fully funds the Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, agents, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the time period from March 16, 2024 through May 5, 2025. The Released Class Claims include all claims that were asserted or that could have been asserted based on the facts alleged in Plaintiff's Original Complaint, the First Amended Complaint, and the Second Amended Complaint. The Released Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims arising outside of the Class Period.

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by Class Counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

To make a fairness determination, the Court should consider several factors, including: "the strength of plaintiffs' 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, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

V. <u>ARGUMENT</u>

A. <u>The Settlement Should Be Preliminarily Approved</u>

1. <u>The Strength of Plaintiff's Case</u>

Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described in Section II.B., *supra*, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

2. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete in formal litigation had the matter not settled. [Bokhour Decl., ¶ 20.] This would have required expenditure of substantial time and resources by all Parties that would have very likely spanned several years. *Id*. Plaintiff faced numerous risks in continued litigation, including and not limited to, the risk of receiving no recovery if a class is not certified and/or no liability is found and the Court determining that adjudication on a representative or class basis is unmanageable and not appropriate. *Id*. Plaintiff also faced the real possibility that the amount recovered against Defendant after years of litigation and a lengthy and costly trial would be less than the amount negotiated in this Settlement. *Id*. This Settlement avoids those risks and the accompanying expense. *Id.*

3. Risk of Maintaining Class Action Status

Plaintiff had not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed Class is certifiable is somewhat speculative. Absent the Settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Defendant with individual class members by way of *Pick-Up-Stix* type settlement agreements[4]) and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-Up-Stix* process. Thus, this factor, too, supports preliminary approval of the Settlement.

4. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable recovery for the Class in the face of disputed claims. Plaintiff conducted an in-depth statistical analysis of underpaid wages and penalties due to Defendant alleged unlawful timekeeping policies/practices, potential meal and rest period violations, failure to reimburse all necessary business expenses, failure to pay wages at the correct rate of pay, failure to pay sick wages, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis is discussed below.

[4] In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

Failure to Pay Wages:

As described above, Plaintiff alleges that Defendant failed to accurately record (or record time at all when they were subject to the control of the employer) time worked by Plaintiff and other Class Members because Defendant failed to pay Class Members for pre-shift and post-shift work duties which extended a few minutes beyond their scheduled shifts for which they were not paid. [Bokhour Decl. ¶ 21.]

In this regard, Plaintiff assumed Plaintiff and other Class Members were not paid for approximately 5 minutes per shift. [Bokhour Decl. ¶ 22.]

Based on Plaintiff's analysis, Class Members worked approximately 39,923 shifts and by assuming five minutes per shift, this resulted in approximately $66,505.06 of unpaid minimum and overtime wages <u>(39,923 shifts x 5.0 minutes per shift /60 x $19.99 hour)</u>. [Bokhour Decl. ¶ 23.]

Defendant denies all of Plaintiff's claims and asserts that it maintained lawful timekeeping policies/practices during the Class Period. *Id*. Specifically, Defendant contends that it rarely required employees to work off the clock and it properly compensated all employees. *Id*. Defendant argues that an individualized inquiry as to whether each Class Member was underpaid is necessary and would preclude class certification. *Id*.; *see, e.g., Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1052 (affirming denial of off-the-clock subclass, "[p]roof of off-the-clock liability would have had to continue in an employee-by-employee fashion, demonstrating who worked off the clock, how long they worked, and whether Brinker knew or should have known their work."). [Bokhour Decl. ¶ 24.]

In light of these arguments and defenses, Plaintiff discounted Defendant's maximum exposure by 45% to account for the risk of non-certification, and by an additional 35% for a risk of being unsuccessful on the merits or having the amount of unpaid wages reduced, for a reasonably expected total of approximately **$23,775.56**. [Bokhour Decl., ¶ 25.]

Meal Period Violations:

Plaintiff alleges that Defendant failed to provide Plaintiff and other Class Members with all second meal periods of at least thirty (30) minutes before the tenth (10^{th}) hour of their shift.

[Bokhour Decl., ¶ 26.] Defendant's payroll records demonstrate that Class members were consistently unable to take second meal periods at all for shifts in excess of 10 hours. *Id*.

Plaintiff's analysis of the data demonstrates 3,407 unique meal period violations comprising a 11.5% violation rate based on the payroll data analyzed. Plaintiff calculates $68,105.93 in unpaid meal period premiums (3,407 non-compliant meal periods x $19.99 meal period premium). *Id*. As such, the total damages regarding meal period violations are estimated to be $68,105.93. *Id*.

However, Defendant claims that it maintained legally compliant meal period policies throughout the Class Period; such that it allowed non-exempt employees to take compliant and timely meal periods. *Id*. Defendant also claimed that all or most of the hourly employees had signed second meal period waivers and/or otherwise voluntarily waived a second unpaid meal period that was made available by the company so they could go home sooner rather than taking a second 30-minute unpaid meal break. As such, Defendant vigorously contended that there were no violations for all of the shifts between 10.0 and 12.0 hours. Defendant also contend that this claim would not be certified due to the lack of any common evidence tying together the reason that Class Members experienced an alleged meal period violation. *Id*. Lastly, Defendant assert that the presence of these affirmative defenses as to the voluntariness of a particular meal period decision would preclude class certification. *Id.*; *see Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25. In light of these defenses and arguments, Plaintiff discounted Defendant's maximum exposure by 70% for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits, to arrive at an estimated total of **$10,215.89**. *Id*.

<u>Rest Period Violations:</u>

Plaintiff alleges that Defendant failed to authorize and permit all legally compliant rest periods throughout the Class Period. [Bokhour Decl., ¶ 27.] More specifically, Plaintiff alleged that Defendant failed to authorize and permit Plaintiff and other aggrieved employees from taking legally compliant rest periods due to its unlawful rest period policies and operational requirements as enforced by their supervisors. *Id*. Plaintiff's analysis of Defendant's data demonstrates there were approximately 29,701 rest period eligible shifts. *Id*. For this claim, Plaintiff assumed a 33%

violation rate and calculated Defendant's maximum exposure on this claim at $197,901 (9,900 non-compliant rest periods x $19.99 rest period premium). *Id*.

However, Defendant denies Plaintiff rest period allegations and asserts that they maintained compliant rest period policies throughout the Class Period and authorized and permitted all rest periods to Class Members. [Bokhour Decl., ¶ 28.] In addition, Defendant argued that, in practice, Class Members were allowed to be free and did in fact leave the premises during rest periods. *Id*. Further, Defendant contend that this claim is not amenable to class treatment because individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id*. As such, Plaintiff discounted Defendant's maximum exposure by 65% to account for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of approximately **$34,632.68**. *Id*.

<u>Wage Statement Violations</u>:

Plaintiff contends that, because of the foregoing Labor Code violations, Defendant issued inaccurate wage statements in violation of Labor Code section 226(a). [Bokhour Decl., ¶ 29.] More specifically, Plaintiff alleged that the wage statements issued uniformly failed to reflect all net wages earned, gross wages earned, the appropriate overtime rate, sick pay rate, and the appropriate rate of premium pay for non-compliant meal and rest periods. *Id*. Further, the wage statements issued by Defendant failed to indicate the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. *Id*.

Plaintiff's data analysis reveals there were approximately 9,143 wage statements issued during the Class Period. *Id*. Therefore, Plaintiff calculates Defendant's maximum exposure for this claim at $457,150 (*i.e.*, 9,143 statements * $50. *Id.*

Based on Defendant's arguments that: (i) no violations occurred; (ii) any alleged violations were not "knowing and intentional" as required by Labor Code § 226(e); (iii) no actual injury was suffered; and (iv) that its wage statements always accurately reflected hours worked and amounts paid to employees, *see Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308 (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received), Plaintiff discounted Defendant's calculated maximum exposure by 75% for a risk of non-certification, and an additional 50% for a risk of being unsuccessful on the merits, to arrive at an estimated total of **$57,143.75**. [Bokhour Decl., ¶ 30.]

<u>Waiting Time Penalties</u>:

Defendant's records reflected approximately 80 former Class Members who separated from their employment with Defendant during the Class Period. [Bokhour Decl., ¶ 31.] Based on an average hourly rate of $19.99, Plaintiff estimated the average waiting time penalty per former employee to be $4,797.60 ($19.99 x 8 hours per day x 30 days). *Id*. Therefore, Plaintiff estimated Defendant's maximum exposure for potential waiting time penalties to be $383,808 (80 former employees * $4,797.60 average waiting time penalty). *Id*.

Defendant presented several defenses to this claim, most notably, the assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. *Id*. Defendant further contend that no waiting time penalties are recoverable as a matter of law as to Plaintiff's claims predicated on a failure to provide meal and/or rest periods as a Court of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.* (2019) 40 Cal.App.5th. 444, 473-75 (*review granted* Jan. 2, 2020). To account for Defendant's defenses, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional 60% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of **$92,113.92**. *Id*.

<u>Unreimbursed Business Expenses:</u>

Plaintiff alleges that Defendant failed to reimburse Plaintiff and putative class members for all necessary business expenses such during the Class Period. [Bokhour Decl., ¶ 32.] Plaintiff alleges that the business expenses incurred by Plaintiff and other Class Members were for certain of their own tools, safety gear and other devices required to perform their job duties. *Id*.

Defendant contended that Plaintiff and other putative class members never requested reimbursement from Defendant for these items, and Defendant did not know and had no reason to know that the alleged business-related expenses were incurred and not reimbursed. [Bokhour Decl., ¶ 33.]

Defendant further contended that the reason for why a putative class member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses while not others, would raise individual issues that could not be certified. *Id*. Defendant contended that the California Labor Code only requires reimbursement of "necessary" expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. *Id.*; *See*, Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary, would depend, in part, on the reasonableness of the employee's choice, and whether or not an expense was incurred, would have to be established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137. [Bokhour Decl., ¶ 34.] In light of these defenses and arguments, Plaintiff discounted Defendant's maximum exposure by 100% for the risk of non-certification and to account for Defendant's defenses on the merits, to arrive at an estimated total of **$0.00**. [Bokhour Decl., ¶ 35.]

<u>PAGA Penalties</u>:

Based on the data provided by Defendant, there are approximately 8,625 pay periods during the relevant PAGA Period. [Bokhour Decl., ¶ 36.] Based on the violations addressed above, Plaintiff contends that Defendant is liable for a PAGA civil penalty in the amount of $100 for each of the 8,625 pay periods worked during the PAGA Period. *Id*. Accordingly, Plaintiff estimated Defendant's maximum potential PAGA exposure at $862,500 (8,625 violations x $100 "initial" penalty). *Id.*; *Amaral v. Cintas Corp. No. 2* (2009) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). *Id*.

However, Defendant asserts a host of credible defenses to Plaintiff's PAGA claims. First, while Plaintiff argues that these penalties derive from the underlying wage and hour violations discussed above, Defendant vigorously disputes this. *Id*.; *see e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) Case No. LA CV12-06155 JAK (VBKx), 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendant further contends that the Court would drastically reduce any award of PAGA penalties as "confiscatory." *Id.*; *see also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum figure by 65% for risk of losing on the merits, and an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of **$75,468.75**. *Id.*

Based on the foregoing, the total damages are approximately $293,350.54, calculated as follows:

- Unpaid Wages: $23,775.56
- Meal breaks: $10,215.89
- Rest breaks: $34,632.68
- Wage Statement penalties: $57,143.75
- Waiting time penalties: $92,113.92
- Reimbursement: $0.00
- PAGA: $75,468.75
- **Total: $293,350.54**

In sum, 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 and considering Defendant's various defenses on the merits and to class certification, difficulties of proof, and other risks as described above, Plaintiff predicted that the potential likely recovery for the Class at trial would be approximately $293,350.54. [Bokhour Decl., ¶ 37.]

The proposed settlement of $235,000 therefore represents approximately 80% of the reasonably forecasted recovery for the Class, and therefore, represents a fair, reasonable, and adequate resolution of this lawsuit. [Bokhour Decl., ¶¶ 38-40.] Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Class Members, which is consistent with what Plaintiff's counsel believes could have been recovered had the case proceeded through trial. *Id.* It would also provide the Class with a prompt and certain recovery soon rather than an uncertain recovery after years of potential additional litigation and appeals. *Id.*

5. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th 566Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* [Bokhour Decl., ¶¶ 46-51; Rezvani Decl. ¶¶ 8-13]; Class Counsel conducted an in-depth review of Defendant's relevant policies and timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* [Bokhour Decl., ¶¶ 52, 57-58, 60.] The Settlement was also reached with the assistance of an experienced wage and hour class action mediator. [Bokhour Decl., ¶¶ 58-59.] This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

B. The Preliminary Approval Standard Is Met

At this stage, the Court can grant preliminary approval of the settlement and direct that notice be given if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

1. The Settlement Is Within the Range of Possible Approval

The proposed settlement reflects approximately 80% of the estimated recovery the Class could reasonably expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. [Bokhour Decl., ¶ 40]; *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D.

523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial").

As detailed in the settlement calculation discussion above, a Participating Class Member will receive approximately $394 (minus applicable withholdings for the wage portion of the payment). This estimated average Individual Settlement Payment is greater than the average payments achieved in other wage and hour class action settlements.[5] Thus, Plaintiff submits that the proposed Settlement is within the range of possible approval, such that notice should be provided to the Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class has had the opportunity to opt out or object.

a. The allocation for the Class Representative Service Payment is reasonable.

Subject to Court approval, Plaintiff will receive a Class Representative Service Payment in the amount of Ten Thousand Dollars ($10,000). [Bokhour Decl., ¶ 41.] The Service Payment will be paid in addition to Plaintiff's Individual Settlement Payment. *Id*. Courts routinely approve incentive awards to class representatives for their time and efforts, and the risks they undertake on behalf of the class. *See, e.g.*, *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94 ("[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.").

[5] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento VFto County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately $80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately $60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately $198.70…[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than $90…[T]he Court finds that the results achieved are good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately $108).

Here, the contemplated Service Payment is fair and appropriate and is well within the range of enhancement awards awarded by trial courts. *See Angell v. City of Oakland*, 13 cv-00190 NC, 2015 WL 65501, at *8 (N.D. Cal. Jan. 5, 2015) (approving $9,000 incentive awards); *Covillo*, 2014 WL 954516, at *8 (approving an $8,000 incentive award).

Moreover, Plaintiff spent considerable time and effort to produce relevant documents and past employment records and provide the facts and evidence necessary to support the allegations. [Bokhour Decl., ¶ 41.] Plaintiff was available whenever his counsel needed him and tried to obtain documents and information that would benefit the Class. *Id.* Accordingly, it is appropriate and just for Plaintiff to receive a reasonable Class Representative Service Payment for his services on behalf of the Class.

b. The Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment are reasonable.

Class Counsel meets the requirements under California law. Class Counsel conducted extensive research, investigation, and analysis of the potential value of the claims. Additionally, Class Counsel are highly experienced in wage-and-hour litigation and class action cases. [Bokhour Decl., ¶¶ 46-51; Rezvani Decl. ¶¶ 8-13]. As such, appointment of Bokhour Law Group, P.C. and Venture Law, P.C. as Class Counsel is appropriate.

The Settlement establishes a Gross Settlement Amount of $235,000 and provides for Class Counsel to apply for attorneys' fees in an amount of $78,333.33 which represents one third of the settlement amount. Class Counsel will apply for attorneys' fees at the time of seeking final approval of the proposed Settlement.

Under California precedent, it is appropriate to award attorneys' fees as a percentage of the "common fund" created by a class action settlement. *See Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). The goal is to award "reasonable compensation for creating a common fund." *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). In reviewing a fee award request, courts consider the following factors: (1) the results achieved; (2) whether there are benefits to the class beyond the immediate generation of a cash fund; (3) the risks of litigation; (4) the skill required of counsel and quality of the work performed; (5) the contingent nature of the fee and the foregoing by counsel of other work; and (6) the reactions of the class. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50; *In re Toyota Motor Corp.*, 2013 WL 3224585 (C.D. Cal. June 17, 2013). Of these factors, the most significant factor is the "degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

Here, the Class Counsel Fees Payment provided for by the Settlement is reasonable, particularly in light of the time and effort expended by Class Counsel. Class Counsel litigated this case with the possibility of an unsuccessful outcome and no fee recovery of any kind. [Bokhour Decl., ¶¶ 43-45.] The ongoing work has been demanding and ultimately successful in achieving a substantial Settlement. Given the strengths and weaknesses of the claims and the risk and expense of further litigation, Plaintiff believes that his counsel achieved an excellent result on behalf of the Class. Considering the amount of the fees to be requested, the work performed, and the risks incurred, the Class Counsel Attorneys' Fees and Costs provided for by the Settlement are reasonable and should be awarded. *Id.*; *See Vizcaino*, 290 F.3d at 1051.

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

2. <u>The Settlement Resulted from Serious, Informed Negotiations</u>

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before Daniel Turner, Esq., an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. Here, the Parties actively litigated this case since it commenced. Class Counsel conducted a thorough investigation into the facts of the case, including, *inter alia*, interviews with Plaintiff, and diligently investigated the allegations in this lawsuit. [Bokhour Decl., ¶¶ 57-58.] Class Counsel reviewed a large volume of documents and data produced by Defendant and obtained through other sources, including and not limited to, Plaintiff's employment records (including, *inter alia*, time and payroll data, timecards, earning statements, and personnel records), as well as excerpts of Defendant's applicable employee handbook (such as excerpts pertaining to meal and rest break policies), class-wide data, various documents regarding Defendant's wage-and-hour policies, various internal memoranda various agreements, various training and on-boarding material, and various forms, among other information and documents. *Id*.

The Parties reached the Settlement after reviewing all available evidence, arm's-length bargaining, and participating in mediation conducted by Daniel Turner, Esq., a well-respected mediator experienced in handling complex wage-and-hour class action litigation. *Id*. During the mediation, the parties exchanged information and discussed various aspects of the case, including and not limited to, Plaintiff's claims, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to off-the-clock theory, regular rate theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims pursuant to the revised PAGA, the evidence produced and analyzed, and the possibility of appeals, among other things. *Id.*

During settlement discussions, the Parties conducted their negotiations at arm's length from an adversarial position. [Bokhour Decl., ¶ 59.] Arriving at a settlement that was acceptable to both Parties was not easy. The data and documents produced and obtained in this case enabled Class Counsel to prepare damages/valuation models in preparation for the mediation, to determine the value and strength of the claims. With the aid of the mediator's evaluations, the Parties agreed that the Action was well-suited for settlement given the legal issues relating to the claims, as well as the costs and risks to both sides that would attend further litigation. *Id.* The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. *Id.*

The Settlement is based on this large volume of facts, evidence, and investigation, and the Parties' negotiations during the mediation.[6] [Bokhour Decl., ¶ 60.] While the Parties disagree over the merits and certifiability of Plaintiff's claims, Plaintiff and Class Counsel agree that the Settlement is fair, reasonable, adequate, and in the best interest of the Class, in light of all known facts and circumstances. *Id*.

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[6] *See Hanlon*, 150 F.3d at 1027 (affirming approval of settlement after finding "no evidence to suggest that the settlement was negotiated in haste or in the absence of information illuminating the value of plaintiffs' claims").

3. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed for the Class Counsel Attorney's Fees and Costs, the Class Representative Service Payment, Settlement Administration Costs and the PAGA Payment are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

VI. CERTIFICATION OF THE PROPOSED CLASS IS APPROPIATE UNDER CAL. CIV. PROC. SECTION 382

Class certification under California law is appropriate where: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Class members; and (4) Plaintiff and their counsel will fairly and adequately represent Class members' interest. *See* Cal. Civ. Proc. § 382. The proposed Class meets all of these requirements.

A. Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Class is defined as all current and former hourly, non-exempt employees of Defendant Magnolia Foods, LLC who worked as direct hires in the State of California during the "Class Period".

Further, the proposed Class consists of at least 264 Class Members. [Bokhour Decl., ¶ 19.] The proposed Class is sufficiently numerous, and joinder of all Class Members would be impractical. *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

B. Commonality

A settlement class has sufficient commonality if there are predominant questions of law or fact. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 326. Here, the

Class Members seek remedies under California's wage-and-hour laws for violations arising from common, uniform, and systematic practices which applied to all Class Members during the Class Period. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims); *Williams v. Superior Court* 221 Cal.App.4th 1353, 1371 (2013) (certifying class based on uncompensated work time). Accordingly, the commonality requirement is satisfied for settlement purposes.

C. Typicality

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those of the Class Members, though some factual differences may exist among them, as the claims arise from the same events or course of conduct and are based upon the same legal theories. Given the structure of the Settlement, the proposed Class satisfies the typicality requirement for settlement purposes as Plaintiff's claims arise from the same factual basis and are based on the same legal theories as those applicable to all other Class Members.

D. Adequacy of Representation

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007).

Plaintiff's interests align with those of other Class Members, as they were all employed by Defendant within the State of California. Plaintiff's claims are typical of those of Class Members, which are confined to a limited group of similarly situated employees who worked for Defendant during the Class Period. Class Counsel are highly experienced in employment class action and complex wage-and-hour litigation, having handled many cases before and having been appointed class counsel in many other cases. [*See generally*, Bokhour and Rezvani Declarations.] Plaintiff contends that Class Counsel's experience in litigating similar matters was integral to obtaining the Settlement.

E. ADEQUACY OF THE METHOD OF NOTICE

A class notice must give the "best notice practicable" under the circumstances by providing "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). A class notice is adequate if it "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). The notice must also be neutral and objective in tone and should neither promote nor discourage the assertion of claims.

Here, the proposed Class Notice provides the best notice practicable and is adequate in light of the fact that Defendant are in possession of the addressed for Class Members. While Class Counsel considered alternative methods such as publication or notice via the web or social media, it ultimately determined that first class mail was the best choice given that the identities of the Class Members are known and readily identifiable from Defendant's records. [Bokhour Decl. ¶ 62.] The Class Notice provides information on, *inter alia*, the nature of the lawsuit, the definition of the Class, the terms of the Settlement, the scope of the Released Claims, the binding effect of the Settlement, and the allocations for the Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, and Settlement Administration Costs. Each Class Member's Class Notice will state his or her number of pay periods/workweeks, estimated Individual Settlement Payment, and estimated PAGA Employee payment. [Bokhour Decl. ¶ 63.] The Class Notice summarizes the proceedings and provides the date, time, and place of the Final Approval Hearing. *Id*.

All Class Members and PAGA Employees can and will be identified by Defendant through a review of their business and employment records. After receiving the Class Data from Defendant, the Settlement Administrator will mail a Class Notice to each Class Member. Accordingly, the proposed Class Notice is adequate and is the best notice practicable under California law.

The Class Notice also fulfills the requirement of neutrality in class notices. [Bokhour Decl. ¶ 64.] The Class Notice provides a brief, neutral explanation of the case from the perspective of both

Parties and recognizes that the Court has not yet granted final approval of the Settlement.[7] The Class Notice sets forth in an accurate and informative manner the procedures and deadlines governing the submission of Requests for Exclusion, objections, and workweek disputes. *Id*. The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Accordingly, the Court should approve the proposed Class Notice. *Id*.

On information and belief, the Class Notice[8] has been drafted in a manner that is likely to be readily understood by the members of the Class. [Bokhour Decl. ¶ 65.] Class Members vary in age, education and experience. *Id*. All Class Members read and comprehend English and/or Spanish. *Id*. As such, the Class Notice has been drafted in plain English and Spanish and is readily understandable to current and former employees. *Id*.

VII. <u>APPOINTMENT OF ILYM AS THE ADMINISTRATOR</u>

The Parties have selected ILYM Group, Inc. ("ILYM") as the Settlement Administrator to handle the notice and administration of the Settlement. [Bokhour Decl. ¶¶ 3, 66.] ILYM will mail a Class Notice to each Class Member; receive, review, and process Requests for Exclusion, objections, and workweek disputes; calculate estimated Individual Settlement Payments; withhold applicable taxes and withholdings; prepare and transmit necessary tax documentation and filings; and transmit all required payments. ILYM will also handle inquiries from Class Members regarding the Settlement and perform any other usual and customary duties for administering a class action settlement. *Id.*

Settlement Administration Costs are currently estimated not to exceed Seven Thousand Five Hundred Dollars ($7,500) and will be paid out of the Gross Settlement Amount subject to approval by the Court. [Bokhour Decl. ¶ 67.] Plaintiff's counsel sought a settlement administration bid from ILYM and selected this administrator as it provided a fair and objectively reasonable not to exceed bid, and is highly experienced and qualified to administer this matter. *Id.* Plaintiff respectfully requests that the Court appoint ILYM as the Settlement Administrator and direct distribution of the Class Notice in the

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[7] *See Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 174 (1989) ("[C]ourts must be scrupulous to respect judicial neutrality" in overseeing the class action notice process and "avoid even the appearance of judicial endorsement of the merits of the action[.]").

[8] The proposed Class Notice, Request for Exclusion Form and Objection Form are attached to the Declaration of Mehrdad Bokhour as Exhibit B.

manner and in accordance with the proposed scheduled, set forth in the Settlement Agreement and discussed in Section VIII, *infra*. *Id.*

VIII. DEADLINES FOR NOTICE AND ADMINISTRATION

The Court is respectfully requested to approve the proposed deadlines for the notice and settlement administration process. Within fifteen (15) calendar days following preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the Class Data.[9] [Settlement Agreement ¶ 66.] Within seven (7) days of receiving the Class Data, ILYM will send a Class Notice to each Class Member. [Settlement Agreement ¶ 67.] Prior to mailing the Class Notices, ILYM shall attempt to locate Class Members' updated addresses by a search of the National Change of Address Database. *Id*. If a Class Notice is returned as undeliverable, ILYM will promptly re-mail it to a forwarding address, if provided, or to an updated address obtained from a skip-trace search. [Settlement Agreement ¶ 68.]

Requests for Exclusion, Objections, and Workweek Disputes must be mailed to ILYM and postmarked by the applicable Response Deadline. [Settlement Agreement ¶ 70.]

All settlement checks issued to Class Members and/or PAGA Employees will remain valid and negotiable for one hundred eighty (180) calendar days from the date it is mailed. [Settlement Agreement ¶ 76.] Thereafter, the funds associated with any such checks that remain uncashed or are returned as undeliverable, if any, will be paid to the California State Controller's Unclaimed Property Fund in the name of the Participating Class Member, and the Participating Class Member will remain bound by the Settlement. *Id*.

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[9] "Class Data" means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator and shall include the Settlement Class Members' and PAGA Employees' full names, last known addresses, Social Security Numbers, and dates of employment during the Class Period and PAGA Period and/or number of Work Weeks Worked or Pay Periods Worked as direct-hire non-exempt or hourly employees of Defendant during the Class Period and the number of PAGA Pay Periods worked during the PAGA Period, respectively, for each Settlement Class Member and PAGA Employee. [Settlement Agreement ¶ 7.] The Class Data provided to the Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. [Settlement Agreement ¶ 66.]

IX. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminary approve the Settlement and schedule a Final Approval Hearing.

Dated: June 5, 2025

BOKHOUR LAW GROUP, P.C.
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By: ______________________
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