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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROBERT SUMNER, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

VACCO INDUSTRIES, a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 24STCV24575

Assigned to the Hon. Elihu M. Berle

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

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

HEARING INFO

Date: November 14, 2025

Time: 9:00 a.m.

Dept.: 6

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 14, 2025, at 9:00 a.m. or as soon thereafter as the matter may be heard by the Honorable Elihu M. Berle in Department 6 of the Los Angeles County Superior Court for the State of California, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Robert Sumner, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" and/or "Settlement"), including:

1. Certifying the Class for purposes of the Settlement only;
2. Preliminarily appointing Plaintiff Robert Sumner as Class Representative for purposes of settlement only;
3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C. as Class Counsel for purposes of settlement only;
4. Preliminarily approving the Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the 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 Declarations of Mehrdad Bokhour, Joshua Falakassa, and Robert Sumner in support thereof; the Settlement Agreement; the proposed Order; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

1 Dated: October 14, 2025

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

2
3
4 BY:

MEHRDAD BOKHOUR
JOSHUA FALAKASSA

Attorneys for Plaintiff and the Putative Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Robert Sumner (“Plaintiff”), individually and on behalf
4 of all others similarly situated, seeks preliminary approval of the Class Action and PAGA
5 Settlement Agreement (“Settlement Agreement” and/or “Settlement”). Subject to Court
6 approval, Plaintiff and Defendant VACCO Industries (“Defendant” or “VACCO”) have agreed
7 to settle Plaintiff’s and the proposed Class Members’ claims against Defendant for a gross
8 settlement amount of \$1,260,000 (“Gross Settlement Amount”).

9 Plaintiff seeks to represent a Class of all current and former non-exempt employees who
10 worked for VACCO in California at any time between September 20, 2020, and July 31, 2025
11 (“Class Period”) (the “Class Members”). Likewise, the allegedly aggrieved employees include
12 all current and former non-exempt employees of VACCO who worked for VACCO in
13 California from September 20, 2023, through July 31, 2025, referred to as “PAGA Members.”¹

14 Under the terms of the Settlement Agreement, Defendant will not oppose Class
15 Counsel’s request for a reasonable award of attorney’s fees not to exceed one-third of the
16 Settlement Amount and litigation costs not to exceed \$25,000, Settlement Administration Costs
17 not to exceed \$10,000, PAGA penalties of \$50,000 (of which \$32,500 or 65% will be paid to the
18 LWDA and the remaining \$17,500 or 35% will be paid to the PAGA Members) (“Individual
19 PAGA Payments”), and a Class Representative Service Payment not to exceed \$10,000 to the
20 named Plaintiff as follows:

21

	Total Amount
<i>Gross Settlement Amount</i>	\$1,260,000.00
Class Counsel Fees Payment	\$420,000
Litigation Costs (not to exceed)	\$25,000.00
Administrator Costs (not to exceed)	\$10,000.00
PAGA payment to LWDA (65% of \$50k award)	\$32,500.00
PAGA payment to PAGA Members (35% of 50k award)	\$17,500.00

22
23
24
25

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

Class Representative Service Payment	\$10,000.00
<i>Net Settlement Amount</i>	\$745,000

The Class includes approximately 339 Class Members who worked for Defendant during the Class Period. Plaintiff contends that, regardless of their roles, all non-exempt employees worked under the same workplace policies and practices, and therefore, the individual class payments will be paid on a pro-rata basis based on the number of weeks during which a Class Member worked for VACCO for at least one day during the Class Period (“Workweeks”) worked during the Class Period (the “Individual Class Payments”). Assuming a total class size of 317 Class Members, the average payment to each will be approximately **\$2,197**. Of course, those with more Workweeks stand to recover proportionally more from the Settlement. (Bokhour Decl. ¶ 12.)

The Settlement is non-reversionary, and Class Members will not be required to submit claim forms to receive payment, but each Class Member will be mailed the Class Notice containing information about his/her share, the opportunity to dispute the number of Workweeks by the Class Member, and the opportunity to opt-out or object to the Settlement. All Class Members who do not affirmatively opt out will receive an Individual Class Payment upon the Court granting final approval. (Bokhour Decl. ¶ 13.)²

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 only, approving the proposed Class Notice, appointing Plaintiff’s counsel as Class Counsel, appointing Phoenix Class Action Settlement Administrators as the Settlement Administrator, and scheduling a hearing for the final approval of the Settlement.

² However, those eligible to receive an Individual PAGA payment will receive said payment and be bound by the PAGA release even if they opt out of the class portion of the Settlement.

1 **II. BACKGROUND**

2 **A. THE PARTIES AND THE PROPOSED CLASS**

3 Plaintiff was employed by Defendant as a non-exempt employee with the title of “Senior
4 Electrical Engineer Technician” out of El Monte, California, beginning on April 12, 2012, until
5 his separation from employment on September 19, 2024.

6 Plaintiff and other non-exempt employees (including, but not limited to, Assembly
7 Technician, Machinist, Deburrer, Saw Operator, CNC Programmer, Maintenance Mechanic,
8 Senior Electrical Engineer Technician, Calibration Technician, and all other non-exempt
9 positions) were responsible for all aspects of Defendant’s business in California. However, in
10 these roles, Plaintiff and non-exempt employees were often not afforded all protections and
11 rights conferred under the California Labor Code and applicable Wage Orders.

12 The putative Class consists of all current and former individuals who are or were
13 previously employed by Defendant in California, and who were classified as non-exempt
14 employees during the Class Period (i.e., September 20, 2020, through July 31, 2025). (S.A. ¶¶
15 1.3 and 1.10.)

16 **B. PROCEDURAL HISTORY**

17 On or about September 20, 2024, Plaintiff filed suit in Los Angeles County Superior
18 Court against VACCO, asserting the following claims under the California Labor Code: (1)
19 failure to pay overtime wages; (2) failure to pay sick time wages, (3) failure to provide meal
20 periods; (4) failure to provide rest breaks; (5) failure to provide accurate itemized wage
21 statements; (6) failure to pay all wages due upon separation of employment; (7) failure to pay all
22 vacation wages; (8) failure to reimburse necessary business expenses. Plaintiff also asserted a
23 claim for alleged violation of California’s Unfair Competition Law. (Bokhour Decl. ¶ 15.)

24 Plaintiff also submitted the PAGA Notice to the LWDA, asserting various allegations
25 under the Private Attorneys General Act (“PAGA”) and providing notice of intent to file a
26 representative action on behalf of the LWDA and other allegedly aggrieved non-exempt
27 California employees of VACCO. (Bokhour Decl. ¶ 16.)
28

1 Defendant has denied and continues to deny the allegations throughout the litigation and
2 vowed to defend against the claims vigorously. However, before engaging in protracted
3 litigation, the Parties agreed to explore resolution through private mediation. (Bokhour Decl. ¶
4 17.)

5 In preparation for mediation, the Parties agreed to an informal discovery process where
6 information relating to the applicable policies and procedures, a robust sampling of payroll and
7 timekeeping records, the size of the Class, compensation policies and practices, and other data
8 points bearing on the potential settlement value of the case were exchanged. (*Id.*) The time and
9 pay data sampling enabled Plaintiff's counsel and their expert to fully evaluate the potential
10 claims and extrapolate the data to the entire Class. During this process, Plaintiff and his counsel
11 analyzed, researched, and investigated the potential claims of all similarly situated employees.
12 (Bokhour Decl. ¶ 18.)

13 On February 20, 2025, the Parties participated in mediation before Jeffrey Fuchshman,
14 Esq., an experienced class action mediator. The Parties, through counsel and with the assistance
15 of the mediator, engaged in continued settlement discussions and accepted a Mediator's
16 Proposal made by Mediator Fuchsman on or about August 6, 2025, which was accepted by all
17 Parties on or about August 8, 2025. (Bokhour Decl., ¶ 19, Exhibit "A".) (*Id.*) The Parties now
18 seek the Court's preliminary approval of the Settlement Agreement.

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

20 Plaintiff alleges numerous wage and hour violations on behalf of the Class.

21 First, Plaintiff alleges that Defendant failed to pay all overtime wages due to its
22 implementation of an unlawful and invalid Alternative Workweek Schedule. Plaintiff further
23 contends that Defendant failed to properly calculate and pay overtime and sick pay wages by
24 excluding non-discretionary bonuses and other forms of remuneration from the regular rate of
25 pay (Bokhour Decl. ¶ 21.)

26 Moreover, Plaintiff claims Defendant maintained deficient meal and rest period policies
27 and practices that failed to allow and permit Class Members to take timely and code-compliant
28 meal and rest periods or pay compensation in lieu thereof at the "regular rate of pay." (Bokhour

Decl. ¶ 22.) Plaintiff further contends that Defendant failed to pay non-exempt employees their final wages in a timely manner upon separation from employment. (Bokhour Decl. ¶ 23.)

Finally, Plaintiff alleges that Defendant failed to provide accurate itemized wage statements and seeks civil penalties under the PAGA claims arising from the alleged Labor Code violations set forth above. (Bokhour Decl. ¶ 24.)

D. SUMMARY OF DEFENDANT’S DEFENSES

Defendant contested and denied each of Plaintiff’s material allegations on the merits and the propriety of the Action. (Bokhour Decl. ¶ 25.)

First, Defendant argued that its timekeeping and pay practices were compliant with California law, that the calculation of the “regular rate of pay” was proper, and that any resulting underpayments were *de minimis*.

Defendant further argued that its meal and rest period policies and practices were compliant with California law and that non-exempt employees were always allowed and permitted to take their meal and rest periods in accordance with California law. (Bokhour Decl. ¶ 26.)

Defendant further contended that Plaintiff’s waiting time penalty and wage statement claims based on the alleged underlying meal and rest period violations were unfounded, as these alleged violations did not entitle employees to pursue the derivative penalties under Labor Code sections 203 and 226. (Bokhour Decl. ¶ 27.)

Moreover, Defendant contended that Plaintiff’s claims were highly individualized, that the putative Class Members would not be entitled to late pay penalties, and that there was no stand-alone cause of action for Plaintiff’s sick pay claim. Defendant further asserts that its implementation of the Alternative Workweek Schedule was conducted in full compliance with the California Labor Code, rendering the schedule both valid and lawful.

Finally, Defendant also generally contended that Plaintiff’s claims were not suitable for class certification because individualized inquiries would be required to establish, amongst other things, which employees, if any, took meal periods of less than 30 minutes and why a particular employee received a meal period of less than 30 minutes on a particular shift.

(Bokhour Decl. ¶ 28.)

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 \$1,260,000 Gross 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 Class Representative Service Payment not to exceed \$10,000 to the named Plaintiff, as approved by the Court; (3) Settlement Administration Costs, not to exceed \$10,000, as approved by the Court; (4) a \$50,000 PAGA Payment, 65 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the aggregate of all Individual Class Payments of the Participating Class Members and PAGA Members. (Settlement Agreement "S.A." ¶ 3.1 *et seq.*)

After all Court-approved deductions from the Settlement Amount, it is estimated that \$745,000 will be available to pay the Individual Class Payments to approximately 339 Class Members as of the date of the mediation. As noted above, the average Individual Class Payment to Class Members is estimated to be approximately \$2,350.15, which is a fair and reasonable recovery.

B. NOTICE PROCEDURES

The proposed Class Notice will be provided to the Class Members showing the estimated number of Workweeks for which he/she will be credited (**Exhibit "B"** to the Bokhour Decl.). Within fifteen (15) business days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of all Class Members containing each Class Member's full names, last known mailing addresses, Social Security Numbers, and number of Workweeks and PAGA Pay Periods worked for each Class Member (the "Class Data"), and any other relevant information needed by the Settlement Administrator to calculate Individual Class Payments. (S.A. ¶¶ 1.6, 4.2.)

Within fourteen (14) days after receipt of the Class Data, the Settlement Administrator

will populate the Class Notice and send each Class Member the Class Notice via first-class, United States mail, which shall include the number of Workweeks estimated for each Class Member. (S.A. ¶ 7.4.2.)

If any Class Notice mailed to a Class Member is returned to the Settlement Administrator as undelivered by the U.S. Postal Service, within five (5) business days of receipt, the Settlement Administrator shall use standard methods, including the use of a skip trace, to obtain forwarding addresses of Class Members. (S.A. ¶ 7.4.3.)

If the Settlement Administrator learns of an undelivered mailing and obtains a forwarding or updated address for that Class Member, the Class Notice will be re-mailed to the Class Member within five (5) business days of receipt of the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member. The deadlines for Class Members' written objections, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond time otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline by re-mailing the Class Notice.

C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not opt out of the Settlement in a timely manner will be deemed to participate in the Settlement and shall become Participating Class Members without having to submit a claim form or take any other action. (S.A. ¶ 1.34). The Class Notice shall inform the Class Members of their right to opt out of the Settlement. To do so, the Class Member must submit a written Request for Exclusion to the Settlement Administrator no later than sixty (60) days after being mailed the Class Notice by the Settlement Administrator ("Class Notice Response Deadline"). (S.A. ¶ 7.5.)

The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement must submit a written objection to the Settlement Administrator no later than the Class Notice Response Deadline. The objection must include the Objecting Class Member's full name, address, telephone number,

1 approximate dates of employment with Defendant, social security number for verification
2 purposes, the case name and number, the basis for the objection, and each specific reason in
3 support of the objection, as well as any documentation or evidence in support thereof, and, if
4 counsel represents the objecting Class Member, the name and address of his or her counsel.
5 (S.A. ¶ 7.7.)

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

7 The Individual Class Payment for each Participating Class Member will be calculated by
8 the Settlement Administrator using the Class Data provided by Defendant as follows. Using the
9 Class Data and using any Workweeks that were disputed and subsequently approved while also
10 accounting for any timely submitted Requests for Exclusion, the Settlement Administrator will
11 calculate the total Workweeks for all Class Members (if necessary). Each Participating Class
12 Member's Individual Class Payment shall be based on his or her proportionate Workweeks
13 worked during the Class Period compared to the total number of Workweeks by all Participating
14 Class Members. The Class Notice will inform Class Members of his/her estimated number of
15 Workweeks worked during the Class Period. Class Members may dispute their estimated
16 Workweeks worked if they feel they worked more weeks in the Class Period than Defendant's
17 records show by timely submitting evidence to the Settlement Administrator.

18 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

19 The Settlement Administrator will establish a settlement fund that meets the
20 requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation section
21 468B-1, and will provide Defendant with wire transfer information within three (3) days after
22 the Effective Date. Defendant shall make a one-time deposit into the QSF of the Gross
23 Settlement Amount as described in the Settlement Agreement that is necessary to make all
24 payments required under the Settlement Agreement, within seven (7) business days after the
25 Effective Date, as defined in the Settlement Agreement. (S.A. ¶ 4.3.) No later than ten (10)
26 calendar days after depositing the payment into the QSF, the Settlement Administrator will mail
27 checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
28 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and

the Class Representative Service Payment, and will retain its Settlement Administration Costs payment. (S.A. ¶ 4.4.) Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (*Id.*)

The Settlement Administrator must conduct a Class Member address search for all other Class Members whose checks are returned undelivered without a United States mail forwarding address. (S.A. ¶ 4.4.3.) Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member address search. (*Id.*) The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. (*Id.*) The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member before the void date. (*Id.*)

Participating Class Members shall have 180 calendar days from the date of mailing by the Settlement Administrator to cash their settlement checks. If any Class Member's check is not cashed within that period, the check will be void, and all unclaimed funds shall be donated to Bet Tzedek Legal Services and Public Counsel, subject to Court approval (S.A. ¶ 4.4.4). The Class Member Release will be binding upon all Participating Class Members, including those who do not cash their checks within 180 days.

F. TAX TREATMENT

The Individual Class Payments paid to Participating Class Members will be allocated for tax purposes based on the allegations in the Action as follows: twenty percent (20%) will be allocated as wages subject to withholdings of all applicable local, state, and federal taxes; and eighty (80%) will be allocated as interest and as civil penalties (pursuant to, e.g., California Labor Code Sections 203 and 226) from which no taxes will be withheld. (S.A. ¶ 3.2.4.1.) To the extent required, the Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms concerning the wage allocation and a Form 1099 concerning the penalties and interest allocations. (*Id.*)

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

2 In exchange for these payments, the Settlement Agreement provides that the
3 Participating Class Members will release VACCO Industries, and any of its respective current or
4 former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees,
5 employee benefit plans, representatives, servants, employees, attorneys, parents, subsidiaries,
6 affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint
7 venturers, predecessors, related entities, and assigns, and all other individuals and entities acting
8 on their behalf (collectively, the "Released Parties") of the claims alleged or could have been
9 alleged based on the facts stated in the operative complaint as follows:

10 Upon entry of the Final Approval Order and Judgment following the Final
11 Approval Hearing and full funding of the Settlement, Plaintiff and all Participating
12 Class Members, and each of their respective successors, assigns, legatees, heirs,
13 and personal representatives release and forever discharge the Released Parties
14 from any and all claims alleged in the Complaint and/or First Amended Complaint
15 and all claims that reasonably could have been alleged based on the facts and
16 allegations, including wage and hour violations, asserted in the Complaint and/or
17 First Amended Complaint, including any and all claims alleging: failure to pay all
18 overtime wages, minimum wages, statutory sick pay wages and/or at the proper
19 rate, and/or final wages owed; failure to pay vacation wages, failure to reimburse
20 all necessary business expenses; failure to provide meal periods and rest periods, or
21 pay meal period premiums or rest period premiums at the proper rate or in lieu
22 thereof; failure to provide accurate wage statements; failure to keep accurate
23 records; and/or failure to comply with all related obligations under the California
24 Labor Code, the California Industrial Welfare Commission Wage Orders, and
25 Business and Professions Code, including any claims for wages, penalties, interest,
26 attorneys' fees, declaratory or injunctive relief, and restitution.

27 (S.A. ¶ 5.2.)

28 Likewise, the PAGA Members will release all PAGA Claims as follows:

 Upon entry of the Final Approval Order and Judgment following the Final
Approval Hearing and full funding of the Settlement, Plaintiff and all PAGA
Members shall on behalf of themselves and behalf of the LWDA waive,
release, and forever discharge the Released Parties from any kind of claim or
action for civil penalties under PAGA during the period from September 20,
2023, through July 31, 2025, based on or arising out of the allegations in the
PAGA Notice, the Complaint, and/or the First Amended Complaint including,
but not limited to, any and all claims under California Labor Code sections 201,
202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 246, 510, 511, 512, 516, 1174,
1174.4, 1199, 2698 through 2699 *et seq.*, 2800, 2801, 2802, 2803, and 2804, and
all relevant applicable California Industrial Welfare Commission Wage Orders.

1 (S.A. ¶ 5.3.)

2
3 In addition to the foregoing release, the Plaintiff has also agreed to enter a separate
4 General Release as set forth in the Settlement Agreement. (S.A. ¶ 5.1.)

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

8 California Rule of Court 3.769(d) provides that the Court may make an order
9 approving certification of a provisional settlement class at the preliminary approval stage. It is
10 well-established that trial courts should use a “lesser standard of scrutiny” for determining the
11 propriety of certifying a settlement class, instead of a litigation class. *Dunk v. Ford Motor Co.*
12 (1996) 48 Cal.App.4th 1794, 1807 at n.19.

13 The reasons include that no trial is anticipated in a settlement class, so the case
14 management issues inherent in determining if the class should be certified need not be
15 confronted; and the trial court’s fairness review of the settlement protects the interests of the
16 non-representative Class Members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th
17 Cir. 1982) 688 F.2d 615, 633 (“Th[e] relationship between the certification determination and
18 the merits of the case is further attenuated within the context of the settlement evaluation
19 process . . . [C]ertification issues raised by class action litigation that is resolved short of a
20 decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor*
21 (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class certification, a
22 district court need not inquire whether the case if tried, would present intractable management
23 problems . . . for the proposal is that there be no trial.”)

24 As discussed below, for the purposes of this Settlement only, Plaintiff requests that this
25 Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 3150.

26 **A. NUMEROSITY AND ASCERTAINABILITY**

27 Numerosity is met if a proposed class is so large that joinder of all members would be
28 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if

the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101.

According to Defendant's records, there are approximately 339 Class Members. Plaintiff contends that this figure undoubtedly satisfies the numerosity requirement.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913.)

Here, Plaintiff contends that the Class was subject to common policies and practices relating to the provision of meal and rest periods and payment of minimum and overtime wages, provision of wage statements and final pay upon separation/termination, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this Settlement only.

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." *See Herbert B. Newberg & Alba Conte, Newberg on Class Actions ("Newberg")* § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this Settlement only, that Plaintiff asserts claims regarding, among other things, Defendant's Alternative Workweek Schedule, wage payment policies, calculation of the "regular rate of pay," meal and rest period policies/practices, wage statements, and the provisions governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. Adequacy of Representation

The proposed class representative must establish that they will adequately represent the

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

Adequacy may be established by the fact that counsels are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiff asserts that he is represented by Class Counsel with extensive experience in wage and hour class and PAGA actions like the instant matter. (Bokhour Decl. ¶¶ 2-5; Declaration of Joshua Falakassa in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Falakassa Decl.") ¶¶ 2-8.)

4. Superiority

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

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

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

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374,1382. 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

1 fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

2 The decision to approve or reject a proposed settlement lies within the Court’s sound
3 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224. Nevertheless, in
4 considering a potential settlement for approval, a court is not to turn the approval hearing “into a
5 trial or rehearsal for trial on the merits [or] to reach any ultimate conclusions on the contested
6 issues of fact and law which underlie the merits of the dispute.” *Officers for Justice*, 688 F.2d at
7 625.

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

15 [T]he strength of Plaintiffs’ case, the risk, expense, complexity and likely
16 duration of further litigation, the risk of maintaining class action status
17 through trial, the amount offered in settlement, the extent of discovery
18 completed and the stage of the proceedings, the experience and views of
19 counsel . . . and the reaction of the Class Members to the proposed
20 settlement.
21 *Dunk, supra* (setting forth a non-exhaustive list of factors for the court’s consideration at final
22 approval).

23 The above factors are not exclusive, “and the court is free to engage in a balancing and
24 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at
25 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
26 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent
27 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
28 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 is worthwhile. *See Newberg* § 11:2, 5. Indeed, the Court should grant preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies ... and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra* (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

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

The Settlement was the product of extensive arm’s length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiff and Class Counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any of its defenses, the Class Members may not have received any substantial monetary recovery. (Bokhour Decl. ¶ 35.)

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

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

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

2 To evaluate a settlement, the parties must provide the trial court with “basic
3 information about the nature and magnitude of the claims in question and the basis for
4 concluding that the consideration being paid for the release of those claims represents a
5 reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 11, 6, 133.
6 The *Kullar* requirement was further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los*
7 *Angeles* (2010) 186 Cal.App.4th 399, which held that an explicit statement of the maximum
8 theoretical amount that the class could recover was not necessary:

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

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

23 Of relevance to the reasonableness of the Settlement here is the fact that significant legal
24 and factual grounds for defending this action exist. As further detailed below, in addition to
25 disputing the merits of Plaintiff’s claims, Defendant disputed whether Plaintiff could obtain
26 class certification, arguing *inter alia* a lack of commonality of the legal claims and injuries.
27 Defendant further argued that it complied with the applicable law, that all Class Members were
28 paid all of their wages owed, and allowed to take their meal and rest periods, and that any
purported deviations were individualized, thereby limiting Plaintiff’s ability to certify the Class.
While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always

1 a significant risk associated with class certification proceedings, which could significantly limit
2 the claims he could pursue on a class basis.

3 Considering the uncertainties of protracted litigation, this negotiated Settlement reflects
4 the best practicable recovery for the Class. While the Gross Settlement Amount is a compromise
5 figure, the Parties effectively weighed and considered the potential risks and opportunities,
6 resulting in a fair and equitable settlement.

7 Based upon detailed data obtained through informal discovery and information
8 exchanges, Plaintiff's counsel estimated the following big-picture data points through the
9 mediation date: 317 Class Members who worked approximately 49,512 workweeks during the
10 Class Period. (Bokhour Decl. ¶ 20.)

11 **1. Failure to Pay for all Overtime Wages due to an Invalid Workweek**

12 **Schedule**

13 First, Plaintiff alleged that Defendant's use of an unlawful and invalid Alternative
14 Workweek Schedule ("AWS") resulted in underpayment of overtime wages in violation of
15 California law. Plaintiff contends that the AWS was not properly adopted in accordance with
16 the Labor Code and applicable Wage Orders, and therefore any hours worked in excess of
17 eight per day should have been paid at the applicable overtime rate. Based on Plaintiff's
18 analysis of the timekeeping and payroll records produced during informal discovery, Plaintiff
19 estimates that approximately 100,000 hours of overtime were underpaid due to the AWS, at
20 an average hourly overtime rate of \$31. This results in an estimated maximum value of
21 \$3,100,000 in unpaid overtime wages attributable to the AWS claim. (Bokhour Decl. ¶ 21.)

22 However, this maximum figure does not account for Defendant's defenses to
23 Plaintiff's AWS claim. Defendant asserted that the AWS was properly adopted pursuant to
24 applicable Labor Code requirements and that all overtime was paid in compliance with
25 California law. Defendant also argued that individualized inquiries would be required to
26 determine the hours worked and whether any overtime was, in fact, unpaid for each employee,
27 undermining the suitability of the claim for class certification. Based on this argument and
28 other related risks, Plaintiff assigned a 75% risk that the Court would deny class certification

of the AWS claim. Therefore, Plaintiff estimates a risk-adjusted value of \$775,000 for the AWS Claim. (Bokhour Decl. ¶ 22.)

2. Failure to Pay for All Overtime and Sick Wages

Second, Plaintiff alleged that Defendant failed to account for non-discretionary bonuses and other incentive pay when calculating the “regular rate of pay” when paying overtime and sick pay wages. However, Defendant argued that it correctly calculated the “regular rate of pay,” and that any underpayment was in good faith and *de minimis*. (Bokhour Decl. ¶ 23.)

While Defendant’s sampling of pay records revealed “regular rate of pay” violations, the underpayments of overtime and sick wages were minimal throughout the Class Period. (Bokhour Decl. ¶ 24.)

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

3. Waiting Time Penalties

With respect to Plaintiff’s waiting time penalty claim, approximately 87 Class Members were separated from their employment with Defendant during the relevant statutory period. As such, the maximum potential penalty under Labor Code § 201 – 203 is \$647,280 (87 employees x 8.0 hours per day x average hourly rate of \$31 x 30 days). (Bokhour Decl. ¶ 26.)

In response, Defendant argued that it would defeat the waiting time penalty claim because any failure to pay wages was not willful and occurred before the waiting time penalty liability period. (Bokhour Decl. ¶ 25.) Defendant further argued that it would defeat liability for waiting time penalties arising from Plaintiff’s meal and rest period claims. (Bokhour Decl. ¶ 27.)

Therefore, Plaintiff applied a 50% risk of defeat at the class certification stage and an additional 40% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of \$194,184 for Plaintiff’s waiting time penalty claim. (Bokhour Decl. ¶ 28.)

1 4. **Failure to Provide Meal and Rest Periods or Pay Compensation in**
2 **Lieu Thereof**

3 With respect to Plaintiff's meal and rest period violation claims, the Class Members
4 worked 195,345 shifts during the Class Period. Based on Defendant's sampling of employment
5 records, there was an alleged 6.5% violation rate for the meal period claims and an alleged
6 assumed 33% violation rate for the rest period claims, as extrapolated from the pre-mediation
7 sampling of Defendant's payroll and timekeeping records. Given the total number of shifts at
8 issue (approximately 195,345), this established maximum values of \$393,620 for the meal
9 period claims (195,345 total shifts x 6.5% violation rate x \$31 per LC § 226.7) and \$1,998,379
10 for rest period claims (195,345 total shifts x 33% violation rate x \$31 per LC § 226.7).
11 (Bokhour Decl. ¶ 29.)

12 However, Defendant vehemently opposed the meal and rest period claims based on the
13 following arguments: (1) Plaintiff's meal and rest period claims fall directly into the category of
14 "individualized issues," (2) that its written policies and practices were compliant with California
15 law, and (3) putative class members had ample latitude regarding whether, when, and how they
16 took their meal and rest breaks, especially because most of Class Members worked remotely.
17 Based thereon, Defendant asserted that a factfinder would have to determine for each Class
18 Member whether a break was missed and why a break was noncompliant/nonexistent, because
19 if it was by the employee's choice, no liability attaches to Defendant. (Bokhour Decl. ¶ 30.)

20 Based on these arguments, Plaintiff believes there is a 65% risk that the Court would
21 deny class certification on these meal period and rest period violation claims. (Bokhour Decl. ¶
22 31.)

23 Defendant further argued that, even if certification were granted, it would defeat these
24 claims on the merits because Defendant utilized compliant meal and rest period policies and
25 practices, and it would present sufficient evidence that the putative Class Members were
26 properly provided with all breaks or paid compensation in lieu thereof. Moreover, Defendant
27 argued that Plaintiff could not present sufficient evidence establishing the number of meal and
28 rest period violations to allow a factfinder to determine damages appropriately. Plaintiff

acknowledged these risks and incorporated a further 50% reduction. Plaintiff, therefore, calculates the risk-adjusted value of the meal period claims to be \$68,883, and the rest period claims to be \$349,716. (Bokhour Decl. ¶ 32.)

5. Failure to Provide Accurate Itemized Wage Statements

Plaintiff estimates that the maximum potential penalties for the derivative wage statement claim are \$375,150 (based on approximately 7,503 allegedly violative wage statements issued during the Class Period). In calculating Defendant's exposure, Plaintiff gave Defendant the benefit of assuming Plaintiff could only obtain the "initial" wage statement penalty of \$50 per violation, for a total of \$199,000 in potential wage statement penalties. *Id.*, Lab. Code § 226(e) (providing for a \$50 penalty for "initial" violations); *Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate applies until the employer has been notified that it is violating a Labor Code provision.) (Bokhour Decl. ¶ 33.)

In response to Plaintiff's wage statement violation claim, Defendant contended that any alleged violations were not "knowing and intentional," and that Plaintiff could not establish that he or anyone else suffered "injury" because of any alleged wage statement violations. Further, Defendant relied on its defenses to Plaintiff's underlying claims on the merits and the propriety of class certification. (Bokhour Decl. ¶ 34.)

As such, Plaintiff discounted the calculated maximum exposure by 40% for the risk of non-certification and by an additional 20% for the risk of being unsuccessful on the merits to arrive at an estimated total of \$180,073. (Bokhour Decl. ¶ 35.)

Plaintiff also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be "stacked." *See Gonzalez v. Corecivic of Tennessee, LLC* (E.D. Cal., Sept. 13, 2018, No. 116CV01891DADJLT) 2018 WL 4388425 ("stacking" PAGA penalties is not inappropriate under California law"). Assuming that a PAGA penalty is available in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA penalty would be \$750,300 for the pay periods during the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2). (Bokhour Decl. ¶ 36.)

However, this maximum figure fails to account for numerous unclear issues relating to

PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for the purely derivative penalties).

Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of the particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h); *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F. Supp. 3d 1030, 1037 (noting in the context of approving settlement that a reduction in PAGA penalties would be “appropriate” based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer did not “deliberately evad[e] a clear legal obligation to provide legally required pay and benefits to employees,” (ii) the employer did not “negligently failed to learn about its obligations under the wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because “there is no straight answer to the questionTherefore, Plaintiff believes that the \$50,000 allocation toward PAGA penalties is fair and reasonable. .”). (Bokhour Decl. ¶ 37.)

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

• AWS Claim:	\$775,000
• Overtime Regular Rate Claim:	\$0 (discounted)
• Labor Code §§ 201 – 203 Claims:	\$194,184
• Meal Period Claims:	\$68,883
• Rest Break Claims:	\$349,716
• Labor Code § 226 Claims:	\$180,073
• PAGA Claims:	\$50,000
• <u>Total Risk-Adjusted Penalties and Damages:</u>	\$1,617,856

(Bokhour Decl. ¶ 38.)

Given the realistic value of Plaintiff’s claims, the \$1,260,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 77% of Plaintiff’s risk-adjusted value of the case. Preliminary approval is appropriate since the

Settlement will provide significant monetary relief to the Class. (Bokhour Decl. ¶ 39.)

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

E. PLAINTIFF’S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

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

Plaintiff’s counsel is also highly experienced in class and PAGA litigation, having litigated upwards of 100 class actions and PAGA cases, having been named “Super Lawyers Rising Stars” in employment litigation (a distinction awarded to only 2.5% of litigators), and having achieved large class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-5.). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and risks of this case and is of the view that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk-adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (Bokhour Decl. ¶¶ 34-36).

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

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

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all Class Members complies with all the requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Class Notice include (1) the material terms of the Settlement; (2) the proposed attorneys’ fees

1 and costs and the Settlement Administration Costs; (3) details about the final fairness hearing
2 and how Class Members may elect to exclude themselves or make an objection; and (4) how
3 Class Members can obtain additional information. (Bokhour Decl., Exhibit B). In addition, it
4 will inform Class Members of their estimated settlement share.

5 The Court has wide discretion in approving the means of providing notice, so long as
6 the class representative “provides meaningful notice in a form that should have a reasonable
7 chance of reaching a substantial percentage of Class Members.” *Archibald v. Cinerama Hotels*
8 (1976) 15 Cal.3d 853, 861.

9 Here, the Parties’ notice plan is that notice of the Settlement will be disseminated
10 directly to the Class Members by first-class mail by the Settlement Administrator because
11 Defendant has the last known addresses of all Class Members, and the Settlement Administrator
12 will perform a skip trace and update those addresses for any Class Notices that are returned and
13 re-send the Class Notice.

14 The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Class
15 Members with all due process protections required by the United States Constitution.
16 Moreover, the contents of the Class Notice comply with Cal. R. Ct. 3.766(d), because the Class
17 Notice includes, without limitation (1) a detailed explanation of the case, including the basic
18 contentions or denials of the Parties; (2) a statement that the court will exclude the Class
19 Member from the class portion of the Settlement if the Class Member so requests by a specified
20 date; (3) a procedure for the Class Members to follow in requesting exclusion from the Class;
21 (4) a statement that the judgment, whether favorable or not, will bind all Class Members who do
22 not request exclusion; and (5) a statement that any Class Member who does not request
23 exclusion may if the Class Member so desires, enter an appearance through counsel. The 60-
24 day deadline for Class Members to exclude themselves is reasonable, as it provides Class
25 Members with sufficient time to do so and, if they choose, to seek independent legal advice in
26 the interim. If a Class Member does not opt out, then he or she will automatically be sent a
27 settlement check. PAGA Members cannot opt out of the PAGA portion of the Settlement and
28 will be sent an Individual PAGA Settlement check even if they opt out of the class portion of

the Settlement.

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

The fact that each Class Member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless he or she affirmatively acts to exclude himself or herself. Similarly, all PAGA Members will be mailed a check for the PAGA portion of the Settlement even if they exclude themselves from the class portion of the Settlement. Moreover, the Settlement Amount is non-reversionary, which means that no Settlement funds will revert to Defendant; instead, if any checks are not cashed before the objection deadline, the Settlement Administrator shall transmit the funds represented by such checks to be donated to Bet Tzedek Legal Services and Public Counsel , as set forth in the Settlement Agreement subject to approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the Parties and that the Settlement is fair and favorable to the Class Members.

**H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS
FAIR**

Under the terms of the Settlement Agreement, Class Counsel requests an amount not exceeding one-third of the Settlement Amount in attorneys’ fees. *See, e.g., Laffite v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the Class Members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* ((S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14,

2007, No. 1:05cv0484 DLB), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 (approving fees of 1/3 of the common fund). (Bokhour Decl. ¶¶ 44-45.)

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

I. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND APPROPRIATE

The Settlement Agreement provides for a Class Representative Service Payment to the named Plaintiff in the amount not exceeding \$10,000. The proposed Class Representative Service Payment is reasonable given the time and effort Plaintiff devoted to this case. Plaintiff’s efforts included providing factual background for the class and PAGA complaint; providing documents and information about Defendant’s compensation plans and meal/rest policies/procedures; participating in phone calls to discuss litigation and settlement strategy; making himself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation and being available during mediation; and reviewing the Settlement documents. The Plaintiff also assumed significant risk in bringing this litigation—had he lost, he could have been ordered to pay Defendant’s costs. (See Declaration of Robert Sumner in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement).

The requested Class Representative Service Payment falls within the incentive payments typically awarded to Class Representatives in similar class actions. *See, e.g., Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. 2011, No. 1:09-cv-1662 OWW MJS) 2011 WL 2648879 (approving \$11,250 service award to each of the two class representatives in a trucker meal break class action); *Ross v. US Bank National Association*, N.D. Cal., Sept. 29, 2010, No. C07-02951SI) 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*

1 *Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 (approving service awards in the amount of
2 \$15,000 each from a \$300,000 settlement fund in a wage/hour class action).

3 **VI. THE COURT SHOULD APPOINT PHOENIX CLASS ACTION SETTLEMENT**
4 **ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR**

5 Subject to the Court's approval, the parties have selected Phoenix Class Action
6 Settlement Administrators to serve as the Settlement Administrator. Phoenix Class Action
7 Settlement Administrators is experienced in administering class action settlements and will not
8 exceed \$10,000 to administer this class action Settlement. (Bokhour Decl. ¶ 46.)

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

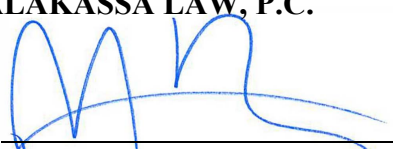
10 The final step in the approval process is the formal hearing, during which proponents
11 of the Settlement may explain and describe its terms and conditions, and offer arguments in
12 support of approval. Class Members or their counsel may also be heard in support of or in
13 opposition to the Settlement. Subject to the Court's approval, the Settlement Agreement
14 stipulates that the Court schedules a hearing for final approval.

15 **VIII. CONCLUSION**

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

18
19 Dated: October 14, 2025

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

20
21 BY: 

22 MEHRDAD BOKHOUR
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