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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MATTHEW MIRMAK, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

SERVICELINK SERVICES, LLC, a Delaware
Limited Liability Company; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: 30-2024-01426948-CU-OE-CXC

Assigned to the Hon. David A. Hoffer

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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

HEARING INFORMATION

Date: April 13, 2026
Time: 1:30 p.m.
Dept.: CX103

Complaint Filed: September 19, 2024
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiffs Kayla Olivo and Aaron Oman (“Plaintiffs”), individually
4 and on behalf of all others similarly situated, seek preliminary approval of the Class Action and
5 PAGA Settlement Agreement.¹ Subject to Court approval, Plaintiffs and Defendant ServiceLink
6 Services, LLC (“Defendant”) have agreed to settle Plaintiffs’ claims and the proposed Class
7 Members’ claims for a Gross Settlement Amount of \$1,260,000.

8 Plaintiffs seek to represent a putative Class of all persons who are or were employed by
9 Defendant in California and classified as non-exempt or hourly employees at any time during the
10 Class Period from September 19, 2020, through November 26, 2025 (the “Class” or “Class
11 Members”). Likewise, the PAGA Members include all persons who are or were employed by
12 Defendant in California and classified as non-exempt or hourly employees at any time during the
13 Class Period from September 19, 2023, through November 26, 2025 (“PAGA Members”).
14 (Bokhour Decl. ¶ 9.)

15 Under the terms of the Settlement Agreement, Class Counsel will apply for a reasonable
16 award of attorney’s fees not to exceed one-third of the Settlement Amount, Class Counsel’s
17 litigation costs not to exceed \$25,000, Settlement Administration Fees not to exceed \$10,000,
18 PAGA penalties of \$50,000 (of which \$32,500 or 65% will be paid to the LWDA and the
19 remaining \$17,500 or 35% will be paid to the PAGA Members), and Class Representative Service
20 Payments not to exceed \$7,500 to each named Plaintiff (S.A. ¶ 3.2 *et seq.*); Bokhour Decl. ¶ 9),
21 as follows:

22

	Total Amount
<i>Gross Settlement Amount</i>	\$1,260,000.00
Attorneys’ Fees (not to exceed 1/3 of GSA)	\$420,000.00
Litigation Costs (not to exceed)	\$25,000.00
Settlement Administration Fees (not to exceed)	\$10,000.00
PAGA payment to LWDA (65% of \$50k award)	\$32,500.00

26

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

PAGA payment to PAGA Members (35% of \$50k award)	\$17,500.00
Class Representative Service Payments (\$7,500 each)	\$15,000.00
<i>Net Settlement Amount</i>	\$740,000.00

As of the Parties' mediation, the putative Class includes approximately 403 non-exempt employees who all worked for Defendant in California during the Class Period. Plaintiffs contend that, regardless of their roles, all non-exempt employees were subject to the same wage and hour policies and payroll/scheduling practices, and therefore, the Individual Settlement Payments will be paid on a pro-rata basis based on the number of Workweeks during the Class Period. Assuming a total class size of approximately 403 Settlement Class Members, the average payment to each Settlement Class Member will be approximately \$1,836, with the highest payment estimated to be \$3,258. Of course, those with more Workweeks stand to recover proportionally more. (Bokhour Decl. ¶ 10.)

The Settlement is non-reversionary, and putative Class Members will not be required to submit claim forms to receive payment, but each putative Class Member will be mailed the Class Notice containing detailed information about their share, the opportunity to dispute the number of Workweeks worked by the putative Class Member, and the opportunity to opt out or object to the Settlement. All putative Class Members who do not affirmatively opt out will receive a settlement check upon the Court granting final approval of the Settlement. PAGA Members will not be able to opt out of the PAGA settlement and will receive settlement checks. (Bokhour Decl. ¶ 11.)

Because the Settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following an appropriate and comprehensive exchange of information and documents in advance of mediation, it should be preliminarily approved. Plaintiffs respectfully request 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 Plaintiffs' counsel as Class Counsel, appointing CPT Group, Inc. as the Settlement Administrator, and scheduling a hearing for the final approval of the Settlement. (Bokhour Decl. ¶ 12.)

1 **II. BACKGROUND**

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

3 Defendant provides digital mortgage services, including valuation, title, and closing, as
4 well as flood services, to mortgage originators and servicers.

5 The putative Class consists of all persons who are or were employed by Defendant in
6 California and classified as non-exempt or hourly employees at any time during the Class Period
7 from September 19, 2020, through November 26, 2025, and who have not signed release
8 agreements as of August 28, 2025. (S.A. ¶¶ 1.8, 1.11.)

9 **B. PROCEDURAL HISTORY**

10 On September 19, 2024, Plaintiff Matthew Mirmak filed this putative wage and hour class
11 action in Orange County Superior Court alleging wage and hour violations, including failure to
12 pay minimum wages and overtime, failure to pay sick time at the correct rate, failure to provide
13 compliant meal and rest periods and to pay applicable premiums, failure to timely pay all wages
14 due during employment and upon separation, failure to provide accurate wage statements, failure
15 to reimburse business expenses, and related claims under California’s Unfair Competition Law.

16 On January 6, 2025, Mr. Mirmak filed a First Amended Complaint (“FAC”) adding a claim
17 for civil penalties under the Private Attorneys General Act (“PAGA”).

18 On September 30, 2025, pursuant to the parties’ stipulation, Plaintiffs filed a Second
19 Amended Complaint (“SAC”) substituting Kayla Olivo and Aaron Oman as the named Plaintiffs
20 in place of Plaintiff Mirmak, who is now deceased. The SAC is the operative pleading in this
21 action. (Bokhour Decl. ¶ 13; S.A. ¶ 41.)

22 During Plaintiffs’ investigation and throughout the litigation, Defendant has persistently
23 denied all liability of any kind associated with Plaintiffs’ allegations and further denied that
24 Plaintiff or the putative Class Members are entitled to any relief. Defendant also denies that these
25 allegations are appropriate for class or representative treatment for any purpose other than the
26 settlement. Defendant maintains, among other things, that it has complied with California laws in
27 all respects and asserted that it would vigorously defend the Action.

1 Before engaging in protracted litigation, however, the Parties agreed to explore resolution
2 through private mediation. In preparation for mediation, the Parties engaged in an informal
3 discovery process through which they exchanged information regarding Defendant’s policies and
4 procedures, payroll and timekeeping records, the size of the proposed class, compensation policies
5 and practices, and the potential value of the case. This sampling allowed Class Counsel and their
6 expert to evaluate the potential claims and extrapolate the data to the Settlement Class as a whole.
7 Throughout this process, Plaintiffs and their counsel analyzed, researched, and investigated the
8 potential claims of all similarly situated employees. (Bokhour Decl. ¶ 14.)

9 The Parties have conducted a thorough investigation into the facts of the Action. This
10 includes conducting interviews with putative class members, investigation of Defendant and its
11 operations, and its pay policies/procedures, exchange of informal discovery, including
12 Defendant’s written policies and practices, and the production of a statistically significant
13 sampling of payroll and timekeeping records for putative Settlement Class Members and PAGA
14 Members. Class Counsel is both knowledgeable about and has done extensive research with
15 respect to the applicable law and potential defenses to the claims of the Settlement Class Members
16 and PAGA Members. Class Counsel has diligently investigated the putative Class Members’
17 claims against Defendant. (Bokhour Decl. ¶ 15.)

18 Based on the foregoing data and their own independent investigation and evaluation, Class
19 Counsel believes that the settlement with Defendant for the consideration and on the terms set
20 forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
21 the Settlement Class Members and PAGA Members, in light of all known facts and circumstances,
22 including the risk of significant delay and uncertainty associated with litigation, various defenses
23 asserted by Defendant, and numerous potential appellate issues. (Bokhour Decl. ¶ 16.)

24 On August 20, 2025, the Parties participated in mediation before Marc Feder, Esq., a
25 highly experienced class action mediator. After a full-day mediation and the issuance of a
26 mediator’s proposal, the Parties settled and memorialized the terms in a long-form Settlement
27 Agreement. (Bokhour Decl., ¶ 17, Exhibit “A”.) (*Id.*)

28 The Parties now seek the Court’s preliminary approval of the Settlement Agreement.

1 **C. SUMMARY OF PLAINTIFFS’ CLAIMS**

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

4 First, Plaintiffs alleged that Defendant failed to pay all overtime and sick wages due at the
5 “regular rate of pay.” (Bokhour Decl. ¶ 19.)

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

12 Plaintiffs further alleged that Defendant failed to pay all final wages at separation of
13 employment and provide accurate itemized wage statements that comply with all requirements of
14 Labor Code Section 226. Plaintiffs also alleged that Defendant failed to reimburse Class Members
15 for all necessary business expenses in violation of Labor Code Sections 2802-2804, and also
16 brought a claim for civil penalties under the PAGA arising from the alleged Labor Code violations
17 set forth above. (Bokhour Decl. ¶ 21.)

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

19 Defendant contested and denied each of Plaintiffs’ material allegations on the merits and
20 as to the propriety of the putative class and PAGA representative action. (Bokhour Decl. ¶ 22.)
21 Defendant maintains, among other things, that it has complied with California laws in all respects.

22 First, Defendant argued that it always paid employees for all hours worked and its
23 timekeeping and pay practices/policies did not result in any underpayment to the putative Class
24 Members. Further, Defendant argued that even if there was any underpayment, it did not
25 constitute compensable time and, if any, resulted in de minimis damages. (Bokhour Decl. ¶ 23.)

26 Next, Defendant argued that, at all relevant times, its written meal and rest period policies
27 were compliant with California law. Defendant also contended that, in practice, the putative Class
28 Members regularly were permitted to timely take and be free of any duties during meal and rest

1 periods and were not constrained due to operational requirements of the job. (Bokhour Decl. ¶
2 24.) With regard to the failure to pay necessary business expenses, Defendant argued that although
3 the putative Class Members were not required to use their personal cell phones and internet, it
4 adequately reimbursed them throughout the relevant Class Period for these expenses pursuant to
5 its reimbursement policy. (Id.)

6 Moreover, Defendant argued that claims for wage statement violations, waiting time
7 penalties, and PAGA penalties were derivative of other claims that it argued had no merit.
8 Defendant further contended that Plaintiffs' waiting time penalty and wage statement claims
9 based on the underlying meal and rest period violations were unfounded and did not entitle
10 putative Class Members to pursue the derivative penalties under Labor Code sections 203 and
11 226. (Bokhour Decl. ¶ 25.)

12 Defendant also generally argued that individualized inquiries would be required to
13 establish liability given varying business units, management, and in-office vs. remote working
14 arrangements, including, amongst other things, which employees, if any, took meal periods of
15 less than 30 minutes, why a particular employee took a meal period of less than 30 minutes on a
16 particular shift, and whether a particular employee remained under the control of Defendant
17 during rest periods. (Bokhour Decl. ¶ 26.)

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

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

20 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

21 The \$1,260,000 Settlement Amount is non-reversionary and will be paid out to putative
22 Class Members without the need to submit a claim form or take any affirmative action. It includes
23 (1) Plaintiffs' reasonable attorneys' fees not to exceed 1/3 of the Settlement, and costs not to
24 exceed \$25,000, as approved by the Court; (2) Class Representative Service Payments not to
25 exceed \$7,500 to each named Plaintiff, as approved by the Court; (3) Settlement Administration
26 Fees, not to exceed \$10,000, as approved by the Court; (4) a \$50,000 PAGA Penalties payment,
27 65 percent (65%) of which is to be paid to the LWDA pursuant to California Labor Code §
28 2699(i); and (5) the aggregate of all Individual Settlement Payments of the Settlement Class

Members. Defendant's employer's share of payroll taxes on the portion of the Individual Settlement Amounts that are allocated as wages subject to withholdings will be paid separately by Defendant. (S.A. ¶ 3, *et seq.*)

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$740,000 will be available to pay the Individual Settlement Payments to approximately 403 Settlement Class Members. As noted above, the average Individual Settlement Payment to Settlement Class Members is approximately \$1,836, which is a fair and reasonable recovery. (Bokhour Decl. ¶ 10.)

B. NOTICE PROCEDURES

The Court approved Class Notice will be mailed to Class Members and will include, on the first page, the estimated dollar amounts of each Class Member's Individual Class Payment and, if applicable, Individual PAGA Payment, as well as the number of Workweeks and PAGA Pay Periods used to calculate those estimates. Before mailing the Class Notices, the Settlement Administrator will update Class Member addresses using the United States Postal Service National Change of Address database. (S.A. ¶ 7.4.2.)

Within fourteen (14) days after entry of the Court's Preliminary Approval Order, Defendant will provide the Settlement Administrator with the Class Data, including each Class Member's full name, last known mailing address, Social Security Number, and the number of Workweeks and PAGA Pay Periods during the Class Period. (S.A. ¶ 4.2.)

No later than three (3) business days after receipt of the Class Data, the Settlement Administrator will notify Class Counsel, with a copy to Defense Counsel, that the Class Data has been received and will state the number of Class Members, PAGA Members, Workweeks, and Pay Periods reflected in the Class Data. (S.A. ¶ 7.4.1.)

Using best efforts, and in no event later than fifteen (15) days after receiving the Class Data, the Settlement Administrator will mail the Class Notice to all Class Members identified in the Class Data via first class United States mail. (S.A. ¶ 7.4.2.)

If any Class Notice is returned by the USPS as undeliverable, not later than five (5) business days after receipt of the returned Notice, the Settlement Administrator will re mail the

1 Class Notice using any forwarding address provided by the USPS. If the USPS does not provide
2 a forwarding address, the Settlement Administrator will conduct an address search and re mail
3 the Class Notice to the most current address obtained. If no updated address is obtained, the
4 Settlement Administrator will re mail the Class Notice to the original address. The Settlement
5 Administrator has no obligation to make further attempts if a second mailing is returned as
6 undeliverable. (S.A. ¶ 7.4.3.)

7 If the Settlement Administrator, Defendant, or Class Counsel is contacted by, or otherwise
8 learns of, any person who believes they should have been included in the Class Data and should
9 have received a Class Notice, the Parties will promptly meet and confer in good faith to determine
10 whether that person should be included as a Class Member. If the Parties agree, the Settlement
11 Administrator will send that person a Class Notice by email or overnight delivery. Any such
12 person will be required to exercise any options under the Settlement by no later than fourteen (14)
13 days after receipt of the Class Notice, or the deadlines stated in the Class Notice, whichever is
14 later. (S.A. ¶ 7.4.4.)

15 **C. EXCLUSION AND OBJECTION PROCEDURES**

16 Class Members who do not submit a timely and valid Request for Exclusion will be
17 deemed Participating Class Members, will be entitled to the benefits of the Settlement, and will
18 be bound by its terms, including the release, without submitting a claim form or taking any other
19 action. (S.A. ¶ 7.5.3.)

20 The Class Notice will advise Class Members of their right to request exclusion from the
21 class action components of the Settlement. To opt out, a Class Member must send the Settlement
22 Administrator a signed written Request for Exclusion by fax, email, or mail, timely postmarked,
23 emailed, or faxed no later than forty-five (45) days after the Settlement Administrator mails the
24 Class Notice. A Request for Exclusion is sufficient if it reasonably communicates the Class
25 Member's election to be excluded and includes the Class Member's first and last name, address,
26 and email address or telephone number. (S.A. ¶ 7.5.1.)

27 The Settlement Administrator will not reject a Request for Exclusion as invalid solely
28 because it does not contain every item of information listed in the Class Notice. The Settlement

1 Administrator will accept a Request for Exclusion as valid if the Administrator can reasonably
2 ascertain the person's identity as a Class Member and the Class Member's desire to be excluded.
3 If the Administrator has reason to question authenticity, the Administrator may request additional
4 proof of identity and will notify Class Counsel and Defense Counsel if a deficient Request for
5 Exclusion is accepted as valid. Any dispute regarding inclusion or exclusion may be presented to
6 the Court for resolution at an appropriate time. (S.A. ¶ 7.5.2.)

7 Any Class Member who submits a timely and valid Request for Exclusion will be a Non-
8 Participating Class Member, will not receive an Individual Class Payment, and will have no right
9 to object to the class action components of the Settlement. However, because PAGA claims are
10 resolved on a representative basis, Non Participating Class Members who are also PAGA
11 Members will be deemed to release the PAGA claims identified in the Settlement and will remain
12 eligible to receive an Individual PAGA Payment. (S.A. ¶ 7.5.4.)

13 The Settlement Administrator will review Requests for Exclusion on a rolling basis and,
14 no later than ten (10) days after the Response Deadline, will email Class Counsel and Defense
15 Counsel an Exclusion List identifying the Class Members who submitted timely valid Requests
16 for Exclusion, those who submitted invalid Requests for Exclusion, and copies of all Requests for
17 Exclusion received. (S.A. ¶ 7.5.5.)

18 Only Participating Class Members may object to the class action components of the
19 Settlement, including the settlement terms and any requests for attorneys' fees, costs, or service
20 payments. Participating Class Members may submit written objections to the Settlement
21 Administrator by fax, email, or mail, postmarked, emailed, or faxed no later than forty-five (45)
22 days after the Settlement Administrator mails the Class Notice, and or may appear at the Final
23 Approval Hearing, personally or through counsel, to present oral objections. Non-Participating
24 Class Members have no right to object to the class action components of the Settlement. (S.A. ¶¶
25 7.7.1 to 7.7.3.)

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

27 The Administrator will calculate each Participating Class Member's Individual Class
28 Payment using the Class Data provided by Defendant, including the number of Workweeks

1 worked during the Class Period. An Individual Class Payment is calculated by (a) dividing the
2 Net Settlement Amount by the total number of Workweeks worked by all Participating Class
3 Members during the Class Period, and (b) multiplying the result by each Participating Class
4 Member's Workweeks. Non Participating Class Members will not receive an Individual Class
5 Payment, and amounts attributable to Non Participating Class Members will remain in the Net
6 Settlement Amount for redistribution to Participating Class Members on a pro rata basis based on
7 Workweeks. (S.A. ¶¶ 3.2.4, 3.2.5.)

8 The Class Notice will state each Class Member's estimated Workweeks during the Class
9 Period and, if applicable, PAGA Pay Periods during the PAGA Period based on Defendant's
10 records. Class Members may challenge the Workweeks and or PAGA Pay Periods stated in the
11 Class Notice by communicating with the Administrator by fax, email, or mail no later than forty
12 five (45) days after the Administrator mails the Class Notice. The Administrator will encourage
13 the Class Member to provide supporting documentation and will resolve any challenges consistent
14 with the Settlement Agreement. The Parties may appeal the Administrator's determination at the
15 Final Approval Hearing. (S.A. ¶ 7.6.)

16 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

17 Defendant will fund the Gross Settlement Amount by wire transfer to the Administrator
18 within thirty (30) days after the Effective Date, and will separately pay any employer-side payroll
19 taxes owed on the Wage Portion of the Individual Class Payments. Within three (3) days after the
20 Effective Date, the Administrator will provide Defendant with wire transfer information. (S.A. ¶¶
21 4.3, 3.1.)

22 The Administrator will establish a Qualified Settlement Fund consistent with Treas. Reg.
23 § 1.468B-1 and will deposit the settlement funds into an interest-bearing account at an FDIC-
24 insured financial institution. The Administrator will have authority to disburse funds from the
25 Qualified Settlement Fund in accordance with the Settlement Agreement. (S.A. ¶¶ 7.3, 7.2.)

26 Within ten (10) days after Defendant funds the Gross Settlement Amount, the
27 Administrator will mail checks for Individual Class Payments and Individual PAGA Payments,
28 and will also issue payments for the LWDA PAGA Payment, Administration Expenses Payment,

1 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class
2 Representative Service Payments. Disbursement of the Class Counsel Fees Payment, Class
3 Counsel Litigation Expenses Payment, and Class Representative Service Payments will not
4 precede disbursement of Individual Class Payments and Individual PAGA Payments. (S.A. ¶ 4.4.)

5 Each settlement check will state a void date that is not less than one hundred eighty (180)
6 days after the date of mailing. The Administrator will cancel checks not cashed by the void date.
7 Within thirty (30) days after the void date, the Administrator will total the value of the expired
8 checks and will transmit the remaining funds to the California State Controller's Office Unclaimed
9 Property account, after the Court approves the final accounting. (S.A. ¶¶ 4.4.1, 4.4.3.)

10 If a check is returned as undeliverable without a USPS forwarding address, the
11 Administrator will conduct a Class Member Address Search. Within seven (7) days of receiving
12 a returned check, the Administrator will re mail the check to any forwarding address provided by
13 USPS or to an address obtained through the address search, or if neither is available, will re mail
14 the check to the original address. The Administrator is not required to take further steps if a re
15 mailed check is returned as undeliverable. The Administrator will also promptly issue a
16 replacement check to any Class Member who requests one before the void date if the original
17 check was lost or misplaced. (S.A. ¶ 4.4.2.)

18 **F. TAX TREATMENT**

19 The Individual Class Payments paid to Participating Class Members will be allocated for
20 tax purposes consistent with the Settlement Agreement. Twenty percent (20%) of each Individual
21 Class Payment will be allocated to settlement of wage claims and will be subject to all applicable
22 payroll tax withholdings and reported on an IRS Form W-2 and applicable state tax forms. The
23 remaining eighty percent (80%) will be allocated to settlement of interest and penalties and will
24 not be subject to wage withholdings and will be reported on an IRS Form 1099. Participating
25 Class Members are solely responsible for any taxes owed on their Individual Class Payments. The
26 Settlement Administrator will issue all required tax forms in accordance with these allocations.
27 (S.A. ¶ 3.2.4.1.)
28

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

2 In exchange for these payments, the Settlement Agreement ¶ 5.2 provides that the
3 Plaintiffs and the Participating Class Members will release the Released Parties² from all claims
4 alleged or that could have been alleged based on the facts stated in the operative complaint, as
5 follows:

6 All Participating Class Members, on behalf of themselves, release any and all
7 claims, damages, and penalties which were pled or reasonably could have been pled
8 arising out of the same facts alleged in the operative or amended complaint and/or
9 PAGA notice to the California Labor and Workforce Development Agency that
10 arose during the Class Period and/or PAGA Period, including, without limitation,
11 claims for: (1) failure to pay proper minimum and overtime wages in violation of
12 Labor Code sections 204, 210, 510, 558, 1194, 1197, and 1198, and the applicable
13 IWC Wage Order(s); (2) failure to pay sick wages at the proper legal rate in
14 violation of Labor Code sections 246, 558, 1194.2, 1197.1, 1198, and 1199, and the
15 applicable IWC Wage Order(s); (3) failure to provide compliant rest periods and
16 pay missed rest break premiums in violation of Labor Code section 226.7 and 516,
17 Civil Code sections 3287(b) and 3289, and the applicable IWC Wage Order(s); (4)
18 failure to provide compliant meal periods and pay missed meal period premiums in
19 violation of Labor Code sections 226.7 and 512, Civil Code sections 3287(b) and
20 3289, and the applicable IWC Wage Order(s); (5) failure to pay all wages due and
owing during employment and at separation in violation of Labor Code sections
201-204 and 227.3; (6) failure to provide complete and accurate wage statements in
violation of Labor Code sections 226, 226.3, and 1174; (7) failure to reimburse
necessary business expenses in violation of Labor Code sections 2802-2804 and the
applicable IWC Wage Order(s); (8) deceptive, fraudulent, or otherwise unlawful
business practices based on the foregoing in violation of California's Unfair
Competition Law (Bus. & Prof. Code, §§ 17200-17210); (9) statutory penalties
based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and (10)
all claims for liquidated damages, penalties, interest, fees, costs based on the
foregoing.

21 (S.A. ¶ 5.2.)

22 **H. PAGA MEMBERS' RELEASE OF CLAIMS**

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

24 All PAGA Members, including Non-Participating Class Members, release any and
25 all claims for civil penalties under PAGA against Defendant and the Released
26 Parties that arise out of or reasonably relate to the claims alleged in the Action or
that could have been alleged based on the factual allegations in the Action during

27 ² "Released Parties" means Defendant, ServiceLink Management Company, LLC, and each of their former
28 and present directors, officers, owners, subsidiaries, affiliates, shareholders, members, employees,
attorneys, insurers, agents, predecessors, successors, and assigns. (S.A. ¶ 1.39.)

1 the PAGA Period, including, without limitation, penalties predicated on the
2 underlying alleged violations of the Released Class Claims or for alleged violations
3 of the following Labor Code sections: 201-204, 210, 226, 226.3, 226.7, 227.3, 246,
4 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and, 2802-2804
5 and the applicable California Industrial Wage Orders (the “Released PAGA
6 Claims”). All PAGA Members, on behalf of themselves and their respective current
7 and former representatives, agents, attorneys, heirs, executors, administrators,
8 successors and assigns, will release the PAGA claims described herein against
9 Defendant and the Released Parties and will receive a portion of the amount set
10 aside as PAGA Penalties, regardless of whether they opt out of the release of the
11 Class Claims.

12 In addition to the foregoing release, the named Plaintiffs have also agreed to a General
13 Release as set forth in the Settlement Agreement. (S.A. ¶ 5.1.)

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

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

22 The reasons include that no trial is anticipated in a settlement class, so the case
23 management issues inherent in determining if the class should be certified need not be confronted;
24 and the trial court’s fairness review of the settlement protects the interests of the non-
25 representative Class Members. *Id.*; see also *Officers for Justice v. Civil Service Com.* (9th Cir.
26 1982) 688 F.2d 615, 633 (“Th[e] relationship between the certification determination and the
27 merits of the case is further attenuated within the context of the settlement evaluation process . .
28 . [C]ertification issues raised by class action litigation that is resolved short of a decision on the
merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S.
591, 620 (“Confronted with a request for settlement-only class certification, a district court need
not inquire whether the case if tried, would present intractable management problems . . . for the
proposal is that there be no trial.”).

As discussed below, for the purposes of this Settlement only, Plaintiffs request that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 382.

A. NUMEROSITY AND ASCERTAINABILITY

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. Here, according to Defendant’s records, there are approximately 403 Class Members. Plaintiffs argue 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. Plaintiffs contend that the Class was subject to common wage and hour policies and practices relating to the provision of meal and rest periods, reimbursements, time keeping, and calculation of wages, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this Settlement only.

2. Typicality

Typically, “focuses on whether there exists a relationship between the Plaintiffs’ 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 Plaintiffs’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 Plaintiffs assert claims regarding Defendant’s wage payment policies/practices, calculation of the “regular rate of pay,” meal and rest break policies/practices, wage statements, reimbursements, and the provisions governing the timely and complete payment of wages, which are at the core of the Action.

1 3. Adequacy of Representation

2 The proposed class representatives must establish that they will adequately represent the
3 proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th
4 540, 546. Plaintiffs contend that they are adequate to represent the Class because they were
5 employed by Defendant during the Class Period, were subject to the same wage and hour policies
6 and practices as the rest of the Class, understand their duties as Class Representatives, have been
7 willing to undertake the risks associated with litigation, and have no conflicts of interest with the
8 Class.

9 Adequacy may also be supported by the fact that counsel are experienced practitioners.
10 *See Local Joint Exec. Bd. of Culinary Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir.
11 2001) 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive
12 experience in wage and hour class actions and PAGA actions of this nature. (Bokhour Decl. ¶¶ 2
13 to 5; Falakassa Decl. ¶¶ 2 to 11.)

14 4. Superiority

15 Plaintiffs further contend that certification of the Class for settlement purposes is superior
16 here because it will result in a global resolution of all claims at once, thereby fostering judicial
17 economy. Plaintiffs contend that class certification for settlement purposes is also vastly superior
18 to litigation of numerous individual claims because most of the claims are too small to litigate
19 outside of the class context.

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

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

24 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 13175.
25 This is particularly true in class actions where substantial resources can be conserved by avoiding
26 the time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
27 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
28 of Court set forth the procedures for court approval of a class action settlement: (1) the Court

1 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
2 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
3 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

17 [T]he strength of Plaintiffs’s case, the risk, expense, complexity and likely
18 duration of further litigation, the risk of maintaining class action status
19 through trial, the amount offered in settlement, the extent of discovery
20 completed and the stage of the proceedings, the experience and views of
counsel . . . and the reaction of the Class Members to the proposed
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 need only determine that the settlement falls within the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies ... and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, *supra* (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

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 Plaintiffs 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. ¶ 48.)

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

Class Counsel thoroughly investigated and evaluated this case’s factual and legal strengths and weaknesses before reaching the Settlement. As described above, the Settlement was reached

1 after extensive investigation and research, thorough calculations and risk evaluation, and a
2 substantial exchange of information and documents relating to Plaintiffs and the putative Class
3 Members prior to mediation.

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

5 To evaluate a settlement, the parties must provide the trial court with “basic information
6 about the nature and magnitude of the claims in question and the basis for concluding that the
7 consideration being paid for the release of those claims represents a reasonable compromise.”
8 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
9 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
10 399, which held that an explicit statement of the maximum theoretical amount that the class could
11 recover was not necessary:

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

17 A settlement is not judged against what might have been recovered had a Plaintiffs
18 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
19 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 250
20 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
21 by the proposed settlement is substantially narrower than it would be if the suits were to be
22 successfully litigated, this is no bar to a class settlement because the public interest may indeed
23 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
24 litigation.”)

25 Of relevance to the reasonableness of the proposed Settlement is the existence of
26 substantial legal and factual defenses to Plaintiffs’ claims. Defendant disputes that Plaintiffs could
27 obtain class certification, contending, among other things, that the alleged claims and injuries lack
28 the requisite commonality. Defendant further asserts that it complied with applicable law,

maintained compliant written policies, provided Class Members with the opportunity to take all required meal and rest periods, fully and timely paid all wages owed, and that any alleged deviations were individualized in nature, thereby undermining Plaintiffs' ability to obtain class certification.

While Plaintiffs contend that this Action is appropriate for class treatment, they recognize that class certification presents inherent risks and uncertainties that could significantly limit or preclude recovery on a classwide basis. In light of these risks, as well as the expense, delay, and uncertainty associated with continued litigation, the negotiated Settlement represents the best practicable recovery for the Class. Although the Gross Settlement Amount reflects a compromise, the Parties carefully evaluated the strengths and weaknesses of their respective positions and negotiated an outcome that is fair, reasonable, and adequate under the circumstances. (Bokhour Decl. ¶¶ 16, 53.)

Based upon detailed data obtained through informal discovery and information exchanges, Class Counsel estimated the following big-picture data points through the date of mediation: 403 Class Members who worked approximately 56,777 workweeks. (Bokhour Decl. ¶ 27.)

1. Failure to Pay Overtime and Sick Wages at the "Regular Rate of Pay"

First, Plaintiffs 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," made appropriate adjustments when paying overtime and sick leave to account for these regular rate issues, and that any underpayment was in good faith and *de minimis*, which Plaintiffs confirmed through their investigation. (Bokhour Decl. ¶ 28.)

Due to this and in light of Defendant's other defenses, Plaintiffs 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(a) as discussed below. (Bokhour Decl. ¶ 29.)

1 **2. Waiting Time Penalties**

2 With respect to Plaintiffs’ waiting time penalty claim, there were approximately 140 Class
3 Members who separated from their employment with Defendant, and who worked an average of
4 7.4 hours per day, during the relevant statutory period. As such, the maximum potential penalty
5 under Labor Code § § 201–203 is \$869,904 (140 employees x 8 hours per day x average rate of
6 \$25.89 x 30 days). (Bokhour Decl. ¶ 30.)

7 However, Defendant argued that it would defeat the waiting time penalty claim as to
8 Plaintiffs’ unpaid wage claim because Defendant would prevail on the merits of these claims,
9 including that it complied with the law because it had an alleged facially neutral pay
10 policy/practice. Finally, Defendant argued that any failure to pay final wages was not willful and
11 occurred before the waiting time penalty liability period. (Bokhour Decl. ¶ 31.)

12 Therefore, Plaintiffs applied a 30% discount to account for the risk of defeat at the class
13 certification stage and an additional discount of 35% for the risk of defeat at the summary
14 judgment stage or on the merits, resulting in the risk-adjusted potential value of \$395,806 for
15 Plaintiffs’ waiting time penalty claim. (Bokhour Decl. ¶ 32.)

16 **3. Failure to Provide Meal and Rest Periods or Compensation in Lieu**
17 **Thereof at the “Regular Rate of Pay”**

18 With respect to Plaintiffs’ meal and rest period claims, Class Members worked 243,496
19 shifts during the Class Period. Based on the pre mediation sampling of Defendant’s timekeeping
20 and payroll records, Plaintiffs estimated a 35 percent meal period violation rate and a 33 percent
21 rest period violation rate. Using an estimated average premium value of approximately \$25.89
22 per violation (one hour of pay at the estimated average regular rate reflected in the sampling), the
23 resulting maximum potential exposure was calculated as follows:

24 Meal period premiums: $243,496 \text{ shifts} \times 0.35 = 85,223.6$ alleged noncompliant shifts, and
25 $85,223.6 \times \$25.89 = \$2,206,439.50$.

26 Rest period premiums: $243,496 \text{ shifts} \times 0.33 = 80,353.68$ alleged noncompliant shifts, and
27 $80,353.68 \times \$25.89 = \$2,080,355.15$.

28 (Bokhour Decl. ¶ 33.)

1 However, Defendant vehemently opposed these claims, arguing that they fall directly
2 within the category of “individualized issues,” that its written policies and practices were
3 compliant with California law, and that the employees had ample latitude regarding when, where,
4 and how they took their meal periods and rest breaks. Therefore, Defendant asserted that a
5 factfinder would have to determine for each Class Member whether a break was missed and why,
6 and why a break was noncompliant/nonexistent, because if it was by the employee’s choice, no
7 liability attaches to Defendant. Based on these arguments, Plaintiffs believe there is a risk that the
8 Court would deny class certification on these meal period and rest break claims. (Bokhour Decl.
9 ¶ 34.)

10 Defendant further argued that, even if certification were granted, it would defeat these
11 claims on the merits because Defendant utilized compliant policies and practices, and it would
12 present sufficient evidence that employees were properly provided with all breaks or paid
13 compensation in lieu thereof. Moreover, Defendant argued that Plaintiffs would be unable to
14 present sufficient evidence establishing the number of meal and rest period violations to allow a
15 factfinder to determine damages appropriately. (Bokhour Decl. ¶ 35.)

16 In light of these defenses and risks, Plaintiffs applied a 40 percent reduction for the risk
17 of non certification and an additional 50 percent reduction for merits risks, resulting in a combined
18 70 percent reduction, or a 30 percent multiplier of the maximum exposure. The risk adjusted
19 values were calculated as follows:

20 Meal period claims: $\$2,206,439.50 \times 0.60 \times 0.50 = \$661,931.85$, rounded to \$661,931.

21 Rest period claims: $\$2,080,355.15 \times 0.60 \times 0.50 = \$624,106.55$, rounded to \$624,107.
22 (Bokhour Decl. ¶ 36.)

23 **4. Failure to Provide Accurate Itemized Wage Statements**

24 Plaintiffs estimate that the maximum potential penalties for the derivative wage statement
25 claim are \$506,850 (based on approximately 10,137 allegedly violative wage statements issued
26 during the Class Period). In calculating Defendant’s exposure, Plaintiffs gave Defendant the
27 benefit of assuming Plaintiffs could only obtain the “initial” wage statement penalty of \$50 per
28 violation. *Id.*, Lab. Code § 226(e) (providing for a \$50 penalty for “initial” violations); *Amaral v.*

1 *Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that “initial” violation rate
2 applies until the employer has been notified that it is violating a Labor Code provision.) (Bokhour
3 Decl. ¶ 37.)

4 In response, Defendant contended that its wage statements fully complied with the law,
5 that any alleged violations were not “knowing and intentional,” and that Plaintiffs could not
6 establish that they or anyone else suffered “injury” because of any alleged wage statement
7 violations. Further, Defendant relied on its defenses to Plaintiffs’ underlying claims on the merits
8 and to class certification. (Bokhour Decl. ¶ 38.)

9 As such, Plaintiffs discounted the calculated maximum exposure by 30% for the risk of
10 non-certification and by an additional 20% for the risk of being unsuccessful on the merits, to
11 arrive at an estimated total potential exposure of \$283,836. (Bokhour Decl. ¶ 39.)

12 **5. Failure to Reimburse for Necessary Business Expenses**

13 Plaintiffs alleged that Defendant failed to reimburse Plaintiffs and Class Members for
14 necessary business expenses incurred in the course of their employment, including, but not limited
15 to, personal cell phone and internet usage. Based on Defendant’s records, Plaintiffs estimated that
16 Class Members incurred an average of \$20 per month in unreimbursed business expenses over
17 approximately 14,194 aggregate work months during the Class Period, resulting in a maximum
18 potential exposure of \$283,885.00 ($\$20 \times 14,194$ months). (Bokhour Decl. ¶ 40.)

19 Defendant disputed this claim, contending that it fully reimbursed a reasonable percentage
20 of Plaintiffs and the other Class Members’ personal cell and internet expenses throughout the
21 relevant Class Period, to the extent that such usage was required to perform their work duties.
22 Defendant further argued that this claim presents individualized issues unsuitable for class
23 treatment, including whether any given employee was indeed required to use their personal cell
24 phone or internet for work, and whether the employee received an appropriate reimbursement.
25 Defendant asserted that its payment of these expense reimbursements throughout the Class Period
26 and these individualized inquiries would preclude class certification and defeat the claim on the
27 merits. (Bokhour Decl. ¶ 41.)

1 In light of these defenses and litigation risks, Plaintiffs discounted Defendant’s maximum
2 exposure by 60 percent to account for the risk of non certification, and by an additional 40 percent
3 to account for Defendant’s defenses on the merits. Applying these discounts, Plaintiffs calculated
4 the risk adjusted potential value of the unreimbursed business expense claim as follows: $\$283,885$
5 $\times 0.40 \times 0.60 = \$68,132.40$, rounded to $\$68,132$. (Bokhour Decl. ¶ 42.)

6 **6. PAGA Penalties**

7 Plaintiffs also sought PAGA penalties for each violation for which they are available and
8 alleged that these penalties can be “stacked.” *See Gonzalez v. Corecivic of Tennessee, LLC*, No.
9 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) (“‘stacking’ PAGA
10 penalties is not inappropriate under California law”). Assuming that a PAGA penalty is available
11 in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA
12 penalty would be \$1,013,700 for the 10,137 pay periods in the PAGA period. *See* Cal. Lab. Code.
13 § 2699(f)(2). (Bokhour Decl. ¶ 4e.)

14 However, this maximum figure fails to account for numerous unresolved issues regarding
15 PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would
16 award penalties in such a way (especially for purely derivative penalties). (Bokhour Decl. ¶ 44.)

17 Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce
18 the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to
19 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
20 Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting
21 in the context of approving settlement that a reduction in PAGA penalties would be “appropriate”
22 based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer
23 did not “deliberately evad[e] a clear obligation to provide legally required pay and benefits to
24 employees,” (ii) the employer did not “negligently fail to learn about its obligations under the
25 wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because
26 “there is no straight answer to the question.”). (Bokhour Decl. ¶ 45.)

27 Accordingly, Plaintiffs heavily discounted the theoretical maximum PAGA exposure to
28 account for the risk of losing on the merits, uncertainty regarding stacking, and the likelihood

of judicial reduction of penalties, resulting in an estimated potential PAGA settlement value of \$50,000. (Bokhour Decl. ¶ 46.)

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

- | | |
|--|--------------------|
| • Failure to Pay Overtime and Sick Wages: | <i>discounted</i> |
| • Labor Code §§ 201 – 203 Claims: | \$395,806 |
| • Meal Period Claims: | \$661,931 |
| • Rest Break Claims: | \$624,107 |
| • Wage Statement Claims: | \$283,836 |
| • Reimbursement Claims: | \$68,132 |
| • PAGA Penalties | \$50,000 |
| • <u>Total Potential Risk-Adjusted Penalties and Damages:</u> | \$2,083,812 |

Given the realistic value of Plaintiffs’ claims, the \$1,260,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 60% of Plaintiffs’ risk-adjusted potential value of the case. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class. (Bokhour Decl. ¶ 47.)

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

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

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

Class Counsel are also highly experienced in class and PAGA litigation, having litigated upwards of 100 class actions and PAGA cases, having been named “Super Lawyers” in employment litigation (a distinction awarded to only 2.5% of litigators), and having achieved large class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-10.) Class Counsel, operating at arm’s length, weighed the strengths and risks of this case and is of the view

1 that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk-
2 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class
3 certification and litigation.

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

5 The proposed Class Notice should be approved because it fairly and adequately informs
6 Class Members of the nature of the Action, the material terms of the Settlement, and the rights
7 and options available to Class Members under the Settlement Agreement and applicable law. The
8 notice procedures set forth in the Settlement Agreement are reasonably calculated to reach all or
9 nearly all Class Members and therefore satisfy due process. (Bokhour Decl. ¶ 49, Exh. B.)

10 The proposed notice plan complies with California Rules of Court 3.766 and 3.769(c)-(e).
11 The Class Notice describes the material terms of the Settlement, including the amounts sought for
12 attorneys' fees and litigation expenses, service payments, and administration expenses, and it
13 provides the date and location of the Final Approval Hearing. It also explains how Class Members
14 may request exclusion, submit objections, and challenge the Workweek and or PAGA Pay Periods
15 used to calculate their estimated payments. The Notice further advises Class Members of their
16 estimated Individual Class Payment and, if applicable, estimated Individual PAGA Payment, and
17 provides information about how to obtain additional information, including by contacting Class
18 Counsel or the Administrator. (Bokhour Decl. ¶ 49, Exh. B.)

19 The Court has broad discretion to approve a notice program so long as it is reasonably
20 calculated to provide meaningful notice likely to reach a substantial percentage of the class.
21 Archibald v. Cinerama Hotels (1976) 15 Cal.3d 853, 861. Here, the Administrator will mail the
22 Class Notice by first-class United States mail to all Class Members identified in the Class Data.
23 Before mailing, the Administrator will update addresses using the National Change of Address
24 database. If a Notice is returned as undeliverable, the Administrator will promptly re-mail the
25 Notice using any forwarding address provided by USPS or, if none is available, by conducting an
26 address search and re-mailing to the most current address obtained, consistent with the Settlement
27 Agreement. These procedures are reasonably calculated to provide effective notice to the
28 Settlement Class. (S.A. ¶¶ 7.4.2 to 7.4.3.)

1 The contents of the Notice also satisfy Rule of Court 3.766(d) and due process. Among
2 other things, the Notice explains the claims and defenses, advises Class Members that they may
3 request exclusion by a stated deadline, provides the procedure for requesting exclusion, advises
4 that the judgment will bind Class Members who do not request exclusion, and explains that
5 Participating Class Members may appear through counsel and object in writing and or at the Final
6 Approval Hearing. The forty-five-day response period is reasonable and provides sufficient time
7 for Class Members to consider their options and seek independent advice if they choose. In
8 addition, because no claim form is required, Class Members who do not opt out will automatically
9 receive their settlement payment by mail. (S.A. ¶¶ 7.5.1 to 7.5.3, 7.7.1 to 7.7.2; Bokhour Decl. ¶
10 49, Exh. B.)

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

13 The Settlement further provides that each Class Member who does not opt out will
14 automatically be mailed a settlement check, ensuring that Class Members will receive payment
15 unless they affirmatively elect to exclude themselves. No claim form is required. In addition, the
16 Settlement is non reversionary, meaning that no portion of the Settlement funds will revert to
17 Defendant. Instead, for any settlement checks that are not cashed before the void date, the
18 Settlement Administrator will cancel the checks and, following Court approval of the final
19 accounting, transmit the remaining funds to the California State Controller’s Office Unclaimed
20 Property account. (S.A. ¶¶ 1.21, 4.4.1, 4.4.3.)

21 These provisions ensure that the full value of the Settlement is preserved for the benefit
22 of Class Members and the public and are indicative of a fair, arms length settlement reached
23 without collusion between counsel.

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

26 Under the terms of the Settlement Agreement, Class Counsel is requesting an amount not
27 to exceed one-third of the Settlement Amount in attorneys’ fees. (See, e.g., *Laffite v. Robert Half*
28 *Int’ l Inc.* (2016) 1 Cal. 5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13

lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the Class Members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of the common fund). (Bokhour Decl. ¶¶ 56-57.)

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

I. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND APPROPRIATE

The Settlement Agreement provides for Class Representative Service Payments to each named Plaintiff in an amount not to exceed \$7,500. (S.A. ¶ 3.2.1.) The requested Class Representative Service Payments are reasonable and appropriate in light of the time, effort, and risks undertaken by Plaintiffs in prosecuting this Action on behalf of the Class and PAGA Members.

Plaintiffs devoted substantial time and effort to the case, including providing factual background and information supporting the class and PAGA claims, producing documents and information concerning Defendant’s compensation practices and wage and hour policies, participating in calls with Class Counsel regarding litigation strategy and settlement negotiations, assisting with analysis of Defendant’s defenses, preparing for and participating in mediation,

1 remaining available throughout the litigation, and reviewing the Settlement documents. Plaintiffs
2 also assumed meaningful personal risk by serving as class representatives, including the risk that
3 they could have been exposed to adverse cost shifting had the Action been unsuccessful. (Bokhour
4 Decl. ¶ 55; see also Declarations of Plaintiffs Kayla Olivo and Aaron Oman in Support of
5 Preliminary Approval of Class Action Settlement filed herewith.)

6 In addition, Plaintiffs agreed to step into the role of Class Representatives after the initial
7 plaintiff passed away, ensuring the continuity of the litigation and avoiding delay. Their
8 willingness to promptly assume these responsibilities allowed the Parties to proceed with
9 mediation without interruption, facilitated an efficient resolution of the Action, and avoided the
10 need for further motion practice or delays that would have prejudiced the putative Class. This
11 cooperation directly benefited the Class by preserving settlement momentum and reducing
12 litigation risk and expense.

13 The requested Service Payments fall well within the range of incentive awards routinely
14 approved in wage and hour class actions. See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal.
15 2011) No. 1:09 cv 1662 OWW MJS, 2011 WL 2648879 (approving \$11,250 service awards to
16 each of two class representatives in a meal break class action); *Ross v. U.S. Bank National*
17 *Association* (N.D. Cal. 2010) No. C 07 02951 SI, 2010 WL 3833922, at *2 (approving a \$20,000
18 enhancement award in a California wage and hour class action); *Vasquez v. Coast Valley Roofing,*
19 *Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving \$15,000 service awards to each class
20 representative in a wage and hour class action)..

21 **V. THE COURT SHOULD APPOINT CPT GROUP, INC. AS THE SETTLEMENT**
22 **ADMINISTRATOR**

23 Subject to the Court's approval, the parties stipulated that CPT Group, Inc. serve as the
24 Settlement Administrator. CPT is experienced in administering class action settlements and will
25 not exceed \$10,000 to administer this class action Settlement. (Bokhour Decl. ¶ 58.)

26 **VI. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

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

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

3 **VII. CONCLUSION**

4 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their
5 Motion for Preliminary Approval of Class Action Settlement.

6
7 Dated: January 9, 2026

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

8
9 BY: 

10 MEHRDAD BOKHOUR
11 JOSHUA FALAKASSA

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