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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRRING STREET COURTHOUSE

JUAN PENA, on behalf of himself and all others similarly situated,

Plaintiff,

v.

HINTON TRANSPORTATION INVESTMENTS, INC. a Michigan Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 24STCV29266

Assigned to the Hon. Samantha P. Jessner

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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

HEARING INFORMATION

Date: December 22, 2025
Time: 10:00 a.m.
Dept.: 7

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 22, 2025, at 10:00 a.m. a.m., or as soon thereafter as the matter may be heard in Department 7 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, before the Honorable Samantha P. Jessner, Plaintiff Juan Pena, individually and on behalf of all others similarly situated, will and hereby does move the Court for an order:

1. Certifying the proposed class for settlement purposes only;
2. Preliminarily appointing Plaintiff Juan Pena as the Class Representative for settlement purposes only;
3. Appointing Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C. as Class Counsel for settlement purposes only;
4. Preliminarily approving the Class Action and PAGA Settlement Agreement as fair, reasonable, and adequate;
5. Approving the form and manner of the Class Notice and directing its dissemination to Class Members, including notice of their right to request exclusion from or object to the Settlement;
6. Setting a date for the final fairness hearing to determine whether the Settlement should be granted final approval.

This Motion is based upon the accompanying Memorandum of Points and Authorities, the Declarations of Mehrdad Bokhour, Joshua Falakassa, and Plaintiff Juan Pena, the Settlement Agreement, the [Proposed] Order, the pleadings and records on file in this action, and such other oral or documentary evidence as may be presented at the hearing.

Dated: August 5, 2025

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

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

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I. INTRODUCTION

Plaintiff Juan Pena ("Plaintiff"), individually and on behalf of all others similarly situated, seeks preliminary approval of the Class Action and PAGA Settlement Agreement. Subject to Court approval, Plaintiff and Defendant Hinton Transportation Investment, Inc. ("Defendant") have agreed to settle their claims and the proposed Class Members' claims against Defendant for a Gross Settlement Amount of $350,000.

Plaintiff seeks to represent a Class of all individuals who currently or formerly worked for Defendant as non-exempt, hourly employees in the State of California at any time during the period November 6, 2020, through July 6, 2025, except as set forth in the Escalator Provision defined below (the "Class"). Likewise, the PAGA Members include all individuals who currently or formerly worked for Defendant as non-exempt, hourly employees in the State of California at any time during the period November 6, 2023, through July 6, 2025, except as set forth in the Escalator Provision defined below ("PAGA Members"). (Declaration of Mehrdad Bokhour ("Bokhour Decl.") ¶ 9.) Further, "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as a PAGA Member). (Id.)

Under the terms of the Settlement Agreement[1], Defendant will not oppose Class Counsel's application for a reasonable award of attorney's fees not to exceed one-third (1/3) of the Settlement Amount (*i.e.*, the sum of One Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents, or $116.666.67), Class Counsel's Litigation Expenses Payment not to exceed $20,000, Administrator Expenses Payment not to exceed $5,000, Private Attorney General Act of 2004 ("PAGA") Penalties of $10,000 (of which $6,500 or 65% will be paid to the Labor Workforce Development Agency (the "LWDA") and the remaining $3,500 or 35% will be paid to the PAGA Members), and a Class Representative Service Payment not to exceed $10,000 to the named Plaintiff (see S.A. ¶¶ 3.1, 3.2.1-3.2.3, 3.2.6; and Bokhour Decl. ¶ 10):

[1] The Class Action and PAGA Settlement Agreement and Release of Claims is attached as Exhibit "A" to the Declaration of Mehrdad Bokhour submitted herewith and is hereinafter referred to as the "Settlement Agreement," "S.A." or the "Settlement." The proposed Class Notice is attached to the Settlement Agreement as Exhibit "A" thereto.

	Total Amount
Gross Settlement Amount	$350,000.00
Class Counsel Fees Payment (not to exceed 1/3 of GSA)	$116.666.67
Class Counsel Litigation Expenses Payment (not to exceed)	$20,000.00
Administrator Expenses Payment (not to exceed)	$5,000.00
PAGA Penalties to LWDA (65% of $10k award)	$6,500.00
PAGA Penalties to PAGA Members (35% of $10k award)	$3,500.00
Class Representative Service Payment	$10,000.00
Net Settlement Amount	**$188,333.33**

Defendant represented at the time of mediation that the Settlement Class consisted of approximately 54 Class Members. Plaintiff alleges that, regardless of job title or position, all Class Members were subject to the same wage and hour policies and practices. Accordingly, Individual Class Payments will be distributed on a pro-rata basis, calculated according to the number of Workweeks each Class Member worked during the Class Period. "Workweek" means any week during which a Class Member worked for Defendant for at least one day during the Class Period. (S.A. ¶ 1.44.) Based on the Class size represented at the time of mediation (54), the average payment is approximately $3,487.65, with the highest estimated potential individual payment of approximately $12,737.72. Of course, Class Members who worked more Workweeks will receive proportionally larger payments. (Bokhour Decl. ¶ 11.)

The Settlement is non-reversionary, and Settlement Class Members are not required to submit claim forms to receive payment. (S.A. ¶¶ 1.2.1, 3.1; Bokhour Decl. ¶ 12.) Each Settlement Class Member will be mailed a notice ("Class Notice") containing information about their estimated Individual Settlement Amount, will be allowed to dispute the number of Workweeks credited to them during the Class Period, and will be provided the opportunity and instructions on how to submit a Request for Exclusion or an Objection to the Settlement. (S.A. ¶¶ 7.4-7.7; Bokhour Decl. ¶ 12.) All Settlement Class Members who do not timely submit a valid Request for Exclusion will automatically receive their Individual Settlement Payment after the Court grants Final Approval. (S.A. ¶ 7.5.3; Bokhour Decl. ¶ 12.) PAGA Members eligible for payments under the PAGA portion of the Settlement may not opt out and will receive their share of the

PAGA Amount regardless of participation in the class settlement. (S.A. ¶¶ 5.3, 7.7.4; Bokhour Decl. ¶ 12.)

Because the Settlement is fair, reasonable, and the result of arm's-length negotiations between experienced counsel with the assistance of an experienced mediator, following an appropriate and thorough exchange of relevant information, data, and documents, it warrants preliminary approval. Plaintiff respectfully requests that the Court enter an order: (1) preliminarily approving the Settlement; (2) conditionally certifying the Settlement Class pursuant to California Code of Civil Procedure § 382 for settlement purposes only; (3) approving the form and content of the proposed Class Notice; (4) appointing Plaintiff's counsel as Class Counsel; (5) appointing CPT Group, Inc. as the Settlement Administrator; and (6) scheduling a Final Approval Hearing. (Bokhour Decl. ¶ 13.)

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED CLASS

Defendant is a privately held conglomerate of investments in the heavy-duty transportation sector, owned and operated by the Hinton family of Grand Rapids, Michigan. In California, Defendant, which also operates under the name Martec International, is located in Gardena, California and primarily operates in the industrial supplies business. (Bokhour Decl. ¶ 14.)

Plaintiff was employed by Defendant as a non-exempt employee with the title of "Warehouse Clerk" out of Gardena, California, beginning in October 2023, until his separation from employment on October 31, 2024. Plaintiff and other Class Members (including, but not limited to, Accounts Receivable Clerk, Warehouse Clerk, Accounts Payable Specialist, Travel and Expenses Specialist, Order Entry Clerk, Support Engineer, Warehouse Worker, and all other non-exempt positions) were responsible for all aspects of Defendant's business in the State of California. (Bokhour Decl. ¶ 15.)

The putative Settlement Class consists of all individuals who currently or formerly worked for Defendant as non-exempt, hourly employees in the State of California during the period November 6, 2020, through July 6, 2025, except as set forth in the Escalator Provision defined below. (S.A. ¶¶ 1.4, 1.11; Bokhour Decl. ¶ 9.)

B. PROCEDURAL HISTORY

On November 6, 2024, Plaintiff filed a class action complaint in Los Angeles County Superior Court, asserting claims based on Defendant's alleged: (1) failure to pay overtime wages; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to pay all sick time wages; (5) failure to provide accurate itemized wage statements; (6) failure to pay all wages due upon separation of employment; and (7) violation of California's Unfair Competition Law ("Original Complaint"). (S.A. ¶ 2.1; Bokhour Decl. ¶ 16.)

On November 6, 2024, Plaintiff submitted a letter (the "PAGA Notice") to the LWDA and Defendant for civil penalties under the PAGA alleging claims against Defendant based on violations of the Labor Code described in the Original Complaint. (S.A. ¶. 2.2; Bokhour Decl. ¶ 17.)

On July 10, 2025, Plaintiff filed a First Amended Complaint (the "Operative Complaint") to add a cause of action for PAGA penalties based on the Labor Code violations alleged in the PAGA Notice. (Bokhour Decl. ¶ 18.)

Throughout the investigation and litigation, Defendant denied, and still denies, Plaintiff's allegations and indicated it would vigorously defend against them. However, before engaging in protracted litigation, the Parties agreed to explore early resolution through private mediation. (Bokhour Decl. ¶ 19.)

The Parties conducted a thorough investigation into the facts and legal issues in this Action. This included interviews with putative class members, an investigation of Defendant's operations and pay practices, and the informal exchange of discovery materials, including Defendant's written policies and practices, as well as a representative sampling of approximately 35% of payroll and timekeeping records for Settlement Class Members and PAGA Members. (S.A. ¶ 2.4; Bokhour Decl. ¶ 20.) Class Counsel has extensive experience in wage and hour litigation and has conducted substantial research regarding the legal claims and potential defenses at issue. Class Counsel has diligently investigated the claims asserted on behalf of the Settlement Class Members and PAGA Members. (Id.)

Based on this investigation and their own independent evaluation, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members and PAGA Members, especially in light of the risks and uncertainties associated with continued litigation, Defendant's asserted defenses, and potential appellate issues. (Bokhour Decl. ¶ 21.)

On April 28, 2025, the Parties participated in a full-day mediation with Todd Smith, Esq., an experienced and respected mediator in wage and hour class actions. Following that session, the Parties were able to reach an agreement with the mediator's assistance which resulted in this Settlement. (S.A. ¶ 2.3; Bokhour Decl. ¶ 22.)

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

C. SUMMARY OF PLAINTIFF'S CLAIMS

Plaintiff alleges various wage and hour violations on behalf of non-exempt employees who worked for Defendant in California during the Class Period (*i.e.*, Settlement Class Members). (Bokhour Decl. ¶ 23.)

First, Plaintiff alleges that Defendant failed to properly calculate and pay overtime and sick wages by, *inter alia*, its failure to include all forms of compensation, including, but not limited to, non-discretionary bonus earnings, in calculating the "regular rate of pay." (Bokhour Decl. ¶ 24.)

Further, Plaintiff alleges that Defendant maintained deficient meal period policies and practices that failed to provide Class Members with timely, duty-free, and compliant meal periods, or premium wages in lieu thereof. Plaintiff also asserts that Class Members were not provided with duty-free rest periods of at least ten (10) minutes for every four (4) hours worked, or major fraction thereof, due to unlawful policies that required employees to remain on duty and/or on premises during rest periods. (Bokhour Decl. ¶ 25.)

As a result, Plaintiff alleges that Defendant failed to pay all final wages upon separation of employment and did not furnish accurate itemized wage statements in compliance with Labor Code § 226. (Bokhour Decl. ¶ 26.)

Finally, Plaintiff brings representative claims under the PAGA for civil penalties based on the alleged Labor Code violations described above. (Id.)

D. Summary of Defendant's Defenses

Defendant contested and denied all material allegations raised by Plaintiff, both on the merits and with respect to the propriety of class certification and PAGA representative treatment. (Bokhour Decl. ¶ 27.)

First, Defendant contended that it correctly calculated and paid all overtime and sick pay wages using the appropriate "regular rate of pay," inclusive of all non-discretionary bonuses and other forms of compensation. Defendant denied excluding any required remuneration from its regular rate calculations. (Bokhour Decl. ¶ 28.)

Second, Defendant argued it maintained that its written meal and rest period policies complied with California law and that, in practice, Settlement Class Members were provided the opportunity to take timely, duty-free meal and rest periods. Defendant denied having any policy or practice requiring employees to remain on duty or on the premises during rest periods. (Bokhour Decl. ¶ 29.)

Third, Defendant argued that Plaintiff's claims for wage statement violations, waiting time penalties, and PAGA penalties were derivative of other claims it contended were meritless. Accordingly, Defendant denied any violations that would give rise to penalties under Labor Code §§ 203 or 226. (Bokhour Decl. ¶ 30.)

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. Settlement Consideration and Allocation

The $350,000 Gross Settlement Amount is non-reversionary and will be paid out to Settlement Class Members without the need to submit a claim form or take any affirmative action. (S.A. ¶ 3.1; Bokhour Decl. ¶ 8.) The Gross Settlement Amount will cover the following, subject to Court approval:

- A Class Counsel's Fees Payment, not to exceed $116,666.67 (33.33% of the Gross Settlement Amount), and a Class Counsel Litigation Expenses Payment, not to exceed $20,000 (S.A. ¶ 3.2.2);

- A Class Representative Service Payment to the Class Representative, not to exceed $10,000 (S.A. ¶ 3.2.1);
- An Administrator Expenses Payment, not to exceed $5,000, except upon a showing of good cause (S.A. ¶ 3.2.3);
- PAGA penalties totaling $10,000, of which 65% ($6,500) will be paid to the LWDA pursuant to Labor Code § 2699(i), and 35% ($3,500) will be distributed to PAGA Members as Individual PAGA Payments (S.A. ¶¶ 3.2.6); and
- The Net Settlement Amount, which will be distributed as Individual Class Payments to Participating Class Members on a pro-rata basis based on the number of Workweeks worked during the Class Period (S.A. ¶¶ 1.21, 1.26.)

Importantly, Defendant will separately pay the employer's share of payroll taxes on the portion of the Individual Class Payments allocated as wages. (S.A. ¶ 3.1.)

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that approximately $188,333.33 will remain as the Net Settlement Amount, available to fund Individual Class Payments to approximately 54 Participating Class Members. (Bokhour Decl. ¶¶ 10, 11).

The Gross Settlement Amount is based on Defendant's representation of the actual number of weeks worked by the Settlement Class. Defendant represents that at the time of executing the Settlement Agreement, there are approximately 4,066 Workweeks worked by Class Members during the Class Period, and approximately 1,761 PAGA Pay Periods worked by the PAGA Members during the PAGA Period. (S.A. ¶ 4.1.) If the number of qualifying Workweeks worked by the Class Members during the Class Period is greater than 10% above Defendant's estimation (*i.e.*, if the Workweeks exceeds 4,473), then at Defendant's option, either the: (1) portion of the Gross Settlement Amount attributable to non-PAGA claims (*i.e.*, the Gross Settlement Amount less the PAGA Penalties) shall be increased proportionately for each additional Workweek above the 10% buffer; or (2) the Class Period shall end as of the date the Workweeks within the Class Period equal 4,473 Workweeks. If the number of PAGA Pay Periods worked by the PAGA Members is greater than 10% above Defendant's estimation (*i.e.*, 1,937), then at Defendant's option, either the: (1) portion of the Gross Settlement Amount attributable to the PAGA claims (*i.e.*, the PAGA Penalties) shall be increased proportionately for each additional PAGA Pay Period worked above the 10% buffer; or (2) the PAGA Period shall end as of the date the PAGA Pay Periods within the PAGA Period equal 1,937 PAGA Pay Periods. Defendant must exercise the option to shorten the Class Period, PAGA Period, and accompanying releases at least 45 days prior to the first set hearing on Plaintiff's Motion for Preliminary Approval ("Escalator Provision"). (S.A. ¶ 8; Bokhour Decl. ¶ 63.)

If ten percent (10%) or more of the Class Members, or a number of Class Members whose Individual Class Payment represent ten percent (10%) or more of the total of all Individual Class Payments, validly elect not to participate in the Settlement, Defendant will have the right to rescind the Settlement, and the Settlement and all actions taken in its furtherance will be null and void. Defendant must exercise this right within fifteen (15) calendar days after the Settlement Administrator sends the final Exclusion List. If Defendant exercises the right to rescind, it will be responsible for the costs of administration of the Settlement incurred through that time. (S.A. ¶ 9; Bokhour Decl. ¶ 64.)

B. CLASS NOTICE PROCEDURES

The proposed Class Notice, once approved by the Court, will be distributed to Settlement Class Members and will include, among other information, the estimated number of Workweeks and PAGA Pay Periods for which each individual will be credited. (S.A. ¶¶ 1.10, 7.4, Ex. A.) Within fourteen (14) days after the Court grants Preliminary Approval, Defendant shall provide the Settlement Administrator with Class Data. (S.A. ¶¶ 1.7, 4.2; 7.4.1.) The Class Data will be in a readable Microsoft Office Excel spreadsheet and will include each Class Member's (1) full name; (2) last known mailing address; (3) Social Security number; and (4) total number of Workweeks worked during the Class Period and total number of PAGA Pay Periods during the PAGA Period. (Id.) The Class Data will only be provided to the Settlement Administrator and will be treated as confidential by the Settlement Administrator. (Id.) To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement, and not provide the Class Data to Plaintiff or Class Counsel. (Id.)

No later than three (3) business days after receipt of the Class Data, the Settlement Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data. (S.A. ¶ 7.4.2.)

Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Settlement Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to the Settlement Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (S.A. ¶¶ 1.10; 7.4.3.) The Class Notice will also inform Class Members that, in order to receive the Individual Class Payment and Individual PAGA Payment, they do not need to do anything except keep the Settlement Administrator apprised of their current mailing addresses.

If a Class Notice is returned as undeliverable with a forwarding address, the Settlement Administrator shall not later than five (5) business days after the Settlement Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (S.A. ¶ 7.4.4.) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time (Id.) The Settlement Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (Id.) The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days beyond the forty-five (45) calendar days 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 (S.A. ¶ 7.4.5.)

C. <u>EXCLUSION AND OBJECTION PROCEDURES</u>

Settlement Class Members who do not timely submit a valid Request for Exclusion will be deemed to participate in the Settlement and will become Participating Class Members, without the need to submit a claim form or take any other affirmative action. (S.A. ¶¶ 3.1, 7.5.3.) The Class Notice will inform Settlement Class Members of their right to opt out of the Settlement. To do so, a Class Member must submit a written Request for Exclusion to the Settlement Administrator, postmarked no later than forty-five (45) calendar days after the initial mailing of the Class Notice, plus a 14-day extension for Class Member whose Class Notice is re-mailed (the "Notice Response Deadline"). (S.A. ¶¶ 7.4.5, 7.5.1.)

The Class Notice will also inform Settlement Class Members of their right to object to the Settlement. (S.A. ¶ 7.7.) To do so, a Class Member must send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. (S.A. ¶ 7.7.2.) A Participating Class Member who elects to send a written objection to the Administrator must do so not later than forty-five (45) calendar days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice was re-mailed). (Id.) A Class Member who does not submit a timely Notice of Objection may nevertheless appear at the Final Approval Hearing and present an oral objection to the Settlement. (Id.) At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or appeal from the Order and Judgment. (S.A. ¶ 12.2.) Class Counsel shall not represent any Class Members with respect to any such objections to this Settlement. (Id.) Any Class Member who submits a valid Request for Exclusion shall not be allowed to object to this Settlement. (S.A. ¶ 7.5.4.) Not later than ten (10) calendar days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid). The Administrator shall also provide a list to Class Counsel of the total number of valid and invalid Requests for Exclusion (with no Class Member names or personally identifying information). (S.A. ¶ 7.8.2.) Counsel for the Parties may file a response to any objections submitted by Objecting Settlement Class Members at least five (5) court days before the date of the Final Approval Hearing. (S.A. ¶ 10.1.)

The Settlement Administrator will, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: (i) Class Notices mailed or re-mailed, (ii) Class Notices returned undelivered, (iii) Requests for Exclusion (whether valid or invalid) received, (iv) objections received, (v) challenges to Workweeks and/or Pay Periods received and/or resolved, and (vi) checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. (S.A. ¶ 7.8.2.)

D. Settlement Allocation Formula for Settlement Shares

The Individual Class Payment for each Participating Class Member will be calculated by the Settlement Administrator based on the Class Data provided by Defendant. (S.A. ¶ 1.21.) After accounting for any approved Workweek disputes and excluding individuals who timely submit valid Requests for Exclusion, the Settlement Administrator will determine the total number of Workweeks worked by all Participating Class Members during the Class Period. (S.A. ¶¶ 1.21, 1.26.) Prior to disbursing the Gross Settlement Amount, the Administrator will provide a disbursement breakdown to Class Counsel and Defense Counsel and will not disburse any funds until the breakdown is approved by both counsels. Any disputes regarding disbursement will be resolved by the Court. (S.A. ¶ 3.1.) Each Participating Class Member's share of the Net Settlement

Amount will then be calculated based on the number of Workweeks he or she worked during the Class Period, as a proportion of the total Workweeks worked by all Participating Class Members. In other words, an Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Id., S.A. ¶ 3.2.4.)

The Class Notice will inform each Settlement Class Member of the estimated number of Workweeks worked during the Class Period. (Id.) If a Settlement Class Member believes the estimate is incorrect and that they worked more Workweeks in California during the Class Period than shown in the Class Notice, they may submit documentation to the Settlement Administrator, postmarked on or before the Notice Response Deadline, to dispute the credited Workweeks. (S.A. ¶ 7.6.) The Settlement Administrator shall review the documentation in consultation with Class Counsel and Defense Counsel and shall make a final and binding determination. (Id.)

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant shall fund the Gross Settlement Amount in two installments as follows: fifty percent (50%) of the Gross Settlement Amount shall be paid within thirty (30) calendar days after the Effective Date[2], and the remaining fifty percent (50%) of the Gross Settlement Amount shall be paid within ninety (90) calendar days after the first payment (*i.e.*, one-hundred-and-twenty (120) calendar days after the Effective date). (S.A. ¶ ¶ 4.3, 7.3.) In addition, Defendant shall separately pay the employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments, as calculated and directed by the Settlement Administrator. (S.A. ¶ 3.1, 7.8.7.)

The Gross Settlement Amount shall be used to fund: (i) the Individual Class Payments to Participating Class Members and PAGA Members; (ii) the Court-approved attorneys' fees and costs; (iii) the Service Payment to the Class Representative; (iv) the payment to the LWDA for

[2] The "Effective Date" means the date when all of the following have occurred: a) the long-form settlement agreement has been signed by the Parties hereto, Class Counsel, and Defendant's counsel; b) the Court has granted preliminary approval of the settlement; c) the Court has granted final approval of the settlement (including approval of the settlement of the PAGA claim); d) the Court has entered and filed the final approval order and final judgment; and e) the judgment has become final. .

its 65% share of PAGA penalties; and (v) the Administration Expenses Payment. (S.A. ¶ 1.20.) Within fourteen (14) calendar days after the Gross Settlement Amount is fully deposited into the QSF, the Settlement Administrator shall issue and mail (S.A. ¶ 4.4):

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

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

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

(d) the PAGA payment to the LWDA; and

(e) Court-approved Administrator Expenses Payment to itself.

Participating Class Members shall have at least 180 calendar days from the date of mailing to cash their settlement checks. (S.A. ¶ 4.4.1.) Within seven days of receiving a returned check, the Settlement Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search, or failing both, re-mailing to the original address. (S.A. ¶ 4.4.2.) The Settlement Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Settlement Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date. (S.A. ¶ 4.4.2.)

If a Participating Class Member fails to cash their check within 180 days, the check will be void. (Id.) The unclaimed funds, including any accrued interest not otherwise distributed, shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). (S.A. ¶ 4.4.3.) Importantly, the release of claims remains binding on all Participating Class Members, including those who do not cash their checks. (S.A. ¶ 7.5.3.)

F. TAX TREATMENT

The Individual Class Amounts paid to Participating Class Members for Class Claims will be allocated for tax purposes based on the nature of the allegations in the Action as follows: 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for all interest and penalties, 15% constituting interest and 55% constituting penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (S.A. ¶ 3.2.4.1.)

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for their awarded Individual Class Payment, as of the date the Settlement becomes final and has been fully funded, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties[3] from any and all claims, rights, demands, debts, liabilities, and causes of action under California law for alleged wage-and-hour violations arising out of or reasonably related to work performed by Settlement Class Members during the Class Period, to the extent such claims are based on the facts, allegations, or legal theories asserted in the operative Complaint, or facts, allegations, or legal theories that could have been asserted in the operative Complaint ("Released Class Claims). (S.A. ¶¶ 1.38, and 5.2.) The Released Class Claims includes, without limitation, claims for unpaid or untimely payment of minimum, regular, overtime, or double-time wages; non-compliant meal or rest periods or associated premium pay; failure to pay wages during employment or upon separation, including waiting time penalties; failure to reimburse business expenses; failure to provide accurate, itemized wage statements; failure to maintain or provide payroll records; failure to pay vacation or sick pay; failure to provide notice of paid sick leave accrual; and any related claims under the California Labor Code, applicable Industrial Welfare Commission Wage Orders, or California Business and Professions Code §§ 17200 *et seq*., to the extent predicated on alleged wage-and-hour violations. (Id.) The Released Class Claims includes all forms of relief related to the foregoing, including claims for damages, penalties, restitution, interest, attorneys' fees and costs, and injunctive or declaratory

[3] "Released Parties" means Defendant, including its current and former parents, subsidiaries, and affiliated entities, and each of their respective officers, directors, employees, agents, insurers, attorneys, representatives, and successors and assigns. (S.A. ¶ 1.40.)

relief. (Id.) Excluded from the Released Class Claims are claims for wrongful termination; discrimination, harassment, or retaliation under the Fair Employment and Housing Act or other applicable laws; personal injury; unemployment insurance, social security, or disability benefits; and vested retirement or pension benefits. (Id.)

In accordance with California Labor Code § 2699(l), and as set forth in the Settlement Agreement, in consideration for their awarded Individual PAGA Payment, as of the date the Settlement becomes final, Plaintiff and the LWDA will release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, any and all claims for civil penalties under the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698 *et seq*., arising out of or reasonably related to work performed by PAGA Settlement Members during the PAGA Period, to the extent such claims are based on the facts, allegations, or legal theories asserted in the operative Complaint or described in Plaintiff's PAGA Notice to the LWDA, or facts, allegations, or legal theories that could have been asserted in the operative Complaint or described in Plaintiff's PAGA Notice to the LWDA (the "Released PAGA Claims"). (S.A. ¶¶ 1.38, and 5.2.) The Released PAGA Claims includes, without limitation, claims for civil penalties arising from the alleged failure to pay all wages due (including minimum wage, overtime, or double-time pay); non-compliant meal or rest periods; failure to provide accurate wage statements; failure to maintain payroll records; failure to reimburse business expenses; failure to pay vacation or sick pay; failure to provide notice of paid sick leave; failure to timely pay wages during or at the end of employment; and other alleged violations of the California Labor Code and related Wage Orders. (Id.) The Released PAGA Claims includes all claims for statutory civil penalties, interest, attorneys' fees, and costs recoverable under PAGA. (Id.) The Released PAGA Claims does not include claims outside the scope of the PAGA statute or claims for personal damages by individual employees not encompassed by the representative action. (Id.) All PAGA Members, on behalf of themselves and their respective current and former representatives, agents, attorneys, heirs, executors, administrators, successors and assigns, will release the PAGA claims described herein against

Defendant and the Released Parties and will receive a portion of the amount set aside as PAGA penalties, regardless of whether they opt out of the release of the Class claims. (Id.)

In addition to this class release, the Class Representative has agreed to a broader General Release—expressly waiving and relinquishing the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code.[4] (S.A. ¶ 5.1.)

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

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

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

As discussed below, for the purposes of this Settlement only, Plaintiff requests that this

[4] Plaintiff understands that Section 1542 gives the right not to release existing claims of which he is not now aware, unless Plaintiff voluntarily chooses to waive this right. Having been so apprised, Plaintiff nevertheless voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, known or unknown.

Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 3150.

A. NUMEROSITY AND ASCERTAINABILITY

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. See *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. A class is sufficiently numerous to warrant class treatment when it is impracticable to bring all class members before the court. (Code Civ. Proc., § 382.) While "[n]o set number is required as a matter of law for the maintenance of a class action," case law indicates that 30-40 class members satisfies the numerosity requirement because at that point, joinder is not practical. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.

Here, according to Defendant's records, there are approximately 54 Class Members. Plaintiff contends that this figure 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. Plaintiff contends that the Class was subject to common policies and practices relating to the provision of meal and rest periods, time keeping, calculation of the "regular rate of pay," and payment of wages upon separation of employment, among other things. While Defendant denies Plaintiff's contentions and the Parties dispute whether a class would be appropriate if the litigation were to continue, the Parties do agree to class certification for the purposes of this Settlement only.

2. Typicality

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

3. Adequacy of Representation

The proposed class representative must establish that he/she will adequately represent the proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Plaintiff contends that he is adequate to represent the Class because he was employed by Defendant during the Class Period, was subject to the same wage and hour policies/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 and Defendant are represented by counsel with extensive experience in wage and hour class and PAGA actions, similar to the instant matter. (Bokhour Decl. ¶¶ 2-6; Falakassa Decl. ¶¶ 2-11.)

4. *Superiority*

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

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

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

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 13150.

This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

> [T]he strength of Plaintiff' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the Class Members to the proposed settlement.

Dunk, supra (setting forth a non-exhaustive list of factors for the court's consideration at final approval).

The above factors are not exclusive, and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." (Id.). The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." (Id.). (citation and internal quotation marks omitted).

At the preliminary approval stage, the Court 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 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. ¶ 50.)

C. The Extent of the Investigation was More than Sufficient to Permit Preliminary Approval of the Settlement

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

D. The Settlement is a Reasonable Compromise of Claims

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

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

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

Of relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. (*See generally* Bokhour Decl. ¶¶ 27-49.) Defendant disputed whether Plaintiff could obtain class certification, arguing, *inter alia,* a lack of commonality of the legal claims and injuries. *(*Id.*)* Defendant further argued that it complied with the applicable law, had compliant written policies, that all Class Members were provided the opportunity to take their meal and rest periods, and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the Class. While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that he could pursue on a class basis. (Id.)

Considering the uncertainties of continued protracted litigation, this negotiated Settlement reflects the best practicable recovery for the Class. While the total Settlement Amount is, of course, a compromise figure, the potential risks and opportunities of both parties were effectively weighed and considered by the Parties, resulting in a fair and equitable Settlement. (Bokhour Decl. ¶ 55.)

Based upon Plaintiff's and his counsel's independent investigation and detailed data obtained through informal discovery and information exchanges, and factoring in claim certification probabilities and liability probabilities, Class Counsel formulated detailed damages models to evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable resolution as further detailed below. (Bokhour Decl. ¶ 31.)

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

First, Plaintiff alleged that Defendant failed to properly calculate the "regular rate of pay" by excluding non-discretionary bonuses, commissions, and other incentive payments when paying overtime and sick pay wages. Plaintiff contends that these exclusions resulted in a systemic underpayment of compensation, in violation of California law. (Bokhour Decl. ¶ 32.)

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

In response, Defendant argued its wage and hour policies are compliant and that any bonus payments at issue were discretionary and, therefore, properly excluded from regular rate calculations. Defendant further asserted that all overtime and sick pay was lawfully calculated and paid in good faith, and that any potential underpayment, if it occurred, was *de minimis* and non-systemic. (Bokhour Decl. ¶ 33.)

While Plaintiff maintains that the bonuses and incentive payments at issue were non-discretionary and therefore required to be included in the "regular rate of pay," Plaintiff also acknowledges the litigation risks associated with this claim. These risks include the possibility that the Court could deny class certification based on individual variations in pay structures and the nature of the bonuses. Additionally, there is risk on the merits, including the potential for summary judgment or an unfavorable outcome at trial. (Bokhour Decl. ¶ 34.)

To account for these risks, Plaintiff applied an equitable discount reflecting the risk of denial at class certification, as well as an additional discount for the risk of defeat at summary judgment or trial. Plaintiff calculated that based on 1,646 pay periods, and the blended ratio of straight-time hours to overtime-hours compared to "bonus" and "incentive" payments remitted to the Class Members over the Class Period, as extrapolated from Defendant's sampling of payroll records, there was a total of $9,000 in unpaid overtime, sick pay and meal premiums.

However, to account for Defendant's defenses, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional 60% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of $2,160.00 for failure to pay wages violations. (Bokhour Decl. ¶ 35.)

2. <u>Waiting Time Penalties</u>

Plaintiff also alleged that Defendant failed to timely pay all wages due at separation of employment, entitling former non-exempt employees to waiting time penalties under Labor Code §§ 201–203. Based on Defendant's sampling of records, there were approximately 25 Settlement Class Members who separated from their employment during the applicable statutory period. Using the statutory maximum of 30 days, with an assumed 8-hour workday and an average hourly rate of $21.51, the total maximum potential exposure for waiting time penalties is approximately $129,060.00 (25 employees × 8 hours/day × $21.51/hour × 30 days). (Bokhour Decl. ¶ 36.)

Defendant disputed this claim and asserted that any failure to pay wages at separation was not willful and, therefore, did not give rise to waiting time penalties under the Labor Code—a good faith dispute and absence of willfulness negates a claim for waiting time penalties. *See e.g. Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065. Defendant also contended that it maintained facially neutral and compliant payroll practices and would defeat any underlying wage claims on the merits or at class certification. (Bokhour Decl. ¶ 37.)

To account for these risks, Plaintiff applied an equitable discount reflecting the risk of denial at class certification, as well as an additional discount for the risk of defeat at summary judgment or trial. To account for Defendant's defenses, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification and the risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of $96,795 for the waiting time penalty claim. (Bokhour Decl. ¶ 38.)

3. <u>Failure to Provide Meal and Rest Periods or Compensation in Lieu Thereof at the "Regular Rate of Pay"</u>

With respect to Plaintiff's meal and rest period claims, the Class Members collectively worked approximately 17,607 shifts during the Class Period requiring at least one meal period, and 17,478 shifts requiring at least one rest period. Based on Plaintiff's expert's analysis of a representative sample of Defendant's timekeeping and payroll records produced by Defendant, Plaintiff applied an estimated 74.8% violation rate for meal periods and a 50% violation rate for rest periods. Using the applicable premium rate of $21.51 per missed break, the maximum potential damages are estimated to be approximately $283,287.47 for the meal period claim 17,607 shifts × 74.8% × $21.51) and $187,975.89 for the rest period claim (17,478 shifts × 50% × $21.51). (Bokhour Decl. ¶ 39.)

Defendant contested liability for both claims, asserting that it maintains compliant written meal and rest period policies and offers employees uninterrupted meal periods as required by law. Further, Defendant argued that meal and rest period issues presented individualized questions inappropriate for class certification. It further argued that manager-specific practices, job duties, and employee choices varied significantly, requiring individualized inquiries into whether breaks were missed or voluntarily skipped. Based on these risks, Plaintiff acknowledged that there was a significant chance that the Court could deny class certification. Defendant also asserted that, even if certification were granted, it would prevail on the merits by showing that it either allowed and permitted compliant breaks or paid the required premium compensation. Defendant contended that Plaintiff would be unable to present reliable, representative evidence sufficient to establish liability or support a class wide damages award. (Bokhour Decl. ¶ 40.)

In light of these risks, Plaintiff discounted Defendant's maximum exposure by 30% for the risk of non-certification and to account for Defendant's defenses on the merits, to arrive at an estimated total of $198,300 for the meal period claims and $187,975.89 for the rest period claims. (Bokhour Decl. ¶ 41.)

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

Plaintiff further alleged that Defendant issued non-compliant wage statements in violation of Labor Code § 226, based on the same facts underlying Plaintiff's claims for unpaid wages, meal and rest period premiums, and failure to include all forms of compensation in the "regular rate of pay." Plaintiff estimates that approximately 1,517 allegedly violative wage statements were issued during the Class Period. In calculating Defendant's maximum potential exposure, Plaintiff conservatively assumed that only the "initial" penalty of $50 per violation would apply, in accordance with Labor Code § 226(e) and case law holding that higher penalties apply only after an employer has been notified of the violations. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008). This results in a maximum potential wage statement penalty of $75,850.00 (1,517 × $50). (Bokhour Decl. ¶ 42.)

Still, Defendant disputed this claim and asserted that its wage statements fully complied with the requirements of Labor Code § 226. Defendant contends that employees were fully compensated, and any violations were rare and minor, if they occurred at all. As a result, Defendant argues there were no wage statement violations and thus no basis for penalties. Further, even if there were any errors, they were not "knowing and intentional" because Defendant was unaware of any issues and believed it was complying and Plaintiff could not establish the required element of injury. Defendant also relied on its defenses to the underlying wage and hour claims and class certification. (Bokhour Decl. ¶ 43.)

In light of these risks, Plaintiff discounted Defendant's maximum exposure by 30% for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits, to arrive at an estimated total of a risk-adjusted value of $26,547.50 for the wage statement penalty claims. (Bokhour Decl. ¶ 44.)

5. PAGA Penalties

Plaintiff also sought civil penalties under PAGA for each Labor Code violation for which such penalties are available, and alleged that these penalties could be assessed on a cumulative or "stacked" basis. See *Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425, at *12 (E.D. Cal. Sept. 12, 2018) ("'stacking' PAGA penalties is not inappropriate under California law"). Assuming application of the default penalty of $100 per pay period pursuant to Labor Code § 2699(f)(2), and those penalties are not subject to reduction or judicial discretion, the maximum potential exposure for PAGA penalties could reach approximately $151,700 (1,517 PAGA pay periods × $100). (Bokhour Decl. ¶ 45.)

However, this theoretical maximum figure does not account for significant legal uncertainties. First, courts are divided on whether stacking PAGA penalties across multiple violations within a single pay period is permissible, particularly where the violations are derivative in nature. Second, Labor Code § 2699(e)(2) grants courts broad discretion to reduce civil penalties where necessary to avoid an award that is "unjust, arbitrary and oppressive, or confiscatory." See *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (approving reduction of PAGA penalties where the employer did not act willfully or negligently, and legal obligations were unclear). (Bokhour Decl. ¶ 46.)

In recognition of these risks—including the likelihood of judicial reduction of penalties, and the challenges of prevailing on the merits of the underlying claims—Plaintiff applied significant discounts to the estimated PAGA penalty exposure. After accounting for these risks, Plaintiff estimated a reasonable potential value of $37,925.00 in PAGA Penalties. However, in light of the Parties' mutual desire to resolve the matter without protracted litigation, they agreed to allocate $10,000 of the Gross Settlement Amount toward resolution of the PAGA claim, which Plaintiff believes is fair and reasonable under the circumstances. (Bokhour Decl. ¶ 47.)

In sum, when factoring in defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows (Bokhour Decl. ¶ 48):

• Regular Rate of Pay Claim:	$2,160.00
• Labor Code §§ 201 – 203 Claims:	$96,795
• Meal Period Claims:	$198,300
• Rest Break Claims:	$187,975.89
• Wage Statement Claims:	$26,547.50
• PAGA Penalties	$37,925.00
<u>Total Risk-Adjusted Penalties and Damages</u>:	**$550,379.28**

Given the realistic value of Plaintiff's claims, the $350,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 63% 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. ¶ 49.) For these reasons, Plaintiff submits that the agreed-upon Settlement is fair and reasonable.

E. <u>CLASS COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION</u>

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

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. ¶¶ 2-6; Falakassa Decl. ¶¶ 2-10.) Plaintiff's counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable Settlement in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation.

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

The proposed Class Notice should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. The way 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). Each Class Notice will provide: (1) information regarding the nature of the Action; (2) a summary of the Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated Individual Class Payment and the formula for calculating Individual Class Payments, if they do not request to be excluded; (5) each PAGA Settlement Employee's estimated Individual PAGA Payment and the formula for calculating Individual PAGA Payments; (6) the dates that comprise the Class Period and PAGA Period; (7) instructions on how to submit a valid Request for Exclusion or Notice of Objection; (8) the deadline by which the Class Member must submit a Request for Exclusion or Notice of Objection; (9) the date for the final approval hearing; and (10) the claims to be released. The Class Notice will also inform Class Members that, to receive the Individual Class Payment and Individual PAGA Payment, they do not need to do anything except keep the Settlement Administrator apprised of their current mailing addresses. In addition, it will inform Class Members of their estimated settlement share.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of Class Members." *Archibald v. Cinerama Hotels*, (1976) 15 Cal.3d 853, 861. Here, the Parties' notice plan is that notice of the Settlement will be disseminated directly to the Class Members by first class mail by the Settlement Administrator, since Defendant has the last known addresses of all Class Members, and the Settlement Administrator will perform a skip trace and update those addresses for any Class Notices that are returned and re-send the Class Notice.

The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Class Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the Parties; (2) a statement that the Court will exclude the Class Member if the Class Member so requests by a specified date; (3) a procedure for the Class Members to follow in requesting exclusion from the Class; (4) a statement that the judgment, whether favorable or not, will bind all Class Members who do not request exclusion; and (5) a statement that any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through counsel. The 45-day deadline for Class Members to exclude themselves is reasonable, as it provides Class Members with sufficient time to do so and, if they choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically be sent a settlement check.

G. THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

The fact that each Class Member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless he or she affirmatively acts to exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no Settlement funds will revert to Defendant; instead, if any checks are not cashed before the objection deadline, the funds will be transferred to California Controller's Unclaimed Property Fund in the name of the Class Member. 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 Gross Settlement Amount in attorneys' fees. (S*ee, e.g., Laffite v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of $6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the Class Members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp*. (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc*. (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

Once the Court grants preliminary approval of the Settlement Agreement and the Class 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 a Class Representative Service Payment to the named Plaintiff in the amount not to exceed $10,000. (S.A. ¶ 3.2.1.) 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 complaints; providing documents and information about Defendant's compensation, bonus plan, overtime payment, and meal and rest period policies and practices; participating in phone calls to discuss litigation and settlement strategy and mediation; 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. Plaintiff also assumed significant risk in bringing this litigation—had he lost, he could have been ordered to pay Defendant's costs. (*See* Declaration of Plaintiff in Support of Preliminary Approval of Class Action Settlement filed herewith; and Bokhour Decl. ¶¶ 55-56.)

The requested Class Representative Service Payment falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc*. (E.D. Cal. 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving $11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association* (N.D. Cal. 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of $15,000 each from a $300,000 settlement fund in a wage/hour class action).

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

Subject to the Court's approval, the parties have stipulated that CPT Group, Inc. be appointed as the Settlement Administrator. (S.A. ¶ 7.1.) CPT is experienced in administering class action settlements and has agreed to cap its fees at $5,000 for administering this Settlement. (Bokhour Decl. ¶ 60.)

VI. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

VII. CONCLUSION

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

Dated: August 5, 2025

BOKHOUR LAW GROUP, P.C.
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By: ______________________________
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