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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BLAIR WOODS and KENNETH JACKSON,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiff,

vs.

JUST IN TIME CARGO INC., a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CIVDS 2000750
*[Assigned to Hon. Judge David Cohn, Dept
S26 for all purposes]*

**PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
DECLARATION IN SUPPORT
THEREOF; [PROPOSED] ORDER**

Hearing

Date: November 22, 2021

Time: 10:00 a.m.

Dept.: S26

Complaint filed: 1/10/2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 22, 2021, at 10:00 a.m. or as soon thereafter
as the matter may be heard by the Honorable David Cohn in Department S26 of the San
Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415,
Plaintiffs Blair Woods and Kenneth Jackson, individually and on behalf of all others similarly
situated, will and hereby do move the Court for entry of an Order preliminarily approving the

Parties' class action settlement, including:

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

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

Dated: October 28, 2021

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiffs and the Proposed
Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiffs Blair Woods and Kenneth Jackson (“Plaintiffs”),
4 individually and on behalf of all others similarly situated, seeks preliminary approval of a
5 \$450,000 wage-and-hour class action settlement (the “Settlement Amount”) between the putative
6 class members and Defendants Just In Time Cargo, Inc. and its owner Tache Gabriel Georgescu
7 (collectively, “Defendants” or “JITC”).

8 Plaintiffs seeks to represent a class of all current and former truck drivers who performed
9 services for Defendant Just In Time Cargo Inc. in the State of California and who were classified
10 by Defendants as independent contractors (the “Class” or “Class Members”) at any time during
11 the period of January 10, 2016, through the Preliminary Approval Date (the “Class Period”).

12 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiffs’
13 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
14 \$150,000 (1/3 of the Settlement Amount) and litigation expenses not to exceed \$20,000,
15 settlement administrator expenses not to exceed \$10,000, PAGA penalties of \$20,000 (of which
16 \$15,000 will be paid to the LWDA and the remaining \$5,000 will be paid pro-rata to the
17 Aggrieved Employees), and Service Payments of \$10,000 to Plaintiffs. (S.A. ¶ 47(a-h)). The
18 Settlement Amount is the maximum amount that will be paid.

19 After all Court-approved deductions from the Settlement Amount, it is estimated that
20 \$230,000 will be available to pay the Individual Settlement Amounts of approximately 450 Class
21 Members who do not opt-out of the settlement, as follows:

22

	Total Amount
<i>Gross Settlement Amount</i>	\$ 450,000.00
Attorneys’ Fees (1/3)	\$ 150,000.00
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 10,000.00
PAGA Penalties	\$ 20,000.00
Class Representatives Service Awards (combined)	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 230,000.00

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27 Assuming a class size of 450 Class Members, the average payment will be approximately
28 \$511. Of course, the actual payments will be calculated on a pro-rata basis according to the

1 number of Weeks Worked by each Class Member through the Preliminary Approval Date.
2 Assuming an estimated 10,000 Weeks Worked through the Preliminary Approval, each will have
3 a value of approximately \$23.00. In addition, Aggrieved Employees (*i.e.*, Class Members that
4 worked during the PAGA Period) will receive a pro rata share of the \$5,000 PAGA Penalties
5 (accounting for 25% of the total \$20,000 allocation). (S.A. ¶¶ 47(c), 47(h)).

6 The settlement is non-reversionary, and Class Members will not be required to submit
7 claim forms to receive payment, but each Class Member will receive the Class Notice containing
8 information about his/her share, the opportunity to dispute the number of Weeks Worked, and
9 the opportunity to opt-out or object to the settlement as to the Class Claims. All Class Members
10 who do not affirmatively opt-out will receive a settlement check upon the Court granting final
11 approval. Likewise, all Aggrieved Employees will receive a share of the PAGA Penalties once
12 the settlement receives final approval.

13 Because the settlement is fair and reasonable and was negotiated at arm's length by
14 experienced counsel and an experienced mediator following a sufficient exchange of information
15 and documents prior to mediation, it should be preliminarily approved. Plaintiffs respectfully
16 request that the Court enter an order preliminarily approving the settlement, conditionally
17 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
18 proposed Class Notice, appointing Plaintiffs' counsel as class counsel, appointing Simpluris as
19 the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

20 **II. BACKGROUND**

21 **A. The Parties and the Proposed Settlement Class**

22 JITC is a trucking and shipping company that uses the services of independent contractor
23 truck drivers to fulfill its contracts. And because Plaintiffs' advance the theory that Defendants
24 misclassified themselves and others similarly situated, the putative Class in this case consists of:

25 All current and former truck drivers who performed services for
26 Defendant Just In Time Cargo Inc. in the State of California and who
27 were classified by Defendants as independent contractors during the
28 Class Period. (S.A. ¶ 37).

1 Similarly, the Aggrieved Employees who are entitled to share in the PAGA Penalties are
2 defined as:

3 All current and former truck drivers who performed services for
4 Defendant Just In Time Cargo Inc. in the State of California and who
5 were classified by Defendants as independent contractors during the
6 PAGA Period. (S.A. ¶ 3).

7 **B. Procedural History**

8 On January 3, 2020, Plaintiff Woods submitted a letter to the California Labor Workforce
9 Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act
10 of 2004 (the “PAGA”), and simultaneously sent a letter to Defendants requesting the production
11 of his personnel and timekeeping records to further evaluate the wage and hour claims. Then, on
12 January 10, 2020, Plaintiff Woods filed a putative class action complaint, alleging claims arising
13 out of Defendant’s alleged: (1) failure to pay minimum wages, (2) failure to pay for rest and
14 recovery periods and other nonproductive time under Labor Code § 226.2, (3) failure to provide
15 rest breaks, (4) failure to provide meal periods, (5) failure to reimburse business expenses, (6)
16 failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, and
17 (8) unfair and unlawful competition. Thereafter, on March 10, 2020, Plaintiff Woods filed a First
18 Amended Complaint adding claims under PAGA after the requisite 65-day exhaustion period
19 elapsed without the LWDA asserting jurisdiction. As the case progressed, Plaintiff Jackson was
20 added to the action via an amended LWDA letter on July 20, 2020 and via a Second Amended
21 Complaint filed on September 3, 2020. (Mankin Decl. ¶¶ 11-15).

22 JITC fully denied the allegations. However, before incurring significant costs and
23 expenses in protracted discovery and litigation, the parties agreed to explore an early resolution
24 through mediation. In preparation for the mediation, the Parties informally exchanged
25 documents and information that allowed both sides to calculate the potential damages and
26 evaluate potential risk, including extensive policies and procedures pertaining to each claim
27 alleged, and statistics relating to the number of current and former drivers, number of trips
28 driven, number of weeks worked, among other metrics. JITC also provided a sampling of

documents for the putative class members, which enabled both parties to take a deep dive into the claims. During this process, Plaintiffs’ counsel evaluated the potential claims, risks, and defenses as to all similarly situated employees. (Mankin Decl. ¶ 16).

On October 28, 2020, the Parties participated in a full-day mediation with Mariam Zadeh, an experienced wage-and-hour class action mediator. However, the mediation was unsuccessful, and no settlement was reached. For that reason, Plaintiffs propounded (and Defendants responded to) written discovery including special interrogatories, requests for admissions, requests for production of documents, and form interrogatories. Concurrently with this formal discovery, the Parties continued to engage in settlement talks, and a class and PAGA settlement was ultimately reached. The Parties memorialized the terms of the settlement in a long-form settlement agreement (Mankin Decl. ¶ 17; Exhibit A to Mankin Decl.) and the Parties now seek the Court’s preliminary approval of the Settlement.

C. Overview of Plaintiffs’ Claims

Plaintiffs alleged numerous wage and hour violations on behalf of the Class Members. However, Defendants vigorously contested and denied each of the material allegations on the merits and as to the propriety of a class action or PAGA representative action, as discussed herein. (Mankin Decl. ¶ 18).

Plaintiffs’ primary claim was based on Defendants’ alleged misclassification of the drivers as independent contractors rather than as employees. The entire case was contingent on Plaintiffs’ misclassification claim (since the other Labor Code claims do not exist unless the drivers were employees), and, for this reason, JTC vigorously defended against and attacked this claim. Notably, Defendants claimed that the new ABC Test did not apply to these claims and that, instead, Plaintiffs’ misclassification claims would be analyzed under the multi-factor test set forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341. In this regard, Defendants argued that Plaintiffs would be unable to show the requisite “control” under *Borello* where Defendants did not retain or exercise control as to the means, methods, or modes by which the Class Members performed their tasks. Additionally, Defendants argued that each Class Member signed an Independent Contractor Agreement confirming this lack of control

1 and, further, that the workers were not prohibited from performing services for other companies
2 and were not managed or supervised by Defendants. (Mankin Decl. ¶ 19).

3 Plaintiffs also alleged a variety of claims that were dependent on the misclassification
4 claim (*i.e.*, no other claims could proceed if the Class was properly classified), such as the failure
5 to pay all required minimum wages under JITC’s “per-trip” pay policy, unlawful deductions
6 from the drivers’ wages, the failure to reimburse business expenses, the failure to timely pay all
7 wages upon separation of employment, and failure to provide compliant wage statements.
8 However, Defendants argued that these claims were without merit and, further, that many claims
9 were preempted under the federal Truth In Lending Act or due to guidance from the Federal
10 Motor Carrier Safety Administration. (Mankin Decl. ¶ 20).

11 Despite the disputed nature of the claims, the Parties concluded that this Settlement was
12 the best result to limit further risk, expense, and protracted litigation.

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

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

15 **A. Settlement Consideration and Allocation**

16 The \$450,000 Settlement Amount is non-reversionary and will be paid out to Class
17 Members without the need to submit a claim form or take any affirmative action. It includes (1)
18 Plaintiffs’ attorneys’ fees and costs, as approved by the Court; (2) a service award of \$10,000 to
19 each Plaintiff, subject to approval by the Court; (3) settlement administrator expenses of up to
20 \$10,000; (4) a \$20,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
21 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
22 aggregate Individual Settlement Payments for Participating Class Members. (S.A. ¶ 47(a-h)).

23 After all Court-approved deductions from the Settlement Amount, it is estimated that
24 \$230,000 will be available to pay the Individual Settlement Amounts to approximately 450 Class
25 Members through the Preliminary Approval Date. Thus, the average settlement payment is
26 approximately \$511.

27 ///

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1 **B. Notice Procedures**

2 The proposed Class Notice will be provided to the Class Members showing the estimated
3 amount that each Class Member will receive and the number of Weeks Worked for which he/she
4 is credited (Exhibit B to the Mankin Decl.). Within 10 days of the Preliminary Approval Order,
5 Defendants shall provide the Settlement Administrator with a list of Class Members containing
6 names, addresses, telephone numbers, Social Security Numbers, and the total Weeks Worked in
7 the Class and PAGA Periods (the “Class Data”). (S.A. ¶¶ 5, 60).

8 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
9 the number of Weeks Worked for each Class Member, populate the Class Notice for each, and
10 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 61).

11 In the event that any Class Notice mailed to a Class Member is returned as having been
12 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
13 search and seek an address correction for such Class Member(s), and a second Class Notice will
14 be sent to any new or different address obtained. (S.A. ¶ 62).

15 **C. Exclusion and Objection Procedures**

16 Class Members who do not timely Opt-Out of the Settlement will be deemed to
17 participate in the Settlement and shall become a Participating Class Member without having to
18 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class
19 Member must submit a written request to the Settlement Administrator no later than 30 days
20 after being mailed by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 19,
21 65). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be
22 invalid. (S.A. ¶ 65(a)).

23 The Class Notice shall inform the Class Members of their right to object to the
24 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
25 objection to the Settlement Administrator no later than the Notice Response Deadline. The
26 objection must include the case name and number and must set forth, in clear and concise terms,
27 a statement of the reasons why the objector believes that the Court should find that the proposed
28 Settlement is not in the best interest of the Class and the reasons why the Settlement should not

1 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 65(c)).

2 **D. Settlement Allocation Formula for Settlement Shares**

3 Individual Settlement Payments will be calculated and apportioned from the Net
4 Settlement Amount based on the number of Weeks Worked by each Settlement Class Member
5 during the Class Period. (S.A. ¶ 47(c)).

6 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
7 based on a pro-rata basis. Thus, the \$5,000 PAGA Penalties allocated to the Aggrieved
8 Employees will be divided and paid on a Work Week basis. (S.A. ¶ 47(h)). Aggrieved
9 Employees may not opt-out of the PAGA Penalties.

10 The Class Notice will inform Class Members of the estimated share and the number of
11 Weeks Worked during the Class and PAGA Periods. Class Members may dispute their Weeks
12 Worked if they feel they worked more weeks in the Class or PAGA Periods than Defendants’
13 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 63).

14 As noted, assuming a class size of approximately 450 Class Members through
15 Preliminary Approval, the average payment to each class member will be approximately \$511,
16 although the actual payment will be calculated on a pro-rata basis and may be slightly more or
17 less due to scheduling of the Preliminary Approval Hearing. Assuming an estimated 10,000
18 Weeks Worked through Preliminary (which again may be slightly more or less), each Week will
19 have a value of approximately \$23.00 on average. Indeed, this is an excellent result for the Class
20 Members.

21 Moreover, it is estimated that there will be approximately 300 Aggrieved Employees who
22 will share in the \$5,000 PAGA award on a pro rata basis.

23 **E. Timing of Settlement Disbursements**

24 Within 15 calendar days of the Effective Date, Defendants shall deposit the Settlement
25 Amount with the Settlement Administrator to pay: (1) the class attorney fees and expenses, as
26 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
27 costs, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual
28 Settlement Amounts of participating Class Members. (S.A. ¶ 66). Within 10 days thereafter, the

1 Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 67).

2 **F. Tax Treatment**

3 Because the Class Members performed contract services for Defendants as independent
4 contractors, rather than as employees, and because Defendants fully dispute the allegations
5 alleged herein, the Parties agree that the Individual Settlement Payments will be allocated and
6 paid to the Participating Class Members as contract compensation, interest, and penalties from
7 which no state or federal taxes will be withheld or deducted. (S.A. ¶ 47(d)).

8 **G. Participating Class Members' Release of Claims**

9 In exchange for these payments, the Settlement Agreement provides that Participating
10 Class Members will release the Released Parties of these "Released Claims":

11 any and all claims stated in the operative Complaint and those that could
12 have been made based solely upon the facts alleged, including: (1) willful
13 misclassification, (2) failure to pay minimum wages, (3) failure to pay for
14 rest and recovery periods and other nonproductive time under Labor Code
15 § 226.2, (4) failure to provide rest breaks, (5) failure to provide meal
16 periods, (6) failure to reimburse business expenses, (7) failure to timely
17 pay wages each period and upon separation of employment, (8) failure to
18 provide accurate itemized wage statements, (9) unfair and unlawful
19 competition, and (10) all other claims for statutory penalties based on the
20 facts or claims alleged in the Complaint. (S.A. ¶ 29).

21 The time governing the release (the "Release Period") shall be the same as the Class
22 Period. (S.A. ¶ 31).

23 It is understood and agreed that the Settlement Agreement will not release any person,
24 party or entity from claims, if any, by Class Members for workers compensation, unemployment,
25 or disability benefits of any nature, nor does it release any claims, actions, or causes of action
26 which may be possessed by Settlement Class Members under state or federal discrimination
27 statutes including, without limitation, the Cal. Fair Employment and Housing Act, the Cal.
28 Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.;
the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.;
the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee
Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and all of their
implementing regulations and interpretive guidelines.

1 **H. Aggrieved Employees’ Release of Claims**

2 The Settlement Agreement also defines the “PAGA Released Claims” as follows:

3 any and all claims for civil penalties under the Private Attorneys General
4 Act, Labor Code § 2698 *et seq.*, that Plaintiffs alleged against the Released
5 Parties, on behalf of Aggrieved Employees and State of California, based
6 on the facts stated in Plaintiffs’ operative Complaint and in Plaintiffs’
7 LWDA notice letters, including all PAGA claims seeking civil penalties
8 for (1) willful misclassification, (2) failure to pay minimum wages, (3)
9 failure to pay for rest and recovery periods and other nonproductive time
 under Labor Code § 226.2, (4) failure to provide rest breaks, (5) failure to
 provide meal periods, (6) failure to reimburse business expenses, (7)
 failure to timely pay wages each period and upon separation of
 employment, and (8) failure to provide accurate itemized wage statements.
 (S.A. ¶ 23)

10 The time period governing the PAGA Release Claims is January 10, 2019, through the
11 Preliminary Approval Date (the “PAGA Period”; see S.A. ¶¶ 22, 23). Moreover, the PAGA
12 Released Claims do not release any Aggrieved Employee’s claim for wages or statutory penalties
13 (S.A. ¶ 23). Finally, even if an Aggrieved Employee requests exclusion from the Class
14 settlement, that individual will still be subject to the PAGA Released Claims to the fullest extent
15 permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 65(a)).

16 **IV. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

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
20 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
21 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
22 a settlement class, so the case management issues inherent in determining if the class should be
23 certified need not be confronted; and the trial court’s fairness review of the settlement protects
24 the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*
25 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification
26 determination and the merits of the case is further attenuated within the context of the settlement
27 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short
28 of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*

1 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
2 certification, a district court need not inquire whether the case, if tried, would present intractable
3 management problems . . . for the proposal is that there be no trial.”).

4 As discussed below, for the purposes of this settlement only, Plaintiffs requests that this
5 Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 3150.

6 **A. Numerosity and Ascertainability**

7 Numerosity is met if a proposed class is so large that joinder of all members would be
8 impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
9 the class members can be objectively identified and given notice of the litigation without
10 unreasonable time or expense. See *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
11 89, 101. Here, according to Defendants’ records, there were approximately 380 Class Members
12 at the time of the October 2020 mediation, which is expected to increase to approximately 450 as
13 of the Preliminary Approval Hearing. This figure satisfies the numerosity requirement.

14 **B. Well-Defined Community of Interest**

15 *1. Commonality*

16 To justify certification, the class proponent must show that questions of law or fact
17 common to the class predominate over the questions affecting the individual members. See
18 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
19 *v. Superior Court* (2001) 24 Cal.4th 906, 913). Plaintiffs contends that the Class was subject to
20 common policies and practices relating to classification as independent contractors rather than
21 employees, the payment of wages, the provision of meal and rest breaks, among other things.
22 While the Parties dispute whether a class would be appropriate if the litigation were to continue,
23 they agree to class certification for the purposes of this settlement.

24 *2. Typicality*

25 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
26 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*
27 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
28 Plaintiffs’ claims are typical of the Class for any continued litigation of the Action, but agree for

1 the purposes of this settlement only, that Plaintiffs assert the claims as those alleged on behalf of
2 the class, all of which are at the core of the lawsuit.

3 3. Adequacy of Representation

4 The proposed class representative must establish that he or she will adequately represent
5 the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
6 546. Specifically, Plaintiffs are adequate to represent the class because they performed services
7 for JITC as independent contractors and experienced the same alleged misclassification and
8 wage and hour practices as the rest of the Class, and they understood their duties as Class
9 Representatives, and were willing to undergo the risks of litigation while having no conflicts of
10 interest.

11 Adequacy may be established by the fact that counsel are experienced practitioners. See
12 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
13 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive
14 experience in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

15 4. Superiority

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

20 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

21 **A. Class Action Settlements are Subject to Judicial Review**

22 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
23 particularly true in class actions where substantial resources can be conserved by avoiding the
24 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
25 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
26 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
27 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
28 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed

1 settlement. See Cal. R. Ct. 3.769(c), (e-g).

2 The decision to approve or reject a proposed settlement lies within the Court's sound
3 discretion. See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.

4 Nevertheless, in considering a potential settlement for approval, a court is not to turn the
5 approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
6 conclusions on the contested issues of fact and law which underlie the merits of the dispute."
7 *Officers for Justice*, 688 F.2d at 625.

8 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
9 reasonable. See *Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable"
10 standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
11 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
12 after determining that it is "'fair, adequate and reasonable,'" considering factors such as the
13 "'risk, expense, [and] complexity'" of continued litigation)). The Court enjoys broad discretion
14 in making its fairness determination, and should consider factors including, but not limited to:

15 [T]he strength of Plaintiff's case, the risk, expense, complexity and
16 likely duration of further litigation, the risk of maintaining class action
17 status through trial, the amount offered in settlement, the extent of
18 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.

19 *Dunk*, *supra* (detailing non-exhaustive list of factors for court's consideration at final approval).

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

27 At the preliminary approval stage, the Court need only determine that the settlement falls
28 within the "range of possible judicial approval," so that notice to the class and the scheduling of

1 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
2 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .
3 . . and [the settlement] appears to fall within the range of possible approval.” *Manual For*
4 *Complex Litigation* (Third) § 30.41 (1995); see *Dunk*, 48 Cal.App.4th at 1802. A “presumption
5 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
6 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
7 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
8 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
9 approval because there are no grounds to doubt its fairness.

10 **B. The Settlement Resulted from Serious, Informed, Non-Collusive Negotiations**

11 The settlement was the product of extensive arm’s length negotiations between counsel
12 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
13 professional, the settlement negotiations were adversarial and non-collusive in nature. The
14 settlement reached is the product of substantial effort by the parties and their counsel. Although
15 Plaintiffs and their counsel believed that there was a possibility of certifying the claims, they
16 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
17 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
18 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
19 prevailed on any of its defenses, the Class may not have received any monetary recovery.

20 **C. The Extent of the Investigation was More than Sufficient**

21 Plaintiffs and their counsel thoroughly investigated and evaluated the factual and legal
22 strengths and weaknesses of this case before reaching the settlement. As described above, the
23 settlement was reached after extensive investigation and research, thorough calculations and risk
24 evaluation, a substantial exchange of information relating to the Class Members prior to
25 mediation, and post-mediation formal discovery. (Mankin Decl. ¶¶ 11-17).

26 **D. The Settlement is a Reasonable Compromise of Claims**

27 To evaluate a settlement, the parties must provide the trial court with “basic information
28 about the nature and magnitude of the claims in question and the basis for concluding that the

1 consideration being paid for the release of those claims represents a reasonable compromise.”
2 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
3 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
4 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
5 the class could recover was not necessary:

6 Greenwell misunderstands *Kullar*, apparently interpreting it to require the
7 record in all cases to contain evidence in the form of an explicit statement
8 of the maximum amount the plaintiff class could recover if it prevailed on
9 all its claims – a number which appears nowhere in the record of the case.
10 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.

11 A settlement is not judged against what might have been recovered had a plaintiff
12 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
13 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
14 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
15 by the proposed settlement is substantially narrower than it would be if the suits were to be
16 successfully litigated, this is no bar to a class settlement because the public interest may indeed
17 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
18 litigation.”)

19 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
20 significant legal and factual grounds for defending this action exist. First, in addition to
21 disputing the merits of Plaintiffs’ claims, Defendants strongly disputed that Plaintiffs could
22 obtain class certification, arguing a lack of commonality of the legal claims and injuries. JITC
23 further argued that it complied with the applicable law and that any purported deviations
24 therefrom were individualized in nature, thereby limiting Plaintiffs’ ability to certify the class.
25 While Plaintiffs assert that this is a suitable case for certification, they realize that there is always
26 a significant risk associated with class certification proceedings, which could significantly limit
27 the claims that they could pursue on a class basis.

28 ///

1 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
2 best practicable recovery for the Class. While the total settlement amount is, of course, a
3 compromise figure, the potential risks and opportunities of both parties were effectively weighed
4 and considered by the parties, resulting in a fair and equitable settlement.

5 Based upon detailed data obtained through informal discovery and information
6 exchanges, Plaintiffs' counsel estimated the following data points through the date of mediation:
7 (1) 380 total Class Members, (2) approximately 8,251 workweeks, (3) approximately 232
8 Aggrieved Employees, and (4) approximately 4,566 workweeks during the PAGA Period. From
9 these metrics, and when factoring in claim certification probabilities and liability probabilities,
10 Class Counsel formulated detailed damages models to value the claims in preparation for
11 mediation and to reach a realistic and reasonable resolution.

12 As a preliminary issue, Plaintiffs entire case was predicated on the theory that JITC
13 misclassified the Class Members as independent contractors rather than employees. As
14 discussed in Section II(c), above, this theory had substantial risk at both the class certification
15 stage and on the merits. Indeed, if Plaintiffs' misclassification claim failed, all claims would fail
16 since each was dependent on the Class Members being employees – not independent contractors.
17 And, although misclassification has no private right of action and no valuation on a class basis,
18 the inherent risks of this claim were incorporated into the damage models discussed below.

19 For example, Plaintiffs alleged that JITC failed to pay the Class Members for all hours
20 worked due to Defendants' "per-trip" pay structure. For this claim, Plaintiffs calculated the
21 maximum potential class value to be \$309,413 (based on 1.5 unpaid hours per week for 8,251
22 weeks at \$25 per hour). But this maximum figure ignores Defendants' multiple defenses to the
23 unpaid wage claim. First, JITC argued that its defenses to the misclassification would also
24 defeat this claim either at the class certification stage or on the merits (since the Labor Code does
25 not govern the adequacy of payments between a business and its independent contractors).
26 Second, Defendants also argued that, even if the Labor Code applied, the pay structure complied
27 with California law and provided compensation for all hours worked. And JITC further argued
28 that any alleged unpaid wages would necessitate a person-by-person analysis to determine

1 whether there was any uncompensated time, and that this is precisely the type of individualized
2 inquiry that is not appropriate for certification. Based on these arguments and others, Plaintiffs
3 assigned a 25% risk that the Court would deny class certification and another 25% risk on the
4 merits, resulting in a total risk-adjusted value for the unpaid wage claim of \$174,045.

5 These unpaid wage claims also gave rise to Plaintiffs' claim for waiting time penalties
6 under Labor Code § 203. In this respect, there were 287 Class Members that separated from
7 employment during the relevant period, and those individuals earned an estimated average daily
8 wage of \$200; therefore, the maximum potential waiting time penalties totaled \$1,722,000.
9 However, this claim faced the same threshold risk on the misclassification claim. Moreover, even
10 if the Court agreed with Plaintiffs on misclassification *and* determined there was an
11 underpayment of wages, Defendants argued that waiting time penalties would not be imposed
12 because any such failure was not "willful" due to the good faith belief that (a) JITC properly
13 classified the Class as independent contractors, and (b) the "per-trip" pay structure compensated
14 the Class for all hours worked. Plaintiff assigned a 40% risk at the class certification stage and a
15 60% risk on the merits, resulting in a risk-adjusted value of \$413,280 for the waiting time
16 penalty claims.

17 Plaintiffs also argued that Defendants failed to reimburse business expenses and/or
18 unlawfully deducted expenses from Class Member wages. The maximum theoretical value for
19 this claim was \$825,100 based on an alleged failure to reimburse \$100 per week for 8,251
20 weeks. But, as with all claims, this claim was dependent on Plaintiffs succeeding on the
21 misclassification claim. And, even if Plaintiffs did succeed in that regard, Defendants argued
22 that the reimbursement claim was not suitable for class certification because it would require
23 individualized assessments as to whether a Class Member incurred unreimbursed expenses, why
24 it occurred, whether the expense was required or a personal choice of the Class Member, and
25 how frequently it happened. Defendants argued that these issues went to the merits, as well,
26 since Plaintiffs would be unable to present sufficient evidence showing the amount of
27 unreimbursed expenses, if any. Defendants also argued that Plaintiffs' reimbursement claims
28 were pre-empted by the federal Truth In Lending Act under conflict pre-emption principles.

Based on these risks and defenses, Plaintiff applied a 30% risk at the class certification stage and a 50% risk on the merits, leading to a risk-adjusted value of \$288,785.

Finally, Plaintiffs alleged that Defendants failed to provide accurate wage statements due to the failure to state accurately state various items required under Labor Code § 226(a). In total, Plaintiff estimates there were 4,566 wage statements at issue, and, with a 100% violation rate, the claim had a maximum value of \$445,000 under the \$50/\$100 standard of § 226(e). However, Defendants raised many defenses, including that: (a) these violations, if any, did not result in any “injury” under § 226(e), (b) the violations, if any, were not “knowing and intentional” and could not support the assessment of penalties, and (c) “derivative” wage statement claims are without merit. Based on these defenses, Plaintiff assigned a 20% risk at the certification stage and a 50% risk on the merits. Thus, this resulted in a risk-adjusted value for the wage statement claims of \$178,000.

In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as follows:¹

• Unpaid Wages:	\$	174,045
• Waiting Time Penalties:	\$	413,280
• Failure to Reimburse / Unlawful Deductions:	\$	288,785
• Wage Statement Penalties:	\$	<u>178,000</u>

Estimated of Total Risk-Adjusted Damages/Penalties \$ 1,054,110

The reasonableness of the settlement is apparent from the fact that the proposed settlement is approximately 42.7% discount of the risk-adjusted class damages and penalties. And while the PAGA civil penalty would have a maximum value in the seven figures, this figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h).

¹ Because the Federal Motor Carrier Safety Administration issued a finding that California’s meal and rest break rules are preempted by federal law, this analysis does not include any valuations for rest break and meal period claims. See Federal Motor Carrier Safety Administration, *California’s Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption*, 83 Fed. Reg. 67470, 67470 (Dec. 28, 2018)

Moreover, Defendants argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also argued that it is improper to stack civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

E. Plaintiffs’ Counsel are Experienced in Similar Wage-and-Hour Litigation

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

Plaintiffs’ Counsel is also highly experienced in Class/PAGA litigation, having been named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, including one of the largest PAGA awards in California’s history, collecting over \$250 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6). 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. (Mankin Decl. ¶¶ 22-27).

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 terms of the Settlement Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified of the proposed settlement.

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all class members complies with all the

1 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
2 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,
3 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
4 and how class members may elect to exclude themselves or make an objection; and (4) how class
5 members can obtain additional information. See Class Notice (Exhibit B to Mankin Decl.). In
6 addition, it will inform Class Members of their estimated settlement share.

7 The Court has wide discretion in approving the means of providing notice, so long as the
8 class representative "provide(s) meaningful notice in a form that should have a reasonable
9 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
10 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
11 disseminated directly to the Class Members by first class mail by the Settlement Administrator
12 since Defendant has the last known addresses of all class members and the Settlement
13 Administrator will perform a skip trace and update those addresses for any class notices that are
14 returned and re-send the notice.

15 The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Settlement
16 Class Members with all due process protections required by the United States Constitution.
17 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
18 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
19 contentions or denials of the parties; (2) a statement that the court will exclude the member from
20 the class if the member so requests by a specified date; (3) a procedure for the member to follow
21 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
22 not, will bind all members who do not request exclusion; and (5) a statement that any member
23 who does not request exclusion may, if the member so desires, enter an appearance through
24 counsel. The 30-day deadline for Class Members to exclude themselves is reasonable, as it
25 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
26 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically
27 be sent a settlement check.

28 ///

1 **G. The Non-Reversionary “Checks Cashed” Distribution Ensures Maximal**
2 **Recovery for Class Members**

3 The fact that each member who does not opt out of the Settlement shall be mailed a check
4 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
5 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
6 settlement funds will revert to Defendants; instead, if any checks are not cashed before the
7 objection deadline, the funds will be transferred to the state’s unclaimed property department
8 subject to approval of the Court. Such terms are favored by Courts and demonstrate that there
9 was no collusion between counsel for the parties and that the Settlement is fair and favorable to
10 the Class Members.

11 **H. The Attorney Fee Allocation Under the Settlement Agreement is Fair**

12 Under the terms of the Settlement Agreement, Class Counsel is requesting \$150,000 in
13 attorneys’ fees and costs, which is equal to one-third of the Settlement Amount. See, *e.g. Laffitte*
14 *v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million
15 at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the
16 benefit of the class members, the trial court may determine the amount of a reasonable fee by
17 choosing an appropriate percentage of the fund created); see also *Stuart v. RadioShack Corp.*
18 (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3
19 of the total maximum settlement amount of \$4.5 million as “well within the range of percentages
20 which courts have upheld as reasonable in other class action lawsuits”); *Singer v. Becton*
21 *Dickinson and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at
22 *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods,*
23 *Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees
24 of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class actions
25 average around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.*
26 (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3
27 of common fund).

28 ///

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

4 **I. The Class Representative Service Awards are Fair and Appropriate**

5 The Settlement Agreement provides an incentive award payment of \$10,000 to each
6 Class Representative, which is reasonable given the recovery that Class Members will receive, as
7 well as the time and effort they devoted to this case. Their efforts included providing factual
8 background for the Class and PAGA complaint; providing documents and information about
9 Defendants' compensation plan; participating in phone calls to discuss litigation and settlement
10 strategy; making themselves available throughout the litigation to assist with analyzing the
11 claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
12 settlement documents. The Class Representatives also assumed significant risk in bringing this
13 litigation – namely, had they lost, they could have been ordered to pay Defendants' costs.

14 The requested service award falls within the range of incentive payments typically
15 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
16 *Enterprises, Inc.* (E.D. Cal. June 30, 2011) 2011 WL 2648879 (approving \$11,250 service award
17 to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank*
18 *National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2
19 (approving \$20,000 enhancement award to Class Representative in California wage-and-hour
20 class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D.
21 4150, 493 (approving service awards in the amount of \$15,000 each from a \$300,000 settlement
22 fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) 2006
23 U.S. Dist. LEXIS 76558, at *28 (“the court finds Plaintiff’s enhancement payments of \$15,000
24 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist.
25 LEXIS 8476, at *52 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is
26 appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal.
27 Oct. 6, 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award for
28 each Class Representative” in wage and hour settlement).

Moreover, the requested service awards are also reasonable and appropriate given that each Plaintiff agreed to a general release as part of this settlement (whereas the Class will only release the claims alleged) and, in doing so, each Plaintiff will waive other valuable claims. The relevant facts will be set forth in the Class Representative declarations and filed concurrently with the Motion for Final Approval for the Court's review and consideration.

VI. THE COURT SHOULD APPOINT SIMPLURIS AS SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties stipulated to Simpluris serving as the Settlement Administrator. Simpluris is experienced in administering class action settlements and the Settlement Agreement authorizes up to \$10,000 for Settlement Administration costs. (Mankin Decl. ¶ 35; Exhibit D to Mankin Decl). In the event that administration costs are ultimately less than \$10,000, the balance shall be added to the Net Settlement for distribution to the Class.

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Settlement Agreement stipulates that the Court schedule a hearing for final approval of the settlement approximately 120 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

November 22, 2021	Preliminary Approval (PA) hearing
December 13, 2021 (10 days plus 10 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
January 12, 2022 (30 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.

9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately March 22, 2022)	Final Approval Hearing.

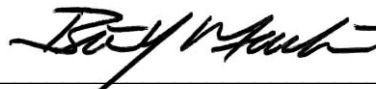
VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court grant the motion for preliminary approval of the settlement.

Dated: October 28, 2021

LAUBY, MANKIN & LAUBY LLP

BY:


 Brian J. Mankin, Esq.
 Attorneys for Plaintiff and the Proposed Class

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On October 28, 2021, I caused to be served the foregoing document(s) described as follows:

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION IN SUPPORT THEREOF; [PROPOSED] ORDER

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California.

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 28, 2021, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

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