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

JULIO MAYA HERNANDEZ,
individually, on a representative basis, and
on behalf of all others similarly situated;

Plaintiff,

vs.

ASTRO COMPANY, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendant.

Case No.: CIVDS2011280
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

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

Hearing

Date: June 21, 2022

Time: 10:00 a.m.

Dept.: S26

Complaint filed: May 29, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 21, 2022, 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, Plaintiff Julio Maya Hernandez, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Parties' class action settlement, including:

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1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
3. Appointing Plaintiff's 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 Plaintiff's 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: March 29, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Julio Maya Hernandez seeks preliminary approval of a \$350,000 wage-and-hour
4 class action settlement (the “Settlement Amount”) on behalf of approximately 240 putative class
5 members, which includes all current and former non-exempt employees of Defendant Astro
6 Company, Inc, who worked in the State of California (the “Class Members”) at any time during
7 the period of May 29, 2016 through the Preliminary Approval Date (the “Class Period”). The
8 payment to each Class Member under the Settlement Agreement is based on the number of Work
9 Weeks that each Class Member worked for Defendant during the Class Period. The Class Action
10 Settlement Agreement and Release of Claims is attached as Exhibit “A” to the Declaration of
11 Brian J. Mankin (“Mankin Decl.”), and is hereinafter referred to as the “Settlement Agreement”
12 or “S.A.” The proposed Notice of Settlement of Class Action (“Class Notice”) is attached to the
13 Mankin Declaration as Exhibit “B.”

14 Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff
15 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
16 \$116,666.66 which is 1/3 of the Maximum Settlement Amount (hereinafter, the “Settlement
17 Amount”), Plaintiff Counsel’s litigation expenses not to exceed \$15,000, Settlement
18 Administrator Costs of \$5,000, PAGA penalties of \$25,000 (of which \$18,750 or 75% will be
19 paid to the LWDA and the remaining \$6,250 or 25% will be paid to the Aggrieved Employees on
20 a pro rata basis), and a Service Payment of \$7,500 to Plaintiff Julio Maya Hernandez (“Class
21 Representative”). (S.A. ¶ 47(a-h)).

22 After all Court-approved deductions from the Settlement Amount, it is estimated that
23 \$180,833.34 will be available to pay the approximately 240 Class Members, as follows:

24

	Total Amount
<i>Gross Settlement Amount</i>	\$ 350,000.00
Attorneys’ Fees (1/3)	\$ 116,666.66
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 5,000
PAGA Penalties	\$ 25,000.00
Class Representative’s Service Award	\$ 7,500
<i>Net Settlement Amount</i>	\$ 180,833.34

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1 Assuming 240 Class Members, the average payment to each class member will be
2 approximately \$753.47 each (\$180,833.34 / 240). Of course, the actual payment will be
3 calculated on a pro-rata basis according to the number of Workweeks Worked by each Class
4 Member. Assuming an estimated 21,900 weeks worked, each Workweek will have a value of
5 approximately \$8.25/week on average. In addition, approximately 125 Aggrieved Employees
6 (*i.e.*, individuals who worked during the PAGA Period starting on May 29, 2019, will receive a
7 pro rata share of the \$6,250 PAGA Penalties (accounting for 25% of the total \$25,000
8 allocation). Moreover, the Aggrieved Employees collectively worked approximately 10,950
9 weeks during the PAGA Period. (Mankin Decl., ¶ 9).

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

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

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1 **II. BACKGROUND**

2 **A. THE SETTLEMENT CLASS**

3 The Class is defined as follows:

4 All current and former non-exempt employees of Defendant Astro
5 Company, Inc., who worked in California at any time between
6 May 29, 2016 and the Preliminary Approval Date. (S.A. ¶ 37).

7 **B. PROCEDURAL HISTORY**

8 On May 13, 2020, Plaintiff 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 Defendant requesting the production
11 of his personnel and timekeeping records in order to further evaluate his wage and hour claims.
12 (Mankin Decl., ¶ 12).

13 Thereafter, Plaintiff filed a complaint that alleges class and PAGA claims, including: (1)
14 failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to
15 provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse for business
16 expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage
17 statements, (8) unfair and unlawful competition pursuant to Business and Professions Code
18 §17200 *et seq.*, and (9) related claims under PAGA. (Mankin Decl., ¶ 13).

19 Defendant retained counsel and vehemently disputed the claims. However, prior to
20 taking depositions, conducting discovery, and filing a disputed motion for class certification, the
21 parties agreed to explore a resolution through mediation. In preparation for the mediation, the
22 Parties informally exchanged documents and information that allowed both sides to calculate the
23 potential damages and evaluate potential risk, including extensive policies and procedures
24 pertaining to each claim alleged, and statistics relating to the number of current and former
25 employees, number of shifts, pay periods and other things. In this regard, Defendant provided a
26 comprehensive sampling of timekeeping and payroll records of the Class Members. This robust
27 sampling enabled both parties to take a deep dive into the claims. Additionally, during this
28 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,

1 including matters related to the calculation of damages, trial, and appellate issues and risks.
2 (Mankin Decl., ¶ 14).

3 The Parties conducted an initial mediation on November 10, 2021, but it did not result in
4 a settlement. Thereafter, the Parties exchanged additional information and documents, and
5 returned for second session with the Hon. Jonathan Cannon (Ret.) on February 7, 2022.
6 Ultimately, Judge Cannon issued a mediator's proposal calling for a class-wide settlement for
7 \$350,000. The Parties accepted the mediator's proposal and memorialized the terms of the
8 settlement in a long-form Settlement Agreement. (Mankin Decl., ¶ 15). The Parties now seek
9 the Court's preliminary approval of the Settlement.

10 **C. SUMMARY OF THE CLAIMS AND DEFENSES**

11 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
12 However, Defendant vigorously contested and denied Plaintiff's material allegations on the
13 merits and as to the propriety of a class action or PAGA representative action. Still, Plaintiff
14 believed there were several strong claims, which are discussed below.

15 For instance, Plaintiff alleged that Defendant issued wage statements to the Class that did
16 not comply with the requirements of Labor Code § 226. But Defendant disputed Plaintiff's wage
17 statement claim and specifically disputed that the wage statements were inaccurate or that they
18 otherwise failed to comply with Labor Code § 226. Furthermore, Defendant contended that,
19 even if Plaintiff could identify a technical error in some employees' wage statements, Plaintiff's
20 claims still fail for multiple reasons, including without limitation, because Plaintiff cannot
21 establish a "knowing and intentional" violation or that Plaintiff and other employees suffered an
22 "injury" as required by Labor Code § 226(e). (Mankin Decl., ¶ 17).

23 Plaintiff also claimed that Defendant failed to pay proper wages due to two distinct
24 violations. *First*, Plaintiff alleges that Defendant paid some Class Members on an hourly-plus-
25 piece-rate basis but that, during such workweeks, Defendant only paid overtime at 1.5 times the
26 base rate of pay. *Second*, Plaintiff claimed that many Class Members were only compensated for
27 8 hours per day, regardless of how many hours were worked. Therefore, Plaintiff argued that
28 these violations resulted in unpaid minimum wages and overtime, as well as waiting time

1 penalties under Labor Code § 203 and other derivative penalties. However, Defendant opposed
2 each of these unpaid wage claims on the merits and as to the propriety of class certification.
3 (Mankin Decl., ¶ 18).

4 Plaintiff also argued that the Class Members were often denied compliant meal and rest
5 breaks due to the nature of the work. However, Defendant argued that it provided and made
6 available meal and rest breaks to all employees, and any employee who did not take a meal or
7 rest break did so entirely of his or her own volition. In this regard, Defendant produced its
8 written policies and practices, which it argued show full compliance with the law. As such,
9 Defendant argued that these claims were without merit because, for each violation, a fact-finder
10 would have to determine why a break was noncompliant/nonexistent, because if it was by the
11 employee's choice, no liability attaches to the Defendant. (Mankin Decl., ¶ 19).

12 Despite the disputed nature of the claims, the Parties concluded that further litigation of
13 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
14 finally settled to limit further risk, expense, and protracted litigation.

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

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

17 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

18 The \$350,000 Settlement Amount is non-reversionary and will be paid out to Class
19 Members without the need to submit a claim form or take any affirmative action. It includes (1)
20 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
21 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
22 \$5,000; (4) a \$25,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
23 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
24 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶
25 47(a-h)). Defendant will separately pay its share of employer's payroll taxes and withholdings.

26 After all Court-approved deductions from the Settlement Amount, it is estimated that
27 \$180,833.34 will be available to pay the Individual Settlement Amounts to approximately 240
28 Class Members. Thus, the average settlement payment is approximately \$753.47.

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 workweeks he/she is credited
4 (Exhibit B to the Mankin Decl.). Within 10 days after entry by the Court of its Order of
5 Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of Class
6 Members containing names, addresses, telephone numbers, Social Security Numbers, and the
7 total Workweeks Worked in the Class and PAGA Periods (the “Class Data”). (S.A. ¶¶ 5, 63).

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. ¶ 64).

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. ¶ 65).

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 68). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be
22 invalid. (S.A. ¶ 68(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. ¶ 68(c)).

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

3 The amount of each Settlement Class Member's Individual Settlement Amount is tied to
4 the number of Workweeks Worked that a Settlement Class Member worked for Defendant in
5 California during the Class Period. Individual Settlement Payments will be made as follows:

6 • Defendant will calculate the total number of Work Weeks worked by each
7 Settlement Class Member during the Class Period and the aggregate total number of Work
8 Weeks worked by all Settlement Class Members during the Class Period.

9 • To determine each Settlement Class Member's estimated Individual Settlement
10 Payment, the Settlement Administrator will use the following formula: The Net Settlement
11 Amount will be divided by the aggregate total number of Work Weeks, resulting in the "Work
12 Week Value." Each Settlement Class Member's Individual Settlement Payment will be
13 calculated by multiplying his or her total number of Work Weeks during the Class Period by the
14 Work Week Value.

15 • Individual Settlement Payments will be reduced by any required deductions for
16 each Participating Class Member as specifically set forth herein, including employee-side tax
17 withholdings or deductions.

18 • The entire Net Settlement Amount will be disbursed to all Participating Class
19 Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator
20 shall proportionally increase the Individual Settlement Payment for each Participating Class
21 Member according to the number of Work Weeks worked, so that the amount actually
22 distributed to the Settlement Class equals 100% of the Net Settlement Amount.

23 (S.A. ¶ 47(c)).

24 Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties
25 based on a pro-rata basis. Thus, the \$6,250 PAGA Penalties allocated to the Aggrieved
26 Employees will be divided and paid on a Work Week basis. (S.A. ¶ 47(h)).

27 The Class Notice will inform Class Members of the estimated share and the number of
28 Work Weeks he/she worked during the Class Period. Class Members may dispute their Weeks

1 Worked if they feel they worked more weeks in the Class or PAGA Periods than Defendant's
2 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 66).

3 As noted, assuming a class size of 240 Class Members, the average payment to each class
4 member will be approximately \$753.47 each, although the actual payment will be calculated on a
5 pro-rata basis as shown above. Assuming an estimated 21,900 weeks worked, each Workweek
6 will have a value of approximately \$8.25 on average. Indeed, this is an excellent result for the
7 Class Members.

8 Moreover, it is estimated that there are 125 Aggrieved Employees who worked an
9 estimated 10,950 Workweeks during the PAGA Period. The Aggrieved Employees will share in
10 the \$6,250 PAGA award on a pro rata basis.

11 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

12 Defendant is required to deposit the Settlement Amount, along with the employers' share
13 of payroll taxes owed, with the Settlement Administrator, by the later of November 21, 2022 or
14 15 calendar days after the "Effective Date" and these funds will be used to pay: (1) the class
15 attorney fees and expenses, as approved by the Court; (2) the service awards, as approved by the
16 Court; (3) administrative expenses, as approved by the Court; (4) a \$25,000 PAGA award; and
17 (5) the aggregate of all Individual Settlement Amounts of participating Class Members. (S.A. ¶
18 69). Within 10 days after the Court's approval of the Settlement, the Settlement Administrator
19 shall issue payments to cover all court-approved payments. (S.A. ¶ 70).

20 Class Members will have 180 days to cash his/her settlement check. If a Class Member
21 fails to cash a check by the deadline, then the Settlement Administrator shall issue the unclaimed
22 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 71).

23 **F. TAX TREATMENT**

24 The Parties agree that 15 percent (15%) of each Individual Settlement Amount shall
25 constitute wages (for which each Participating Class Member will be issued an IRS Form W-2
26 for such payment), and the remaining 85 percent (85%) shall constitute interest and penalties (for
27 which each Participating Class Member will be issued an IRS Form 1099 for the interest and
28 penalty allocation). (S.A. ¶ 47(d)). Additionally, the PAGA Penalties payable to the Aggrieved

1 Employees will be classified entirely as civil penalties and shall be reported as required on an
2 IRS Form 1099. (S.A. ¶ 47(h).

3 Defendant will separately pay its share of employer payroll taxes on the sum allocated to
4 wages. (S.A. ¶ 47(a)).

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

6 In exchange for these payments, the Settlement Agreement ¶ 29 provides that the
7 Participating Class Members will release the Released Parties of the claims alleged or could have
8 been alleged based on the facts stated in the operative complaint, as follows:

9 all claims stated in the Complaint and those based solely upon the
10 facts in the Complaint, including: (a) failure to pay minimum wages,
11 (b) failure to pay overtime wages, (c) failure to provide meal
12 periods, (d) failure to provide rest breaks, (e) failure to reimburse
13 business expenses, (f) failure to failure to timely pay wages each
14 period and upon separation of employment, (g) failure to provide
accurate itemized wage statements, (i) unfair and unlawful
competition, and (j) all other claims for statutory penalties based on
the facts or claims alleged in the Complaint ("Released Claims").

15 The time governing the release (i.e., the "Release Period") shall be the same as the Class
16 Period. (S.A. ¶ 31).

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

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1 **H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS**

2 The Settlement Agreement ¶ 23 also defines the “PAGA Released Claims” as follows:

3 [A]ll PAGA claims that Plaintiff alleged against the Released
4 Parties, on behalf of Aggrieved Employees and State of California,
5 based on the facts stated in Plaintiff’s Complaint and in Plaintiff’s
6 LWDA notice letter, including all PAGA claims seeking civil
7 penalties premised upon: (a) failure to pay minimum wages, (b)
8 failure to pay overtime wages, (c) failure to provide meal periods,
9 (d) failure to provide rest breaks, (e) failure to reimburse business
10 expenses, (f) failure to failure to timely pay wages each period and
11 upon separation of employment, (g) failure to provide accurate
12 itemized wage statements, and (h) all other claims for civil penalties
13 recoverable under the Private Attorneys General Act, Labor Code
14 §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint.

15 The time governing the PAGA Released Claims is May 29, 2019 through the Preliminary
16 Approval Date (the “PAGA Period”; see S.A. ¶¶ 22 and 23). Moreover, the PAGA Released
17 Claims do not release any Aggrieved Employee’s claims for wages of statutory penalties. (S.A.
18 ¶ 23). Finally, even if an Aggrieved Employee requests exclusion from the Class settlement, that
19 individual will still be subject to the PAGA Released Claims to the fullest extent permitted by
20 law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 68(a)).

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

24 California Rule of Court 3.769(d) provides that the Court may make an order approving
25 certification of a provisional settlement class at the preliminary approval stage. It is well-
26 established that trial courts should use a “lesser standard of scrutiny” for determining the
27 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
28 *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. 19150) 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 request that this 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. Here, according to Defendant’s records, there are approximately 240 Class Members. 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 payment of wages, meal and rest breaks, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this settlement only.

2. Typicality

Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether

1 Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the
2 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
3 Defendant's meal and rest break practices, wage statements, and the provisions governing the
4 timely and complete payment of wages, which are at the core of the lawsuit.

5 3. Adequacy of Representation

6 The proposed class representative must establish that he or she will adequately represent
7 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
8 546. Specifically, Plaintiff is adequate to represent the class because he was employed by
9 Defendant during the Class Period, experienced the same wage and hour practices as the rest of
10 the Class, understood his duties as a Class Representative, has been willing to undergo the risks
11 of litigation, and has no conflict of interest.

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

16 4. Superiority

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

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

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

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

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

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

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

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

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

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

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

1 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal
2 quotation marks omitted).

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

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

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

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

27 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
28 weaknesses of this case before reaching the settlement. As described above, the settlement was

1 reached after extensive investigation and research, thorough calculations and risk evaluation, and
2 a substantial exchange of information relating to the Class Members prior to mediation. (Mankin
3 Decl. ¶¶ 12-15, 21-24).

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

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

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

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

28 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
significant legal and factual grounds for defending this action exist. First, in addition to
disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain

1 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant
2 further argued that it complied with the applicable law and that any purported deviations
3 therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the class.
4 While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always
5 a significant risk associated with class certification proceedings, which could significantly limit
6 the claims that he could pursue on a class basis.

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

11 Based upon detailed data obtained through informal discovery and information
12 exchanges, Plaintiff's counsel estimated the following data points through the date of mediation:
13 (1) approximately 240 total Class Members, (2) approximately 14,296 workweeks through
14 mediation for the Class Period, and (3) approximately 6,443 workweeks during the PAGA
15 Period through mediation. From these metrics, and when factoring in claim certification
16 probabilities and liability probabilities, Class Counsel formulated detailed damages models to
17 value the claims in preparation for mediation and to reach a realistic and reasonable resolution.

18 Plaintiff contends that the strongest claim was for wage statement violations, based on the
19 allegation that Defendant failed to include all information required by Labor Code § 226(a). The
20 maximum potential value of this claim was \$641,550 under the \$50/\$100 formula in § 226(e).
21 Defendant raised many defenses, including that: (a) these violations, if any, did not result in any
22 "injury" under § 226(e), (b) the violations, if any, were not "knowing and intentional" and could
23 not support the assessment of penalties, and (c) "derivative" wage statement claims are without
24 merit. Based on the alleged defenses, Plaintiff assigned a risk-adjusted value for the wage
25 statement claims of \$300,000.

26 Next, Plaintiff calculated the maximum potential value of the unpaid wage claim to be
27 \$484,480. After applying appropriate discounts at the class certification stage and on the merits,
28 Plaintiff estimated the risk-adjusted value of the unpaid wage claim to be approximately

1 \$200,000. And these unpaid wage claims also gave rise to Plaintiff's claim for waiting time
2 penalties under Labor Code § 203. In this respect, Plaintiff estimated that there were 160 *former*
3 Class Members during the relevant period, and those individuals earned an average daily wage of
4 \$142.50; therefore, the maximum potential waiting time penalties totaled \$684,000. However,
5 Defendant argued that it would defeat the waiting time penalty claim at the class certification
6 stage and, failing that, it would show that any underpayment of wages was not "willful" and/or
7 that Defendant had a good faith defense to imposition of waiting time penalties. While Plaintiff
8 was confident this claim would ultimately prevail, Plaintiff worked off a risk-adjusted value of
9 \$200,000 for the waiting time penalty claims.

10 In terms of the meal and rest break claims, Plaintiff calculated a maximum total value of
11 \$869,936 based on a 50% meal period violation rate (out of 50,836 applicable shifts) and a 50%
12 rest break violation rate (out of 54,889 applicable shifts). Defendant strongly opposed these
13 claims based on the argument that they fall directly into the category of impermissible
14 "individualized issues" which cannot meet class certification standards since Defendant had
15 compliant written policies the employees had ample latitude regarding whether, when, and how
16 they took their breaks. Therefore, Defendant asserted that a factfinder would have to determine
17 for each Class Member whether a break was missed and why, and why a break was
18 noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the
19 defendant. After factoring in reasonable discounts, Plaintiff's risk-adjusted value of the
20 combined meal and rest break claims was \$150,000.

21 In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff's estimate
22 the risk-adjusted class recovery as follows:

23	• Wage Statement Claim	\$ 300,000
24	• Unpaid Wage Claims	\$ 200,000
25	• Waiting Time Penalty Claim	\$ 200,000
26	• Meal and Rest Break Claims	<u>\$ 150,000</u>
27	Plaintiff's Estimate of Total Risk-Adjusted Damages	\$ 850,000

28 ///

1 The reasonableness of the settlement is apparent from the fact that the proposed
2 settlement binds Defendant to pay over 41% of the risk-adjusted class damages and penalties.
3 And while the PAGA civil penalty would have a maximum value in the seven figures, Defendant
4 points out that courts have wide latitude to reduce the amount of civil penalties “based on the
5 facts and circumstances of a particular case” and if “to do otherwise would result in an award
6 that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). Moreover,
7 Defendant argued against the merits of the underlying claims and particularly that the
8 “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and
9 rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil
10 penalty claims on top of the underlying claim. For these reasons, Plaintiff submits that the
11 agreed-upon settlement is fair and reasonable.

12 **E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
13 **LITIGATION**

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

19 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been
20 named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators),
21 having achieved large settlements and verdicts, including one of the largest PAGA awards in
22 California’s history, collecting over \$250 million for its clients, having tried class and PAGA
23 cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6). Plaintiff’s
24 counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the
25 view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk
26 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of
27 class certification and litigation. (*Id.* ¶¶ 11, 21-26).

28 ///

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

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

7 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
8 the Class Notice to the last known address of all class members complies with all the
9 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
10 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,
11 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
12 and how class members may elect to exclude themselves or make an objection; and (4) how class
13 members can obtain additional information. *See* Class Notice (Exhibit B to Mankin Decl.). In
14 addition, it will inform Class Members of their estimated settlement share.

15 The Court has wide discretion in approving the means of providing notice, so long as the
16 class representative "provide(s) meaningful notice in a form that should have a reasonable
17 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
18 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
19 disseminated directly to the class members by first class mail by the settlement administrator,
20 since Defendant has the last known addresses of all class members and the Settlement
21 Administrator will perform a skip trace and update those addresses for any class notices that are
22 returned and re-send the notice.

23 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement
24 Class Members with all due process protections required by the United States Constitution.
25 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
26 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
27 contentions or denials of the parties; (2) a statement that the court will exclude the member from
28 the class if the member so requests by a specified date; (3) a procedure for the member to follow

1 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
2 not, will bind all members who do not request exclusion; and (5) a statement that any member
3 who does not request exclusion may, if the member so desires, enter an appearance through
4 counsel. The 30-day deadline for Class Members to exclude themselves is reasonable, as it
5 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
6 legal advice in the interim. If a Member does not opt-out, then he or she will automatically be
7 sent a settlement check.

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

10 The fact that each member who does not opt out of the Settlement shall be mailed a check
11 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
12 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
13 settlement funds will revert to Defendant; instead, if any checks are not cashed before the
14 objection deadline, the funds will be transferred to the State Controller’s Office subject to
15 approval of the Court. Such terms are favored by Courts and demonstrate that there was no
16 collusion between counsel for the parties and that the Settlement is fair and favorable to the Class
17 Members.

18 **H. THE ATTORNEY’S FEES AND COSTS ALLOCATION UNDER THE SETTLEMENT**
19 **AGREEMENT IS FAIR**

20 Under the terms of the Settlement Agreement, Class Counsel is requesting \$116,666.66
21 in attorneys’ fees, which is equal to one-third of the Settlement Amount. *See, e.g. Laffitte v.*
22 *Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at
23 a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the
24 benefit of the class members, the trial court may determine the amount of a reasonable fee by
25 choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.*
26 (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3
27 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of
28 1/3 of the total settlement was “well within the range of percentages which courts have upheld

1 as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal.
2 June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of
3 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14,
4 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund
5 in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third
6 of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008)
7 No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

8 Additionally, Plaintiff is seeking up to \$15,000 in litigation costs, pursuant to the
9 Settlement Agreement.

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

13 **I. THE CLASS REPRESENTATIVE’S SERVICE AWARD REQUEST IS FAIR AND**
14 **APPROPRIATE**

15 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
16 Representative, which is reasonable given large recovery that Class Members will receive on
17 average, as well as the time and effort he devoted to this case. His efforts included providing
18 factual background for the Class and PAGA complaint; providing documents and information
19 about Defendant’s compensation plan; participating in phone calls to discuss litigation and
20 settlement strategy; making himself available throughout the litigation to assist with analyzing
21 the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
22 settlement documents. The Class Representative also assumed significant risk in bringing this
23 litigation—namely, had he lost, he could have been ordered to pay Defendant’s costs.

24 The requested service award falls within the range of incentive payments typically
25 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*
26 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving
27 \$11,250 service award to each of the two class representatives in a trucker meal break class
28 action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 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); *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (“the court finds Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement).

VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to Phoenix serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$5,000. (Mankin Decl. ¶ 31).

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 100 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

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June 21, 2022	Preliminary Approval (PA) hearing
July 11, 2022 (<i>20 days after PA</i>)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
August 10, 2022 (<i>30 days after mailing Class Notice</i>)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff 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 September 29, 2022 - 100 days after Preliminary Approval is granted)	Final Approval Hearing.

VIII. CONCLUSION

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

Dated: March 29, 2022

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 April 4, 2022, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S 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 April 4, 2022, 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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