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

RUDOLPH OLLARSABA and AGUSTIN
SELVA, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

PUMPMAN, LLC, a California Limited
Liability Company; PUMPMAN
INTERMEDIATE HOLDINGS, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVDS2008889
*[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: August 4, 2021

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 August 4, 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
Rudolph Ollarsaba and Agustin Selva, 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: June 3, 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 Rudolph Ollarsaba and Agustin Selva, individually and
4 on behalf of all others similarly situated, seeks preliminary approval of a \$395,000 wage-and-
5 hour class action settlement (the “Settlement Amount”) between Pumpman, LLC and Pumpman
6 Intermediate Holdings, LLC (“Defendants”) and the putative class members, who were
7 employed as non-exempt employees performing maintenance and repair services for water pump
8 systems out of Defendants’ Baldwin Park location.

9 Specifically, Plaintiffs seek to represent a class of similarly situated individuals who are
10 employed or have been employed by Defendants at the Baldwin Park location in California at
11 any time during the period from May 29, 2016, through the Preliminary Approval Date (the
12 “Class Period”).

13 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiffs’
14 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
15 \$131,666.66 (1/3 of the Settlement Amount), Plaintiffs’ counsel’s litigation expenses not to
16 exceed \$15,000, settlement administrator expenses of \$3,000, PAGA penalties of \$20,000 (of
17 which \$15,000 or 75% will be paid to the LWDA and the remaining \$5,000 or 25% will be paid
18 pro-rata to the Aggrieved Employees), and Service Payments not to exceed \$10,000 to each
19 Plaintiff. (S.A. ¶ 47(a-h)). The Settlement Amount is the maximum amount that will be paid
20 (except for Defendants’ share of the payroll taxes which they will separately pay).

21 After all these deductions from the Settlement Amount, it is estimated that \$205,333.34
22 will be available to pay the Individual Settlement Amounts of approximately 33 Class Members
23 who do not opt-out of the settlement, as follows:

24

	Total Amount
<i>Gross Settlement Amount</i>	\$ 395,000.00
Attorneys’ Fees (1/3)	\$ 131,666.66
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 3,000.00
PAGA Penalties	\$ 20,000.00
Class Representatives’ Service Award	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 205,333.34

25
26
27
28

1 Assuming a class size of 33 Class Members, the average payment to each class member
2 will be approximately \$6,222 each (\$205,333.34 / 33). 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 4,200 weeks worked, each Workweek will have a value of
5 approximately \$48.89 on average. In addition, Aggrieved Employees (*i.e.*, Class Members that
6 worked during the PAGA Period) will receive a pro rata share of the \$5,000 PAGA Penalties
7 (accounting for 25% of the total \$20,000 allocation). (S.A. ¶¶ 47(c), 47(h)).

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

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

22 **II. BACKGROUND**

23 **A. THE PARTIES AND THE PROPOSED SETTLEMENT CLASS**

24 Defendants employs workers that perform maintenance and repair services for water
25 pump systems. The putative Class in this case consists of:

26 All current and former non-exempt employees of Defendants and who
27 worked at the Baldwin Park location in California at any time during the
28 Class Period. (S.A. ¶ 37).

1 **B. PROCEDURAL HISTORY**

2 Plaintiff Ollarsaba submitted a letter to the California Labor Workforce Development
3 Agency (the “LWDA”) for civil penalties under the Private Attorney General Act of 2004 (the
4 “PAGA”), and simultaneously sent a letter to Defendants requesting the production of his
5 personnel and timekeeping records in order to further evaluate their wage and hour claims.
6 (Mankin Decl. ¶ 12, Exhibit “C”). Plaintiff then filed a putative class and representative action
7 Complaint on May 29, 2020, alleging claims arising out of Defendants’ alleged: (1) Failure to
8 Pay Minimum Wages; (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods;
9 (4) Failure to Provide Rest Breaks; (5) Failure to Reimburse Business Expenses; (6) Failure to
10 Timely Pay Wages Each Period and Upon Separation of Employment; (7) Failure to Provide
11 Accurate Itemized Wage Statements; (8) Unfair and Unlawful Competition, and (9) related
12 PAGA claims. (Mankin Decl. ¶ 13).

13 Thereafter, Mr. Selva was added as a Plaintiff to the action. First, Plaintiffs submitted an
14 amended letter to the LWDA to exhaust Plaintiff Selva’s PAGA claim. (Mankin Decl. ¶ 14,
15 Exhibit “D”). And then on July 21, 2020, Plaintiffs filed a First Amended Complaint that added
16 Plaintiff Selva as a class representative.

17 Defendants fully denied the allegations. However, before incurring significant costs, the
18 parties agreed to explore an early resolution through mediation. In preparation for mediation,
19 the Parties agreed to an informal discovery process where information was exchanged relating to
20 the applicable policies and procedures, payroll and time keeping records, size of the class, and
21 potential value of the case. The sampling included employee wage statements, timekeeping
22 records, and payroll data that enabled Plaintiffs and our expert to fully evaluate the potential
23 claims and extrapolate the data to the entire class. During this process, Plaintiffs and their
24 counsel analyzed, researched, and investigated the potential claims of all similarly situated
25 employees. (Mankin Decl. ¶ 15).

26 On March 25, 2021, the Parties participated in a full-day mediation with Hon. Jonathan
27 Cannon (Ret.), who is a full-time mediator with extensive experience in employment matters. At
28 the conclusion of the mediation, for the parties reached a class-wide settlement for \$395,000, and

1 memorialized the terms of the settlement in a long-form Settlement Agreement (Mankin Decl. ¶
2 16; Exhibit A to Mankin Decl.). The Parties now seek the Court’s preliminary approval of the
3 Settlement.

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

5 Plaintiffs alleged numerous wage and hour violations on behalf of the Class Members,
6 and there was a particular emphasis on three alleged violations.

7 First, Plaintiffs claimed that Defendants failed to pay proper overtime due to its practice
8 of failing to include all required compensation when determining the “regular rate of pay” used
9 for overtime calculations. Plaintiffs argued that this Class-wide failure resulted in unpaid
10 overtime and other derivative penalties. (Mankin Decl. ¶ 18).

11 Second, Plaintiffs argued that they and the Class members were often denied compliant
12 meal and rest breaks due to the nature of the work. However, Defendants argued that it provided
13 and made available meal and rest breaks to all employees, and any employee who did not take a
14 meal or rest break did so entirely of his or her own volition. In this regard, Defendants argued
15 that Class Members were given so much latitude with regards to whether and how they took their
16 breaks, that a fact-finder would have to determine for each Class Member whether a break was
17 taken, missed and why, and why a break was noncompliant/nonexistent, because if it was by the
18 employee’s choice, no liability attaches to the Defendant. (Mankin Decl. ¶ 19).

19 Third, Plaintiffs alleged that Defendants’ wage statements failed to accurately state “total
20 hours worked” each period in violation of Labor Code § 226(a)(2). However, Defendants argued
21 that there was no such violation and, even if a violation was found, penalties would not apply
22 under Labor Code § 226(e) because Class members did not suffer “injury” and, further, any such
23 violations were not “knowing and intentional.” (Mankin Decl. ¶ 20).

24 Plaintiffs also alleged a number of other violations in the complaint.

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

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

27 ///

28 ///

1 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

2 The \$395,000 Settlement Amount is non-reversionary and will be paid out to Class
3 Members without the need to submit a claim form or take any affirmative action. It includes (1)
4 Plaintiffs' attorneys' fees and costs, as approved by the Court; (2) a service award of \$10,000 to
5 each Plaintiff, subject to approval by the Court; (3) settlement administrator expenses of \$3,000;
6 (4) a \$20,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
7 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
8 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶
9 47(a-h)). Defendants will separately pay their share of employer's payroll taxes and
10 withholdings.

11 After all Court-approved deductions from the Settlement Amount, it is estimated that
12 \$205,333.34 will be available to pay the Individual Settlement Amounts to approximately 33
13 Class Members. Thus, the average settlement payment is approximately \$6,222.

14 **B. NOTICE PROCEDURES**

15 The proposed Class Notice will be provided to the Class Members showing the estimated
16 amount that each Class Member will receive and the number of workweeks and Share Points
17 he/she is credited (Exhibit B to the Mankin Decl.). Within 15 business days after entry by the
18 Court of its Order of Preliminary Approval, Defendants shall provide the Settlement
19 Administrator with a list of Class Members containing names, addresses, telephone numbers,
20 Social Security Numbers, and the total Workweeks Worked in the Class and PAGA Periods (the
21 "Class Data"). (S.A. ¶¶ 5, 63).

22 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
23 the number of weeks worked for each Class Member, populate the Class Notice for each, and
24 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 64).

25 In the event that any Class Notice mailed to a Class Member is returned as having been
26 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
27 search and seek an address correction for such Class Member(s), and a second Class Notice will
28 be sent to any new or different address obtained. (S.A. ¶¶ 65).

1 **C. EXCLUSION AND OBJECTION PROCEDURES**

2 Class Members who do not timely Opt-Out of the Settlement will be deemed to
3 participate in the Settlement and shall become a Participating Class Member without having to
4 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class
5 Member must submit a written request to the Settlement Administrator no later than 30 days
6 after being mailed by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 19,
7 68). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be
8 invalid. (S.A. ¶ 68(a)).

9 The Class Notice shall inform the Class Members of their right to object to the
10 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
11 objection to the Settlement Administrator no later than the Notice Response Deadline. The
12 objection must include the case name and number and must set forth, in clear and concise terms,
13 a statement of the reasons why the objector believes that the Court should find that the proposed
14 Settlement is not in the best interest of the Class and the reasons why the Settlement should not
15 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 68(c)).

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

17 The amount of each Settlement Class Member’s Individual Settlement Amount is tied to
18 the number of Workweeks Worked that a Settlement Class Member worked for Defendants in
19 California during the Class Period. Individual Settlement Payments will be made as follows:

- 20 • Defendants will calculate the total number of Work Weeks worked by each
21 Settlement Class Member during the Class Period and the aggregate total number of Work
22 Weeks worked by all Settlement Class Members during the Class Period.
- 23 • To determine each Settlement Class Member’s estimated Individual Settlement
24 Payment, the Settlement Administrator will use the following formula: The Net Settlement
25 Amount will be divided by the aggregate total number of Work Weeks, resulting in the “Work
26 Week Value.” Each Settlement Class Member’s Individual Settlement Payment will be
27 calculated by multiplying his or her total number of Work Weeks during the Class Period by the
28 Work Week Value.

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

4 • The entire Net Settlement Amount will be disbursed to all Participating Class
5 Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator
6 shall proportionally increase the Individual Settlement Payment for each Participating Class
7 Member according to the number of Work Weeks worked, so that the amount actually
8 distributed to the Settlement Class equals 100% of the Net Settlement Amount.
9 (S.A. ¶ 47(c)).

10 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
11 based on a pro-rata basis. Thus, the \$5,000 PAGA Penalties allocated to the Aggrieved
12 Employees will be divided and paid on a Work Week basis. (S.A. ¶ 47(h)).

13 The Class Notice will inform Class Members of the estimated share and the number of
14 Work Weeks he/she worked during the Class Period. Class Members may dispute their Weeks
15 Worked if they feel they worked more weeks in the Class or PAGA Periods than Defendants’
16 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 66).

17 As noted, assuming a class size of 33 Class Members, the average payment to each class
18 member will be approximately \$5,809 each, although the actual payment will be calculated on a
19 pro-rata basis as shown above. Assuming an estimated 4,200 weeks worked, each Workweek
20 will have a value of approximately \$48.89 on average. Indeed, this is an excellent result for the
21 Class Members.

22 Moreover, it is estimated that there are 25 Aggrieved Employees who worked an
23 estimated 1,700 Workweeks during the PAGA Period. The Aggrieved Employees will share in
24 the \$5,000 PAGA award on a pro rata basis.

25 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

26 Defendants are required to deposit the Settlement Amount, along with the employers’
27 share of payroll taxes owed, with the Settlement Administrator, by the later of December 1, 2021
28 or 15 calendar days after the Effective Date and these funds will be used to pay: (1) the class

1 attorney fees and expenses, as approved by the Court; (2) the service awards, as approved by the
2 Court; (3) administrative expenses, as approved by the Court; (4) a \$20,000 PAGA award, 75
3 percent of which is to be paid to the LWDA pursuant to Labor Code § 2699(i); and (5) the
4 aggregate of all Individual Settlement Amounts of participating Class Members. (S.A. ¶ 69).
5 Within 10 days after the Court's approval of the Settlement, the Settlement Administrator shall
6 issue payments to cover all court-approved payments. (S.A. ¶ 70).

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

10 **F. TAX TREATMENT**

11 The Parties agree that one-third of each Individual Settlement Amount shall constitute
12 wages (for which each Participating Class Member will be issued an IRS Form W-2 for such
13 payment), and the remaining two-thirds shall constitute interest and penalties (for which each
14 Participating Class Member will be issued an IRS Form 1099 for the interest and penalty
15 allocation). (S.A. ¶ 47(d)). Additionally, the PAGA Penalties payable to the Aggrieved
16 Employees will be classified entirely as civil penalties and shall be reported as required on an
17 IRS Form 1099. (S.A. ¶ 47(h)).

18 Defendants will separately pay their share of employer payroll taxes on the sum allocated
19 to wages. (S.A. ¶ 47(a)).

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

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

24 all claims stated in the Complaint and those based solely upon the
25 facts in the Complaint, including: (1) failure to pay minimum wages,
26 (2) failure to pay overtime wages, (3) failure to provide compliant
27 meal periods, (4) failure to provide compliant rest breaks, (5) failure
28 to reimburse business expenses, (6) failure to timely pay wages each
period and upon separation of employment, and (7) failure to
provide accurate itemized wage statements, (8) unfair and unlawful
competition, and (9) all other claims for statutory penalties based on
the facts or claims alleged in the Complaint ("Released Claims").

1 The time governing the release (i.e., the “Release Period”) shall be the same as the Class
2 Period. (S.A. ¶ 31).

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

13 **H. AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS**

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

15 [A]ll PAGA claims that Plaintiffs alleged against the Released
16 Parties, on behalf of Aggrieved Employees and State of California,
17 based on the facts stated in Plaintiffs’ Complaint and in Plaintiffs’
18 LWDA notice letter(s), including all PAGA claims seeking civil
19 penalties that is premised upon (1) failure to pay minimum wages,
20 (2) failure to pay overtime wages, (3) failure to provide meal
21 periods, (4) failure to provide rest breaks, (5) failure to reimburse
22 business expenses, (6) failure to failure to timely pay wages each
23 period and upon separation of employment, (7) failure to provide
24 accurate itemized wage statements, and (8) all other claims for civil
25 penalties recoverable under the Private Attorneys General Act,
26 Labor Code § 2698 *et seq.* based on the facts or claims alleged in
27 the Complaint. The time period governing the PAGA Released
28 Claims shall be any time during the PAGA Period. The PAGA
Released Claims do not release any Aggrieved Employee’s claims
for wages or statutory penalties.

26 The time governing the PAGA Released Claims is May 29, 2019 to the date of
27 preliminary approval (the “PAGA Period”; see S.A. ¶¶ 22 and 23). Moreover, the PAGA
28 Released Claims do not release any Aggrieved Employee’s claims for wages of statutory

1 penalties. (S.A. ¶ 23). Finally, even if an Aggrieved Employee requests exclusion from the
2 Class settlement, that individual will still be subject to the PAGA Released Claims to the fullest
3 extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 68(a)).

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

7 California Rule of Court 3.769(d) provides that the Court may make an order approving
8 certification of a provisional settlement class at the preliminary approval stage. It is well-
9 established that trial courts should use a “lesser standard of scrutiny” for determining the
10 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
11 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
12 a settlement class, so the case management issues inherent in determining if the class should be
13 certified need not be confronted; and the trial court’s fairness review of the settlement protects
14 the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*
15 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification
16 determination and the merits of the case is further attenuated within the context of the settlement
17 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short
18 of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
19 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
20 certification, a district court need not inquire whether the case, if tried, would present intractable
21 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
22 purposes of this settlement only, Plaintiffs request that this Court provisionally certify the Class,
23 as defined above, under Code of Civil Procedure § 3150.

24 **A. NUMEROSITY AND ASCERTAINABILITY**

25 Numerosity is met if a proposed class is so large that joinder of all members would be
26 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
27 the class members can be objectively identified and given notice of the litigation without
28 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th

89, 101. Here, according to Defendants’ records, there are approximately 33 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. Plaintiffs contend that the Class was subject to common policies and practices relating to the payment of wages, the provision of 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 Plaintiffs’ claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this settlement only, that Plaintiffs assert claims regarding Defendants’ meal and rest break practices, wage statements, and the provisions governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. Adequacy of Representation

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

///

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

4. Superiority

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

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

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

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

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice*, 688 F.2d at 625.

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

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

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

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

21 At the preliminary approval stage, the Court need only determine that the settlement falls
22 within the "range of possible judicial approval," so that notice to the class and the scheduling of
23 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
24 preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies .
25 . . and [the settlement] appears to fall within the range of possible approval." *Manual For*
26 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A "presumption
27 of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2)
28 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)

counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

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

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

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

Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the settlement. As described above, the settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial exchange of information relating to the Class Members prior to mediation. (Mankin Decl. ¶¶ 15, 24-26).

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

To evaluate a settlement, the parties must provide the trial court with “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that

1 the class could recover was not necessary:

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

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

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

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

1 Based upon detailed data obtained through informal discovery and information
2 exchanges, Plaintiffs' counsel estimated the following data points through the date of mediation:
3 (1) approximately 33 total Class Members, (2) approximately 4,200 workweeks during the Class
4 Period, (3) approximately 25 Aggrieved Employees, and (4) approximately 1,700 workweeks
5 during the PAGA Period. From these metrics, and when factoring in claim certification
6 probabilities and liability probabilities, Class Counsel formulated detailed damages models to
7 value the claims in preparation for mediation and to reach a realistic and reasonable resolution.

8 Plaintiffs contend that their strongest claim was for unpaid overtime, based on the
9 allegation that Defendants failed to include all required compensation in the "regular rate of pay"
10 calculations, resulting in a class-wide underpayment of overtime. Based on the data, this claim
11 only occurred during approximately 998 workweeks and the unpaid overtime claim only had a
12 value of \$49,900. However, Plaintiffs also alleged that the underpayment resulted in the failure
13 to pay all wages owed upon separation of employment, leading to violations of Labor Code §§
14 201 – 202 which trigger waiting time penalties under Labor Code § 203. Based on data showing
15 there were 12 *former* Class Members impacted, Plaintiffs calculated the maximum potential
16 waiting time penalties at \$86,400. Thus, this overtime claim had a combined value (including
17 waiting time penalties) of \$136,600. Although Defendants raised a variety of defenses, Plaintiffs
18 believed that this claim was very strong and had a high likelihood of success at class certification
19 on the merits. As such, Plaintiffs did not assign any risk at certification and only a 10% risk on
20 the merits, leading to a risk-adjusted value of \$122,940 for the overtime claim.

21 Next, Plaintiffs' claims for meal and rest break violations focused on the theory that
22 employees did not receive adequate breaks, and thus were owed a wage premium for each
23 violation. Based on an analysis of Defendants' payroll and timekeeping records, Plaintiffs
24 alleged there were a total of 6,670 meal period violations and 9,126 rest break violations. Thus,
25 the maximum potential damages for the meal and rest break claims totaled \$379,080. However,
26 this violation rate failed to account for various risks and defenses, such as the argument that, for
27 every allegedly noncompliant break, a fact-finder would have to determine for each Class
28 Member whether a break was missed and why, and why a break was noncompliant/nonexistent,

1 because if it was by the employee's choice, no liability attaches to the Defendants. Based on the
2 facts and corresponding defenses, Plaintiffs assigned a 20% risk at class certification and a 20%
3 risk on the merits. In sum, this placed a total risk-adjusted value of \$242,611 on the meal and
4 rest break claims.

5 Finally, Plaintiffs alleged that Defendants failed to provide accurate wage statements due
6 to the failure to state total hours worked during the pay periods, as well as the derivative
7 violations discussed above. In total, Plaintiffs estimates there were 1,687 wage statements at
8 issue, and, with a 100% violation rate, the claim had a maximum value of \$167,700 under the
9 \$50/\$100 standard of § 226(e). However, Defendants raised many defenses, including that: (a)
10 these violations, if any, did not result in any "injury" under § 226(e), (b) the violations, if any,
11 were not "knowing and intentional" and could not support the assessment of penalties, and (c)
12 "derivative" wage statement claims are without merit. These defenses all went to the merits, not
13 to defeating class certification. Thus, Plaintiffs did not assign a risk at the class certification
14 stage and only applied a 20% risk on the merits. Thus, this resulted in a risk-adjusted value for
15 the wage statement claims of \$134,160.

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

18	• Overtime and Waiting Time Penalty Claims	\$ 122,940
19	• Meal and Rest Break Claims	\$ 242,611
20	• Wage Statement Penalty Claims:	<u>\$ 134,160</u>
21	Plaintiffs' Estimate of Total Risk-Adjusted Damages	\$ 499,711

22 The reasonableness of the settlement is apparent from the fact that the proposed
23 settlement is approximately a 20.9% discount from the risk-adjusted class damages and penalties.
24 And while the PAGA civil penalty would have a maximum value in the high six figures, this
25 figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties
26 "based on the facts and circumstances of a particular case" and if "to do otherwise would result
27 in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h).
28 Moreover, Defendants argued against the merits of the underlying claims and particularly that

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

5 **E. PLAINTIFFS’ COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
6 **LITIGATION**

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

12 Plaintiffs’ Counsel is also highly experienced in Class/PAGA litigation, having been
13 named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators),
14 having achieved large settlements and verdicts, including one of the largest PAGA awards in
15 California’s history, collecting over \$200 million for its clients, having tried class and PAGA
16 cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6). Plaintiffs’
17 counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the
18 view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk
19 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of
20 class certification and litigation. (*Id.* ¶¶ 23-27).

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

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

27 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
28 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 Defendants 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 afford 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 Member does not opt-out, then he or she will automatically be
27 sent a settlement check.

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1 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
2 **MAXIMAL 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 Defendant; 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’S FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
12 **FAIR**

13 Under the terms of the Settlement Agreement, Class Counsel is requesting \$131,666.66
14 in attorneys’ fees and costs, which is equal to one-third of the Settlement Amount. *See, e.g.*
15 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33
16 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for
17 the benefit of the class members, the trial court may determine the amount of a reasonable fee
18 by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack*
19 *Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award
20 of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee
21 award of 1/3 of the total settlement was “well within the range of percentages which courts
22 have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.*
23 (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee
24 award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal.
25 Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of
26 common fund in a wage and hour class action, noting: “[f]ee awards in class actions average
27 around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal.
28 Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of

1 common fund).

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

5 **I. THE CLASS REPRESENTATIVES' SERVICE AWARD REQUEST IS FAIR AND**
6 **APPROPRIATE**

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

17 The requested service award falls within the range of incentive payments typically
18 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*
19 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (approving
20 \$11,250 service award to each of the two class representatives in a trucker meal break class
21 action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI,
22 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in
23 California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.
24 Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from
25 a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal.
26 Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 ("the
27 court finds Plaintiff's enhancement payments of \$ 15,000 each to be reasonable."); *Glass v. UBS*
28 *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 ILYM GROUP AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to ILYM Group serving as the Settlement Administrator. ILYM is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$3,000. (Mankin Decl. ¶ 32).

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

August 4, 2021	Preliminary Approval (PA) hearing
September 7, 2021 (15 business days plus 10 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
October 7, 2021 (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 Plaintiffs’ 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.

1 TBD (Approximately November 22,
2 2021)

Final Approval Hearing.

3 **VIII. CONCLUSION**

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

6 Dated: June 3, 2021

LAUBY, MANKIN & LAUBY LLP

8 BY:



9 Brian J. Mankin, Esq.

10 Attorneys for Plaintiffs and the Proposed
11 Class
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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 June 3, 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.

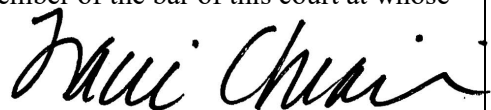
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 June 3, 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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