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

BOBBY MOODY, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DURA TECHNOLOGIES, INC, a Wyoming
Corporation; HAWKEYE INDUSTRIES
INC., a Georgia Corporation; REVCHEM
COMPOSITES, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVDS2008887

*[Assigned to Hon. judge David Cohn, Dept
S26, for all purposes]*

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

Hearing

Date: March 23, 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 March 23, 2021, at 10:00 am 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
Bobby Moody, 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' Joint Stipulation of
Class Action Settlement and Release of Claims (the "Settlement Agreement"), including:

1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiff Bobby Moody as class representative for purposes of settlement only;
3. Appointing Brian Mankin and Peter Carlson 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 Settlement Agreement; the proposed Order granting Preliminary Approval of the Class Action 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 1, 2021

LAUBY, MANKIN & LAUBY LLP

BY:



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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	3
A.	THE PARTIES AND THE PROPOSED SETTLEMENT CLASS	3
B.	PROCEDURAL HISTORY	3
C.	SUMMARY OF THE CLAIMS AND DEFENSES	4
III.	SUMMARY OF THE PROPOSED SETTLEMENT	6
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	6
B.	NOTICE PROCEDURES	6
C.	EXCLUSION AND OBJECTION PROCEDURES	7
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	7
E.	TIMING OF SETTLEMENT DISBURSEMENTS	8
F.	TAX TREATMENT	8
G.	PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS	9
IV.	PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	10
A.	NUMEROSITY AND ASCERTAINABILITY	11
B.	WELL-DEFINED COMMUNITY OF INTEREST	11
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	12
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT	12
B.	THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS	14
C.	THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	14
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS	14
E.	PLAINTIFF'S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION	18
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES	18
G.	THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS	20
H.	THE ATTORNEY'S FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR	20
I.	THE CLASS REPRESENTATIVE'S SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE	21
VI.	THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT ADMINISTRATOR	22
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING	22
VIII.	CONCLUSION	23

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Bobby Moody, individually and on behalf of all others
4 similarly situated, seeks preliminary approval of a \$350,000 wage-and-hour class action
5 settlement (the “Maximum Settlement Amount” or “Settlement Amount”) between the putative
6 class members and Defendants Dura Technologies, Inc., Hawkeye Industries Inc., and/or
7 Revchem Composites, Inc.

8 Plaintiff seeks to represent a class of similarly situated non-exempt (hourly-paid)
9 employees employed by Defendants in California (the “Class” or “Class Members”) at any time
10 during the period from May 29, 2016, through February 26, 2021 (the “Class Period”). The Joint
11 Stipulation of Class Action Settlement and Release of Claims is attached as Exhibit “A” to the
12 Declaration of Brian J. Mankin (“Mankin Decl.”), submitted herewith, and is hereinafter referred
13 to as the “Settlement Agreement” or “S.A.” The proposed Class Notice is attached to the
14 Mankin Declaration as Exhibit “B.”

15 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff
16 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
17 \$116,666.66 (1/3 of the Settlement Amount), Plaintiff Counsel’s litigation expenses not to
18 exceed \$15,000, settlement administrator expenses not to exceed \$7,000, PAGA penalties of
19 \$25,000 (of which \$18,750 or 75% will be paid to the LWDA and the remaining \$6,250 or 25%
20 will be paid to the Class Members), a Service Payment of \$7,500 to Plaintiff Bobby Moody.
21 (S.A. ¶ 64(a-d)).

22 After all Court-approved deductions from the Settlement Amount, it is estimated that
23 \$184,583.34 will be available to pay the Individual Settlement Payments of approximately 150
24 Class Members who do not opt-out of the settlement, as follows:

25 ///

26 ///

27 ///

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	Total Amount
<i>Gross Settlement Amount</i>	\$350,000
Attorneys' Fees (1/3)	\$116,666.66
Litigation Costs	\$15,000
Administrator Costs	\$7,000
PAGA payment to LWDA (75% of \$25k award)	\$18,750
Class Representative's Service Award	\$7,500
<i>Net Settlement Amount</i>	\$184,583.34

After all court approved deductions from the Gross Settlement Amount, it is estimated that each Class Member will receive approximately \$1,230 on average. However, the Individual Settlement Payments will be paid on a pro-rata basis based on the number of Weeks Worked during the Class Period, so a four-year employee stands to recover twice as much as a two-year employee, and so on. From the start of the Class Period through mediation, Defendants reported that the Class Members collectively worked approximately 10,750 Work Weeks. Assuming this number proportionally increases to 11,000 Work Weeks through the end of the Class Period, then the net value per Work Week will be approximately \$16.75.

The settlement is non-reversionary and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Class Notice containing information about his/her share, the opportunity to dispute the number of Weeks Worked by the Class Member, and the opportunity to opt-out or object to the settlement. All Class Members who do not affirmatively opt-out will receive a settlement check upon the Court granting final approval.

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

1 **II. BACKGROUND**

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

3 Defendants manufacture and supply paint and chemical coating products to various
4 industries. Plaintiff and the Class Members were employed by Defendants in California as non-
5 exempt workers at various times during the Class Period.

6 The putative Class in this case consists of:

7 All persons who, during the Class Period, have previously been or
8 currently are employed in California by Defendants, as an hourly-paid,
non-exempt employee. (S.A. ¶ 2).

9 Those employees who fall within the PAGA statutory period are referred to as PAGA
10 Group Members, which consists of:

11 All persons who, during the PAGA Period [of May 29, 2019, through
12 February 26, 2021], have previously been or currently are employed in
13 California by Defendants, as an hourly-paid, non-exempt employee. (S.A.
¶ 22).

14 Employees who worked during the PAGA Period will divide \$6,250 (which is
15 25% of the PAGA Payment) on a pro rata basis, whereas employees who worked during
16 the longer Class Period will split the remainder of the Net Settlement Amount on a pro
17 rata basis.

18
19 **B. PROCEDURAL HISTORY**

20 On May 13, 2020, Plaintiff submitted a letter to the California Labor Workforce
21 Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act
22 of 2004 (the “PAGA”), and simultaneously sent a letter to Defendants requesting the production
23 of his personnel and timekeeping records in order to further evaluate his wage and hour claims.
24 (Mankin Decl., ¶ 10).

25 On May 29, 2020, Plaintiff filed a putative class action and representative in the Court on
26 behalf of all Class Members, alleging class and PAGA claims for: (1) failure to pay minimum
27 wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to
28 provide rest breaks, (5) failure to timely pay final wages, (6) failure to provide accurate itemized

1 wage statements, (7) unfair and unlawful competition, and (8) related PAGA claims. (Mankin
2 Decl., ¶ 11).

3 Defendants fully denied the allegations. However, before conducting extensive
4 discovery, depositions and filing the class certification motion, the parties agreed to explore an
5 early resolution through mediation. In preparation for mediation, the Parties agreed to an
6 informal discovery process where information was exchanged relating to the applicable policies
7 and procedures, payroll and time keeping records, size of the class, and potential value of the
8 case. During this process, Plaintiff and his counsel analyzed, researched, and investigated the
9 potential claims of all similarly situated employees. (Mankin Decl., ¶ 12).

10 On November 18, 2020, the parties participated in a full-day mediation with Steve
11 Serratore, who is a full-time mediator with extensive experience in employment matters. At the
12 conclusion of the mediation, Mr. Serratore issued a mediator's proposal calling for a class-wide
13 settlement for \$350,000. The Parties accepted the mediator's proposal, and memorialized the
14 terms of the settlement in a long-form Settlement Agreement (Mankin Decl., Exhibit "A"). The
15 Parties now seek the Court's preliminary approval of the Settlement.

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

17 Plaintiff alleged numerous wage and hour violations on behalf of the non-exempt
18 employees. However, Defendants vigorously contested and denied each of Plaintiff's material
19 allegations on the merits and as to the propriety of a class action or PAGA representative action,
20 as discussed herein. (Mankin Decl., ¶ 14).

21 First, Plaintiff alleged that Defendant failed to pay proper overtime due to the failure to
22 include these earned and nondiscretionary bonuses in the calculations for the applicable overtime
23 rate of pay, leading to a violation on each such occasion. In response, Defendant argued that
24 these were discretionary payments that were properly excluded from the overtime rate. And
25 Defendants also argued that, regardless of the merits of the claim, any purported violation was
26 extremely limited in scope with only 54 former employees receiving bonuses. (Mankin Decl., ¶
27 15).

28 ///

1 Second, Plaintiff raised an additional claim for unpaid overtime based on an allegedly
2 invalid alternative workweek schedule (“AWS”). However, Defendant vehemently opposed this
3 claim and argued that all employees that worked an AWS did so under a valid election that was
4 properly reported to the Department of Industrial Relations as required. (Mankin Decl., ¶ 16).

5 Third, Plaintiff argued that certain Class Members were subjected to violations when
6 Defendants deducted 30 minutes of pay from shifts despite that no meal period appears in the
7 timekeeping records (the “auto-deduct” claim). But Defendants claimed that there was no “auto-
8 deduct” policy in place and that all Class Members were provided compliant meal periods.
9 (Mankin Decl., ¶ 17).

10 Fourth, Plaintiff sought waiting time penalties under Labor Code §§ 201 – 203 for each
11 *former* employee due to the violations discussed above. Defendants opposed this claim on the
12 merits by arguing that this claim is solely derivative of the claims above, and that Defendants
13 would defeat those claims at the class certification stage or on dispositive motion. (Mankin
14 Decl., ¶ 18).

15 Fifth, Plaintiff alleged that Defendants failed to provide compliant meal periods and rest
16 breaks. Specifically, Plaintiff argued that Defendant engaged in systemic meal period violations
17 relating to late first meals, short meal periods (less than 30 minutes in length) and no second
18 meal periods for shifts over 12 hours. However, Defendant argued that it has fully compliant
19 meal and rest break, that all breaks were made available and missed or short breaks were solely
20 the decision of the employee. (Mankin Decl., ¶ 19).

21 Lastly, Plaintiff raised claims for wage statement violations due to the to the failure to
22 accurately state total hours worked for every pay period with an auto-deduct. However,
23 Defendants again opposed this claim and argued that, even if there was merit to the auto-deduct
24 theory (which Defendants denied), statutory § 226(e) penalties are not proper for these type of
25 “derivative” violations. (Mankin Decl., ¶ 20).

26 Despite the disputed nature of the claims, the Parties concluded that further litigation of
27 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
28 finally settled in order to limit further risk, expense and protracted litigation.

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

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

3 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

4 The \$350,000 Settlement Amount is non-reversionary and will be paid out to Class
5 Members without the need to submit a claim form or take any affirmative action. It includes (1)
6 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
7 Plaintiff, as approved by the Court; (3) settlement administrator expenses, not to exceed \$7,000;
8 (4) a \$25,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
9 California Labor Code § 2699(i); and (5) the aggregate of all Individual Settlement Payments of
10 the Participating Class Members. (S.A. ¶ 19, 64).

11 After all Court-approved deductions from the Settlement Amount, it is estimated that
12 \$184,583.34 will be available to pay the Individual Settlement Payments to approximately 150
13 Class Members. The average settlement payment to the Class Members is approximately \$1,230
14 each.

15 **B. NOTICE PROCEDURES**

16 The proposed Class Notice will be provided to the Class Members showing the estimated
17 amount that each Class Member will receive and the number of Work Weeks he/she is credited
18 (Exhibit "B" to the Mankin Decl.). Within 30 days after entry by the Court of its Order of
19 Preliminary Approval, Defendants shall provide the Settlement Administrator with a list of Class
20 Members containing the pertinent contact information and the Weeks Worked data (the "Class
21 Member's Data"). (S.A. ¶¶ 7, 45(a)).

22 Within 7 days of receipt of the Class Data, the Settlement Administrator shall calculate
23 the number of Work Weeks Worked for each Class Member, populate the Class Notice for each,
24 and send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 45(b)).

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. ¶ 45(c)).

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. (S.A. ¶ 46(a)). In order to Opt-Out of the
5 Settlement, the Class Member must submit a written request to the Settlement Administrator no
6 later than 45 days after being mailed by the Settlement Administrator (“Exclusion Period”).
7 (S.A. ¶ 46(b)). Any Opt-Out request that is not postmarked by the Notice Response Deadline
8 will be invalid.

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 Exclusion Period. The objection must
12 include the case name and number and must set forth, in clear and concise terms, a statement of
13 the reasons why the objector believes that the Court should find that the proposed Settlement is
14 not in the best interest of the Class and the reasons why the Settlement should not be approved,
15 including the legal and factual arguments supporting the objection. (S.A. ¶ 46(c-e)).

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

17 For Class Members, the Settlement Administrator shall divide the Net Settlement
18 Amount by the total number of Work Weeks Worked by the Class Members during the Class
19 Period, in order to determine the amount each Class Member is entitled to for each Work Week
20 Worked by Defendants in California (the “Workweek Value”). The Settlement Administrator
21 will multiply the Workweek Value by the total number of Weeks Worked that each Class
22 Member worked and deduct the employees share taxes and withholding attributable to wages to
23 arrive at the Individual Settlement Amount for that Class Member. (S.A. ¶ 59). The Class Notice
24 will inform Class Members of his/her estimated share and the number of Weeks Worked during
25 the Class Period. Class Members may dispute their Weeks Worked if they feel they worked
26 more weeks in the Class Period in California than Defendants’ records show by timely
27 submitting evidence to the Settlement Administrator. (S.A. ¶ 48).

28 ///

1 As noted above, assuming a class size of 150 Class Members, the average payment to
2 each class member will be approximately \$1,230 each, although the actual payment will be
3 calculated on a pro-rata basis according to the number of Weeks Worked by each employee
4 worked during the Class Period.

5 Additionally, those employees who worked during the PAGA Period (i.e., “PAGA Group
6 Members”) will split the \$6,250 Aggrieved Employee allocation on a pro rata basis similar to the
7 method for calculating Class Members’ Settlement Shares. (S.A. ¶ 60).

8 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

9 Within 20 days after the Effective Date, Defendants shall deposit the Maximum
10 Settlement Amount with the Settlement Administrator to pay: (1) the class attorney fees and
11 expenses, as approved by the Court; (2) the service award, as approved by the Court; (3)
12 administrative costs, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all
13 Individual Settlement Payments of participating Class Members. (S.A. ¶ 54). Defendants shall
14 also pay their share of payroll taxes, as directed by the Settlement Administrator. Within 14 days
15 thereafter, the Settlement Administrator shall issue payments to cover all court-approved
16 payments. (S.A. ¶ 54).

17 Class Members will have 180 days to cash his/her settlement check. If a Class Member
18 fails to cash his check by the deadline, then the Settlement Administrator shall issue the
19 unclaimed funds to the State Controller’s Office for the State of California in the name of the
20 Class Member. (S.A. ¶ 55-56).

21 **F. TAX TREATMENT**

22 The Parties agree that 20% of each Individual Settlement Payment shall constitute wages
23 (for which each participating Class Member will be issued an IRS Form W-2 for such payment),
24 and the remaining 80% shall constitute interest and penalties for which each participating Class
25 Member will be issued an IRS Form 1099 for the interest and penalty allocation). (S.A. ¶ 61).

26 Defendants’ share of employer payroll taxes on the sum allocated to wages (i.e., the
27 “Employer Payroll Tax”) will be paid separately by Defendants, and thus will not be deducted
28 from the Settlement Amount. (*Id.*)

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

2 In exchange for these payments, the Settlement Agreement ¶ 66 provides that the
3 Participating Class Members will release the Released Parties of the claims and causes of action
4 alleged in the operative Complaint, including but not limited to any theory of liability that could
5 have been alleged within the causes of action, as follow:

6 [A]ll claims, demands, rights, liabilities, and causes of action that were or could
7 have been brought against the Releasees in the Action based on the facts,
8 allegations or issues set forth in the Action (the "Released Claims"). Released
9 Claims for Class Members who worked for Defendants in California during the
10 Class Period shall have their claims released during the Class Period. The
11 Released Claims release all causes of action and claims that were alleged in the
12 Action or reasonably could have been alleged based on the facts and legal theories
13 contained in the operative complaint, including, but not limited to, all of the
14 following claims for relief: (a) failure to pay all minimum and overtime wages
15 due; (b) failure to provide meal periods or compensation in lieu thereof; (c) failure
16 to provide rest periods or compensation in lieu thereof; (d) failure to pay wages
17 timely at time of termination or resignation; (e) failure to provide complete,
18 accurate wage statements; (f) unfair business practices that could have been
19 premised on the claims, causes of action or legal theories of relief described above
20 or any of the claims, causes of action or legal theories of relief pleaded in the
21 operative complaint; and (g) all claims under PAGA that could have been
22 premised on the claims, causes of action or legal theories described above or any
of the claims, causes of action or legal theories of relief pleaded in Plaintiff's
Complaint; any claim for costs and attorneys' fees and expenses, and any claim
arising from the claims described above under applicable federal, state, local or
territorial law as well as applicable regulations and Wage Orders. Participating
Class Members who cash their checks are deemed to have waived all claims
under the settlement inclusive of claims under the Fair Labor Standards Act
("FLSA"). Participating Class Members who do not cash their checks shall be
deemed to waive all claims under the Settlement that were or could have been
pled in Plaintiff's Complaint based on the allegations in the Plaintiff's Complaint
except for a claim under the FLSA.

23 The time governing the release shall be the Class Period. (S.A. ¶ 66).

24 Additionally, all PAGA Group Members will release all PAGA claims that were alleged
25 or counsel have been alleged in the Complaint. (S.A. ¶ 67).

26 It is understood and agreed that the Settlement Agreement will not release any person,
27 party or entity from claims, if any, by Class Members for workers compensation, unemployment,
28 or disability benefits of any nature, nor does it release any claims, actions, or causes of action

1 which may be possessed by Settlement Class Members under state or federal discrimination
2 statutes including, without limitation, the Cal. Fair Employment and Housing Act, the Cal.
3 Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.;
4 the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.;
5 the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee
6 Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and all of their
7 implementing regulations and interpretive guidelines.

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

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

28 ///

1 **A. NUMEROSITY AND ASCERTAINABILITY**

2 Numerosity is met if a proposed class is so large that joinder of all members would be
3 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
4 the class members can be objectively identified and given notice of the litigation without
5 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
6 89, 101. Here, according to Defendants’ records, there are approximately 150 Class Members.
7 This figure undoubtedly satisfies the numerosity requirement.

8 **B. WELL-DEFINED COMMUNITY OF INTEREST**

9 1. Commonality

10 To justify certification, the class proponent must show that questions of law or fact
11 common to the class predominate over the questions affecting the individual members. *See*
12 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
13 *v. Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiff contends that the Class was subject to
14 common policies and practices relating to Defendant’s payment of wages, the provision of meal
15 and rest breaks, wage statements, among other things. While the Parties dispute whether a class
16 would be appropriate if the litigation were to continue, they agree to class certification for the
17 purposes of this settlement only.

18 2. Typicality

19 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
20 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
21 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
22 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
23 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
24 Defendant’s payment of wages, meal and rest break practices, and wage statements, which are at
25 the core of the lawsuit.

26 3. Adequacy of Representation

27 The proposed class representative must establish that he or she will adequately represent
28 the proposed class. *See Barboza v. Ventura Foods Digital GSM, Inc.* (2009) 179 Cal.App.4th

540, 546. Specifically, Plaintiff is adequate to represent the class because he was employed by Defendants during the Class Period, experienced the same wage and hour practices as the rest of the Class, understood his duties as Class Representative, has been willing to undergo the risk 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, Plaintiff is 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, 13150. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. Nevertheless, in considering a potential settlement for approval, a court is not to turn the

1 approval hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
2 conclusions on the contested issues of fact and law which underlie the merits of the dispute.”
3 *Officers for Justice*, 688 F.2d at 625.

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

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

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

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

26 At the preliminary approval stage, the Court need only determine that the settlement falls
27 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
28 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .

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

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

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

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

21 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
22 weaknesses of this case before reaching the settlement. As described above, the settlement was
23 reached after extensive investigation and research, thorough calculations and risk evaluation, and
24 a substantial exchange of information relating to the Class Members prior to mediation. (Mankin
25 Decl., ¶¶ 12-13, 27).

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

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

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

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

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

23 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
24 significant legal and factual grounds for defending this action exist. First, in addition to
25 disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain
26 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant
27 further argued that it complied with the applicable law and that any purported deviations
28 therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class.
29 While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always
30 a significant risk associated with class certification proceedings, which could significantly limit
31 the claims that he could pursue on a class basis.

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

5 Based upon detailed data obtained through informal discovery and information
6 exchanges, and factoring in claim certification probabilities and liability probabilities, Class
7 counsel formulated detailed damages models to value the claims in preparation for mediation
8 and in order to reach a realistic and reasonable resolution.

9 Plaintiff's strongest claim was likely for unpaid overtime due to the various theories
10 above. When the regular rate, AWS, and auto-deduct claims were combined, Plaintiff believes
11 that the maximum potential value was approximately \$240,000. However, the real value in this
12 claim was the waiting time penalties for each *former* employee, and that claim had a maximum
13 value of approximately \$470,000 for 90 former employees.

14 Defendants raised numerous defenses to the overtime claims, namely that they had a
15 compliant AWS election, that the auto-deduct issue did not exist since meal periods were taken
16 on those occasions, and that the bonuses at issue were discretionary and properly excluded from
17 the regular rate. Moreover, Defendants argued that that any underpaid wages were inadvertent,
18 sporadic, and not intentional as evidenced by the fact that Defendants had otherwise compliant
19 policies. This raised two defenses. First, Defendants argued that these facts show that any
20 infrequent and inadvertent deviations from this compliant policy and practice were
21 individualized issues and, as such, certification would not be proper. Second, Defendants argued
22 that they would defeat the claims at summary judgment because the violations (if any existed)
23 were not "willful" under the meaning of Labor Code § 203. As a result, Plaintiff applied a 30%
24 discount on this claim at the class certification stage, along with a 50% discount on the merits,
25 resulting in a risk-adjusted values \$84,000 for the overtime claims and \$164,500 for the Labor
26 Code § 203 claims.

27 Plaintiff's claims for meal and rest break violations focused on the theory that employees
28 did not receive adequate breaks, and thus were owed a wage premium for each violation. The

sampling of timekeeping records revealed a violation rate of approximately 38% for meal periods, which translated into a maximum meal premium claim of \$369,000 based on approximately 46,736 shifts. Plaintiff assumed a slightly lower violation rate for missed rest breaks (25%) and, thus, the rest break claim had a value of \$238,472. However, Defendant vigorously disputed these claims, arguing that it has fully compliant policies and procedures for meal and rest breaks, as confirmed by Plaintiff's relatively low violation rate, such that any missed meal or rest breaks were solely because the employees choose not to take them as required. In light of the risks, Plaintiff applied a 50% discount to these claims at the class certification stage, and another 50% risk on the merits. Thus, Plaintiff estimated the risk-adjusted values at \$92,250 for the meal period claims and \$59,618 for the rest break claims.

Finally, Plaintiff estimates the maximum potential penalties for the wage statement claims as \$304,500 for the class claims under the \$50/\$100 standard of § 226(e). However, based on the strength of Defendants' defenses, including that "derivative" wage statement claims are without merit, Plaintiff discounted these claims by 20% at the class certification stage and by 50% based on the merits. As a result, Plaintiff calculates the risk-adjusted value of the Labor Code § 226 claims to be \$180,550.

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

• Unpaid Overtime Claims	\$ 84,000
• Labor Code §§ 201 – 203 Claims	\$ 164,000
• Meal Break Claims	\$ 92,250
• Rest Break Claims	\$ 59,618
• Wage Statement Claims	<u>\$ 121,800</u>
Total Risk-Adjusted Damages and Penalties:	\$ 522,168

While Plaintiff calculated his PAGA civil penalty claims to have a maximum value of approximately \$2 million, this figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or

1 confiscatory.” Labor Code § 2699(h). Moreover, defendant argued against the merits of the
2 underlying claims and particularly that the “wilfulness” standard and/or “good faith” defenses
3 mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also
4 argued that it is improper to stack civil penalty claims on top of the underlying claim. For these
5 reasons, the Parties submit that the agreed-upon PAGA penalties is fair and reasonable.

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

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

13 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been
14 named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators),
15 having achieved large settlements and verdicts, collecting over \$200 million for its clients,
16 having prevailed in class and PAGA trials against Fortune 100 companies, among other things.
17 (Mankin Decl., ¶¶ 2-6). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and
18 risks of this case, and are of the view that this is a fair and reasonable settlement in light of the
19 nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state
20 of the law, and uncertainties of class certification and litigation. (*Id.*, ¶¶ 22-25).

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 (Mankin Decl., Exhibit B). In
6 addition, it will inform Class Members of their estimated settlement share.

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

15 The Class Notice satisfies the requirements of Rule of Court 3.766 and 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 45-day deadline for Class Members to exclude themselves is reasonable, as it
25 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
26 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically
27 be sent a settlement check.

28 ///

1 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
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 Defendants; instead, if any checks are not cashed before the
7 objection deadline, the funds will be issued to the State Controller’s Office in the name of the
8 Class Member, subject to approval of the Court. Such terms are favored by Courts and
9 demonstrate that there was no collusion between counsel for the parties and that the Settlement is
10 fair and favorable to 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 \$116,666.66
14 in attorneys’ fees and costs, which is equal to one-third of the (1/3) Settlement Amount, and the
15 costs are capped at \$15,000. *See, e.g. Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480
16 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, when class
17 action litigation establishes a monetary fund for the benefit of the class members, the trial court
18 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
19 fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499
20 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount
21 of \$4.5 million) (the court noted that the fee award of 1/3 of the total settlement was “well
22 within the range of percentages which courts have upheld as reasonable in other class action
23 lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG
24 (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund);
25 *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007
26 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action,
27 noting: “[f]ee awards in class actions average around one-third of the recovery.”); *Martin v.*
28 *FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008

1 WL 5478576, at *8 (approving fees of 1/3 of common fund).

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

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

7 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
8 Representative. The proposed incentive award is reasonable given the time and effort he devoted
9 to this case. Mr. Moody's efforts included: providing factual background for the Class and
10 PAGA complaint; providing documents and information about Defendant's compensation plan;
11 participating in phone calls to discuss litigation and settlement strategy; making himself available
12 throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel
13 prepare for the mediation; and reviewing the settlement documents. The Class Representative
14 also assumed significant risk in bringing this litigation—namely, had he lost, he could have been
15 ordered to pay Defendant's costs.

16 The requested service award falls within the range of incentive payments typically
17 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*
18 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (approving
19 \$11,250 service award to each of the two class representatives in a trucker meal break class
20 action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI,
21 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in
22 California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.
23 Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from
24 a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal.
25 Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 ("the
26 court finds Plaintiff's enhancement payments of \$ 15,000 each to be reasonable."); *Glass v. UBS*
27 *Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52
28 (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 for less than the maximum costs of \$7,000. (Mankin Decl., ¶ 33).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

March 23, 2021	Preliminary Approval (PA) hearing
April 29, 2021 (37 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
June 14, 2021 (45 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 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 July 26, 2021 - 120 days after Preliminary Approval is granted)	Final Approval Hearing.
20 days after Effective Date	Defendants to deliver court approved funds to Settlement Administrator
10 days after receipt of funds	Settlement Administrator to issue checks.

VIII. CONCLUSION

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

Dated: March 1, 2021

LAUBY, MANKIN & LAUBY LLP

BY:


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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On March 1, 2021, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S 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@lmfirm.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 March 1, 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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