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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

YVONNE LABRA, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

SUTTER STREET MANUFACTURING,
INC., a California Corporation; WILLIAMS-
SONOMA, INC., a Delaware Corporation; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: 20STCV18751
[Assigned to the Hon. Ann I. Jones, Dept.
SS11]

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

Hearing
Date: TBD
Time: TBD
Dept.: SS11

Complaint filed: May 15, 2020

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on a date and time to be determined by the above-
3 captioned court, located at 312 North Spring Street, Los Angeles, California 90012, the
4 Honorable Ann I. Jones presiding in Department 11, Plaintiff Yvonne Labra will and hereby
5 does move the Court for an Order:

- 6 1. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon
7 the terms set forth in the Class Action Settlement Agreement (attached as Exhibit A
8 to the Declaration of Brian Mankin);
- 9 2. Appointing CPT Group as the third-party Settlement Administrator for mailing
10 notices;
- 11 3. Appointing Plaintiff Yvonne Labra as class representative and Brian Mankin, Peter
12 Carlson and Mehrdad Bokhour as class counsel for settlement purposes only;
- 13 4. Provisionally certifying the proposed Settlement Class pursuant to Section 382 of the
14 California Civil Code of Civil Procedure, for settlement purposes only, which
15 includes the following:
 - 16 a. All current and former non-exempt employees employed by Defendants Sutter
17 Street Manufacturing, Inc., and Williams-Sonoma, Inc., at warehouses and/or
18 manufacturing facilities in California at any time during the period of May 15,
19 2016 through March 6, 2021.
- 20 5. Approving the Notice of Settlement of Class Action (attached as Exhibit B to the
21 Mankin Declaration) and ordering that it be disseminated to the proposed Settlement
22 Class as provided in the Settlement Agreement;
- 23 6. Setting a hearing date to consider whether the settlement should be finally approved
24 and to award an amount for the Service Payment to the Class Representative and the
25 Attorneys' Fees and Costs Award to Class Counsel.

26 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum
27 of Points and Authorities in Support of Motion for Preliminary Approval of Class Action
28 Settlement; (3) the Declarations of Plaintiff's counsel (Brian Mankin and Mehrdad Bokhour); (4)

1 the Class Action Settlement Agreement; (5) the Notice of Settlement of Class Action; (6) the
2 [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (7) the records,
3 pleadings, and papers filed in this action; and (8) upon such other documentary and oral evidence
4 or argument as may be presented to the Court at or prior to the hearing of this Motion. As this
5 Motion is unopposed and because of the multiplicity of issues addressed, Plaintiff respectfully
6 requests relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d),
7 and Defendants do not oppose Plaintiff's request for additional pages.

8
9 Dated: March 25, 2021

LAUBY, MANKIN & LAUBY LLP

10
11 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Yvonne Labra seeks preliminary approval of a \$1,824,000 wage-and-hour class
4 action settlement (the “Settlement Amount”) on behalf of approximately 1,100 putative class
5 members (the “Class Members”), which includes all current and former non-exempt employees
6 employed by Defendants at warehouses and/or manufacturing facilities in California at any time
7 during the period of May 15, 2016 through March 6, 2021 (the “Class Period”). The payment to
8 each Class Member under the Settlement Agreement is based on the number of weeks during the
9 Class Period the Class Member was employed by Defendants in a Covered Position (as defined
10 in the Settlement Agreement) and worked at least one shift during the week (“Weeks Worked”),
11 with limited exceptions for leaves of absence and other excluded workweeks. The Class Action
12 Settlement Agreement is attached as Exhibit “A” to the Declaration of Brian J. Mankin (“Mankin
13 Decl.”), and is hereinafter referred to as the “Settlement Agreement” or “S.A.” The proposed
14 Notice of Settlement of Class Action (“Class Notice”) is attached to the Mankin Declaration as
15 Exhibit “B.”

16 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff
17 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
18 \$608,000 which is 1/3 of the Total Maximum Settlement Amount (hereinafter, the “Settlement
19 Amount”), Plaintiff Counsel’s combined litigation expenses not to exceed \$20,000, Settlement
20 Administrator Costs of \$10,500, PAGA penalties of \$50,000 (of which \$37,500 or 75% will be
21 paid to the LWDA and the remaining \$12,500 or 25% will be paid to the Class Members), and a
22 Service Payment of \$10,000 to Plaintiff Yvonne Labra (“Class Representative”). (S.A. ¶ 44(a-
23 h)).

24 After all Court-approved deductions from the Settlement Amount, it is estimated that
25 \$1,138,000 will be available to pay the approximately 1,100 Class Members, as follows:

26 ///

27 ///

28 ///

	Total Amount
<i>Settlement Amount</i>	\$1,824,000
Attorneys' Fees (1/3)	\$608,000
Litigation Costs	\$20,000
Administrator Costs	\$10,500
PAGA payment to LWDA (75% of \$50k award)	\$37,500
Class Representative's Service Award	\$10,000
<i>Net Settlement Amount</i>	\$1,138,000

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 credited Weeks Worked, 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 after the Court grants final approval. Payments to the Class Members will be on a pro-rata basis based on the number of Weeks Worked during the Class Period.

The proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement Agreement.

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED SETTLEMENT CLASS

All of the Class Members worked in one of Defendants' warehouses and/or manufacturing facilities in City of Industry, Richmond, and Fontana, California (which thus excludes Defendants' retail locations).

The Class is defined as follows:

All current and former non-exempt employees employed by Defendants Sutter Street Manufacturing, Inc. and Williams-Sonoma, Inc. at warehouses and/or manufacturing facilities in California at any time during the period of May 15, 2016 through March 6, 2021. (S.A. ¶ 33).

B. PROCEDURAL HISTORY

On May 13, 2020, Plaintiff submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act

1 of 2004 (the “PAGA”), and simultaneously sent a letter to Defendants requesting the production
2 of her personnel and timekeeping records in order to further evaluate her wage and hour claims.
3 The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the
4 right to bring PAGA claims. (Mankin Decl., ¶ 11).

5 As such, Plaintiff filed a putative class action and representative action complaint in the
6 Court alleging claims for: (a) failure to pay minimum wages, (b) failure to pay overtime wages,
7 (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay
8 final wages, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful
9 competition, and related PAGA claims. (*Id.* ¶ 12).

10 Prior to taking depositions, conducting discovery, and filing a disputed motion for class
11 certification, the parties agreed to explore a resolution through mediation. In preparation for the
12 mediation, the Parties informally exchanged documents and information that allowed both sides
13 to calculate the potential damages and evaluate potential risk, including extensive policies and
14 procedures pertaining to each claim alleged, and statistics relating to the number of current and
15 former employees, number of shifts, pay periods and other things. In this regard, Defendants
16 provided a comprehensive and detailed sampling of timekeeping and payroll records consisting
17 of approximately 50,000 daily timekeeping entries and nearly 10,000 paystubs of the Class
18 Members. This robust sampling enabled both parties and their experts to take a deep dive into
19 the claims. In total, Plaintiff’s expert evaluated and extrapolated the data of approximately 1,000
20 employees, thereby giving Plaintiff essentially a trial-ready roadmap of the claims and damages
21 in advance of mediation. Additionally, during this process, Plaintiff, her counsel, and experts
22 analyzed, researched, and investigated the potential issues, including matters related to the
23 calculation of damages, trial, and appellate issues and risks. (*Id.* ¶ 13).

24 On January 5, 2021, the parties participated in a full-day mediation with Mark Rudy, who
25 is one of the most experienced and reputable class action mediators in California. Ultimately,
26 Mr. Rudy issued a mediator’s proposal calling for a class-wide settlement for \$1,824,000. The
27 Parties accepted the mediator’s proposal and memorialized the terms of the settlement in a long-
28 form Settlement Agreement. (Mankin Decl., ¶ 14, and Exhibit “B”). The Parties now seek the

1 Court's preliminary approval of the Settlement.

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

3 Plaintiff alleged numerous wage and hour violations on behalf of the non-exempt
4 employees. However, Defendants vigorously contested and denied each of Plaintiff's material
5 allegations on the merits and as to the propriety of a class action or PAGA representative action
6 on behalf of the putative class and allegedly aggrieved employees, as discussed herein. (Mankin
7 Decl., ¶ 15).

8 First, Plaintiff alleged that, at all relevant times, Defendants utilized a rounding policy
9 that routinely undercompensated the Class Members and resulted in unpaid minimum and
10 overtime wages. However, Defendants vehemently opposed this claim, arguing that their
11 rounding policy complied with California law as described in *See's Candy Shops, Inc. v.*
12 *Superior Court*, 210 Cal.App.4th 889 (2012), among other cases, as the policy was neutral on its
13 face and in its application. (Mankin Decl. ¶ 16).

14 Plaintiff also raised other unpaid wage claims due to Defendants' alleged policy and
15 practice of requiring Class Members to undergo unpaid security checks, and also by paying the
16 Class Members on an hourly basis plus additional compensation in the form of earned bonuses
17 (*i.e.*, productivity bonuses, attendance bonuses, among others). However, Plaintiff alleged that
18 Defendants failed to include these earned and nondiscretionary bonuses in the calculations for
19 the applicable overtime rate of pay, leading to a claim for unpaid overtime wages, on the grounds
20 that overtime wages must be paid at time and one-half of the employee's base rate of pay. (*See*
21 *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, 242; *see also Huntington*
22 *Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902-903 (the payments
23 included and excluded in the calculation of the "regular rate" are generally consistent under state
24 and federal law.) (Mankin Decl. ¶ 17). Defendants alleged that they properly included all non-
25 discretionary bonuses in the regular rate of pay for overtime purposes.

26 Third, Plaintiff further alleged that Defendants failed to provide compliant meal periods
27 and rest breaks. Specifically, Plaintiff argued that Defendants engaged in systemic meal period
28 violations, including failing to provide a second meal period for shifts over 10 hours and a third

1 rest break for shifts over 10 hours. However, Defendants argued that it has fully compliant meal
2 and rest break policies and that all breaks were made available and taken by the workers in
3 compliance with applicable law. Defendants further alleged that they paid meal and rest break
4 penalties to Class Member in compliance with the law. (Mankin Decl., ¶ 18).

5 Plaintiff also claimed, among other things, that Defendants failed to timely pay final
6 wages, failed to provide accurate itemized wage statements and alleged various PAGA claims
7 arising out of the claimed violations mentioned above. However, Defendants argued that claims
8 for wage statements, waiting time penalties and PAGA penalties were derivative of Plaintiff's
9 other claims, which it argued have no merit. (Mankin Decl., ¶ 19).

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

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

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

15 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

16 The \$1,824,000 Settlement Amount is non-reversionary and will be paid out to
17 Participating Class Members without the need to submit a claim form or take any affirmative
18 action. It includes (1) Plaintiff's Attorneys' Fees and Costs Award, as approved by the Court; (2)
19 a Service Award of \$10,000 to Plaintiff, as approved by the Court; (3) Settlement Administration
20 Costs of \$10,500; (4) a \$50,000 PAGA award, 75 percent of which is to be paid to the LWDA
21 pursuant to California Labor Code § 2699(i); and (5) the aggregate of all Individual Settlement
22 Payments of the Participating Class Members. (S.A. ¶ 44(a-h)). Defendants will separately pay
23 their share of payroll tax obligations. (S.A. ¶ 44(a)).

24 After all Court-approved deductions from the Settlement Amount, approximately
25 \$1,138,000 will remain as the Net Settlement Amount. Given that there are approximately 1,100
26 Class Members, the average net recovery will be approximately \$1,035, while the actual
27 payment to each employee will be on a pro rata basis according to the number of Weeks Worked
28 during the Class Period.

1 This average net recovery is on par with (if not significantly better than) many other
2 wage and hour class action settlements approved by California state and federal courts. *See, e.g.,*
3 *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.)
4 (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A.
5 County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food*
6 *Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of
7 approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A.
8 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale*
9 *Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of
10 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D.
11 Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case
12 No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and
13 *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of
14 approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D.
15 Cal. July 11, 2016) (average net recovery of approximately \$50); *Palencia v. 99 Cents Only*
16 *Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of
17 approximately \$80).

18 **B. NOTICE PROCEDURES**

19 The proposed Class Notice will be provided to the Class Members showing the estimated
20 amount that each Class Member will receive and the number of Weeks Worked he/she is
21 credited (Exhibit "B" to the Mankin Decl.). As required by the LA County Preliminary
22 Approval Checklist, the Notice also advises: 1) how uncashed checks are handled, 2) explains
23 the Court's social distancing guidelines, 3) advises how Class Members may learn of continued
24 hearing dates, and all other required items.

25 Within 30 days after Preliminary Approval is granted, Defendants will provide the
26 Settlement Administrator with a complete list, compiled in good faith from Defendants' records,
27 of the Class Members' full names, last known addresses, telephone numbers, social security
28 numbers, and the total Weeks Worked by each Class Member during the Class Period. (S.A. ¶¶

1 4, 59). The Settlement Administrator will then populate the Class Notice for each employee,
2 obtain updated addresses using the National Change of Address Database maintained by the
3 Postal Service, and mail each Class Member the Class Notice within 14 days of receipt of the
4 Class Data. (S.A. ¶ 60).

5 In the event that any Class Notice is returned as having been undelivered, the Settlement
6 Administrator shall perform a skip trace search and seek an address correction for such Class
7 Member(s), and a second Class Notice will be sent to any new or different address obtained.
8 (S.A. ¶ 61).

9 **C. EXCLUSION AND OBJECTION PROCEDURES**

10 Class Members who do not timely opt out of the Settlement shall be deemed to
11 participate in the Settlement and shall become a Participating Class Member without having to
12 submit a claim form or take any other action. In order to opt out of the Settlement, the Class
13 Member must submit a written request to the Settlement Administrator no later than 45 days
14 after being mailed Class Notice by the Settlement Administrator (“Notice Response Deadline”).
15 (S.A. ¶ 18). Any opt-out request that is not postmarked by the Notice Response Deadline will be
16 invalid. (S.A. ¶ 64(a)). To be valid, the opt-out request must include the full name, address,
17 telephone number, last four digits of the social security number or date of birth, and signature of
18 the Class Member. *Id.*

19 The Class Notice shall inform the Class Members of their right to object to the
20 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
21 objection to the Settlement Administrator no later than the Notice Response Deadline. The
22 objection must include the case name and number, the Class Member’s full name, address,
23 telephone number, and dates of employment, and must set forth, in clear and concise terms, a
24 statement of the reasons supporting the objection and any documentation or evidence in support
25 of the objection. (S.A. ¶ 64(c)).

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

27 The Settlement Administrator shall divide the Net Settlement Amount—as defined in the
28 Settlement Agreement as the Total Maximum Settlement Amount less Attorneys’ Fees and Costs

1 Award, Service Payment to the Class Representative, Settlement Administration Costs, and
2 payment of PAGA penalties to the LWDA—by the total number of Weeks Worked by the Class
3 Members during the Class Period, in order to determine the amount to which each Class Member
4 is entitled for each Week Worked (the “Workweek Value”). The Settlement Administrator will
5 multiply the Workweek Value by the total number of Weeks Worked each Class Member
6 worked to arrive at the Individual Settlement Payment for that Class Member. (S.A. ¶ 44(c)).
7 The Class Notice will inform each Class Member of his/her estimated Individual Settlement
8 Payment and the number of Weeks Worked during the Class Period. Class Members may
9 dispute their Weeks Worked if they feel they worked more weeks in the Class Period in
10 California than Defendant’s records show by timely submitting evidence to the Settlement
11 Administrator. (S.A. ¶ 62).

12 Any work week during the Class Period in which a Class Member was also a member of
13 a different settlement class is not credited with a work week under the terms of the Settlement
14 due to having released applicable claims in prior settlements (“Excluded Workweeks”). (S.A.
15 12).

16 As noted above, assuming a class size of 1,100 Class Members, the average payment to
17 each class member will be approximately \$1,035 each, although the actual payments will be
18 calculated on a pro-rata basis.

19 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

20 The Settlement Agreement provides that Defendants shall deposit the Settlement Amount
21 within 21 days of the Effective Date (S.A. ¶ 65). Defendants shall also separately fund their
22 share of payroll taxes, as directed by the Settlement Administrator. Within 14 days of receipt,
23 the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶
24 66).

25 Each Class Member will have 180 days to cash his/her settlement check. If a Class
26 Member fails to cash the check by the deadline, then the Settlement Administrator shall issue the
27 unclaimed funds to the State Controller’s Office for the State of California in the name of the
28 Class Member. (S.A. ¶ 67).

1 **F. TAX TREATMENT**

2 The Parties agree that thirty percent (30%) of each Individual Settlement Amount shall
3 constitute wages (for which each participating Class Member will be issued an IRS Form W-2
4 for such payment), and the remaining eighty percent (70%) shall constitute interest and penalties
5 (allocated as one-third each for which each participating Class Member will be issued an IRS
6 Form 1099 for the interest and penalty allocation). (S.A. ¶ 44(d)).

7 Defendants will separately pay their share of employer payroll taxes on the sum allocated
8 to wages, which share will not be deducted from the Settlement Amount. (S.A. ¶ 44(a)).

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

10 In exchange for these payments, paragraph 25 of the Settlement Agreement provides that
11 the Participating Class Members will release certain "Released Parties" (as defined in the
12 Settlement Agreement) of the claims and causes of action alleged in the operative Complaint¹, as
13 follows:

14 [A]ll claims, demands, rights, liabilities, and causes of action that were or could
15 have been pleaded under local, state or federal law arising out of, relating to, or
16 based on any facts, transactions, events, policies, occurrences, acts, disclosures,
17 statements, omissions, or failures to act pleaded in the Complaint against
18 Defendants for the duration of the Class Period, including but not limited to claims
19 related to unpaid wages and overtime compensation, meal and rest break violations,
20 untimely payment of final wages, inaccurate itemized wage statements, unfair and
21 unlawful business practices, and failure to provide suitable seating and for civil
22 penalties under the Private Attorney General Act related to the claims above. In
23 addition, each Participating Class Member who cashes their Individual Settlement
24 Payment check shall be deemed to have released claims alleged in the operative
25 complaint or that could have been alleged based on the facts therein under the FLSA
26 ["Released Claims"].

27 The time governing the release (i.e., the "Release Period") shall conclude at the same
28 time as the Class Period. (S.A. ¶ 27).

29 ///

30 ///

¹ The Settlement Agreement will not release any claims for workers compensation, unemployment, disability benefits of any nature, nor does it release any claims under state or federal discrimination statutes.

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

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

21 **A. NUMEROSITY AND ASCERTAINABILITY**

22 Numerosity is met if a proposed class is so large that joinder of all members would be
23 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
24 the class members can be objectively identified and given notice of the litigation without
25 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
26 89, 101. Here, according to Defendants’ records, there are approximately 1,100 Class Members.
27 This figure undoubtedly satisfies the numerosity requirement.

28 ///

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

2 1. Commonality

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

11 2. Typicality

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

19 3. Adequacy of Representation

20 The proposed class representative must establish that he or she will adequately represent
21 the proposed class. *See Barboza v. Wellquest Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
22 546. Specifically, Plaintiff is adequate to represent the class because she was employed by
23 Defendants during the Class Period, experienced the same wage and hour practices as the rest of
24 the Class, understood her duties as Class Representative, has been willing to undergo the risk of
25 litigation, and has no conflict of interest.

26 Adequacy also may be established by the fact that counsel are experienced practitioners.
27 *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir.
28 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; Bokhour Decl., ¶¶ 14-19).

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

The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable” standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177

1 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
2 after determining that it is “fair, adequate and reasonable,” considering factors such as the
3 “risk, expense, [and] complexity” of continued litigation) (citations omitted). The Court enjoys
4 broad discretion in making its fairness determination, and should consider factors including, but
5 not limited to:

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

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

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

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

1 within the range of approval because there are no grounds to doubt its fairness.

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

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

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

15 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
16 weaknesses of this case before reaching the settlement. As described above, the settlement was
17 reached after extensive investigation and research, thorough calculations and risk evaluation, and
18 a substantial exchange of information and discovery relating to the Class Members prior to and
19 after mediation. (Mankin Decl., ¶¶ 13, 22).

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

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

28 ///

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

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

17 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
18 significant legal and factual grounds for defending this action exist. First, in addition to
19 disputing the merits of Plaintiff’s claims, Defendants strongly disputed that Plaintiff could obtain
20 class certification or that a representative action was manageable, arguing individualized issues
21 predominate here. Defendants further argued that they complied with the applicable law and that
22 any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff’s
23 ability to certify the class or litigate a representative action. While Plaintiff asserts that this is a
24 suitable case for certification an representative treatment, she realizes that there is always a
25 significant risk associated with class certification proceedings, which could significantly limit the
26 claims that she could pursue on a class and/or representative basis.

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

1 Based upon detailed data obtained through informal discovery and information
2 exchanges, and factoring in claim certification probabilities and liability probabilities, Class
3 Counsel formulated detailed damages models to value the claims in preparation for mediation
4 and in order to reach a realistic and reasonable resolution.

5 First, Plaintiff alleged various claims for unpaid minimum and overtime wages, including
6 based on a rounding policy, unpaid security checks and failure to include bonus payments into
7 the payment of overtime wages. Because these claims involved allegations that Defendant failed
8 to pay for small amounts of time and/or partial payments of overtime, Class counsel's expert
9 calculated Defendants' maximum exposure to be approximately \$229,881 combined. The
10 unpaid wages claims also generate various penalty claims, including waiting time penalties under
11 Labor Code section 203, which had a maximum potential value of \$1,104,833 based on 229
12 former employees. However, Defendants strongly opposed all of the unpaid wages claims, as
13 well as the waiting time penalty claim. For instance, Defendants argued that they would defeat
14 certification on the rounding claim because this is precisely the type of individualized inquiry
15 that is not appropriate for certification, as the court would have to conduct a person-by-person
16 analysis to determine if the Class Member was under the control of Defendants (if not, then the
17 time is not compensable). Likewise, Defendants opposed the unpaid security checkpoint claim
18 on the grounds that any check was neutral and only took a few seconds. With regard to the
19 failure to include bonuses into the overtime rate of pay, Defendants argued that they properly
20 included non-discretionary bonuses in the regular rate of pay, and that any potential violation
21 was not intentional. Based on these defenses, Plaintiff discounted the value of these claims by
22 50% for risk at the class certification phase as well as based on the merits of each claim,
23 resulting in a risk adjusted valuation of \$114,940 for the unpaid wage claims, and \$552,416 for
24 the waiting time penalty claim.

25 With regard to Plaintiff's meal and rest break claims, Class counsel estimated a total of
26 350,000 shifts during the applicable period. Based on an alleged 15% violation rate for the meal
27 period claims, and a 25% violation rate for the rest break claims, the maximum potential
28 damages are \$1,029,076 and \$1,871,964, respectively.

1 However, Defendants vehemently opposed these claims based on the argument that
2 Plaintiff's meal and rest period claims fall directly into the category of "individualized issues,"
3 claiming that their policies were compliant and the employees had ample latitude regarding
4 whether, when, and how they took their breaks. Further, Defendants pointed out that they paid
5 meal and rest break penalties in compliance with the law. Therefore, Defendants asserted that a
6 fact-finder would have to determine for each Class Member whether a break was missed and
7 why, and why a break was noncompliant/nonexistent, because if it was by the employee's
8 choice, no liability attaches to the defendant. Based on these arguments, Plaintiff believes there
9 is a 25% risk that the Court would deny class certification on the meal claims and 50% risk as to
10 the rest break claims.

11 Defendants also argued that even if certification were granted, they would defeat these
12 claims on the merits because Defendants utilized compliant policies and practices and they
13 would present sufficient evidence that the workers were properly provided with all breaks.
14 Moreover, Defendants argued that Plaintiff would be unable to present sufficient evidence
15 establishing the number of meal and rest period violations in order to allow a fact-finder to
16 appropriately determine damages. Plaintiff acknowledged the risks and incorporated a further
17 25% reduction. Plaintiff therefore calculates the risk-adjusted value of the meal claims to be
18 \$514,538 and the rest break claims to be \$467,991.

19 Finally, Plaintiff estimates the maximum potential penalties for the wage statement claim
20 at \$2,095,200 (based on approximately 21,370 wage statements having alleged violations).
21 However, Defendants mounted a challenge based on the argument that Plaintiff's wage
22 statements claims were merely "derivative" of the other claims discussed above and, thus,
23 Plaintiff's claims would fail. See *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th
24 1308. Based on this defense, Plaintiff assigned a 25% risk at the class certification stage and a
25 25% risk on the merits, thus creating a risk-adjusted value for the wage statement claim of
26 \$1,047,600.

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

•	Unpaid Wage Claims	\$ 114,940
•	Labor Code §§ 201 – 203 Claims	\$ 552,416
•	Meal Break Claims	\$ 514,538
•	Rest Break Claims	\$ 467,991
•	Wage Statement Claims	<u>\$ 1,047,600</u>
	Total Risk-Adjusted Damages and Penalties:	\$ 2,697,485

While Plaintiff calculated the PAGA civil penalty claims to have a maximum value in the seven-figures, this figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). Moreover, Defendants argued against the merits of the underlying claims and particularly that the “wilfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also argued that it is improper to stack civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the agreed-upon PAGA penalty is fair and reasonable.

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

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

Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, including one of the largest PAGA awards in California’s history, collecting over \$200 million for their clients, having prevailed in a class action and representative action case at trial, among other things. (Mankin Decl., ¶¶ 2-6). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and risks of this case, and

1 are of the view that this is a fair and reasonable settlement in light of the nature of the claims,
2 realistic risk adjusted value of damages, complexities of the case, the state of the law, and
3 uncertainties of class certification and litigation. (*Id.*, ¶¶ 21-24).

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

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

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

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

26 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Class
27 Members with all due process protections required by the United States Constitution. Moreover,
28 the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice

1 includes, without limitation (1) a detailed explanation of the case, including the basic contentions
2 or denials of the parties; (2) a statement that the court will exclude the member from the class if
3 the member so requests by a specified date; (3) a procedure for the member to follow in
4 requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not,
5 will bind all members who do not request exclusion; and (5) a statement that any member who
6 does not request exclusion may, if the member so desires, enter an appearance through counsel.
7 The 45-day deadline for Class Members to exclude themselves is reasonable, as it provides Class
8 Members with sufficient time to do so and, if they so choose, to seek independent legal advice in
9 the interim. If a Class Member does not opt out, then he or she will automatically be sent a
10 settlement check. (*Id.*).

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

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

21 **H. THE ATTORNEY’S FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
22 **FAIR**

23 Under the terms of the Settlement Agreement, Class Counsel is requesting \$608,000 in
24 attorneys’ fees and costs, which is equal to one-third (1/3) of the Total Maximum Settlement
25 Amount, and the costs are capped at \$20,000. *See, e.g. Laffitte v. Robert Half Int’l Inc.* (2016)
26 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier,
27 when class action litigation establishes a monetary fund for the benefit of the class members,
28 the trial court may determine the amount of a reasonable fee by choosing an appropriate

percentage of the fund created); *see also* *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

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

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

The Settlement Agreement provides a Service Payment of \$10,000 to the Class Representative. The proposed Service Payment is reasonable given the time and effort she devoted to this case. Ms. Labra’s efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Defendants’ wage and hour policies; participating in phone calls to discuss litigation and settlement strategy; making herself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement documents. The Class Representative also assumed significant risk in bringing this litigation—namely, had she lost, she could have been ordered to pay Defendants’ costs.

The requested Service Payment falls within the range of service payments typically awarded to class representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving

1 \$11,250 service award to each of the two class representatives in a trucker meal break class
2 action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI,
3 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in
4 California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.
5 Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from
6 a \$1,824,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D.
7 Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (“the
8 court finds Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS*
9 *Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52
10 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage
11 and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No.
12 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award
13 for each Class Representative” in wage an hour settlement).

14 **VI. APPOINTING THE SETTLEMENT ADMINISTRATOR**

15 Subject to the Court’s approval, the parties stipulated to CPT Group serving as the
16 Settlement Administrator. CPT Group is experienced in administering class action settlements,
17 and has provided an all-in bid of \$10,500 to administer the settlement. (Mankin Decl., ¶ 32).

18 **VII. PROCESS FOR GIVING NOTICE OF FINAL JUDGMENT**

19 The Court’s standard checklist inquires how notice of final judgment will be given to the
20 Class. Pursuant to the terms of the Settlement Agreement, Class Counsel shall provide the
21 Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and
22 the Settlement Administrator shall post the Final Judgment on its website within three (3)
23 business days of receipt. (S.A. ¶72).

24 **VIII. LWDA SUBMISSION AND SCHEDULING A FINAL APPROVAL HEARING**

25 Plaintiff has concurrently submitted the settlement and this motion to the LWDA in
26 accordance with Labor Code § 2699(1)(2). (Mankin Decl., ¶ 33, Exhibit “E”).

27 The last step in the approval process is the formal hearing, whereby proponents of the
28 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 Parties request that the Court schedule a hearing for final approval approximately 120 days after the Preliminary Approval is granted, in accordance with the following schedule:

TBD	Preliminary Approval (PA) hearing
44 calendar days after PA Order	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Class Members.
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.
Approximately 120 days after Preliminary Approval is granted	Final Approval Hearing.
21 days after Effective Date	Defendants to deliver court approved funds to Settlement Administrator
14 days after receipt of funds	Settlement Administrator to issue checks.

IX. CONCLUSION

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

Dated: March 25, 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 25, 2021, I caused to be served the foregoing document(s) described as follows:

**PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT; DECLARATIONS 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 March 25, 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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