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

JOSEPH GREENDALE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ANDERSEN DISTRIBUTION, INC., a
Delaware Corporation; ANDERSEN
LOGISTICS SACRAMENTO LLC, a
Minnesota Limited Liability Company;
ANDERSEN WINDOWS, INC., a
Minnesota Corporation; RENEWAL BY
ANDERSEN, LLC, a Minnesota Limited
Liability Company; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVDS2016569
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

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

Hearing

Date: February 1, 2023

Time: 10:00 a.m.

Dept.: S26

Complaint filed: August 3, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 1, 2023, at 10:00 a.m. or as soon thereafter as
the matter may be heard by the Honorable David Cohn in Department S26 of the San Bernardino
County Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiff
Joseph Greendale, individually and on behalf of all others similarly situated, will and hereby

1 does move the Court for entry of an Order preliminarily approving the Parties' class action
2 settlement, including:

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

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

18 Dated: January 9, 2023

LAUBY, MANKIN & LAUBY LLP

20 BY:



21 Brian J. Mankin, Esq.
22 Attorneys for Plaintiff and the Proposed
23 Class
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
A.	THE SETTLEMENT CLASS	2
B.	PROCEDURAL HISTORY	3
C.	SUMMARY OF THE CLAIMS AND DEFENSES	4
III.	SUMMARY OF THE PROPOSED SETTLEMENT	5
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	5
B.	NOTICE PROCEDURES	6
C.	EXCLUSION AND OBJECTION PROCEDURES	6
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	7
E.	TIMING OF SETTLEMENT DISBURSEMENTS	8
F.	TAX TREATMENT	9
G.	PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS	9
H.	AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS	10
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	15
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS	15
E.	PLAINTIFF'S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION	18
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES	19
G.	THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS	20
H.	THE ATTORNEY'S FEES AND COSTS 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 Plaintiff Joseph Greendale seeks preliminary approval of a \$900,000 wage-and-hour class
4 action settlement (the “Settlement Amount”) on behalf of approximately 550 putative class
5 members,¹ which includes all current and former nonexempt employees employed by
6 Defendants Andersen Distribution, Inc., Andersen Logistics Sacramento LLC, Andersen
7 Windows, Inc., and Renewal By Andersen, LLC (“Defendants”) in California at any time
8 between August 3, 2016, and November 27, 2022 (the “Class Period”).

9 Under the terms of the Settlement Agreement,² Defendants will not oppose Plaintiff
10 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
11 \$300,000 (1/3 of the Gross Settlement Amount), Plaintiff Counsel’s litigation expenses not to
12 exceed \$20,000, Settlement Administrator Costs of \$9,876.62, PAGA penalties of \$60,000 (of
13 which \$45,000 (75%) will be paid to the LWDA and the remaining \$15,000 (25%) will be paid
14 to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$5,000 to Plaintiff
15 Joseph Greendale (“Class Representative”). (S.A. ¶ 50(a-h)).

16 After all Court-approved deductions from the Settlement Amount, it is estimated that
17 \$505,123.38 will be available to pay the Class Members, as follows:

18

	Total Amount
<i>Gross Settlement Amount</i>	\$ 900,000.00
Attorneys’ Fees (1/3)	\$ 300,000.00
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 9,876.62
PAGA Penalties	\$ 60,000.00
Class Representative’s Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 505,123.38

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27 ¹ Defendant pulled data in advance of the September 6, 2022 mediation, so the numbers set forth herein are
28 reasonably extrapolated through the end of the Class Period. Defendant is in the process of pulling the final Class
Data.

² The Class Action Settlement Agreement and Release of Claims is attached as Exhibit A to the Declaration of Brian
Mankin (“Mankin Decl.”), and is hereinafter referred to as the “Settlement Agreement” or “S.A.” The proposed
Notice of Settlement of Class Action (“Class Notice”) is attached to the Mankin Declaration as Exhibit B.

1 Assuming 550 Class Members, the average payment to each class member will be
2 approximately \$918.41 (\$505,123.38 / 550). Of course, the actual payment will be calculated on
3 a pro-rata basis according to the number of Weeks Worked by each Class Member. Assuming
4 an estimated 50,000 Weeks Worked, each Week Worked will have a value of approximately
5 \$10.10 on average. In addition, approximately 330 Aggrieved Employees (*i.e.*, individuals who
6 worked during the PAGA Period starting on August 3, 2019), will receive a pro rata share of the
7 \$15,000 PAGA Penalties (accounting for 25% of the total \$25,000 allocation). Moreover, the
8 Aggrieved Employees collectively had approximately 18,000 Weeks Worked during the PAGA
9 Period. (Mankin Decl. ¶ 9).

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

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

25 **II. BACKGROUND**

26 **A. THE SETTLEMENT CLASS**

27 The Class is defined as follows:

28 All current and former non-exempt employees of Defendants in the
State of California during the Class Period. (S.A. ¶ 37).

1 **B. PROCEDURAL HISTORY**

2 At the outset of the case, Plaintiff submitted a letter to the California Labor Workforce
3 Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act
4 of 2004 (the “PAGA”), and simultaneously sent a letter to Defendants requesting the production
5 of his personnel and timekeeping records in order to further evaluate his wage and hour claims.
6 (Mankin Decl. ¶ 12).

7 On August 3, 2020, Plaintiff filed a class and representative PAGA action complaint in
8 the Court alleging claims for: (1) failure to pay minimum wages, (2) failure to pay overtime
9 wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay
10 vested vacation, (6) failure to timely pay final wages, (7) failure to provide accurate itemized
11 wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code
12 §17200 *et seq.*, and (9) related claims under PAGA. (Mankin Decl. ¶ 13).

13 Defendants retained counsel and then filed a Motion to Compel Arbitration and Stay
14 Proceedings. On August 23, 2021, this Court denied Defendants’ Motion to Compel Arbitration
15 and, thereafter, Defendants filed their Answer to Plaintiff’s Complaint on or around September
16 22, 2021. Then, On September 24, 2021, Defendants filed a Notice of Appeal regarding the
17 Court’s order denying the Motion to Compel Arbitration. However, because the Parties agreed
18 to mediation in an attempt to informally resolve this Action without need for further judicial
19 intervention, the Court of Appeal stayed all briefing deadlines. (Mankin Decl. ¶ 14).

20 In preparation for the mediation, the Parties informally exchanged documents and
21 information that allowed both sides to calculate the potential damages and evaluate potential risk,
22 including policies and procedures pertaining to each claim alleged, and statistics relating to the
23 number of current and former employees, number of shifts, weeks worked and other things.
24 Defendants also provided their written policies and practices and a robust sampling of payroll
25 and timekeeping records for Class Members. This information enabled both parties to take a
26 deep dive into the claims. Additionally, during this process, Plaintiff and his counsel analyzed,
27 researched, and investigated the potential issues, including matters related to the calculation of
28 damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 15).

1 On September 6, 2022, Plaintiff and Defendants participated in mediation before David
2 Phillips, Esq., a highly regarded wage-and-hour mediator. The matter did not resolve at
3 mediation, but the Parties continued negotiations and Mr. Phillips issued a mediator's proposal
4 which was accepted by the Parties on September 26, 2022. (Mankin Decl. ¶ 16). The Parties
5 now seek the Court's preliminary approval of the Settlement.

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

7 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
8 However, Defendants vigorously contested and denied Plaintiff's material allegations on the
9 merits and as to the propriety of a class action or PAGA representative action.

10 One of the primary claims in this action is for wage statement violations under Labor
11 Code § 226 due to the failure to state the accurate overtime rate of pay. However, Defendants
12 raised a variety of defenses to this claim, including that (1) the wage statement did, in fact, state
13 the accurate overtime rate, (2) Plaintiff would be unable to prove the required "knowing and
14 intentional" and "injury" elements under § 226(e) and, thus, no liability would attach, and (3)
15 Defendants modified their paystubs during the relevant period so, even if there violations were
16 found, the liability period ended when the wage statements were modified.

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

25 Additionally, Plaintiff alleged various unpaid wage claims, including based on the claim
26 that Plaintiff and the Class Members were paid on an hourly basis with additional earned
27 compensation (*e.g.*, bonuses), yet Defendants only paid overtime at 1.5 times the base rate of
28 pay. However, Defendants opposed each of these unpaid wage claims on the merits and as to the

propriety of class certification.

Plaintiff also alleged various other Class and PAGA claims relating to the claimed violations mentioned above. However, Defendants argued that these type of “derivative” claims have no merit.

Defendants also had a number of arguments that significantly drove down the settlement value of the case, including but not limited to the following: (1) a significant number of Class Members have signed arbitration agreements with class action waivers; (2) Plaintiff, as an interstate truck driver subject to DOT regulations, was exempt from certain California wage and hour requirements by the FMCSA and therefore not a suitable class representative; (3) the operations of the various entities named as Defendants widely differed in policy and practice, and it would have been difficult for Plaintiff to obtain class certification as to all such entities; and (4) Defendants had recently resolved a PAGA-only action as to defendant Renewal By Andersen, LLC, *Guadalupe Vargas v. Renewal by Andersen LLC, et al.*, Orange County Superior Court Case No. 30-2019-01082294-CU-OE-CXC, with an effective release date of June 15, 2021.

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

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The \$900,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff’s attorneys’ fees and costs, as approved by the Court; (2) a service award of \$5,000 to Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed \$9,876.62; (4) a \$60,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶

50(a-h)). Defendants will separately pay their share of employer payroll taxes and withholdings.

After all Court-approved deductions from the Settlement Amount, it is estimated that \$505,123.38 will be available to pay the Individual Settlement Amounts to approximately 550 Class Members. Thus, the average settlement payment is approximately \$918.41.

B. NOTICE PROCEDURES

The proposed Class Notice will be provided to the Class Members showing the estimated amount that each Class Member will receive and the number of workweeks he/she is credited (Exhibit B to the Mankin Decl.). Within 14 days after entry by the Court of its Order of Preliminary Approval, Defendants shall provide the Settlement Administrator with a list of Class Members containing names, addresses, telephone numbers, Social Security Numbers, and the total Weeks Worked in the Class and PAGA Periods (the "Class Data"). (S.A. ¶¶ 5, 67).

Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate the number of Weeks Worked for each Class Member, populate the Class Notice for each, and send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 68).

In the event that any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. (S.A. ¶ 69).

C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take other action. To Opt-Out of the Settlement, the Class Member must submit a written request to the Settlement Administrator no later than 30 days after being mailed by the Settlement Administrator ("Notice Response Deadline"). (S.A. ¶¶ 20, 72). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be invalid. (S.A. ¶ 72(a)).

The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement must submit a written objection to the Settlement Administrator no later than the Notice Response Deadline. The

objection must include the case name and number and must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the Court should find that the proposed Settlement is not in the best interest of the Class and the reasons why the Settlement should not be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 72(c)).

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Settlement Class Member's Individual Settlement Amount is tied to the number of Weeks Worked by each Settlement Class Member for Defendants during the Class Period. Individual Settlement Payments will be made as follows:

- Defendants will calculate the total number of Weeks Worked by each Settlement Class Member during the Class Period and the aggregate total number of Weeks Worked by all Settlement Class Members during the Class Period.

- To determine each Settlement Class Member's estimated Individual Settlement Payment, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Weeks Worked, resulting in the "Workweek Value." Each Settlement Class Member's Individual Settlement Payment will be calculated by multiplying his or her total number of Weeks Worked during the Class Period by the Workweek Value.

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

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

(S.A. ¶ 50(c)).

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1 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
2 based on a pro-rata basis. Thus, the \$15,000 PAGA Penalties allocated to the Aggrieved
3 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 50(h)).

4 The Class Notice will inform Class Members of the estimated share and the number of
5 Weeks Worked during the Class Period. Class Members may dispute their Weeks Worked if
6 they feel they worked more in the Class or PAGA Periods than Defendants’ records show by
7 timely submitting evidence to the Settlement Administrator. (S.A. ¶ 70).

8 As noted, assuming a class size of 550 Class Members, the average payment to each class
9 member will be approximately \$918 each, although the actual payment will be calculated on a
10 pro-rata basis as shown above. Assuming an estimated 50,000 Weeks Worked, each Week
11 Worked will have a value of approximately \$10.10 on average. Indeed, this is a good result for
12 the Class Members.

13 Moreover, it is estimated that there are 330 Aggrieved Employees who worked an
14 estimated 18,000 Weeks Worked during the PAGA Period. The Aggrieved Employees will
15 share in the \$15,000 PAGA award as set forth in the Settlement Agreement.

16 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

17 Defendants are required to deposit the Settlement Amount, along with the employers’
18 share of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
19 “Effective Date” and these funds will be used to pay: (1) the class attorney fees and expenses, as
20 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
21 expenses, as approved by the Court; (4) a \$60,000 PAGA award; and (5) the aggregate of all
22 Individual Settlement Amounts of participating Class Members. (S.A. ¶ 72). Within 10 days
23 after the Court’s approval of the Settlement, the Settlement Administrator shall issue payments to
24 cover all court-approved payments. (S.A. ¶ 73).

25 Class Members will have 180 days to cash his/her settlement check. If a Class Member
26 fails to cash a check by the deadline, then the Settlement Administrator shall issue the unclaimed
27 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 75).

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1 **F. TAX TREATMENT**

2 The Parties agree that twenty percent (20%) of the Individual Settlement Payments will
3 be allocated as wages subject to withholding of all applicable local, state and federal taxes; and
4 eighty percent (80%) will be allocated for interest and penalties (pursuant to, e.g., California
5 Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A. ¶ 50(d)).
6 Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely
7 as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 50(h)).

8 Defendants will separately pay their share of employer payroll taxes on the sum allocated
9 to wages. (S.A. ¶ 49(a)).

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

11 In exchange for these payments, the Settlement Agreement ¶ 30 provides that the
12 Participating Class Members will release the Released Parties of:

13 all claims stated in the Complaint and those based solely upon the
14 facts in the Complaint, including: (a) failure to pay minimum wages,
15 (b) failure to pay overtime wages, (c) failure to provide meal
16 periods, (d) failure to provide rest breaks, (e) failure to pay vested
17 vacation, (f) failure to timely pay wages upon separation of
18 employment, (g) failure to provide accurate itemized wage
statements, (h) unfair and unlawful competition, and (i) all other
claims that reasonably could have arisen out of the allegations made
and facts alleged in the Complaint (the "Released Class Claims").

19 The time governing the release shall be the same as the Class Period. (S.A. ¶ 54).

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

1 implementing regulations and interpretive guidelines.

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

3 The Settlement Agreement at ¶ 24 also defines the “PAGA Released Claims” as follows:

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

13 The time governing the PAGA Released Claims is August 6, 2019, through November
14 12, 2022 (the “PAGA Period”; *see* S.A. ¶¶ 23, 56). Moreover, even if an Aggrieved Employee
15 requests exclusion from the Class settlement, that individual will still be subject to the PAGA
16 Released Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA
17 Penalties. (S.A. ¶ 71(a)).

18 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
19 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
20 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

21 California Rule of Court 3.769(d) provides that the Court may make an order approving
22 certification of a provisional settlement class at the preliminary approval stage. It is well-
23 established that trial courts should use a “lesser standard of scrutiny” for determining the
24 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
25 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
26 a settlement class, so the case management issues inherent in determining if the class should be
27 certified need not be confronted; and the trial court’s fairness review of the settlement protects
28 the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*

1 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification
2 determination and the merits of the case is further attenuated within the context of the settlement
3 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short
4 of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
5 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
6 certification, a district court need not inquire whether the case, if tried, would present intractable
7 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
8 purposes of this settlement only, Plaintiff request that this Court provisionally certify the Class,
9 as defined above, under Code of Civil Procedure § 3150.

10 **A. NUMEROSITY AND ASCERTAINABILITY**

11 Numerosity is met if a proposed class is so large that joinder of all members would be
12 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
13 the class members can be objectively identified and given notice of the litigation without
14 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
15 89, 101. Here, according to Defendants’ records, there are approximately 550 Class Members.
16 This figure satisfies the numerosity requirement.

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

18 *1. Commonality*

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

26 *2. Typicality*

27 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
28 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*

1 on *Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
2 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
3 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
4 Defendants’ meal and rest break practices, wage statements, and the provisions governing the
5 timely and complete payment of wages, which are at the core of the lawsuit.

6 3. Adequacy of Representation

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

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

17 4. Superiority

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

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

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

26 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
27 particularly true in class actions where substantial resources can be conserved by avoiding the
28 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,

1 compromised, or settled without the Court’s approval. Cal. R. Ct. 3.769(a). The California Rules
2 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
3 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
4 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
5 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

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

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

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

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

1 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
2 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal
3 quotation marks omitted).

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

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

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

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

3 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
4 weaknesses of this case before reaching the settlement. As described above, the settlement was
5 reached after extensive investigation and research, thorough calculations and risk evaluation, and
6 a substantial exchange of information relating to the Class Members prior to mediation.

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

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

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

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

1 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
2 significant legal and factual grounds for defending this action exist. First, in addition to
3 disputing the merits of Plaintiff's claims, Defendants strongly disputed that Plaintiff could obtain
4 class certification, arguing a lack of commonality of the legal claims and injuries as well as a
5 lack of commonality across the various entities. Defendants further argued that they complied
6 with the applicable law and that any purported deviations therefrom were individualized in
7 nature, thereby limiting Plaintiff's ability to certify the class. Further, as noted above, Defendants
8 contested that Plaintiff was a suitable class representative to bring claims on behalf of non-DOT
9 regulated drivers and/or hourly employees of other entities. While Plaintiff asserts that this is a
10 suitable case for certification, he realizes that there is always a significant risk associated with
11 class certification proceedings, which could significantly limit the claims that she could pursue
12 on a class basis.

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

17 Based upon detailed data obtained through informal discovery and information
18 exchanges, Plaintiff's counsel estimated the following data points through the date of mediation:
19 (1) 510 class members, (2) 44,616 workweeks, (3) 179,356 shifts worked, and (4) approximately
20 13,482 wage statements during the PAGA Period.

21 Plaintiff contends that the strongest claim was for wage statement violations, based on the
22 allegation that Defendants failed to include all information required by Labor Code § 226(a).
23 The maximum potential value of this claim was \$1,338,200 under the \$50/\$100 formula in §
24 226(e). Defendants raised many defenses, including that: (a) these violations, if any, did not
25 result in any "injury" under § 226(e), (b) the violations, if any, were not "knowing and
26 intentional" and could not support the assessment of penalties, (c) "derivative" wage statement
27 claims are without merit, and (d) Defendants modified their wage statements during the relevant
28 period to remedy the alleged violations and, thus, the maximum potential violations is less than

1 the total wage statement count. Based on the alleged defenses, Plaintiff assigned a risk-adjusted
2 value for the wage statement claims of \$296,000.

3 Next, Plaintiff assigned a combined maximum value for the meal period and rest break
4 claims of \$3,870,000 based on a 65% violation rate for meal breaks and 50% for rest breaks.
5 Defendants strongly opposed these claims based on the argument that they fall directly into the
6 category of impermissible “individualized issues” which cannot meet class certification
7 standards since Defendants had compliant written policies the employees had ample latitude
8 regarding whether, when, and how they took their breaks. Therefore, Defendants asserted that a
9 factfinder would have to determine for each Class Member whether a break was missed and why,
10 and why a break was noncompliant/nonexistent, because if it was by the employee’s choice, no
11 liability attaches to the defendant. After considering these arguments, Plaintiff assigned a 50%
12 risk at class certification and another 40% on the merits, leading to a risk-adjusted value of
13 \$1,393,200.

14 For the unpaid wage claims, Plaintiff estimated that the maximum value was only
15 \$100,000 (due to small amounts of unpaid wages for each violation). However, the true value in
16 this claim was that it resulted in the failure to pay all wages owed upon separation of
17 employment, leading to violations of Labor Code §§ 201 – 202 which trigger waiting time
18 penalties under Labor Code § 203. Based on an estimated 254 *former* employees during the §
19 203 claim period, Plaintiff calculated the combined maximum value of the unpaid wage and §
20 203 claim to be \$1,640,000. Although Defendants raised a variety of defenses, Plaintiffs
21 believed that this claim was strong and had a likelihood of success at class certification and on
22 the merits. Thus, Plaintiff calculated the risk-adjusted value of the unpaid wage and § 203 claim
23 to be \$900,000.

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

3	• Wage Statement Claims	\$ 296,000
4	• Meal and Rest Break Claims	\$ 1,393,200
5	• Unpaid Wage and § 203 Claims	<u>\$ 900,000</u>
6	• Total Risk Adjusted Penalties and Damages	\$ 2,593,200

7 The reasonableness of the settlement is apparent from the fact that the proposed
8 settlement is a sizeable percentage of the risk-adjusted class damages and penalties. And while
9 the PAGA civil penalty would have a maximum value in the high six figures, this figure fails to
10 acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the
11 facts and circumstances of a particular case” and if “to do otherwise would result in an award
12 that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover,
13 Defendants argued against the merits of the underlying claims and particularly that the
14 “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and
15 rendered any such penalties as uncertain. Defendants also argued that it is improper to stack
16 civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the
17 agreed-upon settlement is fair and reasonable.

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

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

25 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having
26 repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only
27 5% of litigators), having achieved large settlements and verdicts, including one of the largest
28 PAGA awards in California’s history, collecting over \$250 million for its clients, having tried

1 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
2 6). Plaintiff's counsel, operating at arm's length, weighed the strengths and risks of this case,
3 and are of the view that this is a fair and reasonable settlement in light of the nature of the
4 claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and
5 uncertainties of class certification and litigation.

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

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

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

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

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

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

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

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

26 Under the terms of the Settlement Agreement, Class Counsel is requesting \$300,000.00
27 in attorneys’ fees, which is equal to one-third of the Settlement Amount. *See, e.g., Laffitte v.*
28 *Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at

a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the class members, 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).

Additionally, Plaintiff is seeking up to \$20,000 in litigation costs, pursuant to the Settlement Agreement.

Once the Court grants preliminary approval of the Settlement Agreement and Class Notice is disseminated, Plaintiff’s 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 an incentive award payment of \$5,000 to the Class Representative, which is reasonable given large recovery that Class Members will receive on average, as well as the time and effort he devoted to this case. His efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Defendants’ compensation plan; participating in phone calls to discuss litigation and settlement strategy; making himself 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 he lost, he could have been ordered to pay Defendants’ costs.

The requested service award falls within the range of incentive 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 \$11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from a \$296,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (“the court finds Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement).

VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to Phoenix Settlement Administrators serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$9,876.62. (Mankin Decl. ¶ 27).

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 Parties propose that the Court schedule a hearing

for final approval approximately 100 days after the Preliminary Approval Date, as follows:

February 1, 2023	Preliminary Approval (PA) hearing
February 26, 2023 (<i>24 days after PA</i>)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
March 28, 2023 (<i>30 days after mailing Class Notice</i>)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately May 15, 2023 - 100 days after Preliminary Approval is granted)	Final Approval Hearing.

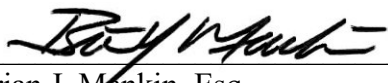
VIII. CONCLUSION

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

Dated: January 9, 2023

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 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On January 9, 2023, 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 January 9, 2023, 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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