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

MARIA SALGADO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

AMERICAN JERKY COMPANY, LLC, a
Delaware Limited Liability Company;
JOBSOURCE, INC., a California
Corporation; JOBSOURCE MIRA LOMA,
INC., a California Corporation;
JOBSOURCE HOLDINGS, INC., a
California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVDS 2016568
*[Assigned to Hon. Judge David Cohn, Dept S26,
for all purposes]*

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

Hearing

Date: June 6, 2023

Time: 10:00 a.m.

Dept.: S26

Complaint filed: August 3, 2020

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 6, 2023 at 10:00 a.m., or as soon thereafter as the
3 matter may be heard by the Honorable David Cohn in Department S26 of the San Bernardino
4 County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff
5 Maria Salgado, individually and on behalf of all others similarly situated, will and hereby does
6 move the Court for entry of an Order preliminarily approving the Parties' class action settlement,
7 including:

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

17 This motion is based upon this Memorandum of Points and Authorities in Support
18 thereof; the Declarations of Plaintiff Maria Salgado and Plaintiff's counsel (Brian Mankin and
19 Peter Carlson); the Class Action and PAGA Settlement Agreement and Release of Claims (the
20 "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement;
21 all other records, pleadings, and papers filed in this action; and upon such other evidence or
22 argument as may be presented to the Court at the hearing of this motion.

23
24 Dated: May 12, 2023

LAUBY, MANKIN & LAUBY LLP

25
26 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria Salgado seeks preliminary approval of an \$800,000 wage-and-hour class
4 action settlement on behalf of approximately 1,700 current and former non-exempt employees
5 that, during the “Class Period” of August 3, 2016 through the date of preliminary approval: (1)
6 were directly employed by Defendant American Jerky (“American Jerky”) in California, or (2)
7 were directly employed by Defendant JobSource Mira Loma, Inc. (“JobSource”), and assigned to
8 work at the American Jerky Facility.

9 Under the terms of the Settlement Agreement,¹ Defendants will not oppose Plaintiff
10 Counsel’s application for attorney’s fees not to exceed 1/3 of the Settlement Amount, litigation
11 expenses not to exceed \$25,000, Administrator Costs of \$18,750, PAGA penalties of \$50,000
12 (with 75% to the LWDA and 25% to the Aggrieved Employees), and a Service Payment of
13 \$7,500 to Plaintiff Maria Salgado (“Class Representative”). (S.A. ¶ 50, *et seq.*)

14 After all Court-approved deductions, it is estimated that \$427,083.34 (the “Net
15 Settlement Amount” or “NSA”) will be available to pay the Class Members, as follows:

16

<i>Settlement Amount</i>	\$ 800,000.00
Attorneys’ Fees (1/3)	\$ 266,666.66
Litigation Costs (not to exceed)	\$ 30,000.00
Administrator Costs	\$ 18,750.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 427,083.34

20

21 Assuming 1,700 Class Members, the average payment to each Class Member will be
22 approximately \$251.23. However, the actual payment will be calculated on a pro-rata basis
23 according to the number of Weeks Worked by each Class Member during the Class Period, with
24 each Work Week having a net value of approximately \$8.21. Also, approximately 1,000
25 Aggrieved Employees will share in the \$12,500 PAGA Penalties (25% of \$50,000), calculated
26 pro-rata based on Weeks Worked during the PAGA Period. (Mankin Decl. ¶ 10; S.A. ¶ 50(h)).
27

28 ¹ The Class Action and PAGA Representative Action Settlement Agreement and Release of
Claims (the “Settlement Agreement” or “S.A.”) is attached as Exhibit A to the Mankin Decl.

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

8 **II. BACKGROUND**

9 **A. THE CLASS**

10 The Class is defined as follows:

11 All current and former non-exempt employees who, during the Class
12 Period (which is August 3, 2016, through the date of preliminary
13 approval), either: (1) were directly employed by Defendant
14 American Jerky, or (2) were directly employed by Defendant
JobSource and assigned to work at the American Jerky Facility.
(S.A. ¶¶ 4, 7).

15 **B. PROCEDURAL HISTORY**

16 Plaintiff submitted a letter to the Labor Workforce Development Agency (the "LWDA")
17 for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and
18 simultaneously sent a letter to Defendants requesting the production of personnel and
19 timekeeping records in order to further evaluate her wage and hour claims. (Mankin Decl. ¶ 13).

20 On August 3, 2020, Plaintiff filed a class and PAGA complaint against Defendants²,
21 alleging: (1) failure to pay minimum wages, (2) failure to pay overtime, (3) failure to provide
22 meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final wages, (6) failure to
23 provide accurate itemized wage statements, (7) unfair and unlawful competition pursuant to Bus.
24 and Prof. Code §§ 17200 *et seq.*, and (8)-(15) related PAGA claims. (Mankin Decl. ¶ 14).

25 Defendants each retained counsel and began to defend the case. Plaintiff propounded
26 written discovery on each Defendants and, after disputes regarding the adequacy of responses,
27

28 ² The Complaint also alleged claims against Defendants JobSource, Inc., and JobSource Holdings, Inc.; Plaintiff dismissed those entities after confirming they were not employer(s).

1 meet and confers commenced with each Defendant. This resulted in several Informal Discovery
2 Conferences, and American Jerky also filed a Motion to Confirm its Confidential Designations
3 (which was denied by this Court). Discovery continued, and the Parties completed the *Belair*
4 notice process, through which Plaintiff and her counsel obtained the names and contact
5 information for putative class members. Then, after discussions among counsel, the Parties
6 agreed to hold off on further discovery and attend private mediation. (Mankin Decl. ¶ 15).

7 In preparation for the mediation, the Parties informally exchanged documents and
8 information that allowed both sides to calculate the potential damages and evaluate potential risk,
9 including policies and procedures pertaining to each claim alleged, and statistics relating to the
10 number of current and former employees, number of shifts, pay periods worked and other things.
11 During this process, Defendants provided thousands of pages of documents, along with detailed
12 payroll and timekeeping data for over 225 Class Members. This information enabled both parties
13 to take a deep dive into the claims. Additionally, during this process, Plaintiff and her counsel
14 analyzed, researched, and investigated the potential issues, including matters related to the
15 calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 16).

16 On December 12, 2022, Plaintiff and Defendants participated in mediation before Hon.
17 Daniel J. Buckley (Ret.), who is a well-respected mediator and the former Presiding Judge of the
18 Los Angeles County Superior Court. The Parties did not settle at mediation, but scheduled an
19 additional mediation session for January 4, 2023. The matter again did not settle, but Judge
20 Buckley issued a mediator's proposal which was ultimately accepted by the Parties. The Parties
21 now seek the Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 17).

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

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

24 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

25 The \$800,000 Settlement Amount is non-reversionary and will be paid out to Class
26 Members without the need to submit a claim form or take any affirmative action. It includes (1)
27 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
28 Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed \$18,750; (4) a

1 \$50,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor
2 Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual
3 Settlement Amounts of the Participating Class Members. (S.A. ¶ 50 and subparts). Defendants
4 will separately pay their share of employer payroll taxes and withholdings. (S.A. ¶ 50(a)).

5 **B. NOTICE PROCEDURES**

6 The proposed Notice will be provided to the Class showing the estimated amounts that
7 each Class Member will receive and the number of Work Weeks credited as a Class Member
8 and/or Aggrieved Employee (*See* Exhibit B to Mankin Decl.). Within 14 calendar days after
9 entry by the Court of its Order of Preliminary Approval, Defendants shall provide the
10 Administrator with the “Class Data” consisting of Class Member names, addresses, Social
11 Security Numbers, and Weeks Worked during the Class/PAGA Period(s) (S.A. ¶¶ 10, 64).

12 Within 10 calendar days of receipt of the Class Data, the Administrator shall calculate the
13 numbers for each Class Member, populate the Notice, and send each Class Member the Notice
14 via first-class, United States mail. (S.A. ¶ 66).

15 If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall
16 perform a skip trace search and seek an address correction for the Class Member(s), and a second
17 Notice will be sent to any new or different address obtained. (S.A. ¶ 67).

18 **C. EXCLUSION AND OBJECTION PROCEDURES**

19 Class Members who do not timely Opt-Out of the Settlement will be deemed to
20 participate in the Settlement and shall become a Participating Class Member without having to
21 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
22 must complete and submit the Request for Exclusion Form to the Administrator no later than 30
23 days after being mailed by the Administrator (“Response Deadline”). (S.A. ¶¶ 26, 71(a)). Any
24 Opt-Out request not postmarked by the Response Deadline will be invalid, unless a Notice was
25 remailed in which case the Class Member’s exclusion or objection must be returned by the later
26 of the original Notice Response Deadline or 15 calendar days after remailing. (S.A. ¶¶ 67, 71).

27 The Class Notice shall inform Class Members of their right to object to the Settlement.
28 Any Participating Class Member who wishes to object to the Settlement must submit the

1 Objection form to the Administrator no later than the Response Deadline. (S.A. ¶ 71(c)).

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

3 The amount of each Class Member's Individual Class Payment is tied to the number of
4 Weeks Worked by each Class Member during the Class Period. Individual Class Payments are
5 calculated by (a) dividing the Net Settlement Amount by the total number Weeks Worked by all
6 Participating Class Members during the Class Period, and (b) multiplying the result by each
7 Participating Class Member's Weeks Worked. (S.A. ¶ 50(c)).

8 Additionally, each "Aggrieved Employee" will receive an Individual PAGA Payment
9 calculated in the same way; thus, the \$12,500 PAGA Penalties allocated to the Aggrieved
10 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 50(h)).

11 The Class Notice will inform Class Members of the estimated share and the number of
12 Weeks Worked during the Class and/or PAGA Period(s). Class Members may dispute Weeks
13 Worked if they feel they worked more in the Class or PAGA Periods than Defendants' records
14 show by timely submitting evidence to the Administrator. (S.A. ¶ 69).

15 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

16 Pursuant to the terms of the Settlement Agreement, Defendants is required to fund the
17 Settlement Amount, plus Defendants' share of payroll taxes owed on the Individual Class
18 Payments, within 30 days of the Effective Date. (S.A. ¶ 73). Within 10 days after receiving the
19 funds, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 74).

20 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 75). If a Class
21 Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to
22 the California State Controller in the name of the Class Member/Aggrieved Employee (*Id.*).

23 **F. TAX TREATMENT**

24 The Parties agree that 20% of the Individual Class Payments will be allocated as wages
25 subject to withholding of all applicable local, state and federal taxes and the remaining 80% will
26 be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226,
27 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 50(d)). The Individual PAGA
28 Payments will be classified entirely as civil penalties and shall be reported as required on an IRS

1 Form 1099. (S.A. ¶ 50(h)). Defendants will separately pay their share of employer payroll taxes
2 on the sum allocated to wages. (S.A. ¶ 50(a)).

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

4 In exchange for these payments, the Settlement Agreement at ¶ 35 provides that the
5 Participating Class Members will release the Released Parties of:

6 the claims stated in the Complaint, or that reasonably could have been
7 alleged based upon the factual allegations in the Complaint, including: (a)
8 failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure
9 to provide meal periods, (d) failure to provide rest breaks, (e) failure to
10 timely pay wages upon separation of employment, (f) failure to provide
accurate itemized wage statements, (g) unfair and unlawful competition,
and (h) all other claims

11 It is understood and agreed that the Settlement Agreement will not release any person,
12 party or entity from claims, if any, by Class Members for any other claims, including claims for
13 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
14 unemployment insurance, disability, social security, workers' compensation, or claims based on
15 facts occurring outside the Class Period.

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

17 The Settlement Agreement at ¶ 36 also defines the "Released PAGA Claims" as follows:

18 all PAGA claims that Plaintiff alleged against the Released Parties, on
19 behalf of the Aggrieved Employees and the State of California, based on the
20 facts alleged or that reasonably could have been alleged based on the factual
21 allegations in the Complaint and in the relevant LWDA notice letter,
22 including all PAGA claims seeking civil penalties premised upon (a) failure
23 to pay minimum wages, (b) failure to pay overtime wages, (c) failure to
24 provide meal periods, (d) failure to provide rest breaks, (e) failure to timely
25 pay wages each period and upon separation of employment, (f) failure to
provide accurate itemized wage statements, (g) failure to provide suitable
seating, and (h) all other claims for civil penalties recoverable under the
Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the
facts or claims alleged in the Complaint

26 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
27 that individual will still be subject to the Released PAGA Claims to the fullest extent permitted
28 by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 55).

1 **IV. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR**
2 **PURPOSES OF SETTLEMENT**

3 California Rule of Court 3.769(d) provides that the Court may make an order approving
4 certification of a provisional settlement class at the preliminary approval stage. It is well-
5 established that trial courts should use a “lesser standard of scrutiny” for determining the
6 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
7 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
8 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved
9 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
10 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
11 certification, a district court need not inquire whether the case, if tried, would present intractable
12 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
13 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
14 as defined above, under Code of Civil Procedure § 382.

15 **A. ASCERTAINABILITY AND NUMEROSITY**

16 In determining whether a class is ascertainable, the court considers “(1) the class
17 definition, (2) the size of the class, and (3) the means available for identifying the class
18 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
19 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
20 class is ascertainable if the class members can be objectively identified and given notice of the
21 litigation without unreasonable time or expense). Here, according to Defendants’ records, there
22 are approximately 1,700 Class Members that are easily identifiable and fall within the defined
23 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

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

25 *1. Commonality*

26 To justify certification, the class proponent must show that questions of law or fact
27 common to the class predominate over the questions affecting the individual members. *Arenas v.*
28 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class

1 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,
2 and so on. While the Parties dispute whether a class would be appropriate if the litigation were to
3 continue, they agree to class certification for the purposes of this settlement only.

4 2. Typicality

5 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
6 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*
7 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
8 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
9 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
10 Defendants’ pay policies, meal and rest break practices, wage statements, and the provisions
11 governing the timely and complete payment of wages, which are at the core of the lawsuit.

12 3. Adequacy of Representation

13 The proposed class representative must establish that he or she will adequately represent
14 the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
15 546. Specifically, Plaintiff is adequate to represent the class because she was employed by
16 JobSource at the American Jerky Facility during the Class Period, experienced the same wage
17 and hour practices as the rest of the Class, understood her duties as a Class Representative, has
18 been willing to undergo the risks of litigation, and has no conflict of interest.

19 Adequacy may be established by the fact that counsel are experienced practitioners. See
20 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
21 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
22 in wage and hour class actions like this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 2-9).

23 4. Superiority

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

28 ///

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

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

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

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

19 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
20 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable"
21 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
22 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
23 after determining that it is "'fair, adequate and reasonable,'" considering factors such as the
24 "'risk, expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys
25 broad discretion in making its fairness determination, and should consider factors including, but
26 not limited to: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration
27 of further litigation, the risk of maintaining class action status through trial, the amount offered
28 in settlement, the extent of discovery completed and the stage of the proceedings, the experience

1 and views of counsel . . . and the reaction of the class members to the proposed settlement. *Dunk*,
2 *supra* (detailing non-exhaustive list of factors for court’s consideration at final approval).

3 The above factors are not exclusive “and the court is free to engage in a balancing and
4 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at
5 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
6 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent
7 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
8 overreaching by, or collusion between, the negotiating parties.” *Id.*

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

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

22 The settlement was the product of extensive arm’s length negotiations between counsel
23 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
24 professional, the settlement negotiations were adversarial and non-collusive in nature. The
25 settlement reached is the product of substantial effort by the parties and their counsel. Although
26 Plaintiff and her counsel believed that there was a possibility of certifying the claims, they
27 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
28 decisions on class certification, summary judgment, at trial and/or on the damages awarded,

1 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
2 prevailed on any of the defenses, the employees may not have received any monetary recovery.

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

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

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

10 To evaluate a settlement, the parties must provide the trial court with “basic information
11 about the nature and magnitude of the claims in question and the basis for concluding that the
12 consideration being paid for the release of those claims represents a reasonable compromise.”
13 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

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

21 Here, Defendants raised significant legal and factual defenses that weigh in favor of the
22 reasonableness of the proposed Settlement. First, in addition to disputing the merits of Plaintiff’s
23 claims, Defendants strongly disputed that Plaintiff could obtain class certification, arguing a lack
24 of commonality of the legal claims and injuries. Defendants further argued that it complied with
25 the applicable law and that any purported deviations therefrom were individualized in nature,
26 thereby limiting Plaintiff’s ability to certify the class. While Plaintiff asserts that this is a suitable
27 case for certification, she realizes that there is always a significant risk associated with class
28 certification proceedings, which could limit the claims that she could pursue on a class basis.

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

5 Based upon data obtained through informal discovery, Plaintiff's counsel estimated the
6 following data through mediation: (1) 1,535 Class Members, (2) 1,215 *former* Class Members
7 for purposes of Labor Code § 203, (3) 46,061 workweeks, (4) 233,691 shifts worked, and (4)
8 approximately 21,691 wage statements during the PAGA Period. (Mankin Decl. ¶ 19).

9 Here, there were three main categories of claims alleged by Plaintiff, including: (1)
10 unpaid wage claims under various theories, (2) meal and rest break violations, and (3) derivative
11 claims for waiting time and wage statement penalties. (Mankin Decl. ¶ 20).

12 As to the unpaid wage claims, Plaintiff alleged two theories of liability. First, Plaintiff
13 alleged that Defendants failed to pay all required minimum and overtime wages due to a practice
14 that required Class Members to complete pre-shift temperature checks and screenings prior to
15 clocking in. Second, Plaintiff alleged that Defendants paid additional nondiscretionary
16 compensation to Class Members yet failed to include that additional compensation in the regular
17 rate for purposes of calculating overtime wages. In total, Plaintiff's counsel estimated the
18 maximum value of these unpaid wages to be \$325,000. But Defendants vehemently opposed
19 these unpaid wage claims on the merits and as to the propriety of class certification. For
20 example, Defendants vehemently opposed these unpaid wage claims by arguing that the health
21 screenings were not implemented by Defendants' choice or for its benefit and, thus, the time was
22 not compensable. Defendants also argued that they paid discretionary amounts to the Class, and
23 that those sums did not need to be included in the regular rate or overtime calculations, and that
24 this would defeat Plaintiff's claims on the merits. Due to the defenses and arguments raised,
25 Plaintiff assigned a 30% risk for each respective unpaid wage claim at the class certification
26 stage and an additional 40% risk on the merits. In sum, Plaintiff's counsel calculated the risk-
27 adjusted value of the unpaid wage claims as \$136,500. (Mankin Decl. ¶ 21).

28 ///

1 Plaintiff also alleged meal and rest break claims against Defendant. Given the total
2 number of shifts at issue (an estimate of 233,691), and when incorporating violation rates from
3 expert review of the timekeeping records and other evidence, Plaintiff's counsel estimated a
4 28.1% violation rate for meal breaks and a 20% violation rate for rest breaks, leading to 65,668
5 alleged meal violations and 46,738 alleged rest break violations. This established a maximum
6 potential value for these claims of \$1,910,902 (112,406 violations multiplied by the average
7 hourly rate of \$17 as the applicable premium rate under § 226.7). (Mankin Decl. ¶ 22).

8 However, Defendants raised numerous arguments in response to this claim, including that
9 they maintained fully compliant written policies and specifically authorized the Class Members
10 to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
11 short/late break. Therefore, Defendants asserted that a fact-finder would have to determine for
12 each Class Member whether a break was missed and why, and why a break was noncompliant or
13 nonexistent, because if it was by the employee's choice, no liability attaches to Defendants.
14 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
15 questions regarding whether the meal and rest break claims could be certified, and Plaintiff
16 placed a 40% risk at the class certification stage for both meal and rest breaks. Second, these
17 defenses also go toward the merits given the evidentiary question of proving the number of meal
18 and rest violations. As such, Plaintiff placed an additional 40% risk on the merits for the meal
19 and rest break claims, setting the risk-adjusted value for the combined meal and rest break claims
20 at \$687,925. (Mankin Decl. ¶ 23).

21 Finally, Plaintiff alleged claims for waiting time penalties and wage statement violations.
22 But these claims were entirely derivative of the claims above, meaning that they only had merit
23 if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for
24 these claims were as follows: (1) \$4,957,200 for waiting time penalties [1,215 former employees
25 x \$17 per hour x 8 hours per day x 30 days], and (2) \$2,124,650 for wage statement violations
26 [21,691 wage statements at the \$50/\$100 formula under § 226(e)]. (Mankin Decl. ¶ 24).

27 But Defendants raised a variety of defenses to these derivative claims that impacted the
28 valuation. Namely, Defendants argued that the wage statements did not violate Labor Code §

226 and, even if there was a “technical” violation, Plaintiff would be unable to prove the required “knowing and intentional” and “injury” elements. Based on these facts and defenses, Plaintiff placed a 40% risk at class certification (mirroring the claims on which the wage statement claim was based) and estimated another 40% risk the merits, leading to a risk-adjusted value of \$764,874 for the wage statement claims. (Mankin Decl. ¶ 25).

Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here, Defendants argued there was no “willful” violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 40% risk at class certification and a 50% risk on the merits, leading to a risk-adjusted value of \$1,487,160. (Mankin Decl. ¶ 26).

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

•	Unpaid Wage Claims	\$	136,500
•	Meal and Rest Break Claims	\$	687,925
•	Wage Statement Claims	\$	764,874
•	Waiting Time Penalty Claims	\$	<u>1,487,160</u>
•	Total Risk Adjusted Penalties and Damages	\$	3,076,459

And while the PAGA penalties had a maximum value in the low seven figures, this fails to acknowledge that courts have wide latitude to reduce the 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(e)(2). Moreover, Defendants argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and

1 rendered any such penalties as uncertain. Defendants also argued it is improper to stack civil
2 penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that
3 this settlement is fair and reasonable.

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

5 The view of the attorneys actively conducting the litigation is entitled to significant
6 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
7 Cal. 1980) 87 F.R.D. 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must take into account “the
8 experience and view of counsel”).

9 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having
10 repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only
11 5% of litigators), having achieved large settlements and verdicts, including one of the largest
12 PAGA awards in California’s history, collecting over \$250 million for its clients, having tried
13 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
14 6; Carlson Decl. ¶¶ 2-9). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and
15 risks of this case, and are of the view that this is a fair and reasonable settlement considering the
16 nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law,
17 and uncertainties of class certification and litigation.

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

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

24 The proposed Notice and proposed plan for the Administrator to mail the Notice to the
25 last known address of all class members complies with all the requirements of Cal. Rule of Court
26 3.769(f) and 3.766(b). The contents of the proposed Notice includes (1) the material terms of the
27 settlement; (2) the proposed attorneys’ fees, litigation expenses, and the costs of administration;
28 (3) details about the final fairness hearing and how class members may elect to exclude

1 themselves or make an objection; and (4) how class members can obtain additional information.
2 See Class Notice (Exhibit B to Mankin Decl.). In addition, it will inform Class Members of their
3 estimated Individual Class Payment and Individual PAGA Payment.

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

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

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

25 The fact that each member who does not opt out of the Settlement shall be mailed a check
26 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
27 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
28 settlement funds will revert to Defendants; instead, if any checks are uncashed by the deadline,

1 the funds will be paid to *cy pres* Public Justice in accordance with CCP § 384. Such terms are
2 favored by Courts and demonstrate that there was no collusion between counsel for the parties
3 and that the Settlement is fair and favorable to the Class Members.

4 **H. THE ATTORNEY’S FEES AND COSTS ALLOCATION IS FAIR**

5 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
6 of up to \$25,000 in litigation costs, along with attorneys’ fees equal to one-third of the
7 Settlement Amount. See, *e.g.*, *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving
8 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
9 action litigation establishes a monetary fund for the benefit of the class members, the trial court
10 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
11 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
12 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was “well
13 within the range of percentages which courts have upheld as reasonable in other class action
14 lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at
15 *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods,*
16 *Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common
17 fund, noting: “[f]ee awards in class actions average around one-third of the recovery.”).

18 Once the Court grants preliminary approval and Notice is disseminated, Plaintiff’s
19 counsel will submit a comprehensive request for attorneys’ fees and costs with final approval.

20 **I. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE**

21 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
22 Representative, which is reasonable given the recovery Class Members will receive on average,
23 as well as the time and effort she devoted to this case. Her efforts included providing factual
24 background for the Class and PAGA complaint; providing documents and information about
25 Defendants’ compensation plan; participating in phone calls to discuss litigation and settlement
26 strategy; making herself available throughout the litigation to assist with analyzing the claims
27 and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
28 documents. The Class Representative also assumed significant risk in bringing this litigation—

1 namely, had she lost, she could have been ordered to pay Defendants' costs.

2 The requested service award falls within the range of incentive payments typically
3 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
4 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in
5 trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010
6 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class
7 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493
8 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
9 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28
10 (finding service awards "of \$ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs.* (N.D.
11 Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of \$25,000 to each
12 of the named Plaintiff is appropriate" in wage and hour settlement)

13 **VI. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR**

14 Subject to the Court's approval, the parties stipulated to Phoenix Settlement
15 Administrators serving as the Administrator. Phoenix is experienced in administering class
16 action settlements and has provided a flat-fee proposal to administer this settlement for \$18,750.
17 (Mankin Decl. ¶ 38; Exhibit D to Mankin Decl. [Administrator's bid]).

18 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

19 The last step in the approval process is the formal hearing, whereby proponents of the
20 Settlement may explain and describe its terms and conditions and offer argument in support of
21 approval, and Class Members or their counsel may be heard in support of or in opposition to the
22 settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing
23 for final approval approximately 110 days after the Preliminary Approval Date, as follows:

24 ///

25 ///

26 ///

27 ///

28 ///

June 6, 2023	Preliminary Approval (PA) hearing
June 30, 2023 <i>24 days after PA</i>	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
July 31, 2023 <i>30 days after mailing Notice</i>	Deadline for 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 and application for award of 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, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD - Approx. September 25, 2023 <i>110 days after PA</i>	Final Approval Hearing.

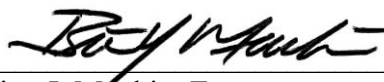
VIII. CONCLUSION

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

Dated: May 12, 2023

LAUBY, MANKIN & LAUBY LLP

BY:


 Brian J. Mankin, Esq.
 Attorneys for Plaintiff and the 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 May 12, 2023, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S UNOPPOSED 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.

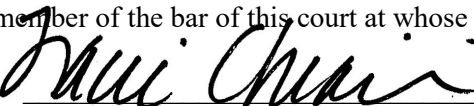
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 May 12, 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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