

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
Fax: (951) 320-1445

Attorneys for Plaintiff Mark Eurich and on behalf of the Proposed Class

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

CESAR TORRES, individually, on a
representative basis, and on behalf of all
others similarly situated; and MARK
EURICH, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

EPAC LOS ANGELES, LLC, a Delaware
Limited Liability Company; EPAC
NORCAL, LLC, a Delaware Limited
Liability Company; EPAC HOLDINGS,
LLC, a Delaware Limited Liability
Company; EPAC, LLC, a Delaware
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVDS2017140
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

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

Hearing

Date: December 6, 2021

Time: 10:00 a.m.

Dept.: S26

Complaint filed: August 24, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 6, 2021, at 10:00 a.m. or as soon thereafter
as the matter may be heard by the Honorable David Cohn in Department S26 of the San
Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415,
Plaintiff Mark Eurich, individually and on behalf of all others similarly situated, will and hereby
does move the Court for entry of an Order preliminarily approving the Parties' class action

1 settlement, including:

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

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

17 Dated: September 20, 2021

LAUBY, MANKIN & LAUBY LLP

19 BY:

20 Brian J. Mankin, Esq.
21 Attorneys for Plaintiff and the Proposed
22 Class
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	3
A.	THE PARTIES AND THE PROPOSED SETTLEMENT CLASS	3
B.	PROCEDURAL HISTORY	3
C.	SUMMARY OF THE CLAIMS AND DEFENSES	5
III.	SUMMARY OF THE PROPOSED SETTLEMENT	6
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	6
B.	NOTICE PROCEDURES	6
C.	EXCLUSION AND OBJECTION PROCEDURES	7
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	7
E.	TIMING OF SETTLEMENT DISBURSEMENTS	9
F.	TAX TREATMENT	9
G.	PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS	10
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	11
A.	NUMEROSITY AND ASCERTAINABILITY	12
B.	WELL-DEFINED COMMUNITY OF INTEREST	12
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	13
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT	13
B.	THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS	15
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	16
E.	PLAINTIFF'S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION	19
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES	20
G.	THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS	21
H.	THE ATTORNEY'S FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR	21
I.	THE CLASS REPRESENTATIVE'S SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE	22
VI.	THE COURT SHOULD APPOINT SIMPLURIS AS SETTLEMENT ADMINISTRATOR	22
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING	23
VIII.	CONCLUSION	23

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Mark Eurich, individually and on behalf of all others
4 similarly situated, seeks preliminary approval of a \$120,000 wage-and-hour class action
5 settlement (the “Settlement Amount”) between ePac Los Angeles, LLC, ePac Norcal, LLC, ePac
6 Holdings, LLC and ePac, LLC (“Defendants” or “ePac”) and approximately 60 putative class
7 members, who are current and former non-exempt employees employed by Defendants in
8 California (the “Class Members”) at any time during the period from August 24, 2016, through
9 July 24, 2021 (the “Class Period”).

10 Indeed, this case is a bit unusual. The original Plaintiff (Cesar Torres) settled directly
11 with Defendants without the knowledge of Plaintiff’s counsel. After a series of motions to
12 substitute Mr. Torres and for other curative relief, the Parties agreed to submit the matter to
13 mediation with the Honorable Jonathan Cannon (Ret.) serving as mediator. Judge Cannon
14 served on the complex department in Orange County for many years where he presided over
15 numerous class actions and now he frequently mediates class action employment cases. At the
16 conclusion of mediation, Judge Cannon consummated a settlement that resulted in an agreement
17 to substitute the named Plaintiff with another employee (Mark Eurich) and settle all claims at
18 issue on a class-wide basis. The Parties finalized a settlement agreement and filed an amended
19 complaint that withdraws Mr. Torres from the case and adds Mr. Eurich as the named Plaintiff
20 and Class Representative.

21 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff’s
22 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
23 \$40,000 (1/3 of the Settlement Amount), Plaintiff’s counsel’s litigation expenses not to exceed
24 \$10,000, settlement administrator expenses of \$4,000, PAGA penalties of \$10,000 (of which
25 \$7,500 or 75% will be paid to the LWDA and the remaining \$2,500 or 25% will be paid pro-rata
26 to the Aggrieved Employees), and a Service Payment of \$2,500 to Plaintiff Eurich. (S.A. ¶ 47(a-
27 h)). In addition to funding the \$120,000 Settlement Amount, Defendants will separately fund the
28 employer’s share of payroll taxes).

After all these deductions from the Settlement Amount, it is estimated that \$53,500 will be available to pay the Individual Settlement Amounts of all Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 120,000.00
Attorneys' Fees (1/3)	\$ 40,000.00
Litigation Costs	\$ 10,000.00
Administrator Costs	\$ 4,000.00
PAGA Penalties	\$ 10,000.00
Class Representative's Service Award	\$ 2,500.00
<i>Net Settlement Amount</i>	\$ 53,500

Assuming a class size of 60 Class Members, the average payment to each Class Member will be approximately \$891.67 each. Of course, the actual payment will be calculated on a pro-rata basis according to the number of Workweeks Worked by each Class Member. At mediation, the parties calculated that all Class Members collectively worked approximately 2,500 weeks during the Class Period, so each Workweek will have a value of approximately \$21.40 on average. In addition, there are an estimated 40 Aggrieved Employees who collectively worked approximately 1,200 work weeks during the PAGA Period. The Aggrieved Employees will receive a pro rata share of the \$2,500 in PAGA Penalties (accounting for 25% of the total \$10,000 allocation), which results in approximately \$2.08 per Work Week and averages approximately \$62.50 per person. (S.A. ¶ 47(h)).

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

Because the settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information

1 and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully
2 requests that the Court enter an order preliminarily approving the settlement, conditionally
3 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
4 proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Simpluris as
5 the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

6 **II. BACKGROUND**

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

8 Defendants employ workers that carry out its core business: manufacturing and selling
9 various products (such as lay flat pouches and custom mylar bags) for other companies to
10 package their own products for sale to end consumers. The Class Members performed these
11 services at only two locations in California (Los Angeles and Sacramento). The putative Class in
12 this case consists of:

13 All current and former non-exempt employees employed by Defendants in
14 California at any time during the Class Period (August 24, 2016, through
15 July 24, 2021), who have not previously released his/her Released Claims
16 against Defendants. (S.A. ¶ 37).

17
18 The Aggrieved Employees are defined as:

19 All current and former non-exempt employees employed by Defendants in
20 California at any time during the PAGA Period (August 24, 2019, through
21 July 24, 2021), who have not previously released his/her PAGA Released
22 Claims. (S.A. ¶ 2).

23 24 **B. PROCEDURAL HISTORY**

25 Cesar Torres initially retained Plaintiff's counsel to investigate potential claims against
26 Defendants. On June 30, 2020, Plaintiff's counsel sent a letter to Defendants requesting the
27 production of Mr. Torres' personnel and timekeeping records in order to further evaluate his
28 wage and hour claims. Upon receipt of the records and discovering apparent wage and hour

1 claims, Mr. Torres further retained Plaintiff's counsel to bring a class and representative action
2 complaint. Thereafter, Plaintiff filed a putative class action complaint on August 24, 2020,
3 alleging claims arising out of Defendants' alleged: (1) Failure to Pay Minimum Wages; (2)
4 Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest
5 Breaks; (5) Failure to Pay Vested Vacation Wages; (6) Failure to Timely Pay Wages; (7) Failure
6 to Provide Accurate Itemized Wage Statements; and (8) Unfair and Unlawful Competition.
7 (Mankin Decl. ¶ 12).

8 Mr. Torres then submitted an August 31, 2020, letter to the California Labor Workforce
9 Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act
10 of 2004 (the "PAGA"). (Mankin Decl. ¶ 13, Exhibit 3). The LWDA declined to assert
11 jurisdiction over Plaintiff's PAGA claims, so Plaintiff filed a First Amended Complaint that
12 added PAGA claims on about November 13, 2021.

13 At some point during the Action, Plaintiff Torres unceremoniously settled directly with
14 Defendants without the knowledge of Plaintiff's counsel. Plaintiff's counsel learned of the
15 settlement shortly after the initial CMC, which prompted a series of ex parte applications and
16 motions seeking various type of curative relief, including substituting Torres as the named
17 Plaintiff. In turn, Defendants filed a motion to dismiss the action for lack of a Plaintiff.
18 However, while numerous motions were pending, the parties agreed to explore resolution
19 through mediation. In preparation for mediation, the Parties agreed to an informal discovery
20 process where information was exchanged relating to the applicable policies and procedures,
21 payroll and time keeping records, size of the class, and potential value of the case. The sampling
22 included employee wage statements, timekeeping records, and payroll data that enabled
23 Plaintiff's counsel and their expert to fully evaluate the potential claims and extrapolate the data
24 to the entire class. During this process, Plaintiff's counsel analyzed, researched, and investigated
25 the potential claims of all similarly situated employees. (Mankin Decl. ¶ 14).

26 On May 18, 2021, the Parties participated in a full-day mediation with Hon. Jonathan
27 Cannon (Ret.). At the conclusion of the mediation, the parties reached a class-wide settlement
28 for \$120,000 that included an agreement to substitute the named Plaintiff. Thereafter, the parties

1 memorialized the terms of the settlement in a long-form Settlement Agreement (Mankin Decl. ¶
2 15; Exhibit 1 to Mankin Decl.). The Parties now seek the Court’s preliminary approval of the
3 Settlement.

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

5 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
6 However, Defendants vigorously contested and denied each of Plaintiff’s material allegations on
7 the merits and as to the propriety of a class action or PAGA representative action, as discussed
8 herein. (Mankin Decl. ¶ 16). There were two primary claims at issue in this matter.

9 First, Plaintiff claimed that Defendants failed to pay proper minimum and overtime
10 wages due to two unpaid wage violations. During the relevant period, Defendants used a
11 “rounding” policy that only paid in quarter-hour increments (*i.e.*, Class Members were paid for
12 .00 / .25 / .50 / .75 hours but never other fractions of time). Plaintiff alleged that this practice
13 routinely undercompensated the Class Members, in violation of California law. Additionally,
14 Plaintiff alleged that Defendants’ payroll policy failed to pay mandated doubletime on occasions
15 that Class Members worked shifts in excess of 12 hours. Plaintiff argued that these distinct
16 violations resulted in unpaid minimum wages and overtime, as well as waiting time penalties
17 under Labor Code § 203 and other derivative penalties. However, Defendants opposed these
18 claims, argued that the rounding policy was neutral both on its face and in application, and that it
19 properly paid all overtime and doubletime owed. (Mankin Decl. ¶ 17).

20 Second, Plaintiff argued that the Class members were often denied compliant meal and
21 rest breaks due to the nature of the work. However, ePac argued that it provided and made
22 available meal and rest breaks to all employees, and any employee who did not take a meal or
23 rest break did so entirely of his or her own volition. As such, Defendants argued that these
24 claims were without merit because, for each violation, a fact-finder would have to determine why
25 a break was noncompliant/nonexistent, because if it was by the employee’s choice, no liability
26 attaches to the Defendant. (Mankin Decl. ¶ 18).

27 Plaintiff also claimed, among other things, that Defendants failed to timely pay final
28 wages, failed to provide accurate itemized wage statements, and alleged various PAGA claims

1 arising out of the claimed violations mentioned above. However, Defendants argued that claims
2 for wage statements, waiting time penalties and PAGA penalties were derivative of other claims,
3 which it argued have no merit. (Mankin Decl. ¶ 19).

4 Despite the disputed nature of the claims, the Parties concluded that this Settlement was
5 the best result to limit further risk, expense, and protracted litigation.

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

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

8 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

9 The \$120,000 Settlement Amount is non-reversionary and will be paid out to Class
10 Members without the need to submit a claim form or take any affirmative action. It includes (1)
11 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$2,500 to
12 Plaintiff Eurich, subject to approval by the Court; (3) settlement administrator expenses of
13 \$4,000; (4) a \$10,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
14 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
15 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶
16 47(a-h)). Defendants will separately pay their share of employer's payroll taxes and
17 withholdings.

18 After all Court-approved deductions from the Settlement Amount, it is estimated that
19 \$53,500 will be available to pay the Individual Settlement Amounts to approximately 60 Class
20 Members. Thus, the average settlement payment to the Class Members is approximately
21 \$891.67.

22 **B. NOTICE PROCEDURES**

23 The proposed Class Notice will be provided to the Class Members showing the estimated
24 amount that each Class Member will receive and the number of workweeks he/she is credited
25 (Exhibit 2 to the Mankin Decl.). Within 10 days after entry by the Court of its Order of
26 Preliminary Approval, Defendants shall provide the Settlement Administrator with a list of Class
27 Members containing names, addresses, telephone numbers, Social Security Numbers, and the
28 total Workweeks Worked in the Class and PAGA Periods (the "Class Data"). (S.A. ¶¶ 5, 60).

1 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
2 the number of weeks worked for each Class Member, populate the Class Notice for each, and
3 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 61).

4 In the event that any Class Notice mailed to a Class Member is returned as having been
5 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
6 search and seek an address correction for such Class Member(s), and a second Class Notice will
7 be sent to any new or different address obtained. (S.A. ¶¶ 62).

8 **C. EXCLUSION AND OBJECTION PROCEDURES**

9 Class Members who do not timely Opt-Out of the Settlement will be deemed to
10 participate in the Settlement and shall become a Participating Class Member without having to
11 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class
12 Member must submit a written request to the Settlement Administrator no later than 30 days
13 after being mailed by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 19,
14 65). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be
15 invalid. (S.A. ¶ 65(a)).

16 The Class Notice shall inform the Class Members of their right to object to the
17 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
18 objection to the Settlement Administrator no later than the Notice Response Deadline. The
19 objection must include the case name and number and must set forth, in clear and concise terms,
20 a statement of the reasons why the objector believes that the Court should find that the proposed
21 Settlement is not in the best interest of the Class and the reasons why the Settlement should not
22 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 65(c)).

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

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

27 • Defendants will calculate the total number of Work Weeks worked by each
28 Settlement Class Member during the Class Period and the aggregate total number of Work

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 Work Weeks, resulting in the "Work Week Value." Each Settlement Class Member's Individual Settlement Payment will be calculated by multiplying his or her total number of Work Weeks during the Class Period by the Work Week 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 or 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 Work Weeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount. (S.A. ¶ 47(c)).

Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the \$2,500 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Work Week basis. (S.A. ¶ 47(h)).

The Class Notice will inform Class Members of the estimated share and the number of Work Weeks he/she worked during the Class Period and PAGA Period. Class Members may dispute their Weeks Worked if they feel they worked more weeks in the Class or PAGA Periods than Defendants' records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 63).

As noted, assuming a class size of 60 Class Members, the average payment to each class member will be approximately \$891.67 each, although the actual payment will be calculated on a pro-rata basis as shown above. Assuming an estimated 2,500 weeks worked, each Workweek will have a value of approximately \$21.40 on average. Indeed, this is an excellent result for the

1 Class Members.

2 Moreover, it is estimated that there are 40 Aggrieved Employees who worked an
3 estimated 1,200 Workweeks during the PAGA Period. The Aggrieved Employees will share in
4 the \$2,500 PAGA award on a pro rata basis.

5 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

6 Defendants are required to deposit the Settlement Amount, along with the employers'
7 share of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
8 Effective Date and these funds will be used to pay: (1) the class attorney fees and expenses, as
9 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
10 expenses, as approved by the Court; (4) a \$10,000 PAGA award, 75 percent of which is to be
11 paid to the LWDA pursuant to Labor Code § 2699(i); and (5) the aggregate of all Individual
12 Settlement Amounts of participating Class Members. (S.A. ¶ 66). Within 10 days after the
13 Court's approval of the Settlement, the Settlement Administrator shall issue payments to cover
14 all court-approved payments. (S.A. ¶ 67).

15 Class Members will have 180 days to cash his/her settlement check. If a Class Member
16 fails to cash his check by the deadline, then the Settlement Administrator shall issue the
17 unclaimed funds to the California State Controller in the name of the Class Member. (S.A. ¶ 68).

18 **F. TAX TREATMENT**

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

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

28 ///

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

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

5 all claims stated in the operative Complaint and those that could
6 have been made based solely upon the facts alleged in the operative
7 Complaint in the Action, including: (1) failure to pay minimum
8 wages, (2) failure to pay overtime wages, (3) failure to provide meal
9 periods, (4) failure to provide rest breaks, (5) failure to pay vested
10 vacation, (6) failure to timely pay wages each period and upon
11 separation of employment, (7) failure to provide accurate itemized
12 wage statements, (8) unfair and unlawful competition, (9) all other
13 claims for statutory penalties based on the facts or claims alleged in
14 the Complaint; and (10) attorneys' fees and costs of litigation
15 associated with this Action ("Released Claims").

16 The time governing the release (i.e., the "Release Period") shall be the same as the Class
17 Period. (S.A. ¶ 31).

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

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

 The Settlement Agreement ¶ 23 also defines the "PAGA Released Claims" as follows:

 [A]ll PAGA claims that Plaintiff alleged against the Released
 Parties, on behalf of Aggrieved Employees and State of California,
 based on the facts stated in the operative Complaint in the Action
 and in the LWDA notice letter(s), including all PAGA claims

1 seeking civil penalties that is premised upon (1) failure to pay
2 minimum wages, (2) failure to pay overtime wages, (3) failure to
3 provide meal periods, (4) failure to provide rest breaks, (5) failure
4 to pay vested vacation, (6) failure to timely pay wages each period
5 and upon separation of employment, (7) failure to provide accurate
6 itemized wage statements, and (8) all other claims for civil penalties
recoverable under the Private Attorneys General Act, Labor Code
§§ 2698 *et seq.* that could have been alleged based on the facts or
claims alleged in the Complaint.

7 The time governing the PAGA Released Claims is August 24, 2019, through July 24,
8 2021 (the “PAGA Period”; see S.A. ¶¶ 22 and 23). Moreover, the PAGA Released Claims do
9 not release any Aggrieved Employee’s claims for wages of statutory penalties. (S.A. ¶ 23).
10 Finally, even if an Aggrieved Employee requests exclusion from the Class settlement, that
11 individual will still be subject to the PAGA Released Claims to the fullest extent permitted by
12 law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 65(a)).

13 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
14 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
15 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

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

1 certification, a district court need not inquire whether the case, if tried, would present intractable
2 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
3 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
4 as defined above, under Code of Civil Procedure § 3150.

5 **A. NUMEROSITY AND ASCERTAINABILITY**

6 Numerosity is met if a proposed class is so large that joinder of all members would be
7 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
8 the class members can be objectively identified and given notice of the litigation without
9 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
10 89, 101. Here, according to Defendants’ records, there are approximately 60 Class Members.
11 This figure satisfies the numerosity requirement.

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

13 *1. Commonality*

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

22 *2. Typicality*

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

provisions governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. Adequacy of Representation

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

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

4. Superiority

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

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

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

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

1 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
2 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

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

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

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

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

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

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

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

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

26 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
27 weaknesses of this case before reaching the settlement. As described above, the settlement was
28 reached after extensive investigation and research, thorough calculations and risk evaluation, and

1 a substantial exchange of information relating to the Class Members prior to mediation. (Mankin
2 Decl. ¶¶ 14, 23).

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

4 To evaluate a settlement, the parties must provide the trial court with “basic information
5 about the nature and magnitude of the claims in question and the basis for concluding that the
6 consideration being paid for the release of those claims represents a reasonable compromise.”

7 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
8 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
9 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
10 the class could recover was not necessary:

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

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

27 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
28 significant legal and factual grounds for defending this action exist. First, in addition to
disputing the merits of Plaintiff’s claims, Defendants strongly disputed that Plaintiff could obtain
class certification, arguing a lack of commonality of the legal claims and injuries. Defendants

1 further argued that it complied with the applicable law and that any purported deviations
2 therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the class.
3 While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always
4 a significant risk associated with class certification proceedings, which could significantly limit
5 the claims that they could pursue on a class basis.

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

10 Based upon detailed data obtained through informal discovery and information
11 exchanges, Plaintiff's counsel estimated the following data points through the date of mediation:
12 (1) approximately 58 total Class Members, (2) approximately 22 Class Members that separated
13 from employment with Defendants since August 24, 2017, (3) approximately 2,378 workweeks
14 during the Class Period, (4) approximately 40 Aggrieved Employees, and (5) approximately
15 1,119 workweeks during the PAGA Period. From these metrics, and when factoring in claim
16 certification probabilities and liability probabilities, Class Counsel formulated detailed damages
17 models to value the claims in preparation for mediation and to reach a realistic and reasonable
18 resolution.

19 Plaintiff contends that the strongest claim was for unpaid wages under the rounding and
20 unpaid doubletime claim. However, Plaintiff estimates the combined value of these two claims
21 is \$10,000 since rounding amounts to, at most, a fractional underpayment and doubletime
22 violations were rare occurrences. But the real value for these claims lies in the fact that the
23 unpaid wages triggered waiting time penalties under Labor Code § 203 for the failure to pay all
24 wages due and owing upon separation of employment, in violation of Labor Code §§ 201-202.
25 Based on data showing that there were 22 *former* Class Members subjected to these alleged
26 violations, Plaintiff calculated maximum potential waiting time penalties at \$122,707. Thus, the
27 unpaid wage claims had a combined value (including waiting time penalties) of \$132,707.
28 Although Defendants raised a variety of defenses, Plaintiff believed that this claim was very

1 strong and had a high likelihood of success at class certification on the merits. As such, Plaintiff
2 assigned only a 20% risk at certification and another 30% risk on the merits, leading to a risk-
3 adjusted value of \$74,316 for the unpaid wage claims.

4 Next, Plaintiff's claims for meal and rest break violations focused on the theory that
5 employees did not receive adequate breaks, and thus were owed a wage premium for each
6 violation. Based on an analysis of Defendants' payroll and timekeeping records, Plaintiff alleged
7 there were a total of 11,890 meal and rest break violations; thus, the maximum potential damages
8 totaled \$232,687. However, this violation rate failed to account for various risks and defenses,
9 such as the argument that, for every allegedly noncompliant break, a fact-finder would have to
10 determine for each Class Member whether a break was missed and why, and why a break was
11 noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the
12 Defendants. Based on the facts and corresponding defenses, Plaintiff assigned a 40% risk at
13 class certification and a 40% risk on the merits. In sum, this placed a total risk-adjusted value of
14 \$83,767 on the meal and rest break claims.

15 Finally, Plaintiff alleged that Defendants failed to provide accurate wage statements due
16 to the failure to state accurately state total hours worked, gross wages, net wages, and other
17 information due to the violations discussed above. In total, Plaintiff estimates there were 1,119
18 wage statements at issue, and, with a 100% violation rate, the claim had a maximum value of
19 \$109,150 under the \$50/\$100 standard of § 226(e). However, Defendants raised many defenses,
20 including that: (a) these violations, if any, did not result in any "injury" under § 226(e), (b) the
21 violations, if any, were not "knowing and intentional" and could not support the assessment of
22 penalties, and (c) "derivative" wage statement claims are without merit. Based on these
23 defenses, Plaintiff assigned a 20% risk at the certification stage and a 50% risk on the merits.
24 Thus, this resulted in a risk-adjusted value for the wage statement claims of \$43,660.

25 ///

26 ///

27 ///

28 ///

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

3	• Unpaid Wages and Waiting Time Penalty Claims	\$ 74,316
4	• Meal and Rest Break Claims	\$ 83,767
5	• Wage Statement Penalty Claims:	<u>\$ 43,660</u>
6	Plaintiff's Estimate of Total Risk-Adjusted Damages	\$ 201,743

7 The reasonableness of the settlement is apparent from the fact that the proposed
8 settlement is approximately a 40.5% discount from the risk-adjusted class damages and penalties.
9 And while the PAGA civil penalty would have a maximum value in the six figures, this figure
10 fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based
11 on the facts and circumstances of a particular case” and if “to do otherwise would result in an
12 award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h).
13 Moreover, Defendants argued against the merits of the underlying claims and particularly that
14 the “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 been
26 named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators),
27 having achieved large settlements and verdicts, including one of the largest PAGA awards in
28 California’s history, collecting over \$250 million for its clients, having tried class and PAGA

1 cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6). Plaintiff's
2 counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the
3 view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk
4 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of
5 class certification and litigation. (*Id.* ¶¶ 21-26).

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 2 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 has 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.

28 ///

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 Defendants; instead, if any checks are not cashed before the
20 objection deadline, the funds will be transferred to the state’s unclaimed property department
21 subject to approval of the Court. Such terms are favored by Courts and demonstrate that there
22 was no collusion between counsel for the parties and that the Settlement is fair and favorable to
23 the Class Members.

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

26 Under the terms of the Settlement Agreement, Class Counsel is requesting \$40,000 in
27 attorneys’ fees and costs, which is equal to one-third of the Settlement Amount. See, e.g.
28 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33

1 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for
2 the benefit of the class members, the trial court may determine the amount of a reasonable fee
3 by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack*
4 *Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award
5 of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee
6 award of 1/3 of the total settlement was “well within the range of percentages which courts
7 have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.*
8 (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee
9 award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal.
10 Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of
11 common fund in a wage and hour class action, noting: “[f]ee awards in class actions average
12 around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal.
13 Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of
14 common fund).

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

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

20 The Settlement Agreement provides an incentive award payment of \$2,500 to Mr. Eurich
21 for serving in the capacity of Class Representative, which is reasonable given his willingness to
22 come forward and serve the interests of the Class, and the time and effort he has devoted to this
23 case.

24 **VI. THE COURT SHOULD APPOINT SIMPLURIS AS SETTLEMENT**
25 **ADMINISTRATOR**

26 Subject to the Court’s approval, the parties stipulated to Simpluris serving as the
27 Settlement Administrator. Simpluris is experienced in administering class action settlements and
28 has provided a flat-fee proposal to administer this settlement for \$4,000. (Mankin Decl. ¶ 31).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Settlement Agreement stipulates that the Court schedule a hearing for final approval of the settlement approximately 110 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

December 6, 2021	Preliminary Approval (PA) hearing
December 27, 2021 (10 days plus 10 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
January 26, 2022 (30 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for 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 March 28, 2022)	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: September 20, 2021

LAUBY, MANKIN & LAUBY LLP

BY:

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

[illegible]

On November 17, 2021, I caused to be served the foregoing document(s) described as follows:

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.

[] 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.

Jaime Chauri

Tracie Chiarito, Declarant

SERVICE LIST

Travis K. Jang-Busby, Esq.
Lindsay C. David, Esq.
GORDON & REES LLP
633 W. Fifth Street, 52nd Floor
Los Angeles, CA 90071
213-270-7868
213-680-4470-fax

tjang-busby@grsm.com
ldavid@grsm.com

Attorneys for Defendants EPAC LOS ANGELES, LLC; EPAC NORCAL, LLC; EPAC
HOLDINGS, LLC; EPAC, LLC