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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

ANDREW ZUBIA, DANA MARIE  
GANAL, CHRISTIAN HERNANDEZ,  
and MICHAEL WOODS individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiffs,

vs.

PROCTER & GAMBLE COMPANY, an  
Ohio Corporation; PROCTER &  
GAMBLE DISTRIBUTING LLC, and  
Ohio Company; and DOES 1 through 20,  
inclusive;

Defendants.

Case No.: 20STCV44506  
*[Assigned to Hon. Judge Lawrence P. Riff, Dept.  
7, for all purposes]*

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

Hearing

Date: May 26, 2023  
Time: 10:00 a.m.  
Dept.: 7

*Related/Consolidated Actions:*

- *Ganal v. P&G, Riverside County  
Superior Court Case No. CVRI2102272*
- *Hernandez v. P&G, Riverside County  
Superior Court Case No. CVRI210385*
- *Hernandez v. P&G, Central District of  
CA Case No. 5:21-cv-00921-FMO-SP*
- *Woods v. P&G, Sacramento Superior  
Case #34-2021-00305001-CU-OE-GDS*

Complaint filed: November 18, 2020

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Attorneys for Plaintiff, Michael Woods, on behalf of others similarly situated

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on a date and time to be set by the by the Honorable  
3 Lawrence P. Riff in Department 7 of the Los Angeles County Superior Court, located at 312  
4 North Spring Street, Los Angeles, CA 90012, Plaintiffs Andrew Zubia, Dana Marie Ganal,  
5 Christian Hernandez and Michael Woods, individually and on behalf of all others similarly  
6 situated, will and hereby do move the Court for entry of an Order preliminarily approving the  
7 Parties' class action settlement, including:

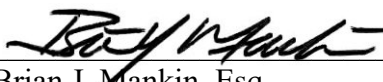
- 8 1. Certifying the class for purposes of settlement only;
- 9 2. Preliminarily appointing Plaintiffs as class representative for settlement purposes;
- 10 3. Appointing Plaintiffs' counsel as class counsel for purposes of settlement only;
- 11 4. Preliminarily approving the class action settlement 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; and
- 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 (a) Plaintiffs' counsel (Brian Mankin, Misty Lauby, Allen Feghali,  
19 William Tran, and Carolyn Cottrell); (b) Plaintiffs Andrew Zubia, Dana Marie Ganal, Christian  
20 Hernandez and Michael Woods), (c) the Settlement Administrator (Mike Moore of Phoenix  
21 Settlement Administrators); and (d) Defendant's counsel (Jina Lee) and Defendant's  
22 representative (Autumn Kruse); as well as the Class Action and PAGA Settlement Agreement  
23 (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the  
24 Settlement; all other records, pleadings, and papers filed in this action; and other evidence as  
25 may be presented to the Court at the hearing of this motion.

26 Dated: March 3, 2023

LAUBY, MANKIN & LAUBY LLP

27 BY:

  
28 Brian J. Mankin, Esq.  
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Following the Court's approval to join/consolidate four separate actions into this case,  
4 Plaintiffs Andrew Zubia, Dana Marie Ganal, Christian Hernandez and Michael Woods seek  
5 preliminary approval of a \$3,750,000 wage-and-hour class action settlement on behalf of  
6 approximately 850 Class Members, which includes all current and former hourly, non-exempt  
7 employees, who were directly hired and employed by Defendant The Procter & Gamble  
8 Distributing LLC ("Defendant" or "P&G") and worked at the P&G Facility in Moreno Valley,  
9 California at any time from May 1, 2019 to May 29, 2022 (the "Class Period").

10 Under the terms of the Settlement Agreement,<sup>1</sup> Defendant will not oppose Plaintiffs  
11 Counsel's application for a reasonable award of attorney's fees not to exceed \$1,250,000 (1/3 of  
12 the Gross Settlement Amount), litigation expenses not to exceed \$30,000, Settlement  
13 Administrator Costs of \$13,000, PAGA penalties of \$200,000 (with 75% to the LWDA and 25%  
14 to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$7,500 to each  
15 Plaintiff (aka "Class Representative"). (S.A. ¶ 3.2 et seq.)

16 After all Court-approved deductions from the Settlement Amount, it is estimated that  
17 \$2,227,000.00 will be available to pay the Class Members, as follows:

18

|                                                   |                        |
|---------------------------------------------------|------------------------|
| <b><i>Gross Settlement Amount</i></b>             | <b>\$ 3,750,000.00</b> |
| Attorneys' Fees (1/3)                             | \$ 1,250,000.00        |
| Litigation Costs (not to exceed)                  | \$ 30,000.00           |
| Administrator Costs (not to exceed)               | \$ 13,000.00           |
| PAGA Penalties                                    | \$ 200,000.00          |
| Class Representative Service Awards (\$7500 each) | \$ 30,000.00           |
| <b><i>Net Settlement Amount</i></b>               | <b>\$ 2,227,000.00</b> |

22

23 Assuming 850 Class Members, the average payment to each class member will be  
24 approximately \$2,620 (\$2,227,000 / 850). Of course, the actual payment will be calculated on a  
25 pro-rata basis according to the number of Workweeks, with each Workweek having a value of  
26

27  
28 <sup>1</sup> The Class Action and PAGA Settlement Agreement (the "Settlement Agreement" or "S.A.") is attached as Exhibit  
2 to the Declaration of Brian Mankin ("Mankin Decl.") and is based on the new model long-form agreement created  
by the Los Angeles County Superior Court. To facilitate the Court's review of the S.A., a redlined version is  
attached as Exhibit 3 to the Mankin Decl. to compare the S.A. to the model agreement.

approximately \$30.09 (\$2,227,000 / 74,000 total Workweeks). In addition, the Aggrieved Employees will receive a share of the \$50,000 PAGA Penalties (25% of the total \$200,000 PAGA allocation), calculated pro-rata based on the number of Workweeks worked during the PAGA Period. (Settlement Agreement ¶ 4.1; Mankin Decl. ¶ 10).

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

## **II. BACKGROUND**

### **A. THE SETTLEMENT CLASS**

The Class is defined as follows:

All current and former hourly, non-exempt employees, who were directly hired and employed by P&G and worked at the P&G Facility in Moreno Valley, California at any time during the Class Period. The "Class" excludes temp employees assigned to work at the P&G Facility. (S.A. ¶ 1.6).

### **B. PROCEDURAL HISTORY**

Plaintiffs Andrew Zubia, Dana Marie Ganal, Christian Hernandez and Michael Woods filed separate class and PAGA actions against Defendant for wage and hour violations, which were pending in various jurisdictions in California.<sup>2</sup> Each of the Plaintiffs also submitted a PAGA Notice by sending written notice to Defendant and the LWDA, pursuant to Labor Code section 2699.3, subd.(a), including (a) Plaintiff Zubia's August 14, 2020 notice letter,<sup>3</sup> (b) Plaintiff Ganal's May 4, 2021 notice letter, (c) Plaintiff Hernandez's April 2, 2021 notice letter,

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<sup>2</sup> See S.A. ¶ 2.1, as well as the concurrently filed declarations of Plaintiffs' counsel set forth a more specific procedural history of each case.

<sup>3</sup> Mankin Decl. ¶ 13, Ex. 4

1 and (d) Plaintiff Woods’ April 27, 2021 letter and September 30, 2021 amended letter notice  
2 letter. (S.A. ¶ 2.2).

3 Defendant retained counsel and began to aggressively defend each of the cases. In the  
4 fall of 2021, Plaintiffs’ counsel collectively entered into a joint prosecution and fee sharing  
5 agreement, thereby coordinating and consolidating their efforts in the four related cases  
6 (hereinafter, collectively referred to as the “Consolidated Action”). However, prior to engaging  
7 in a contested class certification motion, counsel for the parties met and conferred and discussed  
8 staying formal discovery in order to exchange informal discovery in preparation for mediation.  
9 The Parties scheduled mediation with Hon. Carl West (Ret.). (Mankin Decl. ¶ 14).

10 In preparation for the mediation, the Parties informally exchanged documents and  
11 information that allowed both sides to calculate the potential damages and evaluate potential risk,  
12 including policies and procedures pertaining to each claim alleged, and statistics relating to the  
13 number of current and former employees, number of shifts, weeks worked and other things.  
14 Defendant also provided its written policies and practices and a robust sampling of payroll and  
15 timekeeping records for Class Members for over 50,000 shifts worked. This information enabled  
16 both parties to take a deep dive into the claims. Additionally, during this process, Plaintiffs and  
17 their counsel analyzed, researched, and investigated the potential issues, including matters  
18 related to the calculation of damages, trial, and appellate issues and risks. Plaintiffs also retained  
19 an expert (Jarrett Gorlick of Berger Consulting Group) to perform a statistical analysis of the  
20 claims and violations. (Mankin Decl. ¶ 15).

21 On March 30, 2022, Plaintiffs and Defendant participated in mediation presided over by  
22 Judge Carl West (Ret.), but the matter did not resolve at mediation. Over the course of the next 6  
23 months, the Parties continued to exchange information and pursued ongoing negotiations through  
24 Judge West. Ultimately, Judge West issued a mediator’s proposal that called for a global  
25 resolution of all pending actions and claims against Defendant and the filing of the Consolidated  
26 Complaint in this Action. All Parties accepted the proposal on about November 18, 2022, and  
27 entered into this Agreement. (Mankin Decl. ¶ 16). The Parties now seek the Court’s preliminary  
28 approval of the Settlement.

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

2           The putative Class in this case consists of approximately 850 similarly situated Class  
3 Members. Defendant vigorously contested and denied the allegations on the merits and as to the  
4 propriety of a class action or PAGA representative action on behalf of the putative class and  
5 allegedly aggrieved employees. (Mankin Decl. ¶ 17).

6           Plaintiffs' primary claim was that Plaintiffs and the Class Members received inaccurate  
7 and incomplete wage statements that failed to accurately state all necessary items required under  
8 Labor Code § 226. Specifically, in addition to derivative claims, Defendants directly violated  
9 Labor Code § 226 through their practice of failing to show the overtime rate of pay and/or  
10 double overtime rate of pay. (Mankin Decl. ¶ 18).

11           Also, during their employment with Defendant, Plaintiffs allege that they were  
12 denied compliant meal and rest periods. The sampling of timekeeping records produced  
13 by Defendant in preparation for mediation showed 113,063 unique meal violations. In  
14 fact, Class members were denied compliant meal periods on a significant percentage of  
15 total shifts worked due to a variety of reasons, including no first meals for shifts of six  
16 hours or more, short/interrupted/late meal periods and no second meal periods.  
17 Importantly, Defendants' liability for these meal violations does not require any  
18 individualized inquiry; instead, Defendants' objective records, which show the missed,  
19 late, and short meals, will establish Defendants' certain liability for each violation. See  
20 *Donohue v. AMN Services, LLC* (Feb. 25, 2021) No. S253677, 2021 Cal. LEXIS 1294  
21 (adopting the *Werdegart* presumption from *Brinker* and holding that "time records  
22 showing noncompliant meal periods raise a rebuttable presumption of meal period  
23 violations, including at the summary judgment stage"). In this regard, Defendants  
24 produced its written policies and practices, which it argued show full compliance with the law.  
25 As such, Defendants argued that these claims were without merit because, for each violation, a  
26 fact-finder would have to determine why a break was noncompliant/nonexistent, because if it  
27 was by the employee's choice, no liability attaches to the Defendants. (Mankin Decl. ¶ 19).

28       ///

Moreover, Plaintiffs allege they were not provided proper minimum and overtime wages due to Defendants' failure to accurately record and compensate for all hours worked due to employees being forced to undergo off-the-clock security checks, donning and doffing of PPE, and COVID temperature checks and medical questionnaires, leading to unpaid minimum, regular, and overtime wages. However, Defendants vehemently denied these allegations and opposed these claims on the merits arguing that when they took over the facility in May 2019, they moved the timeclocks to the gate entrances allowing employees to clock in prior to undergoing any off-the-clock procedures. Moreover, Defendants argued against the propriety of class certification under the circumstances. (Mankin Decl. ¶ 20).

Additionally, Defendants violation Labor Code § 2802 due to its policy of requiring Plaintiffs and the Represented Employees to supply their own PPE necessitated by the COVID pandemic. Again, Defendants denied that Plaintiffs were required to provide any of their own PPE. (Mankin Decl. ¶ 21).

Plaintiff also alleged various other Class and PAGA claims, such as the failure to pay wages each period, failure to timely pay all wages owed upon termination, and other claims related to the alleged violations mentioned above. However, Defendant argued that these other claims, as well as the "derivative" claims, have no merit. (Mankin Decl. ¶ 22).

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

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

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

#### **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

The \$3,750,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiffs' attorneys' fees not to exceed one third of the Settlement Amount and costs not to exceed \$30,000, as approved by the Court; (2) a service award of \$7,500 to each Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed \$13,000; (4) a \$200,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to

1 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the  
2 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 3.2  
3 and subparts). Defendant will separately pay its share of employer payroll taxes and  
4 withholdings. (S.A. ¶ 3.1).

5 **B. NOTICE PROCEDURES**

6 The proposed Class Notice (based on the model provided by the Court) will be provided  
7 to the Class Members showing the estimated amount that each Class Member will receive and  
8 the credited number of Weeks Worked (Exhibit A to the S.A.). Within 15 days after entry by the  
9 Court of its Order of Preliminary Approval, Defendant shall provide the Settlement  
10 Administrator with a list of Class Members containing names, addresses, telephone numbers,  
11 Social Security Numbers, and the total Weeks Worked in the Class and PAGA Periods (the  
12 “Class Data”). (S.A. ¶¶ 1.9 and 4.2).

13 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate  
14 the number of Weeks Worked for each Class Member, populate the Class Notice for each, and  
15 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 8.4.2).

16 In the event that any Class Notice mailed to a Class Member is returned as having been  
17 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace  
18 search and seek an address correction for such Class Member(s), and a second Class Notice will  
19 be sent to any new or different address obtained. (S.A. ¶ 8.4.3).

20 **C. EXCLUSION AND OBJECTION PROCEDURES**

21 Class Members who do not timely Opt-Out of the Settlement will be deemed to  
22 participate in the Settlement and shall become a Participating Class Member without having to  
23 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member  
24 must submit a written request to the Settlement Administrator no later than 45 days after being  
25 mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 1.47). Any Opt-Out  
26 request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 8.5.1).

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

1 objection to the Settlement Administrator no later than the Response Deadline or, in the  
2 alternative, may appear in Court (or hire an attorney to appear in Court) to present verbal  
3 objections at the Final Approval Hearing. (S.A. ¶ 8.7.2).

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

5 The amount of each Class Member's Individual Class Payment is tied to the number of  
6 Weeks Worked by each Class Member for Defendant during the Class Period. Individual Class  
7 Payments are calculated by (a) dividing the Net Settlement Amount by the total number of  
8 Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying  
9 the result by each Participating Class Member's Weeks Worked. (S.A. ¶ 3.2.4).

10 Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties  
11 based on a pro-rata basis. Thus, the \$50,000 PAGA Penalties allocated to the Aggrieved  
12 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 3.2.5).

13 The Class Notice will inform Class Members of the estimated share and the number of  
14 Workweeks he/she worked during the Class Period. Class Members may dispute their  
15 Workweeks if they feel they worked more in the Class or PAGA Periods than Defendant's  
16 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 8.6).

17 As noted, assuming a class size of 850, the average payment will be approximately  
18 \$2,620 (\$2,227,000 / 850). And assuming an estimated 74,000 Workweeks, each Workweek  
19 will have a value of approximately \$30.09 on average (\$2,227,000 / 74,000). In addition, the  
20 Aggrieved Employees will receive a share of the \$50,000 PAGA Penalties (25% of the total  
21 \$200,000 PAGA allocation), calculated pro-rata.

22 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

23 Defendant is required to deposit the Settlement Amount, along with the employers' share  
24 of payroll taxes owed, with the Settlement Administrator, within 45 calendar days after the  
25 "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as  
26 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative  
27 expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual  
28 Settlement Amounts of participating Class Members. Within 10 days after receiving the funds,

1 the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶  
2 4.4).

3 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 4.4.1). If a Class  
4 Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed  
5 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 4.4.3).

6 **F. TAX TREATMENT**

7 The Parties agree that one-third (33.3%) will be allocated as wages subject to withholding  
8 of all applicable local, state and federal taxes; and two-thirds (66.7%) will be allocated for  
9 interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226, etc.) from  
10 which no taxes will be withheld. (S.A. ¶ 3.2.4.1). Additionally, the PAGA Penalties payable to  
11 the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as  
12 required on an IRS Form 1099. (S.A. ¶¶ 3.2.5.1 and 3.2.5.2).

13 Defendant will separately pay its share of employer payroll taxes on the sum allocated to  
14 wages. (S.A. ¶¶ 3.1).

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

16 In exchange for these payments, the Settlement Agreement at ¶ 6.2 provides that the  
17 Participating Class Members will release the Released Parties of:

18 all claims that were alleged, or reasonably could have been alleged, based  
19 on the facts stated in the Consolidated Complaint and Consolidated Action,  
20 including all of the following claims for relief: (a) failure to pay minimum  
21 wages, regular wages and/or overtime pay; (b) failure to provide or pay  
22 premium payments for meal periods; (c) failure to provide or pay premium  
23 payments for rest periods; (d) failure to reimburse business expenses; (e)  
24 failure to provide complete and accurate wage statements; (f) failure to pay  
25 wages upon termination; (g) failure to maintain temperature providing  
26 reasonable comfort; (h) failure to pay wages weekly; and (i) violations of  
27 the California Business & Professions Code §§ 17200 *et seq.* These claims  
28 include, but are not limited to, California Labor Code sections 201, 202,  
203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802  
and all related provisions of the California Code of Regulations, the  
California Industrial Wage Orders, the California Business & Professions  
Code sections 17200 *et seq.* ("Released Class Claims"). The Released  
Class Claims extends to all theories of relief regardless of whether the claim  
is, was or could have been alleged under federal law, state law or common  
law (including, without limitation, as violations of the California Labor

1 Code, the Wage Orders, applicable regulations, and California’s Business  
2 and Professions Code section 17200), and includes all types of relief  
3 available for the above-referenced claims, including, any claims for  
4 damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs,  
5 expenses, debts, interest, injunctive relief, declaratory relief, or liquidated  
6 damages. The operative release period for the Released Class Claims is the  
7 Class Period.

8 It is understood and agreed that the Settlement Agreement will not release any person,  
9 party or entity from claims, if any, by Class Members for any other claims, including claims for  
10 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,  
11 unemployment insurance, disability, social security, workers’ compensation, or claims based on  
12 facts occurring outside the Class Period. (S.A. ¶ 6.2).

13 **H. AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS**

14 The Settlement Agreement at ¶ 6.3 also defines the “PAGA Released Claims” as follows:

15 all claims for civil penalties under the Private Attorneys General  
16 Act, Labor Code § 2698 *et seq.*, that Plaintiffs alleged against the  
17 Released Parties, on behalf of Aggrieved Employees and State of  
18 California, based on the facts stated in the Consolidated Complaint  
19 and in Plaintiffs’ PAGA Notice to the LWDA (including any  
20 amendments thereto), or reasonably could have been alleged based  
21 on the allegations, the facts, and/or legal theories under the PAGA  
22 contained in the Consolidated Complaint, including all of the  
23 following claims for relief: (a) failure to pay minimum wages,  
24 regular wages and/or overtime pay (including any theory of failure  
25 to pay any and all wages for all time worked or earned); (b) failure  
26 to provide or pay premium payments for meal periods; (c) failure to  
27 provide or pay premium payments for rest periods; (d) failure to  
28 reimburse business expenses; (e) failure to provide complete and  
accurate wage statements; (f) failure to timely pay each week; (g)  
failure to maintain temperature providing reasonable comfort; and  
(h) failure to pay wages upon termination (“Released PAGA  
Claims”). The Released PAGA Claims include, but are not limited  
to, California Labor Code sections 201, 202, 203, 204, 226, 226.7,  
510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and all  
related provisions of the California Code of Regulations, and the  
California Industrial Wage Orders. The time period governing the  
Released PAGA Claims shall be any time during the PAGA Period.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the PAGA Released Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 8.5.4).

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

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

**A. ASCERTAINABILITY AND NUMEROSITY**

In determining whether a class is ascertainable, the court considers “(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense). Here, according to Defendant’s records, there are approximately 850 Class Members that are easily identifiable and fall within the defined Class. Thus, Plaintiffs’ proposed Class meets the ascertainability and numerosity requirements.

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

2                   1.       Commonality

3           To justify certification, the class proponent must show that questions of law or fact  
4 common to the class predominate over the questions affecting the individual members. *Arenas v.*  
5 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiffs contend that the Class  
6 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,  
7 wage statements, and so on. While the Parties dispute whether a class would be appropriate if the  
8 litigation were to continue, they agree to class certification for the purposes of this settlement  
9 only.

10                   2.       Typicality

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

18                   3.       Adequacy of Representation

19           The proposed class representative must establish that he or she will adequately represent  
20 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,  
21 546. Specifically, Plaintiffs are adequate to represent the class because they were employed by  
22 Defendant during the Class Period, experienced the same wage and hour practices as the rest of  
23 the Class, understood their duties as Class Representatives, have been willing to undergo the  
24 risks of litigation, and have no conflict of interest.

25           Adequacy may be established by the fact that counsel are experienced practitioners. *See*  
26 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)  
27 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience  
28 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6; Lauby Decl. ¶¶ 3-

10; Feghali Decl. ¶¶ 5-9, Tran Decl. ¶¶ 4-8, Cottrell Decl. ¶¶ 4-6).

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

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

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only

1 after determining that it is “fair, adequate and reasonable,” considering factors such as the  
2 “risk, expense, [and] complexity” of continued litigation) (citations omitted). The Court enjoys  
3 broad discretion in making its fairness determination, and should consider factors including, but  
4 not limited to:

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

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

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

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

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

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

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

14           Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and  
15 weaknesses of this case before reaching the settlement, wherein it took over 6 months of  
16 negotiation after mediation for the Parties to reach a settlement with the assistance of Judge  
17 West. As described above, the settlement was reached after extensive investigation and research,  
18 thorough calculations and risk evaluation, and a substantial exchange of information relating to  
19 the Class Members prior to mediation.

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

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

25           However, a settlement is not judged against what might have been recovered had a  
26 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought  
27 to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 250 ("Compromise is inherent and  
28 necessary in [settlement] ... even if the relief afforded by the proposed settlement is substantially

1 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class  
2 settlement because the public interest may indeed be served by a voluntary settlement in which  
3 each side gives ground in the interest of avoiding litigation.”)

4       Of particular relevance to the reasonableness of the proposed Settlement is the fact that  
5 significant legal and factual grounds for defending this action exist. Plaintiffs engaged in  
6 extensive analysis of Defendants’ records prior to mediation and settlement including reviewing  
7 a significant volume of documents and data. (See Mankin Decl. ¶ 23). The sampling of  
8 timekeeping and payroll data included over 557,614 rows of data which covered approximately  
9 20% of the Class and Workweeks. Plaintiffs’ expert, Jarrett Gorlick of Berger Consulting,  
10 reviewed and analyzed the data, allowing Plaintiffs’ counsel to formulate detailed damages  
11 models to value the claims in preparation for mediation and to reach a realistic and reasonable  
12 resolution. (Mankin Decl. ¶ 24).

13       At mediation, in addition to disputing the merits of Plaintiffs’ claims, Defendant strongly  
14 disputed that Plaintiffs could obtain class certification, arguing a lack of commonality of the  
15 legal claims and injuries. Defendant further argued that it complied with the applicable law and  
16 that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiffs’  
17 ability to certify the class. While Plaintiffs assert that this is a suitable case for certification, they  
18 realizes that there is always a significant risk associated with class certification proceedings,  
19 which could significantly limit the claims that they could pursue on a class basis.

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

24       Based upon detailed data obtained through informal discovery and information  
25 exchanges, Plaintiffs’ counsel estimated the following data points through the date of mediation:

26 ///

27 ///

28 ///

1           **A. Support for Class Settlement**

2                           **Wage Statement Claims**

3           Plaintiffs' strongest claim was that Defendant failed to provide accurate itemized wage  
4 statements in compliance with Labor Code § 226 for its failure to provided wage statements with  
5 the overtime and double overtime rates of pay and time making it impossible for Plaintiffs and  
6 employees to determine whether they were paid correctly. However, Defendant denied that the  
7 wage statements provided were improper and that the overtime rate issues would only affect  
8 paystubs during pay periods where overtime was worked.

9           Plaintiffs calculated the maximum potential value of this claim as \$2,352,400 based on  
10 approximately 35,818 non-compliant paystub, which factors in the \$4,000 cap per employee  
11 under Section 226. Plaintiffs assigned a risk adjusted discount of 5% that the class would not be  
12 certified and a 25% discount on the merits for a total risk-adjusted value of \$1,564,346.

13           Plaintiffs' PAGA claim for wage statement violations had a maximum value of  
14 \$3,581,800 (35,818 PAGA pay periods x \$100). While Plaintiffs believe that a similar risk  
15 analysis applies as discussed above, Plaintiffs further anticipate that Defendant would push the  
16 Court to use its discretion to substantially reduce the PAGA claim to avoid a double recovery  
17 and/or stacking. Based on these arguments, Plaintiffs applied an 80% discount on the PAGA  
18 claims, resulting in a risk adjusted value of \$716,360. (Mankin Decl. ¶¶ 25-28).

19                           **Meal and Rest Break Claims**

20           Plaintiffs also alleged meal and rest break claims against Defendant. Plaintiffs' consultant  
21 analyzed the time records and found 113,063 unique meal period violations amounting to  
22 \$2,335,881 in class damages for meal periods (113,063 x \$20.66 avg. rate of pay). Because there  
23 are no time records for rest periods, Plaintiffs estimated a 50% violation rate on all shifts over  
24 3.5 hours, resulting in an estimated 144,331 violations, and when multiplied by the average rate  
25 of pay of \$20.66, the maximum value of the rest break claim is \$2,981,878.

26           However, these calculations do not account for various risks and defenses. For instance,  
27 Defendant strongly disputed that Plaintiffs could obtain class certification, arguing a lack of  
28 commonality of the legal claims and injuries. Defendant further argued that it complied with the

1 applicable law and that any purported deviations therefrom were individualized in nature,  
2 thereby limiting Plaintiffs' ability to certify the class. While Plaintiffs assert that this is a suitable  
3 case for certification, they realize that there is always a significant risk associated with class  
4 certification proceedings, which could significantly limit the claims that they could pursue on a  
5 class basis. Moreover, Defendant argued that when it took over the facility in May 2019, they  
6 implemented new policies including policies that gave the employees 15 minutes for rest breaks  
7 and 4 additional minutes for walking time which, if properly implemented, undermined  
8 Plaintiffs' rest break theories.

9 Plaintiffs applied a 50% discount for risk at class certification plus a 50% discount for  
10 risk on the merits, resulting in a risk adjusted value of \$583,970 to the meal claims. Applying the  
11 same discounts on the rest break claims, the risk-adjusted value is \$745,470.

12 As for the PAGA claims, based on the same risk factors in addition to potential risk  
13 associated with stacking of PAGA penalties, Plaintiffs assigned a 75% violation rate and a 75%  
14 risk adjustment to both meal and rest claims and assigned the risk-adjusted value of the related  
15 PAGA meal claims at \$671,587 (26,863.50 pay periods x \$100 = \$2,686,350 - 75% discount),  
16 plus \$671,587 for rest breaks. (Mankin Decl. ¶¶ 29-32).

17 **Failure to Pay Wages**

18 Plaintiffs alleges that Defendant employed policies and practices that required employees  
19 to work off the clock without compensation. Plaintiffs estimated that the maximum potential  
20 value of this claim was \$719,411 in unpaid wages based on an estimated 2 minutes of unpaid  
21 time per shift prior to March 1, 2020 and 5 minutes of unpaid time when COVID protocols were  
22 implemented for the 35,818 pay periods at \$20.66 average rate of pay.

23 At mediation, Defendant argued that employees were not required to work off-the-clock  
24 and that this claim could not be certified due to the individualized nature of the proof. As a  
25 result, Plaintiffs applied a combined 50% discount for risk at class certification and on the  
26 merits, resulting in a risk adjusted value of \$359,706.

27 ///

28 ///

1 Plaintiffs also pursued PAGA claims based on the same theory of liability and calculated  
2 a risk adjusted total is for these claims is \$895,450 (35,818 x \$100 = \$3,581,800 – 75%).  
3 (Mankin Decl. ¶¶ 33-35).

4 **Failure to Reimburse Business Expenses Claims**

5 Plaintiffs also alleged that Defendants violated Labor Code § 2802 each pay period when  
6 it failed to reimburse for PPE provided by the employees. Defendants argued that PPE  
7 employees were not required to provide their own PPE. The maximum value for this claim was  
8 estimated at \$181,720 (\$10 per month per employee) with a risk adjustment of 75% for a total  
9 risk adjusted value of \$45,430. Plaintiff pursued business expenses related PAGA claims and  
10 calculated a risk adjusted value of \$447,725 (35818 pay periods x \$100 – 75% risk adjustment)  
11 (Mankin Decl. ¶ 36).

12 **Failure to Timely Pay Wages Each Pay Period and Upon Separation of Employment**

13 Additionally, Plaintiffs alleged that Defendant failed to timely pay all wages owed to the  
14 Class Members upon separation of employment. Based on this theory of liability, Plaintiffs  
15 calculated the maximum waiting time penalties to be \$1,814,774 based on 305 former employees  
16 x 9.6 average hours per day x \$20.66 average hourly rate x 30.

17 Defendant argued that it would defeat Plaintiffs' unpaid wage claims and, because the  
18 waiting time penalty claims were derivative of the unpaid wages, Plaintiffs' Labor Code § 203  
19 would fail.

20 Therefore, Plaintiffs applied a combined 50% discount for risk at class certification and  
21 on the merits, resulting in a risk adjusted value of \$907,388.

22 Furthermore, because the related PAGA penalties assumes only one violation for each  
23 former employee multiplied by \$100, the value of the PAGA penalties was estimated at \$76,000  
24 (76 formers during the PAGA period) with a risk adjustment of 75% for a total risk adjusted  
25 value of \$19,000. (Mankin Decl. ¶¶ 37-40).

26 In sum, the total maximum value of the class damages is \$10,386,064. when factoring in  
27 the defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as  
28 follows:

|                                          |                     |
|------------------------------------------|---------------------|
| • Wage Statements (LC 226)               | \$ 1,564,346        |
| • Rest Breaks (LC 226.7, 512)            | \$ 745,470          |
| • Meal Periods (LC 226.7, 512)           | \$ 583,970          |
| • Unpaid Wages (LC 200, 510, 1194, etc.) | \$ 359,706          |
| • Unreimbursed Expenses (LC 2802)        | \$ 45,430           |
| • Waiting Time Penalties (LC 203)        | <u>\$ 907,388</u>   |
| <b>Total</b>                             | <b>\$ 4,206,310</b> |

The reasonableness of the Settlement is apparent from the fact that the proposed Settlement is greater than the risk-adjusted class damages calculation. For these reasons, the Partis submit that the agreed-upon Settlement is fair and reasonable. (Mankin Decl. ¶ 41).

#### **B. Support for Assessment of PAGA Penalties**

Following the informal exchange and other information provided by Defendant, we estimated the following data points for the PAGA claims through the date of mediation: A total of 767 Aggrieved Employees and 76 former Aggrieved Employees during the PAGA period through mediation, and 35,818 total pay periods during the PAGA period. (Mankin Decl. ¶ 42).

While the PAGA civil penalty would have a maximum value in the eight figures, this figure 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, Defendant 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 rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying claim. As a result, Defendants argued that Plaintiffs would not be entitled to recover more than one civil penalty per pay period per employee (regardless of whether there was one Labor Code violation or five) because this is improper “stacking.” (Mankin Decl. ¶ 43).

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Based on 35,818 pay periods, Plaintiffs calculated the maximum penalty as follows:

|                                         |                     |
|-----------------------------------------|---------------------|
| • Wage Statements (35,818 pp x \$100)   | \$ 3,581,800        |
| • Rest Breaks (26,863.50 pp x \$100)    | \$ 2,686,350        |
| • Meals (26,863.50 pp x \$100)          | \$ 2,686,350        |
| • Wages (35,818 x \$100)                | \$ 3,581,800        |
| • 204 Late Payments                     | \$ 3,581,800        |
| • 203 (76 former employees x \$100)     | \$ 76,000           |
| • Business Expenses (50% of pp x \$100) | <u>\$ 1,790,900</u> |
| Total                                   | \$ 17,985,000       |

Plaintiffs applied a 75% risk adjustment to each PAGA claim based on the various defenses for an adjusted value of \$4,496,250. (Mankin Decl. ¶ 45).

The proposed Settlement allocates \$200,000 to the PAGA claims, of which 75% (or \$150,000) will be paid to the California LWDA and 25% (or \$50,000) will be allocated to the Aggrieved Employees as payment of the settlement.

**E. PLAINTIFFS' COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION**

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

Plaintiffs' Counsel are also highly experienced in Class/PAGA litigation. (Mankin Decl. ¶¶ 2-6; Lauby Decl. ¶¶ 3-10; Feghali Decl. ¶¶ 5-9, Tran Decl. ¶¶ 4-8, Cottrell Decl. ¶¶ 4-6). Plaintiffs' counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement considering the nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law, and uncertainties of class certification and litigation.

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

The proposed Class Notice should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under terms of the Settlement

1 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as  
2 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified  
3 of the proposed settlement.

4 The proposed Class Notice and proposed plan for the Settlement Administrator to mail  
5 the Class Notice to the last known address of all class members complies with all the  
6 requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed  
7 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,  
8 litigation expenses, and the costs of administration; (3) details about the final fairness hearing  
9 and how class members may elect to exclude themselves or make an objection; and (4) how class  
10 members can obtain additional information. *See* Class Notice (Exhibit A to the Settlement  
11 Agreement). In addition, it will inform Class Members of their estimated settlement share.

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

20 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement  
21 Class Members with all due process protections required by the United States Constitution.  
22 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because  
23 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic  
24 contentions or denials of the parties; (2) a statement that the court will exclude the member from  
25 the class if the member so requests by a specified date; (3) a procedure for the member to follow  
26 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or  
27 not, will bind all members who do not request exclusion; and (5) a statement that any member  
28 who does not request exclusion may, if the member so desires, enter an appearance through

1 counsel. The 45-day deadline for Class Members to exclude themselves is reasonable, as it  
2 provides Class Members with sufficient time to do so and, if they so choose, to seek independent  
3 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically  
4 be sent a settlement check.

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

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

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

15 Under the terms of the Settlement Agreement, Class Counsel is requesting \$1,250,000  
16 in attorneys’ fees, which is equal to one-third of the Settlement Amount. See, e.g., *Laffitte v.*  
17 *Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at  
18 a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the  
19 benefit of the class members, the trial court may determine the amount of a reasonable fee by  
20 choosing an appropriate percentage of the fund created); see also *Stuart v. RadioShack Corp.*  
21 (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee award of 1/3 of the total maximum  
22 settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total  
23 settlement was “well within the range of percentages which courts have upheld as reasonable in  
24 other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010  
25 WL 2196104, at \*8 (approving fee award of 33.33% of the common fund); *Romero v.*  
26 *Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at \*4 (awarding  
27 fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class  
28 actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System,*

1 *Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at \*8 (approving fees of 1/3 of common  
2 fund).

3         Additionally, Plaintiffs' counsel may collectively seek up to \$30,000 in litigation costs,  
4 pursuant to the Settlement Agreement.

5         Once the Court grants preliminary approval of the Settlement Agreement and Class  
6 Notice is disseminated, Plaintiffs' counsel will submit a request for attorneys' fees and costs with  
7 its final approval motion.

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

9         The Settlement Agreement provides an incentive award payment of \$7,500 to each Class  
10 Representative, which is reasonable given the large recovery Class Members will receive on  
11 average, as well as the time and effort they devoted to this case. As set forth in their  
12 declarations, their efforts included providing factual background for the Class and PAGA  
13 complaint; providing documents and information about Defendant's compensation plan;  
14 participating in phone calls to discuss litigation and settlement strategy; making herself available  
15 throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel  
16 prepare for the mediation; and reviewing the settlement documents. The Class Representatives  
17 also assumed significant risk in bringing this litigation—namely, had they lost, they could have  
18 been ordered to pay Defendant's costs.

19         The requested service award falls within the range of incentive payments typically  
20 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*  
21 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service award to each  
22 of the two class representatives in a trucker meal break class action; *Ross v. US Bank National*  
23 *Association* (N.D. Cal. 2010) 2010 WL 3833922, at \*2 (approving \$20,000 enhancement award  
24 to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast*  
25 *Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the  
26 amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v.*  
27 *Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at \*28 ("the court finds  
28 Plaintiff's enhancement payments of \$ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs.*

(N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at \*52 (finding “requested payment of \$25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at \*18 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement).

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

Subject to the Court’s approval, the parties stipulated to Phoenix serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a “not to exceed” proposal (i.e., flat-fee) to administer this settlement for \$13,000. Additionally, Phoenix has agreed to undertake the rules and responsibilities set forth in the new model agreement. (Decl. of Mike Moore). No party or counsel has any financial interest or ties to the proposed class administrator. (*see e.g.* Mankin Decl. ¶ 57).

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

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

|                                    |                                                                                                                                                             |
|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 26, 2023                       | Preliminary Approval Date (PA)                                                                                                                              |
| 25 days after PA                   | Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.                                       |
| 45 days after mailing Class Notice | Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.                                                    |
| TBD                                | Deadline for Plaintiffs 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 Plaintiffs' 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 120 days after Preliminary Approval is granted) | Final Approval Hearing.                                                                                                                                         |

### VIII. CONCLUSION

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

Dated: March 3, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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

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I, Tracie Chiarito, declare I am a citizen of the United States of America and am employed in Riverside, California; I am over the age of 18 years and am not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504. On March 3, 2023, I served the within **PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER** in said action by electronic filing service Case Home Page website to the parties on the service list maintained on the Case Home Page website for this case pursuant to the Court Order establishing the case website and authorizing service of documents.

Executed on March 3, 2023, at Riverside, California.

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