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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

SCOTT CAHN, individually and on behalf
of himself and all others similarly situated,

Plaintiff,

v.

J.J.R. ENTERPRISES, INC., doing
business as CALTRONICS BUSINESS
SYSTEMS, a California Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No. 34-2020-00284704

Assigned for All Purposes to:
Hon. Lauri A. Damrell

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: August 18, 2023
Time: 9:00 a.m.
Dept: 28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Scott Cahn (“Plaintiff”) filed a putative class and representative action against
4 Defendant J.J.R. Enterprises, Inc. (“Defendant”) (collectively the “Parties”) for unreimbursed
5 business expenses pursuant to Labor Code section 2802, Industrial Welfare Commission Wage
6 Orders 1-2001, 4-2001 and 7-200, California Code of Regulations, Title 8, section 11000 et seq.,
7 and Business and Professions Code sections 17200-17208 and for penalties under Private
8 Attorneys General Act of 2004, Labor Code section 2698 *et seq.* (“PAGA”).

9 Plaintiff respectfully requests the Court preliminarily approve the Stipulation of
10 Settlement (“Settlement Agreement”), included for the Court’s review as **Exhibit 1** to the
11 Declaration of James R. Hawkins, approve the Parties’ proposed Notice of Class Action
12 Settlement attached as **Exhibit A**, the Request for Exclusion Form, attached as **Exhibit B**, and
13 the Objection Form, attached as **Exhibit C**, (collectively the “Notice Packet”). Plaintiff has also
14 filed concurrently filed a proposed Order Granting Preliminary Approval of the Class and PAGA
15 Action Settlement (“Order”) which schedules a Final Approval Hearing and other dates of
16 settlement administration.

17 Pursuant to the Settlement Agreement, Defendant will pay a Gross Settlement Amount
18 (“GSA”) of \$425,000.00 to settle the claims raised in the action. The Net Settlement Amount
19 (GSA less Class Counsel Fees and Costs, Class Representative Enhancement Payment,
20 Settlement Administration Expenses, and the PAGA Penalty Payment) will be allocated pro rata
21 to the participating Class Members based on Class Members’ workweeks worked during the
22 Class Period of August 28, 2016, to December 15, 2022.

23 As discussed below, the proposed Settlement satisfies all criteria for preliminary approval
24 under California law and falls well within the range of reasonableness. The Settlement was
25 reached through informed, arms-length bargaining between experienced attorneys after extensive
26 informal discovery and mediation. It was the product of hard-fought negotiations through a full-
27 day mediation with the assistance of an experienced mediator, the Honorable Carl J. West. Thus,
28 Plaintiff respectfully submits preliminary approval of the Settlement should be granted.

II. SUMMARY OF THE LITIGATION

Plaintiff filed his class action complaint against Defendant on August 28, 2020, alleging failure to pay minimum wage, failure to pay overtime, failure to provide lawful meal periods, failure to authorize and permit rest periods, unlawful deductions, failure to timely pay wages during employment, failure to timely pay wages owed upon separation from employment, failure to furnish accurate, itemized wage statements, violation of the unfair competition law, and failure to reimburse necessary expenses. Plaintiff also provided notice to the LWDA of Defendant's alleged labor code violations pursuant to Labor Code section 2698, *et seq.*

Plaintiff was subsequently made aware of a prior settlement encompassing the wage and hour claims in the class action complaint. Accordingly, the wage and hour claims were dismissed, and on January 20, 2021 Plaintiff filed his amended class action and representative action complaint, alleging failure to reimburse necessary expenses, violation of the unfair competition law, and penalties under Labor Code section 2698 *et seq.* Defendant filed its Answer to Plaintiff's First Amended Complaint on February 24, 2021.

On July 12, 2021, Plaintiff propound discovery on Defendant. Thereafter, the Parties agreed to participate in early mediation. On July 13, 2022, the Parties participated in a full day of mediation with the Honorable Carl J. West (Ret.). Following mediation and further negotiations, the Parties reached the Settlement for which they now seek Preliminary Approval.

Although a settlement has been reached, Defendant denies any and all liability or wrongdoing of any sort with regard to the claims and maintains that for any purpose other than a settlement, this Action is not appropriate for class action treatment. (Hawkins Decl. ¶ 12). Defendant does not oppose the Motion for Preliminary Approval. (Id. ¶ 4).

III. INVESTIGATION AND MEDIATION

The Parties have conducted significant investigation of the facts and law, including, *inter alia*, numerous conferences between Plaintiff's Counsel and Defendant's counsel, substantial document production, and review of data necessary to calculate potential damages. Defendant produced a large volume of data concerning the putative class members prior to mediation, including time, pay, and mileage records for the putative class totaling over 100,000 lines of

1 data. Counsel for the Parties investigated the law as applied to the facts discovered regarding
2 Plaintiff's claims and potential defenses thereto, and the damages and penalties claimed. The
3 Parties also retained experts to assist in their respective investigations. (Id. ¶ 6). From the
4 documentation provided, the Parties conducted their own evaluations of the potential recoveries
5 based on the alleged claims. (Id.)

6 The Parties conducted a full day of mediation with respected wage and hour mediator
7 Honorable Carl J. West (Ret.) on July 13, 2022. (Id. ¶ 7). Although the Parties were unable to
8 resolve the dispute at the mediation session, the Parties continued discussions with the assistance
9 of Judge West. (Id.). The Settlement encompasses all claims in Plaintiff's First Amended
10 Complaint.

11 The Parties negotiated the full terms of the proposed Settlement at arm's length for
12 several months. The material terms were realized only after extensive negotiations consisting of
13 numerous telephone conferences and e-mail exchanges between counsel for the Parties, and with
14 assistance from the mediator. (Id. ¶¶ 8-9).

15 **IV. SUMMARY OF THE PROPOSED SETTLEMENT**

16 **A. Class and PAGA Group Definitions:** The proposed "Class Members" are: "All
17 persons who are or were employed by Defendant who submitted for mileage reimbursement in
18 the State of California within the Class Period." (Hawkins Decl., Ex. 1, Settlement, ¶ 2). The
19 Class Period is defined as August 28, 2016 through December 15, 2022. (Id., ¶ 1). The "PAGA
20 Aggrieved Employees" means "all persons who are or were employed by Defendant as non-
21 exempt employees and all exempt employees who submitted for mileage reimbursement in
22 California within the PAGA Period." (Id. ¶ 2). The "PAGA Period" is August 28, 2019 through
23 December 15, 2022. (Id. ¶ 1).

24 All Class Members who do not affirmatively opt-out will be bound by all its terms (Id.).
25 No claim form is required. PAGA Group Members cannot opt out of the PAGA release. (Id. ¶2).

26 **B. Gross Settlement Amount:** Defendant has agreed to pay a GSA of \$425,000.00
27 to settle this Action (Id. ¶4.)

28 **C. Net Settlement Amount:** The Net Settlement Amount ("NSA") is the amount

remaining after subtracting from the GSA the following amounts (subject to Court approval):

- (1) Class Representative Enhancement Payment of \$10,000.00 to Plaintiff Scott Cahn (*Id.* ¶ 8);
- (2) The Settlement Administration Costs to Phoenix Settlement Administrators of up to \$9,750.00 (*Id.* ¶ 9.);
- (3) Class Counsel Fees of one-third (33 1/3%) of the Gross Settlement amount equal to \$141,666.67 and up to \$18,000.00 in litigation costs and expenses (*Id.* ¶ 7.); and
- (4) PAGA Penalties of \$15,000.0, of which 75% will go to the LWDA (\$11,250.00) and 25% to the Aggrieved Employees (\$3,750.00) (*Id.* ¶4.).

Assuming equal distribution to the Class Members and full participation, the average recovery will be approximately \$743.82 from the NSA. (Hawkins Decl. ¶ 21).

Individual Settlement Payments: Defendant will pay the full NSA to Participating Class Members. (Settlement, ¶¶ 2, 11.) Each Participating Class Member will receive a pro rata share of the NSA as an Individual Settlement Payment based on the total workweeks worked during the class period. (*Id.* ¶6, §B). Each PAGA Aggrieved Employee will receive a pro rata share of the portion of the PAGA penalties payable to Aggrieved Employees as an Individual PAGA Payment based on the total number of workweeks worked during the PAGA period (\$3,750). (*Id.*, §C). For tax purposes, Individual Settlement and PAGA Payments shall be classified as 100% unreimbursed expenses, penalties, and interest. (*Id.*, § E) The Settlement Administrator will be responsible for issuing to participating Class Members IRS Forms 1099.

D. Notice Procedures: All Settlement Class Members will be mailed a Notice Packet. Each Notice Packet will include the Notice of Class and Representative Action Settlement (Ex. A), Request for Exclusion Form (Ex. B), and Notice of Objection Form (Ex. C). (*Id.* ¶11.) The Notice provides (1) information regarding the nature of the Action, (2) a summary of the Settlement's terms, (3) the Class and PAGA Group Member definitions, (4) the Class Member's Workweeks during the Class Period and/or Workweeks during the PAGA Period, (5) the estimated Individual Settlement Payment and/or Individual PAGA Payment and the formula for calculating the Payments, (6) the dates which comprise the Class and PAGA Group periods, (7) instructions on how to submit valid Requests for Exclusion or Objections and the deadlines, and (8) the claims to be released (*Id.*, ¶11, §E, Ex. A)

1 Defendant will provide the Class List to the Settlement Administrator within thirty (30)
2 calendar days after the Court grants preliminary approval. (*Id.* ¶11, §A). The Settlement
3 Administrator will perform a search of the National Change of Address Database to update the
4 contact information before mailing. (*Id.* §B)

5 Within ten (10) calendar days after receiving the Class List, the Settlement Administrator
6 will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Id.*). Any
7 Notice Packets returned as non-deliverable on or before the Response Deadline will be sent
8 promptly via regular First-Class U.S. Mail to the forwarding address, and the Administrator will
9 indicate the date of such re-mailing on the Notice. (*Id.* §F) If no forwarding address is provided,
10 the Settlement Administrator will promptly attempt to determine the correct address using a skip-
11 trace, or other search, and will then perform a single re-mailing (*Id.*). The “Response Deadline”
12 is sixty (60) calendar days from the initial mailing of the Notice Packet by the Settlement
13 Administrator. (*Id.* §C.) Class Members to whom Notice Packets are re-mailed after having been
14 returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days
15 from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to
16 submit a Request for Exclusion, an Objection, or a dispute. (*Id.* §F).

17 Any Settlement Class Member who disputes any data provided in the Notice must notify
18 the Settlement Administrator of the dispute in writing by the Response Deadline and submit all
19 evidence relating to the dispute to the Settlement Administrator at such time. (*Id.* §D).

20 Class Members who wish to opt-out from the Settlement must mail a completed Request
21 for Exclusion Form to the Settlement Administrator by the Response Deadline. (*Id.* §C.).

22 To object to the Settlement, a Class Member must not submit a Request for Exclusion
23 and must mail a Notice of Objection Form containing all the required information to the
24 Settlement Administrator before the Response Deadline. (*Id.* §D.). Class Counsel will not
25 represent any Class Members with respect to any such objections to this Settlement.

26 If more than ten percent (10%) of the Class Members opt out, Defendant may, at its
27 election, rescind the Settlement. (*Id.* ¶12.). If the actual number of Class Members or PAGA
28 Aggrieved Employees was more than 10% greater than the data provided to Class Counsel at the

time of mediation, the GSA will be increased proportionally based on the date which the number of Class Members or Aggrieved Employees crossed the 10% threshold. (*Id.* ¶13.).

The Class Notice complies with the standards of fairness, completeness and neutrality required of a settlement class notice.

E. Processing of Payments: Within ten (10) days of Defendant depositing the GSA as set forth above, the Settlement Administrator will issue payments as provided for in the Settlement. (*Id.*, ¶11, §D.). Any amount attributable to settlement checks returned as undeliverable or remaining uncashed for more than one hundred eighty (180) calendar days after issuance shall be tendered to the California State Controller’s Office Unclaimed Property Fund to be held in the name of the Class Member or PAGA Group Member’s name. (*Id.* §F.).

F. Class Members Release of Claims

Every Participating Class Member shall be deemed to have fully released any and all of the “Released Parties” from the “Released Claims” during the Class Period:

[A]ny claims that were asserted in the Action or are based on or reasonably related to the claim for unreimbursed business expenses, attendant interest, penalties, and civil penalties pursuant to the Private Attorneys General Act of 2004 (Labor Code sections 2698, et seq.) (“PAGA”)) for violation of Labor Code sections 2800, and 2802; claims under the Industrial Welfare Commission Wage Orders 1-2001, 4-2001 and 7-2001 for unreimbursed business expenses, California Code of Regulations, Title 8, section 11000 *et seq.*; and Business and Professions Code sections 17200-17208 for unreimbursed business expenses.

(*Id.* §A).

G. PAGA Group Members Release

Each and every PAGA Member shall be deemed to have fully released the Released Parties of and from all the following claims:

[C]laims for civil penalties that were asserted against that were asserted against Defendant or the Released Parties or any of them “arising out of or based upon the facts, theories, and/or claims alleged in the PAGA Notice Letter filed by Plaintiff with the LWDA in this Action. This release includes claims under the PAGA (California Labor Code section 2698 et seq.) for violations of Labor Code Sections 201, 202, 203, 204, 210, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, or 2802, applicable IWC California

Wage Orders, and California Code of Regulations, Title 8, section 11000 *et seq.*”

(*Id.* §B).

H. Plaintiff’s Release of Claims

In addition to the Released Claims above, Plaintiff also executed a general release of all known and unknown claims as set forth in paragraph 2 of the Settlement. (*Id.* §C). This release includes the release of the rights and benefits of Section 1542 of the California Civil Code. (*Id.*).

I. Class Representative Enhancement Payments and Class Counsel’s Fees and Costs Requests

Plaintiff Scott Cahn will request a Class Representative Enhancement Payment in an amount of \$10,000. (*Id.*, ¶8). Courts routinely approve enhancement payments to compensate plaintiffs for the services provided and risks incurred during class action litigation. Incentive awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometime, to recognize their willingness to act as a private attorney general.” (*Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1394 (2010) (approving an incentive award of \$10,000)). Importantly, enhancement awards “are fairly typical in class action cases.” (*Id.*). The requested sum is reasonable and warranted because Plaintiff dedicated a significant amount of time and effort in litigating this action. Plaintiff undertook significant risks, and the Class has been afforded substantial benefits due to his efforts.

In addition, Class Counsel will request a Class Counsel Award for reasonable attorneys’ fees, costs and expenses incurred in connection with the litigation. Class Counsel will request attorneys’ fees up one-third or 33 1/3% of the GSA equal to \$141,666.67 (Settlement ¶ 7.; *see* Hawkins Decl. ¶¶ 57-61 (setting forth a preliminary justification for the Class Counsel Fees Payment) and litigation costs up to \$18,000.00. (Settlement ¶ 7.)

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court.

The law favors settlements. *Bush v. Superior Court*, 10 Cal.App.4th 1374, 1382 (1992).

1 This is particularly true in class actions. However, a class action may not be dismissed,
2 compromised or settled without the Court's approval. See Cal. Civ. Code § 1781(f); Cal. R. Ct.
3 3.769 (a). The procedures for approval of a class action are (1) preliminary approval of the
4 settlement by the Court; (2) notice to Class Members as directed by the Court; and (3) a final
5 approval hearing to inquire into the fairness of the settlement. See Cal. R. Ct. 3.769(c), (e)-(f).

6 The decision to approve a proposed settlement lies within the Court's discretion. See
7 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008); *Wershba v. Apple*
8 *Computer, Inc.*, 91 Cal. App. 4th 224, 234-25 (2001). Nevertheless, in considering a settlement
9 for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the
10 merits...[or] to reach any ultimate conclusions on the contested issues of fact and law which
11 underlie the merits of the dispute." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625
12 (9th Cir. 1982). The Court's duty is to determine whether the settlement is fair, adequate, and
13 reasonable. See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (setting forth the
14 "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, 688 F.2d. at 625). The
15 Court should consider factors including "the strength of plaintiff's case, the risk, expense,
16 complexity and likely duration of further litigation, the risk of maintaining class action status
17 through trial, the amount offered in settlement, the extent of discovery completed and the stage
18 of the proceedings, the experience and views of counsel...and the reaction of the class members
19 to the proposed settlement." *Dunk*, 48 Cal. App. 4th at 1801. Furthermore, the Court must give
20 "[due] regard to what is otherwise a private consensual agreement between the parties."
21 *Wershba*, 91 Cal. App. 4th at 245. The inquiry must be limited "to the extent necessary to reach a
22 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
23 between, the negotiating parties." *Id.* (citation and internal quotation marks omitted).

24 A "presumption of fairness exists where: (1) the settlement is reached through arm's-
25 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
26 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
27 objectors is small." *Dunk*, 48 Cal. App. 4th at 1802 (citing Herbert B. Newberg & Alba Conte,
28 *Newberg on Class Actions* ("Newberg") § 11.41). As shown below, the settlement falls well

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

2 **B. The Settlement is Fair, Reasonable, and Adequate**

3 **1. The Settlement is the Result of Serious, Informed, Non-Collusive**
4 **Negotiations.**

5 The Settlement was the product of extensive arm's length bargaining by the Parties and a
6 full day of mediation with the assistance of retired Judge Carl J. West. (Hawkins Decl. ¶ 9). At
7 all times, the negotiations have been adversarial, non-collusive, and supported by a
8 knowledgeable mediator. The information exchanged between the Parties allowed them to assess
9 the merits of the claims and defenses and reach a compromise. (Id. ¶ 9). Plaintiff and Class
10 Counsel have considered the uncertainty and risk of further litigation and the potential outcome.
11 Plaintiff and Class Counsel have conducted extensive settlement negotiations, including the
12 above-mentioned mediation, and through the long-form Settlement. Based on the foregoing,
13 believe the Settlement set forth is a fair, adequate, and reasonable settlement, and it is in the best
14 interests of the Class Members. (Id. ¶¶ 11, 16).

15 **2. The Extent of Discovery and the Early Stage of the Proceedings**
16 **Support Settlement.**

17 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
18 of his respective claims and defenses before reaching the Settlement. (Id. ¶ 18(d)). The
19 Settlement was reached after extensive investigation and research, substantial exchanges of
20 documents, and a thorough evaluation with expert assistance of class-wide data produced to
21 Class Counsel. (Id. ¶ 18(c)). As such, this litigation has reached the stage where "the Parties
22 certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support
23 the settlement. *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985).

24 **3. The Settlement is a Reasonable Compromise of Claims**

25 The Settlement compares favorably to other class settlements in terms of potential
26 recovery. (See *In re MyFord Touch Consumer Litig.*, 2019 WL 1411510, at *10 (observing that
27 "the very essence of settlement is compromise" and citing cases where settlement ranges from
28 5% to 10% of potential recovery).

1 While Plaintiff believes in the strength of his allegations and that his claims are
2 appropriate for class certification, certification was far from certain given Defendant's defenses
3 and the state of the law regarding certification. (Id. ¶ 42) The considerable risk that Defendant
4 could defeat certification, defeat the representative claims, and prevail on its defenses, warranted
5 a compromise of the class and representative claims. (Id.). After arms-length negotiations
6 between experienced and informed counsel and with the assistance of a mediator, the Parties
7 agreed on a GSA of \$425,000.00, which is approximately 52.2% of the Defendant's realistic
8 exposure exclusive of PAGA, and approximately 23.6% of the exposure including PAGA. (Id. ¶
9 46). As the *Glass* court held:

10 In light of the above-referenced uncertainty in the law, the risk, expense,
11 complexity, and likely duration of further litigation likewise favors the settlement.
12 Regardless of how this Court might have rules on the merits of the legal issues, the
13 losing party likely would have appealed, and the parties would have faced the
14 expense and uncertainty of litigation an appeal. "The expense and possible duration
15 of the litigation should be considered in evaluating the reasonableness of [a]
settlement." See *In re Mego Financial Corp. Securities Litigation*, (9th Cir. 2000)
213 F.3d 454, 458.

16 (*Glass v. UBS Fin. Servs.*, (N.D. Cal. Jan. 26, 2007) 2007 WL 221862, at *9). "Generally,
17 unless the settlement is clearly inadequate, its acceptance and approval are preferable to
18 lengthy and expensive litigation with uncertain results," (*Ching v. Siemens Indus, Inc.*,
19 (N.D. Cal. June 27, 2014) 2014 WL 2926210, at *4 (quotation omitted).) This factor
20 weighs in favor of approval.

21 **4. The Risks Inherent in Continued Litigation Are Great.**

22 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
23 Court also should consider "[t]he strength of plaintiff's case, the risk, expense, complexity, and
24 likely duration of further litigation, [and] the risk of maintaining class action status." See *Dunk*
25 48 Cal.App. 4th at 1801.

26 As set forth in the Hawkins declaration, Defendant asserted strong defenses to Plaintiff's
27 claims, and those defenses create a possibility that the claims might not be certified or might fail
28 on the merits. Plaintiff and Class Counsel recognized the expense and length of proceedings

necessary to continue the litigation against Defendant through trial and through any possible appeals. Also considering the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation (Id. ¶ 11). While Plaintiff believes in the strength of his allegations and that his claims are appropriate for class certification, Plaintiff and Class Counsel have balanced their evaluation of the validity and merit of the asserted claims against potential problems of proof, the legal standards governing litigation of class claims and PAGA claims, uncertainty of obtaining and maintaining class certification, the potential for appeals, and the expense and burden of prolonged litigation. (Id. ¶ 16). Based on Class Counsel's evaluation, the Settlement is fair, adequate, and reasonable and in the best interest of the Class, including Plaintiff. (Id. ¶ 17).

5. The Fairness of the Distribution to Class Members Also Supports Approval.

The Settlement treats all Class Members equally, providing no preferential treatment for the named Plaintiff or any segment of the Class. The Parties have allocated the Individual Settlement Payments according to the number of Workweeks that each Class Member worked during the Class Period versus the Total Workweeks worked by all Class Members during the Class Period. (Settlement ¶6).

6. Class Counsel Are Experienced in Similar Litigation.

Experienced counsel, operating at arm's length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge-Lee Indus, Inc.*, 630 F. Supp. 482, 488 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F. 2d. 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979). Lead Class Counsel, James Hawkins APLC are experienced in wage-and-hour class actions. (Hawkins Decl. ¶71.) Since 2002, class counsel has been certified as class counsel in well over 100 wage and hour class action lawsuits. (*Id.*).

Counsel share the view that this is a fair and reasonable settlement in light of the

complexities of the case, the state of the law, and uncertainties of class certification and litigation. Given the risk inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the Class Members, and should be preliminarily approved.

VI. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASSES UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 382 IS APPROPRIATE

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*, 48 Cal. App. 4th at 1807 n.19. Because no trial is anticipated in a settlement class, the case management issues inherent in determining if the class should be certified need not be confronted, and the trial court’s fairness review of the settlement protects the interests of the non-representative class members. *Id.* Here, for the purposes of this settlement only, the Parties ask this Court to provisionally certify the Class as discussed below.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). The class size of approximately 310 Class Members is sufficiently numerous to warrant conditional class certification. (*Id.* ¶ 51) The proposed Class is ascertainable as all of the Class Members worked for Defendant and can be identified through employee files and payroll records. (*Id.*) For the purpose of settlement only, Plaintiff and Defendant have stipulated to class certification. (*Id.* ¶ 53).

B. Well-Defined Community of Interest

1. Commonality.

1 To justify certification, the class proponent must show that questions of law or fact
2 common to the class predominate over the questions affecting the individual members. *See*
3 *Arenas v. El Torito Rests, Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank*
4 *v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). The claims of Plaintiff and the Class Members
5 all flow from the same facts and legal claims, i.e., that Defendant’s policies, practices, and
6 procedures resulted in Defendant’s failure to reimburse Class Members for expenses, specifically
7 mileage. Under these circumstances, the commonality requirement for certification for settlement
8 purposes is satisfied. (Id. ¶ 49).

9 **2. Typicality**

10 Typicality “focuses on whether there exists a relationship between the plaintiffs’ claims
11 and the claims alleged on behalf of the class.” *Newberg*, §3.13. The typicality requirement is
12 met, as the proposed Class Representative and the Class Members have claims that Defendant
13 violated California law by failing to reimburse for business expenses. The Class Representative
14 and the proposed Class Members all claim that Defendant committed similar violations based
15 upon similar conduct, policies and practice and they seek the same remedies. Plaintiff contends
16 that his claims are typical of the claims of the Class because they generally arise from the same
17 factual basis and the same legal theories as those applicable to the Class Members. (Id. ¶ 50).

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.*, 179 Cal. App. 4th 540, 546
21 (2009). Class Counsel is unaware of any interests of the Class Representative which are adverse
22 to the interests of the Class. (Id. ¶ 51). Adequacy may be established by the fact that counsel are
23 experienced practitioners. *See Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las*
24 *Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Class Counsel James Hawkins,
25 APLC are experienced in wage-and-hour litigation (Id. ¶ 56).

26 **VII. THE COURT SHOULD APPOINT PHOENIX SETTLEMENT** 27 **ADMINISTRATORS AS CLAIMS ADMINISTRATOR**

28 The parties propose that the Court appoint Phoenix Settlement Administrators to serve as

the Claims Administrator. Phoenix Settlement Administrators is experienced in administering class action settlements, and has capped its fees and costs for this settlement at \$9,750.00. (Hawkins Decl. ¶ 33; Settlement ¶9).

A. The Notice To Be Provided to Class Members Is Sufficient.

California statutory and case law vests the Court with broad discretion in fashioning an appropriate notice program. What constitutes adequate notice will depend on the circumstances of each case, and such efforts and their costs must be proportional to the magnitude of the claims. The notice plans here satisfies all due process requirements.

1. The Content Of The Notice Provided to Class Members Is Sufficient.

The Notice of the Class Action Settlement, attached as Exhibit A to the Settlement, identified Plaintiff and Defendant and described the lawsuit and the settlement class. (Settlement, Ex. A-C). It summarizes the proceedings to date along with the terms and conditions of the Settlement in an informative and coherent manner, and is accurate, objective, and understandable to Class Members (Hawkins Decl. ¶ 55). It clearly states the Settlement does not constitute an admission of liability by Defendant and recognized the Court has not ruled on merits (Id.) Additionally, it also states the final settlement approval decision has yet to be made (Id.). The Notice meets the standards of applicable law since it fairly apprises the members of the class “of the terms of the proposed compromise and of the options open to dissenting class members.” (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 251 [citation omitted]; see Cal. R. Ct., Rule 3.766, subd. (d).)

2. The Manner of Supplying Notice to Class Members Is Sufficient.

There is no statutory or due process requirement that all class members receive actual notice of the settlement. Rather, “[t]he notice given should have a reasonable chance of reaching a substantial percentage of the class members....” *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 973. This is satisfied by mailing the Notice of Class Action Settlement by first class USPS mail.

VIII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, at which the Court may hear all evidence and argument necessary to evaluate the proposed Settlement. The Parties propose

that the Court schedule a hearing for final approval of the hearing on or after January 26, 2024.

IX. PROPOSED SETTLEMENT TIMELINE

The following is a proposed settlement timeline, which assumes that the settlement is preliminarily approved on August 18, 2023.

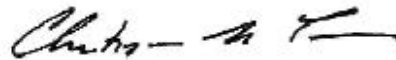
<u>Date</u>	<u>Event</u>
August 18, 2023	Preliminary court approval of settlement
September 18, 2023	Deadline for Defendant to provide Class List to Claims Administrator (within 30 days of Preliminary Approval)
September 28, 2023	Deadline for Claims Administrator to mail Class Notices to Class Members (within 10 days after receiving Class List)
November 27, 2023	Response Deadline for Class Members to opt-out or object to Settlement (No later than 60 calendar days from the mailing of Class Notice)
January 3, 2024	Deadline to file Motion for Final Approval of Settlement and any Motion for Attorney's Fees and Costs
January 26, 2024	Hearing on Final Approval of Settlement

X. CONCLUSION

For all these reasons, Plaintiff respectfully requests that the Court preliminarily approve the Settlement.

Dated: July 21, 2023

JAMES HAWKINS APLC



James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for Plaintiff Scott Cahn, individually and on behalf of all others similarly situated.