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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ELIZABETH MORENO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

J.J. KANE ASSOCIATES, INC., a New
Jersey Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CVRI2101236
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS IN
SUPPORT THEREOF; [PROPOSED]
ORDER**

Hearing

Date: January 31, 2022
Time: 8:30 a.m.
Dept. 1

Reservation #: 780017211930

Complaint filed: 3/9/21

1 TO THE HONORABLE COURT AND TO ALL PARTIES AND COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on January 31, 2022, at 8:30 a.m., or as soon thereafter as
3 this matter may be heard by the Honorable Craig Riemer in Department 1 of the Riverside
4 County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiff Elizabeth
5 Moreno will move pursuant to California Rules of Court 3.769(d) and (e), for an order: (1)
6 granting preliminary certification to the settlement class for settlement purposes only; (2)
7 granting preliminary approval of the proposed settlement including appointment of Plaintiff's
8 counsel as Class Counsel; (3) authorizing the parties to provide the proposed notice to the class;
9 and (4) setting a final approval or fairness hearing to be heard approximately 120 days after the
10 date preliminary approval is granted as the Court's calendar permits. A proposed order to this
11 effect is filed concurrently herewith.

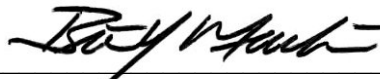
12 This motion is unopposed by Defendant J.J. Kane Associates, Inc. The parties seek the
13 Court's preliminary approval of the settlement in order to begin the process towards obtaining
14 final approval of the proposed settlement through a final fairness hearing set approximately 120
15 days after preliminary approval. At that time, the Court will again have the opportunity to fully
16 consider the proposed settlement before entering a final order.

17 This Motion is based upon this Notice, the attached Memorandum of Points and
18 Authorities, the Class Action Settlement Agreement and proposed Order submitted herewith, the
19 declarations of Plaintiff's counsel (Brian Mankin), Defense counsel (Richard Zuniga), Defendant
20 Representative (Jamie Ido), and the Settlement Administrator (Mike Moore of Phoenix), all other
21 papers on file in this action, and on such other materials or arguments of counsel that the Court
22 may receive at or before the hearing on this Motion.

23 Dated: January 6, 2022

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Elizabeth Moreno, individually and on behalf of all others similarly situated,
4 seeks preliminary approval of a \$235,000 wage-and-hour class action and representative PAGA
5 settlement (the “Settlement Amount”) between the putative class members and Defendant J.J.
6 Kane Associates, Inc (“J.J. Kane or “Defendant”).

7 Through this settlement, Plaintiff seeks to represent the Settlement Class comprised of
8 approximately 45 current and former nonexempt (hourly paid) employees employed by
9 Defendant in California at any time during the Class Period of November 1, 2018, through
10 January 7, 2022.

11 Under the terms of the Class Action Settlement Agreement and Release of Claims
12 (“Settlement Agreement” or “S.A.”), Defendant will not oppose Plaintiff’s Counsel’s application
13 for a reasonable award of attorney’s fees not to exceed one-third of the Settlement Amount
14 (\$78,333.33), litigation expenses not to exceed \$15,000, Settlement Administrator costs not to
15 exceed \$5,000, PAGA penalties of \$20,000 (with 75% to the LWDA and 25% to the “Aggrieved
16 Employees”), and a Service Payment not to exceed \$5,000 for Plaintiff.

17 After all these deductions from the Settlement Amount, it is estimated that \$111,666.67
18 will be available to pay the Individual Settlement Amounts of the Class Members who do not
19 opt-out of the settlement, as follows:

20

	Total Amount
<i>Gross Settlement Amount</i>	\$ 235,000.00
Attorneys’ Fees (1/3)	\$ 78,333.33
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 5,000.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 111,666.67

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26 The settlement is non-reversionary, and Class Members will not be required to submit
27 claim forms to receive payment, but each Class Member will receive the Class Notice containing
28 information about his/her share, the opportunity to dispute the number of weeks worked by the

1 Class Member, and the opportunity to opt-out or object to the settlement. All Class Members
2 who do not affirmatively opt-out will receive a settlement check upon the Court granting final
3 approval.

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

12 **II. BACKGROUND**

13 **A. The Class**

14 The Settlement Class is defined above and in the Settlement Agreement at ¶ 37. (See
15 Exhibit A to the Declaration of Brian J. Mankin ("Mankin Decl.")). There are an estimated 45
16 individuals that fall within the defined Class (the "Class Members").

17 **B. Procedural History**

18 On November 2, 2020, Plaintiff submitted a letter to the California Labor Workforce
19 Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act
20 of 2004 (the "PAGA") and concurrently sent a letter to Defendant requesting the production of
21 her personnel and timekeeping records in order to further evaluate the wage and hour claims.
22 (Mankin Decl., ¶ 13).

23 Then, on March 9, 2021, Plaintiff filed a putative class action and representative
24 complaint in the Court on behalf of the Class Members, alleging causes of action for: (a) failure
25 to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods,
26 (d) failure to provide rest breaks, (e) failure to timely pay vested vacation upon separation of
27 employment, (f) failure to failure to timely pay wages each period and upon separation of
28 employment, (g) failure to provide accurate itemized wage statements, and (h) unfair and

1 unlawful competition, and (i) related claims under PAGA. (Mankin Decl., ¶ 14).

2 Defendant retained counsel and fully denied the allegations. In the Parties' initial status
3 conference statement, Defendant disagreed with Plaintiff's version of the facts and claims and
4 further noted "Defendant denies the material allegations of the Complaint and denies that it has
5 violated any law with respect to Plaintiff, putative class members or putative aggrieved
6 employees." Thereafter, the Parties continued to debate the merits of the claims and defenses
7 before ultimately agreeing to attend an early mediation in order to avoid significant costs and
8 fees associated with a class certification hearing. (Mankin Decl., ¶ 15).

9 In preparation for mediation, the Parties agreed to an informal discovery process where
10 information was exchanged relating to the applicable policies and procedures, payroll and time
11 keeping records, size of the class, and potential value of the case. The exchange included
12 Defendant's policies and procedures relating to the claims at issues, meal period waiver forms, a
13 sampling of timekeeping and payroll records, information relating to the size of the class. The
14 robust exchange allowed Plaintiff and her expert to take a deep dive into the claims by evaluating
15 over 5,000 individual shifts and over 1,100 work weeks. As such, Plaintiff and her counsel were
16 essentially given a roadmap to analyze, research, and investigate the potential claims of all
17 similarly situated employees. (Mankin Decl., ¶ 16).

18 The mediation took place on November 8, 2021 with Todd Smith, a highly regarded and
19 well-respected employment mediator. At the conclusion of mediation, the Parties reached this
20 class-wide settlement for \$235,000 and later memorialized the terms of the settlement in a long-
21 form Settlement Agreement. (Mankin Decl., ¶ 17).

22 **C. Brief Summary of the Claims and Defenses**

23 Plaintiff alleged numerous wage and hour violations on behalf of the Class. However,
24 Defendants vigorously contested and denied each of Plaintiff's material allegations on the merits
25 and as to the propriety of a class action or PAGA representative action, as discussed herein.

26 First, Plaintiff claimed that Defendant utilized a time rounding policy that shaved off
27 minutes of time from the recorded punch in and out times when totaled. Plaintiff alleged that the
28 timekeeping data revealed that the rounding policy routinely and systemically failed to pay the

1 Class for all hours worked. Defendant argued that its rounding practice was facially neutral and
2 the wage claims could not be certified due to their individualized nature. (Mankin Decl., ¶ 19).

3 Second, Plaintiff alleged that the unpaid wage claims trigger various penalties, including
4 30-days of pay as a waiting time penalty for each former employee under Labor Code § 203.
5 (Mankin Decl., ¶ 20).

6 Third, Plaintiff claimed that Defendant violated Labor Code Section § 204 from the
7 beginning of the statutory period through approximately early 2021 where they paid the
8 employees 11 days after the close of each biweekly pay period. (Mankin Decl., ¶ 21).

9 Fourth, Plaintiff alleged that Defendant's meal period policy failed to comply with
10 California law. In this regard, Plaintiff alleges that Defendant routinely failed to (1) comply with
11 California's requirement regarding the timing of meal periods, (2) provide first meal periods for
12 shifts less than 8 hours, and (3) provide second meal periods for shifts in excess of 10 hours.
13 Moreover, Plaintiff alleged that the payroll and timekeeping records confirm that Class Members
14 were subjected to these violations on numerous shifts worked with frequent instances of late first
15 meals, short meal periods, and no mandated first or second meal periods for shifts over 6 hours
16 or 12 hours, respectively. Plaintiff also alleged rest period violations due to Class Members not
17 being provided with 10-minute rest breaks for every work period of four hours or major fraction
18 thereof. Defendant did not schedule rest breaks for the Class Members and, therefore, Plaintiff
19 and the Class members could only take a rest break if such a break could be accommodated by
20 their workload. However, as the Class Members were constantly overwhelmed by the hectic
21 workload, Plaintiff argued that Defendant did not authorize or permit them to take rest breaks.
22 Defendant contested the claims arguing that its written meal and rest policies were compliant
23 with California law and that there was nothing inherent in the duties of the Class Members that
24 would prevent them from taking compliant meal and rest periods and that any non-compliant
25 breaks were as a result of individual choice. Further, in 2021, Defendant changed its timekeeping
26 system by requiring Class Members to attest that they had taken their meal breaks. Lastly,
27 Defendant argues that these violations require individualized testimony and proof and are not
28 certifiable for class treatment because common issues do not predominate. (Mankin Decl., ¶ 22).

1 Finally, Plaintiff claimed that directly contrary to the requirements of Labor Code §
2 226(a), Defendant provided its employees with uniform wage statements that failed to accurately
3 state total hours worked (due to rounding violations). Moreover, due to the failure to pay
4 mandated meal/rest break premiums, the wage statements also failed to accurately state gross/net
5 wages earned and all deductions. (Mankin Decl., ¶ 23).

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

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

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

10 **A. Settlement Consideration and Allocation**

11 The \$235,000 Settlement Amount is non-reversionary and will be paid out to Class
12 Members without the need to submit a claim form or take any affirmative action. It includes (1)
13 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$5,000 to
14 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses of \$5,000; (4) a
15 \$20,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California
16 Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate
17 Individual Settlement Payments for Participating Class Members.

18 After all Court-approved deductions from the Settlement Amount, it is estimated that that
19 \$111,666.67 will be available to pay the Individual Settlement Amounts of the Class Members.
20 The allocation per Class Member is discussed below in Section III(C).

21 **B. Notice Procedures**

22 **1. *The Notice to the Class Complies with CRC Rule 3.766(d)***

23 In reviewing proposed class notices, courts have held that the method and the content of
24 the notice should be designed to fairly apprise class members of the terms of the proposed
25 settlement and the options available to them.

26 Here, in accordance with California Rules of Court, rules 3.766(d) and 3.769(f), the Class
27 Notice (Exhibit "B" to the Mankin Declaration) provides the Class Members with (1) a brief
28 explanation of the case; (2) an explanation of each Settlement Class Member's right to opt out of

1 the settlement class; (3) an explanation of the process (and relevant deadlines) through which a
2 Settlement Class Member could opt out of the settlement class; (4) notice about the binding
3 nature of the Judgment for Settlement Class Members who do not opt out; (5) an explanation of
4 each Settlement Class Member's right to appear through counsel; (6) an explanation of each
5 Settlement Class Member's right to appear at the fairness hearing and express views of the
6 settlement, i.e., object or otherwise respond; and (7) an explanation of each Settlement Class
7 Member's right to participate in the settlement and receive payment accordingly. Furthermore,
8 the Notice advises the Class Members that, in granting preliminary approval, "the Court has
9 determined only that there is sufficient evidence to suggest that the proposed settlement might be
10 fair, adequate, and reasonable, and that any final determination of those issues will be made at
11 the final fairness hearing."

12 The terms of the Notice also comply with this Court's CMO by informing each Class
13 Member of his/her estimated recovery, the number of pay periods that each Class Members is
14 credited with receiving, and the applicable average payments, minimum, and high payments.

15 The Notice also discloses where the Class Members can obtain additional information
16 about the Settlement (i.e., at the Court's physical location, online portal, or by contacting the
17 administrator or Class Counsel).

18 The Court's CMO also inquires as to the likely age, education, experience and English-
19 language facility of the class members. According to Defendant, the typical Class Member is
20 above the age of 18 and speaks, understands, and writes in English. (See Declaration of
21 Defendant's Representative, Jamie Ido). As such, the Class Notice will be only provided in
22 English.

23 **2. The Manner of Giving Notice Complies with CRC Rule 3.766(e)**

24 An appropriate notice is one that has a reasonable chance of reaching a substantial
25 percentage of the class members. *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 970, 974. The
26 settlement calls for the Settlement Administrator to update the list of addresses provided by the
27 employer by using a verification check through the US Postal National Change of Address
28 directory to the last known address of the Settlement Class Members. The Notice Packet will be

1 sent by the Settlement Administrator via first class mail to the last known address of each Class
2 Member. *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 618-620 (individual mailings to
3 each Class Member's last known address is a sufficient form of notice).

4 Here, within 14 days after Preliminary Approval Order is entered, Defendant shall
5 provide the Settlement Administrator with a list of Class Members containing names, addresses;
6 telephone numbers; Social Security Numbers; and the total number of pay periods worked during
7 the Class Period by each Class Member (the "Class Data"). (S.A. ¶¶ 5, 61). Within 14 days of
8 receipt of the Class Data, the Settlement Administrator shall populate the Class Notice for each,
9 and send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 62).

10 In the event that any Class Notice mailed to a Class Member is returned as having been
11 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
12 search and seek an address correction for such Class Member(s), and a second Class Notice will
13 be sent to any new or different address obtained. (S.A. ¶ 63).

14 **3. No Claims Process**

15 As explained above and in the Notice, Class Members are automatically included in the
16 Settlement and will receive payment upon the court granting final approval without being
17 required to take any affirmative action. (S.A. ¶ 24). The Notice provides Class Members with
18 sufficient information to decide whether to opt-out, object, dispute credited Weeks Worked or do
19 nothing.

20 **4. Exclusions and Objections**

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. In order to Opt-Out of the Settlement, the Class
24 Member must submit return the Request for Exclusion Form to the Settlement Administrator no
25 later than 45 days after being mailed by the Settlement Administrator ("Notice Response
26 Deadline"). (S.A. ¶¶ 19, 67).

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 must complete and return

the Objection Form to the Settlement Administrator no later than the Notice Response Deadline. (S.A. ¶ 67(c)).

C. Settlement Allocation Formula for Settlement Shares

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Weeks Worked by each Settlement Class Member during the Class Period. (S.A. ¶¶ 47(c)). Likewise, each “Aggrieved Employee” will receive a share of the \$5,000 in PAGA Penalties allocated to the Aggrieved Employees on a pro-rata basis according to the number of pay periods worked during the PAGA Period. (S.A. ¶¶ 47(h)). Aggrieved Employees may not opt-out of the PAGA Penalties. (S.A. ¶¶ 67(a)).

The Class Notice will inform Class Members of the estimated share and the number of Weeks Worked during the Class Period and PAGA Period. Class Members may dispute their weeks worked if they feel they worked more than Defendant’s records show by timely submitting the Dispute Form and evidence to the Settlement Administrator. (S.A. ¶ 65).

Defendant provided preliminary data showing that 43 individuals collectively worked 3,889 workweeks through November 1, 2021 (prior to the end of the Class Period). Assuming this could increase to 45 Class Members and 4,000 total work weeks for the full Class Period (i.e., through January 7, 2022), then it is estimated that: (1) the average payment will be \$2,481, (2) the value per pay period worked will be \$28.71, (3) the high payment will be approximately \$4,880 (based on an estimated 170 weeks worked), and (4) the low payment will be approximately \$172.26 (based on an estimated 6 weeks worked).¹

Moreover, it is estimated that there will be approximately 40 Aggrieved Employees who will share in the \$5,000 PAGA award on a pro rata basis.

D. Timing of Settlement Disbursements

Defendant shall deposit the Settlement Amount with the Settlement Administrator within 15 days after the Effective Date to pay: (1) the class attorney fees and expenses, as approved by the Court; (2) the service award, as approved by the Court; (3) administrative costs, as approved

¹ See Mankin Decl. ¶ 43 (but the actual figures, based on the Class Data provided after preliminary approval, will be calculated by the Settlement Administrator and inserted into the Class Notice)

1 by the Court; (4) the PAGA award; and (5) the aggregate of all Individual Settlement Amounts
2 of participating Class Members. Within 10 days thereafter, the Settlement Administrator shall
3 issue payments to cover all court-approved payments. (S.A. ¶¶ 68-69).

4 **E. Tax Treatment**

5 The Individual Settlement Payments to Participating Class Members will be allocated as
6 one-third to wages subject to standard withholdings and two thirds for interest and statutory
7 penalties from which no taxes will be withheld. The Settlement Administrator will issue to each
8 Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms
9 with respect to the wage allocation and a Form 1099 with respect to the penalties and interest
10 allocations. (S.A. ¶ 47(d)).

11 **F. Participating Class Members' Release of Claims**

12 In exchange for the payments above, the Settlement Class Members will release the
13 claims and parties as required by CMO ¶ H(3)(e). Specifically, the Settlement Agreement at ¶
14 29 defines the "Released Claims" as follows:

15 "Released Class Claims" or "Class Claims" by the Participating Class
16 Members upon Final Approval of the Settlement will include all claims
17 stated in the operative Complaint and those based solely upon the facts in
18 the Complaint, including: (a) failure to pay minimum wages, (b) failure to
19 pay overtime wages, (c) failure to provide meal periods, (d) failure to
20 provide rest breaks, (e) failure to timely pay vested vacation upon
21 separation of employment, (f) failure to failure to timely pay wages each
22 pay period and upon separation of employment, (g) failure to provide
23 accurate itemized wage statements, and (h) unfair and unlawful
24 competition, and (i) all other claims for statutory penalties based on the
25 facts or claims alleged in the Complaint.

26 This definition "Released Claims" complies with CMO ¶ H(3)(e)(ii) and, because the
27 Settlement Agreement at ¶ 31 specifies that "the time period governing the Released Claims [...]
28 shall be the same as the Class Period," it also complies with CMO ¶ H(3)(e)(iii).

29 It is also understood and agreed that the Settlement Agreement will not release any
30 person, party or entity from claims, if any, by Class Members for workers compensation,
31 unemployment, or disability benefits of any nature, nor does it release any claims, actions, or
32 causes of action which may be possessed by Settlement Class Members under state or federal

1 discrimination statutes including, without limitation, the Cal. Fair Employment and Housing Act,
2 the Cal. Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code §
3 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §
4 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the
5 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and
6 all of their implementing regulations and interpretive guidelines.

7 The Settlement Agreement at ¶ 30 also defines the “Released Parties” as “Defendant, and
8 all of its past and present officers, directors, and employees.” This definition tracks the CMO.

9 Based on the foregoing, Plaintiff submits that the Release complies with all aspects of
10 CMO ¶ G(3)(e).

11 **G. Aggrieved Employees’ Release of Claims**

12 The Settlement Agreement at ¶ 23 also defines the release of PAGA claims in as required
13 by the CMO ¶ H(3)(e)(iv):

14 “PAGA Released Claims” by Plaintiff and the Aggrieved Employees upon
15 Final Approval of the Settlement means any and all PAGA claims that
16 Plaintiff alleged against the Released Parties, on behalf of Aggrieved
17 Employees and State of California, based on the facts stated in the operative
18 Complaint in the Action and in the LWDA notice letter(s), including all
19 PAGA claims seeking civil penalties that premised upon (a) failure to pay
20 minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal
21 periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each
22 period, (f) failure to timely pay final wages, (g) failure to provide accurate
23 itemized wage statements, and (h) all other claims for civil penalties
24 recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et*
25 *seq.* that were stated in the Complaint and based upon the facts alleged in the
26 Complaint and the notice sent by Plaintiff to the LWDA on November 2,
27 2020. The time period governing the PAGA Released Claims shall be any
28 time during the PAGA Period.

22 Additionally, the Settlement Agreement at ¶ 51 provides further clarification showing
23 compliance with the CMO:

24 Upon entry of the Final Approval Order and Defendant funding of the
25 Settlement Amount, Plaintiff – in her individual capacity and on behalf of
26 Aggrieved Employees and the State of California and LWDA - shall
27 completely release and discharge the Released Parties from the PAGA
28 Released Claims for the PAGA Period.

1 Finally, even if an Aggrieved Employee requests exclusion from the Class settlement,
2 that individual will still be subject to the PAGA Released Claims to the fullest extent permitted
3 by law and will receive a pro-rata share of PAGA Penalties. (S.A. at ¶ 67(a)).

4 **IV. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

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

20 As discussed below, for the purposes of this settlement only, Plaintiff request that this
21 Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 3150.

22 **A. Numerosity and Ascertainability**

23 Numerosity is met if a proposed class is so large that joinder of all members would be
24 impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
25 the class members can be objectively identified and given notice of the litigation without
26 unreasonable time or expense. See *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
27 89, 101. Here, according to Defendants’ records, there are approximately 45 Class Members.
28 This figure satisfies the numerosity requirement.

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. See
5 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
6 *v. Superior Court* (2001) 24 Cal.4th 906, 913). Plaintiff contends that the Class was subject to
7 common policies and practices relating to the payment of wages, the provision of meal and rest
8 breaks, among other things. While the Parties dispute whether a class would be appropriate if the
9 litigation were to continue, they agree to class certification for the purposes of this settlement.

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 Plaintiff’s claims are typical of the Class for any continued litigation of the Action, but agree for
15 the purposes of this settlement only, that Plaintiff asserts the claims as those alleged on behalf of
16 the class, all of which are at the core of the lawsuit.

17 3. Adequacy of Representation

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

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

28 ///

1 4. Superiority

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

6 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

7 **A. Class Action Settlements are Subject to Judicial Review and Approval**

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

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

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

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

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

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

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

24 **B. The Settlement Resulted from Serious, Informed, Non-Collusive Negotiations**

25 The settlement was the product of extensive arm's length negotiations between counsel
26 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
27 professional, the settlement negotiations were adversarial and non-collusive in nature. The
28 settlement reached is the product of substantial effort by the parties and their counsel. Although

1 Plaintiff and her counsel believed that there was a possibility of certifying the claims, they
2 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
3 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
4 and/or on an appeal that can take several more years to litigate. In addition, if Defendant
5 prevailed on any of its defenses, the Class may not have received any monetary recovery.

6 **C. The Extent of the Investigation was More than Sufficient**

7 Plaintiff and her counsel thoroughly investigated and evaluated the factual and legal
8 strengths and weaknesses of this case before reaching the settlement. As described above, the
9 settlement was reached after extensive investigation and research, thorough calculations and risk
10 evaluation, and a substantial pre-mediation exchange of information, data, and documents.
11 (Mankin Decl., ¶¶ 12-24).

12 **D. Plaintiff's Counsel is Experienced in Similar Wage-and-Hour Litigation**

13 The view of the attorneys actively conducting the litigation is entitled to significant
14 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
15 Cal. 1980) 87 F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.*
16 (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of
17 counsel”) (internal quotation and citation omitted).

18 Plaintiff's Counsel is highly experienced in Class/PAGA litigation, having achieved large
19 settlements and verdicts, including one of the largest PAGA awards in California's history,
20 collecting over \$250 million for its clients. (Mankin Decl., ¶¶ 2-6). Plaintiff's counsel,
21 operating at arm's length, weighed the strengths and risks of this case, and are of the view that
22 this is a fair and reasonable settlement in light of the nature of the claims, realistic risk adjusted
23 value of damages, complexities of the case, state of the law, and uncertainties of class
24 certification and litigation. (*Id.*, ¶¶ 52-56).

25 **E. The Class Notice Conforms to All Applicable Statutes and Rules**

26 The proposed Class Notice should be approved, as it fully informs the Class Members of
27 the nature of the lawsuit and each Class Member's rights under terms of the Settlement
28 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as

1 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
2 of the proposed settlement.

3 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
4 the Class Notice to the last known address of all class members complies with all the
5 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
6 Class Notice include (1) the material terms of the settlement; (2) the estimated settlement share;
7 (3) the proposed attorneys' fees, litigation expenses, and the costs of administration; (4) details
8 about the final fairness hearing and how class members may elect to exclude themselves or make
9 an objection; and (5) how class members can obtain additional information.²

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

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

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² See Class Notice, Exhibit B to Mankin Decl.

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

VI. THE SETTLEMENT VALUATION IS FAIR AND REASONABLE IN LIGHT OF THE RISKS AND DEFENSES

To evaluate a settlement, the parties must provide “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar, supra*, 168 Cal.App.4th at 133.

To that end and as required by the Court’s CMO, the Mankin Declaration provides the Court with the maximum potential damages and penalties at trial (CMO ¶ H(3)(a)(ii)) and Class Counsel’s reasonable (i.e., risk-adjusted) expectation of trial award as to damages and penalties (CMO ¶ H(3)(a)(iii)). (See Mankin Decl. ¶¶ 27-42, 46, 51), which is the method requested by the Court at CMO ¶ H(3)(a). Moreover, **Exhibit G** to the Mankin Declaration (the Compliance Chart) provides pinpoint references to the document, page, and line number where each requirement is satisfied.

As shown in the moving papers, this Settlement is fair, reasonable, and merits approval in light of the reasonable estimate of the total damages and penalties if successful at trial.

A. Reasonable Estimate of Likely Recovery at Trial

When evaluating a settlement, the most important consideration is “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399. And because the amount in controversy (i.e., the maximum theoretical value if all claims succeeded at trial) fails to account for the many risks of continued litigation, settlement should be analyzed based on a reasonable estimate of the likely recovery at trial. *Wershba, supra*, 91 Cal.App.4th at 250 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be

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

4 Therefore, to permit the necessary analysis, the Mankin Declaration, filed concurrently
5 herewith, provides full detail regarding the claims, the maximum theoretical value, as well as the
6 risks and defenses that were considered when determining the risk-adjusted values. For the sake
7 of brevity, this full detail is included in the Mankin Declaration; the sections below provide the
8 maximum theoretical value and the reasonable estimate of likely recovery at trial for each claim.

9 **Failure to Pay Wages**

10 As discussed above, Plaintiff alleges that Defendant employed a policy and practice that
11 rounded hours worked resulting in minutes shaved off the employees’ compensated time and that
12 the policy was not neutral in its application. Based on the information obtained prior to
13 mediation, Plaintiff estimated that the maximum potential value of this claim was \$7,162 in
14 unpaid wage with a maximum potential value of \$14,324 including interest and liquidated
15 damages. At mediation, Defendant argued that this claim could not be certified due to the
16 individualized nature of the proof and that its rounding practice was facially neutral.
17 Nevertheless, based on Plaintiff’s argument that the application of the policy was not neutral,
18 Plaintiff merely assigned a 15% discount to these claims for a risk adjusted valuation of
19 \$12,175.40. Plaintiff also pursued PAGA claims based on the same theory of liability and
20 calculated a risk adjusted total is for these claims is \$39,270. (Mankin Decl. ¶¶ 28-31).

21 **Failure to Timely Pay Wages Upon Separation of Employment**

22 Additionally, Plaintiff alleged that Defendant failed to timely pay all wages owed to the
23 Class Members upon separation of employment. Based on this theory of liability, Plaintiff
24 calculated the maximum waiting time penalties to be \$67,768. Plaintiff did not apply any risk
25 adjustment to these claims. Furthermore, because the related PAGA penalties assumes only one
26 violation for each former employee multiplied by \$100, the value of the PAGA penalties was
27 estimated at \$1,200. (Mankin Decl. ¶ 32).

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1 **Failure to Pay Wages Timely Each Pay Period Claims**

2 Plaintiff also alleged that Defendant violated Labor Code § 204 each pay period when it
3 consistently paid the Class Members 11 days after the close of the pay period from the beginning
4 of the statutory period through 2021 when the issue was corrected. This issue affected 682 pay
5 periods for a maximum \$68,200 PAGA penalty value. (Mankin Decl. ¶ 33).

6 **Meal and Rest Break Claims**

7 Plaintiff also alleged meal and rest break claims against Defendant. Given the total
8 number of shifts at issue, and when incorporating estimated violation rates, Plaintiff calculated
9 the maximum theoretical value to be \$613,163. But considering the many risks and defenses to
10 these claims, Plaintiff placed a risk-adjusted value of \$231,999 on the meal and rest claims.
11 Additionally, based on the same risk factors, Plaintiff estimated the risk-adjusted value of the
12 related PAGA claims at \$89,266.50. (Mankin Decl. ¶¶ 34-37).

13 **Wage Statement Claims**

14 Plaintiff also argued that Defendant failed to provide accurate itemized wage statements
15 in compliance with Labor Code § 226. Plaintiff calculated the maximum potential value of this
16 claim as \$143,700, with a risk-adjusted value of \$71,850. Additionally, Plaintiff calculated the
17 risk-adjusted value of the PAGA penalties to be \$91,000. (Mankin Decl. ¶¶ 38-40).

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

19 The proposed Settlement allocates \$20,000 of the gross settlement amount to PAGA
20 claims, of which 75% (or \$15,000) will be paid to the California LWDA and 25% (or \$5,000)
21 will be allocated to the Aggrieved Employees as payment of the settlement. The Mankin
22 Declaration provides all information required under CMO ¶ H(9) regarding valuation of the
23 PAGA claims, along with information as to why this allocation is fair. (Mankin Decl. ¶¶ 46-51).

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1 **VII. THE ALLOCATION FOR ATTORNEYS' FEES, COSTS, SERVICE AWARDS,**
2 **AND ADMINISTRATION COSTS IS FAIR**

3 **A. The Proposed Attorneys' Fees are Disclosed to the Class and are Reasonable**
4 **and Warrant Preliminary Approval**

5 Under the terms of the Settlement Agreement, Class Counsel is collectively requesting
6 attorneys' fees equal to one-third of the (1/3) Settlement Amount (\$78,333.33).

7 The requested fees of one-third of the Settlement Amount is consistent with California
8 law. See, *e.g. Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480 (the percentage of the fund
9 method survives in California class action cases) ("*Laffitte*"). There has been a significant
10 amount of work performed by Class Counsel before this Court, before the mediator, and "behind
11 the scenes." Class Counsel conducted extensive research, investigation, and analysis of each
12 potential cause of action and claim for damages in Plaintiff's case. After filing the Complaint,
13 Class Counsel also conducted informal discovery prior to mediation in order to evaluate the
14 claims on a class-wide basis.

15 Class Counsel's investigation and preparation for settlement negotiations included review
16 and analysis of payroll/time records and written policies and procedures. Even after the parties
17 reached a settlement in principle, it took considerable work to fully realize and prepare the
18 Settlement Agreement and to prepare all of the supporting documentation.

19 "In general, questions whether a settlement was fair and reasonable, whether certification
20 of the class was proper, and whether the attorney fee award was proper are matters addressed to
21 the trial court's broad discretion." *Wershba, supra*, 91 Cal.App.4th at 234-235. The custom
22 and practice in class actions is to award approximately **one-third** of a common fund as a fee
23 award. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 (awarding one-third of the
24 common fund is consistent with, and in the range of, awards in other class action lawsuits.) This
25 practice was recently affirmed by the California Supreme Court in *Laffitte, supra*.

26 The proposed attorneys' fees are disclosed to the Settlement Class Members in the
27 proposed Notice. Preliminarily, the fees are reasonable, and costs are reasonably capped at
28 \$15,000, subject to proof at time of final approval. Defendant does not oppose these requests.

1 For purposes of this Motion for preliminary approval of the Settlement, the requested fees
2 and costs fall well within the range of reasonableness.

3 **B. The Class Representative's Requested Enhancement is Reasonable**

4 Service payments to representative plaintiffs in class action settlements are intended to
5 recognize their level of risk, the time expended, and the efforts undertaken on behalf of the class.
6 Courts routinely approve incentive awards to compensate named plaintiffs for the services they
7 provide and the risks they incurred during the course of the class action litigation. See, e.g., *Bell*
8 *v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service
9 payments” to named Plaintiff for their efforts in bringing class action).

10 In this case, the parties agreed to a service award to Plaintiff in the amount of \$5,000.³
11 The proposed incentive award is reasonable given the time and effort that the Plaintiff devoted to
12 this case, including assisting with the investigation of claims; the valuable assistance she
13 provided to Class Counsel behind the scenes and in preparation for mediation; and the time and
14 effort expended attending a full-day mediation to reach a settlement on behalf of the class. The
15 Class Representative also assumed significant risk in bringing this litigation—namely, had she
16 lost, she could have been ordered to pay Defendant’s costs. Plaintiff provided invaluable
17 assistance to Class Counsel and the Class in this case, including providing factual background
18 for the mediation and the Class Complaint; reviewing the mediation brief and Complaint;
19 providing documents about Defendant’s pay plan; participating in phone calls to discuss
20 litigation and settlement strategy; and reviewing the settlement documents. Plaintiff agreed to
21 participate in this case with no guarantee of personal benefit. Accordingly, the service award to
22 Plaintiff is justified and warranted as part of the overall settlement.

23 **C. The Appointment of the Settlement Administrator**

24 After Plaintiff’s counsel sought bids from five separate administrators, the Parties
25 mutually agreed to retain Phoenix as the Settlement Administrator based on it providing the
26 lowest bid. Phoenix is experienced in administering class action settlements and has submitted
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28 ³ Plaintiff separately settled her claims for wrongful termination and discrimination pursuant to a separate individual settlement agreement.

an all-in bid to administer the settlement for \$5,000. (See Declaration of Mike Moore of Phoenix, filed concurrently herewith.)

VIII. 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 request that the Court schedule a hearing for final approval of the settlement approximately 120 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

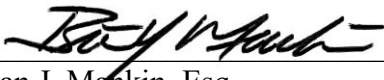
January 31, 2022	Preliminary Approval (PA) hearing
February 28, 2022 (28 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
April 14, 2022 (45 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately June 1, 2022 - 120 days after Preliminary Approval is granted)	Final Approval Hearing.

1 **IX. CONCLUSION**

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

4 Dated: January 6, 2022

LAUBY, MANKIN & LAUBY LLP

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6 BY: 
7 Brian J. Mankin, Esq.
8 Attorneys for Plaintiff
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On January 6, 2022, I caused to be served the foregoing document(s) described as follows:

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

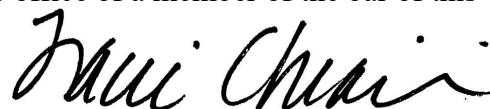
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 6, 2022, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

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