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

JOE GUZMAN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DECKERS OUTDOOR CORPORATION, a
Delaware Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CVRI2100707
*[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: May 9, 2022
Time: 8:30 a.m.
Dept. 1

Reservation #: 352010848829

Complaint Filed: February 10, 2021

1 TO THE COURT AND ALL PARTIES OF RECORD HEREIN:

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

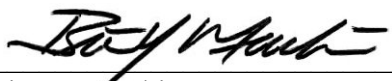
12 This motion is unopposed by Defendant Deckers Outdoor Corporation. The parties seek
13 the Court's preliminary approval of the settlement in order to begin the process towards
14 obtaining final approval of the proposed settlement through a final fairness hearing set
15 approximately 120 days after preliminary approval. At that time, the Court will again have the
16 opportunity to fully 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 Settlement Agreement and proposed Order submitted herewith, the declarations
19 of Plaintiff's counsel (Brian Mankin), Defense counsel (Jeffrey A. Dinkin), Esteban Arellano,
20 and the Settlement Administrator (Mike Moore of Phoenix), all other papers on file in this
21 action, and on such other materials or arguments of counsel that the Court may receive at or
22 before the hearing on this Motion.

23
24 Dated: April 15, 2022

LAUBY, MANKIN & LAUBY LLP

25
26 BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Joe Guzman, individually and on behalf of all others
4 similarly situated, seeks preliminary approval of a \$950,000 wage-and-hour class action
5 settlement (the “Settlement Amount”) between the putative class members and Deckers Outdoor
6 Corporation (“Defendant” or “Deckers”).

7 This class action and representative PAGA action is fairly limited to only two subclasses
8 of employees in light of a previously filed (and settled) class action entitled *Foster, et al. v.*
9 *Deckers Outdoor Corporation, et al.*, Santa Barbara County Superior Court, Case No.
10 20CV03699 (the “*Foster* Case”), which received preliminary approval on November 23, 2021,
11 including a release of class and PAGA claims for unpaid wages, meal and rest breaks, and failure
12 to timely pay wages each pay period and upon separation of employment (the “*Foster* Settled
13 Claims”). Because *Foster’s* pending settlement subsumed many of the claims in Plaintiff’s
14 original action – but not all of the claims including those explicitly carved out – the Court
15 granted Plaintiff permission to file a second amended complaint that alleges claims for wage
16 statement violations under Labor Code § 226, failure to pay vested vacation at the proper rate
17 under Labor Code § 227.3, failure to pay mandated sick pay at the proper rate under Labor Code
18 § 246, and related PAGA claims.

19 Accordingly, Plaintiff now seeks to represent two classes of similarly situated employees
20 who were carved out of the *Foster* settlement, with each Class defined as follows:

21 **Wage Statement Class:** all current and former nonexempt (i.e., eligible for
22 overtime pay) employees (excluding retail employees) employed by Defendant in
23 California at any time during the period of February 10, 2020, through November
24 23, 2021 (the “Wage Statement Class Period”).

25 **Vacation Pay Class:** all nonexempt (i.e., eligible for overtime pay) employees
26 (excluding retail employees) who separated from employment with Defendant in
27 California at any time during the period of February 10, 2017, through November
28 23, 2021 and who had accrued but unused vacation upon their separation of

employment (the “Vacation Pay Class Period”).

Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff’s Counsel’s application for a reasonable award of attorney’s fees not to exceed \$316,666.66 (1/3 of the Settlement Amount), Plaintiff’s Counsel’s litigation expenses not to exceed \$15,000, Settlement Administrator costs not to exceed \$8,500, and PAGA penalties of \$100,000 (of which \$75,000 or 75% will be paid to the LWDA and the remaining \$25,000 or 25% will be paid to the Class Members). (S.A. ¶ 53(a-h)). After all these deductions from the Settlement Amount, it is estimated that \$509,833.34 will be available to pay the Individual Settlement Amounts of the Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$950,000.00
Attorneys’ Fees (1/3)	\$316,666.66
Litigation Costs	\$15,000
Administrator Costs	\$8,500
PAGA payment to LWDA (75% of \$100k award)	\$75,000
PAGA payment to Aggrieved Employees (25%)	\$25,000
Class Representative’s Service Award	\$0
<i>Net Settlement Amount</i>	\$509,833.34

The settlement is non-reversionary and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Class Notice containing information about his/her share, the opportunity to dispute the number of workweeks worked by the Class Member in each Class, and the opportunity to opt-out or object to the settlement. All Class Members who do not affirmatively opt-out will receive a settlement check upon the Court granting final approval.

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

1 Settlement.

2 **II. BACKGROUND**

3 **A. THE CLASS**

4 The Settlement Class is comprised of members of the Wage Statement Class and
5 Vacation Pay Class, as defined above and in the Settlement Agreement at ¶¶ 34, 36, 39. (See
6 Exhibit “1” to the Mankin Declaration.) There are an estimated 481 Wage Statement Class
7 Members, and 144 Vacation Pay Class Members. In total, and after accounting for overlap
8 between the two classes, there are 530 Class Members.

9 **B. Procedural History**

10 On February 10, 2021, Plaintiff filed a putative class action complaint against Defendant,
11 alleging claims for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3)
12 failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay wages,
13 (6) failure to provide accurate itemized wage statements, and (7) unfair and unlawful
14 competition. Then, on February 11, 2021, and to pursue claims under the Private Attorneys
15 General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”), Plaintiff gave written notice by
16 online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail
17 to Defendant of the specific provisions of the Labor Code alleged to have been violated,
18 including the facts and theories to support the alleged violations. After further investigation,
19 Plaintiff also sent an Amended and Second Amended written notice to the LWDA and Defendant
20 to pursue additional claims under PAGA (on April 23, 2021, and April 29, 2021,
21 respectively). The Amended and Second Amended Notices added claims for failure to pay vested
22 vacation under Labor Code § 227.3 and failure to pay sick time at the proper rate of pay under
23 Labor Code § 246. (Settlement Agreement, ¶ 43; Mankin Decl. ¶ 10).

24 On May 21, 2021, Plaintiff filed a First Amended Complaint (“FAC”) adding causes of
25 action under PAGA for the same claims in the original complaint. However, because the
26 requisite 65 days had not elapsed since sending the Amended and Second Amended Notices,
27 Plaintiff’s FAC did not add claims for failure to pay vested vacation under Labor Code § 227.3
28 and failure to pay sick time at the proper rate of pay under Labor Code § 246. (Settlement

1 Agreement, ¶ 44; Mankin Decl. ¶ 11).

2 Defendant retained counsel and fully denied the allegations. Soon thereafter, Defendant
3 advised that the *Foster* case was related to this case. Plaintiff's counsel herein engaged in
4 several conversations with Foster's counsel, and ultimately, they agreed to keep the cases
5 separate. The *Foster* Action settled at mediation and received preliminary approval on
6 November 23, 2021, but pursuant to an agreement with Plaintiff herein, the *Foster* Settlement
7 does not release any claims for Defendant's employees based on alleged violations of Labor
8 Code § 226 (wage statement claims), Labor Code § 227.3 (vested vacation claims), and Labor
9 Code § 246 (sick pay claims). Plaintiff opted out of the *Foster* Settlement. (Settlement
10 Agreement, ¶ 45; Mankin Decl. ¶ 12).

11 Meanwhile, in this case, Plaintiff conducted written discovery into Defendant's written
12 policies and practices. Thereafter, the Parties continued to debate the merits of the claims and
13 defenses before ultimately agreeing to attend an early mediation in order to avoid significant
14 costs and fees associated with a class certification hearing. (Mankin Decl., ¶ 13).

15 In preparation for mediation, the Parties agreed to an informal discovery process where
16 information was exchanged relating to the applicable policies and procedures, payroll and time
17 keeping records, size of the class, and potential value of the case. During this process, Plaintiff
18 and his counsel analyzed, researched, and investigated the potential claims of all similarly
19 situated employees. (Mankin Decl., ¶ 14).

20 The mediation took place on January 26, 2022 with Todd Smith, a full-time mediator
21 with extensive experience in employment matters. At the conclusion of the mediation, Mr.
22 Smith issued a mediator's proposal calling for a class-wide settlement for \$950,000 on behalf of
23 both classes, and further calling for Plaintiff to file a second amended complaint that included the
24 reduced scope of the case in light of the *Foster* settlement. The Parties accepted the mediator's
25 proposal, and memorialized the terms of the settlement in a long-form Settlement Agreement
26 (Mankin Decl., ¶ 15; Exhibit "1"). Pursuant to a stipulation and order, Plaintiff also filed a
27 second amended complaint.

28 ///

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

2 Defendant Deckers is a publicly traded footwear designer and distributor that operates
3 warehouses in California, including in Riverside County. Plaintiff was employed by Deckers as
4 warehouse worker and was subjected to the same claims as those he seeks to represent in the
5 Wage Statement and Vacation Pay Classes. The claims of each Class are briefly summarized
6 below.

7 **1. WAGE STATEMENT CLASS CLAIMS**

8 Plaintiff alleged that Defendant provided the Wage Statement Class with wage statements
9 that failed to accurately state (1) the applicable rate and hours for shift differential pay, and (2)
10 the overtime rate during weeks where shift differentials were earned.

11 More specifically, Plaintiff argued that during the applicable period, Defendant paid
12 Plaintiff and the Class on an hourly basis plus additional hourly compensation in the form of
13 shift differentials. However, Deckers' uniform wage statements failed to provide *any*
14 information regarding the applicable rate of pay for the shift differentials, and the wage
15 statement was also silent as to how many hours were credited toward shift differential pay.
16 Moreover, Plaintiff alleged that Defendant's uniform wage statements only identified the
17 overtime rate as 1.5 times the base rate of pay, despite that the Class Members were owed a
18 higher overtime rate during workweeks when they worked overtime and earned shift differential
19 compensation. As such, Defendant's wage statements failed to accurately state the overtime rate
20 (*i.e.*, one and one-half of the regular rate of pay). See *Alvarado v. Dart Container Corp. of*
21 *California* (2018) 4 Cal.5th 542, 554 (holding that the overtime rate must "reflect all the various
22 forms of regular compensation").

23 Plaintiff contends that this practice runs afoul of Labor Code § 226(a)(9), and the stated
24 purpose of Section 226(a): to "document the paid wages to ensure the employee is fully informed
25 regarding the calculation of those wages." *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th
26 385, 392. Furthermore, these facts present far more than a mere "technical" violation of § 226(a)
27 because "[w]age statements should include the hours worked at each rate and the wages earned"
28 and the failure to include the rate establishes a "deemed injury" under § 226(e)(2)(B).

1 *Maldonado v. Epsilon Plastics* (2018) 22 Cal.App.5th 1308, 1336.

2 However, Deckers vehemently denied this claim, arguing that it has no legal no
3 obligation to state an hourly component for the shift differentials or the fluctuating overtime rate
4 on pay stubs as it relates to the additional premium payments. Plaintiff countered these
5 arguments by claiming that shift differentials were not fluctuating bonus payments, but rather a
6 fixed hourly rate, and thus they were required to be displayed on the pay stub. The parties
7 disagreed whether the premium payments were fixed or fluctuating and whether the law requires
8 that the rates and hours associated with these payments were required to be displayed on
9 paystubs, and thus, this claim was fully disputed on behalf of the Wage Statement Class.

10 Notably, Plaintiff does not (and cannot) allege claims for an underpayment of overtime
11 wages or related waiting time penalties under Labor Code section 203 because the *Foster*
12 Settlement specifically included and released these claims.

13 **2. VACATION PAY CLASS CLAIMS**

14 Plaintiff also alleges two unpaid wage claims that were carved out of the *Foster*
15 settlement by stipulation and agreement: unpaid vacation wages and unpaid sick pay.

16 First, Plaintiff alleges that Defendant failed to pay departing employees for all required
17 vested vacation. For instance, Plaintiff and other Class Members frequently received shift
18 differential and other compensation that caused their actual hourly rate to be higher than the
19 listed base rate of pay. On such occasions, Labor Code § 227.3 requires that Defendant pay
20 vested vacation at the “*final rate*” of pay. Plaintiff alleges that the “*final rate*” means the actual
21 rate of pay earned prior to termination (including shift differentials and other compensation), yet
22 Defendant only paid vested vacation at the base rate, leading to violations of California law on
23 each occasion. In this case, the value of the unpaid vacation wage claim is not be substantial for
24 two reasons: 1) the claim arises out of a failure to include shift differentials into the *final rate*, as
25 compared to a wholesale failure to pay final vacation wage; and 2) the *Foster* settlement released
26 waiting time penalties under Labor Code § 203, which would have otherwise paid the Vacation
27 Pay Class Members up to 30 days of wages for the underpayment.

28 ///

1 Second, Plaintiff alleges a similar theory as to mandated sick pay. Labor Code §
2 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same
3 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
4 whether or not the employee actually works overtime in that workweek.” Additionally, Labor
5 Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s
6 total wages, not including overtime premium pay, by the employee’s total hours worked in the
7 full pay periods of the prior 90 days of employment.” Here, despite that Plaintiff and the Class
8 frequently received shift differential pay, Defendant only paid sick leave at the base rate of pay,
9 in violation of Labor Code § 246. However, the Labor Code does not provide a mechanism of
10 directly recovery unpaid sick pay either in the form of wages or a statutory penalty.
11 Consequently, sick pay claims under Labor Code § 246 are generally enforced in two ways: (1)
12 through PAGA, and/or (2) by collecting waiting time penalties under Labor Code § 203 as a
13 result of the unpaid sick pay. But since *Foster* released waiting time penalty claims, PAGA is
14 the only vehicle here to enforce violations of Labor Code § 246. As such, only the Aggrieved
15 Employees will participate in the unpaid sick pay claims by receiving a pro rata share of the 25%
16 allocated to the Aggrieved Employees under PAGA.

17 Defendant vehemently disputes the merits of these claims, and points to the fact that a
18 similar case for unpaid vacation action (brought by the same Plaintiff’s counsel) is on appeal in
19 the Ninth Circuit after a District Court ruled in Plaintiff’s favor.

20 In light of the foregoing and because the *Foster* settlement largely clipped the valuation
21 of these claims, the Parties agreed that a flat \$100 payment would fairly and adequately
22 compensate members of this class, as discussed further below.

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

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

25 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

26 The \$950,000 Settlement Amount is non-reversionary and will be paid out to Class
27 Members without the need to submit a claim form or take any affirmative action. It includes (1)
28 Plaintiff’s attorneys’ fees and costs, as approved by the Court; (2) settlement administrator

1 expenses, not to exceed \$8,500; (3) a \$100,000 PAGA award, 75 percent of which is to be paid
2 to the LWDA pursuant to California Labor Code § 2699(i); and (4) the aggregate of all
3 Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 53(a-h)). Defendant
4 will separately pay its share of employer's payroll taxes and withholdings.

5 After all Court-approved deductions from the Settlement Amount, it is estimated that
6 \$509,833.34 will be available to pay the Individual Settlement Amounts to the Class Members.
7 The allocation per Class Member is discussed below in section III(D).

8 **B. NOTICE PROCEDURES**

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

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

13 Here, in accordance with California Rules of Court, rules 3.766(d) and 3.769(f), the
14 Notice (Exhibit "2" to the Mankin Declaration) provides the Class Members with (1) a brief
15 explanation of the case; (2) an explanation of each Settlement Class Member's right to opt out of
16 the settlement class; (3) an explanation of the process (and relevant deadlines) through which a
17 Settlement Class Member could opt out of the settlement class; (4) notice about the binding
18 nature of the Judgment for Settlement Class Members who do not opt out; (5) an explanation of
19 each Settlement Class Member's right to appear through counsel; (6) an explanation of each
20 Settlement Class Member's right to appear at the fairness hearing and express views of the
21 settlement, i.e., object or otherwise respond; and (7) an explanation of each Settlement Class
22 Member's right to participate in the settlement and receive payment accordingly. Furthermore,
23 the Notice advises the Class Members that, in granting preliminary approval, "the Court has
24 determined only that there is sufficient evidence to suggest that the proposed settlement might be
25 fair, adequate, and reasonable, and that any final determination of those issues will be made at
26 the final approval hearing."

27 The terms of the Notice also comply with this Court's CMO by informing each Class
28 Member of his/her estimated recovery, the number of weeks that each Class Members is credited

1 with receiving in each class, and the applicable minimum and average payments.

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

5 The Court’s CMO also inquires as to the likely age, education, experience and English-
6 language facility of the class members. According to Defendant, the typical Class Member is
7 above the age of 18 and speaks, understands, and writes in English and Spanish. (See
8 Declaration of Esteban Arellano). Therefore, the Class Notice will be provided in English and
9 Spanish to all Class Members.

10 **2. The Notice to the Class Complies with Rule 3.766(d)**

11 An appropriate notice is one that has a reasonable chance of reaching a substantial
12 percentage of the class members. *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 970, 974. The
13 settlement calls for the Settlement Administrator to update the list of addresses provided by the
14 employer by using a verification check through the US Postal National Change of Address
15 directory to the last known address of the Settlement Class Members. The Notice Packet will be
16 sent by the Settlement Administrator via first class mail to the last known address of each Class
17 Member. *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 618-620 (individual mailings to
18 each Class Member’s last known address is a sufficient form of notice).

19 Here, within 10 days after Preliminary Approval Order is entered, Defendant shall
20 provide the Settlement Administrator with a list of Class Members containing names, addresses;
21 telephone numbers; Social Security Numbers; the total number Weeks Worked in the Wage
22 Statement Class, state “Yes” or “No” as to whether the Class Member is a member of the
23 Vacation Pay Class, and state “Yes” or “No” as to whether the individual is an Aggrieved
24 Employee (the “Class Data”). (S.A. ¶¶ 5, 68). Within 10 days of receipt of the Class Data, the
25 Settlement Administrator shall populate the Class Notice for each, and send each Class Member
26 the Class Notice via first-class, United States mail. (S.A. ¶ 60).

27 In the event that any Class Notice mailed to a Class Member is returned as having been
28 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace

1 search and seek an address correction for such Class Member(s), and a second Class Notice will
2 be sent to any new or different address obtained. (S.A. ¶ 70).

3 **3. No Claims Process**

4 As explained above and in the Notice, Class Members are automatically included in the
5 Settlement and will receive payment upon the court granting final approval without being
6 required to take any affirmative action. The Notice provides Class Members with sufficient
7 information to decide whether to opt-out, object, dispute the Class Data or do nothing.

8 **4. Exclusions and Objections**

9 Class Members who do not timely Opt-Out of the Settlement will be deemed to
10 participate in the Settlement and shall become a Participating Class Member without having to
11 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class
12 Member must submit return the Request for Exclusion Form to the Settlement Administrator no
13 later than 45 days after being mailed by the Settlement Administrator (“Notice Response
14 Deadline”). (S.A. ¶¶ 30, 74).

15 The Class Notice shall inform the Class Members of their right to object to the
16 Settlement. Any Class Member who wishes to object to the Settlement must complete and return
17 the Objection Form to the Settlement Administrator no later than the Notice Response Deadline.
18 (S.A. ¶ 74(c)).

19 **C. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

20 The Net Settlement Amount of approximately \$509,833.34 will be paid to the Settlement
21 Class Members based on the following formula. First, each Vacation Pay Class Member will
22 receive a payment of \$100.00 (totaling approximately \$14,400 based on 144 members of this
23 class). Next, after deducting the Vacation Class Payments, the Settlement Administrator will
24 calculate the total number of Weeks Worked by all Wage Statement Class Member and divide
25 that by the remaining Net Settlement Amount, resulting in a Workweek Value. The
26 Administrator will then multiple the Workweek Value by the number of Weeks Worked by each
27 Wage Statement Class Member during the Wage Statement Class Period during ascertain each
28 person’s Individual Settlement Amount. (S.A. ¶¶ 53(c)).

1 Thus, in a nutshell, each Vacation Pay Class Member will receive \$100, plus each Wage
2 Statement Class Member will receive a pro rata share of the remaining Net Settlement Amount
3 based on the number of Work Weeks worked during the Wage Statement Class Period.

4 The Class Notice will inform Class Members of his/her estimated payment in the
5 Vacation Pay Class, the Wage Statement Class and as an Aggrieved Employee. Class Members
6 may dispute their Share Points credited if they disagree with Defendant's records by timely
7 submitting evidence to the Settlement Administrator. (S.A. ¶ 72).

8 The average payment to the Class will be approximately \$961.95 per person. (See
9 Mankin Decl. ¶ 8, discussing the high, low and average payment estimates).

10 **D. TIMING OF SETTLEMENT DISBURSEMENTS**

11 Defendant is required to deposit the Settlement Amount in the Settlement Administrator's
12 account within 30 days after the Effective Date, which will be used to pay: (1) the class attorney
13 fees and expenses, as approved by the Court; (2) administrative expenses, as approved by the
14 Court; (3) a \$100,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
15 Labor Code § 2699(i); and (5) the aggregate of all Individual Settlement Amounts of
16 participating Class Members. (S.A. ¶ 76). Within 10 days after Defendant's deposit of the
17 Settlement Amount, the Settlement Administrator shall issue payments to cover all court-
18 approved payments. (S.A. ¶ 77).

19 Class Members will have 180 days to cash his/her settlement check. If a Class Member
20 fails to cash his check by the deadline, then the Settlement Administrator shall issue the
21 unclaimed funds to the California State Controller in the name of the Class Member and/or
22 Aggrieved Employee. (S.A. ¶ 78).

23 **E. TAX TREATMENT**

24 The Parties agree that the Individual Settlement Amounts paid to the Wage Statement
25 Class will be treated 100% as penalties and interest reportable on IRS form 1099 for the Wage
26 Statement Class Members. The Individual Settlement Amounts paid to the Vacation Pay Class
27 will be treated as one-third (33.333%) to wages subject to withholding of all applicable local,
28 state and federal taxes; and two-thirds (66.667%) paid as interest and as penalties from which no

1 taxes will be withheld (IRS 1099 reporting). (S.A. ¶ 53(d)).

2 Defendant will also separately fund its share of the payroll taxes and withholdings on
3 payments to the Vacation Pay Class only (since the Wage Statement Class is receiving a
4 statutory penalty payment). (S.A. ¶ 53(a)).

5 **F. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

6 In exchange for the payments above, the Settlement Class Member will release the claims
7 and parties in compliance with CMO ¶ H(3)(e). Specifically, the Settlement Agreement ¶ 41
8 provides that the Participating Wage Statement Class Members will release the Released Parties
9 of the claims alleged, as follows:

10 “Wage Statement Released Claims” by the Participating Wage Statement Class
11 Members includes claims for failure to provide accurate itemized wage statements
12 in violation of Labor Code § 226 and § 226.3 as alleged in the Second Amended
13 Complaint, and all recoverable statutory penalties related thereto. The time period
governing the Wage Statement Released Claims shall be February 10, 2020,
through November 23, 2021 (the “Wage Statement Class Period”).

14 As for the Vacation Pay Class, the Settlement Agreement ¶ 38 will release their claims
15 alleged, as follows:

16 “Vacation Pay Released Claims” by the Participating Vacation Pay Class Members
17 includes all claims for damages and statutory penalties alleged in the Second
18 Amended Complaint and those based upon the facts alleged therein, including
19 claims premised upon the for (1) failure to pay vested vacation pursuant to Labor
20 Code § 227.3, and (2) unfair and unlawful competition claims relating to the vested
vacation claim. The time period governing the Vacation Pay Released Claims
shall be February 10, 2017, through November 23, 2021 (the “Vacation Pay Class
Period”).

21 **G. PAGA RELEASE BY PLAINTIFF, IN HIS INDIVIDUAL CAPACITY AND ON BEHALF**
22 **OF THE STATE OF CALIFORNIA**

23 As required by the CMO, the Settlement Agreement provides that Plaintiff – and not the
24 Aggrieved Employees – will release the PAGA Claims: “On the date that the Court issues a
25 Final Approval Order, Plaintiff, in his individual capacity suing and on behalf of the State of
26 California and the Labor and Workforce Development Agency will forever completely release
27 and discharge the Released Parties from the PAGA Released Claims.”

28 ///

1 Additionally, the Settlement Agreement advises that Plaintiff has entered into a separate
2 individual settlement agreement for Plaintiff's separate individual claims that were not included
3 in this Action (*i.e.*, the *Foster* Settled Claims, as Plaintiff opted out of the *Foster* settlement), and
4 in recognition for Plaintiff waiving a service award as part of this Settlement while giving up a
5 full release of any known and unknown claims in the separate individual settlement agreement.
6 Thus, Plaintiff is not seeking a service award, but has entered into a separate settlement
7 agreement since he opted-out of the Foster settlement and will not receive any money for giving
8 up those claims. (S.A. ¶ 63).

9 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
10 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
11 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

12 California Rule of Court 3.769(d) provides that the Court may make an order approving
13 certification of a provisional settlement class at the preliminary approval stage. It is well-
14 established that trial courts should use a "lesser standard of scrutiny" for determining the
15 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
16 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
17 a settlement class, so the case management issues inherent in determining if the class should be
18 certified need not be confronted; and the trial court's fairness review of the settlement protects
19 the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*
20 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 ("Th[e] relationship between the certification
21 determination and the merits of the case is further attenuated within the context of the settlement
22 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short
23 of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v.*
24 *Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class
25 certification, a district court need not inquire whether the case, if tried, would present intractable
26 management problems . . . for the proposal is that there be no trial."). As discussed below, for
27 the purposes of this settlement only, Plaintiff requests that this Court provisionally certify the
28 Class, as defined above, under Code of Civil Procedure § 3150.

1 **A. NUMEROSITY AND ASCERTAINABILITY**

2 Numerosity is met if a proposed class is so large that joinder of all members would be
3 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
4 the class members can be objectively identified and given notice of the litigation without
5 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
6 89, 101. Here, according to Defendant’s records, there are approximately 530 Class Members.
7 This figure satisfies the numerosity requirement.

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

9 1. Commonality

10 To justify certification, the class proponent must show that questions of law or fact
11 common to the class predominate over the questions affecting the individual members. *See*
12 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
13 *v. Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiff contends that the Class was subject to
14 common policies and practices relating to wage statement violations and the calculation of the
15 regular rate and corresponding payment of wages. While the Parties dispute whether a class
16 would be appropriate if the litigation were to continue, they agree to class certification for the
17 purposes of this settlement only.

18 2. Typicality

19 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
20 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
21 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). For the purposes of this settlement only,
22 the Parties agree that Plaintiff asserts claims regarding Defendant’s wage statements, and
23 provisions governing the final payment of vacation wages, which are at the core of the lawsuit.

24 3. Adequacy of Representation

25 The proposed class representative must establish that he or she will adequately represent
26 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
27 546. Specifically, Plaintiff is adequate to represent the class because she was employed by
28 Defendant during the Class Period, experienced the same practices as the rest of the Class,

1 understood his duties as Class Representative, has been willing to undergo the risks of litigation,
2 and has no conflict of interest.

3 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
4 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
5 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
6 in wage and hour class actions like the instant matter. (Mankin Decl., ¶¶ 2-6).

7 4. Superiority

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

12 **V. THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE**

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

15 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 13150.
16 This is particularly true in class actions where substantial resources can be conserved by
17 avoiding the time, cost, and rigors of formal litigation. However, a class action may not be
18 dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The
19 California Rules of Court set forth the procedures for court approval of a class action settlement:
20 (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed
21 by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of
22 the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

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

13 *Dunk, supra* (setting forth a non-exhaustive list of factors for the court's consideration at final
14 approval).

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

22 At the preliminary approval stage, the Court need only determine that the settlement falls
23 within the "range of possible judicial approval," so that notice to the class and the scheduling of
24 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
25 preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies .
26 . . and [the settlement] appears to fall within the range of possible approval." *Manual For*
27 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A "presumption
28 of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2)

1 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
2 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
3 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
4 approval because there are no grounds to doubt its fairness.

5 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
6 **NEGOTIATIONS**

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

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

18 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
19 weaknesses of this case before reaching the settlement. As described above, the settlement was
20 reached after extensive investigation and research, thorough calculations and risk evaluation, and
21 a substantial exchange of information relating to the Class Members prior to mediation. (Mankin
22 Decl., ¶¶ 13-14, 31-35).

23 **D. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
24 **LITIGATION**

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

counsel”) (internal quotation and citation omitted).

Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been repeatedly named a “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, having prepared at trial on class and PAGA cases against Fortune 100 companies, and collecting over \$250 million for their clients. (Mankin Decl., ¶¶ 2-6). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (*Id.*, ¶¶ 31-35).

E. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES

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

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all class members complies with all the requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys’ fees, litigation expenses, and the costs of administration; (3) details about the final fairness hearing and how class members may elect to exclude themselves or make an objection; and (4) how class members can obtain additional information. *See* Class Notice (Mankin Decl., Exhibits 2-4). In addition, it will inform Class Members of their estimated settlement share.

The Court has wide discretion in approving the means of providing notice, so long as the class representative “provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*, (1976) 15 Cal.3d 853, 861. Here, the parties’ notice plan is that notice of the Settlement will be disseminated directly to the class members by first class mail by the settlement administrator,

1 since Defendant has the last known addresses of all class members and the Settlement
2 Administrator will perform a skip trace and update those addresses for any class notices that are
3 returned and re-send the notice.

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

17 **F. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
18 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

19 The fact that each member who does not opt out of the Settlement shall be mailed a check
20 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
21 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
22 settlement funds will revert to Defendant; instead, if any checks are not cashed before the check
23 cashing deadline, the funds will be transferred to the State Controller in the name of the
24 employee. Such terms are favored by Courts and demonstrate that there was no collusion
25 between counsel for the parties and that the Settlement is fair and favorable to the Class
26 Members.

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28 ///

1 **V. THE SETTLEMENT VALUATION IS FAIR AND REASONABLE IN LIGHT OF**
2 **THE DEFENSES AND RISKS**

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

7 To that end and as required by the Court’s CMO, the Mankin Declaration provides the
8 Court with the maximum potential damages and penalties at trial (CMO ¶ H(3)(a)(ii)) and Class
9 Counsel’s reasonable (i.e., risk-adjusted) expectation of trial award as to damages and penalties
10 (CMO ¶ H(3)(a)(iii)). (See Mankin Decl. ¶¶ 16-30), which is the method requested by the Court
11 at CMO ¶ H(3)(a). Moreover, **Exhibit 6** to the Mankin Declaration (the Compliance Chart)
12 provides pinpoint references to the document, page, and line number where each requirement is
13 satisfied.

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

16 **A. Reasonable Estimate of Likely Recovery at Trial**

17 When evaluating a settlement, the Court of Appeals has confirmed that the most
18 important consideration is “an understanding of the amount that is in controversy and the
19 realistic range of outcomes of the litigation.” *Munoz v. BCI Coca-Cola Bottling Co. of Los*
20 *Angeles* (2010) 186 Cal.App.4th 399. And because the amount in controversy (i.e., the
21 maximum theoretical value if all claims succeeded at trial) fails to account for the many risks of
22 continued litigation, settlement should be analyzed based on a reasonable estimate of the likely
23 recovery at trial. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
24 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
25 by the proposed settlement is substantially narrower than it would be if the suits were to be
26 successfully litigated, this is no bar to a class settlement because the public interest may indeed
27 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
28 litigation”).

1 Therefore, to permit the necessary analysis, the sections below discuss the amount in
2 controversy and the reasonable estimate of likely recovery at trial for each claim pled herein.

3 *i. Wage Statement Class Claims*

4 The Wage Statement Class Claims were based on the allegation that Defendant's uniform
5 wage statements failed to accurately state (1) the applicable rate and hours for shift differential
6 pay, and (2) the overtime rate during weeks where shift differentials were earned.

7 Based on data and information exchanged prior to mediation, Plaintiff estimated there
8 were 9,284 wage statements issued the Wage Statement Class during the alleged violation
9 period. As such, Plaintiff calculated the maximum potential statutory penalties under Labor
10 Code § 226(e) at \$944,900. However, this theoretical maximum fails to account for a variety of
11 risks and Plaintiff placed a 10% risk at the class certification stage and a 25% risk on the merits
12 of the Wage Statement Class Claims, resulting in a risk-adjusted estimate of \$614,185. (Mankin
13 Decl. ¶ 19).

14 Plaintiff also pursued PAGA claims based on the same theory of liability. Given the
15 9,284 wage statements at issue, the maximum potential PAGA penalties for this claim equals
16 \$2,321,000 (assuming \$250/violation under Labor Code § 226.3. But this figure again fails to
17 account for the many risks and defenses of the claim. Additionally, given the uncertainty
18 regarding these wage statements requirements, Plaintiff assumed that the Court would exercise
19 its discretion to reduce the penalty amount because the maximum assessment would be "unjust,
20 arbitrary and oppressive, or confiscatory" in light of "the facts and circumstances of [this]
21 particular case." Labor Code § 2699(h). Moreover, if the Court awarded statutory penalties
22 under Labor Code § 226(e), Plaintiff believed that the Court would again use its discretionary
23 power to reduce the award. The amount of the reduction is of course unknown, leaving Plaintiff
24 to apply a reasonable discounted valuation of \$500,000. (Mankin Decl. ¶ 20).

25 *ii. Vacation Pay Class Claims*

26 As discussed above, Plaintiff pursued two claims on behalf of the Vacation Pay Class (1)
27 failure to pay accrued vacation at the time of termination at the final rate of pay (i.e., not
28 including shift differentials into the final rate), and (2) not paying sick pay at the regular rate of

1 pay (again by not including shift differentials into the regular rate). These claims would
2 generally trigger waiting time penalties under Labor Code § 203 for failure to timely pay all
3 wages due and owing upon separation of employment, and result in PAGA penalties.

4 As for the underpaid vacation and sick pay claims, Plaintiff believed and argued that the
5 failure to include shift differentials in the calculation was arguably clear on its face but, as to
6 damages, the valuation of the underpaid wages was minimal and less than \$10,000 total given
7 that these violations occurred infrequently. However, at the time the case was filed, Plaintiff
8 believed that the real value in these claims involved waiting time penalties, but after discovering
9 that the Foster settlement clipped the waiting time penalty claim, the actual valuation was
10 determined to be rather insignificant with a maximum value in the lower 5 figures. Plaintiff
11 believe that the maximum potential value on a classwide basis was approximately \$20,000 and
12 that the likely trial value ranged between \$0 (depending on the result of the appeal in the Ninth
13 Circuit) and \$20,000. (Mankin Decl. ¶ 21-22).

14 In addition, Defendant raised numerous defenses to these claims, including that the
15 requirement to pay vested vacation wages at the final rate was a new theory that was currently on
16 appeal in the Ninth Circuit. To the extent that any violations existed, Defendant argued that they
17 were not “willful” and would be heavily discounted in the PAGA context. (Mankin Decl. ¶ 23).

18 As for the PAGA penalties, there is only one potential violation per former employee for
19 the vacation claim, and assuming 100 former employees at \$100 per employee, the PAGA claim
20 could be worth a maximum of \$10,000. As for the sick pay claim, assuming all 144 Aggrieved
21 Employees had five instances of unpaid sick pay at the correct rate, the maximum potential
22 PAGA penalty would be \$72,000 (144 x 5 violations x \$100 penalty). As such, the maximum
23 potential PAGA penalties for these employees were \$82,000. However, Plaintiff applied the
24 same risk on the merits (above) and discounted that by 50%. To arrive at a risk-adjusted value of
25 the PAGA penalties for those who had alleged underpayments of vacation and sick pay as
26 \$41,000 in civil penalties. (Mankin Decl. ¶ 24).

27 ///

28 ///

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

2 As discussed above, Plaintiff seeks recovery of PAGA penalties predicated on the same
3 facts and legal theories as the class claims. The proposed Settlement allocates \$100,000 of the
4 gross settlement amount to PAGA claims, of which 75% (or \$75,000) will be paid to the
5 California LWDA and 25% (or \$25,000) will be allocated to the Aggrieved Employees on a pro
6 rata basis. This allocation amounts to almost 10% of the Gross Settlement Amount and is
7 inherently reasonable given similar settlements. And even though Plaintiff faced serious risk
8 moving forward with the litigation, the \$100,000 allocation is approximately 20% of the
9 reasonable estimate of total PAGA penalties at trial (\$541,000, which includes \$500,000 for
10 wage statement claims and \$41,000 for vacation/sick pay claims.) (Mankin Decl. ¶ 25).

11 Because this amount is less than the maximum potential PAGA penalties, the
12 Compliance Chart attached as **Exhibit 6** to the Mankin Declaration provides the Court with
13 references to where it may find the detailed information required by CMO ¶¶ H(9)(b)(i-iii) and
14 H(9)(c)(i-viii).

15 The Mankin Declaration discusses other factors which suggests that the Court may
16 reduce any potential PAGA penalties awarded at trial [CMO ¶ H(9)(c)(viii)]. (Mankin Decl. ¶¶
17 26-30).

18 **VI. THE ALLOCATION FOR ATTORNEYS' FEES, COSTS, AND**
19 **ADMINISTRATION COSTS UNDER THE SETTLEMENT IS FAIR**

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

22 Under the terms of the Settlement Agreement, Class Counsel is collectively requesting
23 \$316,666.66 in attorneys' fees, which is equal to one-third of the (1/3) Settlement Amount. The
24 requested fees of one-third of the Settlement Amount is consistent with California law. *See, e.g.*
25 *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480 (the percentage of the fund method survives
26 in California class action cases) ("*Laffitte*"). (Mankin Decl. ¶ 39). There has been a significant
27 amount of work performed by Class Counsel both before this Court, before the mediator and
28 "behind the scenes." Class Counsel conducted extensive research, investigation, and analysis of

1 each potential cause of action and claim for damages in Plaintiff's case. After filing the
2 Complaint, Plaintiff propounded and responded to written discovery to investigate the claims and
3 evaluate liability theories. Class Counsel also conducted informal discovery prior to mediation
4 in order to evaluate the claims on a class-wide basis.

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

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

16 The proposed attorneys' fees are disclosed to the Settlement Class Members in the
17 proposed Notice. Preliminarily, the fees are reasonable, and costs are reasonably capped at
18 \$15,000, subject to proof at time of final approval. Defendant does not oppose these requests.

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

21 **B. The Appointment of the Settlement Administrator**

22 After obtaining bids from five separate administrators, the Parties mutually agreed to
23 retain Phoenix as the Settlement Administrator based on it providing the lowest bid. Phoenix
24 provided an all-in (fixed) fee of \$8,500 to administer the settlement, as required by the Court and
25 the Settlement Agreement. (See Exhibit B to the Declaration of Mike Moore of Phoenix filed
26 concurrently).

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VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Settlement Agreement stipulates that the Court schedule a hearing for final approval of the settlement approximately 120 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

May 9, 2022	Preliminary Approval (PA) hearing
May 30, 2022 (20 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
July 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 September 6, 2022 - 120 days after Preliminary Approval is granted)	Final Approval Hearing.
40 days after Effective Date	Settlement Administrator to issue checks

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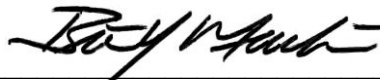
1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the
3 motion for preliminary approval.
4

5 Dated: April 15, 2022

LAUBY, MANKIN & LAUBY LLP

6
7 BY:



8 Brian J. Mankin, Esq.
9 Peter J. Carlson, Esq.
10 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 April 15, 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 April 15, 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

SERVICE LIST

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