

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

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

ASHLEY BROWN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MINUTECLINIC DIAGNOSTIC MEDICAL
GROUP OF CALIFORNIA, INC., a
California Corporation; et al.;

Defendants.

Case No.: 30-2021-01185270-CU-OE-CXC
*[Assigned to Hon. Judge Glenda Sanders,
Dept CX101, for all purposes]*

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

Hearing

Date: September 9, 2022

Time: 1:30 p.m.

Dept.: CX101

Complaint filed: February 22, 2021

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 9, 2022, at 1:30 p.m. or as soon thereafter
3 as the matter may be heard by the Honorable Glenda Sanders in Department CX101 of the
4 Orange County Superior Court, 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Ashley
5 Brown, individually and on behalf of all others similarly situated, will and hereby does move the
6 Court for entry of an Order preliminarily approving the Parties' Class and PAGA Action
7 Settlement Agreement and Release ("Settlement Agreement"), including:

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

17 This motion is based upon this Memorandum of Points and Authorities in Support
18 thereof; the Declaration of Plaintiff's counsel (Brian Mankin) in support thereof; the Settlement
19 Agreement (or "S.A."); the proposed Order granting Preliminary Approval of the Settlement; all
20 other records, pleadings, and papers filed in this action; and upon such other evidence or
21 argument as may be presented to the Court at the hearing of this motion.

22 Dated: July 29, 2022

LAUBY, MANKIN & LAUBY LLP

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24 BY:

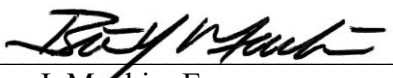

25 Brian J. Mankin, Esq.
26 Attorneys for Plaintiff and the Proposed
27 Class
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
A.	The Parties and the Proposed Settlement Class	2
B.	Procedural History	3
C.	Summary of the Claims and Defenses	4
III.	SUMMARY OF THE PROPOSED SETTLEMENT	6
A.	Settlement Consideration and Allocation	6
B.	Notice Procedures	6
C.	Exclusion and Objection Procedures	7
D.	Settlement Allocation Formula for Settlement Shares.....	7
E.	Timing of Settlement Disbursements.....	8
F.	Tax Treatment	9
G.	Participating Class Members’ Release of Claims.....	9
H.	PAGA Employees’ Release of Claims	10
IV.	PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	11
A.	Numerosity and Ascertainability	11
B.	Well-Defined Community of Interest	12
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASAONABLE	13
A.	Class Action Settlements are Subject to Judicial Review.....	13
B.	The Settlement Resulted from Serious, Informed, Non-Collusive Negotiations..	14
C.	The Extent of the Investigation was More than Sufficient	15
D.	The Settlement is a Reasonable Compromise of Claims	15
E.	Plaintiff’s Counsel if Experienced in Similar Wage-and-Hour Litigation	20
F.	The Class Notice Conforms to All Applicable Statutes and Rules.....	20
G.	The Non-Reversionary “Checks Cashed” Distribution Ensures Maximal Recovery for Class Members	21
H.	The Attorney Fee Allocation Under the Settlement Agreement is Fair.....	22
I.	The Class Representative Service Award is Fair and Appropriate.....	23
VI.	THE COURT SHOULD APPOINT ILYM AS SETTLEMENT ADMINISTRATOR...	23
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING.....	23
VIII.	CONCLUSION.....	23

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Ashley Brown, individually and on behalf of all others
4 similarly situated, seeks preliminary approval of a \$670,000 wage-and-hour class action
5 settlement (the “Settlement Amount”) between the putative class members and Defendants
6 MinuteClinic Diagnostics Medical Group of California, Inc., MinuteClinic Diagnostic Medical
7 Group of Orange County, Inc., and MinuteClinic Diagnostic Medical Group of San Diego, Inc.
8 (collectively, “Defendants” or “MinuteClinic”).

9 Plaintiff seeks to represent a class of all current and former non-exempt employees of
10 MinuteClinic who worked in California (the “Class” or “Class Members”) at any time during the
11 period of February 22, 2017, through the Preliminary Approval Date (the “Class Period”).

12 Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff’s
13 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
14 \$233,333.33 (1/3 of the Settlement Amount), Plaintiff’s Counsel’s litigation expenses not to
15 exceed \$20,000, Settlement Administration Expenses of \$9,750¹, and a PAGA Payment of
16 \$40,000 (of which \$30,000 or 75% will be paid to the LWDA and the remaining \$10,000 or 25%
17 will be paid pro-rata to the PAGA Employees). (S.A. ¶ 50(a-e)). The Settlement Amount is the
18 maximum amount that will be paid (except for Defendants’ share of the payroll taxes which it
19 will separately pay).

20 After all Court-approved deductions from the Settlement Amount, it is estimated that
21 \$366,916.67 will be available to pay the Individual Settlement Amounts of approximately 675
22 Class Members, who do not opt-out of the settlement, as follows:

23

	Total Amount
<i>Gross Settlement Amount</i>	\$ 670,000.00
Attorneys’ Fees (1/3)	\$ 233,333.33
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 9,750.00
PAGA Penalties	\$ 40,000.00
<i>Net Settlement Amount</i>	\$ 366,916.67

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¹ The Parties selected ILYM Group as the Settlement Administrator, who provided an all-in bid of \$9,750, which is less than the \$10,000 cap set forth in the S.A.

1 Assuming a class size of 675 Class Members, the average payment will be approximately
2 \$543 to each Class Member (\$366,916.67 / 675). Of course, the actual payments will be
3 calculated on a pro-rata basis according to the number of pay periods worked by each Class
4 Member through the Preliminary Approval Date. Assuming an estimated 22,000 pay periods
5 worked through the Preliminary Approval, each pay period will have a value of approximately
6 \$16.68. In addition, approximately 450 PAGA Employees (*i.e.*, Class Members that worked
7 during the PAGA Period) will receive a pro rata share of the \$10,000 PAGA Penalties
8 (accounting for 25% of the total \$40,000 allocation). (S.A. ¶ 50).

9 The settlement is non-reversionary and Class Members will not be required to submit
10 claim forms to receive payment, but each Class Member will receive the Class Notice containing
11 information about his/her share, the opportunity to dispute the number of pay periods worked,
12 and the opportunity to opt-out or object to the settlement as to the Class Claims. All Class
13 Members who do not affirmatively opt-out will receive a settlement check upon the Court
14 granting final approval. Likewise, all PAGA Employees will receive a share of the PAGA
15 Penalties once the settlement receives final approval.

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

23 **II. BACKGROUND**

24 **A. The Parties and the Proposed Settlement Class**

25 MinuteClinic is a subsidiary of CVS Health and provides retail clinical services such as
26 vaccinations, family health services, and treatment of minor injuries and illnesses from within
27 CVS locations. The Class Members staffed these locations and typically consisted of one or
28 more nurse practitioners and one or more additional providers (such as licensed vocational

nurses). The putative Class in this case consists of:

All current and former non-exempt employees of Defendant who worked in California at any time during the Class Period. (S.A. ¶ 5).

B. Procedural History

Plaintiff Brown submitted a letter to the California Labor Workforce Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act of 2004 (the “PAGA”), and simultaneously sent a letter to Defendant requesting the production of her personnel and timekeeping records to further evaluate the wage and hour claims. (Mankin Decl. ¶ 11, Exhibit C). On February 22, 2021, Plaintiff filed a putative class action Complaint, alleging claims arising out of Defendants’ alleged: (1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Breaks; (4) Failure to Provide Rest Breaks, (5) Failure to Timely Pay Final Wages; (6) Failure to Provide Accurate Wage Statements, and (7) Unfair Competition. On April 21, 2021, Plaintiff filed a First Amended Complaint adding a cause of action for representative claims under PAGA. (Mankin Decl. ¶ 12).

Defendants fully denied the allegations. However, before incurring significant costs and expenses in protracted discovery and litigation, the parties agreed to explore an early resolution through mediation. In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk, including extensive policies and procedures pertaining to each claim alleged, and statistics relating to the number of current and former employees, number of shifts, pay periods and other things. In this regard, Defendants provided a comprehensive database of timekeeping and payroll records of the Class Members that consisted of nearly 50,000 shifts (and almost 7,500 pay periods) worked by the Class Members. This robust sampling enabled both parties and their experts to take a deep dive into the claims. During this process, Plaintiff’s counsel and their retained expert evaluated the potential claims, risks, and defenses as to all similarly situated employees. (Mankin Decl. ¶ 13).

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1 On March 10, 2022, the Parties participated in a full-day mediation with Steve Serratore,
2 a highly experienced wage and hour class action mediator. At the conclusion of mediation, Mr.
3 Serratore issued a mediator's proposal calling for a class-wide settlement for \$670,000. The
4 Parties accepted the mediator's proposal and memorialized the terms of the settlement in a long-
5 form settlement agreement (Mankin Decl. ¶ 14; Exhibit A). The Parties now seek the Court's
6 preliminary approval of the Settlement.

7 **C. Summary of the Claims and Defenses**

8 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
9 However, Defendant vigorously contested and denied each of Plaintiff's material allegations on
10 the merits and as to the propriety of a class action or PAGA representative action, as discussed
11 herein. (Mankin Decl. ¶ 15).

12 Indeed, before getting to the merits of any specific claim, Defendant argued that the case
13 could not proceed on a class action basis because over 90% of the Class Members had reportedly
14 entered into arbitration agreements with class action waivers. And given that the parties were
15 awaiting the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* at the time
16 of mediation, the parties had to factor the unknown as to whether the PAGA claims would
17 remain viable (and now that the decision has come down and appears to be a mixed bag in light
18 of Justice Sotomayor's concurrence and the California Supreme Court holding in *Kim v. Reins*
19 *International California, Inc.* (2020) 9 Cal.5th 73, the decision to settle seems even more
20 proper). (Mankin Decl. ¶ 16).

21 In light of the various risks facing each side, the Parties agreed to mediate. And there,
22 Plaintiff raised a variety of claims on behalf of the Class. First, Plaintiff alleged claims for
23 unpaid minimum and overtime wages based on the theory that Defendant's practices required the
24 Class Members to perform pre-shift tasks work before clocking in and post-shift tasks after
25 clocking out – without compensation. Thus, Plaintiff argued that this led to unpaid minimum and
26 overtime wages on each such occasion, along with waiting time penalties under Labor Code §
27 203 for each *former* Class Member. (Mankin Decl. ¶ 17).

28 ///

1 However, Defendant vehemently opposed these unpaid wage claims both on the merits
2 and as to the propriety of pursuing them on a class and representative PAGA basis. For example,
3 Defendant argued that it maintained lawful policies to compensate employees for all time
4 worked, including time spent on temperature checks. And Defendant argued that this claim was
5 also inherently unmanageable and not suitable for class certification since it would require
6 individualized assessments as to whether each Class Member performed off the clock work, how
7 much time was spent performing such work, and whether Defendant knew or should have known
8 (since no liability attaches otherwise). (Mankin Decl. ¶ 18).

9 Second, Plaintiff also alleged that Class members were often denied compliant meal and
10 rest breaks due to the nature of the work. However, Defendant countered that it provided and
11 made available meal and rest breaks to all employees, and any employee who did not take a meal
12 or rest break did so entirely of his or her own volition. In this regard, Defendant produced its
13 written policies and practices, which it argued show full compliance with the law. As such,
14 Defendant argued that these claims were without merit because, for each violation, a fact-finder
15 would have to determine why a break was noncompliant/nonexistent, because if it was by the
16 employee's choice, no liability attaches to the Defendant. (Mankin Decl. ¶ 19).

17 Third, Plaintiff also claimed that Defendant provided wage statements to the Class that
18 failed to accurately state the name and address of the employer. However, Defendant raised a
19 variety of defenses to this claim, namely that the wage statements did include the necessary
20 information. Additionally, Defendant argued that, even if some wage statements omitted the
21 necessary information, Plaintiff would be unable to prove the required "knowing and intentional"
22 and "injury" elements; thus, Defendant argued that statutory penalties under § 226(e) could not
23 be recovered under these facts. (Mankin Decl. ¶ 20).

24 Plaintiff also alleged various PAGA claims arising out of the claimed violations
25 mentioned above. However, Defendant argued that these type of "derivative" claims have no
26 merit. (Mankin Decl. ¶ 21).

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

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

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

3 **A. Settlement Consideration and Allocation**

4 The \$670,000 Settlement Amount is non-reversionary and will be paid out to Class
5 Members without the need to submit a claim form or take any affirmative action. It includes (1)
6 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) settlement administration
7 expenses of \$9,750; (3) a \$40,000 PAGA award, 75 percent of which is to be paid to the LWDA
8 pursuant to California Labor Code § 2699(i) and 25 percent to the PAGA Employees; and (4) the
9 aggregate of all Settlement Payments to the Participating Class Members and PAGA Employees.
10 (S.A. ¶ 50). Defendants will separately pay its share of employer's payroll taxes and
11 withholdings.

12 After all Court-approved deductions from the Settlement Amount, it is estimated that
13 \$366,916.67 will be available to pay the Settlement Payments to approximately 675 Class
14 Members through the Preliminary Approval Date. Thus, the average settlement payment is
15 approximately \$543.

16 **B. Notice Procedures**

17 The proposed Class Notice will be provided to the Class Members showing the estimated
18 amount that each Class Member will receive and the number of pay periods worked for which
19 he/she is credited (Exhibit B to the Mankin Decl.). Within 20 days of the Preliminary Approval
20 Order, Defendant shall provide the Settlement Administrator with a list of Class Members
21 containing names, addresses, telephone numbers, Social Security Numbers, and the total pay
22 periods worked in the Class and PAGA Periods (the "Settlement Employee Data"). (S.A. ¶¶ 41,
23 75).

24 Within 10 days of receipt of the Settlement Employee Data, the Settlement Administrator
25 shall calculate the number of pay periods worked for each Class Member, and populate the Class
26 Notice for each. The Settlement Administrator will update the Settlement Employee Data using
27 the National Change of Address Database, and send each Class Member the Class Notice via
28 first-class, United States mail. (S.A. ¶ 77).

1 In the event that any Class Notice mailed to a Class Member is returned as having been
2 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
3 search and seek an address correction for such Class Member(s), and a second Class Notice will
4 be sent to any new or different address obtained. (Id.) In the event of any remailed Notices,
5 those Class Members will receive an extra 15 days to opt-out, object or dispute pay periods
6 credited. (S.A. ¶ 36).

7 **C. Exclusion and Objection Procedures**

8 Class Members who do not timely Opt-Out of the Settlement as to the Class Claims will
9 be deemed to participate in the Settlement and shall become a Participating Class Member
10 without having to submit a claim form or take any other action. In order to Opt-Out of the
11 Settlement of the Class Claims, the Class Member must submit a written request to the
12 Settlement Administrator no later than 45 days after being mailed by the Settlement
13 Administrator (“Response Deadline”). (S.A. ¶¶ 36, 62). Any Opt-Out request that is not
14 postmarked by the Response Deadline will be invalid. (S.A. ¶ 62).

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 submit a written
17 objection to the Settlement Administrator no later than the Response Deadline. The objection
18 must include the case name and number and must set forth, in clear and concise terms, a
19 statement of the reasons why the objector believes that the Court should find that the proposed
20 Settlement is not in the best interest of the Class and the reasons why the Settlement should not
21 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 61).

22 **D. Settlement Allocation Formula for Settlement Shares**

23 Class Settlement Payments will be calculated and apportioned from the Net Settlement
24 Amount based on the percentage of pay periods each Class Member worked during the Class
25 Period. Likewise, PAGA Employee Payments will be calculated based on the number of pay
26 periods each PAGA Employee worked during the PAGA Period. The entire Net Settlement
27 Amount will be disbursed to all Participating Class Members. If there are any valid and timely
28 Requests for Exclusion, the Settlement Administrator shall proportionally increase the Class

1 Settlement Payment for each Participating Class Member according to the number of pay periods
2 worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net
3 Settlement Amount. (S.A. ¶ 68-69).

4 Additionally, each PAGA Employee will receive a share of the PAGA Penalties based on
5 a pro-rata basis. Thus, the \$10,000 PAGA Penalties allocated to the PAGA Employees will be
6 divided and paid on a pay periods worked basis. (S.A. ¶ 69). PAGA Employees may not opt-out
7 of the PAGA Penalties.

8 The Class Notice will inform Class Members of the estimated share and the number of
9 pay periods worked during the Class Period and PAGA Period. Class Members may dispute
10 their pay periods worked if they feel they worked more weeks in the Class or PAGA Periods
11 than Defendants' records show by timely submitting evidence to the Settlement Administrator.
12 (S.A. ¶ 69).

13 As noted, assuming a class size of approximately 675 Class Members through
14 Preliminary Approval, the average payment to each class member will be approximately \$543,
15 although the actual payment will be calculated on a pro-rata basis as shown above, and may be
16 slightly more or less due to scheduling of the Preliminary Approval Hearing. Assuming an
17 estimated 22,000 pay periods worked through Preliminary (which again may be slightly more or
18 less), each pay period will have a value of approximately \$16.68 on average.

19 Moreover, it is estimated that there will be approximately 450 PAGA Employees who
20 will share in the \$10,000 PAGA award on a pro rata basis.

21 **E. Timing of Settlement Disbursements**

22 Within 15 calendar days of the Effective Date, Defendant shall deposit the Settlement
23 Amount with the Settlement Administrator to pay: (1) the class attorney fees and expenses, as
24 approved by the Court; (2) administrative costs, as approved by the Court; (3) PAGA Penalties;
25 and (4) the aggregate of all Settlement Payments of Participating Class Members. (S.A. ¶ 71).
26 Defendant shall also fund its share of payroll taxes, as directed by the Settlement Administrator.
27 Within 7 days thereafter, the Settlement Administrator shall issue payments to cover all court-
28 approved payments. (S.A. ¶ 72).

1 Class Members will have 180 days to cash his/her settlement check. If a Class Member
2 fails to cash his check by the deadline, then the Settlement Administrator shall issue the
3 unclaimed funds to the State Controller's Office for the State of California in the name of the
4 Class Member. (S.A. ¶ 73).

5 **F. Tax Treatment**

6 The Settlement Agreement provides that 10% of each Class Settlement Payment shall
7 constitute wages (for which each Participating Class Member will be issued an IRS Form W-2
8 for such payment), and the remaining 90% shall constitute interest and penalties (for which each
9 Participating Class Member will be issued an IRS Form 1099 for the interest and penalty
10 allocation). (S.A. ¶ 70). Additionally, the PAGA Penalties payable to the PAGA Employees
11 will be classified entirely as civil penalties and shall be reported as required on an IRS Form
12 1099.

13 **G. Participating Class Members' Release of Claims**

14 In exchange for these payments, the Settlement Agreement ¶ 32 provides that the
15 Participating Class Members will release the Released Parties of the claims alleged or could have
16 been alleged based on the facts stated in the operative complaint, as follows:

17 any and all claims, demands, rights, liabilities, and causes of action that
18 have been or could have been asserted in the instant Action based on the
19 allegations in the operative Complaint and LWDA Notice in this Action for
20 the duration of the Class Period, including but not limited to, claims for (1)
21 Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3)
22 Failure to Provide Meal Breaks; (4) Failure to Provide Rest Breaks, (5)
23 Failure to Timely Pay Final Wages; (6) Failure to Provide Accurate Wage
24 Statements, and (7) Unfair Competition. In addition, each Participating
Class Member who cashes their settlement payment shall be deemed to have
released all claims set forth above under the California Labor Code and the
FLSA (the "Released Class Claims"). The time period governing the
Released Class Claims shall be the same as the Class Period.

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

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

7 **H. PAGA Employees' Release of Claims**

8 The Settlement Agreement ¶ 33 also defines the "Released PAGA Claims" as follows:

9 any and all claims for civil penalties under the Private Attorneys General
10 Act, Labor Code § 2698 *et seq.*, that have been or could have been asserted
11 against the Released Parties, on behalf of Aggrieved Employees and State
12 of California, based on the facts stated in Plaintiff's operative Complaint
13 and in Plaintiff's February 11, 2021, notice letter to the LWDA, including
14 all PAGA claims seeking civil penalties for (1) Failure to Pay Minimum
15 Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal
16 Periods; (4) Failure to Provide Rest Breaks, (5) Failure to Timely Pay
17 Wages; (6) Failure to Timely Pay Final Wages; and (7) Failure to Provide
18 Accurate Wage Statements, and based on or arising from alleged violations
19 of the California Labor Code, including Sections 200, 201, 202, 203, 204,
20 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197,
21 1197.1, 1198, and 1199, 2699, et seq., and of the California Wage Orders.
22 The time period governing the PAGA Released Claims shall be any time
23 during the PAGA Period. The PAGA Released Claims do not release any
24 potential claims for wages or statutory penalties.

25 The time period governing the Released PAGA Claims is December 20, 2019, to the
26 Preliminary Approval Date (the "PAGA Period"; see S.A. ¶ 27). Moreover, the Released PAGA
27 Claims do not release any PAGA Employee's claims for wages or statutory penalties. (S.A. ¶
28 33). Finally, even if a PAGA Employee requests exclusion from the Class settlement, that
individual will still be subject to the Released PAGA Claims to the fullest extent permitted by
law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 52).

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

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

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

20 **A. Numerosity and Ascertainability**

21 Numerosity is met if a proposed class is so large that joinder of all members would be
22 impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
23 the class members can be objectively identified and given notice of the litigation without
24 unreasonable time or expense. See *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
25 89, 101. Here, according to Defendants’ records, there will be approximately 675 Class
26 Members as of the Preliminary Approval Hearing. This figure satisfies the numerosity
27 requirement.

28 ///

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 claims regarding Defendants’ meal and
16 rest break practices, wage statements, and the provisions governing the timely and complete
17 payment of wages, which are at the core of the lawsuit.

18 3. Adequacy of Representation

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

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

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 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

8 **A. Class Action Settlements are Subject to Judicial Review**

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

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

23 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
24 reasonable. See *Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable"
25 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
26 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
27 after determining that it is "fair, adequate and reasonable," considering factors such as the
28 "risk, expense, [and] complexity" of continued litigation)). The Court enjoys broad discretion

1 in making its fairness determination, and should consider factors including, but not limited to:

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

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

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

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

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

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

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

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

8 Plaintiff, her counsel, and their retained expert thoroughly investigated and evaluated the
9 factual and legal strengths and weaknesses of this case before reaching the settlement. As
10 described above, the settlement was reached after extensive investigation and research, thorough
11 calculations and risk evaluation, and a substantial exchange of information relating to the Class
12 Members prior to mediation. (Mankin Decl. ¶¶ 10-13, 23-31).

13 **D. The Settlement is a Reasonable Compromise of Claims**

14 To evaluate a settlement, the parties must provide the trial court with “basic information
15 about the nature and magnitude of the claims in question and the basis for concluding that the
16 consideration being paid for the release of those claims represents a reasonable compromise.”
17 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
18 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
19 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
20 the class could recover was not necessary:

21 Greenwell misunderstands *Kullar*, apparently interpreting it to require the
22 record in all cases to contain evidence in the form of an explicit statement
23 of the maximum amount the plaintiff class could recover if it prevailed on
24 all its claims – a number which appears nowhere in the record of the case.
25 But *Kullar* does not, as Greenwell claims, require any such explicit
26 statement of value; it requires a record which allows “an understanding of
27 the amount that is in controversy and the realistic range of outcomes of the
28 litigation.

26 A settlement is not judged against what might have been recovered had a plaintiff
27 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
28 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250

1 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
2 by the proposed settlement is substantially narrower than it would be if the suits were to be
3 successfully litigated, this is no bar to a class settlement because the public interest may indeed
4 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
5 litigation.”)

6 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
7 significant legal and factual grounds for defending this action exist. First, in addition to
8 disputing the merits of Plaintiff’s claims, Defendants strongly disputed that Plaintiff could obtain
9 class certification, arguing a lack of commonality of the legal claims and injuries. Defendants
10 further argued that it complied with the applicable law and that any purported deviations
11 therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class.
12 While Plaintiff asserts that this is a suitable case for certification, she realizes that there is always
13 a significant risk associated with class certification proceedings, which could significantly limit
14 the claims that she could pursue on a class basis.

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

19 Based upon detailed data obtained through informal discovery and information
20 exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation:
21 (1) approximately 575 total Class Members shortly prior to the January 2022, mediation (“the
22 pre-mediation period”), (2) approximately 38,765 workweeks in the pre-mediation period, (3)
23 approximately 283,311 shifts worked in the pre-mediation period, and (4) approximately 9,225
24 pay periods during the pre-mediation PAGA Period. From these metrics, and when factoring in
25 claim certification probabilities and liability probabilities, Class Counsel formulated detailed
26 damages models to value the claims in preparation for mediation and to reach a realistic and
27 reasonable resolution. (Mankin Decl. ¶ 23).

28 ///

1 Plaintiff's claim for unpaid minimum and overtime wages was based on the allegation
2 that the Class Members were underpaid by an average of 3 minutes per shift, for a total of 14,165
3 hours during the pre-mediation, at an effective rate of pay of \$87.44 per hour (a blended rate,
4 incorporating the base wage and overtime premium). As such, the maximum potential damages
5 for this wage claim was \$1,238,587. (Mankin Decl. ¶ 24).

6 But this maximum figure ignores Defendants' multiple defenses to the unpaid wage
7 claim. First, Defendants argued that the off-the-clock claims are unmanageable and would
8 require a person-by-person analysis as to whether off-the-clock work occurred, whether a Class
9 Member was working or engaged in personal activities (such as socializing or making phone
10 calls, which cannot be considered work time), and whether Defendants knew or had reason to
11 know that such work was performed. As such, Defendants argued that this constituted precisely
12 the type of individualized inquiry that is not appropriate for certification. Based on this
13 argument, and others, Plaintiff assigned a 50% discount based on the risk that the Court would
14 deny class certification on the unpaid wage claims. Additionally, Defendants alleged that, if
15 certification were granted, it would defeat the wage claim on two fronts: (1) due to the arbitration
16 agreements, and (2) due to its compliant policies and practices that paid the Class for all hours
17 worked. Therefore, Plaintiff assigned an additional 50% discount for risks at the merits stage
18 (primarily due to the arbitration agreement), resulting in a total risk-adjusted value for the unpaid
19 wage claim of \$309,646. (Mankin Decl. ¶ 25).

20 These unpaid wage claims also gave rise to Plaintiff's claim for waiting time penalties
21 under Labor Code § 203. In this respect, there were 250 Class Members that separated from
22 employment during the relevant period, and those individuals earned an average daily wage of
23 \$466. Therefore, the maximum potential waiting time penalties totaled \$3,495,000. However,
24 Defendants argued that it would defeat the waiting time penalty claim as to Plaintiff's off-the-
25 clock claim because the failure to pay wages, if any, was not willful given Defendants' facially
26 compliant policy. Plaintiff applied a 50% risk of defeat at the class certification stage, and an
27 additional 75% discount at the trial and/or summary judgment stage (based on the arbitration
28 agreement issue and the willful defenses), resulting in the risk-adjusted value of \$436,875.

1 (Mankin Decl. ¶ 26).

2 With regard to Plaintiff's meal and rest break claims, the Class Members worked 283,311
3 shifts during the pre-mediation period. Based on an alleged 26.9% violation rate for the meal
4 period claims, as extrapolated from the pre-mediation sampling, and a 25% violation rate for the
5 rest break claims, the maximum potential damages are \$4,442,280 and \$4,128,505, respectively.
6 (Mankin Decl. ¶ 27).

7 But Defendants strongly opposed these claims based on the argument that these fall
8 directly into the category of impermissible "individualized issues" which cannot meet class
9 certification standards since Defendants had compliant written policies the employees had ample
10 latitude regarding whether, when, and how they took their breaks. Therefore, Defendants
11 asserted that a fact-finder would have to determine for each Class Member whether a break was
12 missed and why, and why a break was noncompliant/nonexistent, because if it was by the
13 employee's choice, no liability attaches to the Defendants. Based on these arguments, Plaintiff
14 believes there is a 50% risk that the Court would deny class certification on these meal and rest
15 break claims. (Mankin Decl. ¶ 28).

16 Defendants also argued that, even if certification were granted, it would defeat these
17 claims on the merits because Defendants utilized compliant policies and practices and it would
18 present sufficient evidence that the workers were properly provided with all breaks. Moreover,
19 Defendants argued that Plaintiff would be unable to present sufficient evidence establishing the
20 number of meal and rest period violations in order to allow a fact-finder to appropriately
21 determine damages. Plaintiff acknowledged the risks and incorporated a further 40% reduction
22 on the merits, with an additional 40% reduction for the arbitration agreement issue, resulting in a
23 80% risk adjustment on the meal and rest break claims. Thus, Plaintiff therefore calculates the
24 risk-adjusted value of the meal claims to be \$444,228 and the rest break claims to be \$412,850.
25 (Mankin Decl. ¶ 29).

26 Finally, Plaintiff estimates the maximum potential penalties for the wage statement
27 claims as \$917,636 (based on approximately 9,225 pre-mediation allegedly violative wage
28 statements issued for the one-year statute of limitations). However, Defendant raised many

defenses, including that: (a) these violations, if any, did not result in any “injury” under § 226(e), (b) the violations, if any, were not “knowing and intentional” and could not support the assessment of penalties, and (c) “derivative” wage statement claims are without merit. These defenses all went to the merits, not to defeating class certification. Thus, Plaintiff only assigned a nominal 10% at class certification but applied a 50% risk on the merits, the majority of which represents the risk presented by the arbitration agreements, resulting in a risk-adjusted value for the wage statement claims of \$412,936. (Mankin Decl. ¶ 30).

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

•	Unpaid Wage Claims	\$	309,646
•	Waiting Time Penalty Claims	\$	436,875
•	Meal Period Claims	\$	444,228
•	Rest Break Claims	\$	412,850
•	Wage Statement Claims	\$	<u>412,936</u>
•	Total Risk Adjusted Penalties and Damages	\$	2,016,535

Thus, while this settlement is lower than the risk-adjusted totals, the reasonableness of the settlement is apparent when considering that Plaintiff and her counsel obtained a significant settlement despite the existence of arbitration agreements and substantial defenses to the claims. And while the PAGA civil penalty would have a maximum value in the seven figures, this figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). Moreover, Defendant argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

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1 **E. Plaintiff’s Counsel if Experienced in Similar Wage-and-Hour Litigation**

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

7 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been
8 named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators),
9 having achieved large settlements and verdicts, including one of the largest PAGA awards in
10 California’s history, collecting over \$250 million for its clients, having tried class and PAGA
11 cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6). Plaintiff’s
12 counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the
13 view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk
14 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of
15 class certification and litigation. (*Id.* ¶¶ 15-32).

16 **F. The Class Notice Conforms to All Applicable Statutes and Rules**

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

22 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
23 the Class Notice to the last known address of all class members complies with all the
24 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
25 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys’ fees,
26 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
27 and how class members may elect to exclude themselves or make an objection; and (4) how class
28 members can obtain additional information. See Class Notice (Exhibit B to Mankin Decl.). In

1 addition, it will inform Class Members of their estimated settlement share.

2 The Court has wide discretion in approving the means of providing notice, so long as the
3 class representative “provide(s) meaningful notice in a form that should have a reasonable
4 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
5 (1976) 15 Cal.3d 853, 861. Here, the parties’ notice plan is that notice of the Settlement will be
6 disseminated directly to the Class Members by first class mail by the Settlement Administrator
7 since Defendants have the last known addresses of all class members and the Settlement
8 Administrator will perform a skip trace and update those addresses for any class notices that are
9 returned and resend the Notice.

10 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement
11 Class Members with all due process protections required by the United States Constitution.
12 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
13 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
14 contentions or denials of the parties; (2) a statement that the court will exclude the member from
15 the class if the member so requests by a specified date; (3) a procedure for the member to follow
16 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
17 not, will bind all members who do not request exclusion; and (5) a statement that any member
18 who does not request exclusion may, if the member so desires, enter an appearance through
19 counsel. The 45-day deadline for Class Members to exclude themselves is reasonable, as it
20 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
21 legal advice in the interim, plus they will receive an additional 15 days to respond if a notice is
22 remailed due to a chance of address. If a Class Member does not opt-out, then he or she will
23 automatically be sent a settlement check.

24 **G. The Non-Reversionary “Checks Cashed” Distribution Ensures Maximal**
25 **Recovery for Class Members**

26 The fact that each member who does not opt out of the Settlement shall be mailed a check
27 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
28 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no

1 settlement funds will revert to Defendants; instead, if any checks are not cashed before the
2 Response Deadline, the funds will be transferred to the State Controller Office in the name of the
3 employee, subject to approval of the Court. Such terms are favored by Courts and demonstrate
4 that there was no collusion between counsel for the parties and that the Settlement is fair and
5 favorable to the Class Members.

6 **H. The Attorney Fee Allocation Under the Settlement Agreement is Fair**

7 Under the terms of the Settlement Agreement, Class Counsel is requesting \$233,333.33
8 in attorneys' fees and costs, which is equal to one-third of the Settlement Amount. *See, e.g.*
9 *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33
10 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for
11 the benefit of the class members, the trial court may determine the amount of a reasonable fee
12 by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack*
13 *Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award
14 of 1/3 of the total maximum settlement amount of \$4.5 million as "well within the range of
15 percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v.*
16 *Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL
17 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers*
18 *Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4
19 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in
20 class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package*
21 *System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8
22 (approving fees of 1/3 of common fund).

23 In addition, Plaintiff's counsel may seek reimbursement of actual litigation costs not to
24 exceed \$20,000. Once the Court grants preliminary approval of the Settlement Agreement and
25 Class Notice is disseminated, Plaintiff's counsel will submit a comprehensive request for
26 attorneys' fees and costs with its final approval motion.

27 ///

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I. The Class Representative is Not Seeking a Service Award

At the time of mediation, Plaintiff separately resolved claims relating to discrimination and wrongful termination for a very modest settlement in the lower five figures. As a result of this separate settlement, Plaintiff is not seeking a service award.

VI. THE COURT SHOULD APPOINT ILYM AS SETTLEMENT ADMINISTRATOR

The parties stipulated to ILYM Group serving as the Settlement Administrator. ILYM Group is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$9,750. (Mankin Decl. ¶ 42; Exhibit “D”).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

Subject to the Court’s approval, the Parties propose that the Court schedule a hearing for final approval of the settlement approximately 130 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

30 days after Preliminary Approval is granted/ordered.	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
45 days after mailing of Class Notice; and 60 days after initial mailing of Class Notice for re-mailed Class Notices	Deadline for Settlement Class Members to mail Requests for Exclusion, Objections to the settlement, as well as dispute his/her pay periods credited.
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.
January 17, 2023 [Proposed Date]	Final Approval Hearing.
15 days after Effective Date	Defendant to fund the Gross Settlement Amount

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1 **VIII. CONCLUSION**

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

4 Dated: July 29, 2022

LAUBY, MANKIN & LAUBY LLP

5
6 BY:



7 Brian J. Mankin, Esq.
8 Attorneys for Plaintiff and the Class
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[illegible]

On July 29, 2022, I caused to be served the foregoing document(s) described as follows:

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

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

Tracie Chiarito, Declarant

SERVICE LIST

Sonia Vucetic, Esq.
Jennifer Zargarof, Esq.
MORGAN, LEWIS & BOCKIUS LLP
300 S. Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
213-612-2500
213-612-2501-fax
sonia.vucetic@morganlewis.com
jennifer.zargarof@morganlewis.com