

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

KARINA MORALES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

VPET USA, LLC, a Delaware Limited
Liability Company; WORKFORCE
PERSONNEL, INC., a California
Corporation; and DOES 1 through 20,
inclusive.

Defendants.

Case No.: CIVSB2108161
*[Assigned to Hon. Judge David Cohn, Dept S26,
for all purposes]*

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

Hearing

Date: July 29, 2022

Time: 10:00 a.m.

Dept.: S26

Complaint filed: March 10, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 29, 2022, at 10:00 a.m. or as soon thereafter as the
matter may be heard by the Honorable David Cohn in Department S26 of the San Bernardino
County Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiff
Karina Morales, individually and on behalf of all others similarly situated, will and hereby does
move the Court for entry of an Order preliminarily approving the Parties' class action settlement,
including:

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

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

Dated: July 7, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	3
A.	THE SETTLEMENT CLASS	3
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	9
F.	TAX TREATMENT	9
G.	PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS	10
H.	AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS	10
IV.	PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	11
A.	NUMEROSITY AND ASCERTAINABILITY	12
B.	WELL-DEFINED COMMUNITY OF INTEREST	12
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	13
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT	13
B.	THE SETTLEMENT IS RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS	15
C.	THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	15
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS	16
E.	PLAINTIFF'S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION	19
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'S FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR	21
I.	THE CLASS REPRESENTATIVES' SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE	22
VI.	THE COURT SHOULD APPOINT ILYM AS SETTLEMENT ADMINISTRATOR	23
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING	23
VIII.	CONCLUSION	24

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Karina Morales seeks preliminary approval of a \$250,000 wage-and-hour class
4 action settlement (the “Settlement Amount”) on behalf of approximately 143 putative class
5 members, which includes all current and former nonexempt employees employed directly by
6 Defendant VPET USA, LLC, and who worked at the VPET Facility (located at 12925 Marlay
7 Avenue, Fontana, CA 92337) (the “Class Members”) at any time between September 19, 2019
8 and the Preliminary Approval Date (the “Class Period”). Because this Settlement only covers
9 individuals who were directly employed by VPET USA, LLC and performed work at the VPET
10 Facility, the converse is that this Settlement excludes any temporary employees that were
11 assigned to work at the VPET Facility by Staffing Agencies or other companies.¹

12 The payment to each Class Member under the Settlement Agreement is based on the
13 number of Work Weeks that each Class Member worked for Defendant during the Class Period.
14 The Class Action Settlement Agreement and Release of Claims is attached as Exhibit “A” to the
15 Declaration of Brian Mankin (“Mankin Decl.”), and is hereinafter referred to as the “Settlement
16 Agreement” or “S.A.” The proposed Notice of Settlement of Class Action (“Class Notice”) is
17 attached to the Mankin Declaration as Exhibit “B.”

18 Under the terms of the Settlement Agreement, Defendant VPET USA, LLC,
19 (“Defendant” or “VPET”) will not oppose Plaintiff Counsel’s application for a reasonable award
20 of attorney’s fees not to exceed the total amount of \$83,333.33 which is 1/3 of the Maximum
21 Settlement Amount (hereinafter, the “Settlement Amount”), Plaintiff Counsel’s litigation
22 expenses not to exceed \$15,000, Settlement Administrator Costs of \$7,000, PAGA penalties of
23 \$25,000 (of which \$18,750 or 75% will be paid to the LWDA and the remaining \$6,250 or 25%

24
25
26 ¹ The Released Class Claims and Released Parties specifically exclude the “Excluded Employers,” who are defined
27 as “Workforce Personnel, Inc., VPET USA, Inc., LL Continental, Inc., and/or the individuals Henry Lee and
28 Wenhao Wang and their officers, directors, shareholders, employees, agents, principals, heirs, representatives,
accountants, auditors, consultants, insurers and reinsurers, and their respective parent and subsidiary corporations,
subsidiaries, divisions, affiliates, attorneys of VPET USA, Inc., and LL Continental, Inc., and/or the individuals
Henry Lee and Wenhao Wang.” The Excluded Employer failed to produce data in preparation for mediation and, as
a result, the settlement only includes direct hires of VPET USA, LLC.

will be paid to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff Karina Morales (“Class Representative”). (S.A. ¶ 49(a-h)).

After all Court-approved deductions from the Settlement Amount, it is estimated that \$112,166.67 will be available to pay the approximately the Class Members, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 250,000
Attorneys’ Fees (1/3)	\$ 83,333.33
Litigation Costs	\$ 15,000
Administrator Costs	\$ 7,000
PAGA Penalties	\$ 25,000
Class Representative’s Service Award	\$ 7,500
<i>Net Settlement Amount</i>	\$ 112,166.67

Assuming 150 Class Members, the average payment to each class member will be approximately \$747.77 each (\$112,166.67 / 150). Of course, the actual payment will be calculated on a pro-rata basis according to the number of Workweeks Worked by each Class Member. Assuming an estimated 7,500 weeks worked, each Workweek will have a value of approximately \$14.95/week on average. In addition, approximately 140 Aggrieved Employees (i.e., individuals who worked during the PAGA Period starting on March 5, 2020, will receive a pro rata share of the \$6,250 PAGA Penalties (accounting for 25% of the total \$25,000 allocation). Moreover, the Aggrieved Employees collectively worked approximately 7,000 weeks during the PAGA Period. (Mankin Decl., ¶ 8).

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, 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. Likewise, all Aggrieved Employees will receive a share of the PAGA Penalties once the settlement receives final approval.

///

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

9 **II. BACKGROUND**

10 **A. THE SETTLEMENT CLASS**

11 The Class is defined as follows:

12 All current and former nonexempt employees employed directly by
13 Defendant VPET USA, LLC, and who worked at the VPET
14 Facility at any between September 19, 2019 and the Preliminary
Approval Date. (S.A. ¶ 38).

15 **B. PROCEDURAL HISTORY**

16 On March 5, 2021, Plaintiff submitted a letter to the California Labor Workforce
17 Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act
18 of 2004 (the "PAGA"), and simultaneously sent a letter to Defendant requesting the production
19 of his personnel and timekeeping records in order to further evaluate his wage and hour claims.
20 (Mankin Decl., ¶ 11).

21 On March 10, 2021, Plaintiff filed a class and representative PAGA action complaint in
22 the Court against Defendants VPet USA, LLC, Workforce Personnel, Inc., and DOES 1 through
23 20. The operative Complaint alleges class and representative PAGA claims, including: (1)
24 failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to
25 provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final wages, (6)
26 failure to provide accurate itemized wage statements, (7) unfair and unlawful competition
27 pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims under PAGA.
28 (Mankin Decl., ¶ 12).

1 Defendant retained counsel and vehemently disputed the claims. However, prior to
2 taking depositions, conducting discovery, and filing a disputed motion for class certification, the
3 parties agreed to explore a resolution through mediation. In preparation for the mediation, the
4 Parties informally exchanged documents and information that allowed both sides to calculate the
5 potential damages and evaluate potential risk, including policies and procedures pertaining to
6 each claim alleged, and statistics relating to the number of current and former employees,
7 number of shifts, weeks worked and other things. In this regard, Defendant provided a sampling
8 of timekeeping and payroll records of the Class Members. This robust sampling enabled both
9 parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and her
10 counsel analyzed, researched, and investigated the potential issues, including matters related to
11 the calculation of damages, trial, and appellate issues and risks. (Mankin Decl., ¶ 13).

12 On April 4, 2022, Plaintiff and Defendant VPET participated in mediation before Jeff
13 Krivis, a highly experienced wage and hour class action mediator. The matter resolved as to
14 Settlement Class pursuant to a mediator's proposal. The Parties accepted the mediator's
15 proposal and memorialized the terms of the settlement in a long-form Settlement Agreement.
16 (Mankin Decl., ¶ 14). The Parties now seek the Court's preliminary approval of the Settlement.

17 Notably, Defendant Workforce Personnel, Inc., also attended mediation, but in light of its
18 failure to exchange information and data prior to mediation, no meaningful settlement talks could
19 occur with respect to temporary employees that Workforce Personnel, Inc., assigned to the VPET
20 Facility.

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

22 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
23 However, Defendant vigorously contested and denied Plaintiff's material allegations on the
24 merits and as to the propriety of a class action or PAGA representative action. Moreover,
25 Defendant VPET denies that Plaintiff is an adequate class representative as to the claims against
26 it because she was an employee of the staffing company Workforce Personnel, Inc. Still, Plaintiff
27 believed there were several strong claims, which are discussed below. (Lauby Decl., ¶ 9).

28 ///

1 First, Plaintiff alleges that she and the Class Members were not provided all minimum,
2 regular, and overtime wages due to Defendants' failure to accurately record and compensate for
3 all hours worked. For instance, Defendant maintained policies and practices that required
4 employees to clock out for lunch periods while still under the control of the Defendant.
5 Nevertheless, Defendant insist that it had compliant policies and it was not the practice for
6 Plaintiff and the Class Members to clock out before being relieved of all duty. (Lauby Decl., ¶
7 10).

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

18 Third, Plaintiff also alleges that she and the Class Members were not paid all wages due
19 and owing each pay period (Labor Code § 204) and upon separation of employment within the
20 time required by Labor Code §§ 201 – 203. (Lauby Decl., ¶ 12).

21 Fourth, Plaintiff alleged that Defendant issued wage statements to the Class Members
22 that did not comply with the requirements of Labor Code § 226. But Defendant disputed
23 Plaintiff's wage statement claim and specifically disputed that the wage statements were
24 inaccurate or that they otherwise failed to comply with Labor Code § 226. Furthermore,
25 Defendant contended that, even if Plaintiff could identify a technical error in some employees'
26 wage statements, Plaintiff's claims still fail for multiple reasons, including without limitation,
27 because Plaintiff cannot establish a "knowing and intentional" violation or that Plaintiff and
28 other employees suffered an "injury" as required by Labor Code § 226(e). (Lauby Decl., ¶ 13).

1 Finally, Plaintiff also alleges that Defendants failed to comply with California’s mandate
2 to provide employees “with suitable seats when the nature of the work reasonably permits the
3 use of seats.” (Lauby Decl., ¶ 14).

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

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

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

9 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

10 The \$250,000 Settlement Amount is non-reversionary and will be paid out to Class
11 Members without the need to submit a claim form or take any affirmative action. It includes (1)
12 Plaintiff’s attorneys’ fees and costs, as approved by the Court; (2) a service award of \$7,500 to
13 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
14 \$7,000; (4) a \$25,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
15 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
16 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶
17 49(a-h)). Defendant will separately pay its share of employer’s payroll taxes and withholdings.

18 After all Court-approved deductions from the Settlement Amount, it is estimated that
19 \$112,166.67 will be available to pay the Individual Settlement Amounts to approximately 150
20 Class Members. Thus, the average settlement payment is approximately \$747.77.

21 **B. NOTICE PROCEDURES**

22 The proposed Class Notice will be provided to the Class Members showing the estimated
23 amount that each Class Member will receive and the number of workweeks he/she is credited
24 (Exhibit B to the Mankin Decl.). Within 10 days after entry by the Court of its Order of
25 Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of Class
26 Members containing names, addresses, telephone numbers, Social Security Numbers, and the
27 total Workweeks Worked in the Class and PAGA Periods (the “Class Data”). (S.A. ¶¶ 5, 66).

28 ///

1 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
2 the number of weeks worked for each Class Member, populate the Class Notice for each, and
3 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 67).

4 In the event that any Class Notice mailed to a Class Member is returned as having been
5 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
6 search and seek an address correction for such Class Member(s), and a second Class Notice will
7 be sent to any new or different address obtained. (S.A. ¶ 68).

8 **C. EXCLUSION AND OBJECTION PROCEDURES**

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 a written request to the Settlement Administrator no later than 30 days
13 after being mailed by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 20,
14 71). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be
15 invalid. (S.A. ¶ 71(a)).

16 The Class Notice shall inform the Class Members of their right to object to the
17 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
18 objection to the Settlement Administrator no later than the Notice Response Deadline. The
19 objection must include the case name and number and must set forth, in clear and concise terms,
20 a statement of the reasons why the objector believes that the Court should find that the proposed
21 Settlement is not in the best interest of the Class and the reasons why the Settlement should not
22 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 71(c)).

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

24 The amount of each Settlement Class Member’s Individual Settlement Amount is tied to
25 the number of Workweeks Worked that a Settlement Class Member worked for Defendant in
26 California during the Class Period. Individual Settlement Payments will be made as follows:

- 27 • Defendant will calculate the total number of Work Weeks worked by each
28 Settlement Class Member during the Class Period and the aggregate total number of Work

Weeks worked by all Settlement Class Members during the Class Period.

- To determine each Settlement Class Member's estimated Individual Settlement Payment, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Work Weeks, resulting in the "Work Week Value." Each Settlement Class Member's Individual Settlement Payment will be calculated by multiplying his or her total number of Work Weeks during the Class Period by the Work Week Value.

- Individual Settlement Payments will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions.

- The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Work Weeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount. (S.A. ¶ 49(c)).

Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the \$6,250 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Work Week basis. (S.A. ¶ 49(h)).

The Class Notice will inform Class Members of the estimated share and the number of Work Weeks he/she worked during the Class Period. Class Members may dispute their Weeks Worked if they feel they worked more weeks in the Class or PAGA Periods than Defendant's records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 69).

As noted, assuming a class size of 150 Class Members, the average payment to each class member will be approximately \$747.77 each, although the actual payment will be calculated on a pro-rata basis as shown above. Assuming an estimated 7,500 weeks worked, each Workweek will have a value of approximately \$14.95/week on average. Indeed, this is an good result for the Class Members.

Moreover, it is estimated that there are 140 Aggrieved Employees who worked an estimated 7,000 Workweeks during the PAGA Period. The Aggrieved Employees will share in the \$6,250 PAGA award on a pro rata basis.

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant is required to deposit the Settlement Amount, along with the employers' share of payroll taxes owed, with the Settlement Administrator, within 30 calendar days after the "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as approved by the Court; (2) the service awards, as approved by the Court; (3) administrative expenses, as approved by the Court; (4) a \$25,000 PAGA award; and (5) the aggregate of all Individual Settlement Amounts of participating Class Members. (S.A. ¶ 72). Within 10 days after the Court's approval of the Settlement, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 73).

Class Members will have 180 days to cash his/her settlement check. If a Class Member fails to cash a check by the deadline, then the Settlement Administrator shall issue the unclaimed funds to the California State Controller in the name of the Class Member. (S.A. ¶ 74).

F. TAX TREATMENT

The Parties agree that one-third (33.34%) of each Individual Settlement Amount shall constitute wages (for which each Participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining two-thirds (66.66%) will be allocated equally between interest (33.33%) and as penalties (33.33%) (for which each Participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (S.A. ¶ 49(d)). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 49(h)).

Defendant will separately pay its share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 49(a)).

///

///

///

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

2 In exchange for these payments, the Settlement Agreement ¶ 30 provides that the
3 Participating Class Members will release the Released Parties of the claims alleged or could have
4 been alleged based on the facts stated in the operative complaint, as follows:

5 any and all claims stated in the Complaint and those based solely
6 upon the facts in the Complaint, including: (a) failure to pay
7 minimum wages, (b) failure to pay overtime wages, (c) failure to
8 provide meal periods, (d) failure to provide rest breaks, (e) failure to
9 failure to timely pay wages each period and upon separation of
10 employment, (f) failure to provide accurate itemized wage
 statements, (g) unfair and unlawful competition, and (h) all other
 claims for statutory penalties based on the facts or claims alleged in
 the Complaint ("Released Claims").

11 The time governing the release (i.e., the "Release Period") shall be the same as the Class
12 Period. (S.A. ¶ 32).

13 It is understood and agreed that the Settlement Agreement will not release any person,
14 party or entity from claims, if any, by Class Members for workers compensation, unemployment,
15 or disability benefits of any nature, nor does it release any claims, actions, or causes of action
16 which may be possessed by Settlement Class Members under state or federal discrimination
17 statutes including, without limitation, the Cal. Fair Employment and Housing Act, the Cal.
18 Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.;
19 the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.;
20 the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee
21 Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and all of their
22 implementing regulations and interpretive guidelines.

23 **H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS**

24 The Settlement Agreement ¶ 24 also defines the "PAGA Released Claims" as follows:

25 [A]ll PAGA claims that Plaintiff alleged against the Released
26 Parties, on behalf of Aggrieved Employees and State of California,
27 based on the facts stated in Plaintiff's Complaint and in Plaintiff's
28 LWDA notice letter, including all PAGA claims seeking civil
 penalties premised upon: (a) failure to pay minimum wages, (b)
 failure to pay overtime wages, (c) failure to provide meal periods,
 (d) failure to provide rest breaks, (e) failure to failure to timely pay

1 wages each period and upon separation of employment, (f) failure
2 to provide accurate itemized wage statements, and (g) all other
3 claims for civil penalties recoverable under the Private Attorneys
4 General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims
alleged in the operative complaint.

5 The time governing the PAGA Released Claims is March 5, 2020 through the
6 Preliminary Approval Date or July 31, 2022, whichever is earlier (the “PAGA Period”; see S.A.
7 ¶ 23). Moreover, the PAGA Released Claims do not release any Aggrieved Employee’s claims
8 for wages of statutory penalties. (S.A. ¶ 24). Finally, even if an Aggrieved Employee requests
9 exclusion from the Class settlement, that individual will still be subject to the PAGA Released
10 Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA
11 Penalties. (S.A. ¶ 71(a)).

12 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
13 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
14 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

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

1 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
2 purposes of this settlement only, Plaintiff request that this Court provisionally certify the Class,
3 as defined above, under Code of Civil Procedure § 3150.

4 **A. NUMEROSITY AND ASCERTAINABILITY**

5 Numerosity is met if a proposed class is so large that joinder of all members would be
6 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
7 the class members can be objectively identified and given notice of the litigation without
8 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
9 89, 101. Here, according to Defendant’s records, there are approximately 150 Class Members.
10 This figure satisfies the numerosity requirement.

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

12 **1. Commonality**

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

20 **2. Typicality**

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

28 ///

1 3. Adequacy of Representation

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

8 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
9 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
10 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
11 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

12 4. Superiority

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

17 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**
18 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

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

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

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

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

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

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

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

27 At the preliminary approval stage, the Court need only determine that the settlement falls
28 within the "range of possible judicial approval," so that notice to the class and the scheduling of

1 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
2 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .
3 . . and [the settlement] appears to fall within the range of possible approval.” *Manual For*
4 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption
5 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
6 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
7 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
8 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
9 approval because there are no grounds to doubt its fairness.

10 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
11 **NEGOTIATIONS**

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

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

23 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
24 weaknesses of this case before reaching the settlement. As described above, the settlement was
25 reached after extensive investigation and research, thorough calculations and risk evaluation, and
26 a substantial exchange of information relating to the Class Members prior to mediation.

27 ///

28 ///

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

2 To evaluate a settlement, the parties must provide the trial court with “basic information
3 about the nature and magnitude of the claims in question and the basis for concluding that the
4 consideration being paid for the release of those claims represents a reasonable compromise.”

5 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
6 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
7 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
8 the class could recover was not necessary:

9 Greenwell misunderstands *Kullar*, apparently interpreting it to
10 require the record in all cases to contain evidence in the form of an
11 explicit statement of the maximum amount the plaintiff class could
12 recover if it prevailed on all its claims – a number which appears
13 nowhere in the record of the case. But *Kullar* does not, as Geenwell
14 claims, require any such explicit statement of value; it requires a
15 record which allows “an understanding of the amount that is in
16 controversy and the realistic range of outcomes of the litigation.

17 A settlement is not judged against what might have been recovered had a plaintiff
18 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
19 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
20 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
21 by the proposed settlement is substantially narrower than it would be if the suits were to be
22 successfully litigated, this is no bar to a class settlement because the public interest may indeed
23 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
24 litigation.”)

25 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
26 significant legal and factual grounds for defending this action exist. First, in addition to
27 disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain
28 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant
further argued that it complied with the applicable law and that any purported deviations
therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class.

1 While Plaintiff asserts that this is a suitable case for certification, she realizes that there is always
2 a significant risk associated with class certification proceedings, which could significantly limit
3 the claims that she could pursue on a class basis.

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

8 Based upon detailed data obtained through informal discovery and information
9 exchanges, Plaintiff's counsel estimated the following data points through the date of mediation:
10 (1) approximately 143 total Class Members, (2) approximately 7,184 workweeks through
11 mediation for the Class Period, and (3) approximately 3,865 pay periods during the PAGA
12 Period through mediation. From these metrics, and when factoring in claim certification
13 probabilities and liability probabilities, Class Counsel formulated detailed damages models to
14 value the claims in preparation for mediation and to reach a realistic and reasonable resolution.
15 (Lauby Decl., ¶ 15).

16 Next, Plaintiff calculated the maximum potential value of the unpaid wage claim to be
17 \$104,527.20. After applying appropriate discounts at the class certification stage and on the
18 merits, Plaintiff estimated the risk-adjusted value of the unpaid wage claim to be approximately
19 \$83,622. And these unpaid wage claims also gave rise to Plaintiff's claim for waiting time
20 penalties under Labor Code § 203. In this respect, Plaintiff estimated that there were 53 *former*
21 Class Members during the relevant period, and those individuals earned an average daily wage of
22 \$186.08; therefore, the maximum potential waiting time penalties totaled \$295,867. However,
23 Defendant argued that it would defeat the waiting time penalty claim at the class certification
24 stage and, failing that, it would show that any underpayment of wages was not "willful" and/or
25 that Defendant had a good faith defense to imposition of waiting time penalties. While Plaintiff
26 was confident this claim would ultimately prevail, Plaintiff worked off a risk-adjusted value of
27 \$236,694 for the waiting time penalty claims. (Lauby Decl., ¶ 16).

28 ///

1 In terms of the meal and rest break claims, Plaintiff calculated a maximum total value of
2 \$585,136 based on a 50% meal period violation rate (17,960 applicable shifts for \$417,750 in
3 damages) and a 25% rest break violation rate (8,980 applicable shifts for \$167,387 in damages).
4 Defendant strongly opposed these claims based on the argument that they fall directly into the
5 category of impermissible “individualized issues” which cannot meet class certification
6 standards since Defendant had compliant written policies the employees had ample latitude
7 regarding whether, when, and how they took their breaks. Therefore, Defendant asserted that a
8 factfinder would have to determine for each Class Member whether a break was missed and why,
9 and why a break was noncompliant/nonexistent, because if it was by the employee’s choice, no
10 liability attaches to the defendant. Moreover, Defendant argued that employees working directly
11 for Workforce, or any other staffing company, were subject to the supervision and policies of the
12 staffing companies and not VPET. As a result, Plaintiff could not adequately represent the
13 VPET employees because she was an employee of Workforce rather than VPET. After factoring
14 in reasonable discounts, Plaintiff’s risk-adjusted value of the combined meal and rest break
15 claims was \$250,722. (Lauby Decl., ¶ 17).

16 Plaintiff also contends that there were wage statement violations, based on the allegation
17 that Defendant failed to include all information required by Labor Code § 226(a). The maximum
18 potential value of this claim was \$379,350 under the \$50/\$100 formula in § 226(e). Defendant
19 raised many defenses, including that: (a) these violations, if any, did not result in any “injury”
20 under § 226(e), (b) the violations, if any, were not “knowing and intentional” and could not
21 support the assessment of penalties, and (c) “derivative” wage statement claims are without
22 merit. Based on the alleged defenses, Plaintiff assigned a risk-adjusted value for the wage
23 statement claims of \$151,740. (Lauby Decl., ¶ 18).

24 Plaintiff’s 204 and suitable seating claims are PAGA only claims that are addressed
25 below. (Lauby Decl., ¶ 19).

26 ///

27 ///

28 ///

1 In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff's estimate
2 the risk-adjusted class recovery as follows:

3	• Wage Claim	\$ 83,622
4	• 203 Claim	\$ 236,694
5	• Meal and Rest Claims	\$ 250,722
6	• Wage Statement Claim	\$ <u>151,740</u>
7	Plaintiff's Estimate of Total Risk-Adjusted Damages	\$ 684,842

8 (Lauby Decl., ¶ 20).

9 The reasonableness of the settlement is apparent from the fact that the proposed
10 settlement binds Defendant to pay over 36% of the risk-adjusted class damages and penalties.
11 And while the PAGA civil penalty would have a maximum value in the seven figures, Defendant
12 points out that courts have wide latitude to reduce the amount of civil penalties "based on the
13 facts and circumstances of a particular case" and if "to do otherwise would result in an award
14 that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h). Moreover,
15 Defendant argued against the merits of the underlying claims and particularly that the
16 "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and
17 rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil
18 penalty claims on top of the underlying claim. For these reasons, Plaintiff submits that the
19 agreed-upon settlement is fair and reasonable. (Lauby Decl., ¶ 21).

20 **E. PLAINTIFF'S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
21 **LITIGATION**

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

27 Plaintiff's Counsel is also highly experienced in Class/PAGA litigation, having been
28 named "Super Lawyer" in employment litigation (a distinction awarded to only 5% of litigators),

1 having achieved large settlements and verdicts, including one of the largest PAGA awards in
2 California's history, collecting over \$250 million for its clients, having tried class and PAGA
3 cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6). Plaintiff's
4 counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the
5 view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk
6 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of
7 class certification and litigation.

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

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

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

22 The Court has wide discretion in approving the means of providing notice, so long as the
23 class representative "provide(s) meaningful notice in a form that should have a reasonable
24 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
25 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
26 disseminated directly to the class members by first class mail by the settlement administrator,
27 since Defendant has the last known addresses of all class members and the Settlement
28 Administrator will perform a skip trace and update those addresses for any class notices that are

1 returned and re-send the notice.

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

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

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

25 **H. THE ATTORNEY’S FEES AND COSTS ALLOCATION UNDER THE SETTLEMENT**
26 **AGREEMENT IS FAIR**

27 Under the terms of the Settlement Agreement, Class Counsel is requesting \$83,333.33
28 in attorneys’ fees, which is equal to one-third of the Settlement Amount. *See, e.g. Laffitte v.*

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

15 Additionally, Plaintiff is seeking up to \$15,000 in litigation costs, pursuant to the
16 Settlement Agreement.

17 Once the Court grants preliminary approval of the Settlement Agreement and Class
18 Notice is disseminated, Plaintiff’s counsel will submit a comprehensive request for attorneys’
19 fees and costs with its final approval motion.

20 **I. THE CLASS REPRESENTATIVE’S SERVICE AWARD REQUEST IS FAIR AND**
21 **APPROPRIATE**

22 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
23 Representative, which is reasonable given large recovery that Class Members will receive on
24 average, as well as the time and effort she devoted to this case. Her efforts included providing
25 factual background for the Class and PAGA complaint; providing documents and information
26 about Defendant’s compensation plan; participating in phone calls to discuss litigation and
27 settlement strategy; making herself available throughout the litigation to assist with analyzing the
28 claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the

1 settlement documents. The Class Representative also assumed significant risk in bringing this
2 litigation—namely, had she lost, she could have been ordered to pay Defendant’s costs.

3 The requested service award falls within the range of incentive payments typically
4 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*
5 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (approving
6 \$11,250 service award to each of the two class representatives in a trucker meal break class
7 action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI,
8 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in
9 California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.
10 Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from
11 a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal.
12 Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (“the
13 court finds Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS*
14 *Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52
15 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage
16 and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No.
17 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award
18 for each Class Representative” in wage an hour settlement).

19 **VI. THE COURT SHOULD APPOINT ILYM AS SETTLEMENT ADMINISTRATOR**

20 Subject to the Court’s approval, the parties stipulated to ILYM Group serving as the
21 Settlement Administrator. ILYM is experienced in administering class action settlements and has
22 provided a flat-fee proposal to administer this settlement for \$7,000. (Mankin Decl. ¶ 25).

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

24 The last step in the approval process is the formal hearing, whereby proponents of the
25 settlement may explain and describe its terms and conditions and offer argument in support of
26 approval, and Class Members or their counsel may be heard in support of or in opposition to the
27 settlement. Subject to the Court’s approval, the Parties propose that the Court schedule a hearing
28 for final approval approximately 100 days after the Preliminary Approval Date, as follows:

July 29, 2022	Preliminary Approval (PA) hearing
August 18, 2022 (<i>20 days after PA</i>)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
September 17, 2022 (<i>30 days after mailing Class Notice</i>)	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 November 8, 2022 - 100 days after Preliminary Approval is granted)	Final Approval Hearing.

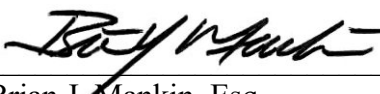
VIII. CONCLUSION

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

Dated: July 7, 2022

LAUBY, MANKIN & LAUBY LLP

BY:


 Brian J. Mankin, Esq.

Attorneys for Plaintiff and the Proposed Class

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 July 7, 2022, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION 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 July 7, 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

Kathryn T. McGuigan, Esq.
MORGAN, LEWIS & BOCKIUS LLP
300 S. Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
213-612-2500+213-612-2501-fax
kathryn.mcguigan@morganlewis.com
Attorneys for VPET USA, LLC

Jason Brown, Esq.
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105
415-442-1230-direct
415-442-1000
415-442-1001-fax
jason.brown@morganlewis.com
Attorneys for VPET USA, LLC

Gordon C. Strange, Esq.
LAW OFFICES OF GORDON C. STRANGE
800 N. Haven Avenue, #350
Ontario, CA 91764
909-483-2702
909-483-2701-fax
g.strange@edlapc.com
Attorney for Defendant, WORKFORCE PERSONNEL, INC.