

Larry W. Lee [CSB No. 228175]
lwlee@diversitylaw.com
Kristen M. Agnew [CSB No. 247656]
agnew@diversitylaw.com
Nicholas Rosenthal [CSB No. 268297]
nrosenthal@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555 | Fax: (213) 488-6554

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY, LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated
[Additional Counsel on following page]

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

JODIE BLANTON JR., YAZMIN
CORTES, and GABRIELA ESCRIBA,
individually, on a representative basis, and
on behalf of all others similarly situated;

Plaintiffs,

vs.

COMMUNICATIONS TEST DESIGN,
INC., a Pennsylvania Corporation; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: STK-CV-UOE-2021-0005136
*[Assigned to Hon. Judge Robert T. Waters, Dept.
11B, for all purposes]*

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

Hearing

Date: TBD

Time: TBD

Dept.: 11B

Complaint filed: June 7, 2022

1 William L. Marder, Esq. [CSB No. 170131]
2 POLARIS LAW GROUP
3 501 San Benito Street, Suite 200
4 Hollister, CA 95023
5 Tel: (831) 531-4214 | Fax: (831) 634-0333

6 David G. Spivak [CSB No. 179684]
7 *david@spivaklaw.com*
8 THE SPIVAK LAW FIRM
9 8605 Santa Monica Blvd, PMB 42554
10 West Hollywood CA 90069
11 Tel: (213) 725-9094 | Fax: (213) 634-2485

12 Louis M. Benowitz [CSB 262300]
13 *louis@benowitzlaw.com*
14 BENOWITZ LAW CORPORATION
15 8605 Santa Monica Boulevard, PMB 97638
16 West Hollywood CA 90069
17 Tel: (818) 839-9610 | Fax: (818) 839-9610

18 Benjamin J. Smith [CSB 266712]
19 *Benjy@thesmithlawcorp.com*
20 SMITH LAW
21 4515 Van Nuys Blvd., Ste 302
22 Sherman Oaks CA 91403-5799
23 Tel: (818) 839-9607 | Fax: (818) 839-9700

24 Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated
25
26
27
28

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on a date and time to be set by the Honorable Robert T.
3 Waters in Department 11B of the San Joaquin County Superior Court, located at 180 E. Weber
4 Avenue, 2nd Floor, Stockton, CA 95202, Plaintiffs Jodie Blanton, Jr., Yazmin Cortes and
5 Gabriela Escriba, individually and on behalf of all others similarly situated, will and hereby do
6 move the Court for entry of an Order preliminarily approving the Parties' class action settlement,
7 including:

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

18 This motion is based upon this Memorandum of Points and Authorities in Support
19 thereof; the Declarations of Plaintiffs' counsel (Brian Mankin, Misty Lauby, Nicholas Rosenthal,
20 David Spivak and Louis Benowitz) in support thereof; the Class and Representative Action
21 Settlement Agreement and Release of Claims (the "Settlement Agreement"); the proposed Order
22 granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in
23 this action; and upon such other evidence or argument as may be presented to the Court at the
24 hearing of this motion.

25 Dated: January 20, 2023

LAUBY, MANKIN & LAUBY LLP

26
27 BY:


28 Brian J. Mankin, Esq.

Attorneys for Plaintiffs and the Proposed
Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs seek preliminary approval of a \$2,000,000 wage-and-hour class action
4 settlement on behalf of approximately 3,500 putative class members who worked any warehouse
5 owned or operated by Defendant Communications Test Design, Inc., (“CTDI”) in California,
6 including in Livermore, San Diego, Fontana, Tracy, and Rialto (collectively referred to as the
7 “CTDI Facility”) at any time during the period of June 19, 2019, through August 7, 2022 (the
8 “Class Period”).

9 Under the terms of the Settlement Agreement,¹ Defendant CTDI will not oppose Plaintiff
10 Counsels’ application for a reasonable award of attorney’s fees not to exceed \$700,000, litigation
11 expenses not to exceed \$30,000, Settlement Administrator Costs not to exceed \$50,000, PAGA
12 penalties of \$200,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro
13 rata basis), and a Service Payment of \$15,000 each to Plaintiffs Jodie Blanton, Jr., Yazmin
14 Cortes and Gabriela Escriba (“Class Representatives”). (S.A. ¶ 53 and subparts).

15 After all Court-approved deductions from the Gross Settlement Amount,² it is estimated
16 that \$975,000 will be available to pay the Class Members, as follows:

17

<i>Gross Settlement Amount</i>	\$ 2,000,000
Attorneys’ Fees	\$ 700,000
Litigation Costs (not to exceed)	\$ 30,000
Administrator Costs (not to exceed)	\$ 50,000
PAGA Penalties	\$ 200,000
Class Representative Service Awards	\$ 45,000
<i>Net Settlement Amount</i>	\$ 975,000

21

22 The Class Members here fall into two categories: (1) “Direct Hires” of Defendant CTDI,
23 and (2) “Temporary Employees” that were placed at the CTDI Facility by a staffing agency. In
24 total, there are an estimated 3,500 Class Members who worked approximately 180,000 Work
25 Weeks through May 22, 2022 (which is when data was gathered for the June 7, 2022 mediation).
26 And the payment to each Class Member will be calculated on a pro-rata basis according to the
27

28 ¹ The Class and Representative Action Settlement Agreement and Release of Claims (the “Settlement Agreement”
or “S.A.”) is attached as Exhibit A to the Declaration of Brian Mankin (“Mankin Decl.”)

² The Gross Settlement Amount is subject to increase if the “Escalator Clause” is triggered. See S.A. ¶ 17.

Weeks Worked by each Class Member at the CTDI Facility (discussed in detail in Section III(D) below). In addition, the Aggrieved Employees will receive a share of the \$50,000 PAGA Penalties (25% of the \$200,000 PAGA allocation), distributed pro-rata based on Weeks Worked during the PAGA Period.

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

II. BACKGROUND

A. THE SETTLEMENT CLASS

The Class is defined as follows:

All current and former non-exempt employees who worked at a CTDI Facility in California at any time during the Class Period, including Direct Hires of CTDI and Temporary Employees. (S.A. ¶ 41).³

B. PROCEDURAL HISTORY

Plaintiffs Jodie Blanton Jr., Yazmin Cortes, and Gabriela Escriba filed separate class and PAGA actions against CTDI for wage and hour violations, which were pending in various jurisdictions in California.⁴ In October 2021, Plaintiffs' counsel in each case entered into a joint prosecution and fee sharing agreement, thereby coordinating and consolidating their efforts in the three related cases (hereinafter, collectively referred to as the "Consolidated Action").

³ The following defined terms are used in this class definition: "Class Period" means the period of June 19, 2019, through August 7, 2022 [S.A. ¶ 7]; "Direct Hires of CTDI" means and refers to individuals who were hired directly by CTDI and employed to work at the CTDI Facility [S.A. ¶ 15]; "Temporary Employees" refers to individuals who were jointly employed by a Staffing Agency, and assigned to work at the CTDI Facility at any time during the Class Period and/or PAGA Period [S.A. ¶ 44].

⁴ The concurrently filed declarations of Plaintiff's counsel set forth a more specific procedural history of each case, and attach pertinent exhibits, such as the PAGA Notice Letters.

1 (Mankin Decl. ¶ 12).

2 Defendant CTDI retained counsel and began to aggressively defend each of the cases,
3 including removing the Cortes and Escriba cases to District Court, opposing a motion to remand,
4 and engaging in formal discovery. However, prior to engaging in a contested class certification
5 motion, counsel for the parties met and conferred and discussed staying formal discovery in
6 order to exchange informal discovery in preparation for mediation. Thereafter, the Parties
7 scheduled mediation with Mark Rudy. (Mankin Decl. ¶ 13).

8 In preparation for the mediation, the Parties informally exchanged documents and
9 information that allowed both sides to calculate the potential damages and evaluate potential risk,
10 including policies and procedures pertaining to each claim alleged, and statistics relating to the
11 number of current and former employees, number of shifts, pay periods worked and other things.
12 Defendant also provided its written policies and practices and a robust sampling of payroll and
13 timekeeping records for Class Members covering nearly 75,000 shifts worked. This information
14 enabled both parties and their experts to take a deep dive into the claims. Additionally, during
15 this process, Plaintiffs and their counsel analyzed, researched, and investigated the potential
16 issues, including matters related to the calculation of damages, trial, and appellate issues and
17 risks. (Mankin Decl. ¶ 14).

18 On June 7, 2022, the Parties participated in mediation before Mark Rudy, who is one of
19 the most highly experienced and respected class action mediators in California. The matter
20 resolved at mediation pursuant to a mediator's proposal, which, among other things, called for
21 the filing of a consolidated amended complaint in the Blanton action and the global resolution of
22 all claims alleged against Defendant. (Mankin Decl. ¶ 15). The Parties entered into a
23 Memorandum of Understanding and then filed a Stipulation and Proposed Order to allow for the
24 filing of the Consolidated Amended Complaint in this Court, alleging claims for: (1) failure to
25 pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4)
26 failure to provide rest breaks; (5) failure to timely pay final wages; (6) failure to provide accurate
27 and itemized wage statements; (7) unfair and unlawful competition; (8) PAGA assessment for
28 failure to pay minimum wages; (9) PAGA assessment for failure to pay overtime wages; (10)

1 PAGA assessment for failure to provide meal periods; (11) PAGA assessment for failure to
2 provide rest breaks; (12) PAGA assessment for failure to timely pay wages each period; (13)
3 failure to timely pay final wages; (14) failure to provide accurate itemized wage statements; and
4 (15) failure to provide safe and healthful working conditions. (Mankin Decl. ¶ 16).

5 With a global Settlement Agreement that fully resolves all claims alleged in the
6 Consolidated Amended Complaint in exchange for a substantial sum of money for the Class
7 Members, as well as the State of California and Aggrieved Employees, the Parties now seek the
8 Court's preliminary approval of the Settlement.

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

10 Plaintiffs alleged numerous wage and hour violations on behalf of the Class Members.
11 As noted, Defendant vigorously contested and denied Plaintiffs' material allegations on the
12 merits and as to the propriety of a class action or PAGA representative action.

13 One of the primary claims in this action was for wage statement violations due to
14 Defendant's alleged failure to (1) show all applicable overtime, double time, double overtime,
15 shift differential, and meal premium rates and hours worked at each rate on its wage statements
16 as required by Labor Code § 226(a)(9); (2) failing to include the pay period start date in violation
17 of Labor Code § 226(a)(6); and (3) failure to identify accurate total hours worked under §
18 226(a)(2). Furthermore, Defendant contended that, even if Plaintiffs could identify technical
19 errors in some employees' wage statements, the claims still fail for multiple reasons, including
20 without limitation, because Plaintiffs cannot establish a "knowing and intentional" violation or
21 that Plaintiffs and other employees suffered an "injury" as required by Labor Code section
22 226(e). Defendant further contended that class treatment was inappropriate and that this matter
23 could not be manageably litigated on a representative basis. (Mankin Decl. ¶ 19).

24 Additionally, Plaintiffs alleged that Defendant failed to pay all required minimum and
25 overtime wages because they and other Class Members were forced to wait in lone lines at the
26 timeclock prior to clocking in at the start of the shift and the start and end of meal periods,
27 resulting in a loss of time of 5 minutes or more per shift. Second, during the COVID-19
28 pandemic, Defendant required Plaintiffs and the Class Members to wait in a temperature check

1 line before clocking in. Once they reached the front of the line, their supervisors checked their
2 temperature and provided them with personal protective equipment such as gloves. This process
3 took an additional few minutes to complete each shift which occurred off-the-clock. This
4 practice often resulted in unpaid wages at the overtime rate. Third, Defendant failed to
5 accurately record employees' meal periods by virtue of the fact that they were unable to clock
6 back in for lunch without waiting in line. As a result, employees were not relieved of duty for the
7 full 30-minute meal period and are therefore not compensated at the appropriate minimum and
8 overtime rate. Defendant raised multiple defenses to this claim, including the arguments that
9 there were plenty of timeclocks throughout the facilities to accommodate the number of
10 employees and eliminate standing in line, that meal periods were staggered which helped ensure
11 that lines did not form, that COVID protocols were short term, and Class Members were
12 directed to complete all work related tasks on-the-clock and employees were, in fact, clocked in
13 when performing work; therefore, any off-the-clock claim would fail. Defendant also argues that
14 the process was required by relevant health regulations – and was not put in place by choice of
15 the company itself – which rendered any such time *not* compensable. (Mankin Decl. ¶ 20).

16 Plaintiffs also argued that the Class Members were often denied compliant meal and rest
17 breaks, including when they were not provided 30-minute off-duty meal periods, as a result of
18 being forced to wait in lines when returning from their meal periods to clock back in for work
19 resulting in truncated meal periods, and when they were subjected to meal period violations
20 when they were: (1) unable to take a meal period due to the workload, (2) forced to take a meal
21 period after the 5th hour of work, and (3) not provided a mandated second meal period on shifts
22 in excess of 10 hours. Additionally, rest periods were not properly authorized and permitted.
23 However, Defendant argued that it provided and made available meal and rest breaks to all
24 employees, and any employee who did not take a meal or rest break did so entirely of his or her
25 own volition. In this regard, Defendant produced its written policies and practices, which it
26 argued show full compliance with the law. As such, Defendant argued that these claims were
27 without merit because, for each violation, a fact-finder would have to determine why a break was
28 noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to

1 Defendant. (Mankin Decl. ¶ 21).

2 Plaintiffs further alleged that Defendant failed to provide a safe working environment due
3 to its failure to provide PPE such as gloves that properly fit the employees. Defendant argued
4 that these claims were without merit. (Mankin Decl. ¶ 22).

5 Plaintiffs also alleged various other Class and PAGA claims, such as the failure to timely
6 pay all wages each period and owed upon termination, and other claims related to the alleged
7 violations mentioned above. However, Defendant argued that these other claims, as well as the
8 “derivative” claims, have no merit. (Mankin Decl. ¶ 23).

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

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

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

14 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

15 The \$2 Million Settlement Amount is non-reversionary and will be paid out to Class
16 Members without the need to submit a claim form or take any affirmative action. It includes (1)
17 Plaintiffs’ attorneys’ fees and costs, as approved by the Court; (2) a service award of \$15,000 to
18 each named Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not
19 to exceed \$50,000; (4) a \$200,000 PAGA award, 75% of which is to be paid to the LWDA
20 pursuant to California Labor Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the
21 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 53
22 and subparts). Defendant will separately pay its share of employer payroll tax obligations. (S.A.
23 ¶ 53(a)).

24 **B. NOTICE PROCEDURES**

25 The proposed Class Notice⁵ will be provided to the Class Members showing the
26 estimated amount each Class Member will receive and the credited number of Weeks Worked.
27

28

⁵ The proposed Class Notice is attached to the Mankin Decl. as Exhibit B, and to the Settlement Agreement as Exhibit B.

1 Within 21 days after entry by the Court of its Order of Preliminary Approval, Defendant
2 shall provide the Settlement Administrator with a list of Class Members containing names,
3 addresses, Social Security Numbers, and the dates of employment for Direct Hires of CTDI (the
4 “Class Data of CTDI”). (S.A. ¶¶ 5, 70).

5 Defendant CTDI was also obligated, upon full execution of the Settlement Agreement, to
6 make a good faith effort to identify the full name, last known address, social security number,
7 and number of weeks at issue for the Temporary Employees (the “Class Data of Staffing
8 Agencies”; S.A. ¶ 6, 71). This included a requirement for Defendant to contact the relevant
9 staffing agencies and request that they informally provide the necessary information. Defendant
10 is required to inform Plaintiff’s counsel whether it was able to obtain this information informally;
11 if not, Plaintiff’s counsel shall issue subpoenas to the relevant staffing agencies. And, to the
12 extent that Temporary Employees cannot be located through the means described here, the
13 parties may be required to determine a method acceptable to the Court (such as public notice) to
14 provide notice of, and payment to, Temporary Employees as part of the settlement. (*Id.*).

15 Within 30 days of receipt of the “Combined Class Data,” the Settlement Administrator
16 shall calculate the Weeks Worked for each Class Member and Aggrieved Employee, populate
17 the Class Notice for each, and send each Class Member the Class Notice via first-class, U.S.
18 mail. (S.A. ¶¶ 73-74).

19 In the event that any Class Notice mailed to a Class Member is returned as having been
20 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
21 search and seek an address correction for such Class Member(s), and a second Class Notice will
22 be sent to any new or different address obtained. (S.A. ¶ 75).

23 **C. EXCLUSION AND OBJECTION PROCEDURES**

24 Class Members who do not timely Opt-Out of the Settlement will be deemed to
25 participate in the Settlement and shall become a Participating Class Member without having to
26 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
27 must submit a written request to the Settlement Administrator no later than 45 days after being
28 notified by mail by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶ 24).

1 Any Opt-Out request not postmarked by the Notice Response Deadline will be invalid. (S.A. ¶
2 77(a)).

3 The Class Notice shall inform Class Members of their right to object to the Settlement.
4 Any Class Member who wishes to object to the Settlement may submit a written objection to the
5 Settlement Administrator no later than the Notice Response Deadline. (S.A. ¶ 77(c)).

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

7 The amount of each Settlement Class Member's Individual Settlement Payment is tied to
8 the number of Weeks Worked by each Settlement Class Member for Defendant during the Class
9 Period as either: (1) a Direct Hire and/or (2) a Temporary Employee. Individual Class Payments
10 are calculated by (a) dividing the Net Settlement Amount by the total number of Weeks Worked
11 by all Settlement Class Members during the Class Period, and (b) multiplying the result by each
12 Participating Class Member's Weeks Worked. (S.A. ¶ 53(c)).

13 Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties
14 based on a pro-rata basis. Thus, the \$50,000 PAGA Penalties allocated to the Aggrieved
15 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 53(g)).

16 The Class Notice will inform Class Members of the estimated share and the number of
17 Weeks Worked during the Class Period. Class Members may dispute their Weeks Worked if
18 they feel they worked more in the Class or PAGA Periods than Defendant's records show by
19 timely submitting evidence to the Settlement Administrator. (S.A. ¶ 76).

20 As noted, assuming that the Class Members worked a combined 180,000 Workweeks
21 during the Class Period, then each Class Member will receive approximately \$5.42 per
22 Workweek Worked, which equates to \$281.66 per year worked. In addition, the Aggrieved
23 Employees will receive a share of the \$50,000 PAGA Penalties (25% of the total \$200,000
24 PAGA allocation), calculated pro-rata based on the Weeks Worked during the PAGA Period.

25 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

26 Defendant is required to deposit the Settlement Amount, along with the employer share
27 of payroll taxes owed, with the Settlement Administrator, within 45 calendar days after the
28 "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as

1 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
2 expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual
3 Settlement Payments of participating Class Members. Within 10 days after receiving the funds,
4 the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A.
5 ¶¶ 79, 80).

6 Class Members will have 180 days to cash the settlement check. If a Class Member fails
7 to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the
8 California State Controller in the name of the Class Member. (S.A. ¶ 81).

9 **F. TAX TREATMENT**

10 The Parties agree that 33% of the Individual Settlement payments will be allocated as
11 wages subject to withholding of all applicable local, state and federal taxes; 33% to interest and
12 34% will be allocated for statutory penalties (pursuant to, e.g., California Labor Code sections
13 203, 210, 226, etc.) from which no taxes will be withheld. (S.A. ¶ 53(d)). Additionally, the
14 PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties
15 and shall be reported as required on an IRS Form 1099. (S.A. ¶¶ 53(h)).

16 Defendant will separately pay its share of employer payroll taxes on the sum allocated to
17 wages. (S.A. ¶¶ 53(a)).

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

19 In exchange for these payments, the Settlement Agreement at ¶ 37 provides that the
20 Participating Class Members will release the Released Parties of the "Settled Class Claims,"
21 which is defined as:

22 all causes of action and claims, charges, complaints, liens, demands
23 that were alleged in the Consolidated Complaint or reasonably could
24 have been alleged based on the allegations, the facts, statutory
25 citation and/or legal theories contained in the Consolidated
26 Complaint, including all of the following claims for relief: (a)
27 failure to pay minimum wages, regular wages and/or overtime pay
28 (including any theory of failure to pay any and all wages for all time
worked or earned); (b) failure to provide or pay premium payments
for meal periods; (c) failure to provide or pay premium payments
for rest periods; (d) failure to reimburse business expenses; (e)
failure to provide complete and accurate wage statements; (f) failure
to pay wages upon termination; (f) violations of the California

1 Business & Professions Code §§ 17200 *et seq.* (g) failure to provide,
2 pay, and/or post sick pay at the appropriate rate of pay, and (h)
3 reimbursement of business expenses. These claims include, but are
4 not limited to, California Labor Code sections 201, 202, 203, 226,
5 226.7, 227.3, 246, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800,
6 and 2802 and all related provisions of the California Code of
7 Regulations, the California Industrial Wage Orders, the California
8 Business & Professions Code sections 17200 *et seq.* The release of
9 the foregoing claims, extends to all theories of relief regardless of
10 whether the claim is, was or could have been alleged as separate
11 claims, causes of action, lawsuits or based on other theories of relief,
12 or different right or duty of an alleged statute, whether under federal
13 law, state law or common law (including, without limitation, as
14 violations of the California Labor Code, the Wage Orders,
applicable regulations, and California’s Business and Professions
Code section 17200). Settled Class Claims includes all types of
relief available for the above-referenced claims, including, without
limitation, any claims for damages, restitution, losses, penalties,
fines, liens, attorneys’ fees, costs, expenses, debts, interest,
injunctive relief, declaratory relief, or liquidated damages. The time
period governing the Settled Class Claims shall be the same as the
Class Period.

15 It is understood and agreed that the Settlement Agreement will not release any person,
16 party or entity from claims, if any, by Class Members for any other claims, including claims for
17 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
18 unemployment insurance, disability, social security, workers’ compensation, or claims based on
19 facts occurring outside the Class Period.

20 **H. AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS**

21 The Settlement Agreement at ¶ 38 also defines the “PAGA Released Claims” as follows:

22 all claims for civil penalties under the Private Attorneys General
23 Act, Labor Code § 2698 *et seq.*, that Plaintiffs alleged against the
24 Released Parties, on behalf of Aggrieved Employees and State of
25 California, based on the facts stated in the Consolidated Complaint
26 and in Plaintiffs’ notice letters to the LWDA (including any
27 amendments thereto), or reasonably could have been alleged based
28 on the allegations, the facts, statutory citation and/or legal theories
under the PAGA contained in the Consolidated Complaint,
including all of the following claims for relief: (a) failure to pay
minimum wages, regular wages and/or overtime pay (including any
theory of failure to pay any and all wages for all time worked or
earned); (b) failure to provide or pay premium payments for meal

1 periods; (c) failure to provide or pay premium payments for rest
2 periods; (d) failure to reimburse business expenses; (e) failure to
3 provide complete and accurate wage statements; (f) failure to timely
4 pay each week; (g) failure to pay wages upon termination; (h) failure
5 to provide safe and healthful working conditions, (i) failure to
6 provide, pay, and/or post sick pay at the appropriate rate of pay, and
7 (j) reimbursement of business expenses. These claims include, but
8 are not limited to, California Labor Code sections 201, 202, 203,
9 204, 226, 226.7, 227.3, 246, 510, 512, 1174, 1194, 1197, 1197.1,
10 1198, 2800, and 2802 and all related provisions of the California
11 Code of Regulations, and the California Industrial Wage Orders.
12 The time period governing the Settled PAGA Claims shall be any
13 time during the PAGA Period.

14 Moreover, even if an Aggrieved Employee requests exclusion from the
15 Class settlement, that individual will still be subject to the PAGA Released Claims
16 to the fullest extent permitted by law and will receive a pro-rata share of PAGA
17 Penalties. (S.A. ¶¶ 77(a)).

18 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS**
19 **APPROPRIATE FOR PURPOSES OF SETTLEMENT**

20 California Rule of Court 3.769(d) provides that the Court may make an order approving
21 certification of a provisional settlement class at the preliminary approval stage. It is well-
22 established that trial courts should use a “lesser standard of scrutiny” for determining the
23 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
24 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
25 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved
26 short 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
management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
purposes of this settlement only, Plaintiffs request that this Court provisionally certify the Class,
as defined above, under Code of Civil Procedure § 382.

///

1 **A. ASCERTAINABILITY AND NUMEROSITY**

2 In determining whether a class is ascertainable, the court considers “(1) the class
3 definition, (2) the size of the class, and (3) the means available for identifying the class
4 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
5 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
6 class is ascertainable if the class members can be objectively identified and given notice of the
7 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
8 are approximately 3,500 Class Members that are easily identifiable and fall within the defined
9 Class. Thus, Plaintiffs’ proposed Class meets the ascertainability and numerosity requirements.

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

11 1. Commonality

12 To justify certification, the class proponent must show that questions of law or fact
13 common to the class predominate over the questions affecting the individual members. *Arenas v.*
14 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiffs contend that the Class
15 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,
16 and so on. While the Parties dispute whether a class would be appropriate if the litigation were to
17 continue, they agree to class certification for the purposes of this settlement only.

18 2. Typicality

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

26 3. Adequacy of Representation

27 The proposed class representative must establish that he or she will adequately represent
28 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,

546. Specifically, Plaintiffs contend that they are adequate to represent the class because they were employed by Defendant during the Class Period, allegedly experienced the same wage and hour practices as the rest of the Class, understood their duties as a Class Representative, have been willing to undergo the risks of litigation, and have no conflict of interest.

Adequacy may be established by the fact that counsel are experienced practitioners. See *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive experience in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6; Rosenthal Decl. ¶¶ 2-3; Spivak Decl. ¶¶ 5-9; Benowitz Decl. ¶¶ 4-12).

4. Superiority

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

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

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

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

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.

1 Nevertheless, in considering a potential settlement for approval, a court is not to turn the
2 approval hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
3 conclusions on the contested issues of fact and law which underlie the merits of the dispute.”
4 *Officers for Justice*, 688 F.2d at 625.

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

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

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

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

25 At the preliminary approval stage, the Court need only determine that the settlement falls
26 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
27 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
28 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .

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

8 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
9 **NEGOTIATIONS**

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

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

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

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

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

beginning and ending date for the pay period, and failure to accurately state the hours worked making it impossible for Plaintiffs and employees to determine whether they were paid correctly.

At mediation, Defendant denied that the wage statements provided were improper, that certain violations if they existed were fixed, and that Plaintiffs' estimates failed to take into account the \$4,000 cap on damages for each employee.

Plaintiffs calculated the maximum potential value of this claim as \$6,956,200 by multiplying one paystub per class member (3,500) by \$50, then multiplying the remainder of the 67812 paystubs by \$100. Plaintiffs assigned a risk adjustment of 10% that the class would not be certified and 50% as to the merits, with a risk-adjusted value of \$3,130,290.

Additionally, Plaintiffs calculated the 75% risk-adjusted value of the PAGA penalties to be \$1,782,800 (71,312 PAGA pay periods x \$100 = \$7,131,200 reduced by 75%).

Meal and Rest Break Claims

Plaintiffs also alleged meal and rest break claims against Defendant. Plaintiffs estimated that there were 255,770 unique meal period violations based on a 50% violation rate on an estimated 511,539 shifts amounting to \$4,199,743 in class damages for meal periods (255,770 x \$16.42 avg. rate of pay). Plaintiffs rest break claims were less strong given that employees were not required to wait in line to clock in/out for breaks and the individualized nature of proof required for these claims. Given the total number of shifts at issue, and when incorporating estimated violation rates, Plaintiffs calculated the maximum theoretical value at 25% violation rate for a total of 127,885 potential shifts with rest violation with a total to be \$2,099,872.

However, these calculations do not account for various risks and defenses. For instance, Defendant strongly disputed that Plaintiffs could obtain 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. While Plaintiffs asserts that this is a suitable case for certification, we realize that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that we could pursue on a class basis.

1 Considering the many risks and defenses to these claims, Plaintiffs placed a 75% class
2 certification risk and 75% merits risk for a risk-adjusted value of \$262,484 for meal period
3 claims. Adjusting for risk at 75% for class certification and 75% for merits, Plaintiffs assigned
4 an adjusted value of \$131,242 to the rest claims.

5 Additionally, based on the same risk factors in addition to potential risk associated with
6 stacking of PAGA penalties, Plaintiffs assigned a 75% risk adjustment to both meal and rest
7 claims and assigned the risk-adjusted value of the related PAGA claims at \$ (16772 unique meal
8 claims x \$100 = \$1,677,200 + 8,386 rest claims PAGA pay periods x \$100 = \$838,600 totals
9 combined \$2,515,800 with a 75% reduction for a total of \$628,950).

10 **Failure to Pay Wages**

11 Plaintiffs allege that Defendant employed policies and practices that required employees
12 to work off the clock without compensation. Plaintiffs estimated that the maximum potential
13 value of this claim was \$1,048,655 in unpaid wages based on an estimated 5 minutes of unpaid
14 overtime per the 511,539 estimated class shifts at \$24.63 average OT rate of pay.

15 At mediation, Defendant argued that employees were not required to work off-the-clock
16 and that this claim could not be certified due to the individualized nature of the proof. As a
17 result, Plaintiffs assigned a 75% class certification discount and a 75% merits discount to these
18 claims for a risk adjusted valuation of \$65,540.

19 Plaintiffs also pursued PAGA claims based on the same theory of liability and calculated
20 a risk adjusted total is for these claims is \$91,850 (3674 x \$100 = \$367,400 – 75% = \$91,850).

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

22 Additionally, Plaintiffs alleged that Defendant failed to timely pay all wages owed to the
23 Class Members upon separation of employment. Based on this theory of liability, Plaintiffs
24 calculated the maximum waiting time penalties to be \$3,081,706 based on 782 former employees
25 x 8 average hours per day x \$16.42 average hourly rate x 30.

26 Defendant argued that it would defeat Plaintiffs' unpaid wage claims and, because the
27 waiting time penalty claims were derivative of the unpaid wages, Plaintiff's Labor Code § 203
28 would fail.

1 Therefore, Plaintiffs applied a similar risk adjustment as with the other claims at 50% for
2 class certification and 50% form merits to come to a risk adjusted total of \$770,427.

3 Furthermore, because the related PAGA penalties assumes only one violation for each former
4 employee multiplied by \$100, the value of the PAGA penalties was estimated at \$52,100 (521
5 formers during the PAGA period) with a risk adjustment of 75% for a total risk adjusted value of
6 \$13,025.

7 In sum, the total maximum value of the class damages is \$16,337,521. When factoring in
8 the defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as
9 follows:

10	• Wage Statements	\$ 3,130,290
11	• Meal Periods	\$ 262,484
12	• Rest Breaks	\$ 131,242
13	• Unpaid Wages	\$ 65,540
14	• Waiting Time Penalties	<u>\$ 770,420</u>
15	Total Risk Adjusted Value	\$ 4,294,442

16 The reasonableness of the Settlement is apparent from the fact that the proposed
17 Settlement is 46.6% of the risk-adjusted class damages. For these reasons, the Parties submit that
18 the agreed-upon Settlement is fair and reasonable.

19 While the PAGA civil penalty would have a maximum value in the seven figures, this
20 figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties
21 “based on the facts and circumstances of a particular case” and if “to do otherwise would result
22 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2).
23 Moreover, Defendant argued against the merits of the underlying claims and particularly that the
24 “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and
25 rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil
26 penalty claims on top of the underlying claim.

27 Despite these risks, the proposed Settlement allocates \$200,000 of the gross settlement
28 amount to PAGA claims, of which 75% (or \$150,000) will be paid to the California LWDA and

25% (or \$50,000) will be allocated to the Aggrieved Employees as payment of the settlement.

E. PLAINTIFFS' COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must take into account “the experience and view of counsel”).

Plaintiffs' Counsel are also highly experienced in Class/PAGA litigation, having repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, having tried class and PAGA cases, among other things. (Mankin Decl. ¶¶ 2-6; Rosenthal Decl. ¶¶ 2-3; Spivak Decl. ¶¶ 5-9; Benowitz Decl. ¶¶ 4-12). Plaintiffs' counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement considering the nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law, and uncertainties of class certification and litigation.

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

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

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all class members complies with all the requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (3) details about the final fairness hearing and how class members may elect to exclude themselves or make an objection; and (4) how class members can obtain additional information. *See* Class Notice (Exhibit B to Mankin Decl.). In addition, it will inform Class Members of their estimated settlement share.

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

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

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

24 The fact that each member who does not opt out of the Settlement shall be mailed a check
25 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
26 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
27 settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline,
28 the funds will be transferred to the State Controller’s Office subject to approval of the Court.

Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the parties and that the Settlement is fair and favorable to the Class Members.

H. THE ATTORNEY’S FEES AND COSTS ALLOCATION IS FAIR

Under the terms of the Settlement Agreement, Class Counsel – which includes numerous attorneys from six different law firms who have joined forces to represent the Class – may seek attorneys fees totaling \$700,000, and reimbursement of litigations costs up to \$30,000. These amounts are reasonable, given the facts and circumstances of the case and well within the range approved by courts in California. *See, e.g., Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving a fee percentage in the amount of \$6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created). (Mankin Decl. ¶ 37).

The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel interviewed and obtained information from putative class members, met and conferred with Defendant’s counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendant and obtained through other sources, researched applicable law, and provided estimates of “damages” for purposes of settlement discussions, among other tasks.

Moreover, Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be preliminarily approved.

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1 Once the Court grants preliminary approval of the Settlement Agreement and Class
2 Notice is disseminated, Class Counsel will submit a comprehensive request for attorneys' fees
3 and costs with its final approval motion.

4 **I. THE REQUESTED SERVICE AWARDS ARE FAIR AND APPROPRIATE**

5 The Settlement Agreement provides an incentive award payment of \$15,000 to each
6 Class Representative, which is reasonable given the large settlement and the recovery each Class
7 Members will receive, as well as the time and effort each Plaintiff devoted to this case. Their
8 efforts included providing factual background for the Class and PAGA complaint; providing
9 documents and information about Defendant's compensation plan; participating in phone calls to
10 discuss litigation and settlement strategy; making themselves available throughout the litigation
11 to assist with analyzing the claims and defenses; helping Class Counsel prepare for the
12 mediation; and reviewing the settlement documents. The Class Representatives also assumed
13 significant risk in bringing this litigation—namely, had they lost, they could have been ordered
14 to pay Defendant's costs.

15 The requested service award falls within the range of incentive payments typically
16 awarded to Class Representatives in similar class actions. *See, e.g., Ross v. US Bank National*
17 *Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award
18 to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast*
19 *Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the
20 amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v.*
21 *Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 ("the court finds
22 Plaintiff's enhancement payments of \$ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs.*
23 (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of \$25,000 to
24 each of the named Plaintiff is appropriate" in wage and hour settlement); *Louie v. Kaiser Found.*
25 *Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving "\$25,000
26 incentive award for each Class Representative" in wage an hour settlement).

27 ///

28 ///

1 **VI. THE COURT SHOULD APPOINT ILYM GROUP AS SETTLEMENT**
2 **ADMINISTRATOR**

3 Subject to the Court's approval, the parties stipulated to ILYM Group serving as the
4 Settlement Administrator. ILYM Group is experienced in administering class action settlements
5 and has provided a proposal to administer this settlement for \$34,700. (Mankin Decl. ¶ 38).

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

7 The last step in the approval process is the formal hearing, whereby proponents of the
8 settlement may explain and describe its terms and conditions and offer argument in support of
9 approval, and Class Members or their counsel may be heard in support of or in opposition to the
10 settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing
11 for final approval approximately 150 days after the Preliminary Approval Date.

12 **VIII. CONCLUSION**

13 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant the
14 motion for preliminary approval of the settlement.

15 Dated: January 20, 2023

LAUBY, MANKIN & LAUBY LLP

17 BY:



18 Brian J. Mankin, Esq.
19 Attorneys for Plaintiffs and the Proposed
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On January 20, 2023, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 20, 2023, 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

James E. Hart, Esq.
jhart@littler.com
Leah E. Peterson, Esq.
lwhitehead@littler.com
John S. Keeney, Esq.
jkeeney@littler.com
LITTLER MENDELSON P.C.
18565 Jamboree Road, #800
Irvine, California 92612
Tel: (949) 705-3000
Fax: (949) 724-1201
Attorneys for Defendant Communications Test Design, Inc.