

Brian J. Mankin, Esq. [CSB No. 216228]  
*brian@lmlfirm.com*

Peter J. Carlson, Esq. [CSB No. 295611]  
*peter@lmlfirm.com*

LAUBY, MANKIN & LAUBY LLP  
4590 Allstate Drive  
Riverside, CA 92501  
T: (951) 320-1444  
F: (951) 320-1445

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

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

CHANDRA FINGER, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

PROFESSIONAL REGISTRY HOLDINGS,  
LLC, a California Limited Liability  
Company; COACHELLA VALLEY  
HEALTH PERSONNEL, an Entity  
Unknown; KEVIN BASS, an Individual;  
GEORGE TUCKER, an Individual, KIRVIN  
SATTEWHITE, an Individual; and DOES 1  
through 20, inclusive;

Defendants.

Case No.: CVRI2101956  
*[Assigned to the Hon. Judge Sunshine Sykes,  
Dept 6, for all purposes]*

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

Hearing

Date: January 12, 2022  
Time: 8:30 a.m.  
Dept. 6

Reservation #: 379229112332

Complaint filed: 4/23/21  
FAC filed: 6/15/21  
SAC filed: 8/6/21

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

2 PLEASE TAKE NOTICE that on January 12, 2021, at 8:30 a.m., or as soon thereafter as  
3 this matter may be heard by the Honorable Judge Sykes in Department 6 of the Riverside County  
4 Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiff Chandra Finger will  
5 move pursuant to California Rules of Court 3.769(d) and (e), for an order: (1) granting  
6 preliminary certification to the settlement class for settlement purposes only; (2) granting  
7 preliminary approval of the proposed settlement including appointment of Plaintiff's counsel as  
8 Class Counsel; (3) authorizing the parties to provide the proposed notice to the class; and (4)  
9 setting a final approval or fairness hearing to be heard approximately 110 days after the date  
10 preliminary approval is granted as the Court's calendar permits. A proposed order to this effect  
11 is filed concurrently herewith.

12 This motion is unopposed by Defendants Professional Registry Holdings, LLC, Kevin  
13 Bass, George Tucker, and Kirvin Satterwhite. The parties seek the Court's preliminary approval  
14 of the settlement in order to begin the process towards obtaining final approval of the proposed  
15 settlement through a final fairness hearing set approximately 110 days after preliminary  
16 approval. At that time, the Court will again have the opportunity to fully consider the proposed  
17 settlement before entering a final order.

18 This Motion is based upon this Notice, the attached Memorandum of Points and  
19 Authorities, the Settlement Agreement and proposed Order submitted herewith, the declarations  
20 of Plaintiff's counsel (Brian Mankin), Defense counsel (Darren D. Daniels), Defendant PRH's  
21 Representative (Christine Martin), and the Settlement Administrator (Eric Springer of  
22 Simpluris), all other papers on file in this action, and on such other materials or arguments of  
23 counsel that the Court may receive at or before the hearing on this Motion.

24 Dated: December 16, 2021

LAUBY, MANKIN & LAUBY LLP

25  
26 BY:

  
\_\_\_\_\_  
27 Brian J. Mankin, Esq.  
28 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Chandra Finger (“Plaintiff”), individually and on behalf of all others similarly  
4 situated, seeks preliminary approval of a \$500,000 wage-and-hour class action and representative  
5 PAGA settlement (the “Settlement Amount”) between the putative class members and  
6 Defendants Professional Registry Holdings, LLC, Kevin Bass, George Tucker, and Kirvin  
7 Satterwhite (“Defendants”).

8 Through this settlement, Plaintiff seeks to represent the Settlement Class,<sup>1</sup> comprised of  
9 approximately 226 similarly situated individuals who performed services for Defendants during  
10 the “Class Period” of April 23, 2017, through the Preliminary Approval Date.

11 Under the terms of the Settlement Agreement (“S.A.”), Defendants will not oppose  
12 Plaintiff’s Counsel’s application for a reasonable award of attorney’s fees not to exceed one-third  
13 of the Settlement Amount (\$166,666.66, subject to proportional increase if the Escalator Clause<sup>2</sup>  
14 is triggered), litigation expenses not to exceed \$15,000, Settlement Administrator costs not to  
15 exceed \$7,000, PAGA penalties of \$50,000 (with 75% to the LWDA and 25% to the “Aggrieved  
16 Employees”), and a Service Payment not to exceed \$7,500 for Plaintiff.

17 After all these deductions from the Settlement Amount, and assuming that the Escalator  
18 Clause is not triggered, it is estimated that \$254,834.34 will be available to pay the Individual  
19 Settlement Amounts of the Class Members who do not opt-out of the settlement, as follows:

20

|                                     | <b>Total Amount</b>  |
|-------------------------------------|----------------------|
| <i>Gross Settlement Amount</i>      | \$ 500,000.00        |
| Attorneys’ Fees (1/3)               | \$ 166,666.66        |
| Litigation Costs                    | \$ 15,000.00         |
| Administrator Costs                 | \$ 5,999.00          |
| PAGA Penalties                      | \$ 50,000.00         |
| Class Representative Service Award  | \$ 7,500.00          |
| <b><i>Net Settlement Amount</i></b> | <b>\$ 254,834.34</b> |

21  
22  
23  
24  
25

26 <sup>1</sup> The “Settlement Class” is defined as “all caregivers, companion aides, nursing assistants, licensed vocational  
27 nurses, registered nurses, certified nurse’s assistants, home health aides, and all other similarly situated individuals  
28 who performed services for Defendants in the State of California and who were classified by Defendants as  
independent contractors at any time during the Class Period, who have not previously released their Released Claims  
against Defendants.”

<sup>2</sup> Defendants have agreed to an “Escalator Clause” that will proportionally increase the Settlement Amount if the  
total number of Class Members exceeds 275. (S.A. ¶ 78).

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

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

## 15 **II. BACKGROUND**

### 16 **A. The Class**

17 The Settlement Class is defined above and in the Settlement Agreement at ¶ 35.<sup>3</sup> There  
18 are an estimated 226 individuals that fall within the defined Class (the "Class Members").

### 19 **B. Procedural History**

20 On April 23, 2021, Plaintiff submitted a letter to the California Labor Workforce  
21 Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act  
22 of 2004 (the "PAGA") and concurrently sent a letter to Defendants requesting the production of  
23 her personnel and timekeeping records in order to further evaluate the wage and hour claims.<sup>4</sup>

24 Then, also on April 23, 2021, Plaintiff filed a putative class action complaint in the Court  
25 on behalf of the Class Members, alleging causes of action for: (1) failure to pay minimum wages,  
26 (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest  
27

28 

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<sup>3</sup> See Exhibit A to the Declaration of Brian J. Mankin ("Mankin Decl.")

<sup>4</sup> Mankin Decl. ¶ 13

breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition.<sup>5</sup>

Defendants retained counsel and fully denied the accusations. From the outset, Defendants challenged various aspects of Plaintiff's claims. For instance, Defendants threatened a Demurrer as to two issues: (1) the allegation that Plaintiff's Sixth Cause of Action was improper since Labor Code §§ 204 and 210 do not provide for a private right of action, and (2) that "Coachella Valley Health Personnel" is an improperly named party since it is merely a dba for Defendant Professional Registry Holdings, LLC. After meeting and conferring, Plaintiff filed a First Amended Complaint on June 15, 2021, that resolved both issues. Thereafter, Plaintiff also filed a Second Amended Complaint that added claims under the PAGA.<sup>6</sup>

The Parties continued to debate the merits of the claims and defenses before ultimately agreeing to attend an early mediation with Hon. Carl West (ret.) with JAMS in order to avoid the significant fees and costs associated with a class certification hearing. In preparation for mediation, the Parties agreed to an informal discovery process where information was exchanged relating to the applicable policies and procedures, payroll and time keeping records, size of the class, and potential value of the case. During this process, Defendants produced exemplars of the relevant Independent Contractor Agreements (a crucial piece of the case), the dates that each Class Member performed work for Defendants, and a sampling for 25 Class Members that included more than 725 pages of documents. From this information, Plaintiff and her counsel analyzed, researched, and investigated the potential claims of all similarly situated employees.<sup>7</sup>

The mediation took place on September 20, 2021 with Hon. Carl West (Ret.), a highly regarded and well-respected employment mediator. At the conclusion of mediation, the Parties reached this class-wide settlement for \$500,000 and later memorialized the terms of the settlement in a long-form Settlement Agreement.<sup>8</sup>

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<sup>5</sup> Mankin Decl. ¶ 14

<sup>6</sup> Mankin Decl. ¶ 15

<sup>7</sup> Mankin Decl. ¶¶ 16-17

<sup>8</sup> Mankin Decl. ¶ 18; *see also* Exhibit A to Mankin Decl.

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

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

5           Plaintiff's primary claim was based on Defendants' alleged misclassification of the Class  
6 Members as independent contractors rather than as employees. The entire case was contingent  
7 on this misclassification claim since the other Labor Code claims do not exist unless the Class  
8 Members were employees. For this reason, Defendants vigorously defended against and  
9 attacked this claim. Notably, Defendants argued that they were merely a referral agency that  
10 matched clients (who received care) with caregivers (the Class Members); thus, Defendants  
11 argued they were not an employer and no employment relationship existed. And, on this same  
12 point, Defendants argued that would meet all requirements of the statutory defense to employer  
13 status as codified at Labor Code § 1451, Civil Code § 1812.509, and Cal. UIC § 687.2.<sup>9</sup>

14           Plaintiff also alleged a variety of claims that were dependent on the misclassification  
15 claim (*i.e.*, no other claims could proceed if the Class Members were properly classified as  
16 independent contractors). For instance, Plaintiff alleged that Defendants failed to pay all  
17 required minimum and overtime wages on the occasion that a Class Member provided care to  
18 two clients on the same day (as the travel time was not compensated). But Defendants argued  
19 against the merits, claiming that this violation did not occur. Moreover, Defendants argued that,  
20 if it occurred, the violation was sporadic and so rare that this was only an individualized issue,  
21 and that class treatment would be improper.<sup>10</sup>

22           Plaintiff further alleged that Defendants failed to provide compliant meal and rest breaks,  
23 failed to reimburse business expenses, failed to timely pay all wages upon separation of  
24 employment, and failed to provide compliant wage statements. However, Defendants argued  
25 that these claims were without merit and, further, that many claims were nullified by the  
26 "personal attendant" exemption in IWC Wage Order 15.<sup>11</sup>

27  
28 <sup>9</sup> Mankin Decl. ¶ 20

<sup>10</sup> Mankin Decl. ¶ 21

<sup>11</sup> Mankin Decl. ¶ 22

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

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

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

#### **A. Settlement Consideration and Allocation**

The \$500,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to Plaintiff, subject to approval by the Court; (3) settlement administrator expenses of \$5,999; (4) a \$50,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate Individual Settlement Payments for Participating Class Members.<sup>12</sup>

After all Court-approved deductions from the Settlement Amount, it is estimated that that \$254,834.34 will be available to pay the Individual Settlement Amounts of the Class Members. The allocation per Class Member is discussed below in Section III(C).

The Parties also wish to advise the Court that the Settlement Amount may be increased if the Escalator Clause is triggered.<sup>13</sup> After preliminary approval, it will be known whether the Escalator Clause is triggered. And, because this will occur prior to mailing the Class Notice, the Settlement Administrator is instructed to modify the Class Notice to reflect the increased dollar amounts for the Settlement Amount and attorneys' fee request (if necessary).

#### **B. Notice Procedures**

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

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

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<sup>12</sup> See S.A. ¶ 47(a-h)

<sup>13</sup> See S.A. ¶ 78 ("if the total number of Class Members exceeds 275, the Settlement Amount will be increased proportionally according to the following formula: Escalator Amount = [number of Class Members above 275] x [Net Settlement Amount prior to Escalator Clause calculations / 275]")

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

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

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

20 The Court's CMO also inquires as to the likely age, education, experience and English-  
21 language facility of the class members. According to Defendants, the typical Class Member is  
22 above the age of 18 and speaks, understands, and writes in English.<sup>15</sup> However, because there  
23 may be certain Class Members not proficient in English, the Class Notice will be only provided  
24 in both English and Spanish to the Class Members.

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

26 An appropriate notice is one that has a reasonable chance of reaching a substantial  
27

28 <sup>14</sup> The Class Notice is attached to the Mankin Declaration as Exhibit B.

<sup>15</sup> Declaration of Defendant Professional Registry Holdings' Representative, Christine Martin ¶¶ 5-6

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

Here, within 10 days after Preliminary Approval Order is entered, Defendants shall provide the Settlement Administrator with a list of Class Members containing names, addresses; telephone numbers; Social Security Numbers; and the total number of weeks worked during the Class Period by each Class Member (the "Class Data").<sup>16</sup> Within 10 days of receipt of the Class Data, the Settlement Administrator shall populate the Class Notice for each, and send each Class Member the Class Notice via first-class, United States mail.<sup>17</sup>

In the event that any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained.<sup>18</sup>

### **3. No Claims Process**

As explained above and in the Notice, Class Members are automatically included in the Settlement and will receive payment upon the court granting final approval without being required to take any affirmative action.<sup>19</sup> The Notice provides Class Members with sufficient information to decide whether to opt-out, object, dispute credited pay periods or do nothing.

### **4. Exclusions and Objections**

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to

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<sup>16</sup> S.A. ¶¶ 5 and 59

<sup>17</sup> S.A. ¶ 60

<sup>18</sup> S.A. ¶ 61

<sup>19</sup> S.A. ¶¶ 47(k)

1 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class  
2 Member must submit return the Request for Exclusion Form to the Settlement Administrator no  
3 later than 45 days after being mailed by the Settlement Administrator (“Notice Response  
4 Deadline”).<sup>20</sup>

5 The Class Notice shall inform the Class Members of their right to object to the  
6 Settlement. Any Class Member who wishes to object to the Settlement must complete and return  
7 the Objection Form to the Settlement Administrator no later than the Notice Response  
8 Deadline.<sup>21</sup>

### 9 **C. Settlement Allocation Formula for Settlement Shares**

10 Individual Settlement Payments will be calculated and apportioned from the Net  
11 Settlement Amount based on the number of Weeks Worked by each Settlement Class Member  
12 during the Class Period.<sup>22</sup> Additionally, each “Aggrieved Employee” will receive a share of the  
13 PAGA Penalties based on a pro-rata basis. Thus, the \$12,500 PAGA Penalties allocated to the  
14 Aggrieved Employees will be divided and paid on a Work Week basis.<sup>23</sup> Aggrieved Employees  
15 may not opt-out of the PAGA Penalties.

16 The Class Notice will inform Class Members of the estimated share and the number of  
17 Weeks Worked during the Class and PAGA Periods. Class Members may dispute their Weeks  
18 Worked if they feel they worked more weeks in the Class or PAGA Periods than Defendants’  
19 records show by timely submitting evidence to the Settlement Administrator.<sup>24</sup>

20 Here, based on an estimated 226 Class Members and 8,763 total workweeks at issue  
21 through November 30, 2021, it is estimated that: (1) the average payment will be \$1,127.58, (2)  
22 the workweek value will be \$29.08, (3) the high payment will be \$7,153.68 (if a Class Member  
23 worked every week during the Class Period), and (4) the low payment will be \$29.08 (if a Class  
24 Member worked only one week during the Class Period).<sup>25</sup>

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25  
26 <sup>20</sup> S.A. ¶¶ 19 and 65(a)

27 <sup>21</sup> S.A. ¶ 65(c)

28 <sup>22</sup> S.A. ¶ 47(c)

<sup>23</sup> S.A. ¶ 65(c)

<sup>24</sup> S.A. ¶ 63

<sup>25</sup> See Mankin Decl. ¶ 49 (but the actual figures, based on the Class Data provided after preliminary approval, will be calculated by the Settlement Administrator and inserted into the Class Notice)

Moreover, it is estimated that there will be approximately 90 Aggrieved Employees who will share in the \$12,500 PAGA award on a pro rata basis.

**D. Timing of Settlement Disbursements**

Defendants shall deposit the Settlement Amount with the Settlement Administrator by the later of October 3, 2022 or 15 days after the Effective Date to pay: (1) the class attorney fees and expenses, as approved by the Court; (2) the service award, as approved by the Court; (3) administrative costs, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual Settlement Amounts of participating Class Members. Within 10 days thereafter, the Settlement Administrator shall issue payments to cover all court-approved payments.<sup>26</sup>

**E. Tax Treatment**

Because the Class Members performed contract services for Defendants as independent contractors, rather than as employees, and because Defendants fully dispute the allegations alleged herein, the Parties agree that the Individual Settlement Payments will be allocated and paid to the Participating Class Members as contract compensation, interest, and penalties from which no state or federal taxes will be withheld or deducted.<sup>27</sup>

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

In exchange for the payments above, the Settlement Class Members will release the claims and parties in strict compliance with CMO ¶ G(3)(e). Specifically, the Settlement Agreement at ¶ 29 defines the "Released Claims" as follows:

"Released Class Claims" or "Class Claims" by the Participating Class Members upon Final Approval of the Settlement will include all claims stated in the operative Complaint and those based solely upon the facts in the Complaint, including: (a) willful misclassification, (b) failure to pay minimum wages, (c) failure to pay overtime wages, (d) failure to provide meal periods, (e) failure to provide rest breaks, (f) failure to reimburse business expenses, (g) failure to timely pay wages each period and upon separation of employment, (h) failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j) all other claims for statutory penalties based on the facts or claims alleged in the Complaint.

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<sup>26</sup> S.A. ¶¶ 66, 67

<sup>27</sup> S.A. ¶ 47(d)

1 This definition “Released Claims” complies with CMO ¶ G(3)(e)(ii) and, because the  
2 Settlement Agreement at ¶ 31 specifies that “the time period governing the Released Claims [...] shall be the same as the Class Period,” it also complies with CMO ¶ G(3)(e)(iii).

4 It is also understood and agreed that the Settlement Agreement will not release any  
5 person, party or entity from claims, if any, by Class Members for workers compensation,  
6 unemployment, or disability benefits of any nature, nor does it release any claims, actions, or  
7 causes of action which may be possessed by Settlement Class Members under state or federal  
8 discrimination statutes including, without limitation, the Cal. Fair Employment and Housing Act,  
9 the Cal. Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code §  
10 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §  
11 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the  
12 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and  
13 all of their implementing regulations and interpretive guidelines.

14 The Settlement Agreement at ¶ 30 also defines the “Released Parties” as “Defendants,  
15 together with their members, member managers, officers, directors, employee, and agents.” This  
16 definition tracks the CMO except for the inclusion of “members” and “member managers.”  
17 Thus, this Motion includes the explanation(s) required by CMO ¶ G(3)(e)(i).

18 First, the reason to include “members” and “member managers” is straightforward. The  
19 CMO explicitly permits parties to include officers and directors as “Released Parties,” which  
20 provides security for individuals involved in running a corporation. However, the CMO does not  
21 explicitly provide the same security for individuals involved in running a limited liability  
22 company. Here, Defendant Professional Registry Holdings, LLC is a limited liability company –  
23 not a corporation – and did not have any officers or directors; instead, due to the LLC structure,  
24 the company had only members and member-managers. Thus, the Settlement Agreement  
25 includes members and member managers as Released Parties to provide the same security for the  
26 individual involved in running the company as the Court permits for a corporation.

1 Second, the “member” and “member manager” terms include individuals already  
2 involved as named Defendants (Kevin Bass, George Tucker, and Kirvin Satterwhite), but also  
3 includes one additional individual (Troy Skinner).

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

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

7 The Settlement Agreement at ¶ 23 also defines the release of PAGA claims in strict  
8 compliance with CMO ¶ G(3)(e)(iv)

9 “PAGA Released Claims” by the Aggrieved Employees upon Final Approval  
10 of the Settlement means any and all PAGA claims that Plaintiff alleged against  
11 the Released Parties, on behalf of Aggrieved Employees and State of  
12 California, based on the facts stated in the operative Complaint in the Action  
13 and in the LWDA notice letter(s), including all PAGA claims seeking civil  
14 penalties that premised upon (a) willful misclassification, (b) failure to pay  
15 minimum wages, (c) failure to pay overtime wages, (d) failure to provide meal  
16 periods, (e) failure to provide rest breaks, (f) failure to reimburse business  
17 expenses, (g) failure to timely pay wages each period and upon separation of  
18 employment, (h) failure to provide accurate itemized wage statements, and (i)  
19 all other claims for civil penalties recoverable under the Private Attorneys  
20 General Act, Labor Code §§ 2698 et seq. that were stated in the Complaint  
21 and based solely upon the facts alleged in the Complaint and the notice sent  
22 by Plaintiff to the LWDA on April 23, 2021. The time period governing the  
23 PAGA Released Claims shall be any time during the PAGA Period.

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

26 Upon entry of the Final Approval Order and Defendants funding of the  
27 Settlement Amount, Plaintiff – in her individual capacity and on behalf of the  
28 State of California and LWDA - shall completely release and discharge the  
Released Parties from the PAGA Released Claims for the PAGA Period. As  
such, Plaintiff does not release any Aggrieved Employee’s claim for wages or  
damages, other than the Released Class Claims in relation to the class action  
allegations.

29 Finally, even if an Aggrieved Employee requests exclusion from the Class settlement,  
30 that individual will still be subject to the PAGA Released Claims to the fullest extent permitted  
31 by law and will receive a pro-rata share of PAGA Penalties.<sup>28</sup>

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32 <sup>28</sup> S.A. ¶ 65(a)

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

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

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

19 **A. Numerosity and Ascertainability**

20 Numerosity is met if a proposed class is so large that joinder of all members would be  
21 impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if  
22 the class members can be objectively identified and given notice of the litigation without  
23 unreasonable time or expense. See *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th  
24 89, 101. Here, according to Defendants’ records, there are approximately 226 Class Members.  
25 This figure satisfies the numerosity requirement.

26 ///

27 ///

28 ///

1           **B.     Well-Defined Community of Interest**

2                    1.     Commonality

3           To justify certification, the class proponent must show that questions of law or fact  
4 common to the class predominate over the questions affecting the individual members. See  
5 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*  
6 *v. Superior Court* (2001) 24 Cal.4th 906, 913). Plaintiff contends that the Class was subject to  
7 common policies and practices relating to classification as independent contractors rather than  
8 employees, the payment of wages, the provision of meal and rest breaks, among other things.  
9 While the Parties dispute whether a class would be appropriate if the litigation were to continue,  
10 they agree to class certification for the purposes of this settlement.

11                   2.     Typicality

12           Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims  
13 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*  
14 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether  
15 Plaintiff’s claims are typical of the Class for any continued litigation of the Action, but agree for  
16 the purposes of this settlement only, that Plaintiff asserts the claims as those alleged on behalf of  
17 the class, all of which are at the core of the lawsuit.

18                   3.     Adequacy of Representation

19           The proposed class representative must establish that he or she will adequately represent  
20 the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,  
21 546. Specifically, Plaintiff is adequate to represent the class because she performed services for  
22 Defendants as an independent contractor and experienced the same alleged misclassification and  
23 wage and hour practices as the rest of the Class, and she understood their duties as Class  
24 Representative and was willing to undergo the risks of litigation while having no conflicts of  
25 interest.

26           Adequacy may be established by the fact that counsel are experienced practitioners. See  
27 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)  
28 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience

1 in wage and hour class actions like the instant matter.<sup>29</sup>

2 4. Superiority

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

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

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

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

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

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

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<sup>29</sup> Mankin Decl. ¶¶ 2-6

1 ““risk, expense, [and] complexity”” of continued litigation)). The Court enjoys broad discretion  
2 in making its fairness determination, and should consider factors including, but not limited to:

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

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

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

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

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

27 The settlement was the product of extensive arm’s length negotiations between counsel  
28 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and

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

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

Plaintiff and her counsel thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the settlement. As described above, the settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial pre-mediation exchange of information, data, and documents.<sup>30</sup>

**D. Plaintiff's Counsel is Experienced in Similar 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, *aff'd* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of counsel”) (internal quotation and citation omitted).

Plaintiff's Counsel is highly experienced in Class/PAGA litigation, having achieved large settlements and verdicts, including one of the largest PAGA awards in California's history, collecting over \$250 million for its clients.<sup>31</sup> Plaintiff's counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, state of the law, and uncertainties of class certification and litigation.<sup>32</sup>

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<sup>30</sup> Mankin Decl. ¶¶ 12-17

<sup>31</sup> Mankin Decl. ¶¶ 4

<sup>32</sup> Mankin Decl. ¶¶ 62-67, 83

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

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

7           The proposed Class Notice and proposed plan for the Settlement Administrator to mail  
8 the Class Notice to the last known address of all class members complies with all the  
9 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed  
10 Class Notice include (1) the material terms of the settlement; (2) the estimated settlement share;  
11 (3) the proposed attorneys' fees, litigation expenses, and the costs of administration; (4) details  
12 about the final fairness hearing and how class members may elect to exclude themselves or make  
13 an objection; and (5) how class members can obtain additional information.<sup>33</sup>

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

22           The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Settlement  
23 Class Members with all due process protections required by the United States Constitution.  
24 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because  
25 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic  
26 contentions or denials of the parties; (2) a statement that the court will exclude the member from  
27

28 \_\_\_\_\_  
<sup>33</sup> See Class Notice, Exhibit B to Mankin Decl.

1 the class if the member so requests by a specified date; (3) a procedure for the member to follow  
2 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or  
3 not, will bind all members who do not request exclusion; and (5) a statement that any member  
4 who does not request exclusion may, if the member so desires, enter an appearance through  
5 counsel. The 45-day deadline for Class Members to exclude themselves is reasonable, as it  
6 provides Class Members with sufficient time to do so and, if they so choose, to seek independent  
7 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically  
8 be sent a settlement check.

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

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

15 To that end, and pursuant to the Court’s CMO, the Mankin Declaration provides the  
16 Court with all information required under CMO ¶ G(3)(a) and its subparts.<sup>34</sup> Thus, as shown in  
17 the moving papers, this Settlement is fair, reasonable, and merits approval in light of the  
18 reasonable estimate of the total damages and penalties if successful at trial.

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

20 When evaluating a settlement, the most important consideration is “an understanding of  
21 the amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz v.*  
22 *BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399. And because the  
23 amount in controversy (*i.e.*, the maximum theoretical value if all claims succeeded at trial) fails  
24 to account for the many risks of continued litigation, settlement should be analyzed based on a  
25 reasonable estimate of the likely recovery at trial. *Wershba, supra*, 91 Cal.App.4th at 250  
26 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded  
27

28 <sup>34</sup> See, generally, Mankin Decl. ¶¶ 24-61

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

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

10 **Willful Misclassification**<sup>35</sup>

11 Plaintiff’s strongest claim was likely based on the allegation that Defendants classified  
12 the Class Members as independent contractor when, in reality, they should have been classified  
13 as employees. However, this misclassification claim faced many risks and defenses given the  
14 evolving nature of such claims.

15 As a preliminary matter, the misclassification claim does not have any independent value  
16 on a class basis since there is no private right to action under Labor Code § 226.8 (but it must be  
17 noted that the risk on this claim is also incorporated into the other claims below). Therefore,  
18 Plaintiff calculated the maximum potential PAGA penalties to be \$900,000 (based on 90  
19 allegedly misclassified Aggrieved Employees multiplied by \$10,000). However, based on the  
20 claims detailed in the Mankin Decl., Plaintiff calculated the reasonable estimate of PAGA  
21 penalties at trial for the misclassification claim to be \$110,000.

22 **Failure to Pay Wages**<sup>36</sup>

23 As discussed above, Plaintiff alleged that Defendants failed to pay any wages on the  
24 occasions that the Class Members traveled between two clients on the same day. Based on  
25 information obtained prior to mediation, Plaintiff estimated that the maximum potential value of  
26 this claim was \$131,138. However, this maximum figure failed to account for Defendants’  
27

28 <sup>35</sup> See Mankin Decl. ¶¶ 27-29

<sup>36</sup> See Mankin Decl. ¶¶ 30-33

1 defenses, including the argument that this was an individualized issue so occurred so  
2 infrequently that class treatment was improper. Plaintiff assigned a risk-adjusted valuation of  
3 \$50,000 to this claim. Plaintiff also pursued PAGA claims based on the same theory of liability  
4 and calculated the risk-adjusted value of the PAGA penalties as \$35,000.

5 **Meal and Rest Break Claims**<sup>37</sup>

6 Plaintiff also alleged meal and rest break claims against Defendants. Given the total  
7 number of shifts at issue, and when incorporating estimated violation rates, Plaintiff calculated  
8 the maximum theoretical value to be \$1,056,000. But, considering the many risks and defenses  
9 to these claims, Plaintiff placed a risk-adjusted value of \$370,000 on the meal and rest claims.  
10 Additionally, based on the same risk factors, Plaintiff estimated the risk-adjusted value of the  
11 related PAGA claims at \$95,000.

12 **Reimbursement Claims**<sup>38</sup>

13 Plaintiff also alleged that Defendants failed to reimburse the Class for expenses such as  
14 cellular phone usage and mileage when driving between client locations. However, based on  
15 data and information leading up to mediation, Plaintiff assigned no independent value to this  
16 claim on a class or PAGA basis.

17 **Failure to Timely Pay Wages Upon Separation of Employment**<sup>39</sup>

18 Additionally, Plaintiff alleged that Defendants failed to timely pay all wages owed to the  
19 Class Members upon separation of employment. Based on this theory of liability, Plaintiff  
20 calculated the maximum waiting time penalties to be \$604,800. However, based on Defendants'  
21 defenses and other uncertainties, Plaintiff believed that the risk-adjusted value of this claim was  
22 \$270,000. Furthermore, because the related PAGA penalties were very small (as there is only  
23 one violation for each former employee multiplied by \$100), the risk-adjusted value of the  
24 PAGA penalties was estimated at \$3,000.

25 ///

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27  
28 <sup>37</sup> See Mankin Decl. ¶¶ 34-37

<sup>38</sup> See Mankin Decl. ¶ 38

<sup>39</sup> See Mankin Decl. ¶¶ 39-42

**Wage Statement Claims**<sup>40</sup>

Plaintiff also argued that, because of Defendants' practice of misclassifying the Class Members, Defendants failed to provide accurate itemized wage statements in compliance with Labor Code § 226. Plaintiff calculated the maximum potential value of this claim as \$190,700, with a risk-adjusted value of \$85,000. Additionally, Plaintiff calculated the risk-adjusted value of the PAGA penalties to be \$60,000.

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

The proposed Settlement allocates \$50,000 of the gross settlement amount to PAGA claims, of which 75% (or \$37,500) will be paid to the California LWDA and 25% (or \$12,500) will be allocated to the Aggrieved Employees as payment of the settlement. The Mankin Declaration provides all information required under CMO ¶ G(9) regarding valuation of the PAGA claims, along with information as to why this allocation is fair.<sup>41</sup>

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

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

Under the terms of the Settlement Agreement, Class Counsel is collectively requesting attorneys' fees equal to one-third of the (1/3) Settlement Amount (\$166,666.66, subject to proportionate increased if the Escalator Clause is triggered).

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

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<sup>40</sup> See Mankin Decl. ¶¶ 43-46

<sup>41</sup> See Mankin Decl. ¶¶ 56-61

1 claims on a class-wide basis.

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

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

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

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

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

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

25 In this case, the parties agreed to a service award to Plaintiff in the amount of \$7,500.  
26 The proposed incentive award is reasonable given the time and effort that the named Plaintiff  
27 devoted to this case, including assisting with the investigation of claims; the valuable assistance  
28 they provided to Class Counsel behind the scenes and in preparation for mediation; the time and

1 effort expended attending a full-day mediation to reach a settlement on behalf of the class; and  
2 the fact that she entered into general releases of claims that are broader than the release of the  
3 Class. The Class Representative also assumed significant risk in bringing this litigation—  
4 namely, had she lost, she could have been ordered to pay Defendant’s costs. Plaintiff provided  
5 invaluable assistance to Class Counsel and the Class in this case, including providing factual  
6 background for the mediation and the Class Complaint; reviewing the mediation brief and  
7 Complaint; providing documents about Defendants’ pay plan; participating in phone calls to  
8 discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiff  
9 agreed to participate in this case with no guarantee of personal benefit. Accordingly, the service  
10 award to Plaintiff is justified and warranted as part of the overall settlement.

### 11 **C. The Appointment of the Settlement Administrator**

12 After obtaining bids from five separate administrators, the Parties mutually agreed to  
13 retain Simpluris as the Settlement Administrator based on it providing the lowest bid. Simpluris  
14 is experienced in administering class action settlements and has submitted an all-in bid to  
15 administer the settlement for up to 275 Class Members for \$5,100, which is less than the \$7,000  
16 authorized by the Settlement Agreement.<sup>42</sup>

17 Defendants have agreed that, if there are more than 275 Class Members (triggering the  
18 Escalator Clause) and the administration costs exceed \$5,100 because of the increased Class size,  
19 then Defendants shall pay the Settlement Administrator for the additional expense, separate and  
20 apart from the Settlement Amount.<sup>43</sup>

### 21 **VIII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

22 The last step in the approval process is the formal hearing, whereby proponents of the  
23 settlement may explain and describe its terms and conditions and offer argument in support of  
24 approval, and Class Members or their counsel may be heard in support of or in opposition to the  
25 settlement. Subject to the Court’s approval, the Parties request that the Court schedule a hearing  
26 for final approval of the settlement approximately 110 days after the Preliminary Approval  
27

28 <sup>42</sup> See Declaration of Eric Springer of Simpluris, filed concurrently herewith

<sup>43</sup> S.A. ¶ 36

Hearing Date, in accordance with the following schedule:

|                                                                                  |                                                                                                                                                                 |
|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| January 12, 2022                                                                 | Preliminary Approval (PA) hearing                                                                                                                               |
| February 1, 2022<br>(20 days after PA)                                           | Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.                                           |
| March 18, 2022<br>(45 days after mailing Class Notice)                           | Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.                                                        |
| 16 court days before Final Approval hearing                                      | Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.      |
| 9 court days before Final Approval hearing                                       | Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement. |
| 5 court days before final approval hearing                                       | Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.                                                                 |
| TBD (Approximately May 2, 2022 - 110 days after Preliminary Approval is granted) | Final Approval Hearing.                                                                                                                                         |

**IX. CONCLUSION**

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

Dated: December 16, 2021

LAUBY, MANKIN & LAUBY LLP

BY:

  
\_\_\_\_\_  
Brian J. Mankin, Esq.  
Attorneys for Plaintiff

**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 December 17, 2021, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

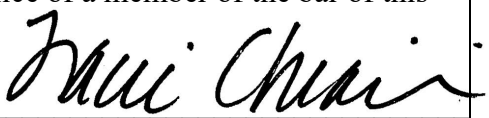
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address [tracie@lmlfirm.com](mailto:tracie@lmlfirm.com) to the persons at the electronic notification 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 December 17, 2021, 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**

Darren D. Daniels, Esq.  
LAW OFFICES OF DARREN D. DANIELS  
235 E. Broadway, #1140  
Long Beach, CA 90802  
562-983-1259  
562-683-2643-fax  
[darrendaniels@dddlaw.com](mailto:darrendaniels@dddlaw.com)  
Attorney for Defendants