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

JOSE MALDONADO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ADD-ON COMPUTER PERIPHERALS
LLC, a California Limited Liability
Company; and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2021-01206062-CU-OE-CXC
*[Assigned to Hon. William Claster, Dept
CX104, for all purposes]*

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

Hearing

Date: July 22, 2022

Time: 9:00 a.m.

Dept.: CX104

RES#: 73775965

Complaint filed: June 14, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 22, 2022, at 9:00 a.m. or as soon thereafter as the
matter may be heard by the Honorable William Claster in Department CX104 of the Orange
County Superior Court located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Jose
Maldonado, individually and on behalf of all others similarly situated, will and hereby does
move the Court for entry of an Order preliminarily approving the Parties' class action settlement,
including:

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

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

Dated: June 6, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



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

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Background.....	3
A.	The Parties and the Proposed Settlement Class	3
B.	Procedural History	3
C.	Summary of the Claims and Defenses	4
III.	Summary of the Proposed Settlement.....	6
A.	Settlement Consideration and Allocation	6
B.	Notice Procedures	7
C.	Exclusion and Objection Procedures	8
D.	Settlement Allocation Formula for Settlement Shares.....	9
E.	Timing of Settlement Disbursements.....	10
F.	Tax Treatment	11
G.	Participating Class Members' Release of Claims	11
H.	Release of PAGA Claims.....	12
IV.	Provisional Certification of the Settlement Class is Appropriate for Purposes of Settlement	12
A.	Numerosity and Ascertainability	13
B.	Well-Defined Community of Interest	13
V.	The Court Should Preliminarily Approve the Settlement, Which is Fair, Adequate, and Reasonable	15
A.	Class Action Settlements are Subject to Judicial Review.....	15
B.	The Settlement Resulted from Serious, Informed, Non-Collusive Negotiations..	16
C.	The Extent of the Investigation was More than Sufficient	17
D.	The Settlement is a Reasonable Compromise of Claims	17
E.	Plaintiff's Counsel is Experienced in Similar Wage-and-Hour Litigation	21
F.	The Class Notice Conforms to All Applicable Statutes and Rules.....	22
G.	The Non-Reversionary "Checks Cashed" Distribution Ensures Maximal Recovery for Class Members	23
H.	The Attorney Fee Allocation Under the Settlement Agreement is Fair.....	23
I.	The Class Representative Service Award is Fair and Appropriate.....	24
VI.	The Court Should Appoint Pheonix as Settlement Administrator.....	25
VII.	Timeline and Scheduling a Final Approval Hearing	25
VIII.	Conclusion	26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Jose Maldonado, individually and on behalf of all others
4 similarly situated, seeks preliminary approval of a \$475,000 wage-and-hour class action
5 settlement (the “Gross Settlement Amount”) between the putative class members and Defendant
6 Add-On Computer Peripherals, LLC (“Defendant” or “Add-On”) (collectively, “the Parties”).

7 Plaintiff seeks to represent a class of similarly situated non-exempt employees of
8 Defendant who worked in California (the “Class” or “Class Members”) at any time during the
9 period of June 14, 2017, through June 15, 2022 (the “Class Period”).

10 Under the terms of the Class and PAGA Action Settlement Agreement And Release of
11 Claims (the “Settlement Agreement” or “Settlement” or “S.A.”)¹, Defendant will not oppose
12 Plaintiff’s Counsel’s application for a reasonable award of attorney’s fees not to exceed the total
13 amount of \$158,333.33 (1/3 of the Gross Settlement Amount), Plaintiff’s Counsel’s litigation
14 expenses not to exceed \$20,000, settlement administrator expenses not to exceed \$7,500, PAGA
15 penalties of \$30,000 (of which \$22,500 or 75% will be paid to the LWDA and the remaining
16 \$7,500 or 25% will be paid pro rata to the Aggrieved Employees), and a Service Payment of
17 \$7,500 to Plaintiff Jose Maldonado for his services as Class Representative. (S.A. ¶ 47(a-h)).
18 The Gross Settlement Amount is the maximum amount that will be paid (except for Defendant’s
19 share of the payroll taxes which it will separately pay).

20 After all Court-approved deductions from the Settlement Amount, it is estimated that
21 \$251,666.67 will be available to pay the Individual Settlement Amounts of approximately 150
22 Class Members, who do not opt out of the settlement, as follows:

23 ///

24 ///

25 ///

26 ///

27
28

¹ See Exhibit A to the Declaration of Brian Mankin ISO Motion for Preliminary Approval (“Mankin Decl.”), which
was filed on June 6, 2022.

	Total Amount
<i>Gross Settlement Amount</i>	\$ 475,000
Attorneys' Fees (1/3)	\$ 158,333.33
Litigation Costs	\$ 20,000
Administrator Costs	\$ 7,500
PAGA Penalties	\$ 30,000
Class Representative's Service Award	\$ 7,500
<i>Net Settlement Amount</i>	\$ 251,666.67

Assuming a class size of 150 Class Members, the average payment will be approximately \$1,678 to each Class Member ($\$251,666.67 / 150$). Of course, the actual payments will be calculated on a pro rata basis according to the number of Pay Periods Worked by each Class Member through the Preliminary Approval Date. In addition, Aggrieved Employees (*i.e.*, Class Members that worked during the PAGA Period) will receive a pro rata share of the \$7,500 PAGA Penalties (accounting for 25% of the total \$30,000 allocation). (S.A. ¶¶ 47(c), 47(h)).

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

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. Plaintiff respectfully requests that the Court enter an order preliminarily approving the settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes only, approving the proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Phoenix Class Action Administration as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

1 **II. BACKGROUND**

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

3 Add-On is a manufacturer of optical transceivers and high speed cabling, with its
4 headquarters in Tustin, California. It employed the Class Members at its Tustin warehouse, who
5 performed various job duties in connection with the production and distribution of Add-On's
6 cabling and other networking products. The putative Class in this case consists of:

7 All current and former non-exempt employees employed by
8 Defendant in California at any time during the Class Period.
9 (S.A. ¶ 38).

10 **B. Procedural History**

11 On June 14, 2021, Plaintiff Maldonado submitted a letter to the California Labor
12 Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney
13 General Act of 2004 (the "PAGA"), and simultaneously sent a letter to Defendant requesting the
14 production of his personnel and timekeeping records to further evaluate his wage and hour
15 claims. (Mankin Decl. ¶ 11, Exhibit C). That same day, Plaintiff filed a putative class action
16 Complaint, and after the 65-day LWDA waiting period ran without the LWDA accepting
17 jurisdiction over the PAGA claims, Plaintiff filed a first amended complaint on August 20, 2021,
18 that added PAGA claims. The operative complaint alleges claims for: (1) failure to pay
19 minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal
20 periods, (4) failure to provide rest breaks, (5) failure to pay vested vacation wages, (6) failure to
21 timely pay final wages, (7) failure to provide accurate itemized wage statements, (8) unfair and
22 unlawful competition pursuant to Business and Professions Code §17200 *et seq.*, and (9-16)
23 eight related claims under PAGA. (Mankin Decl. ¶ 12).

24 Defendant fully denied the allegations, noting in the Joint Statement: "Plaintiff's
25 complaint merely provides unverified and unsupported legal conclusions or speculations of
26 alleged Labor Code violations," and further noting that "most, if not all, of the alleged violations
27 can be easily explained." However, before incurring significant costs and expenses in protracted
28 discovery and litigation, the Parties agreed to explore an early resolution through mediation. In

1 preparation for the mediation, the Parties informally exchanged documents and information that
2 allowed both sides to calculate the potential damages and evaluate potential risk, including
3 extensive policies and procedures pertaining to each claim alleged, and statistics relating to the
4 number of current and former employees, number of shifts, pay periods and other things. In this
5 regard, Defendants provided a comprehensive database of timekeeping and payroll records of the
6 Class Members that consisted of nearly 20,000 shifts (and over 2,000 Pay Periods) worked by
7 the Class Members. This robust sampling enabled both parties and their experts to take a deep
8 dive into the claims. During this process, Plaintiff's counsel and their retained expert evaluated
9 the potential claims, risks, and defenses as to all similarly situated employees. (Mankin Decl. ¶
10 13).

11 On March 14, 2022, the Parties participated in a full-day mediation with Judge Nancy
12 Wieben Stock (Ret.), who presided over similar wage and hour cases for many years in the
13 Orange County Civil Complex Department and now serves as a class action mediator. At the
14 conclusion of mediation, Judge Wieben Stock issued a mediator's proposal calling for a class-
15 wide settlement for \$475,000. The Parties accepted the mediator's proposal and memorialized
16 the terms of the settlement in a long-form settlement agreement (Mankin Decl. ¶ 14; Exhibit A to
17 Mankin Decl.). The Parties now seek the Court's preliminary approval of the Settlement.

18 C. Summary of the Claims and Defenses

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

23 One of the primary claims in this action is for wage statement violations under Labor
24 Code § 226. During the statutory period, Plaintiff and the Class were paid on an hourly basis
25 with additional compensation in the form of "Hazard Pay." Plaintiff alleged that this practice
26 resulted in violations of Labor Code § 226(a)(9) because Defendant's wage statements failed to
27 itemize the applicable rate for Hazard Pay and also failed to itemize the corresponding hours of
28 Hazard Pay. However, Defendant raised a variety of defenses to this claim, namely that the

1 wage statements did include the corresponding rates of pay and applicable hours worked for
2 Hazard Pay. Additionally, Defendant argued that, even if some wage statements omitted the
3 hourly rate and corresponding hours, this was due to an inadvertent clerical mistake by
4 Defendant's third-party payroll vendor. As a result, no statutory penalties are available for
5 Plaintiff or the Class based on a clerical or "technical" violation, because Plaintiff would be
6 unable to prove the required "knowing and intentional" and "injury" elements. (Mankin Decl. ¶
7 16).

8 Plaintiff also alleged a trio of unpaid wage claims. *First*, Plaintiff argued that
9 Defendant's temperature check policy (where Class Members were forced to undergo
10 temperature checks *before* clocking in) resulted in unpaid wages. *Second*, Plaintiff alleged that
11 Defendant violated Labor Code § 227.3 by paying vested vacation wages to departing employees
12 at their base rate rather than at the "final rate" required by statute (which would often be higher
13 than the base rate due to additional earned compensation). *Third*, Plaintiff claimed that
14 Defendant's practice of failing to include earned bonuses in the regular rate and overtime
15 calculations led to additional overtime violations. And, most importantly, Plaintiff alleged that
16 these unpaid wage claims triggered waiting time penalties for each *former* Class Member.
17 (Mankin Decl. ¶ 17).

18 However, Defendant vehemently opposed these unpaid wage claims both on the merits
19 and as to the propriety of pursuing them on a class and representative PAGA basis. For example,
20 Defendant argued that it maintained lawful policies to compensate employees for all time
21 worked, including time spent on temperature checks. Also, Defendant argued that the
22 temperature check policy was only in effect for a short period of time, and it was "voluntary" and
23 based on an "honor system." As a result, the temperature check policy was not applied to all
24 employees and not applied uniformly, which would require individualized assessments and
25 defeat certification. Then Defendant also argued against Plaintiff's interpretation of Labor Code
26 § 227.3 and stood by the argument that "final rate" in the statute merely means the final base rate
27 of pay. Defendant also argued that its decision *not* to include the bonuses in overtime
28 calculations was proper since documentation confirmed that these amounts were discretionary

1 and, thus, properly excluded from the regular rate of pay. And, as for the waiting time penalty
2 claims, Defendant argued that these would fail along with the underlying wage claims – and,
3 even if the wage claims succeeded, Defendant argued it was entitled to the “good faith” defense
4 and that Plaintiff would be unable to show these violations were “willful.” (Mankin Decl. ¶ 18).

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

13 Plaintiff also alleged various PAGA claims arising out of the claimed violations
14 mentioned above. However, Defendant argued that these type of “derivative” claims have no
15 merit. (Mankin Decl. ¶ 18).

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

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

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

20 **A. Settlement Consideration and Allocation**

21 The \$475,000 Settlement Amount is non-reversionary and will be paid out to Class
22 Members without the need to submit a claim form or take any affirmative action. It includes (1)
23 Plaintiff’s attorneys’ fees and costs, as approved by the Court; (2) a service award of \$7,500 to
24 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses of \$7,500; (4) a
25 \$30,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California
26 Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all
27 Individual Settlement Payments of the Participating Class Members. (S.A. ¶ 47(a-h)).
28 Defendant will separately pay its share of employer’s payroll taxes and withholdings.

1 After all Court-approved deductions from the Settlement Amount, it is estimated that
2 \$251,666.67 will be available to pay the Individual Settlement Amounts to approximately 150
3 Class Members. Thus, the average settlement payment to each Class Member is approximately
4 \$1,678.

5 **B. Notice Procedures**

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

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

10 Here, in accordance with California Rules of Court, rules 3.766(d) and 3.769(f), the Class
11 Notice (Mankin Decl., ¶ 9, Ex. B) provides the Class Members with (1) a brief explanation of the
12 case; (2) an explanation of each Settlement Class Member's right to opt out of the settlement
13 class; (3) an explanation of the process (and relevant deadlines) through which a Settlement
14 Class Member could opt out of the settlement class; (4) notice about the binding nature of the
15 Judgment for Settlement Class Members who do not opt out; (5) an explanation of each
16 Settlement Class Member's right to appear through counsel; (6) an explanation of each
17 Settlement Class Member's right to appear at the fairness hearing and express views of the
18 settlement, i.e., object or otherwise respond; and (7) an explanation of each Settlement Class
19 Member's right to participate in the settlement and receive payment accordingly.

20 Additionally, the proposed Class Notice will be provided to the Class Members showing
21 the estimated amount that each Class Member will receive and the number of Pay Periods
22 Worked for which he/she is credited. (Mankin Decl., ¶ 9, Ex. B).

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

24 An appropriate notice is one that has a reasonable chance of reaching a substantial
25 percentage of the class members. *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 974. The
26 Settlement calls for the Settlement Administrator to update the list of addresses provided by the
27 employer by using a verification check through the U.S. Postal Service's National Change of
28 Address Database to the last known address of the Settlement Class Members. The Notice

1 Packet will be sent by the Settlement Administrator via first class mail to the last known address
2 of each Class Member. *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 618-620
3 (individual mailings to each Class Member’s last known address is a sufficient form of notice).

4 Here, within 21 days after entry of the Preliminary Approval Order, Defendant shall
5 provide the Settlement Administrator with a list of Class Members containing names, last known
6 addresses, telephone numbers (if available), Social Security Numbers, and the total Pay Periods
7 Worked during the Class and PAGA Periods (the “Class Data”). (S.A. ¶¶ 6, 65).

8 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
9 the number of Pay Periods worked for each Class Member, populate the Class Notice for each,
10 and send each Class Member the Class Notice via first-class mail in English, with Spanish and
11 Vietnamese translations available upon request. (S.A. ¶ 66). The Class Notice clearly spells out
12 how Class Members can request alternative translations (which the Parties felt would be less
13 confusing and more likely to be read than including numerous translated versions in a single
14 mailing).

15 In the event that any Class Notice mailed to a Class Member is returned as having been
16 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
17 search and seek an address correction for such Class Member(s), and a second Class Notice will
18 be sent to any new or different address obtained. (S.A. ¶¶ 67).

19 **3. No Claims Process**

20 As explained above and in the Notice, Class Members are automatically included in the
21 Settlement and will receive payment upon the court granting final approval without being
22 required to take any affirmative action. (S.A. ¶ 25). The Notice provides Class Members with
23 sufficient information to decide whether to opt out, object, dispute credited Pay Periods Worked
24 or do nothing.

25 **C. Exclusion and Objection Procedures**

26 Class Members who do not timely opt-out of the Settlement as to the Class Claims will
27 be deemed to participate in the Settlement and shall become a Participating Class Member
28 without having to submit a claim form or take any other action. In order to opt out of the

1 Settlement of the Class Claims, the Class Member must submit a written request to the
2 Settlement Administrator no later than 45 days from the date the Notice is mailed by the
3 Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 20, 70(a)). Any opt-out
4 request that is not postmarked by the Notice Response Deadline will be invalid. (S.A. ¶ 70(a)).

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 submit a written
7 objection to the Settlement Administrator no later than the Notice Response Deadline. The
8 objection must include the case name and number and must set forth, in clear and concise terms,
9 a statement of the reasons why the objector believes that the Court should find that the proposed
10 Settlement is not in the best interest of the Class and the reasons why the Settlement should not
11 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 70(c)).

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

13 Individual Settlement Payments will be calculated and apportioned from the Net
14 Settlement Amount based on the number of Eligible Pay Periods a Settlement Class Member
15 worked during the Class Period. Specific calculations of Individual Settlement Payments will be
16 made as follows:

- 17 • Defendant will calculate the total number of Pay Periods Worked by each
18 Settlement Class Member during the Class Period and the aggregate total
19 number of Pay Periods Worked by all Settlement Class Members during the
20 Class Period.
- 21 • To determine each Settlement Class Member’s estimated Individual
22 Settlement Payment, the Settlement Administrator will use the following
23 formula: The Net Settlement Amount will be divided by the aggregate total
24 number of Pay Periods Worked, resulting in the “Pay Period Value.” Each
25 Settlement Class Member’s Individual Settlement Payment will be
26 calculated by multiplying his or her total number of Pay Periods Worked
27 during the Class Period by the Pay Period Value.
- 28 • Individual Settlement Payments will be reduced by any required deductions
for each Participating Class Member as specifically set forth herein,
including employee-side tax withholdings or deductions.
- The entire Net Settlement Amount will be disbursed to all Participating
Class Members. If there are any valid and timely Requests for Exclusion as
to the Class Claims, the Settlement Administrator shall proportionally
increase the Individual Settlement Payment for each Participating Class
Member according to the number of Pay Periods Worked, so that the

amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(S.A. ¶ 47(c)).

Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the \$7,500 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Pay Periods Worked basis. (S.A. ¶ 47(h)). Aggrieved Employees may not opt out of the PAGA Penalties.

The Class Notice will inform Class Members of the estimated share and the number of Pay Periods Worked during the Class Period and/or PAGA Period. Class Members may dispute their Pay Periods Worked, if they feel they worked more weeks than Defendant’s records show, by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 68).

As noted, assuming a class size of approximately 150 Class Members, the average payment to each Class Member will be approximately \$1,678, although the actual payment will be calculated on a pro-rata basis as shown above. Assuming an estimated 8,000 Pay Periods Worked, each Pay Period will have a value of approximately \$31.46 on average. Indeed, this is an excellent result for the Class Members.

Moreover, it is estimated that there will be approximately 90 Aggrieved Employees who will share in the \$7,500 PAGA award on a pro rata basis.

E. Timing of Settlement Disbursements

Within 20 calendar days of the Effective Date, Defendant shall deposit the Gross Settlement Amount into the Qualified Settlement Fund to pay: (1) the class attorney fees and expenses, as approved by the Court; (2) the service award, as approved by the Court; (3) the administrative costs, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual Settlement Amounts of participating Class Members. (S.A. ¶ 71). Defendant shall also fund its share of payroll taxes, as directed by the Settlement Administrator. Within 10 days thereafter, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 72).

///

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

5 **F. Tax Treatment**

6 Since this matter was primarily driven by penalty claims (i.e., wage statements, waiting
7 time penalties and PAGA penalties), the Parties agree that 10% of each Individual Settlement
8 Payment shall constitute wages (for which each Participating Class Member will be issued an
9 IRS Form W-2 for such payment), and the remaining 90% shall constitute interest and penalties
10 (for which each Participating Class Member will be issued an IRS Form 1099 for the interest and
11 penalty allocation). (S.A. ¶ 47(d)). Additionally, the PAGA Penalties payable to the Aggrieved
12 Employees will be classified entirely as civil penalties and shall be reported as required on an
13 IRS Form 1099. (S.A. ¶ 47(h)).

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

15 In exchange for these payments, the Settlement Agreement ¶ 31 provides that the
16 Participating Class Members will release the Released Parties of the Class Claims that were
17 alleged or could have been alleged based on the facts stated in the operative complaint, as
18 follows:

19 any and all claims, rights, demands, liabilities and causes of action that were
20 or could have been pled under local, state, or federal law arising out of or
21 based on the facts alleged in the operative complaint against the Released
22 Parties for the duration of the Class Period, including but not limited to, all
23 claims under California Labor Code §§ 201-204, 210, 226, 226.7, 510, 512,
24 558, 1174, 1194, 1197, 1197.1, 1198, 2802, any applicable California
25 Industrial Welfare Commission Wage Order, California Code of
26 Regulations, tit. 8, § 11070, the California Unfair Competition Law,
27 California Business & Professions Code §§ 17200, *et seq.*, and any
28 remedies for any of the claims described herein, including, damages,
statutory penalties, restitution, declaratory relief, equitable or injunctive
relief, interest, and attorneys' fees and costs.

The time governing the release shall be the same as the Class Period. (S.A. ¶ 31).

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

11 **H. Release of PAGA Claims**

12 The Settlement Agreement ¶ 24 also defines the “PAGA Released Claims” as follows:

13 all PAGA claims that Plaintiff alleged or could have alleged against the
14 Released Parties, on behalf of the Aggrieved Employees and the State of
15 California, based on the facts and/or theories stated in the operative
16 complaint and/or in Plaintiff’s June 14, 2021 notice letter to the LWDA,
17 including but not limited to, all PAGA claims premised upon California
18 Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1197,
19 1197.1, 1198, 2802, any applicable California Industrial Welfare
Commission Wage Order, PAGA, California Labor Code §§ 2699, *et seq.*,
and any remedies for any of the PAGA claims described herein, including
civil penalties, declaratory relief, equitable relief, interest, and attorneys’
fees and costs.

20 The time period governing the PAGA Released Claims is June 14, 2020, to June 15, 2022
21 (the “PAGA Period”; see S.A. ¶¶ 23, 24). Finally, even if an Aggrieved Employee requests
22 exclusion from the Class settlement, that individual will still be subject to the PAGA Released
23 Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA
24 Penalties. (S.A. ¶ 70(a)).

25 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS** 26 **APPROPRIATE FOR PURPOSES OF SETTLEMENT**

27 California Rule of Court 3.769(d) provides that the Court may make an order approving
28 certification of a provisional settlement class at the preliminary approval stage. It is well-

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

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

16 **A. Numerosity and Ascertainability**

17 Numerosity is met if a proposed class is so large that joinder of all members would be
18 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
19 the class members can be objectively identified and given notice of the litigation without
20 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
21 89, 101. Here, according to Defendant’s records, there are approximately 150 Class Members.
22 This figure satisfies the numerosity requirement.

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

24 **1. Commonality**

25 To justify certification, the class proponent must show that questions of law or fact
26 common to the class predominate over the questions affecting the individual members. *See*
27 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
28 *v. Superior Court* (2001) 24 Cal.4th 906, 913). Plaintiff contends that the Class was subject to

1 common policies and practices relating to the payment of wages, including wage statements, the
2 provision of meal and rest breaks, among other things. While the Parties dispute whether a class
3 would be appropriate if the litigation were to continue, they agree to class certification for the
4 purposes of this settlement.

5 2. Typicality

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

13 3. Adequacy of Representation

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

20 Adequacy may be established by the fact that counsel are experienced practitioners. See
21 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
22 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
23 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

24 4. Superiority

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

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

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

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

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

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

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

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

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

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

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

20 The settlement was the product of extensive arm’s length negotiations between counsel
21 and was facilitated by a retired judge who now serves as an experienced wage-and-hour class
22 action mediator. Though cordial and professional, the settlement negotiations were adversarial
23 and non-collusive in nature. The settlement reached is the product of substantial effort by the
24 Parties and their counsel. Although Plaintiff and his counsel believed that there was a possibility
25 of certifying the claims, they recognized the potential risk, expense, and complexity posed by
26 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
27 on the damages awarded, and/or on an appeal that can take several more years to litigate. In
28 addition, if Defendant prevailed on any of its defenses, the employees may not have received any

monetary recovery.

C. The Extent of the Investigation was More than Sufficient

Plaintiff, his counsel, and their retained expert 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 exchange of information relating to the Class Members prior to mediation. (Mankin Decl. ¶¶ 13, 15-21).

D. The Settlement is a Reasonable Compromise of Claims

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

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

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

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

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

14 Based upon detailed data obtained through informal discovery and information
15 exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation:
16 (1) approximately 139 total Class Members as of the March 14, 2022, mediation (“the pre-
17 mediation period”), (2) approximately 15,548 workweeks in the pre-mediation period, (3)
18 approximately 86 Aggrieved Employees in the pre-mediation period, and (4) approximately
19 2,742 pay periods during the pre-mediation PAGA Period. From these metrics, and when
20 factoring in claim certification probabilities and liability probabilities, Class Counsel formulated
21 detailed damages models to value the claims in preparation for mediation and to reach a realistic
22 and reasonable resolution.

23 Plaintiff contends that his strongest claim was for wage statement violations, including
24 the failure to itemize the rate and hours for “Hazard Pay.” Based on data and information
25 gathered prior to mediation, as well as an analysis of such data by a retained expert, Plaintiff
26 alleges that there were 2,724 pay periods at issue for 86 employees; thus, the maximum potential
27 class damages under § 226(e) was \$269,900.

28 ///

1 But this maximum figure ignores several risks and defenses. For example, Plaintiff's
2 expert advised that the "Hazard Pay" did not occur every pay period – instead it was only present
3 in 724 of the pay periods in the sampling (between 70 and 80% of potential pay periods during
4 the one-year statute of limitations). Defendant also raised many defenses, including that: (a)
5 these violations, if any, did not result in any "injury" under § 226(e), (b) the violations, if any,
6 were not "knowing and intentional" and could not support the assessment of penalties, and (c)
7 "derivative" wage statement claims are without merit. These defenses all went to the merits, not
8 to defeating class certification. Thus, Plaintiff did not assign a risk at the class certification stage
9 but applied a 15% risk on the merits, resulting in a risk-adjusted value for the wage statement
10 claims of \$229,415.

11 Plaintiff then valued his trio of unpaid wage claims at a maximum value of approximately
12 \$80,000. First, for the off-the-clock temperature check claim, Plaintiff assumed 2 minutes of
13 unpaid time per day for 70,650 shifts at a rate of \$24.92 – which equals \$58,675, rounded to
14 \$60,000 for simplicity and ease of valuation. Second, Plaintiff estimated \$10,000 for the
15 underpaid vested vacation claim. And third, Plaintiff estimated an additional \$10,000 for the
16 failure to include bonuses and other compensation in the regular rate and overtime pay.
17 However, each of these claims faced strong defenses and substantial risk in continued litigation
18 and, thus, Plaintiff assigned a 25% risk at class certification and an additional 25% on the merits,
19 leading to a risk-adjusted value for the unpaid wage claims of \$45,000.

20 Although these unpaid wage claims were somewhat small in total value, they gave rise to
21 Plaintiff's claim for waiting time penalties under Labor Code § 203. In this respect, there were
22 54 Class Members that separated from employment during the relevant period, and those
23 individuals earned an average daily wage of \$157.80. Therefore, the maximum potential waiting
24 time penalties totaled \$255,636. However, Defendant argued that it would defeat Plaintiff's
25 unpaid wage claims and, because the waiting time penalty claims were derivative of the unpaid
26 wages, Plaintiff's Labor Code § 203 would fail. Additionally, Defendant argued that even if the
27 Court determined that some or all unpaid wage claims had merit, waiting time penalties would be
28 inappropriate because any violations were not "willful", and Defendant had a "good faith" belief

1 in the legality of its practices. Plaintiff applied a 10% risk of defeat at the class certification
2 stage, and an additional 20% risk of defeat at the summary judgment stage or on the merits,
3 resulting in the risk-adjusted value of \$184,058 for the waiting time penalty claims.

4 With regard to Plaintiff's meal and rest break claims, the Class Members worked 70,650
5 shifts during the pre-mediation period. Plaintiff's counsel and his expert reviewed the pre-
6 mediation sampling and extrapolated a 26.8% violation rate from the meal period claims and
7 estimated a 50% violation rate for rest break claims (*i.e.*, one violation every two shifts). Thus,
8 the maximum potential damages are \$314,497 for meal periods and \$586,748 for rest breaks
9 (each based on a premium rate of \$16.61 – the average rate from the sampling).

10 But Defendant strongly opposed these claims based on the argument that these fall
11 directly into the category of impermissible "individualized issues" which cannot meet class
12 certification standards since Defendant had compliant written policies and the employees had
13 ample latitude regarding whether, when, and how they took their breaks. Therefore, Defendant
14 asserted that a fact-finder would have to determine for each Class Member whether a break was
15 missed (since rest breaks were not recorded), and why a break was noncompliant/nonexistent,
16 because if it was by the employee's choice, no liability attaches to the defendant. Based on these
17 arguments, Plaintiff believes there is a 25% risk that the Court would deny class certification on
18 these meal period claims and a 40% risk as to the rest break claims.

19 Defendant also argued that, even if certification were granted, it would defeat these
20 claims on the merits because Defendant utilized compliant policies and practices and it would
21 present sufficient evidence that the workers were properly provided with all breaks. Moreover,
22 Defendant argued that Plaintiff would be unable to present sufficient evidence establishing the
23 number of meal and rest period violations in order to allow a fact-finder to appropriately
24 determine damages. Plaintiff acknowledged the risks and incorporated a further 25% reduction
25 on the merits for the rest break claim. However, due to the recent decision in *Donohue v. AMN*
26 *Services, LLC* (2021) 11 Cal.5th 58, Plaintiff only applied an additional 10% risk on the meal
27 period claims. Plaintiff therefore calculates the risk-adjusted value of the meal claims to be
28 \$212,285 and the rest break claims to be \$264,036.

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

3	•	Wage Statement Claims	\$	229,415
4	•	Unpaid Wage Claims	\$	45,000
5	•	Waiting Time Penalty Claims	\$	184,058
6	•	Meal Period Claims	\$	212,285
7	•	Rest Break Claims	\$	264,036
	•	Total Risk Adjusted Penalties and Damages	\$	934,794

8 The reasonableness of the settlement is apparent from the fact that the proposed
9 settlement is less than a 50% discount from the risk-adjusted class damages and penalties. And
10 while the PAGA civil penalty would have a maximum value in the high six figures, this figure
11 fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based
12 on the facts and circumstances of a particular case” and if “to do otherwise would result in an
13 award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2).
14 Moreover, Defendant argued against the merits of the underlying claims and particularly that the
15 “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and
16 rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil
17 penalty claims on top of the underlying claim. For these reasons, the Parties submit that the
18 agreed-upon settlement is fair and reasonable.

19 **E. Plaintiff’s Counsel is Experienced in Similar Wage-and-Hour Litigation**

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

25 Plaintiff’s counsel is also highly experienced in class/PAGA litigation, having been
26 named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators),
27 having achieved large settlements and verdicts, including one of the largest PAGA awards in
28 California’s history, collecting over \$250 million for its clients, having tried class and PAGA

1 cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6). Plaintiff's
2 counsel, operating at arm's-length, weighed the strengths and risks of this case, and are of the
3 view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk
4 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of
5 class certification and litigation. (*Id.* ¶¶ 22-27).

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

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

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

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

28 ///

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

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

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

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

25 Under the terms of the Settlement Agreement, Class Counsel is requesting \$158,333.33
26 in attorneys’ fees and costs, which is equal to one-third of the Settlement Amount. *See, e.g.*
27 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33
28 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for

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

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

16 **I. The Class Representative Service Award is Fair and Appropriate**

17 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
18 Representative, which is reasonable given large recovery that Class Members will receive on
19 average, as well as the time and effort they devoted to this case. His efforts included providing
20 factual background for the Class and PAGA complaint; providing documents and information
21 about Defendant’s compensation plan; participating in phone calls to discuss litigation and
22 settlement strategy; making himself available throughout the litigation to assist with analyzing
23 the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
24 settlement documents. The Class Representative also assumed significant risk in bringing this
25 litigation—namely, had he lost, he could have been ordered to pay Defendant’s costs.

26 The requested service award falls within the range of incentive payments typically
27 awarded to Class Representatives in similar class actions. See e.g. *Bond v. Ferguson Enterprises,*
28 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving

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

14 **VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT**
15 **ADMINISTRATOR**

16 Subject to the Court’s approval, the Parties stipulated to Phoenix Class Action
17 Administration serving as the Settlement Administrator. Phoenix is experienced in administering
18 class action settlements and has provided a flat-fee proposal to administer this settlement for
19 \$7,500. (Mankin Decl. ¶ 33; Exhibit “D”).

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

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

27 ///

28 ///

July 22, 2022	Preliminary Approval (PA) hearing
August 12, 2022 (or not later than 21 calendar days after entry of the Preliminary Approval Order)	Deadline for Defendant to produce the Class List to the Settlement Administrator.
August 22, 2022 (or not later than 10 calendar days after Defendant produces the Class List)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
October 6, 2022 (or not later than 45 calendar days from the date the Class Notice is mailed to the Class Members)	Deadline for Settlement Class Members to mail Requests for Exclusion, Objections to the Settlement, as well as dispute his/her Pay Periods credited.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the Settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately November 11, 2022)	Final Approval Hearing.
20 calendar days after the Effective Date.	Defendant shall make a deposit into the Qualified Settlement Fund of the Gross Settlement Amount.

VIII. CONCLUSION

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

Dated: June 6, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



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

[illegible]

On June 6, 2022, I caused to be served the foregoing document(s) described as follows:

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

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

-27-

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