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*[Additional Plaintiffs' Counsel on Next Page]*

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

LAURA BARBOZA and DAMON  
POTTER, individually, on a representative  
basis, and on behalf of all others similarly  
situated;

Plaintiffs,

v.

RUDOLPH FOODS COMPANY, INC., an  
Ohio Corporation; and DOES 1 through  
20, inclusive;  
Defendants.

Case No.: CIVSB2129090  
*[Assigned to Hon. Judge Joseph T. Ortiz, Dept.  
S17, for all purposes]*

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

Hearing

Date: April 3, 2023  
Time: 1:30 p.m.  
Dept.: S17

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

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on April 3, 2023 at 1:30 p.m. or as soon thereafter as the  
3 matter may be heard by the Honorable Joseph Ortiz in Department S17 of the San Bernardino  
4 County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiffs  
5 Laura Barboza and Damon Potter, individually and on behalf of all others similarly situated, will  
6 and hereby do move the Court for entry of an Order preliminarily approving the Parties' class  
7 action settlement, including:

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

17 This motion is based upon this Memorandum of Points and Authorities in Support  
18 thereof; the Declaration of Plaintiffs' counsel (Brian Mankin, Kristina Bui Carlson, Nazo  
19 Koulloukian); the Class Action and PAGA Settlement Agreement and Release of Claims (the  
20 "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement;  
21 all other records, pleadings, and papers filed in this action; and upon such other evidence or  
22 argument as may be presented to the Court at the hearing of this motion.

23  
24 Dated: March 9, 2023

LAUBY, MANKIN & LAUBY LLP

25  
26 BY:



27 Brian J. Mankin, Esq.  
28 Attorneys for Plaintiffs and the Proposed  
Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Barboza and Potter seek preliminary approval of a \$1,250,000 wage-and-hour  
4 class action settlement on behalf of approximately 501 current and former non-exempt  
5 employees who worked at any of Defendant Rudolph Foods Company, Inc.'s ("Defendant")  
6 California locations at any time from June 14, 2017, through December 20, 2022 (the "Class  
7 Period").

8 Under the terms of the Settlement Agreement,<sup>1</sup> Defendant will not oppose Plaintiffs  
9 Counsel's application for a reasonable award of attorney's fees not to exceed \$416,666.67 (1/3 of  
10 the Gross Settlement Amount), litigation expenses not to exceed \$25,000, Settlement  
11 Administrator Costs of \$10,000.00, PAGA penalties of \$50,000 (with 75% to the LWDA and  
12 25% to the Aggrieved Employees on a pro rata basis), and Service Payments of \$10,000 each to  
13 Plaintiffs (collectively "Class Representatives"). (S.A. ¶ 49.)

14 After all Court-approved deductions from the Gross Settlement Amount, it is estimated  
15 that \$728,333.33 will be available to pay the Class Members, as follows:

16

|                                      |                        |
|--------------------------------------|------------------------|
| <b>Gross Settlement Amount</b>       | <b>\$ 1,250,000.00</b> |
| Attorneys' Fees (1/3)                | \$ 416,666.67          |
| Litigation Costs (not to exceed)     | \$ 25,000.00           |
| Administrator Costs                  | \$ 10,000.00           |
| PAGA Penalties                       | \$ 50,000.00           |
| Class Representatives Service Awards | \$ 20,000.00           |
| <b>Net Settlement Amount</b>         | <b>\$ 728,333.33</b>   |

20

21 Assuming 501 Class Members, the average payment to each Class Member will be  
22 approximately \$1,453.76 (\$728,333.33 / 501). However, the actual payment will be calculated  
23 on a pro-rata basis according to the number of Weeks Worked by each Class Member during the  
24 Class Period, with each Work Week having a value of approximately \$22.76 (\$728,333.33/  
25 32,000 estimated Work Weeks). In addition, approximately 344 Aggrieved Employees will  
26 receive a share of the \$12,500 PAGA Penalties (25% of the total \$50,000 allocation), calculated  
27  
28

---

<sup>1</sup> The Class Action and PAGA Settlement Agreement and Release of Claims (the "Settlement Agreement" or "S.A.") is attached as Exhibit 1 to the Declaration of Brian Mankin ("Mankin Decl.").

1 pro-rata based on Weeks Worked during the PAGA Period. (S.A. ¶ 49(h)).

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

10 **II. BACKGROUND**

11 **A. THE SETTLEMENT CLASS**

12 The Class is defined as follows:

13 All current and former non-exempt workers who worked at any  
14 Rudolph Foods locations in California at any time during the Class  
15 Period (which is June 14, 2017, through December 20, 2022). (S.A.  
¶ 39).

16 **B. PROCEDURAL HISTORY**

17 The Potter Action was initially filed in the Riverside County Superior Court as a class  
18 action on June 14, 2021, and was subsequently amended on August 20, 2021 to add  
19 corresponding PAGA claims. The Barboza Actions were separately filed in the San Bernardino  
20 County Superior Court, first as a representative PAGA action on November 22, 2021 and then as  
21 a class action on May 19, 2022. (S.A. ¶ 42). After learning that two separate cases were pending  
22 against Defendants, the Plaintiffs agreed to join forces and proceed in a consolidated manner.  
23 (Mankin Decl. ¶ 12).

24 Defendant retained counsel and immediately began to defend the cases. Then, after  
25 discussions among counsel and to avoid a costly class certification battle, the Parties agreed to  
26 attend private mediation. (Mankin Decl. ¶ 13).

27 In preparation for the mediation, the Parties informally exchanged documents and  
28 information that allowed both sides to calculate the potential damages and evaluate potential risk,

1 including policies and procedures pertaining to each claim alleged, and statistics relating to the  
2 number of current and former employees, number of shifts, weeks worked and other things.  
3 Defendants also provided their written policies and practices and a robust sampling of payroll  
4 and timekeeping records for Class Members. This information enabled both parties to take a  
5 deep dive into the claims. Additionally, during this process, Plaintiffs and their counsel  
6 analyzed, researched, and investigated the potential issues, including matters related to the  
7 calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 14).

8 On October 20, 2022, Plaintiffs and Defendants participated in mediation before Steve  
9 Rottman, Esq., a well-respected wage-and-hour mediator. The mediation was successful, and the  
10 Parties reached a global settlement that resolved all claims brought by both Plaintiffs, and both  
11 Plaintiffs agreed to proceed in one Consolidated Action. The Consolidated Complaint has been  
12 filed in this Court and alleges the following class claims: (a) failure to pay minimum wages, (b)  
13 failure to pay for all hours worked, including overtime wages, (c) failure to provide compliant  
14 meal periods, (d) failure to provide compliant rest breaks, (e) failure to timely pay wages,  
15 including final wages, (f) failure to provide accurate itemized wage statements, (g) unfair and  
16 unlawful competition, (h) failure to provide proper cool-down rest periods, (i) failure to provide  
17 suitable seating, (j) failure to reimburse for required business expenses, (k) failure to pay all  
18 required sick pay, (l) failure to provide safe and healthful working conditions; and (m) all other  
19 claims for statutory penalties based on the facts or claims alleged in the Consolidated Complaint  
20 (the “Settled Class Claims”). Now the Parties seek the Court’s preliminary approval of the  
21 Settlement. (Mankin Decl. ¶ 15).

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

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

#### 24 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

25 The \$1,250,000 Settlement Amount is non-reversionary and will be paid out to Class  
26 Members without the need to submit a claim form or take any affirmative action. It includes (1)  
27 Plaintiffs’ attorneys’ fees and costs, as approved by the Court; (2) a service award of \$10,000 to  
28 Plaintiff Barboza and \$10,000 to Plaintiff Potter, subject to approval by the Court; (3) Settlement

1 Administrator Costs of \$10,000; and (4) \$50,000 toward PAGA Penalties, 75 percent of which is  
2 to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the  
3 Aggrieved Employees. Defendant will separately pay its share of employer payroll taxes and  
4 withholdings. (S.A. ¶ 49).

5 **B. NOTICE PROCEDURES**

6 The proposed Class Notice will be provided to the Class Members showing the estimated  
7 amount that each Class Member will receive, the number of Work Weeks credited as a Class  
8 Member and Aggrieved Employee (Exhibit A to the S.A.). Within 21 calendar days after entry  
9 by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement  
10 Administrator with a list containing Class Member names, addresses, phone numbers, Social  
11 Security Numbers, Weeks Worked during the Class Period and PAGA Period (the “Class Data”).  
12 (S.A. ¶¶ 5, 66).

13 Within 30 calendar days of receipt of the Class Data, the Settlement Administrator shall  
14 calculate the numbers for each Class Member, populate the Class Notice, and send each Class  
15 Member the Class Notice via first-class, United States mail. (S.A. ¶ 67).

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

20 **C. EXCLUSION AND OBJECTION PROCEDURES**

21 Class Members who do not timely Opt-Out of the Settlement will be deemed to  
22 participate in the Settlement and shall become a Participating Class Member without having to  
23 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member  
24 must submit a written request to the Settlement Administrator no later than 30 days after being  
25 mailed by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 20). Any Opt-  
26 Out request that is not postmarked by the Response Deadline will be invalid, unless a Notice was  
27 remailed in which case the Class Member’s exclusion or objection must be returned by the later  
28 of the original Notice Response Deadline or 15 calendar days after the remailing of the notice.

1 (S.A. ¶ 70).

2 The Class Notice shall inform Class Members of their right to object to the Settlement.  
3 Any Participating Class Member who wishes to object to the Settlement may submit a written  
4 objection to the Settlement Administrator no later than the Response Deadline. (S.A. ¶ 70(c)).

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

6 The amount of each Settlement Class Member's Individual Class Payment is tied to the  
7 number of Weeks Worked by each Class Member for Defendant during the Class Period.  
8 Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total  
9 number Weeks Worked by all Participating Class Members during the Class Period, and (b)  
10 multiplying the result by each Participating Class Member's Weeks Worked. (S.A. ¶ 49(c)).

11 Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties  
12 based on a pro-rata basis. Thus, the \$12,500 PAGA Penalties allocated to the Aggrieved  
13 Employees will be divided and paid on a Week Worked basis. (S.A. ¶ 49(h)).

14 The Class Notice will inform Class Members of the estimated share and the number of  
15 Weeks Worked during the Class Period, as well as number of Weeks Worked during the PAGA  
16 Period. Class Members may dispute Weeks Worked if they feel they worked more in the Class  
17 or PAGA Periods than Defendant's records show by timely submitting evidence to the  
18 Settlement Administrator. (S.A. ¶ 69).

19 As noted, assuming 501 Class Members, the average payment to each Class Member will  
20 be approximately \$1,453.76 (\$728,333.33 / 501). However, the actual payment will be  
21 calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member  
22 during the Class Period, with each Work Week having a value of approximately \$22.76  
23 (\$728,333.33/ 32,000 estimated Work Weeks). In addition, approximately 344 Aggrieved  
24 Employees will receive a share of the \$12,500 PAGA Penalties (25% of the total \$50,000  
25 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period. (Mankin Decl.  
26 8).

27 ///

28 ///

1           **E.     TIMING OF SETTLEMENT DISBURSEMENTS**

2           Defendant is required to deposit the Settlement Amount, along with the employer’s share  
3 of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the  
4 “Effective Date” and these funds will be used to pay: (1) the class attorney fees and expenses, as  
5 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative  
6 expenses, as approved by the Court; (4) the PAGA Penalties; and (5) the aggregate of all  
7 Individual Settlement Amounts of Participating Class Members. Within 10 calendar days after  
8 receiving the funds, the Settlement Administrator shall issue payments to cover all court-  
9 approved payments. (S.A. ¶¶ 72-73).

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

13           **F.     TAX TREATMENT**

14           The Parties agree that one-third of the Individual Settlement Payments will be allocated  
15 as wages subject to withholding of all applicable local, state and federal taxes and the remaining  
16 two-thirds will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code  
17 sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A. ¶ 49(d)). Additionally,  
18 the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil  
19 penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶¶ 49(h)). These  
20 allocations are in line with the claim valuations in the *Kullar* analysis discussed below (*i.e.*, the  
21 penalty claims [§§ 203 and 226] comprise the majority of risk-adjusted value). Defendant will  
22 separately pay its share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 49(a)).

23           **G.     PARTICIPATING CLASS MEMBERS’ RELEASE OF CLAIMS**

24           In exchange for these payments, the Settlement Agreement at ¶ 35 provides that the  
25 Participating Class Members will release the Released Parties of the Settled Class Claims, which  
26 includes:

27       ///

28       ///

1 “all causes of action and claims, charges, complaints, liens, demands  
2 that were alleged in the Consolidated Complaint or reasonably could  
3 have been alleged based on the allegations, the facts, statutory  
4 citation and/or legal theories contained in the Consolidated  
5 Complaint, including all of the following claims for relief: (a)  
6 failure to pay minimum wages, (b) failure to pay for all hours  
7 worked, including overtime wages, (c) failure to provide compliant  
8 meal periods, (d) failure to provide compliant rest breaks, (e) failure  
9 to timely pay wages, including final wages, (f) failure to provide  
10 accurate itemized wage statements, (g) unfair and unlawful  
11 competition, (h) failure to provide proper cool-down rest periods, (i)  
12 failure to provide suitable seating, (j) failure to reimburse for  
13 required business expenses, (k) failure to pay all required sick pay,  
14 (l) failure to provide safe and healthful working conditions; and (m)  
15 all other claims for statutory penalties based on the facts or claims  
16 alleged in the Consolidated Complaint (the “Settled Class Claims”).  
17 These claims and their related recovery provisions include, but are  
18 not limited to, California Labor Code sections 200, 201, 202, 203,  
19 204, 212, 213, 218, 218.5, 226, 226.3, 226.7, 227.3, 246, 510, 512,  
20 558, 558.1, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198,  
21 1199, 2800, 2802 and all related provisions of the California Code  
22 of Regulations, California Industrial Wage Orders, California  
23 Health and Safety Code sections 6400 *et seq.*, and California  
24 Business & Professions Code sections 17200 *et seq.* The release of  
25 the foregoing claims extends to all theories of relief regardless of  
26 whether the claim is, was or could have been alleged as separate  
27 claims, causes of action, lawsuits or based on other theories of relief,  
28 or different right or duty of an alleged statute, whether under federal  
law, state law or common law (including, without limitation, as  
violations of the California Labor Code, Industrial Wage Orders,  
applicable regulations, California Health and Safety Code, and  
California Business and Professions Code). “Settled Class Claims”  
includes all types of relief available for the above-referenced claims,  
including, without limitation, any claims for damages, restitution,  
losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts,  
interest, injunctive relief, declaratory relief, or liquidated damages.  
The time period governing the Settled Class Claims shall be the  
same as the Class Per.”

25 It is understood and agreed that the Settlement Agreement will not release any person,  
26 party or entity from claims, if any, by Class Members for any other claims, including claims for  
27 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,  
28 unemployment insurance, disability, social security, workers’ compensation, or claims based on

1 facts occurring outside the Class Period.

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

3 The Settlement Agreement at ¶ 36 also defines the “Settled PAGA Claims,” which  
4 includes the following claims for relief:

5 “(a) failure to pay minimum wages, (b) failure to pay for all hours  
6 worked, including overtime wages, (c) failure to provide compliant  
7 meal periods, (d) failure to provide compliant rest breaks, (e) failure  
8 to timely pay wages each period and upon separation of  
9 employment, (f) failure to provide accurate itemized wage  
10 statements and violation of recordkeeping requirements, (g) failure  
11 to provide safe and healthful working conditions, (h) failure to  
12 provide proper cool-down rest periods, (i) failure to provide suitable  
13 seating, (j) failure to reimburse for required business expenses, (k)  
14 failure to pay all required sick pay, and (l) all other claims for PAGA  
15 penalties based on the facts or claims alleged in the Consolidated  
16 Complaint. These claims and their related recovery provisions  
17 include, but are not limited to, California Labor Code sections 200,  
201, 202, 203, 204, 212, 213, 218, 218.5, 226, 226.3, 226.7, 227.3,  
246, 510, 512, 558, 558.1, 1174, 1175, 1194, 1194.2, 1197, 1197.1,  
1197.2, 1198, 1199, 2800, and 2802 and all related provisions of the  
California Code of Regulations, the California Industrial Wage  
Orders, and California Health and Safety Code sections 6400 *et seq.*  
The time period governing the Settled PAGA Claims shall be any  
time during the PAGA Period.”

18 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,  
19 that individual will still be subject to the Settled PAGA Claims to the fullest extent permitted by  
20 law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶¶ 53 and 70(a)).

21 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS**  
22 **APPROPRIATE FOR PURPOSES OF SETTLEMENT**

23 California Rule of Court 3.769(d) provides that the Court may make an order approving  
24 certification of a provisional settlement class at the preliminary approval stage. It is well-  
25 established that trial courts should use a “lesser standard of scrutiny” for determining the  
26 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*  
27 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.  
28 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved

1 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*  
2 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class  
3 certification, a district court need not inquire whether the case, if tried, would present intractable  
4 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the  
5 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,  
6 as defined above, under Code of Civil Procedure § 382.

7 **A. ASCERTAINABILITY AND NUMEROSITY**

8 In determining whether a class is ascertainable, the court considers “(1) the class  
9 definition, (2) the size of the class, and (3) the means available for identifying the class  
10 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,  
11 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement  
12 class is ascertainable if the class members can be objectively identified and given notice of the  
13 litigation without unreasonable time or expense). Here, according to Defendant’s records, there  
14 are approximately 501 Class Members that are easily identifiable and fall within the defined  
15 Class. Thus, Plaintiffs’ proposed Class meets the ascertainability and numerosity requirements.

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

17 **1. Commonality**

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

24 **2. Typicality**

25 Typicality “focuses on whether there exists a relationship between the Plaintiffs’ claims  
26 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*  
27 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether  
28 Plaintiffs’ claims are typical of the Class for the purposes of any continued litigation of the

1 Action, but agree for the purposes of this settlement only, that Plaintiffs assert claims regarding  
2 Defendant's pay policies, meal and rest break practices, wage statements, and the provisions  
3 governing the timely and complete payment of wages, which are at the core of the lawsuit.

4 3. Adequacy of Representation

5 The proposed class representative must establish that he or she will adequately represent  
6 the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,  
7 546. Specifically, Plaintiffs are adequate to represent the class because they performed work for  
8 Defendant during the Class Period, experienced the same wage and hour practices as the rest of  
9 the Class, understood their duties as a Class Representative, have been willing to undergo the  
10 risks of litigation, and have no conflict of interest.

11 Adequacy may be established by the fact that counsel are experienced practitioners. See  
12 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)  
13 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive  
14 experience in wage and hour class actions. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-6;  
15 Koulloukian Decl. ¶ 14-22).

16 4. Superiority

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

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

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

25 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is  
26 particularly true in class actions where substantial resources can be conserved by avoiding the  
27 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,  
28 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules

1 of Court set forth the procedures for court approval of a class action settlement: (1) the Court  
2 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;  
3 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed  
4 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

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

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

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

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

1 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal  
2 quotation marks omitted).

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

14 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**  
15 **NEGOTIATIONS**

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

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

27 Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and  
28 weaknesses of this case before reaching the settlement. As described above, the settlement was

1 reached after extensive investigation and research, thorough calculations and risk evaluation, and  
2 a substantial exchange of information relating to the Class Members prior to mediation.

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

4 To evaluate a settlement, the parties must provide the trial court with “basic information  
5 about the nature and magnitude of the claims in question and the basis for concluding that the  
6 consideration being paid for the release of those claims represents a reasonable compromise.”  
7 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

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

15 Of particular relevance to the reasonableness of the proposed Settlement is the fact that  
16 significant legal and factual grounds for defending this action exist. First, in addition to  
17 disputing the merits of Plaintiffs’ claims, Defendants strongly disputed that Plaintiffs could  
18 obtain class certification, arguing a lack of commonality of the legal claims and injuries.  
19 Defendant further argued that it complied with the applicable law and that any purported  
20 deviations therefrom were individualized in nature, thereby limiting Plaintiffs’ ability to certify  
21 the class. While Plaintiffs assert that this is a suitable case for certification, they realize that there  
22 is always a significant risk associated with class certification proceedings, which could  
23 significantly limit the claims that she could pursue on a class basis.

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

28 ///

1 Based upon detailed data obtained through informal discovery and information  
2 exchanges, Plaintiffs' counsel estimated the following data points through the date of mediation:  
3 (1) 472 class members, (2) 329 class members that separated from employment during the 3-year  
4 lookback for Labor Code § 203, (3) a projected 36,270 workweeks 181,350 shifts worked during  
5 the estimated Class Period, and (4) approximately 15,990 wage statements during the estimated  
6 PAGA Period. (Mankin Decl. ¶ 17).

7 Here, there were several categories of claims alleged by Plaintiffs, including but not  
8 limited to: (1) unpaid wage claims under various theories, (2) meal and rest break violations, (3)  
9 derivative claims for waiting time and wage statement penalties due to the other alleged  
10 violations, and (4) PAGA claims. (Mankin Decl. ¶ 18).

11 As to the unpaid wage claims, Plaintiffs alleged various distinct theories of liability.  
12 First, Plaintiffs alleged that Defendant implemented a pre-shift COVID-19 screening program  
13 that subjected Class Members to uncompensated work, including the use of personal cell phones  
14 for work purposes (i.e., unpaid business expenses) and unpaid sick pay. Second, Plaintiffs  
15 alleged that Defendant failed properly calculate the overtime rate of pay when there was a bonus  
16 earned, resulting in a systematic underpayment to the Class. In total, Plaintiffs' counsel  
17 estimated the maximum value of these unpaid wages to be \$1,088,100. (Mankin Decl. ¶ 19).

18 However, Defendant vehemently opposed these unpaid wage claims on the merits and as  
19 to the propriety of class certification. For example, as to regular rate issue, Defendant argued  
20 that that bonus compensation was rare and that Defendant did factor in bonus compensation into  
21 the regular rate of pay. Moreover, in addition to its other defenses on the merits, Defendants  
22 argued that Plaintiffs would be unable to meet its evidentiary burden at summary judgment  
23 and/or trial because Plaintiffs and the Class would be unable to introduce evidence as to the  
24 amount of unpaid wages (since the claims are not apparent from the timekeeping records alone),  
25 thus defeating liability. (Mankin Decl. ¶ 20).

26 Due to these defenses and arguments, Plaintiffs assigned a 20% risk for the COVID-19  
27 screening claim and 30% risk for the regular rate of pay claim at the class certification stage.  
28 And, due to the defenses as to the merits, Plaintiff assigned the following merits-based risk to

1 each claim: 40% risk on the COVID-19 screening claim and a 20% risk on the regular rate claim.  
2 In sum, Plaintiffs' counsel calculated the risk-adjusted value of the unpaid wage claims as  
3 \$565,812. (Mankin Decl. ¶ 21).

4 Plaintiffs also alleged meal and rest break claims against Defendant. Given the total  
5 number of shifts at issue (an estimate of 181,350), and when incorporating violation rates from  
6 expert review of the timekeeping records and other evidence, Plaintiffs' counsel estimated a 15%  
7 violation rate for meal breaks and a 30% violation rate for rest breaks, leading to 27,203 alleged  
8 meal violations and 54,405 alleged rest break violations. This established a maximum potential  
9 value for these claims of \$1,408,554 (81,608 violations multiplied by the average hourly rate of  
10 \$17.26 as the applicable premium rate under § 226.7). (Mankin Decl. ¶ 22).

11 However, Defendant raised numerous arguments in response to this claim, including that  
12 it maintained fully compliant written policies and specifically authorized the Class Members to  
13 take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a  
14 short/late break. Further, Defendant argued that it provides its employees generous 15-minute  
15 rest breaks, i.e., well above the California minimum of 10 minutes, thus significantly cutting  
16 against Plaintiffs' short rest break theory. Therefore, Defendant asserted that a fact-finder would  
17 have to determine for each Class Member whether a break was missed and why, and why a break  
18 was noncompliant or nonexistent, because if it was by the employee's choice, no liability  
19 attaches to Defendant. These defenses are factored into Plaintiffs' analysis in two ways. First,  
20 these issues raise questions regarding whether the meal and rest break claims could be certified,  
21 and Plaintiffs placed a 40% risk at the class certification stage for meal periods and a 50% risk  
22 for rest breaks. Second, these defenses also go toward the merits given the evidentiary question  
23 of proving the number of meal and rest violations. As such, Plaintiffs placed a 30% risk on the  
24 merits for meal breaks, and an additional 50% risk on the merits for rest breaks, setting the risk-  
25 adjusted value for the combined meal and rest break claims at \$1,572,876. (Mankin Decl. ¶ 23).

26 Finally, Plaintiffs alleged claims for waiting time penalties and wage statement  
27 violations, including issuing wage payments through an out of state banking institution. But  
28 these claims were almost entirely derivative of the claims above, meaning that they only had

1 merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum values  
2 for these claims were as follows: (1) \$1,362,850 for waiting time penalties [329 former  
3 employees x \$17.26 per hour x 8.0 hours per day x 30 days], and (2) \$1,589,000 for wage  
4 statement violations [15,990 wage statements at the \$50/\$100 formula under § 226(e)]. (Mankin  
5 Decl. ¶ 24).

6 But Defendant raised a variety of defenses to these derivative claims that impacted the  
7 valuation. Namely, as to the wage statement violations, Defendant argued that its wage  
8 statements did not violate Labor Code §§ 226, 212, and 213, and even if there was a “technical”  
9 violation, that Plaintiffs would be unable to prove the required “knowing and intentional” and  
10 “injury” elements. Based on these facts and defenses, Plaintiffs placed a nominal 40% risk at  
11 class certification (mirroring the claims on which the wage statement claim was based) and  
12 estimated another 30% risk the merits, leading to a risk-adjusted value of \$667,380 for the wage  
13 statement claims. (Mankin Decl. ¶ 25).

14 Then, as to the waiting time penalty claim, Plaintiffs’ valuation had to account for the  
15 fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the  
16 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would  
17 be no waiting time penalties owed, so the same risks for those claims applied to this claim.  
18 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on  
19 the merits, Plaintiffs would have to prove that the violations (if any existed) were “willful” under  
20 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding  
21 of a “willful” violation since they had compliant written policies and any deviations therefrom  
22 were inadvertent and unintentional. As a result of this analysis, Plaintiffs’ counsel applied a 30%  
23 risk at class certification and a 30% risk on the merits, leading to a risk-adjusted value of  
24 \$667,797. (Mankin Decl. ¶ 26).

25 In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate  
26 the risk-adjusted class recovery as follows:

27 ///

28 ///

|   |                                                  |           |                  |
|---|--------------------------------------------------|-----------|------------------|
| • | Unpaid Wage Claims                               | \$        | 565,812          |
| • | Meal and Rest Break Claims                       | \$        | 1,572,876        |
| • | Wage Statement Claims                            | \$        | 667,380          |
| • | Waiting Time Penalty Claims                      | \$        | <u>667,797</u>   |
| • | <b>Total Risk Adjusted Penalties and Damages</b> | <b>\$</b> | <b>3,473,864</b> |

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 35.98% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the low seven figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

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

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

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

1 uncertainties of class certification and litigation.

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

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

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

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

25 The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Settlement  
26 Class Members with all due process protections required by the U.S. Constitution. Moreover,  
27 the contents of the Class Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes,  
28 without limitation (1) a detailed explanation of the case, including the basic contentions or

1 denials of the parties; (2) a statement that the court will exclude the member from the class if the  
2 member so requests by a specified date; (3) a procedure for the member to follow in requesting  
3 exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind  
4 all members who do not request exclusion; and (5) a statement that any member who does not  
5 request exclusion may, if the member so desires, enter an appearance through counsel. The 30-  
6 day deadline to opt-out or object is also reasonable, as it provides Class Members sufficient time  
7 to do so and, if they so choose, to seek independent legal advice in the interim. If a Class  
8 Member does not opt-out, he or she will automatically be sent a settlement check.

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

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

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

19 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement  
20 of up to \$25,000 in litigation costs, along with \$416,666.67 in attorneys’ fees (one-third of the  
21 Settlement Amount). See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480  
22 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that  
23 when class action litigation establishes a monetary fund for the benefit of the class members,  
24 the trial court may determine the amount of a reasonable fee by choosing an appropriate  
25 percentage of the fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL  
26 3155645 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3  
27 was “well within the range of percentages which courts have upheld as reasonable in other class  
28 action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL

2196104, at \*8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at \*4 (awarding fees of 1/3 of common fund, noting: “[f]ee awards in class actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at \*8 (approving fees of 1/3 of common fund).

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

**I. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE**

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

The requested service award falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at \*2 (approving \$20,000 enhancement award in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at \*28 (finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D.

Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at \*52 (finding “requested payment of \$25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at \*18 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement).

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

Subject to the Court’s approval, the parties stipulated to Phoenix serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$10,000. (Mankin Decl. ¶ 39; Exhibit 3 to Mankin Decl. [Phoenix’s bid]).

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

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court’s approval, the Parties propose that the Court schedule a hearing for final approval approximately 120 days after the Preliminary Approval Date, as follows:

|                                                                                   |                                                                                                                                                   |
|-----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| April 3, 2023                                                                     | Preliminary Approval (PA) hearing                                                                                                                 |
| April 27, 2023<br>(24 days after PA)                                              | Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.                             |
| May 29, 2023 (30 days<br>after mailing Class Notice)                              | Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.                                          |
| 16 court days before Final<br>Approval hearing                                    | Deadline for Plaintiffs to file and serve Motion for Final Approval and application for award of attorneys’ fees, costs and service payments.     |
| 9 court days before Final<br>Approval hearing                                     | Deadline for filing of any written opposition to Plaintiffs’ Motion for Final Approval, or filing any response to an objection to the settlement. |
| 5 court days before final<br>approval hearing                                     | Deadline for filing of any written reply to opposition Motion for Final Approval                                                                  |
| TBD (Approximately<br>August 1, 2023 - 120 days<br>after Preliminary<br>Approval) | Final Approval Hearing.                                                                                                                           |

1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant the  
3 motion for preliminary approval of the settlement.  
4

5 Dated: March 9, 2023

LAUBY, MANKIN & LAUBY LLP

6  
7 BY:



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

**PROOF OF SERVICE**  
**(Pursuant to CCP §§ 1013(a)(1) and 2015.5)**

STATE OF CALIFORNIA     )  
                                          ) ss.  
COUNTY OF RIVERSIDE     )

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

On March 9, 2023, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

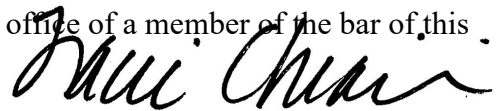
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address [tracie@lmlfirm.com](mailto:tracie@lmlfirm.com) to the persons at the electronic notification 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 March 9, 2023, Riverside, California.

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



Tracie Chiarito, Declarant

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