

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY, LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Mehrdad Bokhour, Esq. (Cal. Bar No. 285256)
mehrdad@bokhourlaw.com
BOKHOUR LAW GROUP, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493 | Fax: (310) 675-0861

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

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

SCOTT KLIMEK, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KINGSPAN INSULATED PANELS,
INC., a Florida Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CV-21-004201
*[Assigned to Hon. Judge John D. Freeland, Dept
23, for all purposes]*

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

Hearing

Date: January 10, 2023
Time: 8:30 a.m.
Dept.: 23

Complaint filed: August 5, 2021

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 10, 2023, at 8:30 a.m. or as soon thereafter as
3 the matter may be heard by the Honorable John D. Freeland in Department 23 of the Stanislaus
4 County Superior Court, located at 801 10th Street, 4th Floor, Modesto, CA 95354, Plaintiff Scott
5 Klimek, individually and on behalf of all others similarly situated, will and hereby does move the
6 Court for entry of an Order preliminarily approving the Parties' class action settlement,
7 including:

- 8 1. Certifying the class for purposes of settlement only;
- 9 2. Preliminarily appointing Plaintiff as class representative for settlement purposes only;
- 10 3. Appointing Plaintiff's 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 Plaintiff's counsel (Brian Mankin, Peter Carlson, and Mehrdad
19 Bokhour) in support thereof; the Class Action and PAGA Settlement Agreement (the "Settlement
20 Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other
21 records, pleadings, and papers filed in this action; and upon such other evidence or argument as
22 may be presented to the Court at the hearing of this motion.

23
24 Dated: December 15, 2022

LAUBY, MANKIN & LAUBY LLP

25
26 BY:


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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
A.	THE SETTLEMENT CLASS	2
B.	PROCEDURAL HISTORY	2
C.	SUMMARY OF THE CLAIMS AND DEFENSES	3
III.	SUMMARY OF THE PROPOSED SETTLEMENT	5
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	5
B.	NOTICE PROCEDURES	6
C.	EXCLUSION AND OBJECTION PROCEDURES	7
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	7
E.	TIMING OF SETTLEMENT DISBURSEMENTS	8
F.	TAX TREATMENT	8
G.	PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS	9
H.	AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS	9
IV.	PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	10
A.	ASCERTAINABILITY AND NUMEROSITY	10
B.	WELL-DEFINED COMMUNITY OF INTEREST	11
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	12
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT	12
B.	THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS	14
C.	THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	14
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS	14
E.	PLAINTIFF'S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION	19
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES	19
G.	THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS	21
H.	THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR	21
I.	THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE	22
VI.	THE COURT SHOULD APPOINT CPT GROUP AS SETTLEMENT ADMINISTRATOR	23
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING	23
VIII.	CONCLUSION	24

TABLE OF AUTHORITIES

Cases

<i>Amchem Prods., Inc. v. Windsor</i> (1997) 521 U.S. 591	10
<i>Archibald v. Cinerama Hotels</i> , (1976) 15 Cal.3d 853	20
<i>Arenas v. El Torito Rests., Inc.</i> (2010) 183 Cal.App.4th 723	11
<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4th 540	11
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. 2011) 2011 WL 2648879.....	22
<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4th 1374	12
<i>Cho v. Seagate Tech. Holdings, Inc.</i> (2009) 177 Cal.App.4th 734.....	13
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	10, 13, 14
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	19
<i>Glass v. UBS Fin. Servs.</i> (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476	22
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	14, 19
<i>Laffitte v. Robert Half Int’l Inc.</i> (2016) 1 Cal.5th. 480	21
<i>Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> (9th Cir. 2001) 244 F.3d 1152	12
<i>Louie v. Kaiser Found. Health Plan, Inc.</i> (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314.....	22
<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576 ..	21
<i>Medraza v. Honda of N. Hollywood</i> (2008) 166 Cal.App.4th 89	11
<i>Officers for Justice v. Civil Service Com.</i> (9th Cir. 1982) 688 F.2d 615	10, 12
<i>Reyes v. San Diego County Board of Supervisors</i> (1987) 196 Cal.App.3d 1263	10
<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841	21
<i>Ross v. US Bank National Association</i> (N.D. Cal. 2010) 2010 WL 3833922	22
<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal. June 1, 2010) 2010 WL 2196104	21
<i>Stuart v. RadioShack Corp.</i> (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645.....	21
<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 4150.....	22
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	12, 13, 14
<i>West v. Circle K Stores, Inc.</i> (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558.....	22

Statutes

Code of Civil Procedure § 382.....	2, 9
Labor Code § 2699(i).....	5

Rules

California Rules of Court, Rule 3.769	11
---	----

Treatises

Herbert B. Newberg & Alba Conte, <i>Newberg on Class Actions</i> (“ <i>Newberg</i> ”) § 3:13 (4th ed. 2002)	10, 12
<i>Manual For Complex Litigation</i> (Third) § 30.41 (1995).....	12

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Scott Klimek seeks preliminary approval of a \$876,036 wage-and-hour class
4 action settlement on behalf of approximately 1,800 putative class members who worked at a
5 facility of Defendant Kingspan Insulated Panels, Inc. in California at any time during the period
6 of August 5, 2017, through October 1, 2022 (the “Class Period”).

7 Under the terms of the Settlement Agreement,¹ Defendant will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorney’s fees not to exceed \$292,012 (1/3 of
9 the Gross Settlement Amount), litigation expenses not to exceed \$20,000, Settlement
10 Administrator Costs of \$18,250, PAGA penalties of \$50,000 (with 75% to the LWDA and 25%
11 to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff
12 Scott Klimek (“Class Representative”). (S.A. ¶ 54 and subparts).

13 After all Court-approved deductions from the Gross Settlement Amount,² it is estimated
14 that \$485,774 will be available to pay the Class Members, as follows:

15

<i>Gross Settlement Amount</i>	\$ 876,036.00
Attorneys’ Fees (1/3)	\$ 292,012.00
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 18,250.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 485,774.00

16
17
18
19

20 The Class Members here fall into two categories: (1) “Direct Hires” of Defendant
21 Kingspan, and (2) “Temporary Employees” that were placed at Kingspan’s facility by a staffing
22 agency. In total, there are an estimated 1,800 Class Members who worked approximately 24,652
23 Work Weeks during the Class Period. And the payment to each Class Member will be calculated
24 on a pro-rata basis according to the Weeks Worked by each Class Member, with Direct Hires
25 and Temporary Employees receiving differently weighted values for each Workweek (discussed
26 in detail in Section III(D) below). In addition, approximately 552 Aggrieved Employees will
27

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

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

1 receive a share of the \$12,500 PAGA Penalties (25% of the \$50,000 PAGA allocation),
2 distributed pro-rata based on Weeks Worked during the PAGA Period.

3 Because the settlement is fair and reasonable and was negotiated at arm's length by
4 experienced counsel and an experienced mediator following a sufficient exchange of information
5 and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully
6 requests that the Court enter an order preliminarily approving the settlement, conditionally
7 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
8 proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing CPT Group as
9 the Settlement Administrator, and scheduling a hearing for final 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 employees who worked at a
14 Kingspan Facility in California at any time during the Class
15 Period, including Direct Hires of Kingspan and Temporary
Employees. (S.A. ¶ 41).³

16 **B. PROCEDURAL HISTORY**

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

21 On August 5, 2021, Plaintiff filed a class and representative PAGA action complaint in
22 the Court alleging claims for: (1) failure to pay minimum wages, (2) failure to pay overtime
23 wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay
24 vested vacation, (6) failure to timely pay final wages, (7) failure to provide accurate itemized
25

26
27 ³ The following defined terms are used in this class definition: "Class Period" means the period of August 5, 2017,
28 through October 1, 2022 [S.A. ¶ 8]; "Direct Hires of Kingspan" means and refers to individuals who were hired
directly by Kingspan and employed to work at the Kingspan Facility [S.A. ¶ 15]; "Temporary Employees" refers to
individuals who were jointly employed by a Staffing Agency and Kingspan, and assigned to work at the Kingspan
Facility at any time during the Class Period and/or PAGA Period [S.A. ¶ 44]

1 wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code
2 §17200 *et seq.*, and (9) related claims under PAGA. (Mankin Decl. ¶ 12).

3 Defendant retained counsel and immediately began to defend the case. Plaintiff then
4 propounded a full set of written discovery, including Special Interrogatories, Form
5 Interrogatories, Requests for Production, and Requests for Admissions. However, before
6 Defendant's responses were due, counsel for the parties met and conferred and discussed staying
7 formal discovery and pursuing informal discovery in connection with mediation. Thereafter, the
8 Parties scheduled mediation with Lynn Frank on July 28, 2022. (Mankin Decl. ¶ 13).

9 In preparation for the mediation, the Parties informally exchanged documents and
10 information that allowed both sides to calculate the potential damages and evaluate potential risk,
11 including policies and procedures pertaining to each claim alleged, and statistics relating to the
12 number of current and former employees, number of shifts, pay periods worked and other things.
13 Defendant also provided its written policies and practices and a robust sampling of payroll and
14 timekeeping records for Class Members covering nearly 15,000 shifts worked. This information
15 enabled both parties to take a deep dive into the claims. Additionally, during this process,
16 Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including
17 matters related to the calculation of damages, trial, and appellate issues and risks. (Mankin Decl.
18 ¶ 14).

19 On July 28, 2022, Plaintiff and Defendant participated in mediation before Lynn Frank,
20 who is one of the most highly experienced and respected class action mediators in California.
21 The matter did not resolve at mediation, but the Parties continued negotiations and Ms. Frank
22 issued a mediator's proposal which was accepted by the Parties on September 2, 2022. (Mankin
23 Decl. ¶ 15). The Parties now seek the Court's preliminary approval of the Settlement.

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

25 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
26 However, Defendant vigorously contested and denied Plaintiff's material allegations on the
27 merits and as to the propriety of a class action or PAGA representative action.

28 ///

1 One of the primary claims in this action was for wage statement violations due to
2 Defendant's alleged failure to state all applicable rates of pay and hours worked on its wage
3 statements. To illustrate, during the relevant period, Defendant paid the Class Members on an
4 hourly basis plus additional compensation in the form of "shift differentials" for undesirable
5 shifts (such as second shift). Kingspan's uniform wage statements labeled these payments as
6 "Shift Premiums," yet allegedly failed to provide information regarding the applicable rate of
7 pay or hours worked. Defendant disputed Plaintiff's claim and specifically disputed that the
8 wage statements were inaccurate or that they otherwise failed to comply with Labor Code section
9 226. Furthermore, Defendant contended that, even if Plaintiff could identify a technical error in
10 some employees' wage statements, the claims still fail for multiple reasons, including without
11 limitation, because Plaintiff cannot establish a "knowing and intentional" violation or that
12 Plaintiff and other employees suffered an "injury" as required by Labor Code section 226(e).
13 Defendant further contended that class treatment was inappropriate and that this matter could not
14 be manageably litigated on a representative basis. (Mankin Decl. ¶ 17).

15 Additionally, Plaintiff alleged that Defendant failed to pay all required minimum and
16 overtime wages because he and other Class Members were required to complete health
17 questionnaires prior to clocking in, which led to unpaid yet compensable time, in violation of the
18 California Labor Code. Defendant raised multiple defenses to this claim, including the
19 arguments that Class Members were directed to complete the health questionnaire *after* clocking
20 in and employees were, in fact, clocked in when doing so; therefore; any off-the-clock claim
21 would fail. Defendant also argues that the process was required by relevant health regulations –
22 and was not put in place by choice of the company itself – which rendered any such time *not*
23 compensable. (Mankin Decl. ¶ 18).

24 Plaintiff also raised the claim that he and *formerly-employed* Class Members were not
25 paid all vested vacation owed at termination. This claim was not based on a "use-it-or-lose-it"
26 policy; instead, it was based on the argument that Defendant was required by Labor Code §
27 227.3 to pay vested vacation at termination at the final rate of pay (including shift differentials)
28 rather than simply at the base rate of pay (not including shift differentials). But Defendant

1 challenged this claim, and argued that companies are not required to offer vacation pay under
2 California law, and that companies are further allowed to set the rates at which they pay
3 employees for such vacation. (Mankin Decl. ¶ 19).

4 Plaintiff also argued that the Class Members were often denied compliant meal and rest
5 breaks due to the nature of the work. However, Defendant argued that it provided and made
6 available meal and rest breaks to all employees, and any employee who did not take a meal or
7 rest break did so entirely of his or her own volition. In this regard, Defendant produced its
8 written policies and practices, which it argued show full compliance with the law. As such,
9 Defendant argued that these claims were without merit because, for each violation, a fact-finder
10 would have to determine why a break was noncompliant/nonexistent, because if it was by the
11 employee's choice, no liability attaches to Defendant. (Mankin Decl. ¶ 20).

12 Plaintiff also alleged various other Class and PAGA claims, such as the failure to timely
13 pay all wages owed upon termination, and other claims related to the alleged violations
14 mentioned above. However, Defendant argued that these other claims, as well as the
15 "derivative" claims, have no merit. (Mankin Decl. ¶ 21).

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

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

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

21 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

22 The \$876,036 Settlement Amount is non-reversionary and will be paid out to Class
23 Members without the need to submit a claim form or take any affirmative action. It includes (1)
24 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$10,000 to
25 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
26 \$18,250; (4) a \$50,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to
27 California Labor Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of
28 all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 54 and subparts).

1 Defendant will separately pay their share of employer payroll tax obligations. (S.A. ¶ 54(a)).

2 **B. NOTICE PROCEDURES**

3 The proposed Class Notice⁴ will be provided to the Class Members showing the
4 estimated amount each Class Member will receive and the credited number of Weeks Worked.

5 Within 30 days after entry by the Court of its Order of Preliminary Approval, Defendant
6 shall provide the Settlement Administrator with a list of Class Members containing names,
7 addresses, Social Security Numbers, and the dates of employment for Direct Hires of Kingspan
8 (the “Class Data of Kingspan”). (S.A. ¶¶ 6, 71).

9 Defendant Kingspan was also obligated, upon full execution of the Settlement
10 Agreement, to make a good faith effort to identify the full name, last known address, social
11 security number, and number of weeks at issue for the Temporary Employees (the “Class Data of
12 Staffing Agencies”; S.A. ¶ 7). This included a requirement for Defendant to contact the relevant
13 staffing agencies and request that they informally provide the necessary information. (S.A. ¶ 72).
14 Defendant is required to inform Plaintiff’s counsel by December 30, 2022, whether it was able to
15 obtain this information informally; if not, Plaintiff’s counsel shall issue subpoenas to the relevant
16 staffing agencies. And, to the extent that Temporary Employees cannot be located through the
17 means described here, the parties may be required to determine a method acceptable to the Court
18 (such as public notice) to provide notice of, and payment to, Temporary Employees as part of the
19 settlement. (S.A. ¶ 72).

20 Within 30 days of receipt of the “Combined Class Data,” the Settlement Administrator
21 shall calculate the Weeks Worked for each Class Member, populate the Class Notice for each,
22 and send each Class Member the Class Notice via first-class, U.S. mail. (S.A. ¶¶ 74, 75).

23 In the event that any Class Notice mailed to a Class Member is returned as having been
24 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
25 search and seek an address correction for such Class Member(s), and a second Class Notice will
26 be sent to any new or different address obtained. (S.A. ¶ 76).

27
28 _____
⁴ The proposed Class Notice is attached to the Mankin Decl. as Exhibit B.

1 **C. EXCLUSION AND OBJECTION PROCEDURES**

2 Class Members who do not timely Opt-Out of the Settlement will be deemed to
3 participate in the Settlement and shall become a Participating Class Member without having to
4 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
5 must submit a written request to the Settlement Administrator no later than 30 days after being
6 notified by mail by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶ 23).
7 Any Opt-Out request not postmarked by the Notice Response Deadline will be invalid. (S.A. ¶
8 78(a)).

9 The Class Notice shall inform Class Members of their right to object to the Settlement.
10 Any Class Member who wishes to object to the Settlement may submit a written objection to the
11 Settlement Administrator no later than the Notice Response Deadline. (S.A. ¶ 78(c)).

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

13 The amount of each Settlement Class Member’s Individual Settlement Payment is tied to
14 the number of Weeks Worked by each Settlement Class Member for Defendant during the Class
15 Period as either: (1) a Direct Hire and/or (2) a Temporary Employee. Individual Class Payments
16 are calculated by (a) dividing the Net Settlement Amount by the total number of Weeks Worked
17 by all Settlement Class Members during the Class Period, and (b) multiplying the result by each
18 Participating Class Member’s Weeks Worked, weighted so that a Workweek for a Direct Hire is
19 worth 2.15 times more than a Workweek for a Temporary Employee. (S.A. ¶ 54(c)).

20 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
21 based on a pro-rata basis. Thus, the \$18,750 PAGA Penalties allocated to the Aggrieved
22 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 54(g)).

23 The Class Notice will inform Class Members of the estimated share and the number of
24 Weeks Worked as a Direct Hire and/or Temporary Employee during the Class Period. Class
25 Members may dispute their Weeks Worked if they feel they worked more in the Class or PAGA
26 Periods than Defendant’s records show by timely submitting evidence to the Settlement
27 Administrator. (S.A. ¶ 77).

28 ///

1 As noted, assuming a class size of 1,800, with 16,652 Workweeks for Direct Hires and
2 8,000 Workweeks for Temporary Employees, with a 2.15-to-1 value for Direct Hires vs.
3 Temporary Employees, each Class Member will receive approximately \$24.00 per Workweek as
4 a Direct Hire and \$11.16 per Workweek as a Temporary Employee. In addition, approximately
5 552 Aggrieved Employees will receive a share of the \$12,500 PAGA Penalties (25% of the total
6 \$50,000 PAGA allocation), calculated pro-rata based on the Weeks Worked during the PAGA
7 Period

8 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

9 Defendant is required to deposit the Settlement Amount, along with the employer share
10 of payroll taxes owed, with the Settlement Administrator, within 30 calendar days after the
11 “Effective Date” and these funds will be used to pay: (1) the class attorney fees and expenses, as
12 approved by the Court; (2) the service award, as approved by the Court; (3) administrative
13 expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual
14 Settlement Payments of participating Class Members. Within 10 days after receiving the funds,
15 the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A.
16 ¶¶ 80, 81).

17 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 82). If a Class
18 Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed
19 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 82).

20 **F. TAX TREATMENT**

21 The Parties agree that twenty percent (20%) will be allocated as wages subject to
22 withholding of all applicable local, state and federal taxes; and eighty percent (80%) will be
23 allocated for interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210,
24 226, etc.) from which no taxes will be withheld. (S.A. ¶ 54(d)). Additionally, the PAGA
25 Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and
26 shall be reported as required on an IRS Form 1099. (S.A. ¶¶ 54(h)).

27 Defendant will separately pay its share of employer payroll taxes on the sum allocated to
28 wages. (S.A. ¶¶ 54(a)).

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

2 In exchange for these payments, the Settlement Agreement at ¶ 34 provides that the
3 Participating Class Members will release the Released Parties of:

4 any and all claims that were or could have been alleged based upon
5 the facts pled in the operative complaint and arising during the Class
6 Period, including without limitation: (a) failure to pay minimum and
7 regular wages, (b) failure to pay overtime and double time wages,
8 (c) failure to provide meal periods, (d) failure to provide rest breaks,
9 (e) failure to pay vested vacation, (f) failure to timely pay wages
10 each period and upon separation of employment, (g) failure to
11 provide accurate itemized wage statements, (h) unfair and unlawful
12 competition, and (i) all other claims for statutory penalties, damages,
13 injunctive relief, declaratory relief, and/or restitution based on the
14 facts or claims alleged in the operative complaint. The time period
15 governing the Released Class Claims shall be the same as the Class
16 Period. As to the Temporary Employees, the Released Class Claims
17 shall only release claims relative to work performed at the Kingspan
18 Facility or otherwise for the benefit of Kingspan.

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

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

20 The Settlement Agreement at ¶ 35 also defines the "PAGA Released Claims" as follows:

21 all claims for civil penalties under the California Labor Code Private
22 Attorneys General Act of 2004, Labor Code § 2698 *et seq.*, that
23 Plaintiff alleged against the Released Parties, on behalf of
24 Aggrieved Employees and State of California, based on the facts
25 stated in the Complaint and in Plaintiff's Notice Letter to the
26 LWDA, including: (a) failure to pay minimum and regular wages,
27 (b) failure to pay overtime and double time wages, (c) failure to
28 provide meal periods, (d) failure to provide rest breaks, (e) failure to
 pay vested vacation, (f) failure to failure to timely pay wages each
 period and upon separation of employment, (g) failure to provide
 accurate itemized wage statements, and (h) all other claims for civil
 penalties recoverable under the California Labor Code Private
 Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* based
 on the facts or claims alleged in the operative complaint. These

claims include, but are not limited to, California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and all related provisions of the California Code of Regulations, and the California Industrial Wage Orders. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the PAGA Released Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶¶ 60, 77).

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

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”). As discussed below, for the purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 382.

A. ASCERTAINABILITY AND NUMEROSITY

In determining whether a class is ascertainable, the court considers “(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement

1 class is ascertainable if the class members can be objectively identified and given notice of the
2 litigation without unreasonable time or expense). Here, according to Defendant's records, there
3 are approximately 1,800 Class Members that are easily identifiable and fall within the defined
4 Class. Thus, Plaintiff's proposed Class meets the ascertainability and numerosity requirements.

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

6 **1. Commonality**

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

13 **2. Typicality**

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

21 **3. Adequacy of Representation**

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

28 ///

Adequacy may be established by the fact that counsel are experienced practitioners. See *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6; Bokhour Decl. ¶¶ 15-20; Carlson Decl. ¶¶ 3-8).

4. Superiority

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

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

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

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

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

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

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

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

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

21 At the preliminary approval stage, the Court need only determine that the settlement falls
22 within the "range of possible judicial approval," so that notice to the class and the scheduling of
23 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
24 preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies .
25 . . and [the settlement] appears to fall within the range of possible approval." *Manual For*
26 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A "presumption
27 of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2)
28 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)

1 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
2 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
3 approval because there are no grounds to doubt its fairness.

4 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
5 **NEGOTIATIONS**

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

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

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

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

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

26 However, a settlement is not judged against what might have been recovered had a
27 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought
28 to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 250 (“Compromise is inherent and

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

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

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

18 Based upon detailed data obtained through informal discovery and information
19 exchanges, Plaintiff’s counsel estimated the following big-picture data points through the date of
20 mediation: (1) 134 Direct Hires, (2) 16,652 Direct Hire Workweeks, (3) 1,645 Temporary
21 Employees, and (4) 8,000 Temporary Employee Workweeks. (Mankin Decl. ¶ 23).

22 Plaintiff contended that his strongest claim was for wage statement violations, which
23 primarily focused on the “shift premium” violation discussed above. In total, Plaintiff estimated
24 that the *maximum* value of this claim (assuming a violation on 100% of all paystubs) was
25 \$425,000 [using the \$50/100 penalty under § 226(e) for 4,500 allegedly violative wage
26 statements]. However, this theoretical maximum fails to account for the variety of risks and
27 defenses raised by Defendant, namely that the wage statements did not violate Labor Code § 226
28 and, even if there was a “technical” violation, that Plaintiff would be unable to prove the required

1 “knowing and intentional” and “injury” elements. Additionally, Defendant contended that
2 (without admitting liability), any instances of the alleged “Shift Premium” violations were
3 extremely limited in number since: (a) the Direct Hires rarely received such payments, and (b)
4 the Temporary Employees did not receive Shift Premiums. Based on these facts and defenses,
5 Plaintiff placed a nominal 5% risk at the class certification stage and estimated a 90% chance of
6 success on the merits, but only for a smaller subset of the wage statements. As such, Plaintiff
7 placed a risk-adjusted value of \$300,000 on the wage statement claim. (Mankin Decl. ¶ 24).

8 Additionally, Plaintiff alleged that Defendant failed to pay all wages owed to the Class
9 due to the COVID health screening practices. Plaintiff’s counsel estimated that there were
10 approximately 60,000 shifts to which this claim applied (*i.e.*, the COVID era) and, after
11 investigating the alleged frequency of violations, Plaintiff’s counsel estimated that there were
12 5,100 unpaid hours during the Class Period at an applicable rate of pay of \$48.50.⁵ Thus, the
13 maximum potential value for the unpaid wage claims was \$244,800. However, Defendant
14 vehemently opposed these unpaid wage claims by arguing that employees were instructed to
15 clock in before completing the health screenings, employees were clocked in when doing so, and
16 that the health screenings were not implemented by Defendant’s choice or for its benefit and,
17 thus, the time was not compensable even if the employees failed to clock in before completing the
18 questionnaire. Thus, Defendant argued that there was no “off-the-clock” time and, even if there
19 were, it had no actual or constructive notice of the same and would not be liable. As such,
20 Defendant alleged that, due to these defenses, Plaintiff’s claims are the prototypical example of
21 “individualized issues” for which certification would not be proper. Plaintiff placed a 20% risk
22 on these claims at the class certification stage. Moreover, in addition to its other defenses on the
23 merits, Defendant argued that Plaintiff would be unable to meet its evidentiary burden at
24 summary judgment and/or trial because Plaintiff and the Class would be unable to introduce
25 evidence as to the amount of unpaid wages (since the claims are not apparent from the
26 timekeeping records), thus defeating liability. For this reason, Plaintiff’s counsel assigned
27

28

⁵ Since these unpaid hours were alleged to occur *after* 8 hours in a day, this blended rate is the overtime rate plus liquidated damages (for unpaid minimum wages) under Labor Code § 1194.2.

1 another 20% risk on the merits. When factoring in these risks and defenses, Plaintiff calculated
2 the risk-adjusted value of the unpaid wage claims to be \$156,672. (Mankin Decl. ¶ 25).

3 Plaintiff also alleged meal and rest break claims against Defendant. Given the total
4 number of shifts at issue (an estimate of 98,934), and when incorporating violation rates from
5 expert review of the timekeeping records and other evidence, Plaintiff's counsel estimated a 30%
6 violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 29,680 alleged
7 meal violations and 49,467 alleged rest break violations. This established a maximum potential
8 value for these claims of \$1,603,518 (using \$20.26 as the applicable premium rate under §
9 226.7). However, Defendant raised numerous arguments in response to this claim, including that
10 it maintained fully compliant written policies and specifically authorized the Class Members to
11 take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
12 short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for
13 each Class Member whether a break was missed and why, and why a break was noncompliant or
14 nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.
15 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
16 questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
17 placed a 40% risk at the class certification stage. Second, these defenses also go toward the
18 merits given the evidentiary question of proving the number of meal and rest violations. As
19 such, Plaintiff placed a 40% risk on the merits, setting the risk-adjusted value for the meal and
20 rest break claims at \$577,267. (Mankin Decl. ¶ 26).

21 Moreover, Plaintiff alleged that Defendant failed to pay all vested vacation wages due
22 and owing upon separation of employment at the proper rate of pay under Labor Code § 227.3.
23 However, the independent value of this claim was not large (since it was a fractional
24 underpayment per occurrence); instead, the value of this claim was that, if proven, it triggered
25 full waiting time penalties for each employee under Labor Code § 203. (Mankin Decl. ¶ 27).

26 Plaintiff's claim for waiting time penalties was based on the claim that Defendant failed
27 to pay all wages due and owing to its employees due to the unpaid wage claim (COVID health
28 screening), unpaid wage premiums for meal and rest break violations (*see Naranjo v. Spectrum*

1 *Security Services, Inc.* (2022) 13 Cal.5th 93, 117), and the underpaid vested vacation. Plaintiff
2 calculated the maximum waiting time penalties by estimating that each former employee (in the
3 3-year lookback period) was entitled to the full 30-day waiting time penalty. As such, the
4 maximum potential value of this claim was \$4,860,000 [\$162 average daily pay x 30 days x
5 1,000 employees]. But this maximum value failed to account for many risks and defenses. For
6 instance, this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
7 unpaid wage premiums). If those claims failed at certification or on the merits, there would be
8 no waiting time penalties owed, so the same risks for those claims applied to this claim.
9 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
10 the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under
11 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding
12 of a “willful” violation since it had compliant written policies and any deviations therefrom were
13 inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 40% risk
14 at class certification and another 50% risk on the merits, leading to a risk-adjusted value of
15 \$1,458,000. (Mankin Decl. ¶ 28).

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

18	• Wage Statement Claims	\$ 200,000
19	• Unpaid Wage Claims	\$ 156,672
20	• Meal and Rest Break Claims	\$ 577,267
21	• Waiting Time Penalty Claims	\$ 1,458,000
22	• Total Risk Adjusted Penalties and Damages	\$ 2,391,939

23 The reasonableness of the settlement is apparent from the fact that the proposed
24 settlement is 36.6% of the risk-adjusted class damages and penalties. And while the PAGA
25 penalties had a maximum value in the high six figures, this fails to acknowledge that courts have
26 wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular
27 case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
28 confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the

1 underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses
2 mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also
3 argued that it is improper to stack civil penalty claims on top of the underlying statutory claim.
4 For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

5 **E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION**

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

10 Plaintiff’s Counsel are also highly experienced in Class/PAGA litigation, having
11 repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only
12 5% of litigators), having achieved large settlements and verdicts, including one of the largest
13 PAGA awards in California’s history, collecting over \$250 million for its clients, having tried
14 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
15 6; Carlson Decl. ¶¶ 3-8; Bokhour Decl. ¶¶ 15-20). Plaintiff’s counsel, operating at arm’s length,
16 weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable
17 settlement considering the nature of the claims, realistic risk adjusted value, the complexities of
18 the case, state of the law, and uncertainties of class certification and litigation.

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

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

25 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
26 the Class Notice to the last known address of all class members complies with all the
27 requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed
28 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys’ fees,

1 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
2 and how class members may elect to exclude themselves or make an objection; and (4) how class
3 members can obtain additional information. *See* Class Notice (Exhibit B to Mankin Decl.). In
4 addition, it will inform Class Members of their estimated settlement share.

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

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

26 ///

27 ///

28 ///

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

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

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

11 Under the terms of the Settlement Agreement, Class Counsel is requesting \$250,000 in
12 attorneys’ fees, which is equal to one-third of the Settlement Amount. *See, e.g., Laffitte v.*
13 *Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at
14 a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the
15 benefit of the class members, the trial court may determine the amount of a reasonable fee by
16 choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.*
17 (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee award of 1/3 of the total maximum
18 settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total
19 settlement was “well within the range of percentages which courts have upheld as reasonable in
20 other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010
21 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v.*
22 *Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding
23 fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class
24 actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System,*
25 *Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at *8 (approving fees of 1/3 of common
26 fund).

27 Additionally, Plaintiff is seeking up to \$20,000 in litigation costs, pursuant to the
28 Settlement Agreement.

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

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

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

14 The requested service award falls within the range of incentive payments typically
15 awarded to Class Representatives in similar class actions. *See, e.g., Bond v. Ferguson*
16 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service award to each
17 of the two class representatives in a trucker meal break class action; *Ross v. US Bank National*
18 *Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award
19 to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast*
20 *Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the
21 amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v.*
22 *Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 ("the court finds
23 Plaintiff's enhancement payments of \$ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs.*
24 (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of \$25,000 to
25 each of the named Plaintiff is appropriate" in wage and hour settlement); *Louie v. Kaiser Found.*
26 *Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving "\$25,000
27 incentive award for each Class Representative" in wage an hour settlement).

28 ///

VI. THE COURT SHOULD APPOINT CPT GROUP AS SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties stipulated to CPT Group serving as the Settlement Administrator. CPT Group is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$18,250. (Mankin Decl. ¶ 41).

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 150 days after the Preliminary Approval Date, as follows:

January 10, 2023	Preliminary Approval (PA) hearing
February 9, 2023 <i>(30 days after PA)</i>	Deadline for Defendant to Provide the Class Data of Kingspan to Settlement Administrator
March 13, 2023 <i>(30 days after Settlement Administrator Receives Combined Class Data)</i>	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
April 12, 2023 <i>(30 days after mailing Class Notice)</i>	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately June 9, 2023 - 150 days after Preliminary Approval granted)	Final Approval Hearing.

1 **VIII. CONCLUSION**

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

4 Dated: December 15, 2022

LAUBY, MANKIN & LAUBY LLP

5
6 BY: 
7 Brian J. Mankin, Esq.
8 Attorneys for Plaintiff and the Proposed
9 Class
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 December 15, 2022, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S 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 to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 15, 2022, Riverside, California.

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


Tracie Chiarito, Declarant

SERVICE LIST

Andrew E. Saxon, Esq.
Kevin L. Quan, Esq.
FISHER & PHILLIPS LLP
One Embarcadero Center, #2050
San Francisco, CA 94111-3712
415-490-9000
415-490-9001-fax
asaxon@fisherphillips.com
kquan@fisherphillips.com
Attorneys for KINGSPAN INSULATED PANELS