

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

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

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

ANDREW ZUNIGA AND VIVIAN
VELASQUEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

DESERT AIDS PROJECT, a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: RIC2003219
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

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

Hearing

Date: March 30, 2023

Time: 8:30 a.m.

Dept. 1

Reservation #: 000269220787

Complaint filed: August 18, 2020

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

2 PLEASE TAKE NOTICE that on March 30, 2023, at 8:30 a.m., or as soon thereafter as
3 this matter may be heard by the Honorable Craig Riemer in Department 1 of the Riverside
4 County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiffs Andrew
5 Zuniga and Vivian Velasquez will move pursuant to California Rules of Court 3.769(d) and (e),
6 for an order: (1) granting preliminary certification to the settlement class for settlement purposes
7 only; (2) granting preliminary approval of the proposed settlement including appointment of
8 Plaintiffs' counsel as Class Counsel; (3) authorizing the parties to provide the proposed notice to
9 the class; and (4) setting a final approval or fairness hearing to be heard approximately 120 days
10 after the date preliminary approval is granted as the Court's calendar permits. A proposed order
11 to this effect is filed concurrently herewith.

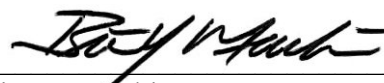
12 This motion is unopposed by Defendant Desert Aids Project. The parties seek the
13 Court's preliminary approval of the settlement in order to begin the process towards obtaining
14 final approval of the proposed settlement through a final fairness hearing set approximately 120
15 days after preliminary approval. At that time, the Court will again have the opportunity to fully
16 consider the proposed settlement before entering a final order.

17 This Motion is based upon this Notice, the attached Memorandum of Points and
18 Authorities, the Class Action Settlement Agreement and proposed Order submitted herewith, the
19 declarations of Plaintiffs' counsel (Brian Mankin and Misty Lauby), Class Representatives
20 (Andrew Zuniga and Vivian Velasquez); Defense counsel (Keith Smith), Defendant's
21 Representative (Sheri Saenz), and the Settlement Administrator (Sean Hartranft of ILYM
22 Group), all other papers on file in this action, and on such other materials or arguments of
23 counsel that the Court may receive at or before the hearing on this Motion.

24 Dated: March 8, 2023

LAUBY, MANKIN & LAUBY LLP

25
26 BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Andrew Zuniga and Vivian Velasquez, individually and on behalf of all others
4 similarly situated, seeks preliminary approval of a \$400,000 wage-and-hour class action and
5 representative PAGA settlement (the “Settlement Amount”) between the putative class members
6 and Defendant Desert Aids Project (“Defendant”).

7 Through this settlement, Plaintiffs seek to represent the Settlement Class comprised of
8 approximately all current and former non-exempt (hourly paid) employees employed by
9 Defendant in California at any time during the Class Period of August 18, 2016, through June 8,
10 2022.

11 Under the terms of the Class Action Settlement Agreement and Release of Claims
12 (“Settlement Agreement” or “S.A.”), Defendant will not oppose Plaintiffs’ Counsel’s application
13 for a reasonable award of attorney’s fees not to exceed one-third of the Settlement Amount
14 (\$133,333.33), litigation expenses not to exceed \$15,000, Settlement Administrator costs of
15 \$8,895, PAGA penalties of \$40,000 (with 75% to the LWDA and 25% to the “Aggrieved
16 Employees”), and a Service Payment not to exceed \$10,000 for each Plaintiff.

17 After all these deductions from the Settlement Amount, it is estimated that \$182,771.67
18 will be available to pay the Individual Settlement Amounts of the Class Members who do not
19 opt-out of the settlement, as follows:

20

	Total Amount
<i>Gross Settlement Amount</i>	\$ 400,000.00
Attorneys’ Fees (1/3)	\$ 133,333.33
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 8,895
PAGA Penalties	\$ 40,000.00
Class Representative Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 182,771.67

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26 The settlement is non-reversionary, and Class Members will not be required to submit
27 claim forms to receive payment, but each Class Member will receive the Class Notice containing
28 information about his/her share, the opportunity to dispute the number of weeks worked by the

1 Class Member, and the opportunity to opt-out or object to the settlement. All Class Members
2 who do not affirmatively opt-out will receive a settlement check upon the Court granting final
3 approval.

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

12 **II. BACKGROUND**

13 **A. The Class**

14 The Settlement Class is defined above and in the Settlement Agreement at ¶ 37. (See
15 Exhibit A to the Declaration of Brian J. Mankin ("Mankin Decl.")). There are an estimated 426
16 individuals that fall within the defined Class (the "Class Members").

17 **B. Procedural History**

18 On August 14, 2020, Plaintiff submitted a letter to the California Labor Workforce
19 Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act
20 of 2004 (the "PAGA") and concurrently sent a letter to Defendant requesting the production of
21 her personnel and timekeeping records in order to further evaluate the wage and hour claims.
22 (Mankin Decl., ¶ 13).

23 Then, on August 18, 2020, Plaintiff filed a putative class action complaint in the Court on
24 behalf of the Class Members. The LWDA declined to assert jurisdiction over the PAGA claims,
25 so on January 31, 2021, the operative first amended complaint was filed that added Vivian
26 Velasquez as a named Plaintiff, and alleged Class Claims and representative PAGA Claims,
27 including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) unlawful
28 deduction of wages, (4) failure to provide meal periods, (5) failure to provide rest breaks, (6)

1 failure to pay vested vacation wages upon separation of employment, (7) failure to timely pay
2 final wages, (8) failure to provide accurate itemized wage statements, (9) unfair and unlawful
3 competition, and (10) related claims under PAGA. (Mankin Decl., ¶ 14).

4 Defendant retained counsel and fully denied the allegations. In the Parties' initial status
5 conference statement, Defendant disagreed with Plaintiffs' version of the facts and claims and
6 further noted "Defendant generally denies the allegations in Plaintiff's Complaint, denies any
7 underpayment to employees due to a rounding up policy, and disputes that this matter is
8 appropriate for class action treatment on a variety of grounds." The Court lifted the stay on
9 discovery, and thereafter, the Parties engaged in a robust formal discovery process, including
10 multiple sets of interrogatories and document requests, and Plaintiff served notices of taking
11 Defendant's PMK deposition and began the process toward obtaining the class list. While
12 debating the merits of the claims and defenses, the Parties ultimately agreed to attend mediation
13 in order to avoid significant costs and fees associated with a class certification hearing. (Mankin
14 Decl., ¶ 15).

15 In preparation for mediation, the Parties agreed to an informal discovery process where
16 information was exchanged relating to the applicable policies and procedures, payroll and time
17 keeping records, size of the class, and potential value of the case. The exchange included
18 Defendant's policies and procedures relating to the claims at issues, a sampling of timekeeping
19 and payroll records, information relating to the size of the class. The robust exchange allowed
20 Plaintiffs and their expert to take a deep dive into the claims by evaluating nearly 5,000
21 individual shifts and over 1,000 work weeks. As such, Plaintiffs and their counsel were
22 essentially given a roadmap to analyze, research, and investigate the potential claims of all
23 similarly situated employees. (Mankin Decl., ¶ 16).

24 The mediation took place on April 8, 2022 with the Hon. Jonathan Cannon (ret.), a well-
25 respected mediator who previously served for many years on the Orange County Civil Complex
26 Panel. At the conclusion of mediation, Judge Cannon issued a mediator's proposal that called
27 for a class-wide settlement for \$400,000. The proposal required Board approval from Defendant,
28 which took several months to secure. Thereafter, the Parties memorialized the terms of the

1 settlement in a long-form Settlement Agreement. (Mankin Decl., ¶ 17).

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

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

6 First, one of the primary claims in the Action is that Plaintiffs and Class Members
7 received inaccurate and incomplete wage statements that failed to accurately state all necessary
8 items required under Labor Code § 226. Specifically, Defendant had a practice of calculating
9 employees' time and rates of pay to the 5th decimal point. Despite this, Defendant failed to show
10 the hours and rates to the 5th decimal point on the paystubs making it impossible for employees
11 to calculate whether they were being paid correctly from their paystubs. Moreover, Defendant
12 often failed to report the overtime rate on the paystubs. However, Defendant raised certain
13 defenses to these claims including that Plaintiff would be unable to prove the required "knowing
14 and intentional" and "injury" elements under § 226(e) and, thus, no liability would attach.
15 (Mankin Decl., ¶ 19).

16 Second, Plaintiffs alleged that they and the Class members were often denied compliant
17 meal periods due to the nature of the work. However, Defendant argued that it provided and
18 made available meal to all employees, and any employee who did not take a meal did so entirely
19 of his or her own volition. In this regard, Defendant produced its written policies and practices,
20 which it argued show compliance with the law. As such, Defendant argued that these claims
21 were without merit because, for each violation, a fact-finder would have to determine why a
22 break was noncompliant/nonexistent, because if it was by the employee's choice, no liability
23 attaches to the Defendant. Plaintiffs also claimed that Defendant failed to provide all required
24 rest breaks pursuant to Labor Code § 226.7 due to their overwhelming workload and written
25 policies forbidding Plaintiffs and Class Members from leaving the premises for rest breaks.
26 (Mankin Decl., ¶ 20).

27 Third, Plaintiff also alleged that he and the Class Members were subjected to minimum
28 wage violations due to a variety of allegedly illegal practices. For instance, Plaintiff alleged that

1 Defendants regularly required employees to continue working after clocking out for lunch and to
2 perform certain duties prior to clocking in at the beginning of each shift or after clocking out at
3 the end of a shift. While Plaintiffs' complaint alleges an illegal rounding policy, their consultant
4 was able to determine upon analysis of the records produced in advance of mediation that the
5 rounding policy was neutral. (Mankin Decl., ¶ 21).

6 Fourth, Plaintiffs alleged that the unpaid wage claims trigger various penalties, including
7 30-days of pay as a waiting time penalty for each former employee under Labor Code § 203.
8 (Mankin Decl., ¶ 22).

9 Finally, Plaintiffs alleged that Defendant failed to comply with Labor Code § 227.3 by
10 paying out accrued vested vacation as less than the "final rate of pay." (Mankin Decl., ¶ 23).

11 Plaintiffs also alleged various PAGA claims arising out of the claimed violations
12 mentioned above. However, Defendant argued that these types of "derivative" claims have no
13 merit.

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

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

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

18 **A. Settlement Consideration and Allocation**

19 The \$400,000 Settlement Amount is non-reversionary and will be paid out to Class
20 Members without the need to submit a claim form or take any affirmative action. It includes (1)
21 Plaintiffs' attorneys' fees and costs, as approved by the Court; (2) service awards of \$10,000 to
22 each Plaintiff, subject to approval by the Court; (3) settlement administrator expenses of \$8,895;
23 (4) a \$40,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
24 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
25 aggregate Individual Settlement Payments for Participating Class Members.

26 After all Court-approved deductions from the Settlement Amount, it is estimated that that
27 \$182,771.67 will be available to pay the Individual Settlement Amounts of the Class Members.
28 The allocation per Class Member is discussed below in Section III(C).

1 **B. Notice Procedures**

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

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

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

20 The terms of the Notice also comply with this Court’s CMO by informing each Class
21 Member of his/her estimated recovery, the number of Weeks Works that each Class Members is
22 credited with receiving, and the applicable average payments, minimum, and high payments.

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

26 The Court’s CMO also inquires as to the likely age, education, experience and English-
27 language facility of the class members. According to Defendant, the typical Class Member is
28 above the age of 18 and speaks, understands, and writes in English. (See Declaration of

Defendant's Representative, Sheri Saenz). As such, the Class Notice will be only provided in English.

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

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

Here, within 14 days after Preliminary Approval Order is entered, Defendant shall provide the Settlement Administrator with a list of Class Members containing names, addresses; telephone numbers; Social Security Numbers; and the total number of Weeks Worked worked during the Class Period and PAGA Period by each Class Member (the "Class Data"). (S.A. ¶¶ 5, 61). Within 10 days of receipt of the Class Data, the Settlement Administrator shall populate the Class Notice for each, and send each Class Member the Class Notice and related forms via first-class, United States mail. (S.A. ¶ 62).

In the event that any Notice Packet mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Notice Packet will be sent to any new or different address obtained. (S.A. ¶ 63).

3. No Claims Process

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

1 **4. *Exclusions and Objections***

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. In order to Opt-Out of the Settlement, the Class
5 Member must submit return the Request for Exclusion Form to the Settlement Administrator no
6 later than 45 days after being mailed by the Settlement Administrator (“Notice Response
7 Deadline”). (S.A. ¶¶ 19, 67). However, Aggrieved Employees cannot opt out of the PAGA
8 Claims, and thus, will received their share of PAGA Penalties regardless of whether they opt out
9 of the Class Claims.

10 The Class Notice shall inform the Class Members of their right to object to the
11 Settlement. Any Class Member who wishes to object to the Settlement must complete and return
12 the Objection Form to the Settlement Administrator no later than the Notice Response Deadline.
13 (S.A. ¶ 67(c)).

14 **C. Settlement Allocation Formula for Settlement Shares**

15 Individual Settlement Payments will be calculated and apportioned from the Net
16 Settlement Amount based on the number of Weeks Worked by each Settlement Class Member
17 during the Class Period. (S.A. ¶¶ 47(c)). Likewise, each “Aggrieved Employee” will receive a
18 share of the \$10,000 in PAGA Penalties allocated to the Aggrieved Employees on a pro-rata
19 basis according to the number of pay periods worked during the PAGA Period. (S.A. ¶¶ 47(h)).
20 Aggrieved Employees may not opt-out of the PAGA Penalties. (S.A. ¶¶ 67(a)).

21 The Class Notice will inform Class Members of the estimated share and the number of
22 Weeks Worked during the Class Period and PAGA Period. Class Members may dispute their
23 weeks worked if they feel they worked more than Defendant’s records show by timely
24 submitting the Dispute Form and evidence to the Settlement Administrator. (S.A. ¶ 65).

25 Defendant advises that 426 Class Members collectively worked 61,042 workweeks
26 through the end of the Class Period. Based on this information, it is estimated that: (1) the
27 average payment will be \$429.04, (2) the value per work week will be \$2.99, (3) the high
28 payment will be approximately \$905.97 (based on an estimated 303 weeks in the Class Period),

1 and (4) the low payment will be approximately \$12 (based on an estimated 4 weeks worked).¹

2 Moreover, it is estimated that there will be approximately 315 Aggrieved Employees who
3 will share in the \$10,000 PAGA award on a pro rata basis.

4 **D. Timing of Settlement Disbursements**

5 Defendant shall deposit the Settlement Amount with the Settlement Administrator within
6 30 days after the Effective Date to pay: (1) the class attorney fees and expenses, as approved by
7 the Court; (2) the service awards, as approved by the Court; (3) administrative costs, as approved
8 by the Court; (4) the PAGA award; and (5) the aggregate of all Individual Settlement Amounts
9 of participating Class Members. Within 10 days thereafter, the Settlement Administrator shall
10 issue payments to cover all court-approved payments. (S.A. ¶¶ 68-69).

11 **E. Tax Treatment**

12 The Individual Settlement Payments to Participating Class Members will be allocated as
13 15 percent to wages subject to standard withholdings² and 85 percent for interest and statutory
14 penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes
15 will be withheld. The Settlement Administrator will issue to each Participating Class Member an
16 Internal Revenue Service Form W-2 and comparable state forms with respect to the wage
17 allocation and a Form 1099 with respect to the penalties and interest allocations. (S.A. ¶ 47(d)).
18 Payments to Aggrieved Employees will be treated as civil penalties and paid on a Form 1099.

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

20 In exchange for the payments above, the Settlement Class Members will release the
21 claims and parties as required by CMO ¶ H(3)(e). Specifically, the Settlement Agreement at ¶
22 29 defines the "Released Claims" as follows:

23 "Released Class Claims" or "Class Claims" by the Participating Class
24 Members upon Final Approval of the Settlement will include all claims
25 stated in the operative Complaint and those based solely upon the facts in
26 the Complaint, including: (a) failure to pay minimum wages, (b) failure to
pay overtime wages, (c) unlawful deduction of wages, (d) failure to
provide meal periods, (e) failure to provide rest breaks, (f) failure to pay

27 ¹ See Mankin Decl. ¶ 46 (The final/actual figures will be calculated by the Settlement Administrator and inserted
into the Class Notice).

28 ² Two of the primary claims were for direct wage statement violations under Labor Code § 226 and waiting time
penalties under Labor Code § 203. These claims make up the bulk of the damages, which is why 15% is allocated to
wages.

1 vested vacation upon separation of employment, (g) failure to failure to
2 timely pay wages upon separation of employment, (h) failure to provide
3 accurate itemized wage statements, (i) unfair and unlawful competition,
4 and (j) all other claims for statutory penalties based on the facts or claims
5 alleged in the operative complaint.

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

8 It is also understood and agreed that the Settlement Agreement will not release any
9 person, party or entity from claims, if any, by Class Members for workers compensation,
10 unemployment, or disability benefits of any nature, nor does it release any claims, actions, or
11 causes of action which may be possessed by Settlement Class Members under state or federal
12 discrimination statutes including, without limitation, the Cal. Fair Employment and Housing Act,
13 the Cal. Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code §
14 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §
15 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the
16 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and
17 all of their implementing regulations and interpretive guidelines.

18 The Settlement Agreement at ¶ 30 also defines the “Released Parties” as “Defendant, and
19 all of its past and present officers, directors, and employees, agents, insurers and reinsurers,
20 vendors, independent contractors, payroll providers, pay stub providers, affiliates, predecessor
21 and successor companies.” This definition includes additional entities than as provided in the
22 CMO, and Defendant explains the need for these additional entities in the declaration of Keith
23 Smith at ¶ 3.

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

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

27 The Settlement Agreement at ¶ 23 also defines the release of PAGA claims in as required
28 by the CMO ¶ H(3)(e)(iv):

1 “PAGA Released Claims” means any and all PAGA claims that Plaintiffs
2 alleged against the Released Parties, on behalf of themselves and the State of
3 California, based on the facts stated in the operative Complaint in the Action
4 and in the LWDA notice letter(s), including all PAGA claims seeking civil
5 penalties that premised upon (a) failure to pay minimum wages, (b) failure to
6 pay overtime wages, (c) unlawful deduction of wages, (d) failure to provide
7 meal periods, (e) failure to provide rest breaks, (f) failure to pay vested
8 vacation upon separation of employment, (g) failure to failure to timely pay
9 wages each pay period and upon separation of employment, and (h) failure to
10 provide accurate itemized wage statements. The time period governing the
11 PAGA Released Claims shall be any time during the PAGA Period.

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

14 Upon entry of the Final Approval Order and Defendant’s funding of the
15 Settlement Amount, Plaintiffs – in their individual capacity and on behalf of
16 the State of California and LWDA – shall completely release and discharge
17 the Released Parties from the PAGA Released Claims for the PAGA Period.

18 Finally, even if an Aggrieved Employee requests exclusion from the Class settlement,
19 that individual will still be subject to the PAGA Released Claims to the fullest extent permitted
20 by law and will receive a pro-rata share of PAGA Penalties. (S.A. at ¶ 67(a)).

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

22 California Rule of Court 3.769(d) provides that the Court may make an order approving
23 certification of a provisional settlement class at the preliminary approval stage. It is well-
24 established that trial courts should use a “lesser standard of scrutiny” for determining the
25 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
26 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
27 a settlement class, so the case management issues inherent in determining if the class should be
28 certified need not be confronted; and the trial court’s fairness review of the settlement protects
the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*
Service Com. (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification
determination and the merits of the case is further attenuated within the context of the settlement
evaluation process . . . [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., supra*, 521
U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court

1 need not inquire whether the case, if tried, would present intractable management problems . . .
2 for the proposal is that there be no trial.”).

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

5 **A. Numerosity and Ascertainability**

6 Numerosity is met if a proposed class is so large that joinder of all members would be
7 impracticable. See Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
8 the class members can be objectively identified and given notice of the litigation without
9 unreasonable time or expense. See *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
10 89, 101. Here, according to Defendant’s records, there are approximately 400 Class Members.
11 This figure satisfies the numerosity requirement.

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

13 *1. Commonality*

14 To justify certification, the class proponent must show that questions of law or fact
15 common to the class predominate over the questions affecting the individual members. See
16 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
17 *v. Superior Court* (2001) 24 Cal.4th 906, 913). Plaintiffs contend that the Class was subject to
18 common policies and practices relating to the payment of wages, the provision of meal and rest
19 breaks, among other things. While the Parties dispute whether a class would be appropriate if the
20 litigation were to continue, they agree to class certification for the purposes of this settlement.

21 *2. Typicality*

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

28 ///

1 3. Adequacy of Representation

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

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

13 4. Superiority

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

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

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

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

28 ///

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

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

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

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

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

26 At the preliminary approval stage, the Court need only determine that the settlement falls
27 within the "range of possible judicial approval," so that notice to the class and the scheduling of
28 the fairness hearing are worthwhile. See *Newberg* § 11:25. Indeed, the Court should grant

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

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

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

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

20 Plaintiffs and their counsel thoroughly investigated and evaluated the factual and legal
21 strengths and weaknesses of this case before reaching the settlement. As described above, the
22 settlement was reached after extensive investigation and research, thorough calculations and risk
23 evaluation, and a substantial pre-mediation exchange of information, data, and documents.
24 (Mankin Decl., ¶¶ 12-24).

25 **D. Plaintiffs’ Counsel is Experienced in Similar Wage-and-Hour Litigation**

26 The view of the attorneys actively conducting the litigation is entitled to significant
27 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
28 Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.*

1 (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of
2 counsel”) (internal quotation and citation omitted).

3 Plaintiffs’ Counsel is highly experienced in Class/PAGA litigation, having achieved large
4 settlements and verdicts, including one of the largest PAGA awards in California’s history,
5 collecting over \$250 million for its clients. (Mankin Decl., ¶¶ 2-6). Plaintiffs’ counsel,
6 operating at arm’s length, weighed the strengths and risks of this case, and are of the view that
7 this is a fair and reasonable settlement in light of the nature of the claims, realistic risk adjusted
8 value of damages, complexities of the case, state of the law, and uncertainties of class
9 certification and litigation. (*Id.*, ¶¶ 55-59).

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

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

16 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
17 the Class Notice to the last known address of all class members complies with all the
18 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
19 Class Notice include (1) the material terms of the settlement; (2) the estimated settlement share;
20 (3) the proposed attorneys’ fees, litigation expenses, and the costs of administration; (4) details
21 about the final fairness hearing and how class members may elect to exclude themselves or make
22 an objection; and (5) how class members can obtain additional information.³

23 The Court has wide discretion in approving the means of providing notice, so long as the
24 class representative “provide(s) meaningful notice in a form that should have a reasonable
25 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
26 (1976) 15 Cal.3d 853, 861. Here, the parties’ notice plan is that notice of the Settlement will be
27

28

³ See Class Notice, Exhibit B to Mankin Decl.

1 disseminated directly to the class members by first class mail by the settlement administrator,
2 since Defendant has the last known addresses of all Class Members and the Settlement
3 Administrator will perform a skip trace and update those addresses for any class notices that are
4 returned and re-send the notice.

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

18 **VI. THE SETTLEMENT VALUATION IS FAIR AND REASONABLE IN LIGHT OF**
19 **THE RISKS AND DEFENSES**

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

24 To that end and as required by the Court’s CMO, the Mankin Declaration provides the
25 Court with the maximum potential damages and penalties at trial (CMO ¶ H(3)(a)(ii)) and Class
26 Counsel’s reasonable (i.e., risk-adjusted) expectation of trial award as to damages and penalties
27 (CMO ¶ H(3)(a)(iii)). (See Mankin Decl. ¶¶ 27-45), which is the method requested by the Court
28 at CMO ¶ H(3)(a).

As shown in the moving papers, this Settlement is fair, reasonable, and merits approval in light of the reasonable estimate of the total damages and penalties if successful at trial.

A. Reasonable Estimate of Likely Recovery at Trial

When evaluating a settlement, the most important consideration is “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399. And because the amount in controversy (*i.e.*, the maximum theoretical value if all claims succeeded at trial) fails to account for the many risks of continued litigation, settlement should be analyzed based on a reasonable estimate of the likely recovery at trial. *Wershba, supra*, 91 Cal.App.4th at 250 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation”).

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

Wage Statement Claims

Plaintiff’s strongest claim was that Defendant failed to provide accurate itemized wage statements in compliance with Labor Code § 226 for its failure to provided wage statements with non-rounded rates of pay and time making it impossible for Plaintiffs and employees to determine whether they were paid correctly. Moreover, Defendant often failed to include the overtime rate of pay in its paystubs.

At mediation, Defendant denied that the wage statements provided were improper.

Plaintiff calculated the maximum potential value of this claim as \$350,300 by multiplying one paystub per class member (342) by \$50, then multiplying the remainder of the

3,332 paystubs by \$100. Plaintiff assigned a risk adjustment of 5% that the class would not be certified and 30% as to the merits, with a risk-adjusted value of \$232,950.

Additionally, Plaintiff calculated the 75% risk-adjusted value of the PAGA penalties to be \$91,8503,674 PAGA pay periods x \$100 = \$367,400 reduced by 75%). (Mankin Decl. ¶¶ 28-31).

Meal and Rest Break Claims

Plaintiffs also alleged meal and rest break claims against Defendant. Plaintiffs' consultant analyzed the time records and found 9,540 unique meal period violations amounting to \$177,825 in class damages for meal periods (9,540 x \$18.64 avg. rate of pay). Plaintiffs argued that their rest break claims were the stronger claim given that the written policy required employees to stay on the premises during breaks. However, Defendant provided authorities that suggest an employer is allowed to require employees to stay on the premises during a rest break. Given the total number of shifts at issue, and when incorporating estimated violation rates, Plaintiff calculated the maximum theoretical value at 100% violation rate for 77,436 shifts to be \$1,443,407.

However, these calculations do not account for various risks and defenses. For instance, Defendant strongly disputed that Plaintiff could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendant further argued that it complied with the applicable law and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a suitable case for certification, we realize that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that we could pursue on a class basis. Moreover, Defendant provided certain authorities suggesting that Plaintiff's main argument regarding rest periods, namely that employees were forbidden from leaving the premises during breaks, was not viable.

Considering the many risks and defenses to these claims, Plaintiff placed a 50% class certification risk and 50% merits risk for a risk-adjusted value of \$360,852 for rest period claims. Adjusting for risk at 50% for class certification and 50% for merits, Plaintiffs assigned an

adjusted value of \$44,456 to the meal claims.

Additionally, based on the same risk factors in addition to potential risk associated with stacking of PAGA penalties, Plaintiff assigned a 75% risk adjustment to both meal and rest claims and assigned the risk-adjusted value of the related PAGA claims at \$123,550 (1,286 unique meal claims x \$100 = \$126,800 + 3674 rest claims PAGA pay periods x \$100 = \$367,400 totals combined \$494,200 with a 75% reduction for a total of \$123,550). (Mankin Decl. ¶¶ 32-35).

Failure to Pay Wages

Plaintiff alleges that Defendant employed policies and practices that required employees to work off the clock without compensation. Plaintiff estimated that the maximum potential value of this claim was \$104,988 in unpaid wages based on an estimated 30 minutes of unpaid time per the 3,674 pay periods at \$18.64 average rate of pay for a maximum value of \$68,483.

At mediation, Defendant argued that employees were not required to work off-the-clock and that this claim could not be certified due to the individualized nature of the proof. As a result, Plaintiff assigned a 50% class certification discount and a 50% merits discount to these claims for a risk adjusted valuation of \$17,121.

Plaintiff also pursued PAGA claims based on the same theory of liability and calculated a risk adjusted total is for these claims is \$91,850 (3674 x \$100 = \$367,400 – 75% = \$91,850). (Mankin Decl. ¶¶ 36-38).

Failure to Timely Pay Wages Upon Separation of Employment

Additionally, Plaintiff alleged that Defendant failed to timely pay all wages owed to the Class Members upon separation of employment. Based on this theory of liability, Plaintiff calculated the maximum waiting time penalties to be \$747,035 based on 183 former employees x 7.3 average hours per day x \$18.64 average hourly rate x 30.

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

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Therefore, Plaintiff applied a similar risk adjustment as with the other claims at 50% for class certification and 50% form merits to come to a risk adjusted total of \$186,759. Furthermore, because the related PAGA penalties assumes only one violation for each former employee multiplied by \$100, the value of the PAGA penalties was estimated at \$5,700 (57 formers during the PAGA period) with a risk adjustment of 75% for a total risk adjusted value of \$1,425. (Mankin Decl. ¶ 39-41).

Failure to Vested Vacation at Final Rate Claims

Plaintiff also alleged that Defendant violated Labor Code § 227.3 each pay period when it failed to pay vested vacation at the final rate. Defendant argued that they did pay vested vacation at the final rate. The maximum value of the PAGA penalties for this claim was estimated at \$5,700 (57 formers during the PAGA period x \$100 penalty) with a risk adjustment of 75% for a total risk adjusted value of \$1,425. (Mankin Decl. ¶ 42).

In sum, the total maximum value of the class damages is \$2,787,050. when factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as follows:

• Wage Statements	\$	232,950
• Rest Breaks	\$	360,852
• Meal Periods	\$	44,456
• Unpaid Wages	\$	17,121
• 203	\$	<u>186,759</u>
Total	\$	842,137

The reasonableness of the Settlement is apparent from the fact that the proposed Settlement is 47.5% of the risk-adjusted class damages. For these reasons, the Partis submit that the agreed-upon Settlement is fair and reasonable. (Mankin Decl. ¶ 43-44).

B. Support for Assessment of PAGA Penalties

While the PAGA civil penalty would have a maximum value in the low seven figures, this figure fails to acknowledge that courts have wide latitude to reduce the amount of 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 that it is improper to stack civil penalty claims on top of the underlying claim.

Plaintiff calculated the maximum penalty for the 3,674 PAGA pay periods at \$1,240,400 as follows:

• Wage Statements (3,674 x \$100)	\$	367,400
• Rest Breaks (3,674 x \$100)	\$	367,400
• Meals (1268 pp with violation x \$100)	\$	126,800
• Wages (3,674 x \$100)	\$	367,400
• 203 (57 former employees x \$100)	\$	5,700
• Vacation (57 former employees x \$100)	\$	<u>5,700</u>
Total	\$	1,240,400

Plaintiffs applied a 75% risk adjustment to each PAGA claim to account for the various defenses and potential judicial reduction for an adjusted value of \$310,100. (Mankin Decl. ¶ 45).

The proposed Settlement allocates \$40,000 of the gross settlement amount to PAGA claims, of which 75% (or \$30,000) will be paid to the California LWDA and 25% (or \$10,000) will be allocated to the Aggrieved Employees as payment of the settlement. The Mankin Declaration provides all information required under CMO ¶ H(9) regarding valuation of the PAGA claims, along with information as to why this allocation is fair. (Mankin Decl. ¶¶ 49-54).

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

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

Under the terms of the Settlement Agreement, Class Counsel is collectively requesting attorneys’ fees equal to one-third of the (1/3) Settlement Amount (\$133,333.33).

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

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

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

20 The proposed attorneys’ fees are disclosed to the Settlement Class Members in the
21 proposed Notice. Preliminarily, the fees are reasonable, and costs are reasonably capped at
22 \$15,000, subject to proof at time of final approval. Defendant does not oppose these requests.

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

25 **B. The Class Representative’s Requested Enhancement is Reasonable**

26 Service payments to representative plaintiffs in class action settlements are intended to
27 recognize their level of risk, the time expended, and the efforts undertaken on behalf of the class.
28 Courts routinely approve incentive awards to compensate named plaintiffs for the services they

1 provide and the risks they incurred during the course of the class action litigation. See, e.g., *Bell*
2 *v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service
3 payments” to named Plaintiff for their efforts in bringing class action).

4 In this case, the parties agreed to a service award to each Plaintiff in the amount of
5 \$10,000. The proposed incentive award is reasonable given the time and effort that Plaintiffs
6 devoted to this case, including providing factual background for the pleadings; reviewing the
7 litigation documents; providing information and documents about Defendant’s policies and
8 practices; participating in phone calls to discuss litigation and settlement strategy; making
9 themselves available throughout the litigation to assist with analyzing the claims and defenses;
10 helping Class Counsel prepare for the mediation; making themselves available for a full-day
11 mediation, and reviewing the settlement documents. Plaintiffs agreed to participate in this case
12 with no guarantee of personal benefit.

13 The Class Representatives also assumed significant risk in bringing this litigation—
14 namely, had they lost, they could have been ordered to pay Defendant’s costs. Moreover,
15 Plaintiffs, in the case in particular, were subject to serious ongoing repercussions in that the
16 Defendant is an organization with extensive ties to the Palm Springs community where the
17 Plaintiffs live and work. By having their names attached to this lawsuit, the Plaintiffs have put
18 themselves at risk of losing out on future employment due to Defendants’ widespread influence
19 with other similar organizations and employers in the area. In fact, Plaintiff Zuniga believes that
20 he has already had trouble obtaining employment because of his involvement in this matter.
21 Moreover, Plaintiffs elected to pursue the class action claims on behalf of other employees while
22 foregoing their potential separate individual claims of wrongful termination. As part of the
23 negotiations, the parties ultimately reached a settlement of the class claims but the requested
24 service award is also reasonable and appropriate given that Plaintiff agreed to put the interests of
25 the class ahead of their interests and performed work on behalf of the class while entering into a
26 general release as part of these settlements. (Mankin Decl. ¶¶ 60-62).

27 Accordingly, the service award to Plaintiffs is justified and warranted as part of the
28 overall settlement.

C. The Appointment of the Settlement Administrator

After Plaintiffs' counsel sought bids from five separate administrators, the Parties mutually agreed to retain ILYM Group as the Settlement Administrator based on it providing the lowest bid. ILYM is experienced in administering class action settlements and has submitted a fixed flat fee proposal to administer the settlement for \$8,895, as follows: "ILYM Group's fees associated with the administration of this settlement are set at a flat fee of \$8,895.00." (See Declaration of Sean Hartranft of ILYM Group ¶ 9.)

VIII. 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 request that the Court schedule a hearing for final approval of the settlement approximately 120 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

March 30, 2023	Preliminary Approval (PA) hearing
April 27, 2023 (28 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
June 12, 2023 (45 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs' 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.

1 TBD (Approximately July 26, 2023 -
2 120 days after Preliminary Approval is
3 granted)

Final Approval Hearing.

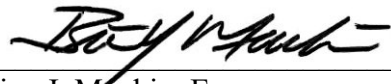
4 **IX. CONCLUSION**

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

7 Dated: March 8, 2023

LAUBY, MANKIN & LAUBY LLP

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9 BY:



10 Brian J. Mankin, Esq.
11 Attorneys for Plaintiff
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On March 8, 2023, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

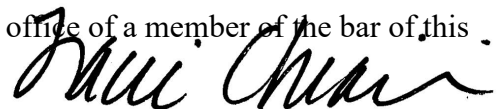
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 8, 2023, Riverside, California.

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



Tracie Chiarito, Declarant

SERVICE LIST

Keith E. Smith, Esq.
Ashley B. Beagle, Esq.
Christina Loni, Esq.
WOOD, SMITH, HENNING & BERMAN LLP
21804 Cactus Avenue, #200
Riverside, CA 92518-3010
951-779-5000
951-755-1650-fax
kesmith@wshblaw.com
abeagle@wshblaw.com
cloni@wshblaw.com
Attorneys for DESERT AIDS PROJECT