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

DANIEL DOMINGUEZ, on behalf of all
Aggrieved Employees and the State of
California;

Plaintiff,

vs.

KENCO LOGISTIC SERVICES, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

CASE NO.: CVRI2105393

*[Assigned to Hon. Judge Craig Riemer, Dept 1,
for all purposes]*

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

Hearing

Date: April 24, 2023

Time: 8:30 a.m.

Dept.: 1

Reservation #: 245239758068

Complaint filed: 11/19/2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 24, 2023, at 8:30 a.m., or as soon thereafter as
the matter may be heard by the Honorable Craig Riemer in Department 1 of the Riverside
County Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff Daniel
Dominguez, individually and on behalf of all others similarly situated, will and hereby does
move pursuant to California Rules of Court 3.769(d) and (e), for an order: (1) granting

1 preliminary certification to the settlement class for settlement purposes only; (2) granting
2 preliminary approval of the proposed settlement including appointment of Plaintiff's counsel as
3 Class Counsel; (3) authorizing the parties to provide the proposed notice to the class; and (4)
4 setting a final approval or fairness hearing to be heard approximately 120 days after the date
5 preliminary approval is granted as the Court's calendar permits. A proposed order to this effect
6 is filed concurrently herewith.

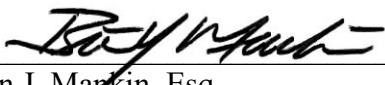
7 This motion is unopposed by Defendant Kenco Logistic Services, LLC. The parties seek
8 the Court's preliminary approval of the settlement in order to begin the process towards
9 obtaining final approval of the proposed settlement through a final fairness hearing set
10 approximately 120 days after preliminary approval. At that time, the Court will again have the
11 opportunity to fully consider the proposed settlement before entering a final order.

12 This motion is based upon this Memorandum of Points and Authorities in Support
13 thereof; the Declaration of Plaintiff's counsel (Brian Mankin and Kristina Bui Carlson); Class
14 Representative (Daniel Dominguez); Declaration of Defense Counsel (Jennifer Holly); the
15 Settlement Administrator (Michael Moore of Phoenix); the Class Action and PAGA Settlement
16 Agreement and Release of Claims (the "Settlement Agreement"); the proposed Order granting
17 Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this
18 action; and upon such other evidence or argument as may be presented to the Court at the
19 hearing of this motion.

20
21 Dated: March 30, 2023

LAUBY, MANKIN & LAUBY LLP

22
23 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Daniel Dominguez seeks preliminary approval of a \$1,455,000 wage-and-hour
4 class action settlement on behalf of approximately 608 current and former non-exempt
5 employees employed by Defendant Kenco Logistic Services, LLC (“Defendant” or “Kenco”) in
6 California at any time from November 19, 2017, through April 24, 2023 (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 one-third of the
9 Settlement Amount, litigation expenses not to exceed \$25,000, Administrator Costs of
10 \$10,000.00, PAGA penalties of \$150,000 (with 75% to the LWDA and 25% to the Aggrieved
11 Employees on a pro rata basis), and a Service Payment of \$5,000 to Plaintiff Daniel Dominguez
12 (“Class Representative”). (S.A. ¶ 49, *et seq.*)

13 After all Court-approved deductions from the Settlement Amount, it is estimated that
14 \$780,004.85 will be available to pay the Class Members, as follows:

15

<i>Settlement Amount</i>	\$ 1,455,000.00
Attorneys’ Fees (1/3)	\$ 484,995.15
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 10,000.00
PAGA Penalties	\$ 150,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$780,004.85

16
17
18
19

20 Based on an estimated 608 Class Members, the average payment to each Class Member
21 will be approximately \$1,282.90 (\$780,004.85 / 608). The actual payment will be calculated on
22 a pro-rata basis according to the number of Weeks Worked by each Class Member during the
23 Class Period, with each Work Week having a value of approximately \$17.73 (\$780,004.85 /
24 44,000 estimated Work Weeks). In addition, the Aggrieved Employees will receive a share of
25 the \$37,500 PAGA Penalties (25% of the total \$150,000 allocation), calculated pro-rata based on
26 Weeks Worked during the PAGA Period. (S.A. ¶ 49(h)).

27
28 ¹ The Class Action and PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”) is attached as Exhibit A to the Decl. of Brian Mankin (“Mankin Decl.”).

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

8 **II. BACKGROUND**

9 **A. THE CLASS**

10 The Class is defined as follows:

11 All current and former non-exempt (hourly paid) employees
12 employed by Defendant in California at any time during the Class
13 Period (which is November 19, 2017, through April 24, 2023). (S.A.
¶¶ 4, 8).

14 There are an estimated 608 individuals that fall within the defined Class (the
15 "Class Members").

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 Kenco requesting the production of personnel and timekeeping
20 records in order to further evaluate his wage and hour claims. (Mankin Decl. ¶ 13).

21 On November 19, 2021, Plaintiff filed a PAGA complaint against Kenco; and later on
22 May 9, 2022, amended to add corresponding class causes of action alleging: (1) failure to pay
23 minimum wages, (2) failure to pay overtime, (3) failure to provide meal periods, (4) failure to
24 provide rest breaks, (5) failure to timely pay final wages, (6) failure to pay vested vacation, (7)
25 failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, (9)
26 unfair and unlawful competition pursuant to California Bus. and Prof. Code §§ 17200 *et seq.*,
27 and (10)-(18) related PAGA claims (S.A. ¶ 42).

28 ///

1 Kenco retained counsel and immediately began to defend the case. Then, after early
2 discussions among counsel, the Parties agreed to attend private mediation. (Mankin Decl. ¶ 15).

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

12 On January 18, 2023, Plaintiff and Kenco participated in mediation before Jeffrey Krivis,
13 Esq. a well-respected class action wage-and-hour mediator. The matter resolved at mediation for
14 a class-wide settlement of \$1,455,000, and the Parties entered into the Settlement Agreement
15 submitted herewith. The Parties now seek the Court's preliminary approval of the Settlement.
16 (Mankin Decl. ¶ 17).

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

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

19 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

20 The \$1,455,000.00 Settlement Amount² is non-reversionary and will be paid out to Class
21 Members without the need to submit a claim form or take any affirmative action. It includes (1)
22 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$5,000 to
23 Plaintiff, subject to approval by the Court; (3) Administration Costs of \$10,000; (4) a \$150,000
24 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor Code §
25 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual Settlement
26

27 ² The \$1,455,000 Settlement Amount is subject to increase if the "Escalator Clause" is triggered.
28 S.A. ¶¶ 15, 49(a). If this clause is triggered, other figures will also shift upward along with the
Settlement Amount, such as attorneys' fees (but this is still constrained to 1/3 of the Settlement
Amount) along with increased Administration Costs (*see* S.A. ¶ 49(g)).

1 Amounts of the Participating Class Members. Defendant will separately pay its share of
2 employer payroll taxes and withholdings. (S.A. ¶ 49 and subparts).

3 After all Court-approved deductions from the Settlement Amount, it is estimated that that
4 \$780,004.85 will be available to pay the Individual Settlement Amounts of the Class Members.
5 The allocation per Class Member is discussed below in Section III(C).

6 **B. NOTICE PROCEDURES**

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

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

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

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

28 ///

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

4 The Court’s CMO also inquires as to the likely age, education, experience and English-
5 language facility of the class members. According to Defendant, the typical Class Member is
6 above the age of 18 and speaks, understands, and writes in English. As such, the Class Notice
7 will be only provided in English.

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

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

17 Here, within 14 days after Preliminary Approval Order is entered, Defendant shall
18 provide the Settlement Administrator with a list of Class Members containing names, addresses;
19 telephone numbers; Social Security Numbers; and the total number of Weeks Worked worked
20 during the Class Period and PAGA Period by each Class Member (the “Class Data”). (S.A. ¶¶ 7,
21 63). Within 10 days of receipt of the Class Data, the Settlement Administrator shall populate the
22 Class Notice for each, and send each Class Member the Class Notice and related forms via first-
23 class, United States mail. (S.A. ¶ 65).

24 In the event that any Notice Packet mailed to a Class Member is returned as having been
25 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
26 search and seek an address correction for such Class Member(s), and a second Notice Packet will
27 be sent to any new or different address obtained. (S.A. ¶ 66).

28 ///

1 **3. *No Claims Process***

2 As explained above and in the Notice, Class Members are automatically included in the
3 Settlement and will receive payment upon the court granting final approval without being
4 required to take any affirmative action. (S.A. ¶ 23). The Notice provides Class Members with
5 sufficient information to decide whether to opt-out, object, dispute credited Weeks Worked or do
6 nothing.

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

14 **4. *Exclusions and Objections***

15 Class Members who do not timely Opt-Out of the Settlement will be deemed to
16 participate in the Settlement and shall become a Participating Class Member without having to
17 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
18 must submit a written request to the Administrator no later than 45 days after being mailed by
19 the Administrator ("Response Deadline"). (S.A. ¶¶ 23). Any Opt-Out request that is not
20 postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
21 case the Class Member's exclusion or objection must be returned by the later of the original
22 Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶¶ 66, 70). The
23 Class Notice shall inform Class Members of their right to object to the Settlement. Any
24 Participating Class Member who wishes to object to the Settlement may submit a written
25 objection to the Administrator no later than the Response Deadline. (S.A. ¶ 70(c)).

26 **C. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

27 The amount of each Class Member's Individual Class Payment is tied to the number of
28 Weeks Worked by each Class Member for Kenco during the Class Period. Individual Class

1 Payments are calculated by (a) dividing the Net Settlement Amount by the total number Weeks
2 Worked by all Participating Class Members during the Class Period, and (b) multiplying the
3 result by each Participating Class Member's Weeks Worked. (S.A. ¶ 49(c)).

4 Additionally, each "Aggrieved Employee" will receive an Individual PAGA Payment
5 calculated in the same way; thus, the \$37,500 PAGA Penalties allocated to the Aggrieved
6 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 49(h)).

7 The Class Notice will inform Class Members of the estimated share and the number of
8 Weeks Worked during the Class and/or PAGA Period(s). Class Members may dispute Weeks
9 Worked if they feel they worked more in the Class or PAGA Periods than Kenco's records show
10 by timely submitting evidence to the Administrator. (S.A. ¶ 68).

11 The Court's CMO also requests estimate high, low and average payments. Based on an
12 estimated 608 Class Members, the average payment to each Class Member will be approximately
13 \$1,282.90 (\$780,004.85 / 608). The actual payment will be calculated on a pro-rata basis
14 according to the number of Weeks Worked by each Class Member during the Class Period, with
15 each Work Week having a value of approximately \$17.73 (\$780,004.85 / 44,000 estimated Work
16 Weeks). There are 283 total work weeks in the Class Period.

17 The Class Data will not be provided to the Administrator until after Preliminary
18 Approval, but from these numbers, we can provide reasonably estimated high and low payments.
19 Assuming a short-term employee only worked for one month, he/she would receive
20 approximately an Individual Class Payment of approximately \$70.92 (4 weeks x \$17.73/week).
21 Conversely, if a long term employee worked the entire Class Period, he/she would receive an
22 Individual Class Payment of approximately \$5,017.59 (283 weeks x \$17.73/week). Thus, we
23 can reasonably assume that the lowest payment will likely be in the \$50 to \$100 range and the
24 highest payment will be in the \$4,000 to \$5,000 range (not including the Individual PAGA
25 Payment that each Aggrieved Employee will receive). (Mankin Decl. ¶ 45).

26 **D. TIMING OF SETTLEMENT DISBURSEMENTS**

27 Pursuant to the terms of the Settlement Agreement, Defendant is required to fund the
28 Settlement Amount, plus Defendant's share of payroll taxes owed on the Individual Class

1 Payments, within 30 days of the Effective Date. (S.A. ¶ 71). Within 10 days after receiving the
2 funds, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 72).

3 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 73). If a Class
4 Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to
5 the California State Controller in the name of the Participating Class Member/Aggrieved
6 Employee (*Id.*).

7 **E. TAX TREATMENT**

8 The Parties agree that 15% of the Individual Class Payments will be allocated as wages
9 subject to withholding of all applicable local, state and federal taxes and the remaining 85% will
10 be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226,
11 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 49(d)). The Individual PAGA
12 Payments will be classified entirely as civil penalties and shall be reported as required on an IRS
13 Form 1099. (S.A. ¶ 49(h)). Defendant will separately pay the share of employer payroll taxes
14 on the sum allocated to wages. (S.A. ¶ 49(a)).

15 **F. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

16 In exchange for these payments, the Settlement Agreement at ¶ 33 provides that the
17 Participating Class Members will release the Released Parties of:

18 all claims stated in the operative Complaint and those based solely upon the
19 facts in the Complaint, including: (a) failure to pay minimum wages, (b)
20 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure
21 to provide rest breaks, (e) failure to pay vested vacation upon separation of
22 employment, (f) failure to reimburse business expenses, (g) failure to failure
23 to timely pay wages each pay period and upon separation of employment,
24 (h) failure to provide accurate itemized wage statements, (i) unfair and
25 unlawful competition, and (j) all other claims for statutory penalties based
26 on the facts or claims alleged in the operative complaint.

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

1 **G. AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS**

2 The Settlement Agreement at ¶ 27 also defines the “Released PAGA Claims” as follows
3 as required by the CMO ¶ H(3)(e)(iv)::

4 all PAGA claims that Plaintiff alleged against the Released Parties,
5 on behalf of himself and the State of California, based on the facts
6 stated in the Complaint in the Action and in the LWDA notice
7 letter(s), including all PAGA claims seeking civil penalties that
8 premised upon (a) failure to pay minimum wages, (b) failure to pay
9 overtime wages, (c) failure to provide meal periods, (d) failure to
10 provide rest breaks, (e) failure to pay vested vacation upon
11 separation of employment, (f) failure to reimburse business
12 expenses, (g) failure to failure to timely pay wages each pay period
13 and upon separation of employment, and (h) failure to provide
14 accurate itemized wage statements

15 Additionally, the Settlement Agreement at ¶ 53 provides further clarification showing
16 compliance with the CMO:

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

22 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
23 that individual will still receive a pro-rata share of PAGA Penalties. (S.A. ¶ 70(a)).

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

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

1 certification, a district court need not inquire whether the case, if tried, would present intractable
2 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
3 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
4 as defined above, under Code of Civil Procedure § 382.

5 **A. ASCERTAINABILITY AND NUMEROSITY**

6 In determining whether a class is ascertainable, the court considers “(1) the class
7 definition, (2) the size of the class, and (3) the means available for identifying the class
8 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
9 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
10 class is ascertainable if the class members can be objectively identified and given notice of the
11 litigation without unreasonable time or expense). Here, according to Kenco’s records, there are
12 approximately 608 Class Members that are easily identifiable and fall within the defined Class.
13 Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

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

15 *1. Commonality*

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

22 *2. Typicality*

23 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
24 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
25 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
26 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
27 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
28 Defendant’s pay policies, meal and rest break practices, wage statements, and the provisions

governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. Adequacy of Representation

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

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 this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-6).

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

1 settlement. See Cal. R. Ct. 3.769(c), (e-g).

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

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

8 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
9 reasonable. See *Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable"
10 standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
11 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
12 after determining that it is "'fair, adequate and reasonable,'" considering factors such as the
13 "'risk, expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys
14 broad discretion in making its fairness determination, and should consider factors including, but
15 not limited to: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration
16 of further litigation, the risk of maintaining class action status through trial, the amount offered
17 in settlement, the extent of discovery completed and the stage of the proceedings, the experience
18 and views of counsel . . . and the reaction of the class members to the proposed settlement. *Dunk*,
19 *supra* (detailing non-exhaustive list of factors for court's consideration at final approval).

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

27 At the preliminary approval stage, the Court need only determine that the settlement falls
28 within the "range of possible judicial approval," so that notice to the class and the scheduling of

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

10 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
11 **NEGOTIATIONS**

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

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

23 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
24 weaknesses of this case before reaching the settlement. As described above, the settlement was
25 reached after extensive investigation and research, thorough calculations and risk evaluation, and
26 a substantial exchange of information relating to the Class Members prior to mediation. (Mankin
27 Decl., ¶¶ 53-54).

28 ///

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

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

6 To that end and as required by the Court’s CMO, the Mankin Declaration provides the
7 Court with the maximum potential damages and penalties at trial (CMO ¶ H(3)(a)(ii)) and Class
8 Counsel’s reasonable (i.e., risk-adjusted) expectation of trial award as to damages and penalties
9 (CMO ¶ H(3)(a)(iii)). (See Mankin Decl. ¶¶ 25-44), which is the method requested by the Court
10 at CMO ¶ H(3)(a).

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

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

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

25 Here, Defendant raised significant legal and factual defenses that weigh in favor of the
26 reasonableness of the proposed Settlement. First, in addition to disputing the merits of Plaintiff’s
27 claims, Kenco strongly disputed that Plaintiff could obtain class certification, arguing a lack of
28 commonality of the legal claims and injuries. Kenco further argued that it complied with the

1 applicable law and that any purported deviations therefrom were individualized in nature,
2 thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a suitable
3 case for certification, he realizes that there is always a significant risk associated with class
4 certification proceedings, which could limit the claims that he could pursue on a class basis.

5 Considering the uncertainties of protracted litigation, this negotiated settlement reflects
6 the best practicable recovery for the Class. While the total Settlement Amount is, of course, a
7 compromise figure, the potential risks and opportunities of both parties were effectively weighed
8 and considered by the parties, resulting in a fair and equitable settlement.

9 According to data provided by Defendant in advance of mediation, we estimate that there
10 are approximately 608 individuals that fall within the defined Class, along with approximately
11 494 individuals that are Aggrieved Employees (i.e., Class Members during the PAGA Period).
12 (Mankin Decl. ¶ 26).

13 **Summary of Claims and Defenses**

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

17 One of the primary claims in the Action is that Defendant failed to pay all required
18 minimum and overtime wages to Plaintiff and Class Members. First, Defendant required Class
19 Members to complete pre-shift temperature checks and screenings prior to clocking in. Second,
20 Plaintiff argued that Defendant utilized a rounding policy that was not neutral in application, thus
21 violating California law. But Kenco vehemently opposed these unpaid wage claims on the
22 merits and as to the propriety of class certification.

23 Second, Plaintiff alleged meal and rest break claims against Defendant. However, Kenco
24 raised numerous arguments in response to this claim, including that it maintained fully compliant
25 written policies and specifically authorized the Class Members to take meal and rest breaks,
26 meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore,
27 Defendant asserted that a fact-finder would have to determine for each Class Member whether a
28 break was missed and why, and why a break was noncompliant or nonexistent, because if it was

1 by the employee's choice, no liability attaches to Defendant.

2 Third, Plaintiff alleged that the unpaid wage and meal / rest break claims trigger various
3 penalties, including inaccurate wage statements under Labor Code § 226 and 30-days of pay as a
4 waiting time penalty for each former employee under Labor Code § 203.

5 Fourth, Plaintiff alleged that Defendant failed to reimburse Class Members for business-
6 related expenses incurred on behalf of their employment with Defendant, such as traveling
7 between Defendant's warehouses on the same day without being reimbursed for mileage or gas
8 expenses.

9 Finally, Plaintiff 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".

11 Despite that each of the claims were disputed, the Parties concluded that further litigation
12 of the Action would be protracted and expensive, and that it is desirable that the Action be fully
13 and finally settled in order to limit further risk, expense and protracted litigation.

14 **Unpaid Wage Claims**

15 Plaintiff's main claim was that Defendant failed to pay for all hours worked under two
16 main theories of liability. First, Plaintiff alleged that Kenco failed to pay all required minimum
17 and overtime wages due to a practice that required Class Members to complete pre-shift
18 temperature checks and screenings prior to clocking in. Second, Plaintiff argued that Defendant
19 utilized a rounding policy that was not neutral in application, thus violating California law. In
20 total, Plaintiff's counsel estimated the maximum value of these unpaid wages to be \$536,315,
21 which was a result of multiplying an estimate of 7.50 minutes per shift of unpaid time with the
22 applicable rate (hourly overtime plus liquated damages). But Kenco vehemently opposed these
23 unpaid wage claims on the merits and as to the propriety of class certification. Due to the
24 defenses and arguments raised, Plaintiff assigned a 30% risk for each respective unpaid wage
25 claim at the class certification stage and an additional 30% risk on the merits. In sum, Plaintiff's
26 counsel calculated the risk-adjusted value of the unpaid wage claims as \$262,794. (Mankin Decl.
27 ¶ 28-30).

28 ///

Additionally, Plaintiff calculated the 75% risk-adjusted value of the PAGA penalties to be \$595,175 (23,807 PAGA pay periods x \$100 = \$2,380,700 reduced by 75%). (Mankin Decl. ¶ 31).

Meal and Rest Break Claims

Plaintiff also alleged meal and rest break claims against Defendant. Given the total number of shifts at issue (an estimate of 208,377), and when incorporating violation rates from expert review of the timekeeping records and other evidence, Plaintiff's counsel estimated a 45.3%% violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 94,395 alleged meal violations and 104,189 alleged rest break violations. This established a maximum potential value for these claims of \$4,055,70 (198,583 violations multiplied by the average hourly rate of \$20.42 as the applicable premium rate under § 226.7). (Mankin Decl. ¶ 32).

However, Kenco raised numerous arguments in response to this claim, including that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiff placed a 30% risk at the class certification stage for meal periods and a 40% risk for rest breaks. Second, these defenses also go toward the merits given the evidentiary question of proving the number of meal and rest violations. As such, Plaintiff placed a 30% risk on the merits for meal breaks, and an additional 30% risk on the merits for rest breaks, setting the risk-adjusted value for the combined meal and rest break claims at \$1,838,057. (Mankin Decl. ¶ 33).

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 ((94,395 unique meal claims in 23,807 PAGA pay periods x \$100 = \$126,800) + (104,189 alleged rest

break in 23,807 PAGA pay periods x \$100 = \$4,761,400 total and with a 75% reduction for a revised total of \$1,190,350). (Mankin Decl. ¶¶ 35).

Wage Statement and Waiting Time Claims

Fourth, Plaintiff alleged claims for waiting time penalties and wage statement violations. But these claims were entirely derivative of the claims above, meaning that they only had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for these claims were as follows: (1) \$1,842,701 for waiting time penalties [320 former employees x \$20.42 per hour x 9.4 hours per day x 30 days], and (2) \$2,370,450 for wage statement violations [23,807 wage statements at the \$50/\$100 formula under § 226(e)]. (Mankin Decl. ¶ 36).

But Kenco raised a variety of defenses to these derivative claims that impacted the valuation. Namely, Kenco argued that the wage statements did not violate Labor Code § 226 and, even if there was a “technical” violation, Plaintiff would be unable to prove the required “knowing and intentional” and “injury” elements. Based on these facts and defenses, Plaintiff placed a 20% risk at class certification and estimated another 30% risk the merits, leading to a risk-adjusted value of \$1,327,452 for the wage statement claims. (Mankin Decl. ¶ 37).

Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here, Defendant argued there was no “willful” violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 20% risk at class certification and a 20% risk on the merits, leading to a risk-adjusted value of \$1,179,329. (Mankin Decl. ¶ 38).

Additionally, Plaintiff calculated the 75% risk-adjusted value of the PAGA penalties to be \$595,175 (23,807 PAGA pay periods x \$100 = \$2,380,700 reduced by 75%). (Mankin Decl. ¶ 39).

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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 \$32,000 (320 formers during the PAGA period x \$100 penalty) with a risk adjustment of 75% for a total risk adjusted value of \$8,000. (Mankin Decl. ¶ 41).

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

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 31.6% of the risk-adjusted class damages. For these reasons, the Parties submit that this settlement is fair and reasonable.

While the PAGA penalties had a maximum value in the six figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Kenco argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties

as uncertain. Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory claims.

Plaintiff calculated the maximum penalty for the 23,807 PAGA pay periods at \$9,554,800. However, 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 \$2,446,700 (Mankin Decl. ¶ 44).

•	Unpaid Wage Claims	\$	595,175
•	Meal and Rest Break Claims	\$	1,190,350
•	Wage Statement Claims	\$	595,175
•	Waiting Time Penalty Claims	\$	8,000
•	Business Expense Claims	\$	50,000
•	Vested Vacation Claims	\$	<u>8,000</u>
•	Total PAGA Risk Adjusted Penalties	\$	2,446,700

The proposed Settlement allocates \$150,000 of the gross settlement amount to PAGA claims, of which 75% (or \$112,500) will be paid to the California LWDA and 25% (or \$37,500) 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. ¶ 44).

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

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

Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, including one of the largest PAGA awards in California’s history, collecting over \$250 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-

6; Carlson Decl. ¶¶ 3-6). Plaintiff's counsel, operating at arm's length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement considering the nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law, and uncertainties of class certification and litigation.

F. THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR

Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement of up to \$25,000 in litigation costs, along with attorneys' fees equal to one-third of the Settlement Amount. See, e.g., *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class action litigation establishes a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: "[f]ee awards in class actions average around one-third of the recovery.").

Once the Court grants preliminary approval and Notice is disseminated, Plaintiff's counsel will submit a comprehensive request for attorneys' fees and costs with final approval.

G. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE

The Settlement Agreement provides an incentive award payment of \$5,000³ to the Class Representative, which is reasonable given the large recovery Class Members will receive on average, as well as the time and effort he devoted to this case. His efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Defendant's compensation plan; participating in phone calls to discuss litigation and

³ Plaintiff separately settled his claims for wrongful termination and discrimination pursuant to a separate individual settlement agreement.

1 settlement strategy; making himself available throughout the litigation to assist with analyzing
2 the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
3 settlement documents. The Class Representative also assumed significant risk in bringing this
4 litigation—namely, had he lost, she could have been ordered to pay Defendant’s costs.

5 The requested service award falls within the range of incentive payments typically
6 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
7 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in
8 trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010
9 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class
10 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493
11 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
12 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28
13 (finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D.
14 Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each
15 of the named Plaintiff is appropriate” in wage and hour settlement).

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

17 Subject to the Court’s approval, the parties stipulated to Phoenix Settlement
18 Administrators serving as the Administrator. Phoenix is experienced in administering class
19 action settlements and has provided a flat-fee proposal to administer this settlement for \$10,000.
20 (Declaration of Mike Moore of Phoenix ¶ 9, which attaches the Administrator’s proposal).

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

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

27 ///

28 ///

April 24, 2023	Preliminary Approval (PA) hearing
May 22, 2023 <i>28 days after PA</i>	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
July 6, 2023 <i>45 days after mailing Notice</i>	Deadline for 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 and application for award of 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, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD - Approx. August 22, 2023 <i>120 days after PA</i>	Final Approval Hearing.

VIII. CONCLUSION

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

Dated: March 30, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On March 30, 2023, 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.

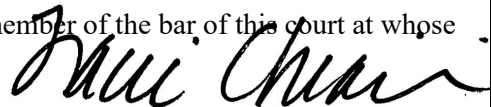
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 March 30, 2023, Riverside, California.

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



Tracie Chiarito, Declarant

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