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

MARIA SOLEDAD RANGEL
MERCADO, individually and on behalf of
all others similarly situated;

Plaintiff,

vs.

NORTH BAY DISTRIBUTION, INC., a
California Corporation; CHARTWELL
STAFFING SERVICES, INC., a New
York Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: FCS057328
[Assigned to Hon. Tim P. Kam, Dept 7, for all purposes]

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

Hearing

Date: May 3, 2024

Time: 9:00 a.m.

Dept.: 7

Complaint filed: October 21, 2021

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 3, 2024, at 9:00 a.m. or as soon thereafter as the
3 matter may be heard by the Honorable Tim P. Kam in Department 7 of the Solano County
4 Superior Court, located at 600 Union Ave., Fairfield, CA, 94533 Maria Soledad Rangel
5 Mercado, individually and on behalf of all others similarly situated, will and hereby does move
6 the Court for entry of an Order preliminarily approving the Parties' class action settlement,
7 including:

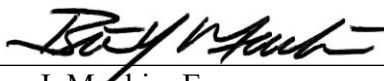
- 8 1. Certifying the class for purposes of settlement only;
- 9 2. Preliminarily appointing Plaintiff as class representative for settlement purposes only;
- 10 3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
- 11 4. Preliminarily approving the class action settlement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

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

23 Dated: February 13, 2024

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
A.	THE SETTLEMENT CLASS	2
B.	PROCEDURAL HISTORY	2
C.	SUMMARY OF THE CLAIMS AND DEFENSES	4
III.	SUMMARY OF THE PROPOSED SETTLEMENT	5
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	5
B.	NOTICE PROCEDURES	5
C.	EXCLUSION AND OBJECTION PROCEDURES	6
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	6
E.	TIMING OF SETTLEMENT DISBURSEMENTS	7
F.	TAX TREATMENT	7
G.	PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS	8
H.	AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS	8
IV.	PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	9
A.	ASCERTAINABILITY AND NUMEROSITY	9
B.	WELL-DEFINED COMMUNITY OF INTEREST	9
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	11
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT	11
B.	THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS	12
C.	THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	13
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS	13
E.	PLAINTIFF'S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION	17
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES	18
G.	THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS	19
H.	THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR	19
I.	THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE	20
VI.	THE COURT SHOULD APPOINT CPT GROUP AS SETTLEMENT ADMINISTRATOR	21
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING	21
VIII.	CONCLUSION	22

TABLE OF AUTHORITIES

Cases

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

Statutes

Code of Civil Procedure § 382..... 2, 9

Labor Code § 2699(i)..... 5

Rules

California Rules of Court, Rule 3.769 11

Treatises

Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”) § 3:13 (4th ed.
2002) 10, 12

Manual For Complex Litigation (Third) § 30.41 (1995)..... 12

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff seeks preliminary approval of a \$1,500,000 wage-and-hour class action
4 settlement on behalf of approximately 2,500 putative class members who worked at a North Bay
5 Facility¹ that was owned or operated by Defendant North Bay Distribution, Inc., (“North Bay”) in California at any time during the period of October 21, 2017, through July 25, 2023 (the
6 “Class Period”). Defendant North Bay Distribution, Inc., (“North Bay”) owned and operated the
7 North Bay Facilities in California and hired “Direct Employees,” whereas Defendant Chartwell
8 Staffing Services, Inc., (“Chartwell”) is a staffing company that employed and assigned
9 Temporary Employees to work at a North Bay Facility.
10

11 Under the terms of the Settlement Agreement,² Defendants will not oppose Plaintiff
12 Counsel’s application for a reasonable award of attorney’s fees not to exceed \$500,000 (1/3 of
13 the Gross Settlement Amount), litigation expenses not to exceed \$25,000, Settlement
14 Administrator Costs of \$25,500, PAGA penalties of \$100,000 (with 75% to the LWDA and 25%
15 to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff
16 Maria Soledad Rangel Mercado (“Class Representative”). (S.A. ¶ 51 and subparts).

17 After all Court-approved deductions from the Gross Settlement Amount,³ it is estimated
18 that \$839,500 will be available to pay the Class Members, as follows:

19

<i>Gross Settlement Amount</i>	\$ 1,500,000.00
Attorneys’ Fees (1/3)	\$ 500,000.00
Litigation Costs	\$ 25,000.00
Administrator Costs	\$ 25,500.00
PAGA Penalties	\$ 100,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 839,500.00

20
21
22
23

24 ¹ “North Bay Facility” means and refers to North Bay’s facilities in California where the Class Members
25 performed work, and includes: (a) 2031 Cessna Dr., Vacaville, CA 95688, (b) 2050 Cessna Dr.,
26 Vacaville, CA 95688, (c) 2029 E. Monte Vista Ave., Vacaville, CA 95688, (d) 2131 Icon Way, Vacaville,
27 CA 95688, (e) 4995 Industrial Way, Benecia, CA 94510, and (f) 13454 Larwin Cir., Santa Fe Springs,
28 CA 90670.

² The Class and Representative Action Settlement Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”) is attached as Exhibit A to the Declaration of Brian Mankin (“Mankin Decl.”)

³ The Gross Settlement Amount is subject to increase if the “Escalator Clause” is triggered. See S.A. ¶ 17.

1 The Class Members fall into two categories: (1) “Direct Hires” of Defendant North Bay,
2 and (2) “Temporary Employees” that were placed at a North Bay Facility by Chartwell. In total,
3 there are an estimated 2,500 Class Members who worked 112,000 Work Weeks during the Class
4 Period. The payment to each Class Member will be calculated on a pro-rata basis according to
5 the Weeks Worked by each Class Member at a North Bay Facility. In addition, Aggrieved
6 Employees will receive a share of the \$25,000 PAGA Penalties (25% of the \$100,000 PAGA
7 allocation), distributed pro-rata based on Weeks Worked during the PAGA Period.

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

15 **II. BACKGROUND**

16 **A. THE SETTLEMENT CLASS**

17 The Class is defined as follows:

18 All current and former nonexempt employees who worked at a
19 North Bay Facility in California at any time during the Class
20 Period, including Direct Hires of North Bay and Temporary
21 Employees assigned by Chartwell. (S.A. ¶ 6).⁴

21 **B. PROCEDURAL HISTORY**

22 Plaintiff submitted a letter to the Labor Workforce Development Agency (the “LWDA”)
23 for civil penalties under the Private Attorney General Act of 2004 (the “PAGA”), and
24 simultaneously sent a letter to Defendants requesting the production of personnel and
25 timekeeping records in order to further evaluate her wage and hour claims. (Mankin Decl. ¶ 12).

26
27 ⁴ The following defined terms are used in this class definition: “Direct Hires of North Bay” refers to
28 individuals who were hired directly by North Bay and employed to work at a North Bay Facility [S.A. ¶
19]; “Temporary Employees” refers to individuals who were employed by Chartwell and assigned to
work at a North Bay Facility in California at any time during the Class Period and/or PAGA Period [S.A.
¶ 42]

1 On October 21, 2021, Plaintiff filed a putative class action in the Solano County Superior
2 Court against Defendant North Bay. Then, on December 27, 2021, Plaintiff filed the operative
3 First Amended Complaint, adding Defendant Chartwell and alleging class and PAGA claims,
4 including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to
5 provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each
6 period and upon separation of employment, (f) failure to provide accurate itemized wage
7 statements, (g) unfair and unlawful competition, and (h) PAGA penalties. (Mankin Decl. ¶ 13).

8 Defendants retained counsel and immediately began to defend the case. And, during the
9 early stages of this case, Defendant Chartwell filed two separate motions to compel arbitration.
10 The first (as to Plaintiff's individual and class action claims) was set for hearing on September
11 19, 2022, and the second (as to Plaintiff's PAGA claims) was set for hearing on November 7,
12 2022. At the hearing on September 19, 2022, the Court did not grant or deny Defendant's
13 motion; instead, the Court set an evidentiary hearing for November 7, 2022 (the same day as the
14 hearing on Chartwell's second motion) to take evidence prior to determining whether Plaintiff
15 and Chartwell entered into an arbitration agreement. The Court also allowed for the parties to:
16 (1) take depositions regarding the evidentiary issues, and (2) submit supplemental briefing
17 regarding whether Plaintiff's claims against Defendant North Bay should proceed in court rather
18 than arbitration. (Mankin Decl. ¶ 14).

19 At that juncture, counsel for the Parties met and conferred and agreed that, that given the
20 size and scope of the class and PAGA claims in the case, the unsettled issues relating to whether
21 this case would proceed to arbitration, in whole or part, and the burden, expense and risk
22 associated with continuing to litigate this matter, the case was a candidate for mediation.
23 Ultimately, the Parties scheduled mediation. (Mankin Decl. ¶ 14).

24 In preparation for the mediation, the Parties informally exchanged documents and
25 information that allowed both sides to calculate potential damages and evaluate potential risk,
26 including policies and procedures pertaining to each claim alleged, and statistics relating to the
27 number of current and former employees, number of shifts, pay periods worked and other things.
28 Defendants also provided their written policies and practices and a robust sampling of payroll

1 and timekeeping records for Class Members covering over 196,950 shifts worked. This
2 information enabled both parties to take a deep dive into the claims. Additionally, during this
3 process, Plaintiff and her counsel analyzed, researched, and investigated the potential issues,
4 including matters related to the calculation of damages, trial, and appellate issues and risks.
5 (Mankin Decl. ¶ 15).

6 On July 25, 2023, Plaintiff and Defendants participated in mediation before Lynn Frank,
7 who is one of the most highly experienced and respected class action mediators in California.
8 The matter did not resolve at mediation, but the Parties continued negotiations and Ms. Frank
9 issued a mediator's proposal which was accepted by Plaintiff and North Bay in October 2023
10 and by Chartwell in November 2023. (Mankin Decl. ¶ 16). The Parties now seek the Court's
11 preliminary approval of the Settlement.

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

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

16 As a threshold matter, Defendants argued that Plaintiff was subject to a binding
17 arbitration agreement, and this would effectively end Plaintiff's ability to litigate *any* claims on a
18 class or representative PAGA basis.

19 But, setting aside the arguments regarding the arbitration agreement, Plaintiff advanced
20 several strong claims against Defendants. For instance, Plaintiff argued that there were three
21 distinct unpaid wage violations for which Defendants were liable, including: (1) requiring Class
22 Members to undergo security checks while off-the-clock, (2) requiring Class Members to
23 complete pre-shift temperature checks and other COVID screenings prior to clocking in, and (3)
24 failing to include all earned bonuses in the regular rate and overtime calculations. Defendants
25 opposed these unpaid wage claims on the merits and as to the propriety of class certification.

26 Plaintiff also alleged that she and the Class Members were often denied compliant meal
27 and rest breaks. However, Defendants argued that they provided and made all mandated meal
28 and rest breaks available to the Class, and any employee who did not take a break did so entirely

1 of their own volition. Thus, Defendants argued that these claims were without merit because, for
2 each violation, a fact-finder would have to determine why a break was noncompliant, because if
3 it was by the employee's choice, no liability attaches to Defendants.

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

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

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

9 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

10 The \$1,500,000 Settlement Amount is non-reversionary and will be paid out to Class
11 Members without the need to submit a claim form or take any affirmative action. It includes (1)
12 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$10,000 to
13 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
14 \$25,500; (4) a \$100,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to
15 California Labor Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of
16 all Individual Class Payments of the Participating Class Members. (S.A. ¶ 51 and subparts).
17 North Bay will separately pay the share of employer payroll tax obligations. (S.A. ¶ 51(a)).

18 **B. NOTICE PROCEDURES**

19 The proposed Class Notice⁵ will be provided to the Class Members showing the
20 estimated amount each Class Member will receive and the credited number of Weeks Worked.

21 Within 14 days after entry by the Court of its Order of Preliminary Approval, Defendants
22 shall provide the Settlement Administrator with a list of Class Members containing names,
23 addresses, Social Security Numbers, and total Weeks Worked during the PAGA Period and the
24 Class Period. (S.A. ¶¶ 8, 9, 65).

25 Within 10 days of receipt of the "Combined Class Data," the Settlement Administrator
26 shall calculate the Weeks Worked for each Class Member, populate the Class Notice for each,
27

28 _____
⁵ The proposed Class Notice is attached to the Mankin Decl. as Exhibit B.

1 and send each Class Member the Class Notice via first-class, U.S. mail. (S.A. ¶¶ 66-68).

2 In the event that any Class Notice mailed to a Class Member is returned as having been
3 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
4 search and seek an address correction for such Class Member(s), and a second Class Notice will
5 be sent to any new or different address obtained. (S.A. ¶ 69).

6 **C. EXCLUSION AND OBJECTION PROCEDURES**

7 Class Members who do not timely Opt-Out of the Settlement will be deemed to
8 participate in the Settlement and shall become a Participating Class Member without having to
9 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
10 must submit a written request to the Settlement Administrator no later than 45 days after being
11 notified by mail by the Settlement Administrator (“Response Deadline”). (S.A. ¶ 23, 73). Any
12 Opt-Out request not postmarked by the Response Deadline will be invalid. (S.A. ¶ 73(a)).

13 The Class Notice shall inform Class Members of their right to object to the Settlement.
14 Any Class Member who wishes to object to the Settlement may submit a written objection to the
15 Settlement Administrator no later than the Response Deadline. (S.A. ¶ 73(b)).

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

17 The amount of each Class Member’s Individual Class Payment is tied to the number of
18 Weeks Worked by each Class Member at a North Bay Facility during the Class Period.
19 Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total
20 number of Weeks Worked by all Class Members during the Class Period, and (b) multiplying the
21 result by each Participating Class Member’s Weeks Worked. (S.A. ¶ 51(c)).

22 Additionally, each “Aggrieved Employee” will receive an Individual PAGA Payment as
23 a share of the PAGA Penalties based on a pro-rata basis. Thus, the \$25,000 PAGA Penalties
24 allocated to the Aggrieved Employees will be divided and paid on a Weeks Worked basis. (S.A.
25 ¶ 51(g)).

26 The Class Notice will inform Class Members of the estimated share and the number of
27 Weeks Worked during the Class Period and PAGA Period. Class Members may dispute their
28 Weeks Worked if they feel they worked more in the Class or PAGA Periods than Defendants’

1 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 71).

2 As noted, assuming that 2,500 Class Members collectively worked 112,000 Workweeks
3 during the Class Period, then each Class Member will receive approximately \$7.50 per
4 Workweek. In addition, the Aggrieved Employees will receive a share of the \$25,000 PAGA
5 Penalties (25% of the total \$100,000 PAGA allocation), calculated pro-rata based on the Weeks
6 Worked during the PAGA Period.

7 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

8 North Bay is required to deposit 50% of the Settlement Amount, along with the employer
9 share of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
10 “Effective Date,” and the remaining 50% on January 10, 2025. These funds will be used to pay:
11 (1) the class attorney fees and expenses, as approved by the Court; (2) the service award, as
12 approved by the Court; (3) administrative expenses, as approved by the Court; (4) the PAGA
13 Penalties to the LWDA and Aggrieved Employees; and (5) the aggregate of all Individual Class
14 Payments of participating Class Members. The Administrator will hold the first payment in
15 trust, and then within 10 days after receiving the second payment, the Settlement Administrator
16 shall issue all payments to cover all court-approved payments. (S.A. ¶¶ 75-76).

17 Class Members will have 180 days to cash the settlement check. If a Class Member fails
18 to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the
19 California State Controller in the name of the Class Member and/or Aggrieved Employee. (S.A.
20 ¶ 77).

21 **F. TAX TREATMENT**

22 The Parties agree that twenty percent (20%) will be allocated as wages subject to
23 withholding of all applicable local, state and federal taxes; and eighty percent (80%) will be
24 allocated for interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210,
25 226, etc.) from which no taxes will be withheld. (S.A. ¶ 51(d)). Additionally, the PAGA
26 Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and
27 shall be reported as required on an IRS Form 1099. (S.A. ¶¶ 51(h)).
28

1 North Bay will separately pay the share of employer payroll taxes on the sum allocated to
2 wages. (S.A. ¶¶ 51(a)).

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

4 In exchange for these payments, the Settlement Agreement at ¶ 35 provides that the
5 Participating Class Members will release the Released Parties of:

6 All claims asserted in the Complaint or that reasonably could have
7 been alleged based on the allegations, the facts, statutory citation
8 and/or legal theories contained in the Complaint, including: (a)
9 failure to pay minimum wages, (b) failure to pay overtime wages,
10 (c) failure to provide meal periods, (d) failure to provide rest breaks,
11 (e) failure to timely pay wages upon separation of employment, (f)
failure to provide accurate itemized wage statements, (g) unfair and
unlawful competition, and (h) all other claims for statutory penalties
based on the facts or claims alleged in the Complaint.

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

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

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

19 all PAGA claims that Plaintiff alleged against the Released Parties,
20 on behalf of herself and the State of California, based on the facts
21 stated in the Complaint in the Action and in the LWDA notice letter,
22 including all PAGA claims seeking civil penalties premised upon
23 (a) failure to pay minimum wages, (b) failure to pay overtime wages,
24 (c) failure to provide meal periods, (d) failure to provide rest breaks,
25 (e) failure to timely pay wages each period and upon separation of
26 employment, (f) failure to provide accurate itemized wage
statements, and (g) all other claims for civil penalties recoverable
under PAGA based on the facts or claims alleged in the Complaint.
The time period governing the Released PAGA Claims shall be any
time during the PAGA Period.

27 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
28 that individual will still be subject to the PAGA Released Claims to the fullest extent permitted

by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶¶ 56, 73(a)).

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

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

A. ASCERTAINABILITY AND NUMEROSITY

In determining whether a class is ascertainable, the court considers “(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense). Here, according to Defendants’ records, there are approximately 2,500 Class Members that are easily identifiable and fall within the defined Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *Arenas v.*

1 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class
2 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,
3 and so on. While the Parties dispute whether a class would be appropriate if the litigation were to
4 continue, they agree to class certification for the purposes of this settlement only.

5 2. Typicality

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

13 3. Adequacy of Representation

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

20 Adequacy may be established by the fact that counsel are experienced practitioners. See
21 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
22 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
23 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6; Bokhour Decl. ¶¶
24 15-20; Carlson Decl. ¶¶ 3-8).

25 4. Superiority

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

1 most of the claims are too small to litigate outside of the class context.

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

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

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

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

20 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
21 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable”
22 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
23 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
24 after determining that it is ““fair, adequate and reasonable,”” considering factors such as the
25 ““risk, expense, [and] complexity”” of continued litigation) (citations omitted). The Court enjoys
26 broad discretion in making its fairness determination, and should consider factors including, but
27 not limited to:
28

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

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

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

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

24 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
25 **NEGOTIATIONS**

26 The settlement was the product of extensive arm's length negotiations between counsel
27 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
28 professional, the settlement negotiations were adversarial and non-collusive in nature. The
settlement reached is the product of substantial effort by the parties and their counsel. Although

1 Plaintiff and her counsel believed that there was a possibility of certifying the claims, they
2 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
3 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
4 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
5 prevailed on any of the defenses, the employees may not have received any monetary recovery.

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

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

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

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

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

24 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
25 significant legal and factual grounds for defending this action exist. First, in addition to
26 disputing the merits of Plaintiff’s claims, Defendants strongly disputed that Plaintiff could obtain
27 class certification, arguing a lack of commonality of the legal claims and injuries. Defendants
28 further argued that it complied with the applicable law and that any purported deviations

1 therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the class.
2 While Plaintiff asserts that this is a suitable case for certification, she realizes that there is always
3 a significant risk associated with class certification proceedings, which could significantly limit
4 the claims that she 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 Based upon detailed data obtained through informal discovery and information
10 exchanges, Plaintiff's counsel estimated the following big-picture data points through the date of
11 mediation: (1) 600 Direct Hires, (2) 67,000 Direct Hire Workweeks, (3) 1,900 Temporary
12 Employees, and (4) 45,000 Temporary Employee Workweeks. (Mankin Decl. ¶ 18).

13 From these numbers, and by applying violations rates derived from analysis of extensive
14 documents and data from Defendants, Plaintiff calculated the potential maximum and risk-
15 adjusted value of the claims as follows.

16 Plaintiff contended that her strongest claims were for unpaid wages arising from three
17 different violations. *First*, Plaintiff argued that she and the Class Members were required to
18 undergo a security check every time they left the facility *after clocking out*, in violation of
19 California law. *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (off-the-clock security checks are
20 compensable because the employees are subject to the company's control and the searches were
21 primarily for the company's benefit). *Second*, Plaintiff also alleged that, during the COVID-era,
22 Defendants failed to compensate the Class for pre-shift temperature checks and screenings.
23 *Boone v. Amazon Servs., LLC* (E.D. Cal. 2022) 562 F.Supp.3d 1103 (pre-shift COVID
24 temperature checks constitute "hours worked" and must be compensated). *Third*, Plaintiff
25 alleged that Defendants paid the Class on an hourly basis with additional earned compensation
26 but failed to include this nondiscretionary compensation in the regular rate calculations and
27 overtime compensation. In total, Plaintiff calculated that the maximum potential damages for
28 these claims (combined) was \$1,683,528. (Mankin Decl. ¶ 19).

1 However, this maximum figure fails to account for various risks and defenses which had
2 to be considered at mediation. For example, Defendants contended that the arbitration
3 agreement was enforceable and would bring a complete end to these claims. Plaintiff assigned a
4 20% risk to this defense/argument. Defendants also argued that the claims were inherently
5 unmanageable as they would rely on individualized testimony as to the amount of
6 uncompensated “off-the-clock” time while underdoing security and COVID screenings; thus,
7 Defendants argued this was the prototypical example where certification would be denied
8 because of individualized issues; thus, Plaintiff assigned another 40% risk at the class
9 certification stage. Then, as to the merits, Defendants argued that it paid all wages owed and the
10 Class Members were not required to perform any off-the-clock work. Indeed, Defendants
11 provided information that many of these practices (such as the security check) did not even exist
12 at other facilities – as such, Plaintiff assigned another 20% risk on the merits, resulting in risk-
13 adjusted value of the unpaid wage claims of \$646,475. (Mankin Decl. ¶ 20).

14 Plaintiff also alleged meal and rest break claims against Defendants. After expert review
15 of the timekeeping records, Plaintiff’s counsel estimated a 36.2% violation rate for meal periods
16 and 25% for rest breaks. Given the total number of shifts at issue (approximately 537,600), this
17 established maximum values of \$3,063,180 for meal periods (537,600 total shifts x 36.2%
18 violation rate x \$15.74 per LC § 226.7) and \$2,115,456 for rest breaks (537,600 total shifts x
19 25% violation rate x \$15.74 per LC § 226.7). (Mankin Decl. ¶ 21).

20 However, Defendants raised numerous arguments in response to this claim, including that
21 they maintained fully compliant written policies and specifically authorized the Class Members
22 to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
23 short/late break. Therefore, Defendants asserted that a fact-finder would have to determine for
24 each Class Member whether a break was missed and why, and why a break was noncompliant or
25 nonexistent, because if it was by the employee’s choice, no liability attaches to Defendants.
26 These defenses are factored into Plaintiffs’ analysis in two ways. First, these issues raise
27 questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
28 placed a 40% risk at the class certification stage for meal periods and a 40% risk for rest breaks.

1 Second, these defenses also go toward the merits given the evidentiary question of proving the
2 number of meal and rest violations. As such, Plaintiffs placed a 40% risk on the merits for meal
3 breaks, and an additional 40% risk on the merits for rest breaks. Plaintiff also assigned the same
4 20% risk as to the arbitration agreement, so this sets the risk-adjusted value for the meal claims
5 as \$882,196 ($\$3,063.180 \times 20\% \text{ arb agreement risk} \times 30\% \text{ class cert risk} \times 30\% \text{ merits risk}$) and
6 for the rest break claims as \$609,251 ($\$2,115,456 \times 20\% \text{ arb agreement risk} \times 40\% \text{ class cert risk}$
7 $\times 40\% \text{ merits risk}$). (Mankin Decl. ¶ 22).

8 Finally, Plaintiff alleged claims for waiting time penalties and wage statement violations.
9 But these claims were entirely derivative of the claims above, meaning that they only had merit
10 if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for
11 these claims were as follows: (1) \$6,044,160 [1,600 former employees $\times$ \$15.74 per hour $\times$ 8
12 hours per day $\times$ 30 days], and (2) \$4,008,000 for wage statement violations [40,580 wage
13 statements at the \$50/\$100 formula under § 226(e)]. (Mankin Decl. ¶ 23).

14 But Defendants raised a variety of defenses to these derivative claims that impacted the
15 valuation. Namely, Defendants argued that the wage statements did not violate Labor Code §
16 226 and, even if there was a “technical” violation, Plaintiff would be unable to prove the required
17 “knowing and intentional” and “injury” elements. Based on these facts and defenses, Plaintiff
18 applied the 20% risk as to the arbitration agreement, a 40% risk at class certification, and
19 estimated another 40% risk on the merits, leading to a risk-adjusted value of \$1,154,304 for the
20 wage statement claims. (Mankin Decl. ¶ 24).

21 Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for the
22 fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those
23 claims failed at certification or on the merits, there would be no waiting time penalties owed, so
24 the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
25 and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
26 prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203.
27 And, here, Defendants argued there was no “willful” violation since they had compliant written
28 policies and any deviations therefrom were inadvertent and unintentional. As a result of this

analysis, Plaintiffs’ counsel applied the 20% arbitration risk, a 40% risk at class certification and a 50% risk on the merits, leading to a risk-adjusted value of \$1,450,598. (Mankin Decl. ¶ 25).

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

•	Unpaid Wage Claims	\$	646,475
•	Meal and Rest Break Claims	\$	1,491,447
•	Wage Statement Claims	\$	1,154,304
•	Waiting Time Penalty Claims	\$	1,450,598
•	Total Risk Adjusted Penalties and Damages	\$	4,742,824

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 31.6% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the high 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, Defendants 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. Defendants also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

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 are 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

1 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
2 6; Carlson Decl. ¶¶ 3-9; Bokhour Decl.). Plaintiff's counsel, operating at arm's length, weighed
3 the strengths and risks of this case, and are of the view that this is a fair and reasonable
4 settlement considering the nature of the claims, realistic risk adjusted value, the complexities of
5 the case, state of the law, and uncertainties of class certification and litigation.

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

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

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

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

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

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

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

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

24 Under the terms of the Settlement Agreement, Class Counsel is requesting \$500,000 in
25 attorneys’ fees, which is equal to one-third of the Settlement Amount. *See, e.g., Laffitte v.*
26 *Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at
27 a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the
28 benefit of the class members, the trial court may determine the amount of a reasonable fee by

1 choosing an appropriate percentage of the fund created); *see also* *Stuart v. RadioShack Corp.*
2 (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee award of 1/3 of the total maximum
3 settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total
4 settlement was “well within the range of percentages which courts have upheld as reasonable in
5 other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010
6 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v.*
7 *Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding
8 fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class
9 actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System,*
10 *Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at *8 (approving fees of 1/3 of common
11 fund).

12 Additionally, Plaintiff is seeking up to \$25,000 in litigation costs, pursuant to the
13 Settlement Agreement.

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

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

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

27 The requested service award falls within the range of incentive payments typically
28 awarded to Class Representatives in similar class actions. *See, e.g., Bond v. Ferguson*

1 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service award to each
2 of the two class representatives in a trucker meal break class action; *Ross v. US Bank National*
3 *Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award
4 to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast*
5 *Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the
6 amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v.*
7 *Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (“the court finds
8 Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.*
9 (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to
10 each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found.*
11 *Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000
12 incentive award for each Class Representative” in wage an hour settlement).

13 **VI. THE COURT SHOULD APPOINT CPT GROUP AS SETTLEMENT**
14 **ADMINISTRATOR**

15 Subject to the Court’s approval, the parties stipulated to CPT Group serving as the
16 Settlement Administrator. CPT Group is experienced in administering class action settlements
17 and has provided a flat-fee proposal to administer this settlement for \$25,500. (Mankin Decl. ¶
18 38).

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

20 The last step in the approval process is the formal hearing, whereby proponents of the
21 settlement may explain and describe its terms and conditions and offer argument in support of
22 approval, and Class Members or their counsel may be heard in support of or in opposition to the
23 settlement. Subject to the Court’s approval, the Parties propose that the Court schedule a hearing
24 for final approval approximately 130 days after the Preliminary Approval Date, as follows:

May 3, 2024	Preliminary Approval (PA) hearing
May 17, 2024 (14 days after PA)	Deadline for Defendants to Provide the Class Data to Settlement Administrator

May 27, 2024 (<i>10 days after Settlement Administrator Receives Combined Class Data</i>)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Class Members.
July 11, 2024 (<i>45 days after mailing Class Notice</i>)	Deadline for Class Members to submit Requests for Exclusion, Objections and Disputes to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately September 10, 2024 - 130 days after Preliminary Approval granted)	Final Approval Hearing.

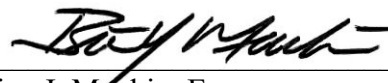
VIII. CONCLUSION

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

Dated: February 13, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



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