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

JUAN NIEVES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KLLM TRANSPORT SERVICES, LLC, a
Texas Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134796
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

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

Hearing

Date: November 29, 2022

Time: 10:00 a.m.

Dept.: S26

Complaint filed: December 21, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 29, 2022, at 10:00 a.m. or as soon thereafter
as the matter may be heard by the Honorable David Cohn in Department S26 of the San
Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415,
Plaintiff Juan Nieves, individually and on behalf of all others similarly situated, will and hereby
does move the Court for entry of an Order preliminarily approving the Parties' class action
settlement, including:

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

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

Dated: August 18, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Juan Nieves seeks preliminary approval of a \$535,000 wage-and-hour class action settlement (the “Settlement Amount”) on behalf of approximately 100 putative class members, which includes all current and former truck drivers who resided in California and who were employed by Defendant at any time between December 21, 2017 and the Preliminary Approval Date or August 31, 2022, whichever is earlier (the “Class Period”).

The payment to each Class Member under the Settlement Agreement is based on the number of Pay Periods that each Class Member worked for Defendant during the Class Period. The Class Action Settlement Agreement and Release of Claims is attached as Exhibit “A” to the Declaration of Brian Mankin (“Mankin Decl.”), and is hereinafter referred to as the “Settlement Agreement” or “S.A.” The proposed Notice of Settlement of Class Action (“Class Notice”) is attached to the Mankin Declaration as Exhibit “B.”

Under the terms of the Settlement Agreement, Defendant KLLM Transport Services, LLC, (“Defendant” or “KLLM”) will not oppose Plaintiff Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of \$178,333.33 which is 1/3 of the Gross Settlement Amount (hereinafter, the “Settlement Amount”), Plaintiff Counsel’s litigation expenses not to exceed \$20,000, Settlement Administrator Costs of \$6,500, PAGA penalties of \$50,000 (of which \$37,500 or 75% will be paid to the LWDA and the remaining \$12,500 or 25% will be paid to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$5,000 to Plaintiff Juan Nieves (“Class Representative”). (S.A. ¶ 49(a-h)).

After all Court-approved deductions from the Settlement Amount, it is estimated that \$275,166.67 will be available to pay the Class Members, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 535,000.00
Attorneys’ Fees (1/3)	\$ 178,333.33
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 6,500.00
PAGA Penalties	\$ 50,000.00
Class Representative’s Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 275,166.67

1 Assuming 100 Class Members, the average payment to each class member will be
2 approximately \$2,751.67 (\$275,166.67 / 100). Of course, the actual payment will be calculated
3 on a pro-rata basis according to the number of Pay Periods Worked by each Class Member.
4 Assuming an estimated 9,500 Pay Periods worked, each Pay Period will have a value of
5 approximately \$28.96 on average. In addition, the Aggrieved Employees (*i.e.*, individuals who
6 worked during the PAGA Period starting on December 21, 2020), will receive a pro rata share of
7 the \$12,500 PAGA Penalties (accounting for 25% of the total \$50,000 allocation). Moreover,
8 there are approximately 65 Aggrieved Employees who collectively worked approximately 3,500
9 Pay Periods during the PAGA Period. (Mankin Decl., ¶ 8).

10 The settlement is non-reversionary and Class Members will not be required to submit
11 claim forms to receive payment, but each Class Member will receive the Class Notice containing
12 information about his/her share, the opportunity to dispute the number of Pay Periods Worked,
13 and the opportunity to opt-out or object to the settlement. All Class Members who do not
14 affirmatively opt-out will receive a settlement check upon the Court granting final approval.
15 Likewise, all Aggrieved Employees will receive a share of the PAGA Penalties once the
16 settlement receives final approval.

17 Because the settlement is fair and reasonable and was negotiated at arm's length by
18 experienced counsel and an experienced mediator following a sufficient exchange of information
19 and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully
20 request that the Court enter an order preliminarily approving the settlement, conditionally
21 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
22 proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Phoenix Class
23 Action Administrators as the Settlement Administrator, and scheduling a hearing for final
24 approval of the Settlement.

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1 **II. BACKGROUND**

2 **A. THE SETTLEMENT CLASS**

3 The Class is defined as follows:

4 All current and former truck drivers who resided in California and
5 who were employed by Defendant KLLM Transport Services,
6 LLC, at any time between December 21, 2017 and the Preliminary
7 Approval Date, or August 31, 2022, whichever is earlier. (S.A. ¶
8 37).

8 **B. PROCEDURAL HISTORY**

9 On December 17, 2021, Plaintiff submitted a letter to the California Labor Workforce
10 Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act
11 of 2004 (the “PAGA”), and simultaneously sent a letter to Defendant requesting the production
12 of his personnel and timekeeping records in order to further evaluate his wage and hour claims.
13 (Mankin Decl., ¶ 11).

14 On December 21, 2021, Plaintiff filed a class and representative PAGA action complaint
15 in the Court alleging claims for: (1) failure to pay minimum and regular wages, (2) failure to
16 provide meal periods, (3) failure to provide rest breaks, (4) failure to reimburse for business
17 expenses, (5) failure to timely pay final wages, (6) failure to provide accurate itemized wage
18 statements, (7) unfair and unlawful competition pursuant to Business and Professions Code
19 §17200 *et seq.*, and (8) related claims under PAGA. (Mankin Decl., ¶ 12).

20 Defendant retained counsel and, on March 11, 2022, Defendant removed the Action to
21 the United States District Court for the Central District of California. Plaintiff advised of his
22 intention to file a motion to remand, but the Parties stayed all motion practice pending the
23 completion of mediation and agreed that any settlement reached at mediation would include a
24 stipulation to remand the Action to state court. In preparation for the mediation, the Parties
25 informally exchanged documents and information that allowed both sides to calculate the
26 potential damages and evaluate potential risk, including policies and procedures pertaining to
27 each claim alleged, and statistics relating to the number of current and former employees,
28 number of shifts, pay periods worked and other things. In this regard, Defendant provided a

1 random 20% sampling of timekeeping and payroll records of the Class Members. This robust
2 sampling enabled both parties to take a deep dive into the claims. Additionally, during this
3 process, Plaintiff and his 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., ¶ 13).

6 On May 6, 2022, Plaintiff and Defendant KLLM participated in mediation before
7 Honorable Jonathan Cannon, a retired Judge who served in the Orange County Complex Civil
8 Department and now serves as mediator on wage and hour class action cases among other
9 matters. The matter resolved pursuant to a mediator's proposal. The Parties accepted the
10 mediator's proposal and memorialized the terms of the settlement in a long-form Settlement
11 Agreement. (Mankin Decl., ¶ 14). The Parties now seek the Court's preliminary approval of the
12 Settlement.

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

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

17 One of the primary claims in this action is for wage statement violations under Labor
18 Code § 226. During the statutory period, Plaintiff alleges that Defendant provided the Class with
19 wage statements that failed to contain multiple items required under § 226(a), including the total
20 hours worked during the pay period, the start date of the pay period, and the name and address of
21 the employer. However, Defendant raised a variety of defenses to this claim, including that
22 Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements
23 under § 226(e) and, thus, no liability would attach.

24 Plaintiff also alleged that he and the Class Members were subjected to minimum wage
25 violations due to a variety of allegedly illegal practices. For instance, Plaintiff alleged that he and
26 the other drivers recorded daily work hours via electronic log on the truck. However, Plaintiff
27 was not able to immediately clock in after arriving at work, as he had to turn on the truck to
28 power up the e-log system, wait for it to update, and only then was he able to clock in. And

1 Plaintiff further alleges that he and the Class were required to perform work for Defendant while
2 off-the-clock while receiving dispatching instructions and other information on the weekends –
3 leading to uncompensated time. Plaintiff also challenges the propriety of Defendant’s pay
4 policies, both as to a piece-rate system and as to a “salary” based pay. And, most importantly,
5 Plaintiff alleged that these unpaid wage claims triggered waiting time penalties for each *former*
6 Class Member.

7 However, Defendant vehemently opposed these unpaid wage claims both on the merits
8 and as to the propriety of pursuing them on a class and representative PAGA basis. For example,
9 Defendant argued that it maintained lawful policies to compensate employees for all time
10 worked and that any ruling on these unpaid wage claims would require unwieldy individualized
11 assessments that were not proper for class and representative treatment. And, as for the waiting
12 time penalty claims, Defendant argued that these would fail along with the underlying wage
13 claims – and, even if the wage claims succeeded, Defendant argued it was entitled to the “good
14 faith” defense and that Plaintiff would be unable to show these violations were “willful.”

15 Plaintiff also alleged various PAGA claims arising out of the claimed violations
16 mentioned above. However, Defendant argued that these types of “derivative” claims have no
17 merit.

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

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

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

23 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

24 The \$535,000 Settlement Amount is non-reversionary and will be paid out to Class
25 Members without the need to submit a claim form or take any affirmative action. It includes (1)
26 Plaintiff’s attorneys’ fees and costs, as approved by the Court; (2) a service award of \$5,000 to
27 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
28 \$6,500; (4) a \$50,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to

1 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
2 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶
3 49(a-h)). Defendant will separately pay its share of employer's payroll taxes and withholdings.

4 After all Court-approved deductions from the Settlement Amount, it is estimated that
5 \$275,166.67 will be available to pay the Individual Settlement Amounts to approximately 100
6 Class Members. Thus, the average settlement payment is approximately \$2,751.67.

7 **B. NOTICE PROCEDURES**

8 The proposed Class Notice will be provided to the Class Members showing the estimated
9 amount that each Class Member will receive and the number of workweeks he/she is credited
10 (Exhibit B to the Mankin Decl.). Within 14 days after entry by the Court of its Order of
11 Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of Class
12 Members containing names, addresses, , Social Security Numbers, and the dates of employment
13 and total Pay Periods Worked in the Class and PAGA Periods (the "Class Data"). (S.A. ¶¶ 5, 67).

14 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
15 the number of weeks worked for each Class Member, populate the Class Notice for each, and
16 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 68).

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

21 **C. EXCLUSION AND OBJECTION PROCEDURES**

22 Class Members who do not timely Opt-Out of the Settlement will be deemed to
23 participate in the Settlement and shall become a Participating Class Member without having to
24 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class
25 Member must submit a written request to the Settlement Administrator no later than 30 days
26 after being mailed by the Settlement Administrator ("Notice Response Deadline"). (S.A. ¶¶ 20,
27 72). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be
28 invalid. (S.A. ¶ 72(a)).

1 The Class Notice shall inform the Class Members of their right to object to the
2 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
3 objection to the Settlement Administrator no later than the Notice Response Deadline. The
4 objection must include the case name and number and must set forth, in clear and concise terms,
5 a statement of the reasons why the objector believes that the Court should find that the proposed
6 Settlement is not in the best interest of the Class and the reasons why the Settlement should not
7 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 72(c)).

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

9 The amount of each Settlement Class Member's Individual Settlement Amount is tied to
10 the number of Pay Periods Worked that a Settlement Class Member worked for Defendant in
11 California during the Class Period. Individual Settlement Payments will be made as follows:

12 • Defendant will calculate the total number of Pay Periods Worked by each
13 Settlement Class Member during the Class Period and the aggregate total number of Pay Periods
14 Worked by all Settlement Class Members during the Class Period.

15 • To determine each Settlement Class Member's estimated Individual Settlement
16 Payment, the Settlement Administrator will use the following formula: The Net Settlement
17 Amount will be divided by the aggregate total number of Pay Periods Worked, resulting in the
18 "Pay Period Value." Each Settlement Class Member's Individual Settlement Payment will be
19 calculated by multiplying his or her total number of Pay Periods Worked during the Class Period
20 by the Pay Period Value.

21 • Individual Settlement Payments will be reduced by any required deductions for
22 each Participating Class Member as specifically set forth herein, including employee-side tax
23 withholdings and deductions.

24 • The entire Net Settlement Amount will be disbursed to all Participating Class
25 Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator
26 shall proportionally increase the Individual Settlement Payment for each Participating Class
27 Member according to the number of Pay Periods Worked, so that the amount actually distributed
28 to the Settlement Class equals 100% of the Net Settlement Amount.

1 (S.A. ¶ 49(c)).

2 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
3 based on a pro-rata basis. Thus, the \$12,500 PAGA Penalties allocated to the roughly 65
4 Aggrieved Employees will be divided and paid on a Pay Period basis. (S.A. ¶ 49(h)).

5 The Class Notice will inform Class Members of the estimated share and the number of
6 Pay Periods he/she worked during the Class Period. Class Members may dispute their Pay
7 Periods Worked if they feel they worked more in the Class or PAGA Periods than Defendant’s
8 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 70).

9 As noted, assuming a class size of 100 Class Members, the average payment to each class
10 member will be approximately \$2,751.67 each, although the actual payment will be calculated on
11 a pro-rata basis as shown above. Assuming an estimated 9,500 Pay Period worked, each Pay
12 Period will have a value of approximately \$28.96 on average. Indeed, this is a good result for
13 the Class Members.

14 Moreover, it is estimated that approximately 65 Aggrieved Employees collectively
15 worked 3,500 Pay Periods during the PAGA Period. The Aggrieved Employees will share in the
16 \$12,500 PAGA award on a pro rata basis.

17 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

18 Defendant is required to deposit the Settlement Amount, along with the employers’ share
19 of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
20 “Effective Date” and these funds will be used to pay: (1) the class attorney fees and expenses, as
21 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
22 expenses, as approved by the Court; (4) a \$50,000 PAGA award; and (5) the aggregate of all
23 Individual Settlement Amounts of participating Class Members. (S.A. ¶ 73). Within 10 days
24 after the Court’s approval of the Settlement, the Settlement Administrator shall issue payments to
25 cover all court-approved payments. (S.A. ¶ 74).

26 Class Members will have 180 days to cash his/her settlement check. If a Class Member
27 fails to cash a check by the deadline, then the Settlement Administrator shall issue the unclaimed
28 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 75).

1 **F. TAX TREATMENT**

2 The Parties agree that one-third (33.33%) will be allocated as wages subject to
3 withholding of all applicable local, state and federal taxes; and two-thirds (66.67%) will be
4 allocated for interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210,
5 226, etc.) from which no taxes will be withheld. (S.A. ¶ 49(d)). Additionally, the PAGA
6 Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and
7 shall be reported as required on an IRS Form 1099. (S.A. ¶ 49(h)).

8 Defendant will separately pay its share of employer payroll taxes on the sum allocated to
9 wages. (S.A. ¶ 49(a)).

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

11 In exchange for these payments, the Settlement Agreement ¶ 30 provides that the
12 Participating Class Members will release the Released Parties of the claims alleged or could have
13 been alleged based on the facts stated in the operative complaint, as follows:

14 any and all claims, wages, penalties, interest, debts, demands, rights,
15 liabilities, costs, compensation, damages, injunctive and/or
16 declaratory relief, attorneys' fees, actions, and/or causes of action
17 that were pleaded or could have been pleaded based upon the factual
18 allegations set forth by Plaintiff in the Complaint filed in this Action
19 and arising at any time during the Class Period, including but not
20 limited to all claims under the California Labor Code for unpaid
21 minimum wages, off-the-clock work violations, failure to provide
22 meal periods, failure to provide rest periods, unreimbursed business
23 expenses, wage statement violations, interest, penalties, and
24 attorneys' fees, waiting time penalties, withholding from wages and
the related provisions of the Labor Code including Labor Code §§
200-204, 208, 210, 216, 218.6, 226, 226.3 , 226.7, 510, 512, 512.5,
558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, derivative
claims under California Business & Professions Code §§ 17200 et
seq., and all claims under the governing Wage Order, and Fair Labor
Standards Act ("Released Class Claims").

25 The time governing the release shall be the same as the Class Period. (S.A. ¶ 30).

26 It is understood and agreed that the Settlement Agreement will not release any person,
27 party or entity from claims, if any, by Class Members for workers compensation, unemployment,
28 or disability benefits of any nature, nor does it release any claims, actions, or causes of action

1 which may be possessed by Settlement Class Members under state or federal discrimination
2 statutes including, without limitation, the Cal. Fair Employment and Housing Act, the Cal.
3 Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.;
4 the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.;
5 the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee
6 Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and all of their
7 implementing regulations and interpretive guidelines.

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

9 The Settlement Agreement ¶ 23 also defines the “PAGA Released Claims” as follows:

10 [A]ll PAGA claims that Plaintiff alleged or could have alleged
11 against the Released Parties, on behalf of the Aggrieved Employees
12 and the State of California, based on the facts and/or theories stated
13 in the operative complaint and/or in Plaintiff’s notice letter to the
14 LWDA, including all PAGA claims seeking civil penalties premised
15 upon: (a) failure to pay minimum wages, (b) failure to provide meal
16 periods, (c) failure to provide rest breaks, (d) failure to reimburse
17 business expenses, (e) failure to failure to timely pay wages each
18 period and upon separation of employment, (f) failure to provide
19 accurate itemized wage statements, and (g) all other claims for civil
20 penalties recoverable under the Private Attorneys General Act,
21 Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in
22 the operative complaint.
23

24 The time governing the PAGA Released Claims is December 21, 2020 through the
25 Preliminary Approval Date or July 31, 2022, whichever is earlier (the “PAGA Period”; see S.A.
26 ¶ 22). Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
27 that individual will still be subject to the PAGA Released Claims to the fullest extent permitted
28 by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 72(a)).

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1 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
2 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
3 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

4 California Rule of Court 3.769(d) provides that the Court may make an order approving
5 certification of a provisional settlement class at the preliminary approval stage. It is well-
6 established that trial courts should use a “lesser standard of scrutiny” for determining the
7 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
8 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
9 a settlement class, so the case management issues inherent in determining if the class should be
10 certified need not be confronted; and the trial court’s fairness review of the settlement protects
11 the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*
12 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification
13 determination and the merits of the case is further attenuated within the context of the settlement
14 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short
15 of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
16 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
17 certification, a district court need not inquire whether the case, if tried, would present intractable
18 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
19 purposes of this settlement only, Plaintiff request that this Court provisionally certify the Class,
20 as defined above, under Code of Civil Procedure § 3150.

21 **A. NUMEROSITY AND ASCERTAINABILITY**

22 Numerosity is met if a proposed class is so large that joinder of all members would be
23 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
24 the class members can be objectively identified and given notice of the litigation without
25 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
26 89, 101. Here, according to Defendant’s records, there are approximately 100 Class Members.
27 This figure satisfies the numerosity requirement.

28 ///

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

2 1. Commonality

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

10 2. Typicality

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

18 3. Adequacy of Representation

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

25 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
26 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
27 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
28 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

1 4. Superiority

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

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

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

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

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

24 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
25 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable”
26 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
27 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
28 after determining that it is ““fair, adequate and reasonable,”” considering factors such as the

1 “risk, expense, [and] complexity” of continued litigation) (citations omitted). The Court enjoys
2 broad discretion in making its fairness determination, and should consider factors including, but
3 not limited to:

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

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

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

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

26 ///

27 ///

28 ///

1 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
2 **NEGOTIATIONS**

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

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

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

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

19 To evaluate a settlement, the parties must provide the trial court with "basic information
20 about the nature and magnitude of the claims in question and the basis for concluding that the
21 consideration being paid for the release of those claims represents a reasonable compromise."
22 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
23 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
24 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
25 the class could recover was not necessary:

26 ///

27 ///

28 ///

Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims – a number which appears nowhere in the record of the case. But *Kullar* does not, as Geenwell claims, require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.”)

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

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

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation:

1 (1) 100 class members, (2) 8,381 workweeks, (3) 43,430 shifts worked, and (4) approximately
2 3,200 wage statements during the PAGA Period.

3 Plaintiff contends that his strongest claim was for wage statement violations. Based on
4 data and information gathered prior to mediation, Plaintiff alleges that there were 3,200 violative
5 wage statements provided to 70 Class Members. As such, the maximum potential damages under
6 § 226(e) was \$316,500.

7 But this maximum figure ignores several risks and defenses. For example, Defendant
8 raised many defenses, including that: (a) all required information under § 226(a) could be “easily
9 ascertained” from the wage statements and thus there were no violations, (b) the omissions, if
10 any, were not “knowing and intentional” so no liability would attach, (c) Plaintiff and the Class
11 would be unable to show the requisite “injury” to impose liability, and (d) even if there were
12 violations, Defendant modified its wage statements during the liability period, thus reducing the
13 number of potential violations. These defenses all went to the merits, not to defeating class
14 certification. Thus, Plaintiff did not assign a risk at the class certification stage but applied a 20%
15 risk on the merits, resulting in risk-adjusted value for the wage statement claim of \$253,000.

16 Plaintiff then valued the various unpaid wage claims at approximately \$2,000,000.
17 However, Defendant raised a host of strong defenses both as to class certification and on the
18 merits. For instance, Defendant argued that it maintained a policy which required the Class
19 Members to keep accurate records for the beginning and end of the workday, and that any “off-
20 the-clock” claims would require exactly the type of individualized assessments that preclude
21 class certification. Defendant also argued that its piece-rate and salary pay structures also
22 complied with California law pursuant to *Ayala v. U.S Xpress Enterprises, Inc.* (C.D. Cal., June
23 9, 2020), 2020 WL 3071707 because the pay structure was intended to and did cover all
24 delivery-related tasks, including non-productive time. Because of these strong defenses and
25 substantial risk in continued litigation, Plaintiff assigned a 45% risk at class certification and
26 another 45% risk on the merits, leading to a risk-adjusted value for the wage claims of \$605,000.

27 These unpaid wage claims then gave rise to Plaintiff’s claim for waiting time penalties,
28 which had a maximum value of \$477,000 based on 53 *former* Class Members. However,

Defendant argued that it would defeat Plaintiff's unpaid wage claims and, because the waiting time penalty claims were derivative of the unpaid wages, Plaintiff's Labor Code § 203 would fail. Additionally, Defendant argued that even if the Court determined that some or all unpaid wage claims had merit, waiting time penalties would be inappropriate because any violations were not "willful", and Defendant had a "good faith" belief in the legality of its practices. For these reasons, Plaintiff applied the same class certification and merits risks from above (45% each), leading to a risk-adjusted value for the § 203 claims of \$144,292.

As for Plaintiff's claims under Labor Code § 2802 (failure to reimburse), Plaintiff assigned a maximum value of \$86,860 based on \$10 unreimbursed cell phone expenses per workweek (\$10 x 8,686 workweeks). But these claims also faced strong defenses, as Defendant argued that it reimbursed the Class Members for all expenses and that the Class Members were not required to use their cell phones for work purposes. Indeed, Defendant argued that the opposite was true since the trucks all had an onboard computer system that was fully capable of handling any necessary communications (without a Class Member needing to use their cell phone). Based on these defenses, Plaintiff assigned a 15% risk at class certification and a 30% risk on the merits, leading to a risk-adjusted value of \$51,682.

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

•	Wage Statement Claims	\$	253,000
•	Unpaid Wage Claims	\$	605,000
•	Waiting Time Penalty Claims	\$	144,292
•	Unreimbursed Expense Claims	<u>\$</u>	<u>51,682</u>
•	Total Risk Adjusted Penalties and Damages	\$	1,053,974

The reasonableness of the settlement is apparent from the fact that the proposed settlement is less than a 50% discount from the risk-adjusted class damages and penalties. And while the PAGA civil penalty would have a maximum value in the high six figures, this figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an

award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR 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, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of counsel”) (internal quotation and citation omitted).

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). 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 in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation.

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

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

1 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
2 the Class Notice to the last known address of all class members complies with all the
3 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
4 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,
5 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
6 and how class members may elect to exclude themselves or make an objection; and (4) how class
7 members can obtain additional information. *See* Class Notice (Exhibit B to Mankin Decl.). In
8 addition, it will inform Class Members of their estimated settlement share.

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

17 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement
18 Class Members with all due process protections required by the United States Constitution.
19 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
20 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
21 contentions or denials of the parties; (2) a statement that the court will exclude the member from
22 the class if the member so requests by a specified date; (3) a procedure for the member to follow
23 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
24 not, will bind all members who do not request exclusion; and (5) a statement that any member
25 who does not request exclusion may, if the member so desires, enter an appearance through
26 counsel. The 30-day deadline for Class Members to exclude themselves is reasonable, as it
27 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
28 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically

1 be sent a settlement check.

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

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

12 **H. THE ATTORNEY’S FEES AND COSTS ALLOCATION UNDER THE SETTLEMENT**
13 **AGREEMENT IS FAIR**

14 Under the terms of the Settlement Agreement, Class Counsel is requesting \$178,333.33
15 in attorneys’ fees, which is equal to one-third of the Settlement Amount. *See, e.g. Laffitte v.*
16 *Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at
17 a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the
18 benefit of the class members, the trial court may determine the amount of a reasonable fee by
19 choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.*
20 (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3
21 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of
22 1/3 of the total settlement was “well within the range of percentages which courts have upheld
23 as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal.
24 June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of
25 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14,
26 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund
27 in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third
28 of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008)

No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

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

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

I. THE CLASS REPRESENTATIVE'S SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE

The Settlement Agreement provides an incentive award payment of \$5,000 to the Class Representative, which is reasonable given large recovery that 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 settlement strategy; making himself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement documents. The Class Representative also assumed significant risk in bringing this litigation—namely, had he lost, he could have been ordered to pay Defendant's costs. Additionally, as part of the mediation process, Plaintiff agreed to enter into a confidential separation agreement (that can be provided to the Court under seal upon request), whereby he concluded his employment with Defendant as of the mediation and received a payment that was intended to compensate him for lost wages incurred while seeking similar employment.

The requested service award falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (approving \$11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.

Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (“the court finds Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement).

VI. THE COURT SHOULD APPOINT ILYM AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to ILYM Group serving as the Settlement Administrator. ILYM is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$6,500. (Mankin Decl. ¶ 25).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

November 29, 2022	Preliminary Approval (PA) hearing
December 23, 2022 (24 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
January 23, 2023 (30 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys’ fees, costs and service payments.

9 court days before Final Approval hearing	Deadline for filing of any written opposition to 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 March 20, 2023 - 110 days after Preliminary Approval is granted)	Final Approval Hearing.

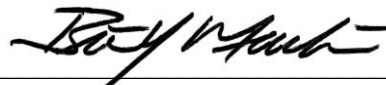
VIII. CONCLUSION

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

Dated: August 18, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On August 18, 2022, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 18, 2022, Riverside, California.

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



Tracie Chiarito, Declarant

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