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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

EDUARDO AQUINO RODRIGUEZ,
individually, on a representative basis, and
on behalf of all others similarly situated;

Plaintiff,

vs.

EAT SWEET FARMS, LLC, a California
Limited Liability Company; JDB PRO,
INC., a California Corporation; and DOES
1 through 20, inclusive;

Defendants.

Case No.: 22CV00203
*[Assigned to Hon. Patricia L. Kelly, Dept SM1,
for all purposes]*

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

Hearing

Date: July 24, 2024
Time: 8:30 a.m.
Dept.: SM1

Complaint filed: January 18, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 24, 2024, at 8:30 a.m. or as soon thereafter as the
3 matter may be heard by the Honorable Patricia L. Kelly in Department SM1 of the Santa Barbara
4 County Superior Court, located at 312-C East Cook Street, Santa Maria, CA 93454, Plaintiff
5 Eduardo Aquino Rodriguez, individually and on behalf of all others similarly situated, will and
6 hereby does move the Court for entry of an Order preliminarily approving the Parties' class
7 action settlement, including:

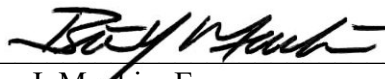
- 8 1. Certifying the class for purposes of settlement only;
- 9 2. Preliminarily appointing Plaintiff as class representative for settlement purposes only;
- 10 3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
- 11 4. Preliminarily approving the class action settlement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

23 Dated: June 20, 2024

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eduardo Aquino Rodriguez seeks preliminary approval of a \$2,150,000 wage-
4 and-hour class action settlement on behalf of the Class Members, which consists of all current
5 and former non-exempt employees employed by Defendants Eat Sweet Farms, LLC, and JDB
6 Pro, Inc., in California at any time during the Class Period of January 18, 2018, through May 24,
7 2024.

8 Under the terms of the Settlement Agreement,¹ Defendants will not oppose Plaintiff
9 Counsel's application for a reasonable award of attorney's fees not to exceed \$716,666.67 (1/3 of
10 the Gross Settlement Amount), litigation expenses not to exceed \$30,000, Administrator Costs of
11 \$92,000, PAGA penalties of \$100,000 (with 75% to the LWDA and 25% to the Aggrieved
12 Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff and Class
13 Representative Eduardo Aquino Rodriguez . (S.A. ¶ 3.2).

14 After all Court-approved deductions from the Gross Settlement Amount,² it is estimated
15 that \$1,201,333.33 will be available to pay the Class Members, as follows:

16

<i>Gross Settlement Amount</i>	\$ 2,150,000.00
Attorneys' Fees (1/3)	\$ 716,666.67
Litigation Costs (not to exceed)	\$ 30,000.00
Administrator Costs (estimated)	\$ 92,000.00
PAGA Penalties	\$ 100,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 1,201,333.33

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21 The actual payment to the Class Members will be calculated on a pro-rata basis according
22 to the number of Weeks Worked during the Class Period with each Workweek having a value of
23 approximately \$4.27 (\$2,150,000 / 504,000 total Work Weeks). (S.A. ¶ 3.2.4). In addition, the
24 Aggrieved Employees will receive a share of the \$25,000 allocated to PAGA Penalties (25% of
25 the total \$100,000 PAGA allocation), calculated pro-rata based on the number of PAGA Pay
26 Periods worked during the PAGA Period. (S.A. ¶ 3.2.5).

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

² The Gross Settlement Amount is subject to increase if the "Escalator Clause" is triggered. See S.A. ¶ 8.

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

8 **II. BACKGROUND**

9 **A. THE SETTLEMENT CLASS**

10 The Class is defined as follows:

11 All current and former non-exempt employees employed by
12 Defendants Eat Sweet Farms, LLC, and JDB Pro, Inc., in
13 California at any time during the Class Period of January 18, 2018,
through May 24, 2024. (S.A. ¶ 1.5).

14 **B. PROCEDURAL HISTORY**

15 Plaintiff submitted a letter to the Labor Workforce Development Agency (the "LWDA")
16 for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and
17 simultaneously sent a letter to Defendants requesting the production of personnel and
18 timekeeping records in order to further evaluate his wage and hour claims. (Mankin Decl. ¶ 13).

19 On January 18, 2022, Plaintiff filed a class and representative PAGA action complaint in
20 the Court alleging the following class action and PAGA claims against Defendants: failure to pay
21 minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to
22 provide rest breaks; failure to pay vested vacation; failure to reimburse business expenses; failure
23 to timely pay final wages; failure to provide accurate itemized wage statements; and unfair and
24 unlawful competition. (S.A. ¶ 2.1; Mankin Decl. ¶ 14).

25 Defendants retained counsel and immediately began to defend the case, including arguing
26 that Plaintiff entered into a binding arbitration agreement that required the dismissal of all class
27 and PAGA claims. Initially, on February 24, 2022, the Parties met and conferred to discuss the
28 (at the time) pending United State Supreme Court case captioned *Viking River Cruises, Inc. v.*

1 *Moriana* (2022) 142 S. Ct. 1906, and the potential impact it might have on the issues presented
2 in this case. To that end, the Parties agreed to stay all proceedings pending the Supreme Court's
3 decision in *Viking River Cruises*. However, the *Viking River Cruises* decision left open
4 additional questions that would ultimately be decided by the California Supreme Court in *Adolph*
5 *v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104. (Mankin Decl. ¶ 15). Even so, Plaintiff
6 threatened to bring multiple arbitrations as well as continue with the PAGA case while obtaining
7 contact information for the Class Members.

8 Meanwhile, while waiting for the California Supreme Court to consider the *Adolph* case,
9 the Parties agreed to submit the matter to mediation. (Mankin Decl. ¶ 16). In preparation for the
10 mediation, the Parties informally exchanged thousands of pages of documents and information
11 that allowed both sides to conduct significant investigation regarding the facts of the case and
12 calculate the potential damages and evaluate potential risk, including policies and procedures
13 pertaining to each claim alleged, and statistics relating to the number of current and former
14 employees, number of shifts, weeks worked and other things. Defendants also provided its
15 written policies and practices and a robust sampling of payroll and timekeeping records for Class
16 Members. This information enabled both parties to take a deep dive into the claims.
17 Additionally, during this process, Plaintiff and his counsel analyzed, researched, and investigated
18 the potential issues, including matters related to the calculation of damages, trial, and appellate
19 issues and risks. (Mankin Decl. ¶ 17).

20 The Parties engaged in extensive settlement negotiations, and on March 13, 2024,
21 Plaintiff and Defendants participated in a formal, full-day mediation conducted by Mr. Michael
22 Strauss, Esq., a highly experienced and respected class action mediator in California. At the
23 conclusion of mediation, Mr. Strauss issued a mediator's proposal which was ultimately accepted
24 by the Parties.

25 During all settlement discussions, the Parties conducted their negotiations at arm's length
26 in an adversarial position. Arriving at a settlement that was acceptable to both Parties was not
27 easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at
28 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class

1 certification and prevail at trial. After conducting investigations, extensive settlement
2 negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the
3 matter is well-suited for settlement given the legal issues as well as the costs and risks to both
4 sides that would attend further litigation. The Parties now seek the Court's preliminary approval
5 of the Settlement. (Mankin Decl. ¶ 18)

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

7 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
8 However, Defendants vigorously contested and denied Plaintiff's material allegations on the
9 merits and as to the propriety of a class action or PAGA representative action. (Mankin Decl. ¶
10 19).

11 One of the primary claims in the action was based on failure to pay all wages. Plaintiff
12 alleged this occurred through various theories. (Mankin Decl. ¶ 20).

13 *First*, Plaintiff claimed that he and the Class Members that were paid on a piece-rate basis
14 did not properly receive all separate compensation for paid rest breaks. Furthermore, Plaintiff
15 alleges that times when Defendants paid for rest breaks, it rounded which resulted in an
16 underpayment to Plaintiff and the Class. However, Defendants denied any liability for this claim
17 by arguing that (1) it had compliant, written policies and (2) Defendants' electronic timekeeping
18 system requires the Class to track their time via badges with electronic barcodes to ensure
19 accurate timekeeping. (Mankin Decl. ¶ 21). At all times, Defendants also disputed that the claim
20 was suitable for class or representative treatment because, among other things, it required highly
21 individualized inquiries.

22 *Second*, Plaintiff alleged that Defendants failed to provide compliant meal periods due to
23 the nature of the work. However, Defendants argued that it provided and made available meal
24 breaks to all employees and the foremen would stop all work for his respective crew to ensure a
25 meal was taken. Furthermore, Defendants argued that any instances of late meals was negated by
26 the existence of valid meal waivers. (Mankin Decl. ¶ 22). At all times, Defendants also disputed
27 that the claim was suitable for class or representative treatment because, among other things, it
28 required highly individualized inquiries.

1 Plaintiff also alleged various other Class and PAGA claims, such as failure to reimburse
2 business expenses, failure to pay all wages owed upon termination, failure to provide accurate
3 wage statements, and other claims related to the alleged violations mentioned above. However,
4 Defendants argued that these other claims, as well as the “derivative claims” have no merit.
5 (Mankin Decl. ¶ 23). At all times, Defendants also disputed that these claim were suitable for
6 class or representative treatment because, among other things, they required highly
7 individualized inquiries.

8 Despite the disputed nature of the claims, the Parties concluded that further litigation of
9 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
10 finally settled to limit further risk, expense, and protracted litigation. (Mankin Decl. ¶ 24).

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

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

13 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

14 The \$2,150,000 Settlement Amount is non-reversionary and will be paid out to Class
15 Members without the need to submit a claim form or take any affirmative action. It includes (1)
16 Plaintiff’s attorneys’ fees and costs, as approved by the Court; (2) a service award of \$10,000 to
17 Plaintiff, subject to approval by the Court; (3) Administrator expenses of approximately \$92,000
18 (and not to exceed \$125,000); (4) a \$100,000 PAGA award, 75% of which is to be paid to the
19 LWDA pursuant to California Labor Code § 2699(i) and 25% to the Aggrieved Employees; and
20 (5) the aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A.
21 ¶ 3.2 and subparts). Defendants will separately pay their share of employer payroll tax
22 obligations. (S.A. ¶ 3.2.4.1).

23 **B. NOTICE PROCEDURES**

24 The proposed Class Notice³ will be provided to the Class Members showing the
25 estimated amount each Class Member will receive and the credited number of Weeks Worked.
26
27
28

³ The proposed Class Notice is attached to the Mankin Decl. as Exhibit B.

1 Within 30 days after entry by the Court of its Order of Preliminary Approval, Defendants
2 shall provide the Administrator with a list of Class Members containing names, addresses, Social
3 Security number, and number of Workweeks and PAGA Pay Periods (the “Class Data”). (S.A. ¶
4 4.1).

5 Within 14 days of receipt of the Class Data, the Administrator shall calculate the Weeks
6 Worked for each Class Member, populate the Class Notice for each, and send each Class
7 Member the Class Notice via first-class, U.S. mail in English and Spanish. (S.A. ¶ 7.4.2).

8 In the event that any Class Notice mailed to a Class Member is returned as having been
9 undelivered by the U.S. Postal Service, the Administrator shall perform a skip trace search and
10 seek an address correction for such Class Member(s), and a second Class Notice will be sent to
11 any new or different address obtained. (S.A. ¶ 7.4.3).

12 **C. EXCLUSION AND OBJECTION PROCEDURES**

13 Class Members who do not timely Opt-Out of the Settlement will be deemed to
14 participate in the Settlement and shall become a Participating Class Member without having to
15 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
16 must submit a written request by mail or email to the Administrator no later than 45 days after
17 being notified by mail by the Administrator (“Response Deadline”). (S.A. ¶ 7.5.1). Any Opt-
18 Out request not postmarked by the Response Deadline will be invalid.

19 The Class Notice shall inform Class Members of their right to object to the Settlement.
20 Any Class Member who wishes to object to the Settlement may submit a written objection to the
21 Administrator by mail or email no later than the Response Deadline. (S.A. ¶ 7.7).

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

23 The amount of each Class Member’s Individual Settlement Payment is tied to the number
24 of Weeks Worked by each Class Member for Defendants during the Class Period. Individual
25 Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of
26 Workweeks worked by all Participating Class Members during the Class Period and (b)
27 multiplying the result by each Participating Class Member’s Workweeks. (S.A. ¶ 3.2.4).
28

1 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
2 based on a pro-rata basis. Thus, the \$25,000 in PAGA Penalties allocated to the Aggrieved
3 Employees will be divided and paid on the number of Pay Periods worked by all Aggrieved
4 Employees during the PAGA Period. (S.A. ¶ 3.2.5).

5 The Class Notice will inform Class Members of the estimated share and the number of
6 Weeks Worked during the Class Period and Pay Periods worked during the PAGA Period. Class
7 Members may dispute their Weeks Worked and/or Pay Periods if they feel they worked more
8 time in the Class or PAGA Periods than Defendants’ records show by timely submitting
9 evidence to the Administrator. (S.A. ¶ 7.6).

10 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

11 Defendants are required to deposit the Settlement Amount, along with the employer share
12 of payroll taxes owed, with the Administrator, in three equal installments as follows: (1) the first
13 installment to be paid on or before January 1, 2025 or within 10 days after the Effective Date,
14 whichever is later; (2) the second installment to be paid on or before July 31, 2025; and (3) the
15 third installment to be paid on or before December 1, 2025. (S.A. ¶ 4.2).

16 Likewise, the Participating Class Members and Aggrieved Employees will also receive 3
17 checks, which will be mailed by the Administrator within 14 days of the receipt of each payment.
18 as follows within 30 calendar days after the “Effective Date” and these funds will be used to pay:
19 (1) the class attorney fees and expenses, as approved by the Court; (2) the service award, as
20 approved by the Court; (3) administrative expenses, as approved by the Court; (4) the PAGA
21 award; and (5) the aggregate of all Individual Settlement Payments of participating Class
22 Members. Within 10 days after receiving the funds, the Administrator shall issue payments to
23 cover all court-approved payments. (S.A. ¶ 4.3).

24 Class Members will have 180 days to cash the settlement check. If a Class Member fails
25 to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California
26 State Controller in the name of the Class Member. (S.A. ¶ 4.3.1).

27 ///

28 ///

1 **F. TAX TREATMENT**

2 The Parties agree that 15% will be allocated as wages subject to withholding of all
3 applicable local, state and federal taxes; and 85% will be allocated for interest and penalties
4 (pursuant to, e.g., California Labor Code sections 203, 210, 226, etc.) from which no taxes will
5 be withheld. Defendants will separately pay their share of employer payroll taxes on the sum
6 allocated to wages. (S.A. ¶ 3.2.4.1). Additionally, the PAGA Penalties payable to the Aggrieved
7 Employees will be classified entirely as civil penalties and shall be reported as required on an
8 IRS Form 1099. (S.A. ¶ 3.2.5.2 – erroneously labeled as 3.2.4.2 in the S.A.).

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

10 In exchange for these payments, the Settlement Agreement at ¶ 5.2 provides that the
11 Participating Class Members will release the Released Parties of:

12 all claims, causes of action, rights, demands, penalties, costs, and
13 attorneys' fees arising during the Class Period under state, federal,
14 or local law that were alleged, or reasonably could have been
15 alleged, based on the factual allegations in the Operative Complaint,
16 or in any PAGA Notice submitted to the LWDA by Plaintiff, or
17 ascertained in the course of the Action (the "Class Released
18 Claims"). The Class Released Claims include any and all statutory,
19 constitutional, contractual, and/or common law claims arising
20 during the Class Period for wages, reimbursements, damages,
21 penalties, restitution, liquidated damages, interest, attorneys' fees,
22 or litigation costs, including but not limited to claims arising under:
23 California Labor Code sections 200, 201, 202, 203, 204, 208, 210,
24 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2,
25 1197, 1197.1, 1198, 1199, or 2802; the California Business and
26 Professions Code section 17200, et seq.; and any IWC Wage Orders.
27 The Class Released Claims include but are not limited to any and all
28 claims arising during the Class Period involving any alleged failure
 to pay minimum wages; failure to pay overtime wages; failure to
 provide meal periods; failure to provide rest breaks; failure to
 provide separate payment for rest and recovery periods and non-
 productive time; failure to pay vested vacation; failure to reimburse
 business expenses; failure to timely pay wages or final wages;
 failure to provide accurate itemized wage statements; failure to
 maintain employment records; and unfair and unlawful competition.
 Except as set forth in Section 5.3 of this Agreement, Participating
 Class Members do not release any other claims, including claims for
 vested benefits, wrongful termination, violation of the Fair
 Employment and Housing Act, unemployment insurance, disability,

1 social security, workers' compensation or claims based on facts
2 occurring outside the Class Period.

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

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

9 The Settlement Agreement at ¶ 5.3 also defines the "PAGA Released Claims" as follows:

10 any and all claims against Defendants and the Released Parties for
11 civil penalties under PAGA arising during the PAGA Period that
12 were, or reasonably could have been, alleged, based on the facts
13 contained in the Operative Complaint, or in any PAGA Notice
14 submitted to the LWDA by Plaintiff, or ascertained in the course of
15 the Action (the "PAGA Released Claims"). The PAGA Released
16 Claims include but are not limited to claims for PAGA penalties
17 arising during the PAGA Period out of alleged violations of Labor
18 Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2,
19 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1,
20 1198, 1199, or 2802, and any IWC Wage Orders, and any claims for
21 PAGA penalties arising during the PAGA Period out of any alleged
22 failure to pay minimum wages; failure to pay overtime wages;
23 failure to provide meal periods; failure to provide rest breaks; failure
24 to provide separate payment for rest and recovery periods and non-
25 productive time; failure to pay vested vacation; failure to reimburse
26 business expenses; failure to timely pay wages or final wages;
27 failure to provide accurate itemized wage statements; or failure to
28 maintain employment records. Upon the Effective Date and full
funding of the Gross Settlement Amount, Plaintiff, all Aggrieved
Employees, and the State of California will be forever barred from
pursuing against Defendants and the Released Parties any and all
claims for PAGA civil penalties arising during the PAGA Period
under the Labor Code or IWC Wage Orders that were, or reasonably
could have been, alleged, based on the facts contained in the
Operative Complaint, or in any PAGA Notice submitted to the
LWDA by Plaintiff, or ascertained in the course of the Action.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the PAGA Released Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 7.5.4).

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 17,000 Class Members that are easily identifiable and fall within the defined Class. Thus, for purposes of settlement, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

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

9 2. Typicality

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

17 3. Adequacy of Representation

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

24 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
25 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
26 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
27 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6; Bokhour Decl. ¶¶
28 15-20; Carlson Decl. ¶¶ 3-8).

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
7 the proceedings, the experience and views of counsel . . . and the reaction of the
8 class members to the proposed settlement.

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

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

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

28 ///

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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 Defendants
11 prevailed on any of the 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.

23 However, a settlement is not judged against what might have been recovered had a
24 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought
25 to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 250 ("Compromise is inherent and
26 necessary in [settlement] ... even if the relief afforded by the proposed settlement is substantially
27 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
28 settlement because the public interest may indeed be served by a voluntary settlement in which

1 each side gives ground in the interest of avoiding litigation.”).

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

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

16 Based upon detailed data obtained through informal discovery and information
17 exchanges, Plaintiff’s counsel estimated the following big-picture data points through the date of
18 mediation: (1) 17,000 Class Members, (2) 504,000 workweeks, (3) 2,520,000 shifts worked
19 during the Class Period, and (4) approximately 206,420 wage statements during the PAGA
20 period. (Mankin Decl. ¶ 26).

21 Plaintiff’s unpaid wage claims had several theories of liability. *First*, Plaintiff alleged that
22 Defendants failed to separately compensate for all rest breaks. *Second*, Plaintiff alleged that
23 Defendants’ rounding practice resulted in an underpayment during the instances when
24 Defendants separately paid rest breaks. However, Defendants vehemently opposed these unpaid
25 wage claims on the merits and the propriety of class certification. Furthermore, Defendants
26 raised several defenses (as discussed in the Sections above). Thus, for mediation and settlement
27 purposes, Plaintiff and Class Counsel applied appropriate risk reductions from the maximum
28 potential unpaid wages to account for the risks at class certifications and on the merits. (Mankin

Decl. ¶ 27).

Additionally, Plaintiff alleged meal break claims against Defendants. Based on mediation analysis and investigation, including expert review of timekeeping data, Class Counsel estimated 12.1% of pay periods had at least one meal violation. However, Defendants raised numerous arguments against this claim, including compliant written policies and valid meal waivers. Defendants argued that a fact-finder would have to make an individualized determination for each Class Member as to why a meal was missed or late and the reasons why. As a result, Plaintiff and Class Counsel considered these risks and defenses, along with the relatively low violation rates; and for settlement purposes, applied appropriate risk reductions related to class and the merits. (Mankin Decl. ¶ 28).

As for the claim for failure to reimburse business expenses, Plaintiff calculated potential violations in approximately 50,400 workweeks. However, Defendants argued that its employees were not required, but actually discouraged, from incurring business expenses as Defendants would provide all necessary tools and equipment. Thus, Defendants argued that any unreimbursed expenses were not “necessary.” As a result, Class Counsel factored the risks and defenses into mediation and settlement (Mankin Decl. ¶ 29).

Plaintiff also alleged claims for waiting time penalties and wage statement violations, including failure to accurately state all applicable hourly rates and total hours worked. Some of these claims were derivative of the claims above, meaning that they only had merit if the claims for unpaid wages or meal/rest breaks were successful. But Defendants raised a variety of defenses to these derivative claims that impacted the valuation. Namely, as to the wage statement violations, Defendants argued that its wage statements did not violate Labor Code § 226 and even if there was a “technical” violation, that Plaintiff would be unable to prove the required “knowing and intentional” and “injury” elements. Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest

1 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
2 violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here,
3 Defendants argued that there could not be a finding of a “willful” violation since they had
4 compliant written policies, and any deviations therefrom were inadvertent and unintentional.
5 (Mankin Decl. ¶ 30).

6 While the theoretical maximum potential damages stretched into the 8-figures, that figure
7 fails to account for the various risks at class certification, on the merits, and the many evidentiary
8 issues present in a class action of this size. For that reason, the settlement presented to the Court
9 is fair, adequate, and reasonable when applying all risks and considering the potential outcomes
10 at class certification and trial. (Mankin Decl. ¶ 31).

11 Likewise, while the PAGA penalties had a maximum value in the eight figures, this also
12 fails to incorporate the risks above and, further, fails to acknowledge that courts have wide
13 latitude to reduce the civil penalties “based on the facts and circumstances of a particular case”
14 and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
15 confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendants argued against the merits of the
16 underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses
17 mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also
18 argued it is improper to stack civil penalty claims on top of underlying statutory claims. For
19 these reasons, the Parties submit that this settlement is fair and reasonable. (Mankin Decl. ¶ 32).

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

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

25 Plaintiff’s Counsel are also highly experienced in Class/PAGA litigation, having
26 repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only
27 5% of litigators), having achieved large settlements and verdicts, including one of the largest
28 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. ¶¶ 3-7; Bokhour Decl. ¶¶ 15-20). Plaintiff's counsel, operating at arm's length,
3 weighed 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 Administrator to mail the Class
13 Notice to the last known address of all class members complies with all the requirements of
14 California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed Class Notice
15 includes (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation
16 expenses, and the costs of administration; (3) details about the final fairness hearing and how
17 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 Administrator, since
25 Defendants have the last known addresses of all class members and the Administrator will
26 perform a skip trace and update those addresses for any class notices that are returned and re-
27 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 \$716,666.67
25 in 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 \$30,000 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 he devoted to this case. His 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 he lost, he could have been ordered to pay Defendants’ 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 RUST CONSULTING AS ADMINISTRATOR**

14 Subject to the Court’s approval, the parties stipulated to Rust Consulting serving as the
15 Administrator. Rust Consulting is experienced in administering class action settlements and has
16 provided a flat-fee proposal to administer this settlement for \$92,000, which includes issuing
17 three separate payments to each of the 17,000 Class Members. (Mankin Decl. ¶ 44). Although
18 it would have saved about \$30,000 in administration costs to only send a single payment to the
19 Class Members, that approach would have meant having the Class Members wait approximately
20 one-year before receiving any money. The Parties felt that the extra payment to the
21 Administrator was well worth putting money in the hands of the Class Members sooner.

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

23 The last step in the approval process is the formal hearing, whereby proponents of the
24 settlement may explain and describe its terms and conditions and offer argument in support of
25 approval, and Class Members or their counsel may be heard in support of or in opposition to the
26 settlement. Subject to the Court’s approval, the Parties propose that the Court schedule a hearing
27 for final approval approximately 150 days after the Preliminary Approval Date, as follows:
28

July 24, 2024	Preliminary Approval (PA) hearing
August 23, 2024 <i>(30 days after PA)</i>	Deadline for Defendants to Provide the Class Data to Administrator
September 6, 2024 <i>(14 days after Administrator Receives Combined Class Data)</i>	Deadline for Administrator to complete first mailing of the Notice to all Class Members.
October 21, 2024 <i>(45 days after mailing Class Notice)</i>	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval 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 December 23, 2024 – 150 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: June 20, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On June 20, 2024, 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.

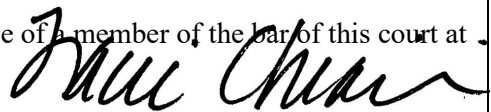
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 June 20, 2024, Riverside, California.

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



Tracie Chiarito, Declarant

SERVICE LIST

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