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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

PETER RODARTE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

WRIGHT BUSINESS GRAPHICS CA, a
California Limited Liability Company;
WRIGHT BUSINESS GRAPHICS LLC,
an Oregon Limited Liability Company;
ENNIS, INC., a Texas Corporation; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2206705
*[Assigned to Hon. 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: July 31, 2023

Time: 9:00 a.m.

Dept.: S26

Complaint Filed: March 25, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 31, 2023, at 9:00 a.m., or as soon thereafter as the
matter may be heard by the Honorable David Cohn in Department S26 of San Bernardino
County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff
Peter Rodarte, 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 and Misty Lauby); the Class and PAGA 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: July 6, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Peter Rodarte seeks preliminary approval of a \$310,000 wage-and-hour class
4 action settlement on behalf of approximately 63 current and former nonexempt employees of
5 Defendants Wright Business Graphics CA, Wright Business Graphics LLC, and Ennis, Inc.
6 (“Defendants”) who worked in California at any time from March 25, 2018 through June 15,
7 2023 (the “Class Period”). (Plaintiff and Defendants are collectively referred to as the “Parties”).

8 Under the terms of the Settlement Agreement (or “S.A.”),¹ Defendants will not oppose
9 Plaintiff Counsel’s application for a reasonable award of attorney’s fees not to exceed 1/3 of the
10 Settlement Amount, litigation expenses not to exceed \$20,000, Administrator Costs of
11 \$6,750.00, PAGA penalties of \$25,000 (with 75% to the LWDA and 25% to the PAGA
12 Members on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff (“Class
13 Representative”). (S.A. ¶ V-F).

14 After all Court-approved deductions from the Settlement Amount, it is estimated that
15 \$167,416.67 will be available to pay the Class Members, as follows:

16

<i>Settlement Amount</i>	\$ 310,000.00
Attorneys’ Fees (1/3)	\$ 103,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,750.00
PAGA Penalties	\$ 25,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 167,416.67

20

21 Assuming 63 Class Members, the average payment to each Class Member will be
22 approximately \$2,657.41 (\$167,416.67 / 63). However, the actual payment will be calculated on
23 a pro-rata basis according to the number of Weeks Worked by each Class Member during the
24 Class Period, with each Work Week having a value of approximately \$14.98 (\$167,416.67 /
25 11,178 estimated Work Weeks). In addition, the PAGA Members will receive a share of the
26 \$6,250 in PAGA Penalties (25% of the total \$25,000 allocation), calculated pro-rata based on
27

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

1 number of Pay Periods worked during the period of March 25, 2021 through June 15, 2023 (the
2 “PAGA Period”). (S.A. ¶ V-F).

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

10 **II. BACKGROUND**

11 **A. THE CLASS AND PAGA MEMBERS**

12 The Class is defined as follows:

13 All current or former non-exempt employees who worked for
14 Defendants within California at any time during the Class Period
(which is March 25, 2018 through June 15, 2023). (S.A. ¶ I-E).

15
16 The PAGA Members are defined as follows:

17 All current or former non-exempt employees who worked for
18 Defendants within California at any time during the PAGA Period
(which is March 25, 2021 through June 15, 2023). (S.A. ¶ I-W).

19 20 **B. BRIEF SUMMARY OF THE WORK PERFORMED AND CLAIMS**

21 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members,
22 who performed services for Defendants’ commercial printing services. However, Defendants
23 vigorously contested and denied Plaintiff’s material allegations on the merits and as to the
24 propriety of a class action or PAGA representative action.

25 One of the primary claims in this action is that the Class Members were often denied
26 compliant meal and rest breaks due to the nature of the work. However, Defendants argued that it
27 provided and made available meal and rest breaks to all employees, that employees never
28 advised of any claimed inability to take breaks due to work, and any employee who did not take

1 a meal or rest break did so entirely of his or her own volition. In this regard, Defendants
2 produced its written policies and practices, which it argued show full compliance with the law.
3 As such, Defendants argued that these claims were without merit because, for each violation, a
4 fact-finder would have to determine why a break was noncompliant/nonexistent, because if it
5 was by the employee's choice, no liability attaches to the Defendants.

6 Plaintiff also made claims for unpaid wages due to Defendants' failure to accurately
7 record and compensate for all hours worked due to policies and practices that rounded hours in a
8 non-neutral way to the detriment of the employees, failing to include shift differentials in the
9 regular rate, and auto deducting meal periods while Class Members continued to work through
10 meal periods, leading to unpaid minimum, regular, and overtime wages.. However, Defendants
11 vehemently denied these allegations and opposed these claims on the merits in light of
12 Defendants' actual policies and procedures and as to the propriety of class certification or
13 representative treatment.

14 Moreover, Plaintiff made allegations that he and the Class Members received inaccurate
15 and incomplete wage statements that failed to accurately state all necessary items required under
16 Labor Code § 226. Specifically, in addition to derivative claims, Plaintiff alleged that
17 Defendants directly violated Labor Code § 226 through their practice of failing to show the
18 overtime rate of pay or double overtime rate of pay. Defendants vigorously disputed these
19 allegations, including by arguing that Plaintiff did not and could not met his burden to show that
20 Defendants had the requisite intent, that the claimed failure to show all wages earned gives rise
21 to wage statement liability when the statements accurately reflect the wages actually paid, or that
22 any injury resulted from any alleged violation.

23 Finally, Plaintiff alleged various other Class and PAGA claims, such as the failure to
24 timely pay wages each pay periods and to timely pay all wages owed upon termination, and other
25 claims related to the alleged violations mentioned above. However, Defendants argued that
26 these other claims, as well as the "derivative" claims, have no merit, both on the merits (which
27 would preclude the derivative claims) and independent, due to the inability to show or establish
28 the necessary state of mind.

///

1 **C. PROCEDURAL HISTORY**

2 On March 23, 2022, Plaintiff submitted a letter to the Labor Workforce Development
3 Agency (the “LWDA”) for civil penalties under the Private Attorney General Act of 2004
4 (“PAGA”), and simultaneously sent a letter to Defendants requesting the production of personnel
5 and timekeeping records to further evaluate his wage and hour claims. (Mankin Decl. ¶ 11).

6 On March 25, 2022, Plaintiff filed a class and PAGA complaint against Defendants,
7 alleging: (1) failure to pay proper minimum wages, (2) failure to pay proper overtime wages, (3)
8 failure to provide compliant meal periods, (4) failure to provide compliant rest periods, (5)
9 failure to timely pay wages each period, (6) failure to timely pay final wages, and (7) failure to
10 provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to
11 California Business and Professions Code §§ 17200 *et seq.*, and (9) related PAGA claims.
12 (Mankin Decl. ¶ 12).

13 Defendants retained counsel and immediately began to defend the case, including asking
14 Plaintiff to amend the complaint to address a couple of issues. Plaintiff filed a first amended
15 complaint on May 31, 2022. Prior to the initial CMC, Plaintiff learned that Defendants engaged
16 in a Pick Up Stix Campaign in an effort to settle directly with the putative class members. In
17 total, a large portion of the class was paid a total of \$41,270 in exchange for signing a release.
18 Plaintiff argued that the releases were improperly obtained, did not eliminate altogether the
19 ability of those individuals to also recover some amounts through this litigation, and vowed to
20 continue with litigation. Ultimately, the Parties agreed to attend private mediation. (Mankin
21 Decl. ¶ 13).

22 In preparation for the mediation, the Parties informally exchanged documents and
23 information that allowed both sides to calculate the potential damages and evaluate potential risk,
24 including policies and procedures pertaining to each claim alleged, and statistics relating to the
25 number of current and former employees, number of shifts, workweeks, pay periods worked,
26 average rates of pay, and other things. Defendants also provided their written policies and
27 practices, contact information for non-settling Class Members, and a robust sampling of
28 thousands of pages of payroll and timekeeping records for Class Members. This information

1 enabled both parties to take a deep dive into the claims. During this process, Plaintiff and his
2 counsel analyzed, researched, and investigated the potential issues, including matters related to
3 the calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 14).

4 On April 4, 2023, Plaintiff and Defendants participated in mediation before Jeff Krivis, a
5 well-respected wage-and-hour mediator. The matter resolved at mediation pursuant to a
6 mediator's proposal that called for a \$310,000 class-wide settlement whereby Defendants
7 would receive a credit in the amount of \$41,270 for the prior payments it paid to certain class
8 members as part of the Pick Up Stix Campaign (the "Prior Payment"). Thereafter, the Parties
9 entered into the Settlement Agreement submitted herewith. The Parties now seek the Court's
10 preliminary approval of the Settlement. (Mankin Decl. ¶ 15).

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 \$310,000 Settlement Amount² 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 \$7,500 to
17 Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed \$6,750; (4) a
18 \$25,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor
19 Code § 2699(i) and 25% to the PAGA Members; and (5) the aggregate of all Individual
20 Settlement Amounts of the Participating Class Members. (S.A. ¶ V-F). Defendants will
21 separately pay their share of employer payroll taxes and withholdings. (S.A. ¶ V-F.4.b).

22 **B. NOTICE PROCEDURES**

23 The proposed Notice will be provided to the Class showing the estimated amounts that
24 each Class Member and/or PAGA Member will receive and the number of Workweeks and/or
25 pay periods credited as a Class Member (*See* Exhibit B to Mankin Decl.). Within 21 calendar
26 days after entry by the Court of its Order of Preliminary Approval, Defendants shall provide the

27
28 ² The Settlement Amount is subject to increase if the "Escalator Clause" is triggered. S.A. ¶¶ I-
N. If this clause is triggered, other figures will also shift upward along with the Settlement
Amount, such as attorneys' fees and Administration Costs

1 Administrator with the “Class Data” consisting of Class Member names, addresses, phone
2 numbers, Social Security Numbers, and Weeks Worked during the Class Period (S.A. ¶ V-
3 H.1.a).

4 Within 10 calendar days of receipt of the Class Data, the Administrator shall calculate the
5 numbers for each Class Member and/or PAGA Member, populate the Notice, and send each
6 Class Member or PAGA Member the Notice via first-class, United States mail. (S.A. ¶ V-H.1.c).

7 If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall
8 perform a skip trace search or other means to seek an address correction for the Class
9 Member(s), and a second Notice will be sent to any new or different address obtained. (S.A. ¶ V-
10 H.1.c).

11 **C. EXCLUSION AND OBJECTION PROCEDURES**

12 Class Members who do not timely Opt-Out of the Settlement will be deemed to
13 participate in the Settlement and shall become a Participating Class Member without having to
14 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
15 must submit a written request to the Administrator no later than 30 days after being mailed by
16 the Administrator (“Response Deadline”). (S.A. ¶ V-H.4). Any Opt-Out request that is not
17 postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
18 case the Class Member’s exclusion or objection must be returned by the later of the original
19 Notice Response Deadline or 15 calendar days after the remailing of the Notice.

20 The Class Notice shall inform Class Members of their right to object to the Settlement.
21 Any Participating Class Member who wishes to object to the Settlement may submit a written
22 objection to the Administrator no later than the Response Deadline. (S.A. ¶ V-H.3).

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

24 The amount of each Settlement Class Member’s Individual Class Payment is tied to the
25 number of Weeks Worked by each Class Member for Defendant during the Class Period.
26 Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total
27 number Weeks Worked by all Participating Class Members during the Class Period, and (b)
28 multiplying the result by each Participating Class Member’s Weeks Worked. (S.A. ¶ V-F.4.a).

1 Additionally, each PAGA Member will receive an Individual PAGA Payment calculated
2 in the same way; thus, the \$6,250 PAGA Penalties allocated to the PAGA Members will be
3 divided and paid on the number of Pay Periods Worked during the PAGA Period (S.A. ¶ V-
4 F.5.a.1).

5 The Class Notice will inform Class Members of the estimated share and the number of
6 Weeks Worked during the Class Period as well as Pay Periods Worked during the PAGA Period.
7 Class Members may dispute these numbers if they feel they worked more in the Class or PAGA
8 Periods than Defendant's records show by timely submitting evidence to the Administrator.
9 (S.A. ¶ V-H.2.d).

10 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

11 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
12 Settlement Amount, plus Defendants' share of payroll taxes owed on the Individual Class
13 Payments, within 30 days of the Effective Date. (S.A. ¶ V-H.8.a). Within 10 days after receiving
14 the funds, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶
15 V-H.8.b).

16 Class Members will have 180 days to cash the settlement check. If a Class Member fails
17 to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California
18 State Controller in the name of the Class Member/Aggrieved Employee (S.A. ¶ V-H.8.a).

19 **F. TAX TREATMENT**

20 The Parties agree that 20% of the Individual Class Payment will be allocated as wages
21 subject to withholding of all applicable local, state and federal taxes and the remaining 80% will
22 be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210,
23 226, etc.) from which no taxes will be withheld. (S.A. ¶ V-F.4.b). Additionally, the PAGA
24 Payment payable to the PAGA Members will be classified entirely as civil penalties and shall be
25 reported as required on an IRS Form 1099. (S.A. ¶¶ V-F.5.b). These allocations are in line with
26 the claim valuations in the *Kullar* analysis discussed below (*i.e.*, the penalty claims [§§ 203 and
27 226] comprise the majority of risk-adjusted value). Defendants will separately pay its share of
28 employer payroll taxes on the sum allocated to wages. (S.A. ¶ V-F.4.b).

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

2 In exchange for these payments, the Settlement Agreement at ¶ I-EE defines the Released
3 Class Claims and provides that the Participating Class Members will release the Released Parties
4 of:

5 all claims, debts, liabilities, demands, actions, or causes of action under
6 state, federal or local law, whether statutory, common law or
7 administrative, arising from or out of or reasonably related to the facts
8 and/or claims alleged in the Action, and all claims that were asserted or
9 that could have been asserted in the Action, including but not limited to
10 state and/or federal wage and hour claims, failure to pay all wages due,
11 including minimum wages, straight time compensation, overtime
12 compensation, double-time compensation, reporting time compensation,
13 and interest; the calculation of the regular rate of pay; failure to provide
14 meal periods and/or rest periods; failure to pay proper meal and/or rest
15 period penalties or premium wages; payment for all hours worked,
16 including off-the-clock work; failure to provide accurate itemized wage
17 statements; failure to reimburse business expenses; failure to timely pay
18 all wages during employment; failure to timely pay all wages due at
19 separation of employment; failure to provide one day's rest in a seven-day
20 workweek; failure to maintain accurate records, including payroll records;
21 unfair business practices; declaratory relief; penalties, including but not
22 limited to recordkeeping penalties, wage statement penalties, minimum-
23 wage penalties, and waiting-time penalties; interest; and attorneys' fees
24 and costs. The Released Class Claims also expressly include all claims
arising under the California Labor Code (including but not limited to
Sections 200-204, 206, 210, 218.5, 218.6, 221, 222, 223, 226, 226.3,
226.7, 256, 510, 512, 551, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197,
1197.1, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.*); the Wage
Orders of the California Industrial Welfare Commission; the California
Private Attorneys General Act of 2004 ("PAGA"); California Business
and Professions Code Section 17200, *et seq.*; the California Civil Code,
including but not limited to Sections 3287, 3336, and 3294; 8 CCR
Sections 11010, 11040, and 11070; California Code of Civil Procedure,
including but not limited to Section 1021.5; and the FLSA, 29 U.S.C.
Section 201, *et seq.* This release excludes the release of claims not
permitted by law.

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

1 **H. PAGA MEMBERS’ RELEASE OF CLAIMS**

2 The Settlement Agreement at ¶ I-FF also defines the “Released PAGA Claims” as
3 follows:

4 any and all causes of action for civil penalties pursuant to the
5 California Labor Code Private Attorneys General Act of 2004
6 (California Labor Code § 2698, *et seq.*) that were alleged or which
7 could have been alleged in the Action based on the facts and
8 allegations pleaded in the operative complaint in the Action and/or
9 the LWDA notice letter, including all claims for civil penalties
10 based upon or arising out of any Defendant’s alleged failure to pay
11 earned wages, failure to pay minimum wage, failure to pay overtime
12 compensation, failure to provide meal breaks, failure to provide rest
13 breaks, failure to pay meal period premium wages, failure to pay rest
14 period premium wages, failure to provide accurate wage statements,
15 failure to timely pay final wages during employment and at
16 separation, failure to maintain accurate payroll records, and claims
for civil penalties arising under or based upon alleged violations of
California Labor Code Sections 200, 201, 202, 203, 204, 204.1, 208,
210, 218.5, 218.6, 221, 222, 223, 226, 226.3, 226.7, 256, 510, 512,
558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*,
2699 *et seq.*, Cal. Admin. Code, Title 8, § 11090, and/or those
arising under applicable Industrial Welfare Commission Wage
Orders.

17 Moreover, even if a PAGA Member requests exclusion from the Class settlement, that
18 individual will still be subject to the Released PAGA Claims to the fullest extent permitted by
19 law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ V-H.4).

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

22 California Rule of Court 3.769(d) provides that the Court may make an order approving
23 certification of a provisional settlement class at the preliminary approval stage. It is well-
24 established that trial courts should use a “lesser standard of scrutiny” for determining the
25 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
26 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
27 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved
28 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*

1 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
2 certification, a district court need not inquire whether the case, if tried, would present intractable
3 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
4 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
5 as defined above, under Code of Civil Procedure § 382.

6 **A. ASCERTAINABILITY AND NUMEROSITY**

7 In determining whether a class is ascertainable, the court considers “(1) the class
8 definition, (2) the size of the class, and (3) the means available for identifying the class
9 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
10 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
11 class is ascertainable if the class members can be objectively identified and given notice of the
12 litigation without unreasonable time or expense). Here, according to Defendants’ records, there
13 are approximately 63 Class Members that are easily identifiable and fall within the defined
14 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

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

16 *1. Commonality*

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

23 *2. Typicality*

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

1 Defendant's pay policies and practices, meal/rest break practices, wage statements, , and the
2 provisions governing the timely and complete payment of wages, which are at the core of the
3 lawsuit.

4 3. Adequacy of Representation

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

11 Adequacy may be established by the fact that counsel are experienced practitioners. See
12 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
13 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
14 in wage and hour class actions like this matter. (Mankin Decl. ¶¶ 2-6; Lauby Decl. ¶¶ 3-8).

15 4. Superiority

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

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

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

24 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
25 particularly true in class actions where substantial resources can be conserved by avoiding the
26 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
27 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
28 of Court set forth the procedures for court approval of a class action settlement: (1) the Court

1 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
2 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
3 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

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

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

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

12 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
13 **NEGOTIATIONS**

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

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

26 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
27 weaknesses of this case before reaching the settlement. As described above, the settlement was
28 reached after extensive investigation and research, thorough calculations and risk evaluation, and

1 a substantial exchange of information and records relating to the Class Members prior to
2 mediation.

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

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

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

15 Here, Defendants raised significant legal and factual defenses that weigh in favor of the
16 reasonableness of the proposed Settlement. First, in addition to disputing the merits of Plaintiff’s
17 claims, Defendants argued that its Pick Up Stix Campaign eliminated the claims of most Class
18 Members. Defendants also strongly disputed that Plaintiff could obtain class certification,
19 arguing a lack of commonality of the legal claims and injuries, lack of typicality between
20 Plaintiff and the Class, and lack of an adequate representative in Plaintiff. Defendants further
21 argued that it complied with the applicable law and that any purported deviations therefrom were
22 individualized in nature, thereby limiting Plaintiff’s ability to certify the class. While Plaintiff
23 asserts that this is a suitable case for certification, he realizes that there is always a significant
24 risk associated with class certification proceedings, which could limit the claims that he could
25 pursue on a class basis.

26 Considering the uncertainties of protracted litigation, this negotiated settlement reflects
27 the best practicable recovery for the Class. While the total Settlement Amount is, of course, a
28 compromise figure, the potential risks and opportunities of both parties were effectively weighed

1 and considered by the parties, resulting in a fair and equitable settlement.

2 Based upon data obtained through informal discovery, Plaintiff's counsel estimated the
3 following data through mediation: (1) 63 Class Members, (2) approximately 29 *former* Class
4 Members for purposes of Labor Code § 203, (3) 11,178 Weeks Worked, and (4) approximately
5 1,959 wage statements during the PAGA Period. (Mankin Decl. ¶ 17).

6 Here, there were four categories of claims alleged by Plaintiff: (1) meal and rest break
7 violations, (2) unpaid wage claims under various theories, and (3) claims for wage statement
8 penalties due to the other alleged violations; and (4) waiting time penalties. (Mankin Decl. ¶ 18).

9 Plaintiff alleged meal and rest break claims against Defendant because Plaintiff alleged
10 they were often required to take late meal periods, cut meal periods short, or were not provided
11 mandated first meal periods for shifts above 6 hours or second meal periods for shifts over ten
12 hours. An analysis of the records provided prior to mediation show a total of 45,492 unique
13 meal period violations at \$21.50 average rate of pay for meal period premium for a maximum
14 value of \$978,078. Moreover, Plaintiff alleged rest break violations at an estimated 50%
15 violation rate on 50,094 shifts over 3.5 hours multiplied by \$21.50 for a total maximum value of
16 \$538,510. This established a maximum potential class value for the meal and rest claims of
17 \$1,712,488.

18 However, Defendant raised numerous arguments in response to this claim, including that
19 it had policies in strict compliance with California law and authorized and permitted the Class
20 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
21 or take a short/late break. Therefore, Defendants asserted that a fact-finder would have to
22 determine for each Class Member whether a break was missed and why, and why a break was
23 noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to
24 Defendants. These defenses are factored into Plaintiff's analysis in two ways. First, these issues
25 raise questions regarding whether the meal and rest break claims could be certified, and Plaintiff
26 placed a 40% risk at the class certification stage for meal periods and a 40% risk for rest breaks.
27 Second, these defenses also go toward the merits given the evidentiary question of proving the
28 number of actual meal and rest violations. As such, Plaintiff placed a 40% risk on the merits for

1 meal breaks, and an additional 40% risk on the merits for rest breaks, setting the risk-adjusted
2 value for the combined meal and rest break claims at \$545,972. (Mankin Decl. ¶ 19).

3 As to the unpaid wage claims, Plaintiff alleged that he and Class Members were denied
4 proper wages due to various illegal practices such (1) underpayment of wages due to rounding;
5 (2) failing to include differential premium pay in the overtime regular rate. Records showed that
6 there was a total of 929.5 net underpaid hours multiplied by an average rate of pay of \$21.50 for
7 a total of \$19,984.25 due to the rounding practice. Furthermore, Plaintiff's expert found that an
8 overtime miscalculation due to non-inclusion of differentials in premium pay of \$756 making the
9 maximum class value for wage claims \$20,740.25. But Defendant vehemently opposed these
10 unpaid wage claims on the merits and as to the propriety of class certification. Due to the
11 defenses and arguments raised, Plaintiff assigned a 20% risk for the unpaid wage claim at the
12 class certification stage and an additional 20% risk on the merits. In sum, Plaintiff's counsel
13 calculated the risk-adjusted value of the unpaid wage claims as \$13,274. (Mankin Decl. ¶ 20).

14 Plaintiff alleged claims for wage statement violations based upon Defendant's failure to
15 accurately state gross/net wages earned, deductions and all hourly rates in effect during the pay
16 period resulting from the failure to pay all wages earned and meal and rest period premiums.
17 The maximum values for this claim is \$193,700 [1,959 wage statements at the \$50/\$100 formula
18 under § 226(e)]. But Defendant raised a variety of defenses to these claims that impacted the
19 valuation. Namely, Defendants argued that the wage statements did not violate Labor Code §
20 226 and, even if there was a "technical" violation, Plaintiff would be unable to prove the required
21 "knowing and intentional" and "injury" elements. Defendant also argued that these claims were
22 derivative claims of the above-mentioned unpaid wage and meal / rest break claims. Based on
23 these facts and defenses, Plaintiff placed a 30% risk at class certification and estimated another
24 30% risk the merits, leading to a risk-adjusted value of \$94,448 for the wage statement claims.
(Mankin Decl. ¶ 21).

25 Furthermore, Plaintiff alleged that Defendants failed to timely pay all wages owed to the
26 Class Members upon separation of employment since the Class Members. The maximum
27 potential value of this claim was \$168,345 based on 29 *former* employees being entitled to the
28 full waiting time penalty of 30 days of pay [29 x 9 hours x \$21.50 x 30]. But this maximum

value failed to account for many risks and defenses. For instance, this claim was entirely derivative of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums). If those claims fails at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiffs would have to prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here, Defendants argued that there could not be a finding of a “willful” violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 50% risk at class certification and a 50% risk on the merits, leading to a risk-adjusted value of \$42,086. (Mankin Decl. ¶ 22).

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

•	Meal and Rest Break Claims	\$ 545,972
•	Unpaid Wage Claims	\$ 13,274
•	Wage Statement Claims	\$ 94,448
•	Waiting Time Penalty Claims	<u>\$ 42,086</u>
•	Total Risk Adjusted Penalties and Damages	\$ 695,780

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 44.6% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the six figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendants argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also argued it is improper to stack civil penalty claims on top of other civil penalties and on top of underlying statutory claims. For these reasons, the Parties submit that this settlement is fair and reasonable. (Mankin Decl. ¶ 23-24).

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

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

6 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been
7 named by the LA Times as one “Southern California Leading Lawyers” in the May 2023 issue of
8 Consumer Attorney’s of Southern California, being named as a “Super Lawyer” in employment
9 litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and
10 verdicts, including one of the largest PAGA awards in California’s history, collecting over \$250
11 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among
12 other things. (Mankin Decl. ¶¶ 2-6). Plaintiff’s counsel, operating at arm’s length, weighed the
13 strengths and risks of this case, and are of the view that this is a fair and reasonable settlement
14 considering the nature of the claims, realistic risk adjusted value, the complexities of the case,
15 state of the law, and uncertainties of class certification and litigation.

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

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

22 The proposed Notice and proposed plan for the Administrator to mail the Notice to the
23 last known address of all Class Members and PAGA Members complies with all the
24 requirements of Cal. Rule of Court 3.769(f) and 3.766(b). The contents of the proposed Notice
25 includes (1) the material terms of the settlement; (2) the proposed attorneys’ fees, litigation
26 expenses, and the costs of administration; (3) details about the final fairness hearing and how
27 Class Members may elect to exclude themselves or make an objection; and (4) how Class
28 Members can obtain additional information. *See* Class Notice (Exhibit B to Mankin Decl.). In

1 addition, it will inform Class Members of their estimated Individual Class Payment and
2 Individual PAGA Payment.

3 The Court has wide discretion in approving the means of providing notice, so long as the
4 class representative “provide(s) meaningful notice in a form that should have a reasonable
5 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
6 (1976) 15 Cal.3d 853, 861. Here, the parties’ notice plan is that notice of the Settlement will be
7 disseminated directly to the Class Members and PAGA Members by first class mail by the
8 Administrator, since Defendants have the last known addresses of all Class Members and PAGA
9 Members and the Administrator will perform a skip trace and update those addresses for any
10 class notices that are returned and re-send the Notice.

11 The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members
12 with all due process protections required by the U.S. Constitution. Moreover, the contents of the
13 Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a
14 detailed explanation of the case, including the basic contentions or denials of the parties; (2) a
15 statement that the court will exclude the member from the class if the member so requests by a
16 specified date; (3) a procedure for the member to follow in requesting exclusion from the class;
17 (4) a statement that the judgment, whether favorable or not, will bind all members who do not
18 request exclusion; and (5) a statement that any member who does not request exclusion may, if
19 the member so desires, enter an appearance through counsel. The 30-day deadline to opt-out or
20 object is also reasonable, as it provides Class Members sufficient time to do so and, if they so
21 choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he
22 or she will automatically be sent a settlement check.

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

25 The fact that each member who does not opt out of the Settlement shall be mailed a check
26 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
27 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
28 settlement funds will revert to Defendants; instead, if any checks are uncashed by the deadline,

1 the funds will be transferred to the State Controller's Office subject to approval of the Court.
2 Such terms are favored by Courts and demonstrate that there was no collusion between counsel
3 for the parties and that the Settlement is fair and favorable to the Class Members.

4 **H. THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR**

5 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
6 of up to \$20,000 in litigation costs, along with attorneys' fees equal to one-third of the
7 Settlement Amount. See, e.g., *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving
8 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
9 action litigation establishes a monetary fund for the benefit of the class members, the trial court
10 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
11 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
12 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was "well
13 within the range of percentages which courts have upheld as reasonable in other class action
14 lawsuits"); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at
15 *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods,*
16 *Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common
17 fund, noting: "[f]ee awards in class actions average around one-third of the recovery.").

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

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

21 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
22 Representative, which is reasonable given the large recovery Class Members will receive on
23 average, the broader release he is agreeing to, as well as the time and effort he devoted to this
24 case. His efforts included providing factual background for the Class and PAGA Complaint;
25 providing documents and information about Defendants' compensation plan; participating in
26 phone calls to discuss litigation and settlement strategy; making himself available throughout the
27 litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the
28 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 Defendants’ costs.

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. 2011) 2011 WL 2648879 (approving \$11,250 service awards in trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 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).

VI. THE COURT SHOULD APPOINT ILYM GROUP AS ADMINISTRATOR

The parties selected ILYM Group as the Administrator. ILYM has provided a flat-fee proposal to administer this settlement for \$6,750. (Mankin Decl. ¶ 36; Exhibit D for the Administrator’s bid).

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 120 days after the Preliminary Approval Date, as follows:

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July 31, 2023	Preliminary Approval (PA) hearing
August 31, 2023 <i>31 days after PA</i>	Deadline for Administrator to complete first mailing of the Notice to all Class Members.
September 30, 2023 <i>30 days after mailing Notice</i>	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD (Approx. November 28, 2023 - <i>120 days after PA</i>)	Final Approval Hearing.

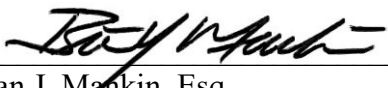
VIII. CONCLUSION

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

Dated: July 6, 2023

LAUBY, MANKIN & LAUBY LLP

BY:


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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On July 6, 2023, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

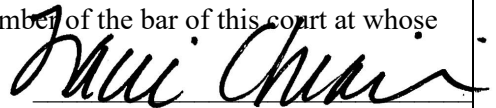
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 6, 2023 Riverside, California.

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


Tracie Chiarito, Declarant

SERVICE LIST

Greg Labate, Esq.

Tyler Z. Bernstein, Esq.

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