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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SUSANA CALDERON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

PRUDENTIAL INS CO OF AMERICA, a
New Jersey Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 22STCV13172

*[Assigned to Hon. Elihu M. Berle, Dept 6, for all
purposes]*

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

Hearing

Date: September 6, 2023

Time: 9:00 a.m.

Dept.: 6

Complaint filed: April 20, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 6, 2023, at 9:00 a.m. or as soon thereafter as
the matter may be heard by the Honorable Elihu M. Berle in Department 6 of the Los Angeles
County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff
Susana Calderon, 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; and
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 Declarations of (a) Plaintiff's counsel (Brian Mankin and Misty Lauby); (b) Plaintiff Susana Calderon; (c) the Settlement Administrator (Mike Moore of Phoenix Settlement Administrators); and (d) Defendant's counsel (Daniel Whang); as well as the Class Action and PAGA Settlement Agreement (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and other evidence as may be presented to the Court at the hearing of this motion.

Dated: August 7, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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

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I. INTRODUCTION

The Settlement is comprised of two classes of similarly situated employees. First, during Plaintiff’s employment at Prudential, she worked as a Customer Service Representative, and thus, she seeks to represent all similarly situated Customer Service Representatives (i.e., the “Customer Service Class”). Additionally, Plaintiff alleges that Defendant issued wage statements to all employees in California that failed to comply with Labor Code § 226, and thus, Plaintiff also seeks to represent all employees in California who received an allegedly non-compliant wage statement during the applicable period (i.e., the “Wage Statement Class”). Each Class is more specifically defined as follows:

Customer Service Class: all current and former non-exempt Prudential employees in California whose primary job responsibilities were making and/or receiving calls, assisting customers, or answering customers’ queries at any time during the period of April 20, 2018, through August 1, 2023 (the “Customer Service Class Period”). There are approximately 70 Customer Service Class Members in the Settlement.

¹ The Class Action and PAGA Settlement Agreement (the “Settlement Agreement” or “S.A.”) is attached as Exhibit 2 to the Declaration of Brian Mankin (“Mankin Decl.”) and is based on the new model long-form agreement created by the Los Angeles County Superior Court. To facilitate the Court’s review of the S.A., a redlined version is attached as Exhibit 3 to the Mankin Decl. to compare the S.A. to the model agreement.

Class Payments. Moreover, under the Settlement, Defendant will not oppose Plaintiff Counsel's application for a reasonable award of attorney's fees not to exceed \$128,333.33 (1/3 of the Gross Settlement Amount), litigation expenses not to exceed \$20,000, Settlement Administrator Costs of \$8,500, PAGA penalties of \$40,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff Susana Calderon ("Class Representative"). (S.A. ¶ 3.2 et seq.)

After all Court-approved deductions from the Settlement Amount, it is estimated that \$180,666.67 will be available to pay the Class Members, as follows:

<i>Gross Settlement Amount</i>	\$ 385,000.00
Attorneys' Fees (1/3)	\$ 128,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs (not to exceed)	\$ 8,500.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 180,666.67

Assuming a maximum of 250 Class Members between the two classes, the average payment to each class member will be approximately \$722.67 (\$180,666.67 / 250). However, the actual payment will be calculated on a pro-rata basis according to the number of Pay Periods Worked during each Class and the corresponding number of Share Points credited to each Class Member. In addition, the Aggrieved Employees will receive a share of the \$10,000 PAGA Penalties (25% of the total \$40,000 PAGA allocation), calculated pro-rata based on approximately Pay Periods Worked during the PAGA Period. (Settlement Agreement ¶ 3.2.5).

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

1 **II. BACKGROUND**

2 **A. THE SETTLEMENT CLASS**

3 As noted, the “Class” consists of two classes: Wage Statement Class and Customer
4 Service Class, as defined above.

5 **B. PROCEDURAL HISTORY**

6 Plaintiff submitted a letter to the Labor Workforce Development Agency (the “LWDA”)
7 for civil penalties under the Private Attorney General Act of 2004 (the “PAGA”), and
8 simultaneously sent a letter to Defendant requesting the production of personnel and timekeeping
9 records in order to further evaluate her wage and hour claims. (Mankin Decl. ¶ 13).

10 On April 20, 2022, Plaintiff filed a class and representative PAGA action complaint in
11 the Court alleging claims for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime
12 Wages; (3) Failure to Provide Meal Periods; (4) Failure to Timely Pay Final Wages; (5) Failure
13 to Provide Accurate Itemized Wage Statements; (6) Unfair and Unlawful Competition, (7)
14 failure to maintain employment records and (8) related PAGA Claims. (Mankin Decl. ¶ 14).

15 Defendant retained counsel and immediately began to defend the case, including alleging
16 in the Joint Initial Status Conference Report that “this case has no merit as Defendant complied
17 with all wage and hour laws at all relevant times.” Thereafter, the Parties exchanged formal
18 written discovery and scheduled the depositions of Plaintiff and Defendant’s PMK. During this
19 time, the Parties engaged in extensive meet and confers regarding the scope of the class,
20 discovery disputes and other matters, prompting Plaintiff to file a motion for leave to file a first
21 amended complaint to clarify certain things in dispute. However, prior to filing a series of
22 motions and contesting class certification, the Parties stipulated to allow Plaintiff to file a first
23 amended complaint and further agreed to submit the matter to mediation. (Mankin Decl. ¶ 15).

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

1 timekeeping records for Class Members. This information enabled both parties to take a deep
2 dive into the claims. Additionally, during this process, Plaintiff and her counsel analyzed,
3 researched, and investigated the potential issues, including matters related to the calculation of
4 damages, trial, and appellate issues and risks. Plaintiff also retained an expert (Jarrett Gorlick of
5 Berger Consulting Group) to perform a statistical analysis of the claims and violations. (Mankin
6 Decl. ¶ 16).

7 On May 1, 2023, Plaintiff and Defendant participated in mediation before Jeffrey Krivis,
8 a highly regarded and experienced wage-and-hour class action mediator. The matter did not
9 resolve at mediation, but Mr. Krivis issued a mediator's proposal which was accepted by the
10 Parties approximately one week later. (Mankin Decl. ¶ 17). The Parties now seek the Court's
11 preliminary approval of the Settlement.

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

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

16 One of the primary claims in this action is that the Wage Statement Class Members
17 received inaccurate and incomplete wage statements that failed to accurately state all necessary
18 items required under Labor Code § 226. Specifically, Plaintiff alleged that the wage statements
19 failed to correctly state the regular hourly rate of pay (instead displaying a "salary rate" for the
20 pay period) and displayed a rounded overtime payment that makes it impossible for employees to
21 calculate whether they are being paid correctly. Further Plaintiff alleged derivative wage
22 statement violations including: failure to accurately state gross wages earned; failure to
23 accurately state total hours worked; failure to accurately state all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate by the
25 employees. Defendant vigorously disputed these allegations, including by arguing that Plaintiff
26 did not and could not meet her burden to show that Defendant had the requisite intent, that
27 displaying a salary is improper for salaried non-exempt employees, that the claimed failure to
28 show all wages earned gives rise to wage statement liability when the statements accurately
reflect the wages actually paid, or that any injury resulted from any alleged violation. (Mankin

Decl. ¶ 19).

Plaintiff also alleged that the Customer Service Class was denied 30-minute off-duty meal periods, as mandated by California law. As a result of Defendant's policies and practices, the customer Service Class was subject to meal period violations when they were: (1) scheduled to take lunch after the 5th hour but their meal period time was fraudulently changed to reflect that meal periods were taken prior to the 5th hour, (2) unable to take a meal period due to work load, and (3) not provided mandated second or third meal periods on shifts in excess of 10 hours. Specifically, Plaintiff alleged that she and the Customer Service Class were expected to take customer service calls up through the minute before their lunch was scheduled, which resulted in meal periods that were not take at the scheduled times often resulting in late or otherwise non-compliant meal periods. On some occasions, the meal periods were scheduled after the 5th hour. Moreover, Plaintiff alleged that Defendant would adjust the meal period time records to avoid paying premiums on non-compliant meal periods. However, Defendant argued that it provided and made available meal breaks to all employees, that it never adjusted meal period time punches, that employees never advised of any claimed inability to take breaks due to work, and any employee who did not take a meal break did so entirely of his or her own volition. In this regard, Defendant produced its written policies and practices, which it argued show full compliance with the law. As such, Defendant argued that this claim was without merit because, for each violation, a fact-finder would have to determine why a break was noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the Defendant. (Mankin Decl. ¶ 20).

Plaintiff also pursued claims for unpaid wages due to Defendant's alleged failure to accurately record and compensate for all hours worked on behalf of the Customer Service Class. For example, Plaintiff was paid by the hour and assigned to work from her house and alleges that she was required to perform pre and post shift work, including but not limited to preparing schedules for the following day, performing computer work and other off-the-clock tasks. However, Defendant vehemently denied these allegations and opposed these claims on the merits in light of Defendant's actual policies and procedures and as to the propriety of class certification

1 or representative treatment due to the individualized nature of the claims. (Mankin Decl. ¶ 21).

2 Finally, Plaintiff alleges that Defendant engaged in the practice of failing to pay all wages
3 due and owing to Plaintiff and the Customer Service Class each pay period (Labor Code § 204)
4 and at the time employment ended with Defendant (Labor Code §§ 201-203), including
5 minimum wages, overtime wages and unpaid meal period premiums. However, Defendant
6 argued that these other claims, as well as the “derivative” claims, have no merit, both on the
7 merits (which would preclude the derivative claims) and independent, due to the inability to
8 show or establish the necessary state of mind. (Mankin Decl. ¶ 22).

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

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

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

14 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

15 The \$385,000 Settlement Amount is non-reversionary and will be paid out to Class
16 Members without the need to submit a claim form or take any affirmative action. It includes (1)
17 Plaintiff’s attorneys’ fees not to exceed one third of the Settlement Amount and costs not to
18 exceed \$20,000, as approved by the Court; (2) a service award of \$7,500 to Plaintiff, subject to
19 approval by the Court; (3) settlement administrator expenses, not to exceed \$8,500; (4) a \$40,000
20 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code
21 § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual
22 Settlement Amounts of the Participating Class Members. (S.A. ¶ 3.2 and subparts). Defendant
23 will separately pay its share of employer payroll taxes and withholdings. (S.A. ¶ 3.1).

24 **B. NOTICE PROCEDURES**

25 The proposed Class Notice (based on the model provided by the Court) will be provided
26 to the Class Members showing the estimated amount that each Class Member will receive and
27 the credited number of Pay Periods Worked during the Class and PAGA Period (Exhibit A to the
28 S.A.). Within 30 days after entry by the Court of its Order of Preliminary Approval, Defendant

1 shall provide the Settlement Administrator with a list of Class Members containing names,
2 addresses, telephone numbers, Social Security Numbers, and the total Pay Periods Worked in the
3 Class and PAGA Periods (the “Class Data”). (S.A. ¶¶ 1.9 and 4.2).

4 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
5 the number of Pay Periods Worked for each Class Member, populate the Class Notice for each,
6 and send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 8.4.2).

7 In the event that any Class Notice mailed to a Class Member is returned as having been
8 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
9 search and seek an address correction for such Class Member(s), and a second Class Notice will
10 be sent to any new or different address obtained. (S.A. ¶ 8.4.3).

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 Settlement Administrator no later than 45 days after being
16 mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 1.47). Any Opt-Out
17 request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 8.5.1).

18 The Class Notice shall inform the Class Members of their right to object to the
19 Settlement. Any Class Member who wishes to object to the Settlement may submit a written
20 objection to the Settlement Administrator no later than the Response Deadline or, in the
21 alternative, may appear in Court (or hire an attorney to appear in Court) to present verbal
22 objections at the Final Approval Hearing. (S.A. ¶ 8.7.2).

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

24 The amount of each Class Member’s Individual Class Payment is tied to the number of
25 Share Points credited. Class Member’s Share Points will be calculated based on the number of
26 Pay Periods worked during each class. More specifically, a Class Member who is a member of
27 the Customer Service Class only (and not of the Wage Statement Class) will receive 0.5 Share
28 Points for each Pay Period Worked during the Customer Service Class Period. A Class Member

1 who is a member of the Wage Statement Class only (and not of the Customer Service Class) will
2 receive 1.0 Share Points for each Pay Period Worked during the Wage Statement Class Period.
3 And Class Member who is a member of both the Customer Service Class and Wage Statement
4 Class will receive 1.2 Share Points for each Pay Period Worked during the Customer Service
5 Class Period. A Class Member who is a member of both the Customer Service Class and Wage
6 Statement Class and is no longer employed by Defendant will receive 1.25 Share Points for each
7 Pay Period Worked during the Customer Service Class Period. The Net Settlement Amount will
8 be divided by the number of Share Points credited to all Class Members, resulting in a value per
9 Share Point (referred to as the Share Point Rate). The Administrator will multiply the Share Point
10 Rate by the number of Share Points credited to each Class Member to determine the Individual
11 Class Payment to each Participating Class Member. (S.A. ¶ 3.2.4).

12 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
13 based on a pro-rata basis. Thus, the \$10,000 PAGA Penalties allocated to the Aggrieved
14 Employees will be divided and paid on a Pay Periods Worked basis. (S.A. ¶ 3.2.5).

15 The Class Notice will inform Class Members of the estimated share and the number of
16 Pay Periods he/she worked during the Class and PAGA Period. Class Members may dispute
17 their Pay Periods Worked if they feel they worked more in the Class or PAGA Periods than
18 Defendant’s records show by timely submitting evidence to the Settlement Administrator. (S.A.
19 ¶ 8.6).

20 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

21 Defendant is required to deposit the Settlement Amount, along with the employers’ share
22 of payroll taxes owed, with the Settlement Administrator, within 14 calendar days after the
23 “Effective Date” and these funds will be used to pay: (1) the class attorney fees and expenses, as
24 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
25 expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual
26 Settlement Amounts of participating Class Members. Within 10 days after receiving the funds,
27 the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶
28 4.4).

1 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 4.4.1). If a Class
2 Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed
3 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 4.4.3).

4 **F. TAX TREATMENT**

5 The Parties agree that portions of the Individual Class Payment paid to the Participating
6 Class Members in the Customer Service Class will be allocated as 20% to wage claims (the
7 “Wage Portion”) and remaining 80% will be allocated to settlement of claims for interest and
8 penalties (the “Non-Wage Portion”). Portions of the Individual Class Payment paid to the
9 Participating Class Members belonging only in the Wage Statement Class will be treated 100%
10 as penalties and interest, and will be included in the Non-Wage Portion. (S.A. ¶ 3.2.4.1).
11 Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely
12 as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶¶ 3.2.5.1 and
13 3.2.5.2).

14 Defendant will separately pay its share of employer payroll taxes on the sum allocated to
15 wages. (S.A. ¶¶ 3.1).

16 **G. PARTICIPATING CLASS MEMBERS’ RELEASE OF CLAIMS**

17 In exchange for these payments, the Settlement Agreement at ¶ 6.2 provides that the
18 Participating Wage Statement Class Members and Participating Customer Service Class
19 Members will only release their respective claims, as follows:

20 Participating Wage Statement Class Members: on behalf of themselves and
21 their respective former and present representatives, agents, attorneys, heirs,
22 administrators, successors, and assigns, will release the Released Parties
23 from all claims that were alleged, or reasonably could have been alleged,
24 based on the facts stated in the Complaint, including failure to provide
25 accurate itemized wage statements under Labor Code section 226 (the
“Wage Statement Class Released Claims”). The time period governing the
Wage Statement Class Released Claims shall be the Wage Statement Class
Period.

26 Participating Customer Service Class Members: on behalf of themselves
27 and their respective former and present representatives, agents, attorneys,
28 heirs, administrators, successors, and assigns, will release the Released
Parties from all claims that were alleged, or reasonably could have been
alleged, based on the facts stated in the Complaint, including for (1) failure

1 to pay minimum wages; (2) failure to pay overtime wages; (3) failure to
2 provide meal periods; (4) failure to timely pay final wages; and (5) unfair
3 and unlawful competition (the “Customer Service Class Released Claims”).
4 The time period governing the Customer Service Class Released Claims
5 shall be the Customer Service Class Period.

6 It is understood and agreed that the Settlement Agreement will not release any person,
7 party or entity from claims, if any, by Class Members for any other claims, including claims for
8 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
9 unemployment insurance, disability, social security, workers’ compensation, or claims based on
10 facts occurring outside the Class Period. (S.A. ¶ 6.2.3).

11 **H. AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS**

12 The Settlement Agreement at ¶ 6.3 also defines the “Released PAGA Claims” as follows:

13 all claims for PAGA penalties that were alleged, or reasonably could
14 have been alleged, based on the facts stated in the Complaint and the
15 PAGA Notice, as follows: (1) as alleged on behalf of the State of
16 California and Aggrieved Employees who are in the Customer
17 Service Class, Aggrieved Employees shall release all PAGA claims
18 premised upon claims including unpaid minimum wages, unpaid
19 overtime wages, failure to provide compliant meal periods, failure
20 to timely pay wages, and failure to maintain employment records,
21 and claims for penalties pursuant to Labor Code §§ 201-204, 210,
22 226, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197 and 2699;
23 and (2) as alleged on behalf of the State of California and Aggrieved
24 Employees in the Wage Statement Class, Aggrieved Employees
25 shall release all PAGA claims premised upon the claims for the
26 violation of Labor Code § 226 and § 226.3 (the “Released PAGA
27 Claims”). The operative release period for the Released PAGA
28 Claims is the PAGA Period.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
that individual will still be subject to the Released PAGA Claims to the fullest extent permitted
by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 8.5.4).

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-

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

11 **A. ASCERTAINABILITY AND NUMEROSITY**

12 In determining whether a class is ascertainable, the court considers “(1) the class
13 definition, (2) the size of the class, and (3) the means available for identifying the class
14 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
15 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
16 class is ascertainable if the class members can be objectively identified and given notice of the
17 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
18 are approximately 250 Class Members that are easily identifiable and fall within the defined
19 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

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

21 **1. Commonality**

22 To justify certification, the class proponent must show that questions of law or fact
23 common to the class predominate over the questions affecting the individual members. *Arenas v.*
24 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class
25 was subjected to common policies and practices relating to wage statements, the payment of
26 wages, and so on. While the Parties dispute whether a class would be appropriate if the litigation
27 were to continue, they agree to class certification for the purposes of this settlement only.
28

1 2. Typicality

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

9 3. Adequacy of Representation

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

16 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
17 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
18 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
19 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6; Lauby Decl. ¶¶ 3-9).

20 4. Superiority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
26 significant legal and factual grounds for defending this action exist. First, in addition to
27 disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain
28 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant

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

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

10 Based upon detailed data obtained through informal discovery and information
11 exchanges, Plaintiff's counsel estimated the following data points through the date of mediation:
12 (1) 209 Wage Statement Class Members, (2) 60 Customer Service Class Members (2) 5,735
13 workweeks, (3) 96,935 shifts worked, and (4) approximately 3,800 wage statements during the
14 PAGA Period. (Mankin Decl. ¶ 23).

15 Plaintiff contended that her strongest claim was Defendant's failure to provide accurate
16 itemized wage statements due to failing to accurately state several items required by Labor
17 Code § 226(a). The maximum potential value for this claim, calculated using the statutory
18 framework of § 226(e) [\$50 for first violation and \$100 for every violation thereafter), was
19 \$377,000 based on 3,800 allegedly violative wage statements. But Defendant raised strong
20 defenses to this claim, including that, with each wage statement, the salary rate listed in the place
21 of the hourly rate is permissible for non-exempt employees classified as "salary non-exempt".
22 Defendant further argued that: (a) these violations, if any, did not result in any "injury" under §
23 226(e), (b) the violations, if any, were not "knowing and intentional" and could not support the
24 assessment of penalties, and (c) "derivative" wage statement claims are without merit. Based on
25 these defenses, Plaintiff assigned a 20% risk at class certification and an additional 25% on the
26 merits, leading to a risk-adjusted value of \$226,200. Plaintiff also made claims for PAGA civil
27 penalties on 100% of the 3800 pay periods at issue at the rate of \$100 per pay period for a
28 maximum value of \$380,000. Plaintiff believed there is a high likelihood of success because of

1 the objective nature of the claim (*i.e.*, the claims would be proven or disproven at MSJ/MSA
2 based on the wage statements themselves). For that reason, Plaintiff only applied a 25% risk on
3 the merits, leading to a risk-adjusted value of \$285,000 for the § 226 PAGA claims. (Mankin
4 Decl. ¶ 24).

5 Plaintiff also alleged meal claims against Defendant. Given the total number of shifts at
6 issue, and when incorporating a 50% violation rates from the timekeeping records and other
7 evidence, Plaintiff's counsel estimated 14,373 alleged unique meal violations leading to a
8 maximum potential value of \$411,628. However, Defendant raised numerous arguments in
9 response to this claim, including that policies specifically authorized the Class Members to take a
10 meal periods, and that many employees worked from home without supervision and had ample
11 opportunity to take compliant meals. Therefore, Defendant asserted that a fact-finder would
12 have to determine for each Class Member whether a break was recorded on each employees
13 timesheet or if it was missed and why, and why a break was noncompliant or nonexistent,
14 because if it was by the employee's choice, no liability attaches to Defendant. This defense is
15 factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding
16 whether the meal claims could be certified, and Plaintiff placed a 40% risk at the class
17 certification stage. Second, these defenses also go toward the merits given the evidentiary
18 question of proving the number of meal violations. As such, Plaintiff placed a 40% risk on the
19 merits, setting the risk-adjusted value for the meal at \$342,000. Plaintiff also alleged claims for
20 PAGA civil penalties for meal claims against Defendant. And because Plaintiff alleged that
21 these violations occurred on 50% of shifts, that equates to a roughly 75% violation rate under
22 PAGA. Therefore, given 2,850 alleged violations for this claim, the maximum potential value
23 was \$285,000 for the meal claim. However, the same defenses apply for class and PAGA
24 claims. Moreover, Plaintiff recognized that, even if the Court were to find Defendant liable for
25 meal period violations, the Court was likely to exercise its discretion to reduce the PAGA
26 penalties. Given the allegedly compliant policies/practices and the disputed nature of these
27 claims, we believed that the Court would apply an additional discretionary reduction of 75%
28 resulting in likely PAGA penalties after trial resulting in a risk adjusted value of \$71,250 for this

1 claim. (Mankin Decl. ¶ 25).

2 Additionally, Plaintiff alleged claims for unpaid wages, arising from off-the-clock work
3 when booting up their computers in the morning and checking their schedules for the following
4 day after hours, as well as, performing work during lunch periods. After investigating the
5 alleged frequency of violations, Plaintiff estimated that there were an alleged 86,235 minutes (3
6 minutes per 28,745 total shifts) unpaid hours during the Class Period at an applicable rate of pay
7 of \$57.28.² Thus, the maximum potential value for the unpaid wage claims was \$81,923.30.
8 However, Defendant vehemently opposed these unpaid wage claims on multiple fronts. For
9 example, Defendant argued that it had policies to pay employees for all hours worked and other
10 policies requiring employees to accurately record their own hours worked. Thus, Defendant
11 argued that there was no “off-the-clock” time and, even if there were, it had no actual or
12 constructive notice of the same and would not be liable. Additionally, Defendant claimed that
13 many of the Customer Service Class Members were employed at an office rather than at home
14 where they clocked in prior to booting up their computers. Moreover, Defendant alleged that,
15 due to these defenses, Plaintiff’s claims are the prototypical example of “individualized issues”
16 for which certification would not be proper. Thus, Plaintiff placed a 30% risk on these claims at
17 the class certification stage. Moreover, in addition to its other defenses on the merits, Defendant
18 argued that Plaintiff would be unable to meet its evidentiary burden at summary judgment and/or
19 trial because Plaintiff and the Class would be unable to identify when these alleged wage
20 violations occurred (since the claims are not all apparent from the timekeeping records), thus
21 defeating liability. For this reason, Plaintiff’s counsel assigned another 40% risk on the merits.
22 When factoring in these risks and defenses, Plaintiff calculated the risk-adjusted value of the
23 unpaid wage claims to be \$34,408. As for PAGA violations on this claim, the maximum
24 potential recover would be \$380,00 based on \$100 penalty for each of the 3800 pay periods at
25 issue. However, Plaintiff applied a 75% risk reduction because Defendant would likely be able
26 to prove that not all pay periods were affected and that the Court would likely use its discretion
27

28

² Since these unpaid hours were alleged to occur *after* 8 hours in a day, this blended rate is the overtime rate plus liquidated damages (for unpaid minimum wages) under Labor Code § 1194.2.

1 to further reduce the recovery. Therefore, Plaintiff came up with a risk-adjusted PAGA penalty
2 estimate of \$95,000. (Mankin Decl. ¶ 26).

3 Furthermore, Plaintiff alleged that Defendant failed to timely pay all wages owed to the
4 Class Members upon separation of employment since the Class Members. The maximum
5 potential value of this claim was \$164,345 based on 26 *former* employees being entitled to the
6 full waiting time penalty of 30 days of pay. But this maximum value failed to account for many
7 risks and defenses. For instance, this claim was entirely derivative of the unpaid wage and meal
8 break claims (*e.g.*, the unpaid wage premiums). If those claims fail at certification or on the
9 merits, there would be no waiting time penalties owed, so the same risks for those claims applied
10 to this claim. Furthermore, even if the unpaid wage and/or meal claims succeeded at certification
11 and on the merits, Plaintiff would have to prove that the violations (if any existed) were “willful”
12 under the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a
13 finding of a “willful” violation since they had compliant written policies and any deviations
14 therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel
15 applied a 30% risk at class certification and a 50% risk on the merits, leading to a risk-adjusted
16 value of \$57,521. Additionally, the total potential PAGA recovery for this claim was \$2,600
17 (\$100 penalty multiplied by 26 former employees. But Plaintiff adjusted this penalty claim by
18 75% as well due to the likelihood that the Court would apply the same discretionary reduction as
19 with the other claims. (Mankin Decl. ¶ 27).

20 Plaintiff also made PAGA only claims based on Defendant’s failure to timely pay wages
21 each pay period (Labor Code §204) and for failure to maintain employment records (Labor Code
22 §§1174, 1174.5). Each of these claims had a maximum potential penalty of \$380,000. However,
23 since both of these claims were purely derivative of the other claims and due to the same
24 likelihood that the Court will apply a discretionary reduction, Plaintiff discounted these claims
25 by 75% each for a risk-adjusted value on each claim of \$95,000. (Mankin Decl. ¶ 28).

26 In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates
27 the risk-adjusted class recovery as follows:
28

Class Claims

•	Wage Statement Claims	\$	226,200
•	Meal Break Claims	\$	148,186
•	Unpaid Wage Claims	\$	34,408
•	Waiting Time Penalty Claims	\$	<u>57,521</u>
•	Risk Adjusted Damages	\$	466,315

PAGA Claims

•	Wage Statement Claims	\$	285,000
•	Meal Break Claims	\$	71,250
•	Unpaid Wage Claims	\$	95,000
•	Late Wages	\$	95,000
•	Employment Records	\$	95,000
•	203	\$	<u>650</u>
•	Risk Adjusted Damages	\$	641,900

(Mankin Decl. ¶ 29).

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 82% of the risk-adjusted class damages and penalties and 34% of the total risk-adjusted value of the class and PAGA claims combined. And while the PAGA penalties had a maximum value in the seven 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, Defendant argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable. (Mankin Decl. ¶ 30).

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

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

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

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

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

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

25 The Court has wide discretion in approving the means of providing notice, so long as the
26 class representative "provide(s) meaningful notice in a form that should have a reasonable
27 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
28 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be

1 disseminated directly to the class members by first class mail by the settlement administrator,
2 since Defendant has the last known addresses of all class members and the Settlement
3 Administrator will perform a skip trace and update those addresses for any class notices that are
4 returned and re-send the notice.

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

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

20 The fact that each member who does not opt out of the Settlement shall be mailed a check
21 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
22 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
23 settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline,
24 the funds will be transferred to the State Controller’s Office subject to approval of the Court.
25 Such terms are favored by Courts and demonstrate that there was no collusion between counsel
26 for the parties and that the Settlement is fair and favorable to the Class Members.
27
28

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

2 Under the terms of the Settlement Agreement, Class Counsel is requesting \$128,333.33
3 in attorneys’ fees, which is equal to one-third of the Settlement Amount. *See, e.g., Laffitte v.*
4 *Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at
5 a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the
6 benefit of the class members, the trial court may determine the amount of a reasonable fee by
7 choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.*
8 (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee award of 1/3 of the total maximum
9 settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total
10 settlement was “well within the range of percentages which courts have upheld as reasonable in
11 other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010
12 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v.*
13 *Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding
14 fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class
15 actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System,*
16 *Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at *8 (approving fees of 1/3 of common
17 fund).

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

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

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

24 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
25 Representative, which is reasonable given the recovery Class Members will receive on average,
26 as well as the time and effort she devoted to this case. Her efforts included providing factual
27 background for the Class and PAGA complaint; providing documents and information about
28 Defendant’s compensation plan; participating in phone calls to discuss litigation and settlement

1 strategy; making herself available throughout the litigation to assist with analyzing the claims
2 and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
3 documents. The Class Representative also assumed significant risk in bringing this litigation—
4 namely, had she lost, she could have been ordered to pay Defendant’s costs.
5 Additionally, Plaintiff gave up an opportunity to pursue claims for discrimination and retaliation,
6 and instead agreed to forego those claims in exchange for the service award and full release of
7 claims.

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

22 **VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT**
23 **ADMINISTRATOR**

24 Subject to the Court’s approval, the parties stipulated to Phoenix serving as the
25 Settlement Administrator. Phoenix is experienced in administering class action settlements and
26 has provided a flat-fee proposal to administer this settlement for \$8,500. Additionally, Phoenix
27 has agreed to undertake the rules and responsibilities set forth in the new model agreement. (See
28 Decl. of Mike Moore). No party or counsel has any financial interest or ties to the proposed class

1 administrator. (See Mankin Decl. ¶ 42; Daniel Whang Decl. ¶ 3).

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

3 The last step in the approval process is the formal hearing, whereby proponents of the
4 settlement may explain and describe its terms and conditions and offer argument in support of
5 approval, and Class Members or their counsel may be heard in support of or in opposition to the
6 settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing
7 for final approval approximately 120 days after the Preliminary Approval Date, as follows:

8 September 6, 2023	Preliminary Approval (PA) hearing
9 October 16, 2023 <i>(40 days after PA)</i>	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Class Members.
10 November 30, 2023 <i>(45 days after mailing Class Notice)</i>	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
11 TBD	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
12 TBD	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.
13 TBD	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
14 TBD (Approximately January 4, 2024 - 120 days after Preliminary Approval is granted)	Final Approval Hearing.

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1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the
3 motion for preliminary approval of the settlement.
4

5 Dated: August 7, 2023

LAUBY, MANKIN & LAUBY LLP

6
7 BY:



Brian J. Mankin, Esq.

Misty M. Lauby, Esq.

Attorneys for Plaintiff and the Proposed
Class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE:

I, Tracie Chiarito, declare I am a citizen of the United States of America and am employed in Riverside, California; I am over the age of 18 years and am not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504. On August 7, 2023, I served the within **PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER** in said action by electronic filing service Case Home Page website to the parties on the service list maintained on the Case Home Page website for this case pursuant to the Court Order establishing the case website and authorizing service of documents.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 7, 2023, at Riverside, California.


Tracie Chiarito, Declarant

SERVICE LIST

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Attorneys for Defendant

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA (erroneously named and sued
as PRUDENTIAL INS CO OF AMERICA)