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

DANIEL LOPEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MARTINEZ CONCRETE, INC., a
California Corporation, ROBERTO
MARTINEZ, an Individual, and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVSB2208282
*[Assigned to Hon. Joseph Ortiz, Dept. S17, for
all purposes]*

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

Hearing

Date: November 6, 2023

Time: 1:30 p.m.

Dept.: S17

Complaint filed: April 21, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 6, 2023, at 8:30 a.m. or as soon thereafter as
the matter may be heard by the Honorable Joseph Ortiz in Department S17 of the San Bernardino
County Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiff
Daniel Lopez, 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 Declarations of Plaintiff and Plaintiff's counsel (Brian Mankin) in support thereof; the Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: October 13, 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 Daniel Lopez seeks preliminary approval of a \$320,000 wage-and-hour class
4 action settlement (the “Settlement Amount”) on behalf of all current and former nonexempt
5 employees employed by Defendant Martinez Concrete, Inc., in California at any time during the
6 Class Period of April 21, 2018, through September 17, 2023.

7 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
9 \$106,666.66 which is 1/3 of the Settlement Amount, Plaintiff Counsel’s litigation expenses not
10 to exceed \$20,000, Settlement Administrator Costs of \$5,600, PAGA penalties of \$32,000 (of
11 which \$24,000 or 75% will be paid to the LWDA and the remaining \$8,000 or 25% will be paid
12 to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff
13 Daniel Lopez (“Class Representative”). (S.A. ¶ 47(a-h)).

14 After all Court-approved deductions from the Settlement Amount, it is estimated that
15 \$148,233.34 will be available to pay the Class Members, as follows:

16

<i>Settlement Amount</i>	\$ 320,000.00
Attorneys’ Fees (1/3)	\$ 106,666.66
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 5,600.00
PAGA Penalties	\$ 32,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 148,233.34

20

21 Assuming 80 Class Members, the average payment to each class member will be
22 approximately \$1,852.92 (\$148,233.34 / 80). Of course, the actual payment will be calculated on
23 a pro-rata basis according to the number of Weeks Worked by each Class Member. Assuming
24 an estimated 8,000 Weeks Worked, each Workweek will have a value of approximately \$18.53
25 on average. In addition, the Aggrieved Employees (*i.e.*, individuals who worked during the
26 PAGA Period of April 21, 2021, through September 17, 2023), will receive a pro rata share of
27 the \$8,000 PAGA Penalties (accounting for 25% of the total \$32,000 allocation). Moreover,
28 approximately 50 Aggrieved Employees worked during the PAGA Period. (Mankin Decl., ¶ 8).

1 The settlement is non-reversionary and Class Members will not be required to submit
2 claim forms to receive payment, but each Class Member will receive the Class Notice containing
3 information about his/her share, the opportunity to dispute the number of Weeks Worked, and
4 the opportunity to opt-out or object to the settlement. All Class Members who do not
5 affirmatively opt-out will receive a settlement check upon the Court granting final approval.
6 Likewise, all Aggrieved Employees will receive a share of the PAGA Penalties once the
7 settlement receives final approval.

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

15 **II. BACKGROUND**

16 **A. THE SETTLEMENT CLASS**

17 The Class is defined as follows:

18 All current and former nonexempt employees employed by
19 Defendant Martinez Concrete, Inc., in California at any time
20 during the Class Period of April 21, 2018, through September 17,
21 2023. (S.A. ¶ 6).

21 **B. PROCEDURAL HISTORY**

22 On April 19, 2022, Plaintiff submitted a letter to the California Labor Workforce
23 Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act
24 of 2004 (the "PAGA"), and simultaneously sent a letter to Defendants requesting the production
25 of his personnel and timekeeping records in order to further evaluate his wage and hour claims.
26 (Mankin Decl., ¶ 11).

27 Plaintiff then filed a class and PAGA complaint in the Court that alleges claims for: (1)
28 failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal

1 periods, (4) failure to provide rest breaks; (5) failure to timely pay final wages, (6) failure to
2 provide accurate itemized wage statements, (7) unfair and unlawful competition pursuant to
3 Business and Professions Code §17200 *et seq.*, and (8) related PAGA claims. (Mankin Decl., ¶
4 12).

5 Defendants retained counsel began to defend the case. Plaintiff served written discovery,
6 but after discussions amongst counsel, the Parties agreed to attend private mediation. In
7 preparation for the mediation, the Parties informally exchanged documents and information that
8 allowed both sides to calculate the potential damages and evaluate potential risk, including
9 policies and procedures pertaining to each claim alleged, and statistics relating to the number of
10 current and former employees, number of shifts, pay periods worked and other things. In this
11 regard, Defendant provided a random sampling of timekeeping and payroll records of the Class
12 Members. This robust sampling enabled both parties to take a deep dive into the claims.
13 Additionally, during this process, Plaintiff and his counsel analyzed, researched, and investigated
14 the potential issues, including matters related to the calculation of damages, trial, and appellate
15 issues and risks. (Mankin Decl., ¶ 13).

16 On July 17, 2023, Plaintiff and Defendants participated in mediation before Jeff Krivis
17 Phillips, who is one of the most respected class action wage and hour mediator in California. At
18 the conclusion of mediation, the mediator issued a mediator's proposal calling for a class-wide
19 settlement for \$320,000. The Parties accepted the mediator's proposal and memorialized the
20 terms of the settlement in a long-form Settlement Agreement. (Mankin Decl., ¶ 14). The Parties
21 now seek the Court's preliminary approval of the Settlement.

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

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

26 First, Plaintiff alleged that he was not provided proper minimum and overtime wages due to
27 Defendants' failure to accurately record and compensate for all hours worked due to Defendants'
28 routine practice of failing to pay Plaintiff and the Class Members for time spent loading their work

1 trucks and traveling from the Defendant's yard in Azusa to worksites throughout Los Angeles
2 County and other locations throughout Southern California. For example, Plaintiff that the Class
3 Members were typically required to arrive at the yard at 5:00 a.m. to load the work truck with
4 supplies and tools needed for the day's job, but were not allowed to clock in for work until they
5 reached the jobsite at 7:00 a.m. In addition, on many occasions, Plaintiff and the Class Members
6 arrived at the jobsite and began performing work prior to 7 a.m., but they were required to clock-in on
7 record on their timesheets that they started at 7:00 a.m., resulting in a loss of time worked.
8 Moreover, Defendants failed to pay reporting time pay on days where Plaintiff that the Class
9 Members report to work but are sent home because, for example, the jobsite is not ready. Similarly, if
10 Defendants did not have any work for Plaintiff and the Class Members perform at the start of the
11 shift, Plaintiff and the Class Members were forced to wait up to 2 hours to begin work without being
12 paid any wages while on forced standby resulting in unpaid off-the-clock work leading to unpaid
13 minimum, regular, and overtime wages.

14 Second, during his employment with Defendant, Plaintiff alleged that he was denied
15 compliant meal and rest periods. As a result of Defendants' policies and practices, the Class
16 Members were subjected to meal period violations when they were: (1) instructed not to take a lunch
17 due to company policy despite never agreeing to waive the lunch period, (2) unable to take a meal
18 period due to workload, (3) forced to take an on-duty meal period while under the control of the
19 Company, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
20 second or third meal periods on shifts in excess of 10 hours or 15 hours, respectively. Even on
21 occasions when they were denied a meal period, Defendants nevertheless automatically deducted 30
22 minutes of pay. The timekeeping records produced by Defendant in preparation for mediation
23 confirms systemic violations. For instance, Defendants' records reveal that the time records
24 consisted of handwritten timecards that are largely undated and do not include specific in and out
25 times for daily time or for lunch periods, but rather include total hours worked only. This lack of
26 record keeping raises a rebuttable presumption against Defendants that proper meal periods were not
27 given. Importantly, Defendants' liability for these meal violations does not require any
28 individualized inquiry; instead, Defendants' objective records, which show the missed, late, and short

1 meals, will establish Defendants' certain liability for each violation.

2 Third, Plaintiff received inaccurate and incomplete wage statements that failed to accurately
3 state all necessary items required under Labor Code § 226.

4 Finally, due to its failure to pay all wages, Plaintiff alleged that Defendants also failed to
5 comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages each
6 period and failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of
7 final wages upon separation of employment triggering the full 30-day waiting time penalty for each
8 former employee.

9 Plaintiffs also alleged various PAGA claims arising out of the claimed violations
10 mentioned above. However, Defendant argued that these types of "derivative" claims have no
11 merit.

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

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

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

17 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

18 The \$320,000 Settlement Amount is non-reversionary and will be paid out to Class
19 Members without the need to submit a claim form or take any affirmative action. It includes (1)
20 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
21 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
22 \$5,600; (4) a \$32,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
23 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
24 aggregate of all Individual Class Payments of the Participating Class Members. (S.A. ¶ 47(a-h)).
25 Defendants will separately pay their share of employer's payroll taxes and withholdings.

26 After all Court-approved deductions from the Settlement Amount, it is estimated that
27 \$148,233.34 will be available to pay the Individual Class Payments to approximately 80 Class
28 Members. Thus, the average settlement payment is approximately \$1,852.92.

1 **B. NOTICE PROCEDURES**

2 The proposed Class Notice will be provided to the Class Members showing the estimated
3 amount that each Class Member will receive and the number of workweeks he/she is credited
4 (Exhibit B to the Mankin Decl.). Within 14 days after entry by the Court of its Order of
5 Preliminary Approval, Defendants shall provide the Settlement Administrator with a list of Class
6 Members containing names, addresses, Social Security Numbers, and total Weeks Worked
7 during the PAGA Period and the Class Period (the “Class Data”). (S.A. ¶¶ 9, 61).

8 Within 10 days of receipt of the Class Data, the Administrator shall calculate the number
9 of weeks worked for each Class Member, determine if the Escalator Clause was triggered, then
10 populate the Class Notice for each, and send each Class Member the Class Notice in English and
11 Spanish via first-class, United States mail. (S.A. ¶ 62-63).

12 In the event that any Class Notice mailed to a Class Member is returned as having been
13 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
14 search and seek an address correction for such Class Member(s), and a second Class Notice will
15 be sent to any new or different address obtained. (S.A. ¶ 64).

16 **C. EXCLUSION AND OBJECTION PROCEDURES**

17 Class Members who do not timely Opt-Out of the Settlement will be deemed to
18 participate in the Settlement and shall become a Participating Class Member without having to
19 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class
20 Member must submit a written request to the Administrator no later than 30 days after being
21 mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 23, 68). Any Opt-Out
22 request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 68(a)).

23 The Class Notice shall inform the Class Members of their right to object to the
24 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
25 objection to the Settlement Administrator no later than the Response Deadline. The objection
26 must include the case name and number and must set forth, in clear and concise terms, a
27 statement of the reasons why the objector believes that the Court should find that the proposed
28 Settlement is not in the best interest of the Class and the reasons why the Settlement should not

1 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 68(c)).

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

3 The amount of each Class Member's Individual Class Payment is tied to the number of
4 Weeks Worked by each Class Member during the Class Period. Individual Class Payments are
5 calculated by (a) dividing the Net Settlement Amount by the total number Weeks Worked by all
6 Participating Class Members during the Class Period, and (b) multiplying the result by each
7 Participating Class Member's Weeks Worked. (S.A. ¶ 47(c)).

8 Additionally, each "Aggrieved Employee" will receive an Individual PAGA Payment
9 calculated in the same way; thus, the \$8,000 PAGA Penalties allocated to the Aggrieved
10 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 47(h)).

11 The Class Notice will inform Class Members of the estimated share and the number of
12 Weeks Worked during the Class and/or PAGA Period(s). Class Members may dispute Weeks
13 Worked if they feel they worked more in the Class or PAGA Periods than Defendants' records
14 show by timely submitting evidence to the Administrator. (S.A. ¶ 66).

15 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

16 Defendants are required to deposit the Settlement Amount, along with the employers'
17 share of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
18 "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as
19 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
20 expenses, as approved by the Court; (4) a \$32,000 PAGA award; and (5) the aggregate of all
21 Individual Settlement Amounts of participating Class Members. (S.A. ¶ 69). Within 10 days
22 after the Court's approval of the Settlement, the Settlement Administrator shall issue payments to
23 cover all court-approved payments. (S.A. ¶ 70).

24 Class Members will have 180 days to cash his/her settlement check. If a Class Member
25 fails to cash a check by the deadline, then the Settlement Administrator shall issue the unclaimed
26 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 71).

1 **F. TAX TREATMENT**

2 The Parties agree that one-third (33.33%) of the Individual Class Payments will be
3 allocated as wages subject to withholding of all applicable local, state and federal taxes and the
4 remaining two-thirds (66.67%) will be allocated for interest and penalties (pursuant to, *e.g.*,
5 California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A.
6 ¶ 47(d)). The Individual PAGA Payments will be classified entirely as civil penalties and shall
7 be reported as required on an IRS Form 1099. (S.A. ¶ 47(h)). Defendants will separately pay
8 their share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 47(a)).

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

10 In exchange for these payments, the Settlement Agreement ¶ 32 provides that the
11 Participating Class Members will release the Released Parties of the claims alleged or could have
12 been alleged based on the facts stated in the operative complaint, as follows:

13 the claims stated in the Complaint, or that reasonably could have
14 been alleged based upon the factual allegations in the Complaint,
15 including: (a) failure to pay minimum wages, (b) failure to pay
16 overtime wages, (c) failure to provide meal periods, (d) failure to
17 provide rest breaks, (e) failure to failure to timely pay wages upon
18 separation of employment, (f) failure to provide accurate itemized
19 wage statements, (g) unfair and unlawful competition, and (h) all
20 other claims for statutory penalties based on the facts or claims
21 alleged in the Complaint ("Released Class Claims").

22 The time governing the release shall be the same as the Class Period. (S.A. ¶ 48).

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

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

 The Settlement Agreement ¶ 33 also defines the "Released PAGA Claims" as follows:

 [A]ll PAGA claims that Plaintiff alleged against the Released
 Parties, on behalf of the Aggrieved Employees and the State of
 California, based on the facts alleged or that reasonably could have

1 been alleged based on the factual allegations in the Complaint and
2 in the relevant LWDA notice letter, including all PAGA claims
3 seeking civil penalties premised (a) failure to pay minimum wages,
4 (b) failure to pay overtime wages, (c) failure to provide meal
5 periods, (d) failure to provide rest breaks, (e) failure to failure to
6 timely pay wages each period and upon separation of employment,
7 (f) failure to provide accurate itemized wage statements, (g) failure
8 to maintain employment records, and (h) all other claims for civil
9 penalties recoverable under the Private Attorneys General Act,
10 Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in
11 the Complaint.

12 The time governing the PAGA Released Claims is the PAGA Period of April 21, 2021,
13 through September 17, 2023. (S.A. ¶ 26). Moreover, even if an Aggrieved Employee requests
14 exclusion from the Class settlement, that individual will still be subject to the PAGA Released
15 Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA
16 Penalties. (S.A. ¶ 32, 67(a)).

17 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
18 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
19 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

20 California Rule of Court 3.769(d) provides that the Court may make an order approving
21 certification of a provisional settlement class at the preliminary approval stage. It is well-
22 established that trial courts should use a “lesser standard of scrutiny” for determining the
23 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
24 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
25 a settlement class, so the case management issues inherent in determining if the class should be
26 certified need not be confronted; and the trial court’s fairness review of the settlement protects
27 the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*
28 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification
 determination and the merits of the case is further attenuated within the context of the settlement
 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short
 of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*

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 request that this Court provisionally certify the Class,
5 as defined above, under Code of Civil Procedure § 3150.

6 **A. NUMEROSITY AND ASCERTAINABILITY**

7 Numerosity is met if a proposed class is so large that joinder of all members would be
8 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
9 the class members can be objectively identified and given notice of the litigation without
10 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
11 89, 101. Here, according to Defendants’ records, there are approximately 80 Class Members.
12 This figure satisfies the numerosity requirement.

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

14 **1. Commonality**

15 To justify certification, the class proponent must show that questions of law or fact
16 common to the class predominate over the questions affecting the individual members. *See*
17 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
18 *v. Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiff contends that the Class was subject to
19 common policies and practices relating to the payment of wages, meal and rest breaks, wage
20 statements, final pay, among other things. While the Parties dispute whether a class would be
21 appropriate if the litigation were to continue, they agree to class certification for the purposes of
22 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

Defendants' payment of wages, meal and rest breaks, wage statements, and the provisions governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. Adequacy of Representation

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

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

4. Superiority

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

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

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

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court;

1 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
2 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

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

17 [T]he 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
19 amount offered in settlement, the extent of discovery completed and the stage of
20 the proceedings, the experience and views of counsel . . . and the reaction of the
21 class members to the proposed settlement.
22 *Dunk, supra* (detailing non-exhaustive list of factors for court’s consideration at final approval).

23 The above factors are not exclusive “and the court is free to engage in a balancing and
24 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at
25 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
26 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent
27 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
28 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal
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 awarded,
21 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
22 prevailed on any of its defenses, the employees may not have received any monetary recovery.

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

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

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

2 To evaluate a settlement, the parties must provide the trial court with “basic information
3 about the nature and magnitude of the claims in question and the basis for concluding that the
4 consideration being paid for the release of those claims represents a reasonable compromise.”

5 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
6 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
7 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
8 the class could recover was not necessary:

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

17 A settlement is not judged against what might have been recovered had a plaintiff
18 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
19 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
20 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
21 by the proposed settlement is substantially narrower than it would be if the suits were to be
22 successfully litigated, this is no bar to a class settlement because the public interest may indeed
23 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
24 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, Defendants strongly disputed that Plaintiff could obtain
28 class certification, arguing a lack of commonality of the legal claims and injuries. Defendants
further argued that they complied with the applicable law and that any purported deviations
therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class.
While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always

1 a significant risk associated with class certification proceedings, which could significantly limit
2 the claims that he could pursue on a class basis.

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

7 Based upon detailed data obtained through informal discovery and information
8 exchanges, Plaintiff's counsel estimated the following data points through the date of mediation:
9 (1) 76 class members, (2) 7,866 workweeks, (3) 39,330 shifts worked, and (4) approximately
10 2,340 wage statements during the PAGA Period.

11 Plaintiff valued the various unpaid wage claims at approximately \$655,500 based on an
12 estimated 10 minutes per shift of unpaid time due to failure to accurately record time (\$80 avg.
13 rate of pay plus liquidated damages of LC 1194.2/6 x 19,665 shifts (50% violation rate) =
14 262,200) and 9,883 shifts (25% violation rate) with 30-minute meal auto-deduct violation (9,833
15 x 80/2 = \$393,320). However, Defendant raised defenses both as to class certification and on the
16 merits. For instance, Defendant argued that it maintained a policy which required the Class
17 Members to keep accurate records for the beginning and end of the workday, and that any "off-
18 the-clock" or auto-deduct claims would require exactly the type of individualized assessments
19 that preclude class certification. Because of the strong defenses and substantial risk in continued
20 litigation, Plaintiff assigned a 40% risk at class certification and another 40% risk on the merits,
21 leading to a risk-adjusted value for the wage claims of \$235,980.

22 These unpaid wage claims then gave rise to Plaintiff's claim for waiting time penalties,
23 which had a maximum value of \$182,400 based on 19 *former* Class Members (\$320 average
24 daily pay x 30 x 19). However, Defendant argued that it would defeat Plaintiff's unpaid wage
25 claims and, because the waiting time penalty claims were derivative of the unpaid wages,
26 Plaintiff's Labor Code § 203 would fail. Additionally, Defendant argued that even if the Court
27 determined that some or all unpaid wage claims had merit, waiting time penalties would be
28 inappropriate because any violations were not "willful", and Defendant had a "good faith" belief

1 in the legality of its practices. For these reasons, Plaintiff applied the same class certification and
2 merits risks from above (50% each), leading to a risk-adjusted value for the § 203 claims of
3 \$45,600.

4 Plaintiff also alleged meal and rest break claims against Defendant. Given the total
5 number of shifts at issue (an estimate of 39,330), Plaintiff's counsel estimated a 50% violation
6 rate for meal breaks and a 25% violation rate for rest breaks, leading to 19,665 alleged meal
7 violations and 9,833 alleged rest break violations. This established a maximum potential value
8 for these claims of \$1,179,920 (29,495 violations multiplied by the average hourly rate of \$40 as
9 the applicable premium rate under § 226.7).

10 However, Defendants raised numerous arguments in response to this claim, including that
11 they maintained fully compliant written policies and specifically authorized the Class Members
12 to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
13 short/late break. Therefore, Defendants asserted that a fact-finder would have to determine for
14 each Class Member whether a break was missed and why, and why a break was noncompliant or
15 nonexistent, because if it was by the employee's choice, no liability attaches to Defendants.
16 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
17 questions regarding whether the meal and rest break claims could be certified, and Plaintiff
18 placed a 40% risk at the class certification stage for both meal and rest breaks. Second, these
19 defenses also go toward the merits given the evidentiary question of proving the number of meal
20 and rest violations. As such, Plaintiff placed an additional 40% risk on the merits for the meal
21 and rest break claims, setting the risk-adjusted value for the combined meal and rest break claims
22 at \$424,764.

23 Plaintiff also made claims for wage statement violations. Based on data and information
24 gathered prior to mediation, Plaintiff alleges that there were 2,340 violative wage statements
25 during the applicable period. As such, the maximum potential damages under § 226(e) was
26 \$231,750.

27 But this maximum figure ignores several risks and defenses. For example, Defendant
28 raised many defenses, including that: (a) all required information under § 226(a) could be "easily

ascertained” from the wage statements and thus there were no violations, (b) the omissions, if any, were not “knowing and intentional” so no liability would attach, (c) Plaintiff and the Class would be unable to show the requisite “injury” to impose liability, and (d) even if there were violations, Defendant modified its wage statements during the liability period, thus reducing the number of potential violations. These defenses all went to the merits, not to defeating class certification. Thus, Plaintiff did not assign a risk at the class certification stage but applied a 30% risk on the merits, resulting in risk-adjusted value for the wage statement claim of \$162,225.

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

• Unpaid Wage Claims	\$ 235,980
• Waiting Time Penalty Claims	\$ 45,600
• Wage Statement Claims	\$ 162,225
• Meal and Rest Claims	<u>\$ 424,764</u>
• Total Risk Adjusted Penalties and Damages	\$ 868,569

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 37% of the risk-adjusted class damages and penalties. And while the PAGA civil penalty would have a maximum value in the low seven figures, this figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

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

3 The view of the attorneys actively conducting the litigation is entitled to significant
4 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
5 Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail,*
6 *Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of
7 counsel”) (internal quotation and citation omitted).

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

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

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

24 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
25 the Class Notice to the last known address of all class members complies with all the
26 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
27 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys’ fees,
28 litigation expenses, and the costs of administration; (3) details about the final fairness hearing

1 and how class members may elect to exclude themselves or make an objection; and (4) how class
2 members can obtain additional information. *See* Class Notice (Exhibit B to Mankin Decl.). In
3 addition, it will inform Class Members of their estimated settlement share.

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

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

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

26 The fact that each member who does not opt out of the Settlement shall be mailed a check
27 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
28 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no

1 settlement funds will revert to Defendants. Instead, if any checks are not cashed before the
2 objection deadline, the funds will be transferred to the State Controller's Office subject to
3 approval of the Court. Such terms are favored by Courts and demonstrate that there was no
4 collusion between counsel for the parties and that the Settlement is fair and favorable to the Class
5 Members.

6 **H. THE ATTORNEY'S FEES AND COSTS ALLOCATION UNDER THE SETTLEMENT**
7 **AGREEMENT IS FAIR**

8 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement of
9 up to \$20,000 in litigation costs, along with attorneys' fees equal to one-third of the Settlement
10 Amount. See, e.g., *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in
11 the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class action
12 litigation establishes a monetary fund for the benefit of the class members, the trial court may
13 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
14 created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee
15 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was "well within the range
16 of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v.*
17 *Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee
18 award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov.
19 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: "[f]ee
20 awards in class actions average around one-third of the recovery.").

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

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

26 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
27 Representative, which is reasonable given the recovery Class Members will receive on average,
28 the broader release he is agreeing to, as well as the time and effort he devoted to this case. His

1 efforts included providing factual background for the Class and PAGA Complaint; providing
2 documents and information about Defendants' compensation plan; participating in phone calls to
3 discuss litigation and settlement strategy; making himself available throughout the litigation to
4 assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation;
5 and reviewing the settlement documents. The Class Representative also assumed significant risk
6 in bringing this litigation—namely, had he lost, he could have been ordered to pay Defendants'
7 costs.

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 awards in
11 trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010
12 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class
13 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493
14 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
15 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28
16 (finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D.
17 Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each
18 of the named Plaintiff is appropriate” in wage and hour settlement).

19 **VI. THE COURT SHOULD APPOINT ILYM GROUP AS SETTLEMENT**
20 **ADMINISTRATOR**

21 Subject to the Court's approval, the parties stipulated to ILYM Group serving as the
22 Settlement Administrator. ILYM Group is experienced in administering class action settlements
23 and has provided a flat-fee proposal to administer this settlement for \$5,600. (Mankin Decl. ¶
24 25).

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

26 The last step in the approval process is the formal hearing, whereby proponents of the
27 settlement may explain and describe its terms and conditions and offer argument in support of
28 approval, and Class Members or their counsel may be heard in support of or in opposition to the

1 settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing
2 for final approval approximately 110 days after the Preliminary Approval Date, as follows:

3 November 6, 2023	Preliminary Approval (PA) hearing
4 November 30, 2023 (24 days after PA)	Deadline for Administrator to complete first mailing of the Class Notice to all Class Members.
5 December 30, 2023 (30 days after mailing Class Notice)	Deadline for Class Members to submit Requests for Exclusion, Objections and Disputes to the Settlement.
6 16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and a Service Award.
7 9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
8 5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
9 TBD (Approximately February 27, 2024 - 110 days after Preliminary Approval is granted)	Final Approval Hearing.

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17 **VIII. CONCLUSION**

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

20
21 Dated: October 13, 2023

LAUBY, MANKIN & LAUBY LLP

22
23 BY:



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

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 October 13, 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.

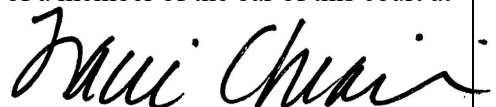
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 October 13, 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

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