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

SALVADOR RAMOS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

WHITE LINE SYSTEMS, LLC, a Texas
Limited Liability Company, DRIVEN 2
DRIVE LEASING, LLC, a Texas Limited
Liability Company, and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2216314
*[Assigned to Hon. Jessica Morgan, Dept. S26,
for all purposes]*

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

Hearing

Date: February 22, 2024

Time: 8:30 a.m.

Dept.: S26

Complaint filed: July 27, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 22, 2024, at 8:30 a.m. or as soon thereafter as
the matter may be heard by the Honorable Jessica Morgan in Department S26 of the San
Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415,
Plaintiff Salvador Ramos, 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 and Misty Lauby) in support thereof; the Class and Representative 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: January 29, 2024

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 Salvador Ramos seeks preliminary approval of a \$825,000 wage-and-hour class
4 action settlement (the “Total Settlement Amount” or “Settlement Amount”) on behalf of all
5 current and former truck drivers who were employed by Defendants White Line Systems, LLC,
6 and Driven 2 Drive Leasing, LLC in California at any time from July 27, 2018, through March 4,
7 2023 (the “Class Period”).

8 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff
9 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
10 \$275,000 which is 1/3 of the Settlement Amount, Plaintiff Counsel’s litigation expenses not to
11 exceed \$20,000, Settlement Administrator Costs of \$8,350, PAGA Payment of \$50,000 (of
12 which \$37,500 or 75% will be paid to the LWDA and the remaining \$12,500 or 25% will be paid
13 to the PAGA Members on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff
14 Salvador Ramos (“Class Representative”). (S.A. ¶ 51(a-h)).

15 After all Court-approved deductions from the Settlement Amount, it is estimated that
16 \$464,150 will be available to pay the Class Members, as follows:

17

<i>Settlement Amount</i>	\$ 825,000.00
Attorneys’ Fees (1/3)	\$ 275,000.00
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 8,350.00
PAGA Payment	\$ 50,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 464,150.00

21

22 Assuming 520 Class Members, the average payment to each class member will be
23 approximately \$892.60 (\$464,150 / 520). Of course, the actual payment will be calculated on a
24 pro-rata basis according to the number of Weeks Worked by each Class Member. Assuming an
25 estimated 21,683 Weeks Worked, each Workweek will have a value of approximately \$21.41 on
26 average. In addition, the PAGA Members (*i.e.*, individuals who worked during the PAGA
27 Period of June 23, 2021, through March 4, 2023), will receive a pro rata share of the \$12,500
28 PAGA Payment (accounting for 25% of the total \$50,000 allocation). Moreover, there are

1 approximately 318 PAGA Members who collectively worked approximately 10,400 pay periods
2 during the PAGA Period. (Mankin Decl., ¶ 9).

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

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

17 **II. BACKGROUND**

18 **A. THE SETTLEMENT CLASS**

19 The Class is defined as follows:

20 All current and former truck drivers who were employed by
21 Defendants White Line Systems, LLC, and Driven 2 Drive
22 Leasing, LLC in California at any time from July 27, 2018,
through March 4, 2023. (S.A. ¶ 6).

23 **B. PROCEDURAL HISTORY**

24 On June 23, 2022, Plaintiff submitted a letter to the California Labor Workforce
25 Development Agency (the "LWDA") for alleged civil penalties under the Labor Code Private
26 Attorneys General Act of 2004 (the "PAGA"), and simultaneously sent a letter to Defendants
27 requesting the production of his personnel and timekeeping records in order to further evaluate
28 his wage and hour claims.

1 (Mankin Decl., ¶ 12).

2 On July 27, 2022, Plaintiff filed a class action complaint in the Court. Thereafter, the
3 LWDA declined to assert jurisdiction over the PAGA claims, so on September 15, 2022,
4 Plaintiff filed a first amended complaint that added related claims under PAGA. The operative
5 First Amended Complaint alleges claims for: (1) failure to pay minimum and regular wages, (2)
6 failure to pay for nonproductive time under Labor Code § 226.2, (3) failure to reimburse for
7 business expenses, (4) failure to timely pay final wages, (5) failure to provide accurate itemized
8 wage statements, (6) unfair and unlawful competition pursuant to Business and Professions Code
9 §17200 *et seq*, and (7) related PAGA claims. (Mankin Decl., ¶ 13).

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

21 On June 6, 2023, Plaintiff and Defendant participated in mediation before David Phillips,
22 an experienced class action wage and hour mediator. The matter did not settle at mediation;
23 however, Mr. Phillips issued a mediator's proposal, which was ultimately accepted by the
24 Parties. (Mankin Decl., ¶ 15). The Parties now seek the Court's preliminary approval of the
25 Settlement.

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

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

5 One of the primary claims in this Action is for alleged underpayment of minimum wages
6 due to Defendant's piece-rate (flat daily rate) pay policy. Under this policy, Plaintiff alleges that
7 the Class Members were only paid for completion of a day's route and were not compensated for
8 non-driving tasks such as pre-trip and post-trip inspections, stop pay, detention time, loading and
9 unloading time, completing paperwork, refueling or repair, and downtime between runs, among
10 other tasks. However, Defendants raised a strong challenge to these claims by arguing that the
11 policy was compliant because it was intended to (and did) compensate for all hours worked,
12 including non-driving time, in accordance with *Ayala v. U.S. Xpress Enters.* (C.D. Cal. June 9,
13 2020) 2020 U.S. Dist. LEXIS 102991 and *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal.5th 762.

14 As a result of the unpaid wages, Plaintiff alleged that the underpayments trigger
15 substantial liability and exposure for the unpaid wages and various penalties, including full 30-
16 day waiting time penalties for each former employee under Labor Code § 203.

17 Plaintiff also alleged claims for wage statement violations under Labor Code § 226.
18 During the statutory period, Plaintiff alleges that Defendants provided the Class with wage
19 statements that failed to contain the total hours worked each period and the rate paid as required
20 by § 226(a)(2). However, Defendants raised a variety of defenses to this claim, including that
21 Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements
22 under § 226(e) and, thus, no liability would attach.

23 Plaintiff further alleged that Defendants failed to adequately reimburse Class Members
24 for use of their personal cell phones for work-related purposes. Defendants, however, argued
25 that they did reimburse \$25 per month and that any such alleged cell phone use was neither
26 required nor necessary, since Defendant's trucks are equipped with electronic communication
27 devices that enable drivers to receive load and shipping information, track hours of service and
28 duty status changes, obtain routing directions, scan and upload paperwork, and communicate

1 with dispatch via messaging.

2 Plaintiff also alleged various other Class and PAGA claims relating to the claimed
3 violations mentioned above. However, Defendants argued that these type of “derivative” claims
4 have no merit.

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

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

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

10 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

11 The \$825,000 Settlement Amount is non-reversionary and will be paid out to Class
12 Members without the need to submit a claim form or take any affirmative action. It includes (1)
13 Plaintiff’s attorneys’ fees and costs, as approved by the Court; (2) a service award of \$7,500 to
14 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
15 \$8,350; (4) a \$50,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
16 California Labor Code § 2699(i) and 25 percent to the PAGA Members; and (5) the aggregate of
17 all Individual Class Payments of the Participating Class Members. (S.A. ¶ 51(a-h)). Defendants
18 will separately pay their share of employer’s payroll taxes and withholdings.

19 After all Court-approved deductions from the Settlement Amount, it is estimated that
20 \$464,150 will be available to pay the Individual Settlement Amounts to approximately 520 Class
21 Members. Thus, the average settlement payment is approximately \$892.60.

22 **B. NOTICE PROCEDURES**

23 The proposed Class Notice will be provided to the Class Members showing the estimated
24 amount that each Class Member will receive and the number of workweeks he/she is credited
25 (Exhibit B to the Mankin Decl.). Within 14 days after entry by the Court of its Order of
26 Preliminary Approval, Defendants shall provide the Settlement Administrator with a list of Class
27 Members containing names, addresses, Social Security numbers, and total pay periods and
28 Weeks Worked during the PAGA Period and the Class Period (the “Class Data”). (S.A. ¶¶ 9, 65).

1 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
2 the number of weeks worked for each Class Member, populate the Class Notice for each, and
3 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 65).

4 In the event that any Class Notice mailed to a Class Member is returned as having been
5 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
6 search and seek an address correction for such Class Member(s), and a second Class Notice will
7 be sent to any new or different address obtained. (S.A. ¶ 68).

8 **C. EXCLUSION AND OBJECTION PROCEDURES**

9 Class Members who do not timely Opt-Out of the Settlement will be deemed to
10 participate in the Settlement and shall become a Participating Class Member without having to
11 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class
12 Member must submit a written request to the Settlement Administrator no later than 30 days
13 after being mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 40, 72).
14 Any Opt-Out request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶
15 72(a)).

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

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 Weeks Worked by each Class Member during the Class Period. Individual Class Payments are
26 calculated by (a) dividing the Net Settlement Amount by the total number Weeks Worked by all
27 Participating Class Members during the Class Period, and (b) multiplying the result by each
28 Participating Class Member’s Weeks Worked. (S.A. ¶ 51(c)).

1 Additionally, each PAGA Member will receive an Individual PAGA Payment calculated
2 based on the pro rata, whereby the \$12,500 PAGA Payment allocated to the PAGA Members
3 will be divided and paid on a pay period basis. (S.A. ¶ 51(h)).

4 The Class Notice will inform Class Members of the estimated share and the number of
5 Weeks Worked during the Class and/or pay periods worked during the PAGA Period. Class
6 Members may dispute Weeks Worked if they feel they worked more in the Class or PAGA Pay
7 Periods than Defendants' records show by timely submitting evidence to the Administrator.
8 (S.A. ¶ 70).

9 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

10 Defendants are required to deposit the Settlement Amount, along with the employers'
11 share of payroll taxes owed, with the Settlement Administrator, over three payments in 2024, and
12 these funds will be used to pay: (1) the class attorney fees and expenses, as approved by the
13 Court; (2) the service awards, as approved by the Court; (3) administrative expenses, as approved
14 by the Court; (4) a \$50,000 PAGA award; and (5) the aggregate of all Individual Settlement
15 Amounts of participating Class Members. (S.A. ¶ 73). Within 10 days of receipt of the last
16 payment, which is projected to occur on December 10, 2024, the Settlement Administrator shall
17 issue payments to cover all court-approved payments. (S.A. ¶ 74).

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

21 **F. TAX TREATMENT**

22 The Parties agree that 20% of the Individual Class Payments will be allocated as wages
23 subject to withholding of all applicable local, state and federal taxes and the remaining 80% will
24 be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226,
25 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 51(d)). The Individual PAGA
26 Payments will be classified entirely as civil penalties and shall be reported as required on an IRS
27 Form 1099. (S.A. ¶ 51(h)). Defendants will separately pay their share of employer payroll taxes
28 on the sum allocated to wages. (S.A. ¶ 51(a)).

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

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

5 All claims and/or causes of action as well as the predicate claims
6 based on the facts alleged in the Action, or that reasonably could
7 have been alleged based upon the factual allegations in the original
8 and amended Complaints and the PAGA Notice Letters, including
9 all of the following: (a) all class claims alleging violations of
10 California Labor Code sections 200, 201, 202, 203, 204, 208, 210,
11 218.6, 221-223, 226, 226.2, 226.3, 256, 558, 1194, 1197, 1197.1 and
12 2802; (b) any and all claims for failure to pay minimum and regular
13 wages; (c) any and all claims for failure to pay for nonproductive
14 time under Labor Code § 226.2; (d) any and all claims for failure to
15 reimburse for business expenses; (e) any and all claims for failure to
16 timely pay final wages; (f) any and all claims for improper or
17 inaccurate itemized wage statements, including any alleged
18 violations of Labor Code Section 226(a)(1)-(9) based on the facts
19 alleged in the Action, and including claims for injuries suffered
20 therefrom; (g) any and all claims for unreimbursed business
21 expenses, including, but not limited to, expenses incurred for
22 personal cell phone usage; (h) any and all claims under the Business
and Professions Code (including Section 17200 *et seq.*) premised on
the facts, claims and causes of action alleged in the Action, and (i)
all other claims or penalties under the wage and hour laws pleaded
in the Action; and all damages, penalties, interest and other amounts
recoverable under all claims under California and federal law, to the
extent permissible, including but not limited to the California Labor
Code as to the facts alleged in the Action, and the applicable Wage
Orders as to the facts alleged in the Action. The period of the
Release shall extend to the limits of the Class Period ("Released
Class Claims").

23 The time governing the release shall be the same as the Class Period. (S.A. ¶ 35).

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

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

2 The Settlement Agreement ¶ 36 also defines the “Released PAGA Claims” as follows:

3 [A]ll all claims and causes of action for PAGA civil penalties against
4 the Released Parties that were alleged or that could have been
5 alleged based on the facts asserted in the Action as well as in the
6 PAGA Notice Letters for violations of Labor Code sections 200,
7 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.2, 226.3,
8 256, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802
9 and 2699 *et seq.*, and sections of the applicable wage order, as well
10 as any claims for attorneys’ fees, litigation costs, and interest
11 allocated to those claims. The Released PAGA Claims include: (a)
12 any and all claims for civil penalties for failure to pay minimum and
13 regular wages; (b) any and all claims for civil penalties for failure to
14 pay for nonproductive time under Labor Code § 226.2; (c) any and
15 all claims for civil penalties for failure to reimburse for business
16 expenses; (d) any and all claims for civil penalties for failure to
17 timely pay final wages; (e) any and all claims civil penalties for
18 improper or inaccurate itemized wage statements, including any
19 alleged violations of Labor Code Section 226(a)(1)-(9) based on the
20 facts and legal theories contained in the PAGA Notice Letters; (f)
21 any and all claims civil penalties for unreimbursed business
22 expenses, including, but not limited to, expenses incurred for
23 personal cell phone usage; and (f) all other claims for civil penalties
24 recoverable under the Private Attorneys General Act, Labor Code
25 §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint.
26 Under *Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476
27 (2020), the Released PAGA Claims apply to all PAGA Members,
28 regardless of whether they request exclusion from the class. The
 Released PAGA Claims do not release any PAGA Members’ claims
 for wages or statutory penalties.

21 The time governing the PAGA Released Claims is the PAGA Period of June 23, 2021,
22 through March 4, 2023. (S.A. ¶ 29). Moreover, even if a PAGA Member requests exclusion
23 from the Class settlement, that individual will still be subject to the PAGA Released Claims to
24 the fullest extent permitted by law and will receive a pro-rata share of the PAGA Payment. (S.A.
25 ¶ 72(a)).

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

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

21 **A. NUMEROSITY AND ASCERTAINABILITY**

22 Numerosity is met if a proposed class is so large that joinder of all members would be
23 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
24 the class members can be objectively identified and given notice of the litigation without
25 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
26 89, 101. Here, according to Defendants’ records, there are approximately 520 Class Members.
27 This figure satisfies the numerosity requirement.

28 ///

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

2 1. Commonality

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

11 2. Typicality

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

19 3. Adequacy of Representation

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

26 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
27 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
28 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience

1 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

2 4. Superiority

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

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

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

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

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

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

1 after determining that it is “fair, adequate and reasonable,” considering factors such as the
2 “risk, expense, [and] complexity” of continued litigation) (citations omitted). The Court enjoys
3 broad discretion in making its fairness determination, and should consider factors including, but
4 not limited to:

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

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

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

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

///

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

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

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

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

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

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

26 Greenwell misunderstands *Kullar*, apparently interpreting it to
27 require the record in all cases to contain evidence in the form of an
28 explicit statement of the maximum amount the plaintiff class could
 recover if it prevailed on all its claims – a number which appears
 nowhere in the record of the case. But *Kullar* does not, as Geenwell

claims, require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.

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

Of particular relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. First, in addition to disputing the merits of Plaintiff’s claims, Defendants strongly disputed that Plaintiff could obtain 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 a significant risk associated with class certification proceedings, which could significantly limit the claims that he could pursue on a class basis.

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

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation: (1) 520 class members, (2) 21,150 workweeks, (3) 108,646 shifts worked, and (4) approximately 10,789 wage statements during the PAGA Period. (Mankin Decl. ¶ 16).

1 Plaintiff alleges that his strongest claims were for unpaid wages and valued the various
2 claims at approximately \$1,629,690 (108,646 shifts x 1 unpaid hour x \$15 minimum wage).
3 However, Defendants raised a host of strong defenses both as to class certification and on the
4 merits. For instance, Defendants argued that any assessing the number of unpaid hours would
5 require exactly the type of individualized assessments that preclude class certification.
6 Defendants also argued that its piece-rate pay structure also complied with California law
7 pursuant to *Ayala v. U.S Xpress Enterprises, Inc.* (C.D. Cal., June 9, 2020), 2020 WL 3071707
8 because the pay structure was intended to and did cover all delivery-related tasks for the entire,
9 including non-productive time. Because of these strong defenses and substantial risk in
10 continued litigation, Plaintiff assigned a 45% risk at class certification and another 45% risk on
11 the merits, leading to a risk-adjusted value for the wage claims of \$492,981. (Mankin Decl. ¶
12 17).

13 These unpaid wage claims then gave rise to Plaintiff's claim for waiting time penalties,
14 which had a maximum value of \$2,706,905 based on 397 former Class Members (397 former
15 Class Members since June 10, 2019 x \$227.28 avg. per day flat rate x 30). However, Defendants
16 argued that it would defeat Plaintiff's unpaid wage claims and, because the waiting time penalty
17 claims were derivative of the unpaid wages, Plaintiff's Labor Code § 203 would fail.
18 Additionally, Defendants argued that even if the Court determined that some or all unpaid wage
19 claims had merit, waiting time penalties would be inappropriate because any violations were not
20 "willful", and Defendants had a "good faith" belief in the legality of its practices. For these
21 reasons, Plaintiff applied the same class certification and merits risks from above (45% each),
22 leading to a risk-adjusted value for the § 203 claims of \$818,839. (Mankin Decl. ¶ 18).

23 Plaintiff then contends that wage statement violated the Labor Code directly by failing to
24 include the correct hours worked by the Class Members and the rate at which the drivers were
25 paid. Based on data and information gathered prior to mediation, Plaintiff alleges that there were
26 10,789 violative wage statements provided to 318 Class Members during the statutory period
27 dating back to July 27, 2021. As such, the maximum potential damages under § 226(e) were
28 \$1,063,000 ((318 Class Members x \$50 = 15,900) + (10,789 wage statements – 318 x 100 =

1 1,047,100)). But this maximum figure ignores several risks and defenses. For example,
2 Defendants raised many defenses, including that: (a) they are not required to include hours
3 worked and rate for flat rate drivers, (b) all required information under § 226(a) could be “easily
4 ascertained” from the wage statements and thus there were no violations, (c) the omissions, if
5 any, were not “knowing and intentional” so no liability would attach, (d) Plaintiff and the Class
6 would be unable to show the requisite “injury” to impose liability, and (e) even if there were
7 violations, Plaintiff’s maximum number didn’t take into account the \$4,000 cap on damages for
8 each Class Member, thus reducing the number of potential violations. Most of these defenses
9 went to the merits, not to defeating class certification. Thus, Plaintiff assigned a small risk at the
10 class certification of 20% stage but applied a 50% risk on the merits, resulting in risk-adjusted
11 value for the wage statement claim of \$425,200. (Mankin Decl. ¶ 19).

12 As for Plaintiff’s claims under Labor Code § 2802 (failure to reimburse), Plaintiff
13 assigned a maximum value of \$42,300 based on \$2 unreimbursed cell phone expenses per
14 workweek (\$2 x 21,150 workweeks during the class period). But these claims also faced strong
15 defenses, as Defendant argued that it reimbursed the Class Members \$25 per month for all cell
16 phone expenses and that the Class Members were not required to use their cell phones for work
17 purposes. Indeed, Defendant argued that the opposite was true since the trucks all had an
18 onboard computer system that was fully capable of handling any necessary communications
19 (without a Class Member needing to use their cell phone). Based on these defenses, Plaintiff
20 assigned a 50% risk at class certification and a 75% risk on the merits, leading to a risk-adjusted
21 value of \$5,287. (Mankin Decl. ¶ 20).

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

24	• Unpaid Wage Claims	\$ 492,981
25	• Waiting Time Penalty Claims	\$ 818,839
26	• Wage Statement Claims	\$ 425,200
27	• Unreimbursed Expense Claims	<u>\$ 5,287</u>
28	• Total Risk Adjusted Penalties and Damages	\$ 1,742,307

(Mankin Decl. ¶ 21).

The reasonableness of the settlement is apparent from the fact that the proposed settlement is only at a 53% discount from the risk-adjusted class damages and penalties. And while the PAGA civil penalty would have a maximum value in the 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, Defendants argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. 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. (Mankin Decl. ¶ 22).

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

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

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

1 state of the law, and uncertainties of class certification and litigation.

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

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

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

16 The Court has wide discretion in approving the means of providing notice, so long as the
17 class representative "provide(s) meaningful notice in a form that should have a reasonable
18 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
19 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
20 disseminated directly to the class members by first class mail by the settlement administrator,
21 since Defendants have the last known addresses of all Class Members and the Settlement
22 Administrator will perform a skip trace and update those addresses for any class notices that are
23 returned and re-send the notice.

24 The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members
25 with all due process protections required by the U.S. Constitution. Moreover, the contents of the
26 Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a
27 detailed explanation of the case, including the basic contentions or denials of the parties; (2) a
28 statement that the court will exclude the member from the class if the member so requests by a

1 specified date; (3) a procedure for the member to follow in requesting exclusion from the class;
2 (4) a statement that the judgment, whether favorable or not, will bind all members who do not
3 request exclusion; and (5) a statement that any member who does not request exclusion may, if
4 the member so desires, enter an appearance through counsel. The 30-day deadline to opt-out or
5 object is also reasonable, as it provides Class Members sufficient time to do so and, if they so
6 choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he
7 or she will automatically be sent a settlement check.

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

10 The fact that each class member who does not opt out of the Settlement shall be mailed a
11 check ensures that every Participating Class Member will be paid unless he or she affirmatively
12 acts to exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which
13 means that no settlement funds will revert to Defendants. Instead, if any checks are not cashed
14 by the check cashing deadline, the funds will be transferred to the State Controller’s Office
15 subject to approval of the Court. Such terms are favored by Courts and demonstrate that there
16 was no collusion between counsel for the parties and that the Settlement is fair and favorable to
17 the Class Members.

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

20 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement of
21 up to \$20,000 in litigation costs, along with attorneys’ fees equal to one-third of the Settlement
22 Amount. The benchmark in California is to award fees of one-third of the common fund
23 settlement. *See, e.g., Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in
24 the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class action
25 litigation establishes a monetary fund for the benefit of the class members, the trial court may
26 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
27 created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee
28 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was “well within the range

1 of percentages which courts have upheld as reasonable in other class action lawsuits”); *Singer v.*
2 *Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee
3 award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov.
4 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: “[f]ee
5 awards in class actions average around one-third of the recovery.”).

6 Once the Court grants preliminary approval and Notice is disseminated, Plaintiff’s
7 counsel will submit a comprehensive request for attorneys’ fees and costs with the motion for
8 final approval.

9 **I. THE CLASS REPRESENTATIVE’S SERVICE AWARD REQUEST IS FAIR AND**
10 **APPROPRIATE**

11 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
12 Representative, which is reasonable given the large recovery Class Members will receive on
13 average, the broader release he is agreeing to, as well as the time and effort he devoted to this
14 case. His efforts included providing factual background for the Class and PAGA Complaint;
15 providing documents and information about Defendants’ compensation plan; participating in
16 phone calls to discuss litigation and settlement strategy; making himself available throughout the
17 litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the
18 mediation; and reviewing the settlement documents. The Class Representative also assumed
19 significant risk in bringing this litigation—namely, had he lost, he could have been ordered to
20 pay Defendants’ costs.

21 The requested service award falls within the range of incentive payments typically
22 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
23 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in
24 trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010
25 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class
26 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493
27 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
28 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28

(finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement).

VI. THE COURT SHOULD APPOINT ILYM GROUP AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to ILYM Group serving as the Settlement Administrator. ILYM Group is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$8,350. (Mankin Decl. ¶ 33).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

February 22, 2024	Preliminary Approval (PA) hearing
March 18, 2024 (<i>24 days after PA</i>)	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
April 17, 2024 (<i>30 days after mailing Class Notice</i>)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys’ fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff’s Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.

1 TBD (Approximately June 11, 2024 -
2 110 days after Preliminary Approval is
3 granted)

Final Approval Hearing.

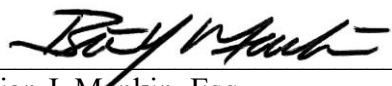
4 **VIII. CONCLUSION**

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

7
8 Dated: January 29, 2024

LAUBY, MANKIN & LAUBY LLP

9
10 BY:


11 Brian J. Mankin, Esq.
12 Attorneys for Plaintiff and the Proposed
13 Class
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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 January 29, 2024, I caused to be served the foregoing document(s) described as follows:

**PLAINTIFF'S 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.

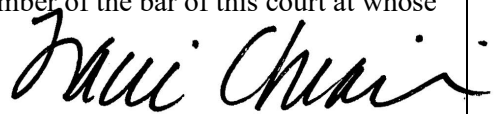
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 January 29, 2024, Riverside, California.

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



Tracie Chiarito, Declarant

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