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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DESIREE DUNN, individually, on a representative basis, and on behalf of all others similarly situated;

Plaintiff,

vs.

SUZUKI MOTOR USA, LLC, a California Limited Liability Company; and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2025-01477567-CU-OE-CXC
[Assigned to Hon. William Claster, Dept CX101, for all purposes]

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

Hearing
Date: July 31, 2026
Time: 9:00 a.m.
Dept.: CX101

Complaint filed: April 23, 2025

TO THE HONORABLE COURT AND TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 31, 2026, at 9:00 a.m. or as soon thereafter as the matter may be heard by the Honorable William Claster in Department CX101 of the Orange County Superior Court located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Desiree Dunn, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Class and PAGA action settlement with Defendant Suzuki Motor USA, LLC, 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 Approval 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 and the following:

- Declaration of Plaintiff's counsel Brian Mankin in support of this Renewed Motion for Preliminary Approval, to which is attached: (1) Exhibit A, which is the fully executed Class Action and PAGA Representative Action Settlement Agreement and Release of Claims (the "Settlement Agreement" or "Settlement" or "S.A."), (2) Exhibit B, which is the "Notice Packet" comprised of the Class Notice, Exclusion Form, and Workweeks Dispute Form, and (3) other relevant Exhibits.
- Declaration of Plaintiff's counsel Peter Carlson (*previously filed as* ROA #50),
- Declaration of Plaintiff Desiree Dunn (*previously filed* as ROA # 48), and
- Declaration of the Administrator, Michael Moore of Phoenix Settlement Administrators (*previously filed as* ROA # 54),
- *Revised* proposed Order granting Preliminary Approval of the Settlement,
- All other records, pleadings, and papers filed in this action; and
- Upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: July 9, 2026

LAUBY, MANKIN & LAUBY LLP

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Desiree Dunn, individually and on behalf of all others similarly situated, seeks preliminary approval of a $160,000 wage-and-hour class and representative PAGA action settlement (the "Gross Settlement Amount") between roughly 25 Class Members[1] and Defendant Suzuki Motor USA, LLC, ("Defendant" or "Suzuki Motor") (collectively, "the Parties").

Under the terms of the fully-executed Settlement Agreement,[2] Defendant will not oppose Plaintiff's Counsel's application for a reasonable award of attorney's fees not to exceed the total amount of $53,333.33 (1/3 of the Gross Settlement Amount), Plaintiff's Counsel's litigation costs not to exceed $20,000, Administrator Costs of $5,000, and PAGA penalties of $10,000 (of which $6,500 or 65% will be paid to the LWDA and the remaining $3,500 or 35% will be paid pro rata to the Aggrieved Employees). (S.A. ¶ 44).

After all Court-approved deductions from the Settlement Amount, it is estimated that $71,666.67 will be available to pay the Individual Class Payments of approximately 25 Class Members, who do not opt out of the settlement, as follows:

	Total Amount
Gross Settlement Amount	$ 160,000.00
Attorneys' Fees (1/3)	$ 53,333.33
Litigation Costs	$ 20,000.00
Administration Costs	$ 5,000.00
PAGA Penalties	$ 10,000.00
Class Representative's Service Award	$ 0
Net Settlement Amount	**$ 71,666.67**

Assuming a class size of 25 Class Members, th***e average payment will be approximately $2,866*** to each Class Member ($71,666.67 / 25). Of course, the actual payments will be calculated on a pro rata basis according to the number of Workweeks worked by each Class

[1] The "Class Members" are defined as "all current and former nonexempt (hourly paid) employees employed by Defendant in California during the Class Period (April 23, 2021, through September 18, 2025).

[2] The fully executed "Class Action and PAGA Representative Action Settlement Agreement and Release of Claims" shall be referred to herein as the "Settlement Agreement" or "Settlement" or "S.A." and is attached as Exhibit A to the Declaration of Brian Mankin in support of Plaintiff's Renewed Motion for Preliminary Approval ("Mankin Decl.").

Member. In addition, Aggrieved Employees (defined in S.A. ¶ 4 as "all current and former nonexempt (hourly paid) employees employed by Defendant in California during the PAGA Period") will receive a pro rata share of the $3,500 PAGA Penalties (accounting for 35% of the total $10,000 allocation). (S.A. ¶ 44(h)).

The Settlement is non-reversionary and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Class Notice containing information about his/her share, the opportunity to dispute the number of Weeks Worked or Pay Periods, and the opportunity to opt out or object to the Settlement as to the Class Claims. All Class Members who do not affirmatively opt out will receive a settlement check upon the Court granting Final Approval. Likewise, all Aggrieved Employees will receive a share of the PAGA Penalties once the Settlement receives Final Approval.

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

II. BACKGROUND

A. THE PROPOSED SETTLEMENT CLASS

The putative Class in this case consists of:

> All current and former nonexempt (hourly paid) employees employed by Defendant in California during the Class Period of April 23, 2021, through September 18, 2025. (S.A. ¶¶ 6, 10).

B. PROCEDURAL HISTORY

On April 23, 2025, Plaintiff submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and simultaneously sent a letter to Defendant requesting the production of her personnel and timekeeping records to further evaluate her wage and hour claims. (Mankin Decl. ¶ 11, Exhibit C). That same day, Plaintiff filed a putative class action Complaint in this Court. Subsequently, the LWDA declined to assert jurisdiction over the PAGA Claims, so on July 1, 2025, Plaintiff filed a separate PAGA only complaint in this Court (Case No. 30-2025-01495109-CU-OE-CXC), and then filed a Notice of Related Cases. The Complaints allege class and representative PAGA claims, including: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to timely pay final wages; (7) failure to pay vested vacation wages; (8) failure to provide accurate itemized wage statements; and (9) unfair and unlawful competition pursuant to Business and Professions Code §17200 *et seq*., and (10) related claims under PAGA. (Mankin Decl. ¶ 12).

Defendant retained counsel and has denied, and continues to deny, the allegations and any and all liability or wrongdoing of any kind associated with Plaintiff's claims, disputed and continues to dispute, the damages and penalties claimed by Plaintiff, and contends that Plaintiff's claims are not appropriate for class or representative treatment. However, before incurring significant costs and expenses in engaging in protracted discovery and a class certification battle, the Parties agreed to explore an early resolution through mediation. In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk. Notably, in advance of mediation, Defendant provided big-picture data points regarding the number of Class Members during the Class Period, the number of Aggrieved Employees during the PAGA Period, the total *former* employees for purposes of Labor Code §§ 201-203, the number of workweeks worked by Class Members during the Class Period, the number of pay periods during the PAGA Period, and the average rate of pay for Class Members. Additionally, Defendant produced 613 pages of documents that covered applicable policies and practices, and also included the various iterations of employee handbooks in effect during the Class Period. Finally, Defendant provided the payroll and timekeeping data for all Class Members from 2021 to 2025 (not a sampling), spanning over 59,000 rows of excel data. Plaintiff's counsel used these records to evaluate the potential claims, risks, and defenses as to all similarly situated employees. (Mankin Decl. ¶ 13).

On August 18, 2024, Plaintiff and Defendant participated in a full-day mediation with Hon. Jonathan Cannon (Ret.), who served on the Orange County Complex Panel for many years handling class actions and PAGA cases, and now serves as a private mediator. At the conclusion of mediation, Judge Cannon issued a mediator's proposal calling for a class and PAGA settlement for $160,000. The Parties accepted the mediator's proposal and memorialized the terms of the settlement in an MOU and then in a long-form settlement agreement (*see* Exhibit A to Mankin Decl.). As part of the Settlement, the Parties agreed to join/consolidate the Class Action and PAGA Action together by way of a first amended complaint that was filed in the Class Action on April 21, 2026. Plaintiff now seeks preliminary approval of the Settlement.

C. <u>SUMMARY OF THE CLAIMS AND DEFENSES</u>

Suzuki is a publicly traded global motor company known for its vehicles, including motorcycles. Its United States subsidiary (the Defendant here) operates a regional corporate headquarters in Brea, California, where the approximately 25 similarly situated Class Members worked. Plaintiff alleged numerous wage and hour violations on behalf of these Class Members, but Defendant vigorously contested and denied Plaintiff's material allegations on the merits and as to the propriety of a class action or PAGA representative action. (Mankin Decl. ¶ 15).

<u>*Causes of Action ("COA") 1, 2, 10, 11: Unpaid Minimum and Overtime Wage Claims*</u>

In this matter, Plaintiff alleged that Defendant failed to pay her and the Class for all required minimum and overtime wage under several theories of liability. For instance, Plaintiff alleged that the Class Members were required to perform off-the-clock work due to a computer-based timekeeping system that was not accessible until employees completed various boot-up tasks (at the beginning of shifts) and through which employees had to clock out and then perform various shut down tasks (at the end of shifts). *Cadena v. Customer Connexx LLC* (9th Cir. 2022) 51 F.4th 831 (booting up and shutting down computers is compensable under the FLSA [and therefore the Labor Code]). Plaintiff also alleges that she and the other Class Members were frequently required to perform other pre- and post-shift tasks, without compensation, in violation of California law. These claims were based on well-established authority that employees must be paid for all time that the employer either knew, or reasonably should have known, that its employees are subject to its control or otherwise working. *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585. And this was further reinforced by two recent cases from the California Supreme Court regarding this type of uncompensated time. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation"); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when the employee is under company's control and where tasks served the employer's interests).

In response, Defendant presented strong defenses. Notably, Defendant argued that it maintained lawful policies and that its timekeeping policies and procedures which noted that employees were required to accurately record their time worked, including the time work begins and ends. For this reason, Defendant argued that its lawful written policy creates a "presumption [that employees] are doing no work" when they are clocked out. *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1051. Thus, any claim for off-the-clock work would require unmanageable individualized inquiries into why an employee failed to follow the company's lawful policy and whether that employee actually performed compensable (but unpaid) work.

<u>*COA 3, 4, 12, and 13: Meal Period and Rest Break Violations*</u>

Plaintiff's meal and rest break claims were *not* based on an unlawful written policy. Instead, Plaintiff alleged that due to inadequate staffing and other work requirements, Plaintiff and the Class were frequently denied compliant meal and rest breaks.

However, Defendant countered that it provided and made available meal and rest breaks to all employees, and any employee who did not take a meal or rest break did so entirely of his or her own volition. In this regard, Defendant produced its written policies and practices, which it argued show full compliance with the law.

Therefore, Plaintiff's theory of liability (and Defendant's theory of defense) boiled down to whether timekeeping records showing noncompliant meal periods are sufficient for class certification and eventual summary judgment/adjudication. Plaintiff argued that this was sufficient, relying on the California Supreme Court decision in *Donohue v. AMN Services, LLC*

(2021) 11 Cal.5th 58, 61, where it was held that "time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." But Defendant argued against this stance, and argued that because it had lawful written policies, it could not be liable absent proof that an employee was impeded or discouraged from taking the break. And Defendant further argued that this analysis would require improper individualized assessments into why a break was noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches.

COA 5 and 14: Unreimbursed Business Expense Claims

Plaintiff also advanced a claim for failure to reimburse expenses incurred by Plaintiff and the Class to carry out their tasks for Defendant, including cellular phone costs, along with expenses associated with working remotely out of a home office (such as internet costs).

However, Defendant argued that it reimbursed all necessary expenses and provided records indicating that it reimbursed Plaintiff and the Class on a per-pay-period basis for such expenses. Thus, Defendant contended that this claim would fail at class certification (based on individualized issues) and on the merits, if certification were granted.

COA 6 and 15: Failure to Pay Vested Vacation

Additionally, Plaintiff alleged that Defendant failed to pay all vested vacation wages due and owing to the Class upon separation of employment, as required by Labor Code § 227.3. Specifically, Plaintiff alleged that Defendant failed to pay for all accrued but unused vacation hours and did not receive pay such hours at the "final rate", as required by Labor Code § 227.3. But Defendant vehemently opposed this claim and argued that it, at all times, paid the departing Class Members for all accrued and unused vested vacation at the proper "final rate of pay."

COA 7 and 16: Failure to Timely Pay Final Wages

Plaintiff further argued that Defendant was liable for waiting time penalties under Labor Code § 203 for the failure to timely pay all wages due and owing to its employees. This claim is often referred to as "derivative" because it rises or falls based on the answers as to whether Defendant failed to pay all required compensation under other claims (*e.g.*, did Defendant pay all required minimum and overtime? Did Defendant pay all meal and rest break premiums it was required to pay?). Due to the derivative nature of this claim, the evidence is the same as the underlying claims discussed above.

In response, Defendant argued that it would not be liable for waiting time penalties because it would not be found liable for the underlying alleged violations. And where there is no underpayment of wages, there is no basis for waiting time penalties. Defendant also argued that, even if it was found liable for unpaid/underpaid wages, it would not be held liable for waiting time penalties based on a "good faith defense." In this sense, Defendant argued that there was a good faith dispute as to whether it properly calculated and paid minimum wages, overtime wages, and meal premiums.

COA 7 and 16: Wage Statement Violations

Plaintiff's claim for wage statement violations was also "derivative" because it rises or falls based on the answers as to whether Defendant failed to pay all required compensation under other claims (*e.g.*, did Defendant pay all required minimum and overtime? Did Defendant pay all meal and rest break premiums it was required to pay?). Due to the derivative nature of this claim, the evidence is the same as the underlying claims discussed above.

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

COA 9: Unfair Competition

Plaintiff also advanced a claim under the Unfair Competition Law, California Business & Professions Code § 17200, *et seq*. This claim was not based on any new facts or theories; instead, it was utilized to extend the class action recovery period to four years in order to broaden the time frame and provide more coverage to Class Members and permit additional class members to potentially recover from this suit (*Murphy v. Kenneth Cole Productions, Inc.*, (2007) 56 Cal. Rptr. 3d 880).

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

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The $160,000 Gross Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's attorneys' fees and costs, as approved by the Court; (2) Administration Costs of $5,000; (3) a $10,000 PAGA award, 65 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 35 percent of which is to be paid to the Aggrieved Employees; and (4) the aggregate of all Individual Class Payments of the Participating Class Members. (S.A. ¶ 44). Defendant will separately pay its share of employer's payroll taxes and withholdings. (S.A. ¶ 44(a)).

After all Court-approved deductions from the Settlement Amount, it is estimated that $71,666.67 will be available to pay Individual Class Payments to approximately 25 Class Members; thus, the average settlement payment to each Class Member is approximately $2,866.

B. NOTICE PROCEDURES

The proposed Notice Packet (consisting of the Class Notice, Exclusion Form and Dispute Form) will be provided to the Class in English only, showing how each Class Member's Individual Class Payment and, if applicable, Individual PAGA Payment will be calculated, the number of Workweeks credited as a Class Member and/or Aggrieved Employee (*See* Exhibit B to Mankin Decl.). Within 20 calendar days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Administrator with the "Class Data" consisting of Class Member's full names, last known mailing addresses, Social Security Numbers, and the total Weeks Worked during the Class and PAGA Period. (S.A. ¶¶ 9, 58).

The Administrator will initially determine if the Escalator Clause[3] has been triggered and if so, will provide Defendant with its options. (S.A. ¶ 59). The Administrator shall calculate the

[3] Under the "Escalator Clause" (S.A. ¶ 17), if the total Workweeks exceed 3.850, Defendant has the option to either: (1) increase the Gross Settlement Amount by $45.71 for each workweek above 3,850, or (2) modify the end date of the Class Period so that Workweeks do not exceed 3,850 (but not to a date earlier than the date of mediation, August 18, 2025).

number of Weeks Worked during the Class Period and PAGA Period, populate the Notice for each Class Member, and send each Class Member the Notice Packet via first-class mail in English and Spanish.

In the event that any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. The re-mailed Class Notice shall be identical to the original Class Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by no later than 15 (fifteen) days from the original Response Deadline.

C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not timely opt-out of the Settlement as to the Class Claims will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. (S.A. ¶ 63). To Opt-Out of the Class Settlement, the Class Member must complete and submit a Request for Exclusion Form to the Administrator no later than 45 days after being mailed the Class notice by the Administrator ("Response Deadline"). Any Opt-Out request that is not postmarked by the Response Deadline will be invalid, unless a Notice Packet was remailed in which case the Class Member's exclusion or objection must be submitted by the later of the original Response Deadline or 15 calendar days after the remailing of the Notice Packet.

The Class Notice shall inform Class Members of their right to object to the Settlement. Any Participating Class Member who wishes to object to the Settlement must submit the objection to the Administrator no later than the Response Deadline, or may object orally at the final approval hearing.

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Class Member's Individual Class Payment is tied to the number of Weeks Worked by each Class Member for Defendant in California during the Class Period. Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's Weeks Worked. (S.A. ¶ 44(c)).

Additionally, each Aggrieved Employee will receive an Individual PAGA Payment based on a pro-rata basis. Thus, the $3,500 PAGA Penalties allocated to the Aggrieved Employees will be divided by and paid based on the number of Weeks worked during the PAGA Period. (S.A. ¶ 44(h)). Aggrieved Employees may not opt out of the Released PAGA Claims. (S.A. ¶ 48).

The Class Notice will inform Class Members of the estimated share and the number of Weeks Worked during the Class Period and PAGA Period. Class Members may dispute their Weeks Worked if they feel they worked more weeks than Defendant's records show, by timely submitting evidence to the Administrator.

As noted, assuming a class size of approximately 25 Class Members, the average payment to each Class Member will be approximately $2,866, although the actual payment will be calculated on a pro-rata basis as shown above. Assuming an estimated 3,500 Weeks Worked by the Class Members, each Workweek will have a net value of approximately $20.48. Thus, if a Class Member worked the entire Class Period (approximately 230 Workweeks), their estimated share will be approximately $4,710. Indeed, this is an excellent result for the Class Members.

Moreover, it is estimated that there will be approximately 15 Aggrieved Employees who will share in the $3,500 PAGA award on a pro rata basis.

E. TIMING OF SETTLEMENT DISBURSEMENTS

Within 15 calendar days of the Effective Date, Defendant shall deposit the Gross Settlement Amount into the Qualified Settlement Fund to pay: (1) the Attorneys' Fees and Costs Award, as approved by the Court; (2) Administrator Costs, as approved by the Court; (3) the PAGA Penalties; and (4) the aggregate of all Individual Class Payments to Participating Class Members. (S.A. ¶ 66). Defendant shall also fund its share of payroll taxes, as directed by the Administrator. Within 10 days thereafter, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 67)

Class Members will have 180 days to cash his/her settlement check. If a Class Member fails to cash their check by the deadline, then the Administrator shall issue the unclaimed funds to the State Controller's Office for the State of California in the name of the Class Member. (S.A. ¶ 67(a)).

F. Tax Treatment

Since this matter was primarily driven by penalty claims (*i.e.*, wage statements, waiting time penalties and PAGA penalties), the Parties agree that 20% of each Individual Class Payment shall constitute wages (for which each Participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute interest and penalties (for which each Participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (S.A. ¶ 44(d)). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and be reported on an IRS Form 1099.

G. Participating Class Members' Release of Claims

Upon the Effective Date occurring, and after the Court's Judgment is final and Defendant fully funding the Gross Settlement Amount and separate amount of payroll taxes described herein, Plaintiff and the Participating Class Members will fully release and discharge the Released Parties of the Released Class Claims (S.A. ¶ 45), with the "Released Class Claims" defined at S.A. ¶ 30 as follows:

> "Released Class Claims" means all claims arising out of the claims expressly pleaded in the Complaint and all amendments thereto, and all claims, that reasonably could have been asserted based on the facts alleged in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, (9) failure to pay sick pay; and (10) unfair and unlawful competition, as well as related claims arising under state, federal, or local law, the California Labor Code, Wage Orders, regulations, and/or other provisions of law that were based on the facts or claims alleged in the Complaint. The time period governing the Released Class Claims shall be the Class Period.

Naturally, the Settlement Agreement will not release any person, party or entity from claims by Class Members not covered by the release, including claims for wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, or workers' compensation.

H. RELEASE OF PAGA CLAIMS

The S.A. at ¶ 31 also defines the "Released PAGA Claims" as follows:

> "Released PAGA Claims" means the PAGA claims for civil penalties based upon all underlying wage and hour claims alleged in the Complaint and PAGA Notice Letter(s) filed with the LWDA, and all amendments thereto, as well as all other PAGA claims that reasonably could have been asserted based on the facts alleged or premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay wages each period, (8) failure to timely pay wages upon separation of employment, (9) failure to provide accurate itemized wage statements, (10) failure to pay sick pay, and (11) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq., whether arising out of state, federal or local law, California Labor Code, Wage Orders or regulations that are based on the facts or claims alleged in the LWDA notice letters and the Complaint. The time period governing the PAGA Released Claims shall be the PAGA Period. The PAGA Released Claims do not release any Aggrieved Employees' claims for wages or statutory penalties.

Even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the Released PAGA Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 48).

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

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil 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. Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.").

As discussed below, for the purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 3150.

A. NUMEROSITY AND ASCERTAINABILITY

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

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

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

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 3:13 (4th ed. 2002). Again, the Parties dispute whether

Plaintiff's claims are typical of the Class for any continued litigation of the Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding Defendant's payment of wages, meal and rest break practices, 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 Defendant 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

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

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. See *Dunk,* 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, *supra*).

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

B. THE SETTLEMENT RESULTED FROM SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS

The settlement was the product of extensive arm's length negotiations between counsel and was facilitated by a retired judge and experienced wage-and-hour class action mediator. Courts favor "deference to the 'private consensual decision of the [settling] parties,' particularly where the parties are represented by experienced counsel and negotiation has been facilitated by a neutral party—in this instance, a private mediator." *Beck-Ellman v. Kaz USA, Inc.* (S.D. Cal. 2013) 2013 WL 1748729, *5-6 (quoting *Rodriguez v. West Pub. Corp*. (9th Cir. 2009) 563 F.3d 948, 965). Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although Plaintiff and his counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendants prevailed on any of the defenses, the employees may not have received any monetary recovery.

C. <u>THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT</u>

Plaintiff thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the settlement. As described above, the settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial exchange of information relating to the Class Members prior to mediation. See *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 410 (approving settlement where "considerable information [exists] from which to assess the strength of the class claims" and litigation risks). (Mankin Decl. ¶¶ 13, 21).

D. <u>THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS</u>

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

> Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an 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*, 91 Cal. App. 4th at 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.") (citation and internal quotation marks omitted).

Here, Defendant raised significant legal and factual defenses that weigh in favor of the reasonableness of the proposed Settlement. First, in addition to disputing the merits of Plaintiff's claims, Defendant strongly disputed that Plaintiff could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendant further argued that it 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 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.

Following the informal exchange and other information provided by Defendant, we estimated the following data points through the date of mediation: (1) 25 Class Members, (2) 5 *former* Class Members for purposes of Labor Code § 203, (3) 3,500 workweeks, (4) 16,100 shifts worked, (4) approximately 450 wage statements during the PAGA Period, and (5) an average rate of pay of $26.31 for the Class. (Mankin Decl. ¶ 31).

For the unpaid minimum and overtime wage claims, Plaintiff calculated the *maximum potential value* as $143,464, based on an alleged 10 minutes of unpaid time on each shift worked during the Class Period multiplied by the applicable rate of pay. However, as detailed above, Defendant vehemently opposed these unpaid wage claims on the merits and as to the propriety of class certification. Moreover, in addition to its other defenses on the merits, Defendant argued that Plaintiff would be unable to meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class would be unable to introduce evidence as to the amount of unpaid wages (since certain claims are not apparent from the timekeeping records alone), thus defeating liability. Due to these defenses and arguments, Plaintiff assigned appropriate risks for these unpaid wage claims at the class certification stage and on the merits, and calculated the risk-adjusted value of the unpaid wage claims as $80,340. (Mankin Decl. ¶ 32).

Plaintiff also alleged meal and rest break claims against Defendant. Based on analysis of the timekeeping records, the objective violation rate (*i.e.*, the instances of meal violations shown in the timekeeping records themselves) was low, but Plaintiff argued that the records did not accurately reflect the frequency of meal period violations. Thus, based on the records and incorporating Plaintiff's theories of liability, we applied a 20% violation rate for meal breaks and another 20% for rest breaks (since the rest break claim was based on the same theory that the hectic workload did not permit compliant breaks). Thus, this results in *maximum potential value* of $84,718 for meal periods and another $84,718 for rest breaks (with each calculation based on 3,220 multiplied by $26.31, the applicable premium rate under Labor Code § 226.7). However, Defendant raised numerous arguments in response to this claim, including that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break (which Defendant argued is reflected by the small meal violation rate). Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified; second, these defenses also go toward the merits given the evidentiary question of proving the number of meal and rest violations. As such, we calculated the risk-adjusted value for the combined meal and rest break claims at $35,582 each, for a combined total of $71,164. (Mankin Decl. ¶ 33).

Then, as to the claims for unreimbursed expenses, the maximum potential value (without incorporating any risks or defenses) is $70,000, based on $20 in unreimbursed expenses during each workweek worked by the Class. However, as noted previously, Defendant had several strong defenses to this claim, including that the company did reimburse on a per-pay-period basis for certain expenses. Thus, when incorporating the previously discussed defenses and risks (and when considering the offset for previously paid reimbursements), Plaintiff calculated the risk-adjusted value as $25,200 for the Labor Code § 2802 claims. (Mankin Decl. ¶ 34)

Plaintiff's claims for failure to pay vested vacation had a maximum value of less than $4,000 based on the claims that Defendant failed to properly account for and "cash out" all accrued and unused vested vacation upon separation of employment. As noted previously, Defendant raised defenses to this claim and, given the small number of employees impacted by this violation and relatively small value of this claim, Plaintiff assigned a de minimis risk-adjusted value of $2,000 to this claim. (Mankin Decl. ¶ 35).

Finally, Plaintiff alleged "derivative" claims for waiting time penalties and wage statement violations (*i.e.*, these claims only had merit if the claims for unpaid wages or meal/rest breaks were successful). The maximum values for these claims were as follows: (1) $31,572 for waiting time penalties [estimated 5 former employees x $26.31 per hour x 8 hours per day x 30 days], and (2) $44,250 for wage statement violations [450 wage statements at the $50/$100 formula under § 226(e)]. (Mankin Decl. ¶¶ 36-37)

But Defendant raised a variety of defenses to these derivative claims that impacted the valuation. Namely, as to the wage statement violations, Defendant argued that its wage statements did not violate Labor Code §§ 226, and even if there was a "technical" violation, that Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements. Based on these facts and defenses, Plaintiff calculated a risk-adjusted value of $18,585 for the wage statement claims. (Mankin Decl. ¶ 37).

Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding of a "willful" violation since it had compliant written policies and any deviations there from were inadvertent and unintentional. As a result of this analysis, Plaintiff's counsel calculated a risk-adjusted value of $15,786. (Mankin Decl. ¶ 36).

Plaintiff also calculated that the PAGA claim had a maximum potential value in the high-five-figures. For instance, if Plaintiff succeeded in proving that there were two distinct violations in each PAGA pay period *and* if the Court permitted "stacking" of penalties in this fashion, then the maximum potential PAGA value would be $90,000 [450 PAGA pay periods x 2 violations x $100 per violation = $90,000]. However, this maximum value did not account for the risks and defenses raised herein, and it also did not acknowledge that courts have wide latitude to reduce the civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Moreover, this maximum value did not consider Defendant's arguments that: (1) "stacking" of multiple PAGA penalties per period is not permitted, especially where Class Members have already received a recovery and/or statutory penalties for the same violation, (2) the underlying claims would fail on the merits and, therefore, the PAGA claims would also fail, and (3) the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims, especially where Defendant utilized facially compliant written policies and took affirmative steps to educate the employees on the same. Courts have often awarded significantly lesser amounts in cases when they assess a penalty. *See, e.g.*, *Carrington v. Starbucks Corp*. (2017) 30 Cal. App. 5th 504, 669 (PAGA penalties reduced by 90%); *Morales v. Bridgestone*, Case No. 30-2017-00900244 (Orange County Super. Ct.) (Aug. 2, 2018) (PAGA penalties reduced by 94%). Given these factors, Plaintiff allocated $10,000 of the total Gross Settlement Amount to civil penalties (which equates to $22.22 per PAGA pay period).

Allocating less of the settlement to PAGA Penalties is justified because it maximizes payments to Class Members and furthers the public policies underlying PAGA by providing a "robust" remedy for alleged violations of the Labor Code. See *Mejia v. Walgreen Co*. (E.D. Cal. Mar. 24, 2021) 2021 WL 1122390, at *5. (Mankin Decl. ¶ 38).

In sum, Plaintiff calculated the maximum potential value of the claims as $552,722 and, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted recovery as $226,075. Thus, the reasonableness of the settlement is apparent from the fact that the proposed settlement is 70% of the risk-adjusted value. *See, e.g., Hopson v. Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, *8 ("The settlement … represents less than two percent of that amount," but "may be justifiable … given … significant defenses that increase the risks of litigation."); *Balderas v. Massage Envy Franchising* (N.D. Cal. 2014) 2014 WL 3610945 (settlement approved despite only 5% of projected maximum recovery). *Villegas v. J.P. Morgan Chase* (N.D. Cal. 2012) 2012 WL 5878390 (approved settlement that was 15% of potential recovery). Thus, the Parties submit that this settlement is fair and reasonable.

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

The view of the attorneys conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *Kullar, supra* at 128 (court must consider "the experience and view of counsel").

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 $300 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-6). 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, state of the law, and uncertainties of class certification and litigation.

F. The Class Notice Conforms to All Applicable Statutes and Rules

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

The proposed Notice Packet and proposed plan for the Administrator to mail the Notice Packet to the last known address of all Class Members complies with all the requirements of Cal. Rule of Court 3.769(f) and 3.766(b). The contents of the proposed Notice include (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (3) details about the final fairness hearing and how Class Members may elect to exclude themselves or make an objection; and (4) how Class Members can obtain additional information. *See* Notice Packet (Exhibit B to Mankin Decl.). In addition, it will inform Class Members of their estimated Individual Class Payment and Individual PAGA Payment.

The Court has wide discretion in approving the means of providing Class Notice, so long as the process "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*, (1976) 15 Cal.3d 853, 861. Here, the notice of the Settlement will be disseminated directly to the Class Members by first class mail by the Administrator, since Defendant has the last known addresses of all Class Members and the Administrator will perform a skip trace and update addresses for any Class Notices that are returned and re-send the Class Notice.

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

G. THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

The fact that each member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless he or she affirmatively acts to exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no settlement funds will revert to Defendant; instead, if any checks are not cashed before the objection deadline, the funds will be transferred to the state's unclaimed property department subject to approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the Parties and that the Settlement is fair and favorable to the Class Members.

H. THE ATTORNEY FEE AND COST ALLOCATION IS FAIR

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

Once the Court grants preliminary approval of the Settlement Agreement and Class Notice is disseminated, Plaintiff's counsel will submit a comprehensive request for attorneys' fees and costs with its Final Approval motion.

I. A SERVICE AWARD IS NOT REQUESTED

Plaintiff is not seeking an enhancement payment in light of a separate and confidential individual settlement.

VI. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR

Subject to the Court's approval, Phoenix Settlement Administrators shall serve as the Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for $5,000. (Mankin Decl. ¶ 52 and Exhibit D; Decl. of Mike Moore).

VII. OTHER TOPICS

A. ANY RELATED CASES?

Plaintiff's counsel is not aware of any other individual, class, or PAGA case (pending or in the pre-filing LWDA stage) that would be affected by this settlement. Moreover, after conferring with defense counsel, they have not advised of any either. (Mankin Decl. ¶ 54).

B. HAS COUNSEL SPOKEN WITH OTHER CLASS MEMBERS?

No, Plaintiff's counsel did not speak with any other putative class members; instead, the claims and theories of recovery were based on common claims, policies, and analysis of the sampled data. (Mankin Decl., p. 5, fn. 1).

C. SHOULD THE NOTICE BE PROVIDED IN ANY OTHER LANGUAGES?

According to Defendant's counsel, all Class Members read and write in English.

VIII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the Final Approval 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 Settlement Agreement stipulates that the Court schedule a hearing for Final Approval of the settlement approximately 140 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

July 31, 2026	Preliminary Approval (PA) Order is Entered
August 31, 2026 *30 days after PA*	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
October 15, 2026 *45 days after mailing Notice*	Deadline for Class Members to submit Disputes, Requests for Exclusion and Objections to the settlement.
16 court days before FA hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and Service Payment.
9 court days before FA hearing	Deadline for filing of any written Opposition to Plaintiff's Motion for Final Approval.
5 court days before FA hearing	Deadline for filing of any written reply to Opposition to Motion for Final Approval, or filing response to any objections submitted by objecting Class Members.
December 18, 2026	**Proposed** Final Approval Hearing Date

IX. <u>CONCLUSION</u>

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

Dated: July 9, 2026

LAUBY, MANKIN & LAUBY LLP

BY: ______________________

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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On July 9, 2026, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S RENEWED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA 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.

[X] **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.

[X] **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 9, 2026, 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

Tracie Chiarito, Declarant

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