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

EDGAR HERNANDEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ROOM & BOARD, INC., a Minnesota
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 22STCV30047
*[Assigned to Hon. William F. Highberger, Dept
10, for all purposes]*

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

Hearing

Date: November 16, 2023

Time: 2:00 p.m.

Dept.: 10

Complaint filed: April 22, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 16, 2023, at 2:00 p.m. or as soon thereafter
as the matter may be heard by the Honorable William F. Highberger, in Department 10 of the
Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA

1 90012, Plaintiff Edgar Hernandez, individually and on behalf of all others similarly situated, will
2 and hereby does move the Court for entry of an Order preliminarily approving the Parties' class
3 action settlement, including:

- 4 1. Certifying the class for purposes of settlement only;
- 5 2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
- 6 3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
- 7 4. Preliminarily approving the class action settlement as fair, adequate, and
8 reasonable, based upon the terms set forth in the Settlement Agreement;
- 9 5. Directing distribution of the Class Notice, including notice of the opportunity to
10 exclude oneself from, or object to, the settlement; and
- 11 6. Setting a date for a final fairness hearing to determine, following dissemination of
12 the Class Notice, whether to grant final approval of the Settlement.

13 This motion is based upon this Memorandum of Points and Authorities in Support
14 thereof; the Declarations of (a) Plaintiff's counsel (Brian Mankin, Peter Carlson, and Mehrdad
15 Bokhour); (b) Plaintiff Edgar Hernandez; (c) the Settlement Administrator (Mike Moore of
16 Phoenix Settlement Administrators); and (d) Defendant's counsel (Rachel Chatman) and
17 Representative (Jean Sand); as well as the Class Action and PAGA Settlement Agreement (the
18 "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement;
19 all other records, pleadings, and papers filed in this action; and other evidence as may be
20 presented to the Court at the hearing of this motion.

21 Dated: October 9, 2023

LAUBY, MANKIN & LAUBY LLP

22
23 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Edgar Hernandez seeks preliminary approval of a \$1,300,000 wage-and-hour
4 class action settlement on behalf of all current and former nonexempt employees of Defendant
5 Room & Board, Inc., who worked for Defendant in California at any time from September 15,
6 2018, through September 30, 2023 (the “Class Period”).

7 Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorney’s fees not to exceed \$433,333.33 (1/3 of
9 the Gross Settlement Amount), litigation expenses not to exceed \$20,000, Settlement
10 Administrator Costs of \$9,000, PAGA penalties of \$50,000 (with 75% to the LWDA and 25% to
11 the Aggrieved Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff
12 Edgar Hernandez (“Class Representative”). (S.A. ¶ 3.2 et seq.)

13 After all Court-approved deductions from the Settlement Amount, it is estimated that
14 \$777,666.67 will be available to pay the Class Members, as follows:

15

<i>Gross Settlement Amount</i>	\$ 1,300,000.00
Attorneys’ Fees (1/3)	\$ 433,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs (not to exceed)	\$ 9,000.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 777,666.67

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20 Assuming approximately 320 Class Members, the average payment to each class member
21 will be approximately \$2,430.21 (\$777,666.67 / 320). Of course, the actual payment will be
22 calculated on a pro-rata basis according to the number of Weeks Worked, with each Workweek
23 having a value of approximately \$22.15 (\$777,666.67 / 35,115 total Work Weeks). In addition,
24 the Aggrieved Employees will receive a share of the \$12,500 PAGA Penalties (25% of the total
25 \$50,000 PAGA allocation), calculated pro-rata based on approximate Weeks Worked during the
26 PAGA Period. (Settlement Agreement ¶ 3.2.5).

27 Because the settlement is fair and reasonable and was negotiated at arm’s length by
28 experienced counsel and an experienced mediator following a sufficient exchange of information

1 and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully
2 requests that the Court enter an order preliminarily approving the settlement, conditionally
3 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
4 proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Phoenix
5 Settlement Administrators as the Settlement Administrator, and scheduling a hearing for final
6 approval of the Settlement.

7 **II. BACKGROUND**

8 **A. THE SETTLEMENT CLASS**

9 The Class is defined as follows:

10 All current and former nonexempt employees who were employed by Room &
11 Board, Inc., in California at any time during the Class Period. (S.A. ¶ 1.6).

12 **B. PROCEDURAL HISTORY**

13 On September 15, 2022, Plaintiff submitted a letter to the Labor Workforce Development
14 Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the
15 "PAGA"), and simultaneously sent a letter to Defendant requesting the production of personnel
16 and timekeeping records in order to further evaluate his wage and hour claims. (Mankin Decl. ¶
17 14).

18 That same day, Plaintiff filed a class action complaint in the Court. Thereafter, the
19 LWDA declined to assert jurisdiction over PAGA claims during the 65-day waiting period, so
20 on December 15, 2022, Plaintiff filed a first amended complaint that included the PAGA claims.
21 The operative complaint alleges claims for: (1) Failure to Pay Minimum Wages; (2) Failure to
22 Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks;
23 (5) Failure to Reimburse for Business Expenses, (6) Failure to Timely Pay Final Wages; (7)
24 Failure to Provide Accurate Itemized Wage Statements; (8) Unfair and Unlawful Competition,
25 and (9) related PAGA Claims. (Mankin Decl. ¶ 15).

26 Defendant retained counsel and immediately began to defend the case. However, prior to
27 engaging in formal discovery and a class certification battle, the Parties agreed to submit the
28 matter to mediation. (Mankin Decl. ¶ 16).

1 In preparation for the mediation, the Parties informally exchanged documents and
2 information that allowed both sides to calculate the potential damages and evaluate potential risk,
3 including policies and procedures pertaining to each claim alleged, and statistics relating to the
4 number of current and former employees, number of shifts, pay periods and weeks worked and
5 other things. Notably, Defendant produced all payroll and timekeeping records for all Class
6 Members for a more-than-three-year period (September 19, 2019, through November 7, 2022),
7 which included information for 276 Class Members and 23,210 workweeks (covering 86.25% of
8 estimated Class Members and 66.09% of estimated workweeks). Defendant also provided data
9 points and other information for the other time periods not covered, along with its written
10 policies and practices relevant to the claims here. This information enabled both parties to take a
11 deep dive into the claims. Additionally, during this process, Plaintiff and his counsel analyzed,
12 researched, and investigated the potential issues, including matters related to the calculation of
13 damages, trial, and appellate issues and risks. Plaintiff also retained an expert (Jarrett Gorlick of
14 Berger Consulting Group) to perform a statistical analysis of the claims and violations. (Mankin
15 Decl. ¶ 17).

16 On July 24, 2023, Plaintiff and Defendant participated in mediation before Todd Smith, a
17 highly regarded and experienced wage-and-hour class action mediator. The matter resolved at
18 mediation pursuant to a mediator's proposal, which was accepted by the Parties. (Mankin Decl. ¶
19 18). The Parties now seek the Court's preliminary approval of the Settlement.

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

21 Defendant is a furniture retailer. Plaintiff and the Class Members carried out Defendant's
22 core business operations, namely selling, distributing, and delivering furniture and other home
23 furnishings. However, Defendant vigorously contested and denied Plaintiff's material
24 allegations on the merits and as to the propriety of a class action or PAGA representative action.

25 Here, Plaintiff alleged various claims against Defendant; this section provides a brief
26 overview but the *Kullar* analysis (in Section V(D), below) provides more detail for each.

27 One of the primary claims in this action is for wage statement violations under Labor
28 Code § 226, and this theory of liability is based on Defendant's practice through which it

1 provided wage statements to the Class that allegedly did not list any overtime or doubletime rates
2 of pay. However, Defendant vigorously denied these claims and argued that, even if there were
3 a technical violation, that Plaintiff could not show the requisite elements of “injury” or a
4 “knowing and intentional” violation.

5 Plaintiff also alleged unpaid wage claims falling into two distinct categories. *First*,
6 Plaintiff alleged that Defendant utilized an “auto-deduct” policy where Defendant automatically
7 deducted 30 minutes from an employee’s shift, regardless of whether there was evidence of a
8 meal period taken. However, as to the auto-deduct claim, Defendant argued that this practice did
9 not occur and, if it did, it was a random occurrence not suitable for class treatment due to the
10 lack of commonality and/or manageability. Defendant also argued that this claim (regardless of
11 merit) would only apply to the small subset of Class Members. *Second*, Plaintiff alleged that
12 Defendant paid the Class on an hourly basis with additional compensation (such as bonuses) yet
13 failed to factor those bonuses into the regular rate of pay. However, Defendant argued that its
14 practice *not* to include bonuses in overtime calculations was proper since these amounts were
15 discretionary and properly excluded from the regular rate of pay.

16 Plaintiff also argued that Class Members were often denied compliant meal and rest
17 breaks due to the nature of the work. However, Defendant argued that it had compliant policies
18 through which it provided and made available meal and rest breaks to all employees, and any
19 employee who did not take a meal or rest break did so entirely of his or her own volition. As
20 such, Defendant argued that these claims were without merit.

21 Plaintiff also alleged various other Class and PAGA claims, such as the failure to
22 reimburse business expenses, failure to timely pay all wages owed upon termination, and other
23 claims related to the alleged violations mentioned above. However, Defendants argued that
24 these other claims, as well as the “derivative” claims, have no merit.

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

28 ///

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

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

3 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

4 The \$1,300,000 Settlement Amount is non-reversionary and will be paid out to Class
5 Members without the need to submit a claim form or take any affirmative action. It includes (1)
6 Plaintiff's attorneys' fees not to exceed one third of the Settlement Amount and costs not to
7 exceed \$20,000, as approved by the Court; (2) a service award of \$10,000 to Plaintiff, subject to
8 approval by the Court; (3) settlement administrator expenses, not to exceed \$9,000; (4) a \$50,000
9 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code
10 § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual
11 Class Payments of the Participating Class Members. (S.A. ¶ 3.2 and subparts). Defendant will
12 separately pay its share of employer payroll taxes and withholdings through the Administrator.
13 (S.A. ¶ 3.1).

14 **B. NOTICE PROCEDURES**

15 The proposed Class Notice (based on the model provided by the Court) will be provided
16 to the Class Members showing the estimated amount that each Class Member will receive and
17 the credited number of Weeks Worked during the Class and PAGA Period (Exhibit A to the
18 S.A.). Within 15 days after entry by the Court of its Order of Preliminary Approval, Defendant
19 shall provide the Settlement Administrator with a list of Class Members containing names,
20 addresses, telephone numbers, Social Security Numbers, and the total Weeks Worked in the
21 Class and PAGA Periods (the "Class Data"). (S.A. ¶¶ 1.9 and 4.2).

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

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

1 **C. EXCLUSION AND OBJECTION PROCEDURES**

2 Class Members who do not timely Opt-Out of the Settlement will be deemed to
3 participate in the Settlement and shall become a Participating Class Member without having to
4 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
5 must submit a written request to the Settlement Administrator no later than 45 days after being
6 mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 1.45). Any Opt-Out
7 request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 8.5.1).

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

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

14 The amount of each Class Member’s Individual Class Payment is tied to the number of
15 Weeks Worked by each Class Member during the Class Period. Individual Class Payments are
16 calculated by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by
17 all Participating Class Members during the Class Period, and (b) multiplying the result by each
18 Participating Class Member’s Weeks Worked. (S.A. ¶ 3.2.4).

19 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
20 based on a pro-rata basis. Thus, the \$12,500 PAGA Penalties allocated to the Aggrieved
21 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 3.2.5).

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

26 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

27 Defendant is required to deposit the Settlement Amount, along with the employer’s share
28 of payroll taxes owed, with the Settlement Administrator, within 30 calendar days after the

1 “Effective Date” and these funds will be used to pay: (1) the class attorney fees and expenses, as
2 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
3 expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual
4 Class Amounts of Participating Class Members. Within 10 days after receiving the funds, the
5 Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 4.3
6 to 4.4).

7 Participating Class Members and Aggrieved Employees will have 180 days to cash the
8 settlement check. (S.A. ¶ 4.4.1). If they fail to cash a check by the deadline, the Administrator
9 shall issue unclaimed funds to the California State Controller’s Unclaimed Property Fund in the
10 name of the Class Member and/or and Aggrieved Employee. (S.A. ¶ 4.4.3).

11 **F. TAX TREATMENT**

12 The Parties agree that one-third (33.33%) of the Individual Class Payment will be
13 allocated as wages subject to withholding of all applicable local, state and federal taxes; and the
14 remaining two-thirds (66.67%) will be allocated as interest and penalties (pursuant to, e.g.,
15 California Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A.
16 ¶ 3.2.4.1). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be
17 classified entirely as civil penalties and shall be reported as required on an IRS Form 1099.
18 (S.A. ¶ 3.2.4.1).

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

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

22 In exchange for these payments, the Settlement Agreement at ¶ 6.2 provides that the
23 Participating Class Members will release the Released Parties of:

24 the claims alleged in the operative Complaint, or that reasonably
25 could have been alleged based on the facts stated in the First
26 Amended Complaint, including: (a) failure to pay minimum wages,
27 (b) failure to pay overtime wages, (c) failure to provide meal
28 periods, (d) failure to provide rest breaks, (e) failure to reimburse
business expenses, (f) failure to timely pay wages upon separation
of employment, (g) failure to provide accurate itemized wage
statements, (h) unfair and unlawful competition, and (i) all other
claims for statutory penalties based on the facts or claims alleged in

1 the operative complaint. (“Released Class Claims”). The operative
2 release period for the Released Class Claims is the Class Period.

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

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

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

10 all claims for civil penalties under the Private Attorneys General
11 Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the
12 Released Parties, on behalf of Aggrieved Employees and State of
13 California, based on the facts stated in the Complaint and in
14 Plaintiff’s PAGA Notice to the LWDA, including: (a) failure to pay
15 minimum wages, (b) failure to pay overtime wages, (c) failure to
16 provide meal periods, (d) failure to provide rest breaks, (e) failure to
17 reimburse business expenses, (f) failure to failure to timely pay
18 wages each period and upon separation of employment, (g) failure
19 to provide accurate itemized wage statements, and (h) all other
claims for civil penalties recoverable under the Private Attorneys
General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims
alleged in the operative complaint. The time period governing the
Released PAGA Claims shall be the entire time during the PAGA
Period. The Released PAGA Claims do not release any potential
claims for wages or statutory penalties.

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

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

25 California Rule of Court 3.769(d) provides that the Court may make an order approving
26 certification of a provisional settlement class at the preliminary approval stage. It is well-
27 established that trial courts should use a “lesser standard of scrutiny” for determining the
28 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*

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

9 **A. ASCERTAINABILITY AND NUMEROSITY**

10 In determining whether a class is ascertainable, the court considers “(1) the class
11 definition, (2) the size of the class, and (3) the means available for identifying the class
12 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
13 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
14 class is ascertainable if the class members can be objectively identified and given notice of the
15 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
16 are approximately 320 Class Members that are easily identifiable and fall within the defined
17 Class. Thus, the proposed Class meets the ascertainability and numerosity requirements.

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

19 **1. Commonality**

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

26 **2. Typicality**

27 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
28 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*

1 on *Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
2 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
3 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
4 Defendant’s pay policies, wage statements, and the provisions governing the timely and
5 complete payment of wages, which are at the core of the lawsuit.

6 3. Adequacy of Representation

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

13 Adequacy may be established by the fact that counsel are experienced practitioners. See
14 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
15 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
16 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

17 4. Superiority

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

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

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

26 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
27 particularly true in class actions where substantial resources can be conserved by avoiding the
28 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,

1 compromised, or settled without the Court’s approval. Cal. R. Ct. 3.769(a). The California Rules
2 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
3 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
4 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
5 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

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

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

25 The above factors are not exclusive “and the court is free to engage in a balancing and
26 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at
27 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
28 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent

1 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
2 overreaching by, or collusion between, the negotiating parties.” *Id.*

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

14 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
15 **NEGOTIATIONS**

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

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

27 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
28 weaknesses of this case before reaching the settlement. As described above, the settlement was

1 reached after extensive investigation and research, thorough calculations and risk evaluation, and
2 a substantial exchange of information relating to the Class Members prior to mediation.

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

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

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

15 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
16 significant legal and factual grounds for defending this action exist. First, in addition to
17 disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain
18 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant
19 further argued that it complied with the applicable law and that any purported deviations
20 therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class.
21 While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always
22 a significant risk associated with class certification proceedings, which could significantly limit
23 the claims that he could pursue on a class basis.

24 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
25 best practicable recovery for the Class. While the total settlement amount is, of course, a
26 compromise figure, the potential risks and opportunities of both parties were effectively weighed
27 and considered by the parties, resulting in a fair and equitable settlement.
28

1 Based upon detailed data obtained through informal discovery and information
2 exchanges, Plaintiff's counsel estimated the following data points through the end of the Class
3 Period: (1) 320 Class Members, (2) 35,115 workweeks during the Class Period, (3) 136,949
4 shifts worked during the Class Period, and (4) approximately 6,877 bi-weekly wage statements
5 during the PAGA Period. From these metrics, Plaintiff's counsel created detailed damage
6 models to calculate the maximum and risk-adjusted value of the claims. (Mankin Decl. ¶ 22).

7 Plaintiff contends that his strongest claim (*i.e.*, the claim with highest odds of success)
8 was for wage statement violations, including the failure to list overtime and doubletime rates of
9 pay. Based on data and information gathered prior to mediation, Plaintiff estimated that, in the
10 one-year lookback period for Labor Code § 226 claims, there were 6,877 wage statements issued
11 to 215 Class Members; thus, the maximum potential class damages under § 226(e) was \$676,950
12 (\$50 for initial violation and \$100 for subsequent). (Mankin Decl. ¶ 23).

13 But this maximum figure ignores several risks and defenses. For example, Plaintiff's
14 expert advised that overtime did not occur every pay period – instead it was only present in
15 approximately 63% of the wage statements at issue (thus reducing the possible maximum
16 violations). Defendant also raised many defenses, including that: (a) these violations, if any, did
17 not result in any “injury” under § 226(e), (b) the violations, if any, were not “knowing and
18 intentional” and could not support the assessment of penalties, and (c) “derivative” wage
19 statement claims are without merit. These defenses all went to the merits, not to defeating class
20 certification. Thus, Plaintiff did not assign a risk at the class certification stage but, on the
21 merits, applied a 37% reduction to account for the frequency of overtime worked (because there
22 was no direct violation without overtime worked) and another 20% risk on the merits, resulting
23 in a risk-adjusted value for the wage statement claims of \$341,183. (Mankin Decl. ¶ 24).

24 Plaintiff then valued his two unpaid wage claims at a maximum value of approximately
25 \$340,000. First, for the auto-deduct claims, Plaintiff estimated this occurred on 10% of shifts,
26 leading to 13,695 alleged violations (136,949 shifts x 10%). And Plaintiff argued that this was
27 30 minutes of unpaid time on each occasion payable at the overtime rate since the average shift
28 was estimated at 8 hours. Thus, based on a calculated average rate of pay of \$29.01, the

1 applicable overtime rate was \$43.52, and the maximum damages for the auto-deduct were
2 calculated as \$297,866 ([13,695 violative shifts x 0.5 unpaid per violation] x \$43.52). Then,
3 Plaintiff calculated the estimated underpayment for regular rate violations as \$40,000, leading to
4 a total maximum value for unpaid wage claims of approximately \$340,000. (Mankin Decl. ¶ 25).

5 However, Defendant raised numerous defenses to these unpaid wage claims. As to
6 alleged violations relating to bonuses and the regular rate, Defendant vehemently denied any
7 violation and provided extensive documentation that all bonuses and other compensation paid
8 were “discretionary” under controlling law. For instance, Defendant provided policy documents
9 and citations to authority that the following payments were discretionary: profit-sharing bonuses,
10 estate planning reimbursement, relocation reimbursement, and referral bonuses. These arguments
11 went to the merits, not to the propriety of class certification, so Plaintiff assigned a 50% risk on
12 the merits for this sub-claim. Then, as to the auto-deduct claim, Defendant denied such a policy
13 existed but argued that, even if it did, any underpaid wages were inadvertent, sporadic, and not
14 intentional, as evidenced by the fact that Defendant had otherwise compliant policies. Defendant
15 then argued that, because the underpaid wages (if any existed) were inadvertent, sporadic, and
16 not intentional, these are the prototypical example of individualized issues for which certification
17 would not be proper. Thus, because of the potential “individualized” issues, Plaintiff placed a
18 20% risk at the class certification stage on this sub-claim. Moreover, in addition to its other
19 defenses on the merits for the auto-deduct claim, Defendant argued that Plaintiff would be
20 unable to meet its evidentiary burden at summary judgment and/or trial because Plaintiff would
21 be unable to identify when these alleged automatic-deductions occurred – in essence, Defendant
22 argued the Class Members would testify that meal periods were actually taken on each supposed
23 occasion, thus defeating liability. For this reason, Plaintiffs’ counsel placed another 20% risk on
24 the merits. These risks and defenses led to a total risk-adjusted value of the unpaid wage claims
25 of \$187,550. (Mankin Decl. ¶ 26).

26 For Plaintiff’s meal and rest break claims, Plaintiff’s counsel and their expert reviewed
27 the pre-mediation sampling and extrapolated a 40.4% violation rate for the meal period claims
28 and estimated a 50% violation rate for rest break claims (*i.e.*, one violation every two shifts).

1 This translates to an estimated 55,327 meal violations and 68,475 rest violations and, at the
2 applicable \$29.01 premium rate, the maximum damages total \$3,591,493. (Mankin Decl. ¶ 27).

3 But Defendant strongly opposed these claims based on the argument that these fall
4 directly into the category of impermissible “individualized issues” which cannot meet class
5 certification standards since Defendant had compliant written policies and the employees had
6 ample latitude regarding whether, when, and how they took their breaks. Therefore, Defendant
7 asserted that a fact-finder would have to determine for each Class Member whether a break was
8 missed, and why a break was noncompliant/nonexistent, because if it was by the employee’s
9 choice, no liability attaches to the defendant. Based on these arguments, Plaintiff believes there
10 is a 25% risk that the Court would deny class certification on these meal period claims and a
11 40% risk as to the rest break claims. (Mankin Decl. ¶ 28).

12 Defendant also argued that, even if certification were granted, it would defeat these
13 claims on the merits because Defendant utilized compliant policies and practices and it would
14 present sufficient evidence that the workers were properly provided with all breaks. Moreover,
15 Defendant argued that Plaintiff would be unable to present sufficient evidence establishing the
16 number of meal and rest period violations in order to allow a fact-finder to appropriately
17 determine damages. Plaintiff acknowledged the risks and incorporated a further 25% reduction
18 on the merits for the rest break claim. However, due to the recent decision in *Donohue v. AMN*
19 *Services, LLC* (2021) 11 Cal.5th 58, Plaintiff only applied an additional 10% risk on the meal
20 period claims. Plaintiff therefore calculates the risk-adjusted value of the meal claims to be
21 \$1,083,407 and the rest break claims to be \$893,900. (Mankin Decl. ¶ 29).

22 Plaintiff’s unpaid wage claims (and claims for unpaid wage premiums under Labor Code
23 § 226.7) gave rise to Plaintiff’s claim for waiting time penalties under Labor Code § 203. With
24 an estimated 129 Class Members that separated from employment during the relevant period, at
25 an average daily wage of \$229.18 (\$29.01 x 7.9 hours per day), the maximum potential waiting
26 time penalties totaled \$886,923. However, Defendant argued that it would defeat Plaintiff’s
27 claims on which this derivative claim was based and, thus, Plaintiff’s Labor Code § 203 would
28 fail. Additionally, Defendant argued that even if the Court determined that some or all claims

1 had merit, waiting time penalties would be inappropriate because any violations were not
2 “willful”, and Defendant had a “good faith” belief in the legality of its practices. Plaintiff
3 applied a 10% risk of defeat at the class certification stage, and an additional 20% risk of defeat
4 at the summary judgment stage or on the merits, resulting in the risk-adjusted value of \$638,585
5 for the waiting time penalty claims. (Mankin Decl. ¶ 30).

6 Plaintiff’s complaint also alleges that Defendant failed to reimburse employees for
7 business expenses, such as cell phone use to perform their duties for the company. Plaintiff
8 placed the maximum value of this claim at \$10 per workweek (for cell phone reimbursement)
9 and estimated that it applied to 18,000 workweeks, leading to a maximum value of \$180,000.
10 But, leading up to mediation, Defendant provided documents and information showing that it
11 provided company devices and cellular phones to employees (where such devices were needed).
12 Thus, Defendant argued that this claim would fail at class certification because whether a Class
13 Member used their phone or not (when one was already provided by the company) was the
14 prototypical “individualized issue” for which class certification is improper. And Defendant also
15 argued that it would defeat this claim on the merits because, by providing devices and phones to
16 employees, it could conclusively prove that any Class Member using their own phone did so at
17 their own volition and there was no requirement or necessity to do so. Based on these arguments,
18 Plaintiff placed a 60% risk at class certification and another 60% risk on the merits, leading to a
19 risk-adjusted value of \$28,800 for the § 2802 claims. (Mankin Decl. ¶ 31).

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

22	• Wage Statement Claims	\$ 341,183
23	• Unpaid Wage Claims	\$ 187,550
24	• Meal Period Claims	\$ 1,083,407
25	• Rest Break Claims	\$ 893,900
26	• Waiting Time Penalty Claims	\$ 638,585
27	• Unreimbursed Expense Claims	<u>\$ 28,800</u>
28	• Total Risk Adjusted Penalties and Damages	\$ 3,173,425

1 The reasonableness of the settlement is apparent from the fact that the proposed
2 settlement is 40.97% of the risk-adjusted class damages and penalties. And while the PAGA
3 penalties had a maximum value in the low seven figures, this fails to acknowledge that courts
4 have wide latitude to reduce the civil penalties “based on the facts and circumstances of a
5 particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and
6 oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the
7 merits of the underlying claims and particularly that the “willfulness” standard and/or “good
8 faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain.
9 Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory
10 claims; as a result, Defendant argued that Plaintiff would not be entitled to recover more than
11 one PAGA civil penalty per pay period per employee (regardless of whether there was one
12 violation or six) because that constitutes improper “stacking.” (Mankin Decl. ¶ 33).

13 If the Court adopted Defendant’s argument against stacking, and Plaintiff was only
14 permitted one PAGA penalty per pay period, then the maximum PAGA penalties would be
15 \$687,700 (6,877 violations x \$100). However, if the Court rejected this argument (as Plaintiff
16 contends it should), and Defendant was subjected to one penalty per violation, then Plaintiff
17 calculated the maximum penalty as \$2,293,300 based on calculations of \$100 per violation and
18 22,933 total violations across all claims. (Mankin Decl. ¶ 34). But this maximum PAGA penalty
19 figure fails to consider the merits-based risk for each claim, detailed above, and the Court’s
20 ability to apply a discretionary reduction. In this regard, after Plaintiff applied the same merits
21 risk for each claim as above, the total PAGA penalties are reduced to \$1,581,070. Plaintiff also
22 believed that, based on Defendant’s defenses and good faith attempts at compliance, along with a
23 reluctance to “double-dip” (*i.e.*, impose substantial PAGA penalties where class damages are
24 already imposed), the Court would apply a discretionary reduction of 75% - leading to a final
25 risk-adjusted PAGA penalty value of \$395,268. (Mankin Decl. ¶ 35).

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

27 The view of the attorneys actively conducting the litigation is entitled to significant
28 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.

1 Cal. 1980) 87 F.R.D. 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must take into account “the
2 experience and view of counsel”).

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

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

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

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

27 The Court has wide discretion in approving the means of providing notice, so long as the
28 class representative “provide(s) meaningful notice in a form that should have a reasonable

1 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
2 (1976) 15 Cal.3d 853, 861. Here, the parties’ notice plan is that notice of the Settlement will be
3 disseminated directly to the class members by first class mail by the settlement administrator,
4 since Defendant has the last known addresses of all class members and the Settlement
5 Administrator will perform a skip trace and update those addresses for any class notices that are
6 returned and re-send the notice.

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

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

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

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

2 Under the terms of the Settlement Agreement, Class Counsel (which consists of two law
3 firms and multiply attorneys) is requesting one-third of the Settlement Amount in attorneys’
4 fees, which estimated to be \$433,333.33 as long as the Escalator Clause is not triggered. See,
5 *e.g.*, *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of
6 \$6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary
7 fund for the benefit of the class members, the trial court may determine the amount of a
8 reasonable fee by choosing an appropriate percentage of the fund created); see also *Stuart v.*
9 *RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee award of 1/3 of
10 the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of 1/3
11 of the total settlement was “well within the range of percentages which courts have upheld as
12 reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June
13 1, 2010) 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund);
14 *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4
15 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in
16 class actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package*
17 *System, Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at *8 (approving fees of 1/3 of
18 common fund).

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

21 Once the Court grants preliminary approval, Plaintiff’s counsel will submit a request for
22 attorneys’ fees and costs with its final approval motion.

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

24 The Settlement Agreement provides an incentive award payment of \$10,000 to the Class
25 Representative, which is reasonable given the recovery Class Members will receive on average,
26 as well as the time and effort he devoted to this case. His efforts included providing factual
27 background for the Class and PAGA complaint; providing documents and information about
28 Defendant’s compensation plan; participating in phone calls to discuss litigation and settlement

1 strategy; making himself available throughout the litigation to assist with analyzing the claims
2 and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
3 documents. The Class Representative also assumed significant risk in bringing this litigation—
4 namely, had he lost, he could have been ordered to pay Defendant’s costs.

5 Additionally, Plaintiff entered into a full release of all claims in exchange for the service award.

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

20 **VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT**
21 **ADMINISTRATOR**

22 Subject to the Court’s approval, the parties stipulated to Phoenix serving as the
23 Settlement Administrator. Phoenix is experienced in administering class action settlements and
24 has provided a flat-fee proposal to administer this settlement for \$9,000. Additionally, Phoenix
25 has agreed to undertake the rules and responsibilities set forth in the new model agreement. (See
26 Decl. of Mike Moore). No party or counsel has any financial interest or ties to the proposed class
27 administrator. (See Mankin Decl. ¶ 7; Defense counsel Rachel Chatman Decl. ¶ 3; Defendant’s
28 representative Jean Sand Decl. ¶ 3).

1
2 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

3 The last step in the approval process is the formal hearing, whereby proponents of the
4 settlement may explain and describe its terms and conditions and offer argument in support of
5 approval, and Class Members or their counsel may be heard in support of or in opposition to the
6 settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing
7 for final approval approximately 130 days after the Preliminary Approval Date.

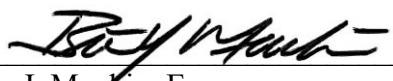
8 **VIII. CONCLUSION**

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

11 Dated: October 9, 2023

LAUBY, MANKIN & LAUBY LLP

12
13 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 October 9, 2023, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

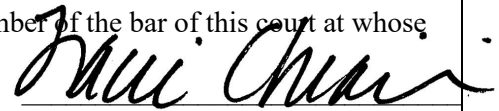
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 9, 2023, Riverside, California.

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


Tracie Chiarito, Declarant

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