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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

TIANA WILLIAMSON and HARPREET
AUJLA, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiffs,

vs.

KAL FREIGHT, INC., a Texas
Corporation; SPG TRANSPORTATION
INC., a California Corporation; PRO TEC
INC., a California Corporation; and DOES
1 through 20, inclusive;

Defendants.

Case No.: CVRI2204960
*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

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

Hearing

Date: December 4, 2024

Time: 8:30 a.m.

Dept.: 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 4, 2024, 8:30 a.m., or as soon thereafter as
the matter may be heard by the Honorable Harold Hopp in Department 1 of the Riverside County
Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiffs Tiana Williamson

1 and Harpreet Aujla (“Plaintiffs”), individually and on behalf of all others similarly situated, will
2 and hereby do move the Court for entry of an Order preliminarily approving the Parties’ Class
3 Action and Private Attorneys General Act (“PAGA”) settlement, including:

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

14 This motion is based upon this Memorandum of Points and Authorities in Support
15 thereof; the Declarations of Plaintiffs’ counsel (Brian Mankin, Peter Carlson, and James De
16 Sario); the Declarations of Plaintiffs; the Declaration of Defendants KAL Freight, Inc., SPG
17 Transportation Inc., and Pro Tec Inc’s (“Defendants”) counsel (Nicole M. Shaffer); the
18 Declaration of Defendants’ Representative (Rekha Balan); the Declaration of Michael Moore on
19 behalf of Phoenix Settlement Administrators; the Class Action and PAGA Settlement Agreement
20 and Release of Claims (the “Settlement Agreement”); the proposed Order granting Preliminary
21 Approval of the Settlement; all other records, pleadings, and papers filed in this action; and upon
22 such other evidence or argument as may be presented to the Court at the hearing of this motion.

23 Dated: November 7, 2024

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



26 Brian J. Mankin, Esq.
27 Attorneys for Plaintiffs and the Class
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Tiana Williamson and Harpreet Aujla seek preliminary approval of a
4 \$1,400,000 class action settlement on behalf of all current and former California resident truck
5 drivers who performed services for Defendants KAL Freight, Inc., SPG Transportation Inc., or
6 Pro Tec Inc., (“Defendants”) in the State of California and who were classified by Defendants as
7 independent contractors during the Class Period of November 14, 2018, through May 19, 2024.

8 Under the terms of the Settlement Agreement,¹ Defendants will not oppose Plaintiffs’
9 Counsel’s application for a reasonable award of attorneys’ fees not to exceed \$466,666.66 (1/3 of
10 the Settlement Amount), litigation expenses not to exceed \$25,000, Settlement Administrator
11 Costs of \$10,000, PAGA penalties of \$50,000 (75% to LWDA and 25% to Aggrieved
12 Employees), and a Service Payment of \$10,000 for Plaintiff Tiana Williamson and \$5,000 for
13 Plaintiff Harpreet Aujla (aka “Class Representatives”). (S.A. ¶ 47).

14 After all Court-approved deductions from the Settlement Amount, it is estimated that
15 \$833,333.34 will be available to pay the Class Members, as follows:

16

<i>Settlement Amount</i>	\$ 1,400,000.00
Attorneys’ Fees (1/3)	\$ 466,666.66
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 11,000.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Awards	\$ 15,000.00
<i>Net Settlement Amount</i>	\$ 832,333.34

20

21 Assuming 808 total Class Members, the average payment will be approximately
22 \$1,030.12. But the actual payments will be calculated and distributed on a pro-rata workweek
23 basis. (S.A. ¶ 47(c); Mankin Decl. ¶¶ 50-52 [description of high/low payments]). In addition,
24 approximately 589 Aggrieved Employees will receive a share of the \$12,500 PAGA Penalties
25 (25% of the \$50,000 allocation), calculated pro-rata based on Weeks Worked during the PAGA
26 Period. (S.A. ¶ 47(h)).

27

28 ¹ The Class Action and PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”) is attached as Exhibit A to the Decl. of Brian Mankin (“Mankin Decl.”).

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

8 **II. BACKGROUND**

9 **A. THE CLASS**

10 The Class is defined as follows:

11 All current and former California resident truck drivers who
12 performed services for Defendants in the State of California and
13 who were classified by Defendants as independent contractors
14 during the Class Period of November 14, 2018, through May 19,
15 2024. (S.A. ¶¶ 4, 8).

16 **B. PROCEDURAL HISTORY**

17 Plaintiff Tiana Williamson submitted a letter to the Labor and Workforce Development
18 Agency ("LWDA") for civil penalties under the Private Attorneys General Act of 2004
19 ("PAGA"). (Mankin Decl. ¶ 13).

20 That same day, Plaintiff Williamson filed this class action, alleging that Defendants
21 violated various sections of the Labor Code. Then, on about May 23, 2023, Plaintiff Williamson
22 filed a First Amended Complaint adding causes of action under PAGA. Defendants filed their
23 Answer to the First Amended Complaint on June 15, 2023. (Mankin Decl. ¶ 14).

24 Defendants retained counsel and began vigorously defending the cases. The Parties
25 exchanged extensive amounts of written discovery and documents, and engaged in the Belaire
26 West whereby class contact information was ultimately provided to Plaintiffs' counsel. But prior
27 to engaging in a contested class certification motion, the Parties agreed to attend private
28 mediation. In preparation for mediation, the Parties informally exchanged documents and
information that allowed both sides to calculate the potential damages and evaluate potential risk,
including policies and procedures pertaining to the claims, statistics relating to the number of

1 current and former class members, number of shifts, pay periods worked and other things, and a
2 sampling of payroll and timekeeping records for Class Members. This information enabled both
3 parties to take a deep dive into the claims. Additionally, during this process, Plaintiffs and their
4 counsel analyzed, researched, and investigated the potential issues, including matters related to
5 the calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 15).

6 On April 8, 2024, Plaintiffs and Defendants participated in a full-day mediation with
7 Hon. Daniel Buckley (Ret.), a well-respected wage-and-hour mediator. At the conclusion of
8 mediation and extensive arms-length negotiations, Judge Buckley issued a mediator's proposal
9 which was ultimately accepted by the Parties. The agreement called for the filing of a Second
10 Amended Complaint to add Plaintiff Harpreet Aujla to the class and PAGA action. The Court
11 approved the addition of Plaintiff Aujla, so Plaintiffs filed the operative second amended
12 complaint on July 8, 2024. The Parties then entered into the Settlement Agreement submitted
13 herewith, and now seek the Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 16).

14 **C. BRIEF OVERVIEW OF CLAIMS AND DEFENSES**

15 Plaintiffs alleged numerous wage and hour violations on behalf of the Class. However,
16 Defendants vigorously contested and denied Plaintiffs' material allegations on the merits and as
17 to the propriety of a class action or PAGA representative action. (Mankin Decl. ¶ 17).

18 Plaintiffs' primary claim relates to Defendants' practice of classifying its truck drivers as
19 independent contractors, rather than as employees, and Plaintiffs allege that this practice violated
20 California law and led to several other strong claims. For instance, Defendants paid the Class
21 Members on a piece-rate (per-mile) basis, and Plaintiffs allege that failed to compensate for time
22 spent performing non-driving tasks for Defendants (such as pre- and post-trip inspections,
23 fueling, repair time, etc.). Plaintiffs also allege that they and the other Class Members were
24 frequently required to use their personal cell phones to perform tasks for Defendants, yet
25 Defendants did not provide any reimbursement for such expenses. Additionally, Plaintiffs
26 alleged a variety of other claims (all of which Defendants disputed), such as the failure to timely
27 pay wages each period and upon separation of employment and failure to provide accurate
28 itemized wage statements. (Mankin Decl. ¶ 18).

1 Of course, Defendants vehemently opposed these claims, including an overarching
2 defense that all claims would fail because the Class Members were properly classified as
3 independent contractors (and, therefore, the California Labor Code does not apply, as those
4 protections are only applicable for employees). (Mankin Decl. ¶ 19).

5 Despite the disputed nature of the claims, the Parties concluded that further litigation of
6 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
7 finally settled to limit further risk, expense, and protracted litigation. (Mankin Decl. ¶ 20).

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

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

10 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

11 The \$1,400,000 Settlement Amount² is non-reversionary and will be paid out to Class
12 Members without the need to submit a claim form or take any affirmative action. It includes (1)
13 Plaintiffs' attorneys' fees and costs, as approved by the Court; (2) a service award of \$15,000
14 combined for both Plaintiffs, subject to approval by the Court; (3) Administration Costs, not to
15 exceed \$10,000; (4) a \$50,000 PAGA award, with 75% paid to the LWDA and 25% to the
16 Aggrieved Employees; and (5) the aggregate of all Individual Settlement Amounts of the
17 Participating Class Members. (S.A. ¶ 47).

18 **B. NOTICE PROCEDURES**

19 Here, the Parties will provide notice of this settlement in strict compliance with Court's
20 Class Action Case Management Order #1, issued on November 15, 2022 (the "CMO"). Thus, as
21 required by CMO ¶ G, the Parties will send each Class Member a Class Notice, a Request for
22 Exclusion Form, an Objection Form, and a Dispute Form. (S.A. ¶ 63), which are attached to the
23 Mankin Decl. as Exhibits B, C, D, and E, respectively.

24
25 ² The Settlement Amount is subject to increase if the "Escalator Clause" is triggered. S.A. ¶¶ 15,
26 47(a). If this clause is triggered, Defendants shall have the option to either: (i) increase the
27 Settlement Amount by \$69.87 (Settlement Amount divided by 20,037) for each additional
28 Workweek above 22,040, or (ii) change the end date of the Class Period to a date which results
in no more than 22,040 total Workweeks. If Defendants increase the Settlement Amount, other
figures will also shift upward, such as attorneys' fees (but this is still constrained to 1/3 of the
Settlement Amount) along with increased Administration Costs (*see* S.A. ¶ 47(g)).

1 Notably, the proposed Notice complies with CMO ¶ G(5) because it informs each Class
2 Member of the estimated recovery, the number of Weeks Works that each Class Members is
3 credited with, and the applicable average payments, minimum, and high payments. And the
4 Notice Packet will be provided in both English and Spanish to ensure that each Class Member
5 can read and understand the contents.

6 Within 14 calendar days after entry of the Preliminary Approval Order, Defendants shall
7 provide the Settlement Administrator with the “Class Data” consisting of Class Member names,
8 addresses, Social Security Numbers, and Weeks Worked during the applicable periods. (S.A. ¶¶
9 7, 61). Within 10 calendar days of receipt of the Class Data, the Settlement Administrator shall
10 calculate the numbers for each Class Member, populate the Notice, and send each Class Member
11 the Notice Packet via first-class, United States mail. (S.A. ¶ 63).

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

15 **C. EXCLUSION AND OBJECTION PROCEDURES**

16 Class Members who do not timely Opt-Out of the Settlement will be deemed to
17 participate in the Settlement and shall become a Participating Class Member without having to
18 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
19 must submit a written request to the Administrator no later than 45 days after being mailed by
20 the Settlement Administrator (“Response Deadline”). (S.A. ¶ 33). Any Opt-Out request that is
21 not postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
22 case the Class Member’s exclusion or objection must be returned by the later of the original
23 Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶¶ 64, 68).

24 The Class Notice shall inform Class Members of their right to object to the Settlement.
25 Any Participating Class Member who wishes to object to the Settlement must complete the
26 Objection Form in the Notice Packet. To be valid, any Objection Form must be mailed to the
27 Settlement Administrator and postmarked on or before the Response Deadline. (S.A. ¶ 68(c)).

28 ///

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

2 The amount of each Class Member's Individual Class Payment will be calculated by
3 dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating
4 Class Members during the Class Period, and (b) multiplying the result by each Participating
5 Class Members' Weeks Worked. (S.A. ¶ 47(c)). Additionally, each "Aggrieved Employee" will
6 receive an Individual PAGA Payment, calculated by dividing and distributing the \$12,500 on a
7 pro-rata Weeks Worked basis. (S.A. ¶ 47(h)).

8 The Class Notice will inform Class Members of the number of Weeks Worked during the
9 relevant periods and the estimated Individual Class and PAGA Payments. Class Members may
10 dispute their Weeks Worked by timely submitting evidence to the Settlement Administrator.
11 (S.A. ¶ 66).

12 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

13 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
14 Settlement Amount, plus their share of payroll taxes owed on the Individual Class Payments,
15 within 15 days of the Effective Date. (S.A. ¶ 69). Within 10 days after receiving the funds, the
16 Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 70).

17 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 71). If a Class
18 Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to
19 the California State Controller in the name of the Class Member/Aggrieved Employee. (*Id.*).
20 As required by CMO ¶ G(3)(c)(i), Plaintiffs' Counsel explains the reasoning for this method of
21 distribution at Mankin Decl. ¶¶ 56-61.

22 **F. TAX TREATMENT**

23 Because the Class Members performed contract services for Defendants as independent
24 contractors, rather than as employees, and because Defendants fully dispute the allegations
25 alleged herein, the Parties agree that the settlement funds paid to Class members will be allocated
26 and paid as contract compensation, interest, and penalties from which no state or federal taxes
27 will be withheld or deducted. (S.A. ¶ 47(d)). Likewise, the Individual PAGA Payments will be
28 classified entirely as civil penalties and shall be reported as required on an IRS Form 1099.

1 (S.A. ¶ 47(h)).

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

3 In exchange for these payments, and in strict compliance with CMO ¶ G(3)(e), the
4 Settlement Agreement at ¶ 30 defines the “Released Class Claims” as follows:

5 all claims stated in the operative Complaint and those based solely
6 upon the facts in the Complaint, including: (1) failure to pay
7 minimum wages, (2) failure to pay for nonproductive time under
8 Labor Code § 226.2, (3) failure to reimburse business expenses, (4)
failure to timely pay final wages, (5) failure to provide accurate
itemized wage statements, and (6) unfair and unlawful competition.

9 Additionally, as required by CMO ¶ G(3)(e)(iii), the time period governing the Released
10 Class Claims shall be any time during the Class Period. (S.A. ¶ 30). And, pursuant to CMO ¶
11 G(3)(e)(i), the “Released Parties” means Defendants, together with their officers, directors,
12 employees and agents. (S.A. ¶ 32).

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

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

19 The Settlement Agreement at ¶ 31 also complies with CMO ¶¶ G(3)(e)(iv) and G(9)(d) as
20 it defines the “Released PAGA Claims” as follows:

21 all PAGA claims that Plaintiffs alleged against the Released Parties
22 based on the facts stated in the relevant LWDA notice letters and
23 only to the extent that they are alleged in the operative Complaint,
24 including all PAGA claims seeking civil penalties premised upon:
25 (1) willful misclassification, (2) failure to pay minimum wages, (3)
26 failure to pay for nonproductive time under Labor Code § 226.2, (4)
27 failure to reimburse business expenses, (5) failure to timely pay
28 wages each period, (6) failure to timely pay wages upon separation
of employment, (7) failure to provide accurate itemized wage
statements, and (8) 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 LWDA notice letters
and operative Complaint.

1 The CMO, at ¶¶ G(3)(e)(iv) and G(9)(d)(i), also requires that the “release of claims for
2 PAGA penalties shall bind only the named plaintiff and the State of California.” The Settlement
3 Agreement strictly complies with this requirement. (See S.A. ¶ 51 [“Plaintiffs – in their
4 individual capacity and on behalf of the State of California and LWDA – shall completely
5 release and discharge the Released Parties from the Released PAGA Claims for the PAGA
6 Period”]).

7 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
8 that individual will still be subject to the Released PAGA Claims and will receive a pro-rata share
9 of PAGA Penalties. (S.A. ¶ 52; CMO ¶ G(9)(c)).

10 **IV. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR** 11 **PURPOSES OF SETTLEMENT**

12 California Rule of Court 3.769(d) provides that the Court may make an order approving
13 certification of a provisional settlement class at the preliminary approval stage. It is well-
14 established that trial courts should use a “lesser standard of scrutiny” for determining the
15 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
16 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
17 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved
18 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
19 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
20 certification, a district court need not inquire whether the case, if tried, would present intractable
21 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
22 purposes of this settlement only, Plaintiffs request that this Court provisionally certify the Class,
23 as defined above, under Code of Civil Procedure § 382.

24 **A. ASCERTAINABILITY AND NUMEROSITY**

25 In determining whether a class is ascertainable, the court considers “(1) the class
26 definition, (2) the size of the class, and (3) the means available for identifying the class
27 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
28 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement

1 class is ascertainable if the class members can be objectively identified and given notice of the
2 litigation without unreasonable time or expense). Here, according to Defendants’ records, there
3 are approximately 808 Class Members that are easily identifiable and fall within the defined
4 Class. Thus, Plaintiffs’ proposed Class meets the ascertainability and numerosity requirements.

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

6 *1. Commonality*

7 To justify certification, the class proponent must show that questions of law or fact
8 common to the class predominate over the questions affecting the individual members. *Arenas v.*
9 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiffs contend that the Class
10 was subjected to common policies and practices relating to Defendants classification of the
11 workers, payment of wages, reimbursement of expenses, and so on. While the Parties dispute
12 whether a class would be appropriate if the litigation were to continue, they agree to class
13 certification for the purposes of this settlement only.

14 *2. Typicality*

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

22 *3. Adequacy of Representation*

23 The proposed class representative must establish that he or she will adequately represent
24 the proposed class. *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.
25 Specifically, Plaintiffs are adequate to represent the class because they performed services for
26 Defendants during the Class Period, experienced the same wage and hour practices as the rest of
27 the Class, understood their duties as Class Representatives, have been willing to undergo the
28 risks of litigation, and have no conflict of interest. (Williamson Decl. ¶¶ 2-5; Aujla Decl. ¶¶ 2-5).

Adequacy may be established by the fact that counsel are experienced practitioners. See *Local Joint Exec. Bd. v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive experience in wage and hour class actions like this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-9; De Sario Decl. ¶¶ 6-10).

4. Superiority

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

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

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

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; 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. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. And the Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard).

Thus, 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

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

9 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
10 **NEGOTIATIONS**

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

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

23 Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and
24 weaknesses of this case before reaching the settlement. As described above, the settlement was
25 reached after extensive discovery, investigation and research, thorough calculations and risk
26 evaluation, and a substantial exchange of information prior to mediation. *See Munoz v. BCI*
27 *Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 410 (approving settlement where
28 “considerable information [exists] from which to assess the strength of the class claims” and

1 litigation risks).

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

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

7 However, *Kullar* does not require review of the outer reaches of possible exposure
8 without considering actual risks of certification, decertification, dispositive motions, and trial,
9 rather only a record which allows “an understanding of the amount that is in controversy and the
10 realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 408-9. Thus, a
11 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial,
12 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
13 *Wershba*, 91 Cal.App.4th at 250 (“Compromise is inherent and necessary in [settlement] ... even
14 if the relief afforded by the proposed settlement is substantially narrower than it would be if the
15 suits were to be successfully litigated, this is no bar to a class settlement because the public
16 interest may indeed be served by a voluntary settlement in which each side gives ground in the
17 interest of avoiding litigation.”)

18 Here, Defendants raised significant legal and factual defenses that weigh in favor of the
19 reasonableness of the proposed Settlement. In addition to disputing the merits of Plaintiffs’
20 claims, Defendants strongly disputed that Plaintiffs could obtain class certification, arguing a
21 lack of commonality of the legal claims and injuries. Defendants further argued they complied
22 with applicable law and that any purported deviations therefrom were individualized in nature,
23 thereby limiting Plaintiffs’ ability to certify the class. Thus, while Plaintiffs asserts that this is a
24 suitable case for certification, they realize that there is always a significant risk associated with
25 class certification proceedings, which could limit the claims they could pursue on a class basis.

26 Considering the uncertainties of protracted litigation, this negotiated settlement reflects
27 the best practicable recovery for the Class. While the total Settlement Amount is, of course, a
28 compromise figure, the potential risks and opportunities of both parties were effectively weighed

1 and considered by the parties, resulting in a fair and equitable settlement.

2 Based upon data obtained through formal and informal discovery, Plaintiffs' counsel
3 estimated the following through mediation: (1) 575 Class Members, (2) 520 *former* Class
4 Members for Labor Code § 203, (3) 20,000 workweeks, (4) 100,000 shifts worked, and (5)
5 approximately 6,500 wage statements during the PAGA Period. (Mankin Decl. ¶ 24).

6 From these numbers, and by applying violations rates derived from analysis of extensive
7 documents and data from Defendants, Plaintiffs calculated the following maximum amounts
8 assuming all claims were entirely successful at trial: class damages and penalties of \$5,001,700
9 and PAGA penalties of \$11,370,000. (Mankin Decl. ¶ 49). Then, by applying risks at class
10 certification and on the merits, and when considering other factors (such as evidentiary burdens
11 of proof), Plaintiff calculated the risk-adjusted award at trial for the class claims to be \$1,706,761
12 and for PAGA as \$1,180,125. (Mankin Decl. ¶ 49). As required by CMO ¶ G(3)(a)(i and ii), the
13 full analysis of the maximum and risk-adjusted values is contained in the Mankin Decl. at ¶¶ 22-
14 49 (and, for the sake of brevity, that information is not duplicated in this Motion).

15 Thus, the reasonableness of the settlement is apparent from the fact that the proposed
16 settlement amounts to 48.5% of the risk-adjusted class damages and penalties. For that reason
17 and others discussed in this Motion, the Parties submit that this settlement is fair and reasonable.

18 **E. PLAINTIFFS' COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION**

19 The view of attorneys conducting the litigation is entitled to significant weight deciding
20 whether to approve a settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
21 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must consider "the experience and view of
22 counsel"). Here, Class Counsel are also highly experienced in Class/PAGA litigation, including
23 having been named by the LA Times as one "Southern California Leading Lawyers", having
24 been selected as "Super Lawyer" in employment litigation over the last 5 consecutive years,
25 having achieved large settlements, having prevailed at trial in PAGA-only actions and Class
26 Action jury trials. (Mankin Decl. ¶¶ 2-7; Carlson Decl. ¶¶ 3-9; De Sario Decl. ¶¶ 6-10).
27 Plaintiffs' counsel, operating at arm's length, weighed the strengths and risks of this case, and
28 are of the view that this is a fair and reasonable settlement considering the nature of the claims,

1 realistic risk adjusted value, the complexities of the case, state of the law, and uncertainties of
2 class certification and litigation.

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

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

8 The proposed Notice and proposed plan for the Administrator to mail the Notice to the
9 last known address of all class members complies with all the requirements of Cal. Rule of Court
10 3.769(f) and 3.766(b). The proposed Notice includes: (1) the material terms of the settlement; (2)
11 the proposed attorneys' fees, litigation expenses, and the costs of administration; (3) details
12 about the final fairness hearing and how class members may elect to exclude themselves or make
13 an objection; (4) how class members can obtain additional information; and (5) each Class
14 Members' Individual Class and PAGA Payments. *See* Class Notice (Exhibit B to Mankin Decl.).

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

22 The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members
23 with all due process protections required by the U.S. Constitution. Moreover, the contents of the
24 Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a
25 detailed explanation of the case, including the basic contentions or denials of the parties; (2) a
26 statement that the court will exclude the member from the class if the member so requests by a
27 specified date; (3) a procedure for the member to follow in requesting exclusion from the class;
28 (4) a statement that the judgment, whether favorable or not, will bind all members who do not

1 request exclusion; and (5) a statement that any member who does not request exclusion may, if
2 the member so desires, enter an appearance through counsel. The 45-day deadline to opt-out or
3 object is also reasonable, as it provides Class Members sufficient time to do so and, if they so
4 choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he
5 or she will automatically be sent a settlement check.

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

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

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

16 Under the terms of the Settlement Agreement, Class Counsel (which consists of
17 multiple attorneys from two law firms) is seeking reimbursement of up to \$25,000 in litigation
18 costs, along with attorneys’ fees equal to one-third of the Settlement Amount. See, *e.g.*, *Laffitte*
19 *v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million
20 at a 2.13 lodestar multiplier, and holding that when class action litigation establishes a
21 monetary fund for the benefit of the class members, the trial court may determine the amount of
22 a reasonable fee by choosing an appropriate percentage of the fund created); *Stuart v.*
23 *RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee 1/3 from
24 settlement amount of \$4.5 million since 1/3 was “well within the range of percentages which
25 courts have upheld as reasonable in other class action lawsuits”).

26 Once the Court grants preliminary approval and Notice is disseminated, Plaintiffs’
27 counsel will submit a comprehensive request for attorneys’ fees and costs with final approval.

28 ///

1 **I. THE REQUESTED SERVICE AWARDS ARE FAIR AND APPROPRIATE**

2 The Settlement Agreement provides an incentive award payment of \$10,000 for Plaintiff
3 Tiana Williamson and \$5,000 for Plaintiff Harpreet Aujla, which is reasonable given the
4 recovery Class Members will receive on average, as well as the time and effort they devoted to
5 this case. Their efforts included providing factual background for the litigation; providing
6 documents and information about Defendants' compensation plan; participating in phone calls to
7 discuss litigation and settlement strategy; making themselves available throughout the litigation
8 to assist with analyzing the claims and defenses; helping Class Counsel prepare for the
9 mediation; and reviewing the settlement documents. The Class Representatives also assumed
10 significant risk in bringing this litigation—namely, had they lost, they could have been ordered
11 to pay Defendants' costs.

12 The requested service award falls within the range of incentive payments typically
13 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
14 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in class
15 action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2
16 (approving \$20,000 enhancement award in California wage-and-hour class settlement); *Vasquez*
17 *v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of
18 \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores,*
19 *Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards “of \$ 15,000
20 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS
21 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is
22 appropriate” in wage and hour settlement).

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

24 Subject to the Court's approval, the parties agreed to Phoenix Settlement Administrators
25 serving as the Settlement Administrator. Phoenix is experienced in administering class action
26 settlements and has provided a flat-fee proposal to administer this settlement for \$11,000.
27 (Mankin Decl. ¶ 80; Decl. of Michael Moore of Phoenix and exhibits).

28 ///

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

December 4, 2024	Preliminary Approval (PA) hearing
December 30, 2024 (24 days after PA falls on a Saturday, rolled forward to Monday)	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
February 13, 2025 (45 days after mailing)	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs' Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
Date: _____, 2025 Time: 8:30 a.m.	Final Approval Hearing

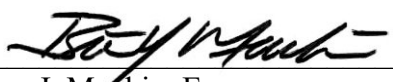
VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant the motion for preliminary approval of the settlement.

Dated: November 7, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiffs and the Class

1 **ROOF OF SERVICE**

2 (Pursuant to CCP §§ 1013(a)(1) and 2015.5)

3 STATE OF CALIFORNIA)
4 COUNTY OF RIVERSIDE) ss.

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

7 On November 7, 2024, I caused to be served the foregoing document(s) described as follows:

8 **PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS**
9 **ACTION AND PAGA SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF;**
10 **[PROPOSED] ORDER**

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

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

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

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

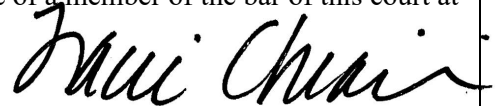
21 ☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties
22 to accept service by email or electronic transmission, I caused the document(s) to be sent from
23 email address tracie@lmlfirm.com to the persons at the electronic notification address listed in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

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

28 ☐ **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 November 7, 2024, Riverside, California.

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



Tracie Chiarito, Declarant

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