

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

MARK SUAREZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MONZON & SON ENTERPRISES, INC.,
a California Corporation; MONZON &
SON EQUIPMENT TRANSPORT INC., a
California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVSB2225078
*[Assigned to Hon. Christian Towns, Dept S26,
for all purposes]*

**PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

*Filed Concurrently with Declarations in
Support Thereof and [Proposed] Order*

Hearing

Date: November 4, 2025

Time: 8:30 a.m.

Dept.: S26

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 4, 2025, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard by the Honorable Christian Towns in Department S26 of the San
4 Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA
5 92415, Plaintiff Mark Suarez, individually and on behalf of all others similarly situated, will and
6 hereby does move the Court for entry of an Order preliminarily approving the Parties' Class
7 Action and Private Attorneys General Act ("PAGA") settlement, including:

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

17 This motion is based upon this Memorandum of Points and Authorities in Support
18 thereof; the Declaration of Plaintiff's counsel (Brian Mankin and Peter Carlson); the Declaration
19 of Plaintiff Mark Suarez; the Class Action and PAGA Settlement Agreement and Release of
20 Claims (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the
21 Settlement; all other records, pleadings, and papers filed in this action; and upon such other
22 evidence or argument as may be presented to the Court at the hearing of this motion.

23 Dated: October 13, 2025

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
A.	THE CLASS.....	2
B.	PROCEDURAL HISTORY	2
III.	SUMMARY OF THE PROPOSED SETTLEMENT.....	3
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	3
B.	NOTICE PROCEDURES	4
C.	EXCLUSION AND OBJECTION PROCEDURES	4
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	4
E.	TIMING OF SETTLEMENT DISBURSEMENTS.....	5
F.	TAX TREATMENT	5
G.	PARTICIPATING CLASS MEMBERS’ RELEASE OF CLAIMS	6
H.	AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS.....	6
IV.	PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	7
A.	ASCERTAINABILITY AND NUMEROSITY	7
B.	WELL-DEFINED COMMUNITY OF INTEREST	7
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	9
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT.....	9
B.	THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS.....	10
C.	THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	10
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS	10
E.	PLAINTIFF’S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION	12
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES.....	12
G.	THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS.....	14
H.	THE ATTORNEY’S FEES AND COSTS ALLOCATION IS FAIR	14
I.	THE SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE	14
VI.	THE COURT SHOULD APPOINT ILYM AS ADMINISTRATOR.....	15
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING.....	15
VIII.	CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<i>Amchem Prods., Inc. v. Windsor</i> (1997) 521 U.S. 591	8
<i>Archibald v. Cinerama Hotels</i> , (1976) 15 Cal.3d 853	14
<i>Arenas v. El Torito Rests., Inc.</i> (2010) 183 Cal.App.4th 723	8
<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4th 540	9
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. 2011) 2011 WL 2648879.....	16
<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4th 1374	10
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 10
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	13
<i>Glass v. UBS Fin. Servs.</i> (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476	16
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	11, 13
<i>Laffitte v. Robert Half Int’l Inc.</i> (2016) 1 Cal.5th. 480	15
<i>Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> (9th Cir. 2001) 244 F.3d 1152	9
<i>Medraza v. Honda of N. Hollywood</i> (2008) 166 Cal.App.4th 89	8
<i>Officers for Justice v. Civil Service Com.</i> (9th Cir. 1982) 688 F.2d 615	8
<i>Reyes v. San Diego County Board of Supervisors</i> (1987) 196 Cal.App.3d 1263	8
<i>Ross v. US Bank National Association</i> (N.D. Cal. 2010) 2010 WL 3833922	16
<i>Stuart v. RadioShack Corp.</i> (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645.....	15
<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 4150.....	16
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	10, 12
<i>West v. Circle K Stores, Inc.</i> (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558.....	16

Statutes

Code of Civil Procedure § 382.....	2, 8
Labor Code § 2699(i).....	4

Rules

California Rules of Court, Rule 3.769	10
---	----

Treatises

Herbert B. Newberg & Alba Conte, <i>Newberg on Class Actions</i> (“Newberg”) § 3:13 (4th ed. 2002)	9, 10
<i>Manual For Complex Litigation</i> (Third) § 30.41 (1995).....	10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Mark Suarez seeks preliminary approval of a \$300,000 class action settlement
4 on behalf of approximately 160 California resident truck drivers employed by Monzon & Son
5 Enterprises, Inc., Monzon & Son Equipment Transport, Inc., and Kelvin J. Monzon
6 (“Defendants”) during the “Class Period” of November 4, 2018, through October 31, 2024.

7 Under the terms of the Settlement Agreement,¹ Defendants will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorneys’ fees not to exceed \$100,000 (1/3 of
9 the Gross Settlement Amount), litigation expenses not to exceed \$25,000, an Administration
10 Costs of \$6,950, PAGA penalties of \$10,000 (with 75% to the LWDA and 25% to the Aggrieved
11 Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff Mark Suarez
12 (“Class Representative”). (S.A. ¶ 55)

13 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
14 that \$148,050 will be available to pay the Class Members, as follows:

15

<i>Gross Settlement Amount</i>	\$ 300,000.00
Attorneys’ Fees (1/3)	\$ 100,000.00
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 6,950.00
PAGA Penalties	\$ 10,000.00
Class Representative Service Payment	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 148,050.00

16
17
18
19

20 Assuming 160 Class Members, the average payment will be approximately \$925.31
21 (\$148,050 / 160).² However, the actual payments will be calculated on a pro-rata basis
22 according to the number of Weeks Worked by each Class Member during the Class Period. In
23 addition, the PAGA “Aggrieved Employees” will receive a share of the \$2,500 PAGA Penalties
24 (25% of the \$10,000 allocation), calculated pro-rata based on pay periods worked during the
25 PAGA Period.

26
27 ¹ The Class Action and PAGA Settlement Agreement and Release of Claims (the “Settlement
Agreement” or “S.A.”) is attached as Exhibit 1 to the Decl. of Brian Mankin (“Mankin Decl.”).

28 ² The Net Settlement Amount payable to the Class will likely increase at final approval because
Plaintiff’s Counsel does not anticipate using the full \$25,000 cost allocation.

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. Plaintiff respectfully requests
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 Plaintiff's 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**

The Class is defined as follows:

10 All current and former nonexempt, California resident truck drivers
11 employed by Defendants during the Class Period (November 4,
12 2018, through October 31, 2024). (S.A. ¶¶ 6, 11).

13 **B. PROCEDURAL HISTORY**

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

18 Then, on November 4, 2020, Plaintiff filed this class action, alleging that Defendant
19 violated various sections of the Labor Code. After the LWDA declined to assert jurisdiction over
20 the PAGA claims, Plaintiff later filed the operative First Amended Complaint, alleging putative
21 class and representative PAGA claims against all Defendants named herein. (Mankin Decl. ¶ 14).

22 Defendants retained counsel and immediately began to defend the case. Ultimately, after
23 discussions among counsel, the Parties agreed to attend private mediation prior to further
24 discovery and motion practice. (Mankin Decl. ¶ 15).

25 In preparation for mediation, the Parties informally exchanged documents and
26 information that allowed both sides to calculate the potential damages and evaluate potential risk,
27 including policies and procedures pertaining to the claims, statistics relating to the number of
28 current and former employees, number of shifts, pay periods worked, and other things. This

1 information enabled both parties to take a deep dive into the claims. Additionally, during this
2 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
3 including matters related to the calculation of damages, trial, and appellate issues and risks.
4 (Mankin Decl. ¶ 16).

5 On March 18, 2024, Plaintiff and Defendants participated in a full-day mediation with
6 Hon Jonathan Cannon (Ret.), a well-respected employment mediator. (Mankin Decl. ¶ 17).

7 Mediation was unsuccessful, and Defendants then filed a Motion to Compel Arbitration
8 which was set for hearing on July 25, 2024. At the hearing, and after oral argument, the Court
9 continued the hearing to October 29, 2024, and lifted the discovery stay for the limited purpose
10 of allowing Plaintiff to investigate the applicability of the Federal Arbitration Act and the
11 transportation worker exemption. Thereafter, Plaintiff propounded discovery on Defendants and
12 noticed depositions of Defendants' PMK and of Mr. Kelvin Monzon. (Mankin Decl. ¶ 18).

13 Before discovery responses were provided, and before the depositions occurred, the
14 Parties reengaged the services of the mediator, who ultimately issued a mediator's proposal that
15 was accepted by all Parties. The Parties now seek the Court's preliminary approval of the
16 Settlement. (Mankin Decl. ¶ 19).

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

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

19 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

20 The \$300,000 Settlement Amount³ is non-reversionary and will be paid to Class
21 Members without the need to submit a claim form or take any affirmative action. It includes (1)
22 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service payment of \$10,000
23 to Plaintiff, subject to approval by the Court; (3) Administration Costs of \$6,950; (4) a \$10,000
24 PAGA award, 75% to the LWDA and 25% to the Aggrieved Employees; and (5) the aggregate
25 of all Individual Class Payments of the Participating Class Members. (S.A. ¶ 55). Defendants
26 will separately pay their share of employer payroll taxes and withholdings. (S.A. ¶¶ 55(a)).

27
28 ³ The Settlement Amount is subject to potential increase if the "Escalator Clause" is triggered
(S.A. ¶ 55(b)). If this clause is triggered, other figures will also shift upward, such as attorneys'
fees (but this is still constrained to 1/3 of the new Settlement Amount).

1 **B. NOTICE PROCEDURES**

2 The proposed Notice will be provided to the Class showing the estimated amounts that
3 each Class Member will receive, the number of Work Weeks credited as a Class Member and the
4 number of pay periods as an Aggrieved Employee (*See* Exhibit 2 to Mankin Decl.). Within 14
5 calendar days after Preliminary Approval, Defendants shall provide the Administrator with the
6 “Class Data” consisting of Class Member names, addresses, Social Security Numbers, Weeks
7 Worked during the Class/PAGA Period(s). (S.A. ¶¶ 10, 69).

8 Within 15 calendar days of receipt of the Class Data, the Administrator shall calculate the
9 numbers for each Class Member, populate the Notice, and send each Class Member the Notice
10 via first-class, United States mail. (S.A. ¶ 71).

11 If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall
12 perform a skip trace search and seek an address correction for the Class Member(s), and a second
13 Notice will be sent to any new or different address obtained. (S.A. ¶¶ 71, 72).

14 **C. EXCLUSION AND OBJECTION PROCEDURES**

15 Class Members who do not timely Opt-Out of the Settlement will be deemed to
16 participate in the Settlement and shall become a Participating Class Member without having to
17 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
18 must submit a Request for Exclusion to the Administrator no later than 30 days after being
19 mailed by the Administrator (“Response Deadline”). (S.A. ¶¶ 45, 76(a)). Any Opt-Out request
20 not postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
21 case the Class Member’s exclusion or objection must be returned by the later of the original
22 Notice Response Deadline or 15 calendar days after remailing. (S.A. ¶¶ 45, 72).

23 The Class Notice shall inform Class Members of their right to object to the Settlement.
24 Any Participating Class Member who wishes to object to the Settlement must provide their
25 objection no later than the Response Deadline. (S.A. ¶ 76(c)).

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

27 The amount of each Class Member’s Individual Class Payment is tied to the number of
28 Weeks Worked by each Class Member for Defendants during the Class Period. Therefore,

Individual Class Payments will be calculated by: (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Members' Weeks Worked. (S.A. ¶ 55(d)). Additionally, each "Aggrieved Employee" will receive an Individual PAGA Payment, calculated by dividing and distributing the \$2,500 on a pro-rata pay period basis. (S.A. ¶ 55(i)).

The Class Notice will inform Class Members of the number of Weeks Worked during the relevant periods and the estimated Individual Class and PAGA Payments. Class Members may dispute their Weeks Worked by timely submitting evidence to the Administrator. (S.A. ¶ 74).

E. TIMING OF SETTLEMENT DISBURSEMENTS

Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the Settlement Amount under a two-part payment plan, as follows: (A) within 30 days after the Effective Date, Defendants shall fund fifty percent (50%) of the Gross Settlement Amount and (B) within 180 days after the Effective Date, Defendants shall fund the remaining fifty percent (50%) of the Gross Settlement Amount, plus any required amounts owed for Defendants' employer share of payroll taxes owed on Individual Class Payments. (S.A. ¶ 77).

Within 10 days after receiving each installment payment, the Administrator shall issue shall distribute pro-rata shares of all court-approved payments. (S.A. ¶ 78). Class Members will have 180 days to cash the settlement check. (S.A. ¶ 79). If a Class Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California State Controller in the name of the Class Member/Aggrieved Employee. (*Id.*).

F. TAX TREATMENT

The Parties agree that ten percent (10%) of the Individual Class Payments will be allocated as wages subject to withholding of all applicable local, state and federal taxes and the remaining ninety percent (90%) will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 55(e)). The Individual PAGA Payments will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 55(i)).

///

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

2 In exchange for these payments, the Settlement Agreement at ¶ 40 defines the “Released
3 Class Claims” as follows:

4 all claims, rights, demands, liabilities and causes of action that were
5 alleged in the Complaint, or that reasonably could have been alleged based
6 upon the facts stated in the Complaint, during the Class Period, including,
7 but not limited to: (1) failure to pay minimum wages, (2) failure to pay for
8 nonproductive time under Labor Code § 226.2, (3) failure to reimburse
9 business expenses, (4) failure to pay vested vacation, (5) failure to timely
10 pay final wages, (6) failure to provide accurate itemized wage statements,
11 (7) unfair and unlawful competition.

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

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

18 The Settlement Agreement at ¶ 41 defines the “Released PAGA Claims” as follows:

19 all claims for PAGA penalties based on the Labor Code violations alleged
20 in the Complaint and the LWDA Notice Letter, or that reasonably could
21 have been based on the facts stated in the Complaint and in the LWDA
22 Notice Letter, including all PAGA claims for: (1) failure to pay minimum,
23 overtime, and doubletime wages, (2) failure to pay for nonproductive time
24 under Labor Code § 226.2, (3) failure to provide meal periods, (4) failure
25 to provide rest periods, (5) failure to pay meal and rest period premiums
26 at the regular rate of pay, (6) failure to pay paid sick leave at the regular
27 rate of pay, (7) failure to reimburse business expenses, (8) failure to pay
28 vested vacation or paid time off, (9) failure to timely pay wages each
 period, (10) failure to timely pay wages upon separation of employment,
 (11) failure to provide accurate itemized wage statements, (12) failure to
 maintain accurate records, and (13) all other claims for civil penalties
 recoverable under the PAGA based on the facts or claims alleged in the
 LWDA Notice Letter and Complaint, as well as claims for attorneys’ fees
 and costs arising out of the claims above.

 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
that individual will still be subject to the Released PAGA Claims and will receive a pro-rata share
of PAGA Penalties. (S.A. ¶ 60).

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

3 California Rule of Court 3.769(d) provides that the Court may make an order approving
4 certification of a provisional settlement class at the preliminary approval stage. It is well-
5 established that trial courts should use a “lesser standard of scrutiny” for determining the
6 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
7 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
8 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved
9 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
10 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
11 certification, a district court need not inquire whether the case, if tried, would present intractable
12 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
13 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
14 as defined above, under Code of Civil Procedure § 382.

15 **A. ASCERTAINABILITY AND NUMEROSITY**

16 In determining whether a class is ascertainable, the court considers “(1) the class
17 definition, (2) the size of the class, and (3) the means available for identifying the class
18 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
19 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
20 class is ascertainable if the class members can be objectively identified and given notice of the
21 litigation without unreasonable time or expense). Here, according to Defendants’ records, there
22 are approximately 160 Class Members that are easily identifiable and fall within the defined
23 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

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

25 *I. Commonality*

26 To justify certification, the class proponent must show that questions of law or fact
27 common to the class predominate over the questions affecting the individual members. *Arenas v.*
28 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends the Class was

1 subjected to common policies and practices relating to unpaid wages, expenses reimbursements,
2 and so on. While the Parties dispute whether a class would be appropriate if the litigation were to
3 continue, they agree to class certification for the purposes of this settlement only.

4 2. Typicality

5 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
6 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
7 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Here, typicality is satisfied because
8 Plaintiff was employed by Defendants during the Class Period and alleges that he experienced
9 the same wage and hour violations as the rest of the Class, based on Defendants’ uniform
10 policies. Thus, although Defendants dispute whether Plaintiff’s claims are typical of the Class for
11 the purposes of any continued litigation, the Parties agree that, for the purposes of this settlement
12 only, Plaintiff asserts claims regarding Defendants’ pay policies, wage statements, among other
13 claims, which are at the core of the lawsuit.

14 3. Adequacy of Representation

15 The proposed class representative must establish that he or she will adequately represent
16 the proposed class. *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.
17 Specifically, Plaintiff is adequate to represent the class because he understood his duties as a
18 Class Representative, has been willing to undergo the risks of litigation, and has no conflict of
19 interest. (*See, generally*, Plaintiff Decl.).

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

24 4. Superiority

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

25 However, *Kullar* does not require review of the outer reaches of possible exposure
26 without considering actual risks of certification, decertification, dispositive motions, and trial,
27 rather only a record which allows "an understanding of the amount that is in controversy and the
28 realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 408-9. Thus, a

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

8 Here, Defendants raised significant legal and factual defenses that weigh in favor of the
9 reasonableness of the proposed Settlement. In addition to disputing the merits of Plaintiff’s
10 claims, Defendants strongly disputed that Plaintiff could obtain class certification, arguing a lack
11 of commonality of the legal claims and injuries. Defendants further argued that they complied
12 with the applicable law and that any purported deviations therefrom were individualized in
13 nature, thereby limiting Plaintiff’s ability to certify the class. While Plaintiff asserts that this is a
14 suitable case for certification, he realizes that there is always a significant risk associated with
15 class certification proceedings, which could limit the claims he could pursue on a class basis.

16 Considering the uncertainties of protracted litigation, this negotiated settlement reflects
17 the best practicable recovery for the Class. While the total Gross Settlement Amount is, of
18 course, a compromise figure, the potential risks and opportunities of both parties were effectively
19 weighed and considered by the parties, resulting in a fair and equitable settlement.

20 Based upon data obtained through formal and informal discovery, and by applying
21 violations rates derived from documents and data, Plaintiff calculated that, assuming all claims
22 were entirely successful at trial, the maximum class damages and penalties would be
23 approximately \$1,500,000. (Mankin Decl. ¶ 30). However, this figure failed to incorporate or
24 acknowledge many risks at class certification and on the merits, defenses, and other issues (such
25 as violation rates and evidentiary burdens of proof); when taking those into account, Plaintiff
26 calculated the risk-adjusted award at trial for the class claims to be \$600,000. (*Id.*). The full
27 analysis of the maximum and risk-adjusted values is contained in the Mankin Decl. at ¶¶ 25-30
28 (and, for the sake of brevity, that information is not duplicated in this Motion).

1 And while the PAGA penalties had a potential maximum value in the six figures, this
2 also fails to incorporate the risks above and, further, fails to acknowledge that courts have wide
3 latitude to reduce the civil penalties “based on the facts and circumstances of a particular case”
4 and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
5 confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendants argued against the merits of the
6 underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses
7 mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also
8 argued it is improper to stack civil penalty claims on top of underlying statutory claims.

9 Thus, the reasonableness of the settlement is apparent from the fact that the Settlement is
10 sizeable percentage of the risk-adjusted class damages and penalties. And, for that reason and
11 others discussed in this Motion, the Parties submit that this settlement is fair and reasonable.

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

13 The view of attorneys conducting the litigation is entitled to significant weight deciding
14 whether to approve a settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
15 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must consider “the experience and view of
16 counsel”). Here, Plaintiff’s Counsel are highly experienced in Class/PAGA litigation, having
17 repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only
18 5% of litigators), having achieved large settlements and verdicts, including one of the largest
19 PAGA awards in California’s history, collecting over \$250 million for its clients, having tried
20 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
21 6; Carlson Decl. ¶¶ 3-9). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and
22 risks of this case, and are of the view that this is a fair and reasonable settlement considering the
23 nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law,
24 and uncertainties of class certification and litigation.

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

26 The proposed Notice should be approved, as it fully informs the Class Members of the
27 nature of the lawsuit and each Class Member’s rights under the terms of the Settlement
28 Agreement and applicable law. The way the Class Notice shall be disseminated ensures that all

1 or nearly all of the Class Members shall be properly notified of the proposed settlement.

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

9 The Court has wide discretion in approving the means of providing notice, so long as the
10 class representative "provide(s) meaningful notice in a form that should have a reasonable
11 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
12 (1976) 15 Cal.3d 853, 861. Here, the Notice will be disseminated directly to the Class Members
13 by first class mail by the Administrator, since Defendants have the last known addresses of all
14 class members and the Administrator will perform a skip trace and update those addresses for
15 any Notices that are returned and re-send the same.

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

28 ///

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

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

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

11 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
12 of up to \$25,000 in litigation costs, along with attorneys’ fees equal to one-third of the Gross
13 Settlement Amount. See, *e.g.*, *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving
14 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
15 action litigation establishes a monetary fund for the benefit of the class members, the trial court
16 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
17 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
18 (approving fee 1/3 from settlement amount of \$4.5 million since 1/3 was “well within the range
19 of percentages which courts have upheld as reasonable in other class action lawsuits”).

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

22 **I. THE SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE**

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

1 and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
2 documents. The Class Representative also assumed significant risk in bringing this litigation—
3 namely, had he lost, he could have been ordered to pay Defendants’ costs.

4 The requested service award falls within the range of incentive payments typically
5 awarded to Class Representatives in similar class actions. *See, e.g., Bond v. Ferguson*
6 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in class
7 action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2
8 (approving \$20,000 enhancement award in California wage-and-hour class settlement); *Vasquez*
9 *v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of
10 \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores,*
11 *Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards “of \$ 15,000
12 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS
13 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is
14 appropriate” in wage and hour settlement).

15 **VI. THE COURT SHOULD APPOINT ILYM AS ADMINISTRATOR**

16 Subject to the Court’s approval, the parties agreed to ILYM Group, Inc. serving as the
17 Administrator. ILYM is experienced in administering class action settlements and has provided a
18 flat-fee proposal to administer this settlement for \$6,950. (Mankin Decl. ¶ 43; and Exhibit 4
19 [ILYM’s bid]).

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

21 The last step in the approval process is the formal hearing, whereby proponents of the
22 Settlement may explain and describe its terms and conditions and offer argument in support of
23 approval, and Class Members or their counsel may be heard in support of or in opposition to the
24 settlement. Subject to the Court’s approval, the Parties propose that the Court schedule a hearing
25 for final approval approximately 120 days after Preliminary Approval, as follows:

26 ///

27 ///

28 ///

November 4, 2025	Preliminary Approval (PA) hearing
December 3, 2025	<u>29 days after PA</u> : Deadline for Administrator to complete first mailing of the Notice
January 2, 2026	<u>30 days after mailing Notice</u> : Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval 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 Plaintiff's 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
TBD	Final Approval Hearing – <i>proposed date of February 22, 2026</i>

VIII. CONCLUSION

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

Dated: October 13, 2025

LAUBY, MANKIN & LAUBY LLP

BY:


 Brian J. Mankin, Esq.
 Attorneys for Plaintiff and the 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 13, 2025, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 13, 2025, 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

SERVICE LIST

Marie Burke Kenny, Esq.

marie.kenny@procopio.com

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

525 B. Street, #2200

San Diego, CA 92101

619-906-5684

619-398-0182-fax

Attorneys for Defendants MONZON & SON ENTERPRISES, INC., MONZON & SON
EQUIPMENT TRANSPORT INC., and KELVIN MONZON