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

SAMUEL JOHNSON, individually, on a
representative basis, and on behalf of all
others similarly situated; and JAZMIN
VALERIO individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiffs,

vs.

THE J.G WENTWORTH COMPANY, a
California Corporation; SETTLEMENT
FUNDING LLC, a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 37-2022-00048277-CU-OE-CTL
*[Assigned to Hon. Katherine Bacal, Dept C-
69, for all purposes]*

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

Hearing

Date: January 5, 2024

Time: 1:30 p.m.

Dept.: C-69

Complaint filed: 12/1/2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 5, 2024 at 1:30 p.m. or as soon thereafter as
the matter may be heard by the Honorable Katherine Bacal in Department 69 of the San Diego
County Superior Court, located at 330 W Broadway, San Diego, CA 92101, Plaintiffs Samuel
Johnson and Jazmin Valerio, individually and on behalf of all others similarly situated, will and
hereby do move the Court for entry of an Order preliminarily approving the Parties' class action
settlement, including:

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

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declaration of Plaintiffs' counsel (Brian Mankin and Misty Lauby); the Parties' comprehensive Memorandum of Understanding (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: December 8, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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

TABLE OF CONTENTS

I.	INTRODUCTION	6
II.	BACKGROUND	8
A.	THE SETTLEMENT CLASS	8
B.	PROCEDURAL HISTORY	8
III.	SUMMARY OF THE PROPOSED SETTLEMENT	9
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	9
B.	NOTICE PROCEDURES	10
C.	EXCLUSION AND OBJECTION PROCEDURES	10
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	11
E.	TIMING OF SETTLEMENT DISBURSEMENTS	13
F.	TAX TREATMENT	13
G.	PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS	13
H.	AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS	14
IV.	PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	15
A.	ASCERTAINABILITY AND NUMEROSITY	15
B.	WELL-DEFINED COMMUNITY OF INTEREST	15
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	17
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT	17
B.	THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS	18
C.	THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	19
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS	19
E.	PLAINTIFFS' COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION	23
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES	24
G.	THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS	25
H.	THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR	25
I.	THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE	26
VI.	THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT ADMINISTRATOR	27
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING	27
VIII.	CONCLUSION	28

TABLE OF AUTHORITIES

Cases

<i>Amchem Prods., Inc. v. Windsor</i> (1997) 521 U.S. 591	9
<i>Archibald v. Cinerama Hotels</i> , (1976) 15 Cal.3d 853	18
<i>Arenas v. El Torito Rests., Inc.</i> (2010) 183 Cal.App.4th 723	9
<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4th 540	10
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. 2011) 2011 WL 2648879.....	20
<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4th 1374	10
<i>Cho v. Seagate Tech. Holdings, Inc.</i> (2009) 177 Cal.App.4th 734.....	11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 11, 12
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	17
<i>Glass v. UBS Fin. Servs.</i> (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476	20
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	13, 17
<i>Laffitte v. Robert Half Int’l Inc.</i> (2016) 1 Cal.5th. 480	19
<i>Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> (9th Cir. 2001) 244 F.3d 1152	10
<i>Louie v. Kaiser Found. Health Plan, Inc.</i> (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314.....	20
<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576 ..	19
<i>Medraza v. Honda of N. Hollywood</i> (2008) 166 Cal.App.4th 89	9
<i>Officers for Justice v. Civil Service Com.</i> (9th Cir. 1982) 688 F.2d 615	8, 11
<i>Reyes v. San Diego County Board of Supervisors</i> (1987) 196 Cal.App.3d 1263	9
<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841	19
<i>Ross v. US Bank National Association</i> (N.D. Cal. 2010) 2010 WL 3833922	20
<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal. June 1, 2010) 2010 WL 2196104	19
<i>Stuart v. RadioShack Corp.</i> (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645.....	19
<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 4150.....	20
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	11, 13
<i>West v. Circle K Stores, Inc.</i> (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558.....	20

Statutes

Code of Civil Procedure § 382.....	2, 7
Labor Code § 2699(i).....	3

Rules

California Rules of Court, Rule 3.769	9
---	---

Treatises

Herbert B. Newberg & Alba Conte, <i>Newberg on Class Actions</i> (“ <i>Newberg</i> ”) § 3:13 (4th ed. 2002)	8, 10
<i>Manual For Complex Litigation</i> (Third) § 30.41 (1995).....	11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Samuel Johnson and Jazmin Valerio seek preliminary approval of a
4 \$436,000.00 wage-and-hour class action settlement on behalf of approximately 71 current and
5 former non-exempt employees employed by Defendants The J.G. Wentworth Company and
6 Settlement Funding, LLC (“Defendants”) in California at any time from December 1, 2018,
7 through December 4, 2023 (the “Class Period”).

8 During the course of litigation, Plaintiffs put Defendants on notice of various wage and
9 hour claims, including providing Defendants with evidence of unpaid wage violations. As a
10 result of the action and putting Defendants on notice of the claims, Defendants conducted an
11 investigation and thereafter directly paid a certain Class Members a total of \$186,000 in unpaid
12 wages and meal/rest break penalties (the “Prior Payment”). Defendants did not require a release
13 for these payments to certain Class Members (who are referred to as the “Previously Paid
14 Settlement Class Members”). Although there were only 15 Previously Paid Settlement Class
15 Members, these individuals collectively worked the vast majority of all workweeks worked by
16 all Class Members.

17 After Defendants issued the \$186,000 Prior Payment, the Parties engaged in mediation
18 with Glenn Lerman on July 11, 2023, and reached a resolution of all remaining claims and
19 issues. Under the terms of the Settlement Agreement,¹ Defendants will receive a credit for the
20 \$186,000 Prior Payment, and will pay an additional \$250,000 to settle the remaining claims,
21 resulting in a Gross Combined Payment of \$436,000.

22 The following is a breakdown reflecting how the funds are allocated under paragraph 49
23 of the Settlement Agreement:

24
25
26
27
28

29 ¹ Attached as Exhibit 1 to the Declaration of Brian Mankin (“Mankin Decl.”).

<i>Gross Combined Amount</i>	\$ 436,000.00
Credit for the Prior Payment	\$ 186,000.00
Attorneys' Fees (30%)	\$ 130,800.00
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 25,000.00
Class Representative Service Awards	\$ 15,000.00
<i>Net Settlement Amount</i>	\$ 53,200.00

The 15 Previously Paid Settlement Class Members have already been paid for their claims and thus are not eligible for Individual Class Payments, but they will be eligible to receive \$250 each for releasing the Released Class Claims (\$3,750 total from the Net Settlement Amount), and if they qualify as an Aggrieved Employees, they will also be eligible to receive an Individual PAGA Payment. (S.A. ¶ 49(c)).

The remainder of \$49,450 will be paid to approximately 55 Class Members, who will receive an average payment of approximately \$900 each (\$49,450 / 55). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period. (S.A. ¶ 49(h)).

The Aggrieved Employees will receive a share of the \$6,250 PAGA Penalties (25% of the total \$25,000 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period. (S.A. ¶ 49(g)).

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

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1 **II. BACKGROUND**

2 **A. THE CLASS AND AGGRIEVED EMPLOYEES**

3 The Class is defined as follows:

4 All current and former non-exempt employees employed by
5 Defendants The J.G. Wentworth Company and Settlement Funding
6 LLC in California at any time during the Class Period (which is
7 December 1, 2018, through December 4, 2023). (S.A. ¶ 5).

8 The Aggrieved Employees are defined as follows:

9 All current and former non-exempt employees employed by
10 Defendants The J.G. Wentworth Company and Settlement Funding
11 LLC in California at any time during the PAGA Period (which is
12 December 1, 2021, through December 4, 2023). (S.A. ¶ 6).

11 **B. PROCEDURAL HISTORY**

12 Plaintiff Johnson submitted a letter to the Labor Workforce Development Agency (the
13 “LWDA”) for civil penalties under the Private Attorney General Act of 2004 (the “PAGA”) on
14 December 1, 2022, and simultaneously sent a letter to Defendant requesting the production of
15 personnel and timekeeping records in order to further evaluate Plaintiff’s wage and hour claims.
16 (Mankin Decl. ¶ 13).

17 That same day, while the 65-day waiting period was running to commence PAGA claims,
18 Plaintiff Johnson filed a class action complaint alleging causes of action against Defendants for
19 (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal
20 periods; (4) failure to provide rest breaks; (5) failure to timely pay final wages; (6) failure to
21 provide accurate itemized wage statements; and (7) unfair and unlawful competition. The
22 LWDA did not assert jurisdiction over the PAGA claims, so on February 15, 2023, Plaintiff
23 Johnson filed a first amended complaint adding PAGA claims. (Mankin Decl. ¶ 14).

24 Defendants retained counsel and immediately began to defend the case. Thereafter, in or
25 around March 2023, Plaintiffs’ counsel was informed that Defendant was making individual
26 payments for the alleged violations to the Previously Paid Settlement Class Members. Plaintiff
27 argued that the payments did not eliminate the ability of those individuals to also recover some
28 amounts through this litigation, and vowed to continue with litigation as to these individuals, as

1 well as all 55 individuals who did not receive a payment. Ultimately, the Parties agreed to attend
2 private mediation. (Mankin Decl. ¶ 15).

3 On or about May 6, 2023, Plaintiff Jazmin Valerio formally retained Plaintiffs' counsel
4 and agreed to serve as a Class Representative in this matter. (Mankin Decl. ¶ 16).

5 In preparation for the mediation, the Parties informally exchanged documents and
6 information that allowed both sides to calculate the potential damages and evaluate potential risk,
7 including policies and procedures pertaining to each claim alleged, and statistics relating to the
8 number of current and former employees, number of shifts, pay periods worked and other things.
9 Defendants also provided their written policies and practices and a robust sampling of payroll
10 and timekeeping records for Class Members. This information enabled both parties to take a
11 deep dive into the claims. Additionally, during this process, Plaintiffs and their counsel
12 analyzed, researched, and investigated the potential issues, including matters related to the
13 calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 17).

14 On July 11, 2023, Plaintiffs and Defendants participated in mediation before Glenn
15 Lerman, Esq., a well-respected wage-and-hour mediator. At the conclusion of mediation and
16 extensive arms-length negotiations, the Parties reached a global settlement and thereafter entered
17 into Settlement Agreement, which requires Plaintiffs to file a Second Amended Complaint to
18 encompass all claims alleged and resolved at mediation. The Parties are concurrently submitting
19 a stipulation to file the proposed Second Amended Complaint. (Mankin Decl. ¶ 18). Plaintiffs
20 now seek the Court's preliminary approval of the Settlement.

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

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

23 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

24 The Settlement is non-reversionary and will result in Individual Class Payments being
25 paid to Class Members without the need to submit a claim form or take any affirmative action.
26 The Gross Combined Payment includes (1) the \$186,000 Prior Payment; (2) a flat \$250 Payment
27 to the Previously Paid Class Members; (3) Plaintiffs' attorneys' fees and costs, as approved by
28 the Court; (4) a service award of \$7,500 each to Plaintiff Johnson and Plaintiff Valerio, subject to

1 approval by the Court; (4) settlement administrator expenses, not to exceed \$6,000; (5) a \$25,000
2 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code
3 § 2699(i) and 25 percent to the Aggrieved Employees; and (6) the aggregate of all Individual
4 Class Payments of the Participating Class Members. Defendants will separately pay their share
5 of employer payroll taxes and withholdings. (S.A. ¶ 49).

6 **B. NOTICE PROCEDURES**

7 The proposed Class Notice will be provided to the Class Members showing the estimated
8 amount that each Class Member will receive, the number of Work Weeks credited as a Class
9 Member and the number of Weeks Worked as an Aggrieved Employee. Within 14 calendar days
10 after entry by the Court of its Order of Preliminary Approval, Defendants shall provide the
11 Settlement Administrator with a list containing Class Member names, addresses, phone numbers,
12 Social Security Numbers, Weeks Worked during the Class Period and Pay Periods Worked
13 during the PAGA Period (the “Class Data”). (S.A. ¶ 63).

14 Within 10 calendar days of receipt of the Class Data, the Settlement Administrator shall
15 calculate the numbers for each Class Member, populate the Class Notice, and send each Class
16 Member the Class Notice via first-class, United States mail. (S.A. ¶ 65).

17 In the event that any Class Notice mailed to a Class Member is returned as having been
18 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
19 search and seek an address correction for such Class Member(s), and a second Class Notice will
20 be sent to any new or different address obtained. (S.A. ¶ 66).

21 **C. EXCLUSION AND OBJECTION PROCEDURES**

22 Class Members who do not timely opt-out of the Settlement will be deemed to participate
23 in the Settlement and shall become a Participating Class Member without having to submit a
24 claim form or take any other action. To opt-out of the Settlement, the Class Member must
25 submit a written Request for Exclusion to the Settlement Administrator no later than 30 days
26 after being mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶ 70(a)). Of
27 course, any Request for Exclusion that is not postmarked by the Response Deadline will be
28 invalid.

1 The Class Notice shall inform Class Members of their right to object to the Settlement.
2 Any Participating Class Member who wishes to object to the Settlement may submit a written
3 objection to the Settlement Administrator no later than the Response Deadline. (S.A. ¶ 70(b)).

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

5 The Previously Paid Class Members have already received a share of the Prior Payment
6 for the alleged claims, and were not required to sign a release agreement. Thus, under the
7 Agreement, each Previously Paid Class Members shall be entitled to a Flat \$250 Payment.
8 Previously Paid Class Members are not eligible to receive an Individual Class Payment. (S.A. ¶
9 49(c)).

10 After deducting (1) \$186,000 Prior Payment; (2) the Flat \$250 Payment to each
11 Previously Paid Class member; (3) Attorneys' Fees and Costs Award, (4) the Service Award to the
12 Class Representatives; (5) the Settlement Administrator Costs, and (6) PAGA Penalties from the
13 Gross Combined Payment, the remainder shall form the Net Settlement Amount for distribution
14 as Individual Class Payments to Class Members who are not Previously Paid Class Members.
15 (S.A. ¶ 49).

16 Individual Class Payments will be calculated and apportioned from the Net Settlement
17 Amount based on the number of Weeks Worked by a Class Member during the Class Period.
18 Specific calculations of Individual Class Payments will be made as follows:

- 19 • Defendants will calculate the total number of Weeks Worked by
20 each Class Member during the Class Period and the aggregate total
21 number of Weeks Worked by all Class Members during the Class
22 Period.
- 23 • To determine each Class Member's estimated Individual Class
24 Payment, the Settlement Administrator will use the following
25 formula: The Net Settlement Amount will be divided by the
26 aggregate total number of Weeks Worked, resulting in the
27 "Workweek Value." Each Class Member's Individual Class
28 Payment will be calculated by multiplying their total number of

Weeks Worked during the Class Period by the Workweek Value.

- Individual Class Payments will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings and deductions.
- The entire Net Settlement Amount will be disbursed to Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Class Payment for each Participating Class Member according to the number of Weeks Worked, so that the amount actually distributed equals 100% of the Net Settlement Amount.

(S.A. ¶ 49(h)).

Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the \$6,250 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Week Worked basis. (S.A. ¶ 49(g)).

The Class Notice will inform Class Members of his/her estimated Individual Class Payment and the number of Weeks Worked during the Class Period and during the PAGA Period, or alternatively, if the Class Member is eligible to receive a Flat \$250 Payment and Individual PAGA Payment. Class Members may dispute their Weeks Worked by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 68).

As noted, after deducting \$3,750 from the Net Settlement Amount to the Previously Paid Class Members, the remaining Class Members will receive an average payment of approximately \$900 (\$49,450 / 55). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period. In addition, the Aggrieved Employees will receive a share of the \$6,250 PAGA Penalties allocation based on Weeks Worked by each Aggrieved Employee during the PAGA Period.

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1 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

2 Defendants are required to deposit the Settlement Amount, along with the employers’
3 share of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
4 “Effective Date” and these funds will be used to pay: (1) Individual Class Payments or Flat \$250
5 Payment to the Participating Class Members, (2) the Individual PAGA Payments to the
6 Aggrieved Employees, (3) the payment to Class Counsel for the Attorneys’ Fees and Costs
7 Award, (4) any Service Payment to the Class Representatives, (5) the payment to the LWDA for
8 PAGA Penalties, and (6) the Settlement Administration Costs. Within 10 calendar days after
9 receiving the funds, the Settlement Administrator shall issue payments to cover all court-
10 approved payments. (S.A. ¶ 71-72).

11 Class Members will have 180 days to cash the settlement check. If a Class Member fails
12 to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the
13 California State Controller in the name of the Class Member. (S.A. ¶ 73).

14 **F. TAX TREATMENT**

15 The Parties agree that Individual Class Payments and Flat \$250 Payments will be
16 allocated as follows: one-third will be allocated as wages subject to withholding of all applicable
17 local, state and federal taxes; and two-thirds will be allocated for interest and statutory penalties
18 (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes will be
19 withheld. The Settlement Administrator will issue to each Participating Class Member an
20 Internal Revenue Service Form W-2 and comparable state forms with respect to the wage
21 allocation and a Form 1099 with respect to the penalties and interest allocations. Additionally,
22 the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil
23 penalties and shall be reported as required on an IRS Form 1099. Defendants will separately
24 pay its share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 49(i)).

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

26 In exchange for these payments, the Settlement Agreement at ¶ 32, 50 provides that the
27 Participating Class Members will release the Released Parties of:
28

1 “all claims which were pled or reasonably could have been pled
2 arising out of the same facts the Operative Complaint and the PAGA
3 notice, including, but not limited to: (a) failure to pay minimum
4 wages, (b) failure to pay overtime wages, (c) failure to provide meal
5 periods, (d) failure to provide rest breaks, (e) failure to failure to
6 timely pay wages upon separation of employment, (f) failure to
7 provide accurate itemized wage statements, (g) unfair and unlawful
8 competition, and (h) all other claims for statutory penalties based on
9 the facts or claims alleged in the Operative Complaint. The time
10 period governing the Released Class Claims shall be any time during
11 the Class Period.”

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

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

18 The Settlement Agreement at ¶ 33 also defines the “Released PAGA Claims” as follows:

19 “any and all PAGA claims that Plaintiffs alleged against the
20 Released Parties based on the facts stated in the relevant LWDA
21 notice letters and only to the extent that they are alleged in the
22 operative Complaint, including all PAGA claims seeking civil
23 penalties premised upon: (1) failure to pay minimum wages, (2)
24 failure to pay overtime wages, (3) failure to provide meal periods,
25 (4) failure to provide rest breaks, (5) failure to timely pay wages
26 each period, (6) failure to timely pay wages upon separation of
27 employment, (7) failure to provide accurate itemized wage
28 statements, and (9) 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. The time period governing the Released
PAGA Claims shall be any time during the PAGA Period.”

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
that individual will still be subject to the PAGA Released Claims to the fullest extent permitted
by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 54).

///

1 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS**
2 **APPROPRIATE FOR 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, the Parties request that this Court provisionally certify the
14 Class, 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 71 Class Members that are easily identifiable and fall within the defined
23 Class. Thus, Plaintiffs’ proposed Class meets the ascertainability and numerosity requirements.

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

25 **1. 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, Plaintiffs contend that the Class

1 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,
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 Plaintiffs’ 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). Again, the Parties dispute whether
8 Plaintiffs’ claims are typical of the Class for the purposes of any continued litigation of the
9 Action, but agree for the purposes of this settlement only, that Plaintiffs assert claims regarding
10 Defendants’ pay policies, meal and rest break practices, wage statements, and the provisions
11 governing the timely and complete payment of wages, which are at the core of the lawsuit.

12 3. Adequacy of Representation

13 The proposed class representative must establish that he or she will adequately represent
14 the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
15 546. Specifically, Plaintiffs are adequate to represent the class because they were employed by
16 Defendant during the Class Period, experienced the same wage and hour practices as the rest of
17 the Class, understood their duties as a Class Representative, have been willing to undergo the
18 risks of litigation, and have no conflict of interest.

19 Adequacy may be established by the fact that counsel are experienced practitioners. See
20 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
21 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive
22 experience in wage and hour class actions. (Mankin Decl. ¶¶ 2-6).

23 4. Superiority

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

28 ///

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. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.
15 Nevertheless, in considering a potential settlement for approval, a court is not to turn the
16 approval hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
17 conclusions on the contested issues of fact and law which underlie the merits of the dispute.”
18 *Officers for Justice*, 688 F.2d at 625.

19 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
20 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable”
21 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
22 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
23 after determining that it is ““fair, adequate and reasonable,”” considering factors such as the
24 ““risk, expense, [and] complexity”” of continued litigation) (citations omitted). The Court enjoys
25 broad discretion in making its fairness determination, and should consider factors including, but
26 not limited to:
27
28

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

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

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

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

25 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
26 **NEGOTIATIONS**

27 The settlement was the product of extensive arm's length negotiations between counsel
28 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
professional, the settlement negotiations were adversarial and non-collusive in nature. The

1 settlement reached is the product of substantial effort by the parties and their counsel. Although
2 Plaintiffs and their counsel believed that there was a possibility of certifying the claims, they
3 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
4 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
5 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
6 prevailed on any of the defenses, the employees may not have received any monetary recovery.

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

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

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

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

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

25 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
26 significant legal and factual grounds for defending this action exist. First, in addition to
27 disputing the merits of Plaintiffs’ claims, Defendants strongly disputed that Plaintiffs could
28 obtain class certification, arguing a lack of commonality of the legal claims and injuries.

1 Defendant further argued that it complied with the applicable law and that any purported
2 deviations therefrom were individualized in nature, thereby limiting Plaintiffs' ability to certify
3 the class. While Plaintiffs assert that this is a suitable case for certification, they realize that there
4 is always a significant risk associated with class certification proceedings, which could
5 significantly limit the claims that she could pursue on a class basis.

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

10 Based upon preliminary data obtained through informal discovery and information
11 exchanges, Plaintiffs' counsel estimated the following data points through the date of mediation:
12 (1) 71 class members, (2) 50 class members that separated from employment during the 3-year
13 lookback for Labor Code § 203, (3) 2,200 workweeks, (4) 10,223 shifts worked, and (4)
14 approximately 615 wage statements during the PAGA Period. (Mankin Decl. ¶ 21).

15 Here, there were three categories of claims alleged by Plaintiffs: (1) unpaid wage claims
16 under various theories, (2) meal and rest break violations, and (3) derivative claims for waiting
17 time and wage statement penalties due to the other alleged violations. (Mankin Decl. ¶ 22).

18 As to the unpaid wage claims, Plaintiffs alleged two distinct theories of liability. First,
19 Plaintiffs alleged that Defendants instructed Plaintiffs and Class Members to change their time
20 entries for the Defendants to avoid paying overtime premiums. Instead of paying overtime
21 premiums, the Defendants instructed the Plaintiff and Class Members that they could take time
22 off on a subsequent day and record the time as regular, base rate hours. Defendants even named
23 this illegal practice, "flex" time. However, since the pressure to meet quotas was never off, it was
24 unclear how the Class Members could even "flex" the overtime hours to sometime later without
25 hurting their bottom line later. This had an added effect of decreasing overtime premiums that
26 should have been paid on commissions earned during weeks where the overtime was actually
27 worked, resulting in a systematic underpayment to the Class. Second, Plaintiffs alleged that
28 Defendants failed to pay proper overtime when Defendants failed to account for off-the-clock

1 work before and after each shift. In total, Plaintiffs’ counsel estimated the maximum value of
2 these unpaid wages to be approximately \$357,524. (Mankin Decl. ¶ 23).

3 However, Defendants vehemently opposed these unpaid wage claims on the merits and as
4 to the propriety of class certification. For example, as to the unpaid “flex time” claim,
5 Defendants argued that that Class Members were not required to work any overtime and were
6 discouraged from doing so. Moreover, in addition to its other defenses on the merits, Defendants
7 argued that Plaintiffs would be unable to meet its evidentiary burden at summary judgment
8 and/or trial because Plaintiffs and the Class would be unable to introduce evidence as to the
9 amount of unpaid wages (since the claims are not apparent from the timekeeping records alone),
10 thus defeating liability. Additionally, Defendant claimed that 63 of the 71 current and former
11 Class Members signed arbitration agreements precluding Plaintiffs from representing them in a
12 class action. Finally, Defendant argued that after the case was filed, they paid out \$186,000 to 15
13 employees who worked 1,618 of the 2200 workweeks at issue. Due to these defenses and
14 arguments, Plaintiffs assigned a 30% risk for the unpaid wage claims at the class certification
15 stage. And, due to the defenses as to the merits, Plaintiff assigned a 20% risk on the wage claim.
16 In sum, Plaintiffs’ counsel calculated the risk-adjusted value of the unpaid wage claims as
17 \$200,213.00. (Mankin Decl. ¶ 24).

18 Plaintiffs also alleged meal and rest break claims against Defendants. Given the total
19 number of shifts at issue (an estimate of 10,223), and when incorporating violation rates from
20 expert review of the timekeeping records and other evidence, Plaintiffs’ counsel estimated a
21 36.3% violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 3,707
22 alleged meal violations and 5,112 alleged rest break violations. This established a maximum
23 potential value for these claims of \$164,474 (8,819 violations multiplied by the average hourly
24 rate of \$18.65 as the applicable premium rate under § 226.7). (Mankin Decl. ¶ 25).

25 However, Defendants raised numerous arguments in response to this claim, including that
26 it maintained fully compliant written policies and specifically authorized the Class Members to
27 take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
28 short/late break. Therefore, Defendants asserted that a fact-finder would have to determine for

1 each Class Member whether a break was missed and why, and why a break was noncompliant or
2 nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.
3 These defenses are factored into Plaintiffs' analysis in two ways. First, these issues raise
4 questions regarding whether the meal and rest break claims could be certified, and second these
5 defenses also go toward the merits given the evidentiary question of proving the number of meal
6 and rest violations. As such, Plaintiffs placed a 30% risk on the merits and at class certification
7 on the meal break claim (\$33,875 risk adjusted value), and a 50% risk on the rest break claim at
8 each stage (\$23,835 risk adjusted value), resulting in a risk-adjusted value for the combined meal
9 and rest break claims at \$57,710. (Mankin Decl. ¶ 26).

10 Finally, Plaintiffs alleged claims for waiting time penalties and wage statement
11 violations. But these claims were entirely derivative of the claims above, meaning that they only
12 had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum
13 values for these claims were as follows: (1) \$237,788 for waiting time penalties [50 former
14 employees x \$18.65 per hour x 8.50 hours per day x 30 days], and (2) \$58,500 for wage
15 statement violations [615 wage statements at the \$50/\$100 formula under § 226(e)]. But
16 Defendants raised a variety of defenses to these derivative claims that impacted the valuation.
17 Namely, as to the wage statement violations, Defendants argued that its wage statements did not
18 violate Labor Code § 226 and, even if there was a "technical" violation, that Plaintiffs would be
19 unable to prove the required "knowing and intentional" and "injury" elements. Based on these
20 facts and defenses, Plaintiffs placed a nominal 20% risk at class certification (mirroring the
21 claims on which the wage statement claim was based) and estimated another 20% risk the merits,
22 leading to a risk-adjusted value of \$37,440 for the wage statement claims. (Mankin Decl. ¶ 27).

23 Then, as to the waiting time penalty claim, Plaintiffs' valuation had to account for the
24 fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
25 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
26 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
27 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
28 the merits, Plaintiff would have to prove that the violations (if any existed) were "willful" under

1 the meaning of Labor Code § 203. And, here, Defendants argued that there could not be a
2 finding of a “willful” violation since they had compliant written policies and any deviations
3 therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiffs’ counsel
4 applied a 20% risk at class certification and a 20% risk on the merits, leading to a risk-adjusted
5 value of \$152,184. (Mankin Decl. ¶ 28).

6 In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate
7 the risk-adjusted class recovery as follows:

8	• Unpaid Wage Claims	\$ 200,213
9	• Meal and Rest Break Claims	\$ 57,710
10	• Wage Statement Claims	\$ 37,440
11	• Waiting Time Penalty Claims	<u>\$ 152,184</u>
12	• Total Risk Adjusted Penalties and Damages	\$ 447,548

13 (Mankin Decl. ¶ 29).

14 And while the PAGA penalties had a maximum value in the mid six figures, this fails to
15 acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and
16 circumstances of a particular case” and if “to do otherwise would result in an award that is
17 unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover,
18 Defendants argued against the merits of the underlying claims and particularly that the
19 “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and
20 rendered any such penalties as uncertain. Defendants also argued it is improper to stack civil
21 penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that
22 this settlement is fair and reasonable. (Mankin Decl. ¶ 30).

23 **E. PLAINTIFFS’ COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION**

24 The view of the attorneys actively conducting the litigation is entitled to significant
25 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
26 Cal. 1980) 87 F.R.D. 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must take into account “the
27 experience and view of counsel”).
28

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

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

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

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

25 The Court has wide discretion in approving the means of providing notice, so long as the
26 class representative "provide(s) meaningful notice in a form that should have a reasonable
27 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
28 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be

1 disseminated directly to the class members by first class mail by the settlement administrator,
2 since Defendant has the last known addresses of all class members and the Settlement
3 Administrator will perform a skip trace and update those addresses for any class notices that are
4 returned and re-send the notice.

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

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

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

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

27 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
28 of up to \$20,000 in litigation costs, along with \$130,800 in attorneys’ fees (30% of the Gross

Combined Payment). See, e.g., *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class action litigation establishes a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: “[f]ee awards in class actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

Once the Court grants preliminary approval of the Settlement Agreement and Class Notice is disseminated, Plaintiffs’ counsel will submit a comprehensive request for attorneys’ fees and costs with its final approval motion.

I. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE

The Settlement Agreement provides an incentive award payment of \$7,500 each to Samuel Johnson and Jazmin Valerio as Class Representatives, which is reasonable given the large recovery Class Members will receive on average, as well as the time and effort they devoted to this case. Their efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Defendants’ compensation plan; participating in phone calls to discuss litigation and settlement strategy; making themselves available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement documents. The Class Representatives also assumed significant risk in bringing this litigation—namely, had they lost, they could have been ordered to pay Defendants’ costs.

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

**VI. THE COURT SHOULD APPOINT PHOENIX SETTLEMENT
ADMINISTRATORS AS SETTLEMENT ADMINISTRATOR**

Subject to the Court’s approval, the Parties stipulated to Phoenix Settlement Administrators serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$6,000. (Mankin Decl. ¶ 42; Exhibit 4).

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 120 days after the Preliminary Approval Date, as follows:

January 5, 2024	Preliminary Approval (PA) hearing
January 19, 2024 (<i>14 days after PA</i>)	Deadline for Defendants to provide Class Data to the Settlement Administrator.

January 29, 2024 (<i>10 days after receipt of data</i>)	Deadline for the Settlement Administrator to complete first mailing of the Notice Packet to all Class Members
February 28, 2024 (<i>30 days after mailing Class Notice</i>)	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 attorneys' 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 any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD (Approximately May 7, 2024 - 120 days after Preliminary Approval)	Final Approval Hearing.

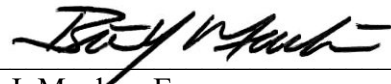
VIII. CONCLUSION

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

Dated: December 8, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On December 8, 2023, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

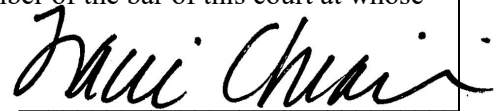
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 8, 2023, Riverside, California.

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



Tracie Chiarito, Declarant

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