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

MARLENE MOLINA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

U.S. BANK NATIONAL ASSOCIATION;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2300344
c/w CIVSB2302908
*[Assigned to Hon. Jessica Morgan, Dept S26, for
all purposes]*

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

Hearing

Date: May 22, 2024

Time: 8:30 a.m.

Dept.: S26

Complaint filed: January 24, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 22, 2024, at 8:30 a.m. or as soon thereafter as the
matter may be heard by the Honorable Jessica Morgan, in Department S26 of the San Bernardino
County Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiff
Marlene Molina, individually and on behalf of all others similarly situated, will and hereby does
move the Court for entry of an Order preliminarily approving the Parties' class action settlement,
including:

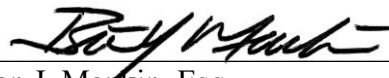
1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
4. Preliminarily approving the class action settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the settlement; and
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 Declarations of Plaintiff's counsel (Brian Mankin and Peter Carlson) and Plaintiff Marlene Molina, as well as the Class and PAGA Settlement Agreement and Release; the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and other evidence as may be presented to the Court at the hearing of this motion.

Dated: April 30, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Marlene Molina seeks preliminary approval of a \$4,550,000 wage-and-hour
4 class action settlement on behalf of all current and former nonexempt employees employed by
5 U.S. Bank in California who recorded hours worked during at least one Workweek at any time
6 from January 24, 2019, through Preliminary Approval (the “Class Period”).

7 Under the terms of the Settlement Agreement¹, Defendant will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorney’s fees not to exceed one-third of the
9 Gross Settlement Amount, litigation expenses not to exceed \$30,000, Settlement Administrator
10 Costs of \$50,500, PAGA penalties of \$200,000 (with 75% to the LWDA and 25% to the
11 Aggrieved Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff
12 Marlene Molina (“Class Representative”). (S.A. ¶ 3.2 et seq.)

13 After all Court-approved deductions from the Settlement Amount, it is estimated that
14 \$2,742,833.33 will be available to pay the Class Members, as follows:

15

<i>Gross Settlement Amount</i>	\$ 4,550,000.00
Attorneys’ Fees (1/3)	\$ 1,516,666.67
Litigation Costs (not to exceed)	\$ 30,000.00
Administrator Costs (not to exceed)	\$ 50,500.00
PAGA Penalties	\$ 200,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 2,742,833.33

16
17
18
19

20 Assuming approximately 14,000 Class Members, the average payment to each class
21 member will be almost \$200 each. Of course, the actual payment will be calculated on a pro-rata
22 basis according to the number of Workweeks during the Class Period, which are weighted
23 depending on a number of factors including whether the Class Members: received a payment
24 from prior class settlements; were considered “home-based”; and/or are former employees.
25 Further, the Settlement includes an Escalator Clause in the event that the total Workweek count
26 exceeds Defendant’s projections at mediation by more than 10% (S.A. ¶ 9). In addition, the
27

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

1 Aggrieved Employees will receive a share of the \$50,000 PAGA Penalties (25% of the total
2 \$200,000 PAGA allocation), calculated pro-rata based on approximate Weeks Worked during
3 the PAGA Period. (S.A. ¶ 3.2.5).

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

12 **II. BACKGROUND**

13 **A. THE SETTLEMENT CLASS**

14 The Class is defined as follows:

15 All current and former nonexempt employees employed by U.S.
16 Bank in California who recorded hours worked during at least one
17 Workweek during the Class Period. (S.A. ¶ 1.5).

18 **B. PROCEDURAL HISTORY**

19 Plaintiff submitted a letter to the Labor Workforce Development Agency (the "LWDA")
20 for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and
21 simultaneously sent a letter to Defendant requesting the production of personnel and timekeeping
22 records in order to further evaluate her wage and hour claims. (Mankin Decl. ¶ 13).

23 That same day, Plaintiff filed a class action complaint in this action. Once the 65-day
24 exhaustion period expired to bring PAGA claims, Plaintiff then filed a separate action in this
25 Court for PAGA Penalties, which was designated as case number CIVSB2302908. The Court
26 consolidated the initial class complaint with the later filed PAGA complaint, which collectively
27 allege causes of action for: (1) failure to pay minimum and regular wages (including but not
28 limited to pre and post shift work, calculation of the regular rate, computer boot up, sick pay and

1 other wage violations), (2) failure to pay overtime wages, (3) failure to provide compliant meal
2 periods, (4) failure to provide compliant rest breaks, (5) failure to reimburse business expenses,
3 (6) failure to pay vested vacation, (7) failure to timely pay wages each period, (8) failure to
4 timely pay all wages owed upon separation of employment, (9) failure to provide accurate
5 itemized wage statements; (10) unfair and unlawful competition, and (11) related PAGA claims.
6 (Mankin Decl. ¶ 14).

7 Defendant retained counsel and immediately began to defend the case, including alleging
8 in the Joint Initial Status Conference Report that “Defendant generally denies the allegations in
9 Plaintiff’s Complaint, and asserts the affirmative defenses set forth in its Answer.” Thereafter,
10 Plaintiff served formal written discovery, including special interrogatories, form interrogatories,
11 requests for admissions and request for production of documents. Plaintiff also demanded the
12 names and contact information of all class members and aggrieved employees and provided a
13 Belaire Notice to Defendant. In turn, Defendant served formal written discovery on Plaintiff and
14 noticed Plaintiff’s deposition. However, prior to engaging in further discovery and contested
15 class certification, the Parties agreed to submit the matter to mediation. (Mankin Decl. ¶ 15).

16 In preparation for the mediation, the Parties informally exchanged documents and
17 information that allowed both sides to calculate the potential damages and evaluate potential risk,
18 including policies and procedures pertaining to each claim alleged, and statistics relating to the
19 number of current and former employees, number of shifts, pay periods and weeks worked and
20 other things. Defendant also provided its written policies and practices and a robust sampling of
21 payroll and timekeeping records for Class Members, which included hundreds of pages of
22 documentation and over 1,250,000 rows of excel data. This information enabled both parties to
23 take a deep dive into the claims. Additionally, during this process, Plaintiff and his counsel
24 analyzed, researched, and investigated the potential issues, including matters related to the
25 calculation of damages, trial, and appellate issues and risks. Plaintiff also retained an expert
26 (Sean Berger of Berger Consulting Group) to perform a statistical analysis of the claims and
27 violations. (Mankin Decl. ¶ 16).

1 On January 19, 2024, Plaintiff and Defendant participated in mediation before Steve
2 Rottman, a highly regarded and experienced wage-and-hour class action mediator. The matter
3 resolved at mediation pursuant to a mediator's proposal, which was accepted by the Parties.
4 (Mankin Decl. ¶ 17). The Parties now seek the Court's preliminary approval of the Settlement.

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

6 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
7 However, Defendant vigorously contested and denied Plaintiff's material allegations on the
8 merits and as to the propriety of a class action or PAGA representative action.

9 One of the primary claims in this action was based on Defendant's alleged failure to pay
10 all required wages. And Plaintiff alleged that this occurred through several distinct violations.

11 *First*, Plaintiff claimed that she and the Class Members were required to perform off-the-
12 clock work due to a computer-based timekeeping system that was not accessible until employees
13 completed various boot-up tasks (at the beginning of shifts) and through which employees had to
14 clock out and then perform various shut down tasks (at the end of shifts). However, Defendant
15 denied any liability for this claim on two fronts by: (1) arguing that Class Members were
16 responsible for recording and entering their own timekeeping accurately, and that there were no
17 system restraints preventing this; thus, if a Class Member entered 8:00 a.m. as the "start time" in
18 the timekeeping, Defendant had no actual or constructive knowledge of work performed prior to
19 that time, and no liability attaches, and (2) offering evidence that, for a portion of the relevant
20 timeframe, Defendant paid the Class Members an extra two minutes per shift worked to account
21 for this "computer boot up time" thus negating any potential violations.

22 *Second*, Plaintiff also alleged that Defendant used a "rounding" policy that only paid the
23 Class in quarter- or half-hour increments. But Defendant vehemently opposed these claims and
24 argued that it had a written policy that strictly prohibited any off-the-clock work, that the
25 timekeeping systems allowed Class Members to record time to the minute, and that there was no
26 rounding policy that deprived the Class of wages.

27 *Third*, Plaintiff alleged that Defendant failed to pay all vested vacation wages owed to
28 departing employees, in violation of Labor Code § 227.3, due to a practice that paid departing

employees at the base rate rather than at the proper “final rate” as required. Defendant also opposed this claim and, moreover, argued that Plaintiff’s interpretation of Labor Code § 227.3 was incorrect and that Defendant did not violate the requirements of the statute.

Fourth, Plaintiff brought claims for underpaid overtime, sick pay, and meal premiums based on the fact that Defendant paid the Class on an hourly basis plus other nondiscretionary compensation (such as shift differentials, COVID premiums, and bonuses), yet Defendant failed to properly include this compensation in the regular rate and other calculations. However, Defendant disputed this claim and argued that it properly calculated and paid all required wages, including by incorporating nondiscretionary compensation into the necessary calculations.

Plaintiff also argued that the Class Members were often denied compliant meal and rest breaks due to the nature of the work. However, Defendant argued that it provided and made available meal and rest breaks to all employees, and any employee who did not take a meal or rest break did so entirely of his or her own volition. In this regard, Defendant produced its written policies and practices, which it argued show full compliance with the law. As such, Defendant argued that these claims were without merit because, for each violation, a fact-finder would have to determine why a break was noncompliant/nonexistent, because if it was by the employee’s choice, no liability attaches to the Defendant.

Plaintiff also alleged various other Class and PAGA claims, such as the failure to reimburse business expenses, failure to timely pay all wages owed upon termination, failure to provide accurate itemized wage statements, and other claims related to the alleged violations mentioned above. However, Defendant argued that these other claims, as well as the “derivative” claims, have no merit.

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

D. PLAINTIFF HAS CLAIMS THAT ARE COMMON AND TYPICAL OF THE CLASS

As outlined in the Declaration of Plaintiff Marlene Molina (“Molina Decl.”), Plaintiff asserts that she is an adequate class representative that has claims that are common and typical of

the Class. Notably, Plaintiff asserts that her claims are typical of the other Class Members because all Class Members were subjected to the Defendant's uniform practices in regard to payment of wages, calculation of the regular rate of pay and overtime, meal and rest breaks, vacation pay, wage statements, along with other issues. For example, Plaintiff earned a base hourly rate of pay plus additional nondiscretionary compensation during her employment, just as the other Class Members did – and Plaintiff asserts that Defendant applied a uniform class-wide practice as to how overtime, sick pay, and meal premiums were paid on such occasions. Also, Plaintiff asserts that she, like the other Class Members, was required to incur various expenses to perform her duties for Defendant yet was not reimbursed for those expenses. Similarly, at the start of every shift, Plaintiff asserts that she, like the other Class Members, was required to go through various computer “boot up” tasks before being allowed to clock in, and she was not paid for that time – just like Defendant's other employees. (Molina Decl. ¶ 4).

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The \$4,550,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) a Class Counsel Fee Payment not to exceed one-third of the Settlement Amount and Litigation Expenses not to exceed \$30,000, as approved by the Court; (2) a Class Representative Service Payment of \$10,000, subject to approval by the Court; (3) Administrator Expenses not to exceed \$50,500; (4) PAGA Penalties of \$200,000, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual Class Payments of the Participating Class Members. (S.A. ¶ 3.2 and subparts). Defendant will separately pay its share of employer payroll taxes and withholdings through the Administrator. (S.A. ¶ 3.1).

B. NOTICE PROCEDURES

The proposed Class Notice will be provided to the Class Members showing the estimated amount that each Class Member will receive and the credited number of Workweeks during the

1 Class Period and pay periods during PAGA Period (See Exhibit 2 to the Mankin Decl.). Within
2 21 days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide
3 the Settlement Administrator with a list of Class Members containing names, addresses,
4 telephone numbers, Social Security Numbers, and the total Weeks Worked in the Class and
5 PAGA Periods (the “Class Data”). (S.A. ¶¶ 1.8 and 4.2).

6 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
7 the number of Weeks Worked for each Class Member, populate the Class Notice for each, and
8 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 7.4.2).

9 In the event that any Class Notice mailed to a Class Member is returned as having been
10 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
11 search and seek an address correction for such Class Member(s), and a second Class Notice will
12 be sent to any new or different address obtained. (S.A. ¶ 7.4.3).

13 **C. EXCLUSION AND OBJECTION PROCEDURES**

14 Class Members who do not timely Opt-Out of the Settlement will be deemed to
15 participate in the Settlement and shall become a Participating Class Member without having to
16 submit a claim form or take any other action. To Opt-Out of the class portion of the Settlement,
17 the Class Member must submit a written request to the Settlement Administrator no later than 30
18 days after being mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 1.46).
19 Any Opt-Out request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶
20 7.5.1).

21 The Class Notice shall inform the Class Members of their right to object to the
22 Settlement. Any Class Member who wishes to object to the Settlement may submit a written
23 objection to the Settlement Administrator no later than the Response Deadline. (S.A. ¶ 7.7.2).

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

25 The amount of each Class Member’s Individual Class Payment is tied to the number of
26 Workweeks during the Class Period. Individual Class Payments take into account prior
27 payments received by some Class Members from earlier resolved Class Actions and thus the Net
28 Settlement Amount shall be allocated as follows: First: (i) each Workweek that was covered by

1 the previous settlement in *Rodriguez v. U.S. Bank National Association*, Los Angeles Superior
2 Court Case No. BC617356 (which had added, by way of amendment, the plaintiffs and claims
3 from two other cases: *Malik v. U.S. Bank National Association*, Los Angeles Superior Court
4 Case No. 19STCV17516; and *Yousefi v. U.S. Bank National Association*, Southern District of
5 California Case No. 3:20-cv-01770-BAS-AGS) shall be given one (1) settlement point; (ii) all of
6 the remaining Workweeks shall be given two (2) settlement points; (iii) each Workweek worked
7 by a Class Member while home-based (as determined by U.S. Bank's HRIS records) shall be
8 given one (1) additional settlement point; and (iv) each Workweek worked by a Class Member
9 who is no longer employed by U.S. Bank (as determined by U.S. Bank's HRIS records) as of the
10 date of Preliminary Approval shall be given one (1) additional settlement point. The total number
11 of settlement points for all Class Members will be added together and the Net Settlement
12 Amount shall be divided by that total to reach a dollar value per point. The resulting point value
13 will then be multiplied by each Class Member's number of settlement points to determine his or
14 her Individual Class Payment; provided, however, that each Class Member shall receive, at
15 minimum, the amount equivalent to one settlement point. (S.A. ¶ 3.2.4).

16 Additionally, each "Aggrieved Employee" will receive a share of the \$50,000 of PAGA
17 Penalties allocated to the Aggrieved Employees based on the number of PAGA Pay Periods
18 during the PAGA Period. (S.A. ¶ 3.2.5).

19 The Class Notice will inform Class Members of the estimated Workweeks, PAGA Pay
20 Periods, Individual Class Payment, and Individual PAGA Payment. Class Members may dispute
21 their Workweeks and PAGA Pay Periods if they feel they worked more in California as a non-
22 exempt employee during the Class Period or PAGA Period than Defendant's records show by
23 timely submitting evidence to the Settlement Administrator. (S.A. ¶ 7.6).

24 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

25 Defendant is required to deposit the Settlement Amount, along with the employer's share
26 of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
27 "Effective Date" and these funds will be used to pay: (1) Class Counsel's Fees and Expenses
28 Payment, as approved by the Court; (2) the Service Payment, as approved by the Court; (3)

1 Administrator Expenses, as approved by the Court; (4) PAGA Penalties; and (5) the aggregate of
2 all Individual Class Payments of Participating Class Members. Within 14 days after receiving the
3 funds, the Settlement Administrator shall issue payments to cover all court-approved payments.
4 (S.A. ¶ 4.3 to 4.4).

5 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 4.4.1). If a Class
6 Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed
7 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 4.4.3).

8 **F. TAX TREATMENT**

9 The Parties agree that one-third of the Individual Class Payment will be allocated as
10 wages subject to withholding of all applicable local, state and federal taxes; and the remaining
11 two-thirds will be allocated as interest and penalties (pursuant to, e.g., California Labor Code
12 sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A. ¶ 3.2.4.1).

13 Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely
14 as civil penalties and shall be reported as required on an IRS Form 1099.

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

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

18 In exchange for these payments, the Settlement Agreement at ¶¶ 1.42 and 5.2 provides
19 that the Participating Class Members will release the Released Parties of:

20 All claims that were alleged, or that reasonably could have been
21 alleged, based upon the facts stated in the Complaint and/or in
22 Plaintiff's LWDA Notice letter against any of the Released Parties,
23 including claims pursuant to: California Labor Code sections 200-
24 204, 208, 210, 218.5, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246,
25 148.5, 256, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197,
26 1197.1, 1198, 1199, 2800, 2802; the California Industrial Welfare
27 Commission's ("IWC") Wage Orders; the California Code of
28 Regulations; California Code of Civil Procedure § 1021.5; the
California Business & Professions Code; and the Fair Labor
Standards Act including claims premised upon: rest periods; meal
periods, including on-duty meal periods; unpaid wages; minimum
wages; overtime wages; pay for all hours worked, including but not
limited to off-the-clock work; calculation of the regular rate,
including non-inclusion of all forms of compensation required to be

1 included in such calculation; timeliness of wages; payment of any
2 wages due at separation of employment; vacation wages; the rate of
3 payment for sick leave; underpayment of sick leave; waiting time
4 penalties; itemized wage statements, accuracy of wage statements,
5 and/or any potential violation of Labor Code § 226(a);
6 reimbursement of expenses, including but not limited to work-from-
7 home expenses; recordkeeping; unfair competition; any unpaid
8 wages or compensation related to any or all of the foregoing; any
9 premium payments related to any or all the foregoing; whether the
10 foregoing claims are known or unknown to the employees;
11 restitution for any or all of the foregoing; any penalties, including
12 statutory and civil penalties, related to any or all of the foregoing;
13 attorneys' fees or costs related to any or all of the foregoing; interest
14 related to any or all of the foregoing; and/or any other damages or
15 amounts related to any or all of the foregoing. The time period
16 governing the Released Class Claims shall be the Class Period.

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

18 The Settlement Agreement at ¶¶ 1.43 and 5.3 also defines the "Released PAGA Claims"
19 as follows:

20 all claims for civil penalties under California Labor Code section
21 2698 *et seq.* (PAGA) that were alleged, or that reasonably could
22 have been alleged, based upon the facts state in the Complaint and/or
23 in Plaintiff's LWDA Notice letter against any of the Released
24 Parties, including claims for PAGA civil penalties premised on:
25 California Labor Code sections 200-204, 208, 210, 218.5, 218.6,
26 221-223, 226, 226.3, 226.7, 227.3, 246, 248.5, 256, 432, 510, 512,
27 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800,
28 2802; the California Industrial Welfare Commission's ("IWC")
Wage Orders; and the California Code of Regulations, including
claims for PAGA civil penalties premised on: rest periods; meal
periods, including on-duty meal periods; unpaid wages; minimum
wages; overtime wages; pay for all hours worked, including but not
limited to off-the-clock work; calculation of the regular rate,
including non-inclusion of all forms of compensation required to be
included in such calculation; timeliness of wages; payment of any
wages due at separation of employment; vacation wages; the rate of
payment for sick leave; underpayment of sick leave; waiting time
penalties; itemized wage statements, accuracy of wage statements,
and/or any potential violation of Labor Code § 226(a);
reimbursement of expenses; recordkeeping; any premium payments
related to any or all the foregoing; any civil penalties related to any
or all of the foregoing; and attorneys' fees or costs related to any or

1 all of the foregoing. The time period governing the Released PAGA
2 Claims shall be the PAGA Period.

3 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
4 that individual will still be subject to the Released PAGA Claims to the fullest extent permitted
5 by law and will receive their Individual PAGA Payment. (S.A. ¶ 7.5.4).

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

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

20 **A. ASCERTAINABILITY AND NUMEROSITY**

21 In determining whether a class is ascertainable, the court considers “(1) the class
22 definition, (2) the size of the class, and (3) the means available for identifying the class
23 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
24 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
25 class is ascertainable if the class members can be objectively identified and given notice of the
26 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
27 are approximately 14,000 Class Members that are easily identifiable and fall within the defined
28 Class. Thus, the proposed Class meets the ascertainability and numerosity requirements.

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

2 1. Commonality

3 To justify certification, the class proponent must show that questions of law or fact
4 common to the class predominate over the questions affecting the individual members. *Arenas v.*
5 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class
6 was subjected to common policies and practices relating to the payment of wages, the calculation
7 of the regular rate of pay, expense reimbursements, vacation pay, wage statements, and so on.
8 While the Parties dispute whether a class would be appropriate if the litigation were to continue,
9 they agree to class certification for the purposes of this settlement only. (Molina Decl. ¶ 4).

10 2. Typicality

11 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
12 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
13 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
14 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
15 Action, but agree for the purposes of this settlement only, that Plaintiff was employed as a non-
16 exempt employee for Defendant. Plaintiff contends that she asserts claims that are typical of the
17 class, namely regarding Defendant’s payment of wages, the calculation of the regular rate of pay,
18 expense reimbursements, vacation pay, wage statements, and so on – all of which are at the core
19 of the lawsuit. (Molina Decl. ¶ 4).

20 3. Adequacy of Representation

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

27 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
28 *Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)

244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

4. Superiority

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

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

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

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

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

The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable”

1 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
2 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
3 after determining that it is “fair, adequate and reasonable,” considering factors such as the
4 “risk, expense, [and] complexity” of continued litigation) (citations omitted). The Court enjoys
5 broad discretion in making its fairness determination, and should consider factors including, but
6 not limited to:

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

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

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

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

1 approval because there are no grounds to doubt its fairness.

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

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

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

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

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

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

24 However, a settlement is not judged against what might have been recovered had a
25 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought
26 to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 250 ("Compromise is inherent and
27 necessary in [settlement] ... even if the relief afforded by the proposed settlement is substantially
28 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class

1 settlement because the public interest may indeed be served by a voluntary settlement in which
2 each side gives ground in the interest of avoiding litigation.”)

3 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
4 significant legal and factual grounds for defending this action exist. First, in addition to
5 disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain
6 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant
7 further argued that it complied with the applicable law and that any purported deviations
8 therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class.
9 While Plaintiff asserts that this is a suitable case for certification, she realizes that there is always
10 a significant risk associated with class certification proceedings, which could significantly limit
11 the claims that she could pursue on a class basis.

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

16 Based upon detailed data obtained through informal discovery and information
17 exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation:
18 (1) 11,154 Class Members, (2) 1,019,399 workweeks during the Class Period, (3) 4,587,296
19 shifts worked during the Class Period, and (4) approximately 235,147 wage statements during
20 the PAGA Period. (Mankin Decl. ¶ 28).

21 Here, Plaintiff alleged a variety of claims against Defendant, which boil down to these
22 categories: (1) unpaid wages, (2) meal and rest break violations, (3) failure to reimburse business
23 expenses, (4) waiting time penalties under Labor Code §§ 201 – 203, (5) wage statement
24 penalties under § 226(e), and (6) PAGA civil penalties for the same claims discussed herein.
25 (Mankin Decl. ¶ 29).

26 Plaintiff’s unpaid wage claims had several distinct theories of liability. *First*, Plaintiff
27 alleged that Defendant failed to compensate for all hours worked due to unpaid computer boot-
28 up and shut down time. *Second*, Plaintiff alleged that Defendant utilized a “rounding” practice

1 that only paid the Class in quarter-hour increments. *Third*, Plaintiff argued that Defendant's
2 practice of paying final vacation at the base rate violated Labor Code § 227.3. *Fourth*, Plaintiff
3 argued that Defendant failed to properly incorporate all nondiscretionary compensation in the
4 calculations for overtime wages, sick pay, and meal/rest premium payments. However,
5 Defendant vehemently opposed these unpaid wage claims on the merits and as to the propriety of
6 class certification. On this point, Defendant raised several strong defenses (discussed in Section
7 II(C), above). As a result, for mediation and settlement purposes, Plaintiff and Class Counsel
8 applied appropriate risk reductions from the maximum potential unpaid wages to account for
9 risks of defeat at class certification and on the merits. (Mankin Decl. ¶ 30).

10 Plaintiff also alleged meal and rest break claims against Defendant. Based on the pre-
11 mediation analysis and investigation, and when incorporating violation rates from expert review
12 of the timekeeping records and other evidence, Class Counsel estimated a 13.3% violation rate
13 for meal periods and a 15% violation rate for rest breaks. However, Defendant raised numerous
14 arguments in response to this claim, including that it maintained fully compliant written policies
15 and specifically authorized the Class Members to take meal and rest breaks, meaning that no one
16 had a reason or cause to miss a break or take a short/late break. Therefore, Defendant asserted
17 that a fact-finder would have to determine for each Class Member whether a break was missed
18 and why, and why a break was noncompliant or nonexistent, because if it was by the employee's
19 choice, no liability attaches to Defendant. These defenses are factored into Plaintiff's analysis in
20 two ways. First, these issues raise questions regarding whether the meal and rest break claims
21 could be certified. Second, these defenses also go toward the merits given the evidentiary
22 question of proving the number of meal and rest violations. As such, Plaintiff and Class Counsel
23 considered these risks and defenses, along with the relatively low violation rates and, for
24 purposes of mediation and settlement, applied appropriate risk reductions regarding the risks of
25 defeat at class certification and on the merits. (Mankin Decl. ¶ 31).

26 As to the claim for failure to reimburse business expenses, Plaintiff calculated potential
27 violations in approximately 140,000 workweeks. However, Defendant argued that, generally, its
28 hourly employees were not required to incur business expenses, and that it had an expense

1 reimbursement policy – and, to the extent that home-based employees needed to use internet,
2 such claim would fail on the merits, was low-value, and not certifiable. Defendant argued that
3 this claim was not appropriate for class certification because this required individualized
4 inquiries to determine which employees incurred unreimbursed expenses and whether such
5 expenses were reasonable and “necessary” and thus mandated reimbursement. As above, Class
6 Counsel considered these arguments and factored the risks and defenses into mediation and
7 settlement valuation. (Mankin Decl. ¶ 32).

8 Plaintiff also alleged claims for waiting time penalties and wage statement violations,
9 including failure to accurately state all applicable hourly rates and total hours worked. Some of
10 these claims were derivative of the claims above, meaning that they only had merit if the claims
11 for unpaid wages or meal/rest breaks were successful. But Defendant raised a variety of
12 defenses to these derivative claims that impacted the valuation. Namely, as to the wage
13 statement violations, Defendant argued that its wage statements did not violate Labor Code § 226
14 and even if there was a “technical” violation, that Plaintiff would be unable to prove the required
15 “knowing and intentional” and “injury” elements. Then, as to the waiting time penalty claim,
16 Plaintiff’s valuation had to account for the fact that this claim was derivative of the unpaid wage
17 and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at
18 certification or on the merits, there would be no waiting time penalties owed, so the same risks
19 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
20 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
21 violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here,
22 Defendant argued that there could not be a finding of a “willful” violation since they had
23 compliant written policies, and any deviations therefrom were inadvertent and unintentional.
24 (Mankin Decl. ¶ 33).

25 While the theoretical maximum potential damages may stretch into the 8-figures, that
26 figure fails to account for the various risks at class certification, on the merits, and the many
27 evidentiary issues present in a class action of this size. For that reason, the settlement presented
28 to the Court is fair, adequate, and reasonable when applying all risks and considering the

1 potential outcomes at class certification and trial. (Mankin Decl. ¶ 34).

2 Likewise, while the PAGA penalties had a maximum value in the eight figures, this also
3 fails to incorporate the risks above and, further, fails to acknowledge that courts have wide
4 latitude to reduce the civil penalties “based on the facts and circumstances of a particular case”
5 and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
6 confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the
7 underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses
8 mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also
9 argued it is improper to stack civil penalty claims on top of underlying statutory claims. For
10 these reasons, the Parties submit that this settlement is fair and reasonable. (Mankin Decl. ¶ 35).

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

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

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

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

27 The proposed Class Notice should be approved, as it fully informs the Class Members of
28 the nature of the lawsuit and each Class Member’s rights under terms of the Settlement

1 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as
2 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
3 of the proposed settlement.

4 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
5 the Class Notice to the last known address of all class members complies with all the
6 requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed
7 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,
8 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
9 and how class members may elect to exclude themselves or make an objection; and (4) how class
10 members can obtain additional information. *See* Class Notice (Exhibit 2 to the Mankin Decl.). In
11 addition, it will inform Class Members of their estimated settlement share.

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

20 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement
21 Class Members with all due process protections required by the United States Constitution.
22 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
23 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
24 contentions or denials of the parties; (2) a statement that the court will exclude the member from
25 the class if the member so requests by a specified date; (3) a procedure for the member to follow
26 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
27 not, will bind all members who do not request exclusion; and (5) a statement that any member
28 who does not request exclusion may, if the member so desires, enter an appearance through

1 counsel. The 30-day deadline for Class Members to exclude themselves is reasonable, as it
2 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
3 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically
4 be sent a settlement check.

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

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

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

15 Under the terms of the Settlement Agreement, Class Counsel is requesting attorneys’
16 fees equal to one-third of the Settlement Amount, which is estimated to be \$1,516,666.67
17 unless the Escalator Clause is triggered. See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1
18 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier,
19 when class action litigation establishes a monetary fund for the benefit of the class members,
20 the trial court may determine the amount of a reasonable fee by choosing an appropriate
21 percentage of the fund created); see also *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010)
22 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of
23 \$4.5 million) (the court noted that the fee award of 1/3 of the total settlement was “well within
24 the range of percentages which courts have upheld as reasonable in other class action
25 lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at
26 *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods,*
27 *Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund
28 in a wage and hour class action, 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).

Additionally, Plaintiff is seeking up to \$30,000 in litigation costs, pursuant to the Settlement Agreement.

Once the Court grants preliminary approval, Plaintiff’s counsel will submit a 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 \$10,000 to the Class Representative, which is reasonable given the recovery Class Members will receive on average, as well as the time and effort she devoted to this case. Her efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Defendant’s compensation plan; participating in phone calls to discuss litigation and settlement strategy; making herself 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 Representative also assumed significant risk in bringing this litigation—namely, had she lost, she could have been ordered to pay Defendant’s costs.²

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 award to each of the two class representatives in a 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 to Class Representative 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 in the amount of \$15,000 each 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 (“the court finds

² In addition to her wage and hour claims at issue in this Settlement, Plaintiff also had intended to separately pursue claims under the Fair Employment and Housing Act relating to her employment with, and termination from, U.S. Bank (as well as related claims). To resolve these claims, Plaintiff and U.S. Bank have entered into a separate settlement agreement.

1 Plaintiff's enhancement payments of \$ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs.*
2 (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of \$25,000 to
3 each of the named Plaintiff is appropriate" in wage and hour settlement); *Louie v. Kaiser Found.*
4 *Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving "\$25,000
5 incentive award for each Class Representative" in wage an hour settlement).

6 **VI. THE COURT SHOULD APPOINT RUST CONSULTING AS SETTLEMENT**
7 **ADMINISTRATOR**

8 Subject to the Court's approval, the parties stipulated to Rust Consulting serving as the
9 Settlement Administrator. Rust Consulting is experienced in administering class action
10 settlements and has provided a flat-fee proposal to administer this settlement for \$50,500.
11 (Mankin Decl. ¶ 47; Exhibit 3 to Mankin Decl.).

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

13 The last step in the approval process is the formal hearing, whereby proponents of the
14 settlement may explain and describe its terms and conditions and offer argument in support of
15 approval, and Class Members or their counsel may be heard in support of or in opposition to the
16 settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing
17 for final approval approximately 120 days after the Preliminary Approval Date.

18 **VIII. CONCLUSION**

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

21 Dated: April 30, 2024

LAUBY, MANKIN & LAUBY LLP

22
23 BY:



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

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 April 30, 2024, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

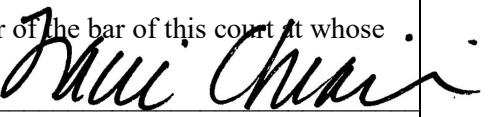
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 30, 2024, Riverside, California.

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


Tracie Chiarito, Declarant

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