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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

YVONNE LABRA and ANABEL
MADRIGAL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

PENN EMBLEM COMPANY, a
Pennsylvania Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CVRI2300385
*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

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

Hearing

Date: June 5, 2025

Time: 8:30 a.m.

Dept.: 1

Complaint filed: January 20, 2023

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 5, 2025, 8:30 a.m., or as soon thereafter as the
3 matter may be heard by the Honorable Harold Hopp in Department 1 of the Riverside County
4 Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiffs Yvonne Labra and
5 Anabel Madrigal, individually and on behalf of all others similarly situated, will and hereby do
6 move the Court for entry of an Order preliminarily approving the Parties' Class Action and
7 Private Attorneys General Act ("PAGA") settlement between Plaintiffs and Defendant Penn
8 Emblem Company, including:

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

18 This motion is based upon this Memorandum of Points and Authorities in Support
19 thereof; the Declaration of Plaintiff's counsel (Brian Mankin and Peter Carlson); the Declaration
20 of Plaintiffs; the Declaration of Defendants' counsel (Katherine Forster); the Declaration of
21 Defendant's Representative (Karen Weber); the Declaration of Jonathan Paul on behalf of the
22 Settlement Administrator (Xpand Legal); the Class Action and PAGA Settlement Agreement and
23 Release of Claims (the "Settlement Agreement"); the proposed Order granting Preliminary
24 Approval of the Settlement; all other records, pleadings, and papers filed in this action; and upon
25 such other evidence or argument as may be presented to the Court at the hearing of this motion.

26 Dated: May 13, 2025

LAUBY, MANKIN & LAUBY LLP

27 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Yvonne Labra and Anabel Madrigal seek preliminary approval of a \$700,000
4 class action settlement on behalf of approximately 700 current and former nonexempt (hourly
5 paid) employees employed by Defendant Penn Emblem in California at any time during the
6 Class Period of January 20, 2019, through March 17, 2025.

7 Under the terms of the Settlement Agreement,¹ Defendant will not oppose Plaintiff
8 Counsel's application for a reasonable award of attorneys' fees not to exceed \$233,333.33 (1/3 of
9 the Settlement Amount), litigation expenses not to exceed \$30,000, Settlement Administrator
10 Costs of \$9,240, PAGA penalties of \$20,000 (75% to LWDA and 25% to Aggrieved
11 Employees), and a Service Payment of \$10,000 each to Plaintiffs Yvonne Labra and Anabel
12 Madrigal ("Class Representatives"). (S.A. ¶ 54).

13 After all Court-approved deductions from the Settlement Amount, it is estimated that
14 \$387,426.67 will be available to pay the Class Members, as follows:

15

<i>Settlement Amount</i>	\$ 700,000.00
Attorneys' Fees (1/3)	\$ 233,333.33
Litigation Costs (not to exceed)	\$ 30,000.00
Administrator Costs	\$ 9,240.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 387,426.67

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20 Assuming 700 total Class Members, the average payment will be approximately \$553.46
21 (\$387,426.67 / 700). However, the actual payments will be calculated on a pro-rata basis
22 according to the number of Weeks Worked by each Class Member during the Class Period. (S.A.
23 ¶ 54(c); Mankin Decl. ¶¶ 51 [description of high/low payments]). In addition, approximately 165
24 Aggrieved Employees will receive a share of the \$5,000 PAGA Penalties (25% of the \$20,000
25 allocation), calculated pro-rata based on Pay Periods Worked during the PAGA Period. (S.A. ¶
26 54(h)).

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

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

8 **II. BACKGROUND**

9 **A. THE CLASS**

The Class is defined as follows:

10 All current and former nonexempt (hourly paid) employees
11 employed by Defendant in California, including Direct Hires² and
12 Temporary Employees³, at any time during the Class Period. (S.A.
¶¶ 4, 8).

13 **B. PROCEDURAL HISTORY**

14 Plaintiff Labra submitted a letter to the Labor and Workforce Development Agency
15 ("LWDA") for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), and
16 simultaneously sent a letter to Defendants requesting the production of personnel and
17 timekeeping records to further evaluate her wage and hour claims. (Mankin Decl. ¶ 13). On
18 January 20, 2023, Plaintiff Labra filed this class action, alleging that Defendant violated various
19 sections of the Labor Code. Then, on April 17, 2024, Plaintiff Labra filed a First Amended
20 Complaint alleging putative class and representative PAGA claims, including: (a) failure to pay
21 minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d)
22 failure to provide rest breaks, (e) failure to pay vested vacation, (f) failure to timely pay wages
23

24 ² "Direct Hires" means and refers to individuals who were nonexempt or hourly employees and
25 were hired directly by Defendant and employed to work for Defendant in California. (S.A. ¶ 14).

26 ³ "Temporary Employees" means and refers to individuals who were nonexempt or hourly
27 employees and employed by temporary staffing companies including specifically, but not limited
28 to, BRS Staffing, Chartwell/Partners Personnel, Empirde Workforce Solutions, Pro Staff Hire,
Protech, Solvis, Square One, Pridestaff, Priority Workforce, Partnership Staffing, Team One,
Ultimate Staffing, Fairway Staffing, Select Staffing, and Robert Half and assigned to work at
Defendant's warehouses in California. (S.A. ¶ 45).

1 upon separation of employment, (g) failure to provide accurate itemized wage statements, (h)
2 unfair and unlawful competition, and (i) related claims under PAGA. (Mankin Decl. ¶ 14; S.A. ¶
3 46).

4 Then on June 29, 2023, Plaintiff Madrigal filed a separated class action against
5 Defendant in Riverside County Superior Court, entitled *Madrigal v. Penn Emblem Company*,
6 Case No. CVRI2303312. (S.A. ¶ 47).

7 Plaintiffs' counsel in Labra and Madrigal ultimately joined forces and entered into a Joint
8 Prosecution Agreement.

9 Meanwhile, Defendant retained counsel and immediately began to defend the cases.
10 Plaintiff Labra immediately commenced discovery under the Court's CMO by demanding the
11 names and contact information of the putative class members pursuant to a Belaire Notice.
12 Then, after early discussions among counsel, the Parties agreed to attend private mediation in an
13 effort to avoid a contested class certification process. In preparation for mediation, the Parties
14 informally exchanged documents and information that allowed both sides to calculate the
15 potential damages and evaluate potential risk, including policies and procedures pertaining to the
16 claims, statistics relating to the number of current and former employees, number of shifts,
17 workweeks and pay periods worked and other things, and a sampling of payroll and timekeeping
18 records for Class Members. This information enabled both parties to take a deep dive into the
19 claims. Additionally, during this process, Plaintiffs and their counsel analyzed, researched, and
20 investigated the potential issues, including matters related to the calculation of damages, trial,
21 and appellate issues and risks. (Mankin Decl. ¶ 15).

22 On February 1, 2024, the Parties attended private mediation with Jeffrey Krivis, but the
23 matter did not settle. Over the course of the next 11 months, the Parties engaged in ongoing
24 negotiations and analysis, and ultimately reached this Settlement. As part of the Settlement, the
25 Parties agreed to consolidate Plaintiff Madrigal's action into Plaintiff Labra's action by
26 stipulating to file the Consolidated Complaint to add Plaintiff Madrigal as a plaintiff and to add
27 any claims in Plaintiff's Madrigal's action that were not already included within Plaintiff Labra's
28 action. After the Court granted the Parties' stipulation, Plaintiffs filed the operative second

1 amended complaint (“Consolidated Complaint”) on March 7, 2025. (Mankin Decl. ¶ 16).

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

3 Plaintiffs alleged numerous wage and hour violations on behalf of the Class Members.
4 However, Defendant vigorously contested and denied Plaintiffs’ material allegations on the
5 merits and as to the propriety of a class action or PAGA representative action. (Mankin Decl. ¶
6 17).

7 For instance, Plaintiffs alleged that Defendant paid the Class on an hourly basis plus
8 additional earned compensation but failed to include this compensation in the regular rate
9 calculations, leading to a failure to pay all required overtime, sick and vacation pay, and meal
10 premiums. However, Defendant opposed this regular rate claim, arguing that the bonus payments
11 were properly excluded from the regular rate, and therefore these claims would lose on the merits
12 and as to the propriety of class certification. (Mankin Decl. ¶ 18).

13 Plaintiffs also alleged that they and the Class Members were often denied compliant meal
14 and rest breaks due to the nature of the work. However, Defendant argued that it provided and
15 made all mandated meal and rest breaks available to the Class, and any employee who did not
16 take a break did so entirely of their own volition. Thus, Defendant argued that these claims were
17 without merit because, for each violation, a fact-finder would have to determine why a break was
18 noncompliant, because if it was by the employee’s choice, no liability attaches to Defendant.
19 (Mankin Decl. ¶ 19).

20 Finally, Plaintiffs alleged a variety of other claims (all of which Defendant disputed),
21 such as the failure to reimburse business expenses, failure to timely pay wages each period and
22 upon separation of employment and failure to provide accurate itemized wage statements.
23 (Mankin Decl. ¶ 20).

24 Despite the disputed nature of the claims, the Parties concluded that further litigation of
25 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
26 finally settled to limit further risk, expense, and protracted litigation. (Mankin Decl. ¶ 21).

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

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

3 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

4 The \$700,000 Settlement Amount⁴ is non-reversionary and will be paid out to Class
5 Members without the need to submit a claim form or take any affirmative action. It includes (1)
6 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$10,000
7 each to Plaintiffs, subject to approval by the Court; (3) Administration Costs, not to exceed
8 \$9,240; (4) a \$20,000 PAGA award, with 75% paid to the LWDA and 25% to the Aggrieved
9 Employees; and (5) the aggregate of all Individual Class Payments to the Participating Class
10 Members. (S.A. ¶ 54). Additionally, the Parties agreed to an Escalator Clause in the event that
11 the Workweek information is more than 10% higher than Defendant's estimate. (S.A. ¶ 16).
12 Defendant will also separately pay its share of employer payroll taxes. (S.A. ¶ 54).

13 **B. NOTICE PROCEDURES**

14 Here, the Parties will provide notice of this settlement in strict compliance with Court's
15 Class Action Case Management Order #1, issued on January 27, 2023 (the "CMO"). Thus, as
16 required by CMO ¶ G.3.k, the Parties will send each Class Member a Class Notice, a Request for
17 Exclusion Form and an Objection Form. (S.A. ¶ 70), which are attached to the Mankin Decl. as
18 Exhibits B, C and D, respectively.

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

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27 ⁴ If the "Escalator Clause" is triggered, Defendant may elect to increase the Settlement Amount
28 or shorten the Class Period. S.A. ¶¶ 14, 54(a). If Defendant elects to increase the Settlement
Amount, other figures will also shift upward along with the Settlement Amount, such as
attorneys' fees (but this is still constrained to 1/3 of the Settlement Amount) along with increased
Administration Costs (*see* S.A. ¶ 54(g)).

1 Within 21 calendar days after entry of the Preliminary Approval Order, Defendant shall
2 provide the Settlement Administrator with the “Class Data” consisting of Class Member names,
3 addresses, Social Security Numbers, and Weeks Worked during the Class Period and Pay
4 Periods worked during the PAGA Period. (S.A. ¶¶ 7, 68). Within 10 calendar days of receipt of
5 the Class Data, the Settlement Administrator shall calculate the numbers for each Class Member,
6 populate the Notice, and send each Class Member the Notice Packet via first-class, United States
7 mail. (S.A. ¶ 69).

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

11 **C. EXCLUSION AND OBJECTION PROCEDURES**

12 Class Members who do not timely Opt-Out of the Settlement will be deemed to
13 participate in the Settlement and shall become a Participating Class Member without having to
14 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
15 must submit a written request to the Administrator no later than 45 days after being mailed by
16 the Settlement Administrator (“Response Deadline”). (S.A. ¶ 39). Any Opt-Out request that is
17 not postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
18 case the Class Member’s exclusion or objection must be returned by the later of the original
19 Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶¶ 71, 76).

20 The Class Notice shall inform Class Members of their right to object to the Settlement.
21 Any Participating Class Member who wishes to object to the Settlement must complete the
22 Objection Form in the Notice Packet. To be valid, any Objection Form must be mailed to the
23 Settlement Administrator and postmarked on or before the Response Deadline. (S.A. ¶ 76(c)).

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 Weeks Worked by each Class Member for Defendant in California during the Class Period.
27 Therefore, Individual Class Payments will be calculated by: (a) dividing the Net Settlement
28 Amount by the total number of Weeks Worked by all Participating Class Members during the

1 Class Period, and (b) multiplying the result by each Participating Class Members' Weeks
2 Worked. (S.A. ¶ 54(c)). Additionally, each "Aggrieved Employee" will receive an Individual
3 PAGA Payment, calculated by dividing and distributing the \$5,000 on a pro-rata Pay Periods
4 Worked basis. (S.A. ¶ 54(h)).

5 The Class Notice will inform Class Members of the number of Weeks Worked during the
6 Class Period, Pay Periods worked during the PAGA Period, and the estimated Individual Class
7 and PAGA Payments. Class Members may dispute their Weeks Worked by timely submitting
8 evidence to the Settlement Administrator. (S.A. ¶ 74).

9 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

10 Pursuant to the terms of the Settlement Agreement, Defendant is required to fund the
11 Settlement Amount, plus its share of payroll taxes owed on the Individual Class Payments, by no
12 later than December 1, 2026. (S.A. ¶ 77). The payment was delayed to give Defendant sufficient
13 time to gather the funds. Within 10 days after receiving the funds, the Administrator shall issue
14 payments to cover all court-approved payments. (S.A. ¶ 78).

15 Participating Class Members and Aggrieved Employees shall have 180 calendar days
16 after mailing by the Settlement Administrator to cash each settlement check. If a check is not
17 cashed within the 180-day period, the check will be voided, and a stop-payment will be issued.
18 The Settlement Administrator shall issue all unclaimed funds to the California State Controller's
19 Office in the name of the Participating Class Member or Aggrieved Employee. (S.A. ¶ 79).

20 As required by CMO ¶ G(3)(c)(i), Plaintiff's Counsel explains the reasoning for this
21 method of distribution at Mankin Decl. ¶¶ 56-61.

22 **F. TAX TREATMENT**

23 The Parties agree that one-third (33.333%) of the Individual Class Payments will be
24 allocated as wages subject to withholding of all applicable local, state and federal taxes and the
25 remaining two-thirds (66.667%) will be allocated for interest and penalties (pursuant to, *e.g.*,
26 California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A.
27 ¶ 54(d)). The Individual PAGA Payments will be classified entirely as civil penalties and shall
28 be reported as required on an IRS Form 1099. (S.A. ¶ 54(h)).

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

2 In exchange for these payments, and in strict compliance with CMO ¶ G(3)(e), the
3 Settlement Agreement at ¶ 36 defines the “Released Class Claims” as follows:

4 the claims stated in the Consolidated Complaint and those based
5 solely upon the facts in the Consolidated Complaint, including: (1)
6 failure to pay minimum wages, (2) failure to pay overtime wages, (3)
7 failure to provide meal periods, (4) failure to provide rest breaks, (5)
8 failure to pay vested vacation, (6) failure to reimburse business
9 expenses, (7) failure to maintain required records, (8) failure to
timely pay final wages, (9) failure to provide accurate itemized wage
statements, and (10) unfair and unlawful competition.

10 Additionally, as required by CMO ¶ G(3)(e)(iii), the “time period governing the Released
11 Class Claims shall be any time during the Class Period.” (S.A. ¶ 36). And, pursuant to CMO ¶
12 G(3)(e)(i), the “Released Parties” means “Defendant, and all of its present and former officers,
13 director, employees, and agents, including specifically, but not limited to, BRS Staffing,
14 Chartwell/Partners Personnel, Empire Workforce Solutions, Pro Staff Hire, Protech, Solvis,
15 Square One, Pridestaff, Priority Workforce, Partnership Staffing, Team One, Ultimate Staffing,
16 Fairway Staffing, Select Staffing, and Robert Half temporary staffing agencies. (S.A. ¶ 38).

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

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

23 The Settlement Agreement at ¶ 37 also complies with CMO ¶¶ G(3)(e)(iv) and G(9)(d) as
24 it defines the “Released PAGA Claims” as follows:

25 all PAGA Claims that Plaintiffs alleged against the Released Parties,
26 based on the facts stated in the relevant LWDA notice letters and
27 only to the extent that they are alleged in the Consolidated
28 Complaint, including all PAGA claims seeking civil penalties
premised upon: (1) failure to pay minimum wages, (2) failure to pay
overtime wages, (3) failure to provide meal periods, (4) failure to
provide rest breaks, (5) failure to pay vested vacation, (6) failure to
reimburse business expenses, (7) failure to maintain required

1 records, (8) failure to timely pay wages each period, (9) failure to
2 timely pay wages upon separation of employment, (10) failure to
3 provide accurate itemized wage statements, and (11) all other claims
4 for civil penalties recoverable under the Private Attorneys General
5 Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged
6 in the LWDA notice letters and Complaint. The time period
7 governing the PAGA Released Claims shall be the PAGA Period.

8 The CMO, at ¶¶ G(3)(e)(iv) and G(9)(d)(i), also requires that the “release of claims for
9 PAGA penalties shall bind only the named plaintiff and the State of California.” The Settlement
10 Agreement strictly complies with this requirement. (See S.A. ¶ 58 [“Upon entry of the Final
11 Approval Order and Defendant’s funding of the Settlement Amount, Plaintiffs and the State of
12 California and the LWDA shall completely release and discharge the Released Parties from the
13 Released PAGA Claims for the PAGA Period”]).

14 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
15 that individual will still be subject to the Released PAGA Claims and will receive a pro-rata share
16 of PAGA Penalties. (S.A. ¶ 59; CMO ¶ G(9)(c)).

17 **IV. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR**
18 **PURPOSES OF SETTLEMENT**

19 California Rule of Court 3.769(d) provides that the Court may make an order approving
20 certification of a provisional settlement class at the preliminary approval stage. It is well-
21 established that trial courts should use a “lesser standard of scrutiny” for determining the
22 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
23 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
24 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved
25 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
26 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
27 certification, a district court need not inquire whether the case, if tried, would present intractable
28 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
purposes of this settlement only, Plaintiffs request that this Court provisionally certify the Class,
as defined above, under Code of Civil Procedure § 382.

1 **A. ASCERTAINABILITY AND NUMEROSITY**

2 In determining whether a class is ascertainable, the court considers “(1) the class
3 definition, (2) the size of the class, and (3) the means available for identifying the class
4 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
5 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
6 class is ascertainable if the class members can be objectively identified and given notice of the
7 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
8 are approximately 700 Class Members that are easily identifiable and fall within the defined
9 Class. Thus, Plaintiffs’ proposed Class meets the ascertainability and numerosity requirements.

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

11 1. Commonality

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

18 2. Typicality

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

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1 3. Adequacy of Representation

2 The proposed class representative must establish that he or she will adequately represent
3 the proposed class. *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.
4 Specifically, Plaintiffs are adequate to represent the class because they was employed by
5 Defendant during the Class Period, experienced the same wage and hour practices as the rest of
6 the Class, understood their duties as a Class Representatives, have been willing to undergo the
7 risks of litigation, and have no conflict of interest. (Labra Decl. ¶¶ 3-14; Madrigal Decl. ¶¶ 3-10).

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

12 4. Superiority

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

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

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

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

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

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

16 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
17 **NEGOTIATIONS**

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

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

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

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

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

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

25 Here, Defendant raised significant legal and factual defenses that weigh in favor of the
26 reasonableness of the proposed Settlement. In addition to disputing the merits of Plaintiffs’
27 claims, Defendant strongly disputed that Plaintiffs could obtain class certification, arguing a lack
28 of commonality of the legal claims and injuries. Defendant further argued that it complied with

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

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

9 Based upon data obtained through formal and informal discovery, Plaintiffs' counsel
10 estimated the following through mediation: (1) 700 Class Members, (2) 450 *former* Class
11 Members for Labor Code § 203, (3) 39,113 workweeks, (4) 189,648 shifts worked, and (4)
12 approximately 17,133 wage statements during the PAGA Period. (Mankin Decl. ¶ 25).

13 From these numbers, and by applying violations rates derived from analysis of extensive
14 documents and data from Defendant, Plaintiffs calculated the following maximum amounts
15 assuming all claims were entirely successful at trial: class damages and penalties of \$4,217,174,
16 and PAGA penalties of \$5,379,695. (Mankin Decl. ¶ 49). Then, by applying risks at class
17 certification and on the merits, and when considering other factors (such as evidentiary burdens
18 of proof), Plaintiff calculated the risk-adjusted award at trial for the class claims to be \$1,234,402
19 and for PAGA as \$388,249. (Mankin Decl. ¶ 49). As required by CMO ¶ G(3)(a)(i and ii), the
20 full analysis of the maximum and risk-adjusted values is contained in the Mankin Decl. at ¶¶ 25-
21 49 (and, for the sake of brevity, that information is not duplicated in this Motion).

22 Thus, the reasonableness of the settlement is apparent from the fact that the proposed
23 settlement is 56.7% of the risk-adjusted class damages and penalties. And, for that reason and
24 the others discussed in this Motion, the Parties submit that this settlement is fair and reasonable.

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

26 The view of attorneys conducting the litigation is entitled to significant weight deciding
27 whether to approve a settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
28 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must consider "the experience and view of

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

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

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

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

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

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

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

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

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

23 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
24 of up to \$30,000 in litigation costs, along with attorneys’ fees equal to one-third of the
25 Settlement Amount. See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving
26 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
27 action litigation establishes a monetary fund for the benefit of the class members, the trial court
28 may determine the amount of a reasonable fee by choosing an appropriate percentage of the

1 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
2 (approving fee 1/3 from settlement amount of \$4.5 million since 1/3 was “well within the range
3 of percentages which courts have upheld as reasonable in other class action lawsuits”).

4 Once the Court grants preliminary approval and Notice is disseminated, Plaintiffs’
5 counsel will submit a comprehensive request for attorneys’ fees and costs with their request for
6 final approval of settlement.

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

8 The Settlement Agreement provides an incentive award payment of \$10,000 to each
9 Class Representative. This request is reasonable given the recovery Class Members will receive
10 on average, as well as the time and effort they devoted to this case. Their efforts included
11 providing factual background for the litigation; providing documents and information about
12 Defendant’s compensation plan; participating in phone calls to discuss litigation and settlement
13 strategy; making themselves available throughout the litigation to assist with analyzing the
14 claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
15 settlement documents. The Class Representatives also assumed significant risk in bringing this
16 litigation—namely, had they lost, they could have been ordered to pay Defendant’s costs.

17 The requested service award falls within the range of incentive payments typically
18 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
19 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in class
20 action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2
21 (approving \$20,000 enhancement award in California wage-and-hour class settlement); *Vasquez*
22 *v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of
23 \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores,*
24 *Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards “of \$ 15,000
25 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS
26 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is
27 appropriate” in wage and hour settlement).

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VI. THE COURT SHOULD APPOINT XPAND LEGAL AS THE ADMINISTRATOR

Subject to the Court's approval, the parties agreed to Xpand Legal serving as the Settlement Administrator. Xpand Legal is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$9,240. (Mankin Decl. ¶¶ 62, 80; Decl. of Jonathan Paul of Xpand Legal).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the final approval 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 final approval hearing approximately 160 days after the Preliminary Approval Date, as follows:

June 5, 2025	Preliminary Approval (PA) hearing
July 7, 2025 (31 days after PA)	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
August 21, 2025 (45 days after mailing)	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
Approx. November 12, 2025 (160 days after PA)	Final Approval Hearing

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1 **VIII. CONCLUSION**

2 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant the
3 motion for preliminary approval of the settlement.
4

5 Dated: May 13, 2025

LAUBY, MANKIN & LAUBY LLP

6
7 BY:



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

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; DECLARATIONS IN SUPPORT OF; [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 May 13, 2025, Riverside, California.

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


Tracie Chiarito, Declarant

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