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

ESTEBAN ALDANA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CORESLAB STRUCTURES (L.A.) INC.,
a California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CVRI2300287
*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

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

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

Hearing

Date: March 14, 2024

Time: 8:30 a.m.

Dept.: 1

Reservation #: 019798886267

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 14, 2024, 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, Plaintiff Esteban Aldana,
5 individually and on behalf of all others similarly situated, will and hereby does move the Court
6 for entry of an Order preliminarily approving the Parties' Class Action and Private Attorneys
7 General Act ("PAGA") settlement, including:

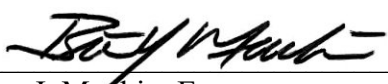
- 8 1. Certifying the class for purposes of settlement only;
- 9 2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
- 10 3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
- 11 4. Preliminarily approving the class action and PAGA settlement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

17 This motion is based upon this Memorandum of Points and Authorities in Support
18 thereof; the Declaration of Plaintiff's counsel (Brian Mankin and Peter Carlson); the Declaration
19 of Erick J. Becker; the Declaration of Defendant's Representative Jon Clausen; the Declaration
20 of Michael Moore on behalf of Phoenix Settlement Administrators; the Class and PAGA
21 Settlement Agreement and Release of Claims (the "Settlement Agreement"); the proposed Order
22 granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in
23 this action; and upon such other evidence or argument as may be presented to the Court at the
24 hearing of this motion.

25 Dated: February 21, 2024

LAUBY, MANKIN & LAUBY LLP

26
27 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Esteban Aldana seeks preliminary approval of a \$775,000 class action settlement
4 on behalf of approximately 410 current and former nonexempt employees employed by
5 Defendant Coreslab Structures (L.A.) Inc. (“Coreslab” or “Defendant”) in California at any time
6 from January 19, 2019, through February 2, 2024 (the “Class Period”).

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 \$258,333.33 (1/3 of
9 the Settlement Amount), litigation expenses not to exceed \$20,000, Settlement Administrator
10 Costs of \$9,000, PAGA penalties of \$50,000 (with 75% to the LWDA and 25% to the Aggrieved
11 Employees on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff Esteban Aldana
12 (“Class Representative”). (S.A. ¶ 49, *et seq.*)

13 After all Court-approved deductions from the Settlement Amount, it is estimated that
14 \$430,166.67 will be available to pay the Class Members, as follows:

<i>Settlement Amount</i>	\$ 775,000.00
Attorneys’ Fees (1/3)	\$ 258,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 9,000.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 430,166.67

20
21 Assuming 410 Class Members, the average payment will be approximately \$1,049.19
22 (\$430,166.67 / 410). However, the actual payments will be calculated on a pro-rata basis
23 according to the number of Weeks Worked by each Class Member during the Class Period. (*See*
24 Mankin Decl. ¶¶ 47-48 [description of high/low payments]). In addition, approximately 204
25 Aggrieved Employees will receive a share of the \$12,500 PAGA Penalties (25% of the \$50,000
26 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period. (S.A. ¶ 49(h)).
27

28

¹ The Class 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 Phoenix Settlement
7 Administrators as the Administrator, and scheduling a hearing for final approval.

8 **II. BACKGROUND**

9 **A. THE CLASS**

10 The Class is defined as follows:

11 All current and former nonexempt (hourly paid) employees
12 employed by Defendant in California at any time during the Class
Period (January 19, 2019, through February 2, 2024). (S.A. ¶¶ 4, 8).

13 **B. PROCEDURAL HISTORY**

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

18 On January 19, 2023, Plaintiff filed this class action, alleging that Coreslab violated
19 various sections of the Labor Code. Then, on March 31, 2023, Plaintiff filed a First Amended
20 Complaint adding PAGA causes of action. (Mankin Decl. ¶ 14).

21 Coreslab retained counsel and immediately began to defend the case. Then, after early
22 discussions among counsel, the Parties agreed to attend private mediation. (Mankin Decl. ¶ 15).

23 In preparation for mediation, the Parties informally exchanged documents and
24 information that allowed both sides to calculate the potential damages and evaluate potential risk,
25 including policies and procedures pertaining to the claims, statistics relating to the number of
26 current and former employees, number of shifts, pay periods worked and other things, and a
27 sampling of payroll and timekeeping records for Class Members. This information enabled both
28 parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and his

counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 16).

On December 4, 2023, Plaintiff and Defendant participated in mediation before Steve Serratore, Esq. a well-respected employment mediator. The matter resolved at mediation and the Parties entered into the Settlement Agreement submitted herewith. The Parties now seek the Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 17).

C. BRIEF OVERVIEW OF CLAIMS AND DEFENSES

Plaintiff alleged numerous wage and hour violations on behalf of the Class Members. However, Defendant vigorously contested and denied Plaintiff's material allegations on the merits and as to the propriety of a class action or PAGA representative action. Still, Plaintiff believed there were several strong claims.

For instance, Plaintiff alleged Defendant failed to pay proper wages due to several distinct wage violations. First, Plaintiff alleged that Defendant paid the Class on an hourly basis plus additional earned compensation but failed to include this compensation in the regular rate calculations and overtime pay. Second, Plaintiff alleged that Defendant failed to pay for all compensable hours due to the failure to accurately record all hours worked. As a result, Plaintiff argued these violations resulted in unpaid minimum wages and overtime, as well as waiting time penalties under Labor Code § 203 and other derivative penalties. However, Defendant opposed each of these unpaid wage claims on the merits and as to the propriety of class certification.

Plaintiff also alleged that he and 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 all mandated meal and rest breaks available to the Class, and any employee who did not take a break did so entirely of their own volition. Thus, Defendant argued that these claims were without merit because, for each violation, a fact-finder would have to determine why a break was noncompliant, because if it was by the employee's choice, no liability attaches to Defendant. Furthermore, with respect to Plaintiff's minimum wage, overtime, meal and rest break and derivative labor code allegations as a whole, Defendant also argued that it was exempt from the requirements of the Labor Code due to the existence of various collective bargaining agreements

meeting the exceptions provided by Labor Code section 514, Labor Code section 512(e), and/or Industrial Wage Order No. 16, which Plaintiff disputes Defendant and/or the applicable collective bargaining agreements meeting. 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.

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 \$775,000 Settlement Amount² 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) Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed \$9,000; (4) a \$50,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 49 and subparts). Defendant will separately pay their share of employer payroll taxes and withholdings. (S.A. ¶ 49(a)).

B. NOTICE PROCEDURES

Here, the Parties will provide notice of this settlement in strict compliance with Court's Class Action Case Management Order #1, issued on January 26, 2023 (the "CMO"). Thus, as required by CMO ¶ G), the Parties will send each Class Member a Class Notice, a Request for Exclusion Form, an Objection Form, and a Dispute Form. (S.A. ¶ 65), which are attached to the Mankin Decl. as Exhibits B, C, D, and E, respectively.

Notably, the proposed Notice complies with CMO ¶ G(5) because it informs each Class Member of the estimated recovery, the number of Weeks Works that each Class Members is

² The Settlement Amount is subject to increase if the "Escalator Clause" is triggered. S.A. ¶¶ 15, 49(a). If this clause is triggered, 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. ¶ 49(g)).

1 credited with, and the applicable average payments, minimum, and high payments. And the
2 Notice Packet will be provided in both English and Spanish to ensure that each Class Member
3 can read and understand the contents.

4 Within 14 calendar days after entry of the Preliminary Approval Order, Coreslab shall
5 provide the Settlement Administrator with the “Class Data” consisting of Class Member names,
6 addresses, Social Security Numbers, and Weeks Worked during the applicable periods. (S.A. ¶¶
7 7, 63). Within 10 calendar days of receipt of the Class Data, the Settlement Administrator shall
8 calculate the numbers for each Class Member, populate the Notice, and send each Class Member
9 the Notice Packet via first-class, United States mail. (S.A. ¶ 65).

10 If a Notice is returned as undelivered by the U.S. Postal Service, the Settlement
11 Administrator shall perform a skip trace and seek an address correction for the Class Member(s),
12 and a second Notice will be sent to any new or different address obtained. (S.A. ¶ 66).

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 Settlement, the Class Member
17 must submit a written request to the Administrator no later than 45 days after being mailed by
18 the Settlement Administrator (“Response Deadline”). (S.A. ¶ 35). Any Opt-Out request that is
19 not postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
20 case the Class Member’s exclusion or objection must be returned by the later of the original
21 Notice Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶¶ 66, 70).

22 The Class Notice shall inform Class Members of their right to object to the Settlement.
23 Any Participating Class Member who wishes to object to the Settlement must complete the
24 Objection Form in the Notice Packet. To be valid, any Objection Form must be mailed to the
25 Settlement Administrator and postmarked on or before the Response Deadline. (S.A. ¶ 70(c)).

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

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

Individual Class Payments will be calculated by: (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Members' Weeks Worked. (S.A. ¶ 49(c)). Additionally, each "Aggrieved Employee" will receive an Individual PAGA Payment, calculated by dividing and distributing the \$12,500 on a pro-rata Weeks Worked basis. (S.A. ¶ 49(h)).

The Class Notice will inform Class Members of the number of Weeks Worked during the relevant periods and the estimated Individual Class and PAGA Payments. Class Members may dispute their Share Points or Weeks Worked by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 68).

E. TIMING OF SETTLEMENT DISBURSEMENTS

Pursuant to the terms of the Settlement Agreement, Coreslab is required to fund the Settlement Amount, plus Coreslab's share of payroll taxes owed on the Individual Class Payments, within 60 days of the Effective Date. (S.A. ¶ 71). Within 10 days after receiving the funds, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 72). However, disbursement of the Class Counsel's Attorney's Fees and Cost, Service Payment to the Class Representative, Settlement Administration Costs shall not precede disbursement of the Individual Class Payments and the PAGA Penalties. (*Id.*)

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

As required by CMO ¶ G(3)(c)(i), Plaintiff's Counsel explains the reasoning for this method of distribution at Mankin Decl. ¶¶ 53-58.

F. TAX TREATMENT

The Parties agree that twenty percent (20%) of the Individual Class Payments will be allocated as wages subject to withholding of all applicable local, state and federal taxes and the remaining eighty percent (80%) will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 49(d)). The Individual PAGA Payments will be classified entirely as civil penalties and shall

1 be reported as required on an IRS Form 1099. (S.A. ¶ 49(h)).

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

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

5 all claims stated in the operative Complaint and those based solely
6 upon the facts in the Complaint, including: (1) failure to pay
7 minimum wages, (2) failure to pay overtime wages, (3) failure to
8 provide meal periods, (4) failure to provide rest breaks, (5) failure
to timely pay final wages, (6) failure to provide accurate itemized
wage statements, and (7) unfair and unlawful competition.

9 Additionally, as required by CMO ¶ G(3)(e)(iii), the time period governing the Released
10 Class Claims is the same as the Class Period. And, pursuant to CMO ¶ G(3)(e)(i), the “Released
11 Parties” are limited to Defendant and its officers, directors, employees, and agents. (S.A. ¶ 33).

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

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

18 The Settlement Agreement at ¶ 34 also complies with CMO ¶¶ G(3)(e)(iv) and G(9)(d) as
19 it defines the “Released PAGA Claims” as follows:

20 all PAGA claims that Plaintiff alleged against the Released Parties
21 based on the facts stated in the relevant LWDA notice letters and
22 only to the extent that they are alleged in the operative Complaint,
including all PAGA claims seeking civil penalties premised upon:
23 (1) failure to pay minimum wages, (2) failure to pay overtime wages,
24 (3) failure to provide meal periods, (4) failure to provide rest breaks,
(5) failure to timely pay wages each period, (6) failure to timely pay
wages upon separation of employment, (7) failure to provide
25 accurate itemized wage statements, and (8) all other claims for civil
penalties recoverable under the Private Attorneys General Act,
26 Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in
27 the LWDA notice letters and operative Complaint.
28

1 The CMO, at ¶¶ G(3)(e)(iv) and G(9)(d)(i), also requires that the “release of claims for
2 PAGA penalties shall bind only the named plaintiff and the State of California.” The Settlement
3 Agreement strictly complies with this requirement. (See S.A. ¶ 53 [“Plaintiff – in his individual
4 capacity and on behalf of the State of California and LWDA – shall completely release and
5 discharge the Released Parties from the Released PAGA Claims for the PAGA Period”]).

6 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
7 that individual will still be subject to the Released PAGA Claims and will receive a pro-rata share
8 of PAGA Penalties. (S.A. ¶ 54; CMO ¶ G(9)(c)).

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

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

23 **A. ASCERTAINABILITY AND NUMEROSITY**

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

1 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
2 are approximately 410 Class Members that are easily identifiable and fall within the defined
3 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

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

5 *1. Commonality*

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

12 *2. Typicality*

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

20 *3. Adequacy of Representation*

21 The proposed class representative must establish that he or she will adequately represent
22 the proposed class. *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.
23 Specifically, Plaintiff is adequate to represent the class because he was employed by Defendant
24 during the Class Period, experienced the same wage and hour practices as the rest of the Class,
25 understood his duties as a Class Representative, has been willing to undergo the risks of
26 litigation, and has no conflict of interest. (Aldana Decl. ¶¶ 2-5).

27 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
28 *Local Joint Exec. Bd. v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here,

1 Plaintiff is represented by Class Counsel with extensive experience in wage and hour class
2 actions like this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-9).

3 4. Superiority

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

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

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

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

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

24 Thus, at the preliminary approval stage, the Court need only determine that the settlement
25 falls within the "range of possible judicial approval," so that notice to the class and the
26 scheduling of the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court
27 should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious
28 deficiencies . . . and [the settlement] appears to fall within the range of possible approval."

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

7 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
8 **NEGOTIATIONS**

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

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

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

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

27 To evaluate a settlement, the parties must provide the trial court with “basic information
28 about the nature and magnitude of the claims in question and the basis for concluding that the

1 consideration being paid for the release of those claims represents a reasonable compromise.”

2 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

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

14 Here, Coreslab raised significant legal and factual defenses that weigh in favor of the
15 reasonableness of the proposed Settlement. Specifically, with respect to Plaintiff’s minimum
16 wage, overtime, meal and rest break and derivative labor code allegations as a whole, Coreslab
17 argued that it was exempt from the requirements of the Labor Code due to the existence of
18 various collective bargaining agreements meeting the exceptions provided by Labor Code
19 section 514, Labor Code section 512(e), and/or Industrial Wage Order No. 16, which Plaintiff
20 disputes Coreslab and/or the applicable collective bargaining agreements meeting. Furthermore,
21 in addition to disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff
22 could obtain class certification, arguing a lack of commonality of the legal claims and injuries.
23 Coreslab further argued that it complied with the applicable law and that any purported
24 deviations therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify
25 the class.

26 While Plaintiff asserts that this is a suitable case for certification, he realizes that there is
27 always a significant risk associated with class certification proceedings, which could limit the
28 claims that he could pursue on a class basis.

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

5 Based upon data obtained through formal and informal discovery, Plaintiff's counsel
6 estimated the following through mediation: (1) 403 Class Members, (2) 242 *former* Class
7 Members for purposes of Labor Code § 203, (3) 19,954 workweeks, (4) 93,784 shifts worked,
8 and (4) approximately 9,006 wage statements during the PAGA Period. (Mankin Decl. ¶ 25).

9 From these numbers, and by applying violations rates derived from analysis of extensive
10 documents and data from Defendant, Plaintiff calculated the following maximum amounts
11 assuming all claims were entirely successful at trial: class damages and penalties of \$7,410,938,
12 and PAGA penalties of \$4,511,000. (Mankin Decl. ¶ 46). Then, by applying risks at class
13 certification and on the merits, and when considering other factors (such as evidentiary burdens
14 of proof), Plaintiff calculated the risk-adjusted award at trial for the class claims to be \$2,251,188
15 and for PAGA as \$586,990. (Mankin Decl. ¶ 46). As required by CMO ¶ G(3)(a)(i and ii), the
16 full analysis of the maximum and risk-adjusted values is contained in the Mankin Decl. at ¶¶ 24-
17 45 (and, for the sake of brevity, that information is not duplicated in this Motion).

18 Thus, the reasonableness of the settlement is apparent from the fact that the proposed
19 settlement is 34.4% of the risk-adjusted class damages and penalties. And, for that reason and
20 the others discussed in this Motion, the Parties submit that this settlement is fair and reasonable.

21 **E. PLAINTIFF'S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION**

22 The view of attorneys conducting the litigation is entitled to significant weight deciding
23 whether to approve a settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
24 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must consider "the experience and view of
25 counsel"). Here, Plaintiff's Counsel are highly experienced in Class/PAGA litigation, having
26 repeatedly been named "Super Lawyer" in employment litigation (a distinction awarded to only
27 5% of litigators), having achieved large settlements and verdicts, including one of the largest
28 PAGA awards in California's history, collecting over \$250 million for its clients, having tried

1 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
2 6; Carlson Decl. ¶¶ 3-9). Plaintiff's counsel, operating at arm's length, weighed the strengths and
3 risks of this case, and are of the view that this is a fair and reasonable settlement considering the
4 nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law,
5 and uncertainties of class certification and litigation.

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

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

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

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

25 The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members
26 with all due process protections required by the U.S. Constitution. Moreover, the contents of the
27 Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a
28 detailed explanation of the case, including the basic contentions or denials of the parties; (2) a

1 statement that the court will exclude the member from the class if the member so requests by a
2 specified date; (3) a procedure for the member to follow in requesting exclusion from the class;
3 (4) a statement that the judgment, whether favorable or not, will bind all members who do not
4 request exclusion; and (5) a statement that any member who does not request exclusion may, if
5 the member so desires, enter an appearance through counsel. The 45-day deadline to opt-out or
6 object is also reasonable, as it provides Class Members sufficient time to do so and, if they so
7 choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he
8 or she will automatically be sent a settlement check.

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

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

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

19 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
20 of up to \$20,000 in litigation costs, along with attorneys’ fees equal to one-third of the
21 Settlement Amount. See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving
22 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
23 action litigation establishes a monetary fund for the benefit of the class members, the trial court
24 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
25 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
26 (approving fee 1/3 from settlement amount of \$4.5 million since 1/3 was “well within the range
27 of percentages which courts have upheld as reasonable in other class action lawsuits”).
28

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

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

4 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
5 Representative, which is reasonable given the large recovery Class Members will receive on
6 average, as well as the time and effort he devoted to this case. His efforts included providing
7 factual background for the litigation; providing documents and information about Defendant's
8 compensation plan; participating in phone calls to discuss litigation and settlement strategy;
9 making himself available throughout the litigation to assist with analyzing the claims and
10 defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
11 documents. The Class Representative also assumed significant risk in bringing this litigation—
12 namely, had he lost, he could have been ordered to pay Defendant's costs.

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

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

25 Subject to the Court's approval, the parties agreed to Phoenix Settlement Administrators
26 serving as the Settlement Administrator. Phoenix is experienced in administering class action
27 settlements and has provided a flat-fee proposal to administer this settlement for \$9,000.
28 (Mankin Decl. ¶ 77; Decl. of Michael Moore of Phoenix and exhibits).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

March 14, 2024	Preliminary Approval (PA) hearing
April 8, 2024	<u>24 days after PA (+1 for Sunday)</u> : Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
May 23, 2024	<u>45 days after mailing Notice</u> : Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD – June 12, 2024	<u>Approx. 120 days after PA</u> : Final Approval Hearing

VIII. CONCLUSION

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

Dated: February 21, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On February 21, 2024, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 21, 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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