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

ELAINE COOPER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

EXLSERVICE HOLDINGS, INC., a
Delaware Corporation; OVERLAND
SOLUTIONS, INC., a Delaware
Corporation; OVERLAND SOLUTIONS
LLC, an Entity Unknown;
EXLSERVICE.COM, LLC, a Delaware
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVSB2308059
*[Assigned to Hon. Joseph Ortiz, Dept S17, 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: September 12, 2024

Time: 8:30 a.m.

Dept.: S17

Complaint filed: April 24, 2023

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 12, 2024, 8:30 a.m., or as soon thereafter as
3 the matter may be heard by the Honorable Joseph Ortiz in Department S17 of the San Bernardino
4 County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff
5 Elaine Cooper, individually and on behalf of all others similarly situated, will and hereby does
6 move the Court for entry of an Order preliminarily approving the Parties' Class Action and
7 Private Attorneys General Act ("PAGA") settlement, including:

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

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

23 Dated: August 20, 2024

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Elaine Cooper seeks preliminary approval of a \$600,000 class action settlement
4 on behalf of approximately 300 current and former non-exempt, hourly-paid employees of
5 Defendants ExlService Holdings, Inc. Overland Solutions LLC, Overland Solutions, Inc. and
6 ExlService.com, LLC (“Defendants”) who worked in California at any time during the Class
7 Period of April 24, 2019, through either (1) date of Preliminary Approval, or (2) the date by
8 which Defendants elect to end the Class Period should the number of Workweeks exceed 16,009
9 before Preliminary Approval as provided in the Escalator Clause.¹

10 Under the terms of the Settlement Agreement,² Defendants will not oppose Plaintiff
11 Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the
12 Settlement Amount, litigation expenses not to exceed \$25,000, Administrator Costs of \$8,000,
13 PAGA penalties of \$50,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a
14 pro rata basis), and a Service Payment of \$10,000 to Plaintiff Elaine Cooper (“Class
15 Representative”). (S.A. ¶ 3.2, *et seq.*)

16 After all Court-approved deductions from the Settlement Amount, it is estimated that
17 \$307,000 will be available to pay the Class Members, as follows:

18

<i>Settlement Amount</i>	\$ 600,000.00
Attorneys’ Fees (1/3)	\$ 200,000.00
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 8,000.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 307,000.00

23

24 ¹ “Escalator Clause” means that if the actual number of Workweeks through Preliminary Approval Order
25 exceeds 14,554 Workweeks by more than 10% (*i.e.*, by more than 16,009.4 Workweeks), then at the
26 option of Defendants, Defendants shall either (a) increase the Gross Settlement Amount by the additional
27 Workweeks above 16,009 Workweeks on a pro rata basis (*e.g.*, if the number of Workweeks is 11%
28 greater than the 14,554, the Gross Settlement Amount shall increase by 1%), or (b) elect to move the end
dates for the Class Period to the latest date before the Preliminary Approval Order that does not exceed
16,009 Workweeks.

² The Class Action and PAGA Settlement Agreement (the “Settlement Agreement” or “S.A.”) is attached
as Exhibit 1 to the Decl. of Brian Mankin (“Mankin Decl.”).

1 Assuming 300 Class Members, the average payment will be approximately \$1,023.33
2 (\$307,000 / 300). However, the actual payments will be calculated on a pro-rata basis according
3 to the number of Weeks Worked by each Class Member during the Class Period. In addition,
4 approximately 200 Aggrieved Employees will receive a share of the \$12,500 PAGA Penalties
5 (25% of the \$50,000 allocation), calculated pro-rata based on Pay Periods Worked during the
6 PAGA Period. (S.A. ¶ 3.2.5).

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

14 **II. BACKGROUND**

15 **A. THE CLASS**

16 The Class is defined as follows:

17 All current and former non-exempt, hourly-paid employees of
18 Defendants ExlService Holdings, Inc. Overland Solutions LLC,
19 Overland Solutions, Inc. and ExlService.com, LLC who worked in
20 California at any time during the Class Period of April 24, 2019,
21 through either (1) date of Preliminary Approval, or (2) the date by
22 which Defendants elect to end the Class Period should the number
23 of Workweeks exceed 16,009 before Preliminary Approval as
24 provided in the Escalator Clause. (S.A. ¶¶ 1.5, 1.12).

25 **B. PROCEDURAL HISTORY**

26 On April 21, 2023, Plaintiff submitted a letter to the Labor and Workforce Development
27 Agency ("LWDA") for civil penalties under the Private Attorneys General Act of 2004
28 ("PAGA"), and simultaneously sent a letter to Defendants requesting the production of personnel
and timekeeping records to further evaluate her wage and hour claims. (Mankin Decl. ¶ 13).

Then on April 24, 2023, Plaintiff commenced this Action by filing a class action
complaint against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay

1 Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5)
2 Failure to Reimburse Business Expenses; (6) Failure to Timely Pay Final Wages; (7) Failure to
3 Provide Accurate Itemized Wage Statements and; and (8) Unfair and Unlawful Competition.
4 Once the 65 day waiting period expired and the LWDA did not assert jurisdiction over the
5 PAGA claims, Plaintiff filed a First Amended Complaint against Defendants on July 6, 2023 that
6 added claims civil penalties under PAGA, including (9) Failure to Pay Minimum Wages, (10)
7 Failure to Pay Overtime Wages, (11) Failure to Provide Meal Periods, (12) Failure to Provide
8 Rest Breaks, (13) Failure to Reimburse Business Expenses, (14) Failure to Timely Pay Wages,
9 (15) Failure to Timely Pay Final Wages, and (16) Failure to Provide Accurate Itemized Wage
10 Statements. On March 15, 2024, Plaintiff filed the operative Second Amended Complaint
11 against Defendants, adding Class and PAGA causes of action for failure to pay vested vacation
12 wages. (S.A. ¶ 2.1; Mankin Decl. ¶ 14).

13 Defendants retained counsel and immediately began to defend the case, including
14 denying the allegations in the Complaint, denying any failure to comply with the laws identified
15 in in the Complaint, and denying any and all liability for the causes of action alleged.
16 Defendants further denied that, for any purpose other than settling this Action, this Action is
17 appropriate for class action or representative treatment. (S.A. ¶ 2.1). However, after discussions
18 among counsel, the Parties agreed to attend private mediation prior to a contested class
19 certification process. (Mankin Decl. ¶ 15).

20 In preparation for mediation, the Parties informally exchanged documents and
21 information that allowed both sides to calculate the potential damages and evaluate potential risk,
22 including policies and procedures pertaining to the claims, statistics relating to the number of
23 current and former employees, number of shifts, pay periods worked and other things, and a
24 sampling of payroll and timekeeping records for Class Members. This information, which
25 included a 25 percent random and anonymized representative sampling of class time and pay
26 data for 235 Class Members, among other documents, which enabled both parties to take a deep
27 dive into the claims. Additionally, during this process, Plaintiff and her counsel analyzed,
28 researched, and investigated the potential issues, including matters related to the calculation of

1 damages, trial, and appellate issues and risks. (S.A. ¶ 2.4; Mankin Decl. ¶ 16).

2 On January 22, 2024, Plaintiff and Defendants participated in mediation with Tripper
3 Ortman III, a well-respected employment mediator. After a full-day mediation, the matter
4 resolved with a mediator's proposal, and the Parties entered into the Settlement Agreement. The
5 Parties now seek the Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 17).

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

7 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
8 However, Defendants vigorously contested and denied Plaintiff's material allegations on the
9 merits and as to the propriety of a class action or PAGA representative action. Still, Plaintiff
10 believed there were several strong claims. (Mankin Decl. ¶ 18).

11 For instance, Plaintiff alleged Defendant failed to pay proper wages due to several
12 distinct wage violations. *First*, Plaintiff alleged that Defendants paid the Class on an hourly
13 basis plus other nondiscretionary compensation (such as bonuses and commissions), yet
14 Defendants failed to properly include this compensation in the regular rate calculations and
15 overtime compensation. *Second*, Plaintiff also alleged that Plaintiff and the Class Members were
16 required to perform off-the-clock work due to various reasons, including a computer-based
17 timekeeping system that was not accessible until employees completed various boot-up tasks (at
18 the beginning of shifts) and through which employees had to clock out and then perform various
19 shut down tasks (at the end of shifts). *Third*, Plaintiff alleged that Defendants failed to pay all
20 vested vacation owed to the Class. However, Defendants opposed each of these unpaid wage
21 claims on the merits and as to the propriety of class certification. (Mankin Decl. ¶ 19).

22 Plaintiff also alleged that Class Members were denied compliant meal and rest breaks.
23 However, Defendants argued they provided and made all mandated breaks available to the Class,
24 and any employee who did not take a break did so of their own volition. Thus, Defendants
25 argued these claims were without merit because, for each violation, a fact-finder would have to
26 determine why a break was noncompliant, because if it was by the employee's choice, no
27 liability attaches to Defendant. (Mankin Decl. ¶ 20).

1 Finally, Plaintiff alleged a variety of other claims (all of which Defendants disputed),
2 such as the failure to reimburse expenses, failure to timely pay wages each period and upon
3 separation of employment, and failure to provide accurate itemized wage statements. (Mankin
4 Decl. ¶ 21).

5 Despite the disputed nature of the claims, the Parties concluded that further litigation of
6 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
7 finally settled to limit further risk, expense, and protracted litigation. (Mankin Decl. ¶ 22).

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

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

10 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

11 The \$600,000 Settlement Amount³ is non-reversionary and will be paid out to Class
12 Members without the need to submit a claim form or take any affirmative action. It includes (1)
13 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$10,000 to
14 Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed \$8,000; (4) a
15 \$50,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor
16 Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual
17 Class Payments of the Participating Class Members. (S.A. ¶ 3.2 and subparts). Defendants will
18 separately pay their share of employer payroll taxes and withholdings on the Wage Portions of
19 the Individual Class Payments. (S.A. ¶ 3.1).

20 **B. NOTICE PROCEDURES**

21 The proposed Notice will be provided to the Class showing the estimated amounts that
22 each Class Member will receive, the number of Work Weeks credited as a Class Member, and (if
23 applicable) the number of Pay Periods credited as an Aggrieved Employee (*See* Exhibit 2 to
24 Mankin Decl.). Within 45 calendar days after entry by the Court of its Order of Preliminary
25

26 ³ The Gross Settlement Amount may be increased if the "Escalator Clause" is triggered. S.A. ¶ 8.
27 If this clause is triggered and Defendants elect to increase the Gross Settlement Amount (as
28 compared to shortening the Class/PAGA Periods), then other figures will also shift upward along
with the Gross Settlement Amount, such as attorneys' fees (but this is still constrained to 1/3 of
the Settlement Amount) (*see* S.A. ¶ 3.2.2).

1 Approval, Defendants shall provide the Administrator with the “Class Data” consisting of Class
2 Member names, addresses, Social Security Numbers, Weeks Worked and Pay Periods Worked
3 during the Class/PAGA Period(s). (S.A. ¶¶ 1.8, 4.2).

4 Within 14 calendar days of receipt of the Class Data, the Administrator shall calculate the
5 numbers for each Class Member, determine if the Escalator Clause has been triggered and
6 provide Defendant with its options, populate the Notice, and then send each Class Member the
7 Notice via first-class, United States mail. (S.A. ¶ 7.4.2).

8 If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall
9 perform a skip trace search and seek an address correction for the Class Member(s), and a second
10 Notice will be sent to any new or different address obtained. (S.A. ¶ 7.4.3).

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 complete and submit a Request for Exclusion to the Administrator no later than 30 days
16 after being mailed by the Administrator (“Response Deadline”). (S.A. ¶¶ 1.45, 7.5). Any Opt-
17 Out request not postmarked by the Response Deadline will be invalid, unless a Notice was
18 remailed in which case the Class Member’s exclusion or objection must be returned by the later
19 of the original Response Deadline or 10 calendar days after remailing. (S.A. ¶¶ 7.4.4).

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 submit an
22 Objection to the Administrator no later than the Response Deadline. (S.A. ¶ 7.7).

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

24 The amount of each Class Member’s Individual Class Payment is tied to the number of
25 Weeks Worked by each Class Member for Defendants during the Class Period. Therefore,
26 Individual Class Payments will be calculated by: (a) dividing the Net Settlement Amount by the
27 total number of Workweeks worked by all Participating Class Members during the Class Period
28 and (b) multiplying the result by each Participating Class Member’s Workweeks. (S.A. ¶ 3.2.4).

1 Additionally, each “Aggrieved Employee” will receive an Individual PAGA Payment, calculated
2 by dividing and distributing the \$12,500 on a pro-rata Pay Period basis. (S.A. ¶ 3.2.5.1).

3 The first page of the Class Notice shall prominently estimate the dollar amounts of any
4 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and
5 the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these
6 amounts. (S.A. ¶ 7.4.2). Class Members may dispute their Weeks Worked or Pay Periods by
7 timely submitting evidence to the Settlement Administrator. (S.A. ¶ 7.6).

8 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

9 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
10 Settlement Amount, plus Defendants’ share of payroll taxes owed on the Individual Class
11 Payments, within 25 days of the Effective Date, which will occur after the deadline to appeal the
12 Final Order. (S.A. ¶ 1.19, 4.3). Within 10 days after receiving the funds, the Administrator shall
13 issue payments to cover all court-approved payments. (S.A. ¶ 4.4).

14 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 4.4.1). If a Class
15 Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to
16 the California State Controller in the name of the Class Member/Aggrieved Employee. (S.A. ¶
17 4.4.3).

18 **F. TAX TREATMENT**

19 The Parties agree that fifteen percent (15%) of the Individual Class Payments will be
20 allocated as wages subject to withholding of all applicable local, state and federal taxes and the
21 remaining eighty-five percent (85%) will be allocated for interest and penalties (pursuant to, *e.g.*,
22 California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A.
23 ¶ 3.2.4.1). The Individual PAGA Payments will be classified entirely as civil penalties and shall
24 be reported as required on an IRS Form 1099. (S.A. ¶ 3.2.5.2).

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

26 In exchange for these payments, the Participating Class Members will release the
27 Released Parties of the following “Released Class Claims” (S.A. ¶ 5.2):

28 all claims and causes of action pleaded in the Complaint, and those
which could reasonably have been alleged based on the facts,

1 allegations, and/or claims stated in the Complaint for work performed
2 during the Class Period, including claims for: (1) Failure to Pay
3 Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to
4 Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure
5 to Pay Vested Vacation; (6) Failure to Reimburse Business Expenses;
6 (7) Failure to Timely Pay Final Wages; (8) Failure to Provide Accurate
7 Itemized Wage Statements; (9) Unfair and Unlawful Competition;
8 including claims predicated on the same or similar facts and/or claims
9 alleged in the Complaint as well as any claims that reasonably could
10 have been pled which arise from the facts alleged in the Complaint
11 concerning the Plaintiff or the putative class, including any state or
12 federal claims for unpaid wages (including minimum, regular, vacation
13 and overtime wages), unlawful rounding of employee time punches,
14 untimely wage payments both during and at the end of employment,
15 non-compliant meal periods, non-compliant rest periods, non-compliant
16 wage statements, failure to reimburse and indemnify business expenses,
17 failure to correctly calculate the regular rate of pay, and claims for
18 interest, penalties (including but not limited to waiting time penalties),
19 or premiums in connection therewith, as well as any claims under
20 federal law, the California Labor Code and California Industrial Welfare
21 Commission Wage Orders that were alleged or which reasonably could
22 have been alleged under the facts, allegations and/or claims pleaded in
23 the PAGA Letter or the Class Lawsuit. Finally, to the extent required by
24 law, the cashing of the settlement check by the Settlement Class
25 Member shall be deemed to be an opt-in for purposes of releasing
26 Released Parties from any claims predicated under the Fair Labor
27 Standards Act ("FLSA") that could have been alleged under the facts,
28 allegations and/or claims pleaded in the Operative Complaint.

19 The Settlement Administrator shall include a legend on the settlement check stating, "By
20 cashing this check, and to the extent required by law, I am opting into the settlement in *Elaine*
21 *Cooper v. ExlService Holdings, Inc. et al.*, San Bernardino Superior Court, Case No.
22 CVSB2308059, under FLSA, 29 U.S.C. § 216(b), and releasing the Released Claims described
23 in the Settlement Agreement.

24 It is understood and agreed that the Settlement Agreement will not release any other
25 claims, including claims for vested benefits, wrongful termination, violation of the Fair
26 Employment and Housing Act, unemployment insurance, disability, social security, workers'
27 compensation, or claims based on facts occurring outside the Class Period. (S.A. ¶ 5.3).

28 ///

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

2 The Settlement Agreement at ¶ 5.4 defines the “Released PAGA Claims” as follows:

3 all claims for PAGA penalties that were alleged, or reasonably could
4 have been alleged, based on the PAGA Period facts stated in the
5 Operative Complaint, and PAGA Notice, including, e.g., any and all
6 claims involving any and all claims involving (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 Periods; (5) Failure
9 to Pay Vested Vacation; (6) Failure to Reimburse Business Expenses;
10 (7) Failure to Timely Pay Final Wages; (8) Failure to Timely Pay Final
11 Wages, (9) Failure to Provide Accurate Itemized Wage Statements, (10)
12 Failure to pay sick pay and (11) all other claims for civil penalties
13 recoverable under PAGA based on the facts or claims alleged in
14 Plaintiff’s PAGA Notice to the LWDA and the Complaint.

15 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
16 that individual will still be subject to the Released PAGA Claims and will receive a pro-rata share
17 of PAGA Penalties. (S.A. ¶ 3.2.5).

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

20 California Rule of Court 3.769(d) provides that the Court may make an order approving
21 certification of a provisional settlement class at the preliminary approval stage. It is well-
22 established that trial courts should use a “lesser standard of scrutiny” for determining the
23 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
24 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
25 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved
26 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
27 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
28 certification, a district court need not inquire whether the case, if tried, would present intractable
management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
purposes of this settlement only, Plaintiff requests 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; *Medraza 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 Defendants’ records, there
8 are approximately 300 Class Members that are easily identifiable and fall within the defined
9 Class. Thus, Plaintiff’s 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, Plaintiff contends 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). Here, typicality is satisfied because
22 Plaintiff was employed by Defendants during the Class Period and alleges that she experienced
23 the same wage and hour violations as the rest of the Class, based on Defendants’ uniform
24 policies. (Cooper Decl. ¶ 4). Thus, although Defendants dispute whether Plaintiff’s claims are
25 typical of the Class for the purposes of any continued litigation of the Action, they agree that, for
26 the purposes of this settlement only, Plaintiff asserts claims regarding Defendants’ pay policies,
27 meal and rest break practices, wage statements, and the provisions governing the timely and
28 complete payment of wages, which are at the core of the lawsuit.

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, Plaintiff is adequate to represent the class because she understood her duties as a
5 Class Representative, has been willing to undergo the risks of litigation, and has no conflict of
6 interest. (Cooper Decl. ¶¶ 2-5).

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

11 4. Superiority

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

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

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

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

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28 ///

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

3 Plaintiff 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, Defendants 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 Plaintiff’s
27 claims, Defendants strongly disputed that Plaintiff could obtain class certification, arguing a lack
28 of commonality of the legal claims and injuries. Defendants further argued that they complied

1 with applicable law and that any purported deviations therefrom were individualized in nature,
2 thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a suitable
3 case for certification, she realizes that there is always a significant risk associated with class
4 certification proceedings, which could limit the claims that she 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, Plaintiff's counsel
10 estimated the following through mediation: (1) 240 Class Members, (2) 150 *former* Class
11 Members for purposes of Labor Code § 203, (3) 14,434 workweeks, (4) 63,994 shifts worked,
12 and (4) approximately 4,142 wage statements during the PAGA Period. (Mankin Decl. ¶ 24).

13 From these numbers, and by applying violations rates derived from analysis of extensive
14 documents and data from Defendants, Plaintiff calculated that, assuming all claims were entirely
15 successful at trial, the maximum class damages and penalties would be approximately \$3.8
16 million. (Mankin Decl. ¶ 30). Then, by applying risks at class certification and on the merits,
17 and when considering other factors (such as evidentiary burdens of proof), Plaintiff calculated
18 the risk-adjusted award at trial for the class claims to be approximately \$1.1 million. (*Id.*). The
19 full analysis of the maximum and risk-adjusted values is contained in the Mankin Decl. at ¶¶ 24-
20 31 (and, for the sake of brevity, that information is not duplicated in this Motion).

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

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

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

5 The view of attorneys conducting the litigation is entitled to significant weight deciding
6 whether to approve a settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
7 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must consider “the experience and view of
8 counsel”). Here, Plaintiff’s Counsel are highly experienced in Class/PAGA litigation, having
9 repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only
10 5% of litigators), having achieved large settlements and verdicts, including one of the largest
11 PAGA awards in California’s history, collecting over \$250 million for its clients, having tried
12 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
13 6; Carlson Decl. ¶¶ 3-9). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and
14 risks of this case, and are of the view that this is a fair and reasonable settlement considering the
15 nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law,
16 and uncertainties of class certification and litigation.

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

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

22 The proposed Notice and proposed plan for the Administrator to mail the Notice to the
23 last known address of all class members complies with all the requirements of Cal. Rule of Court
24 3.769(f) and 3.766(b). The proposed Notice includes: (1) the material terms of the settlement; (2)
25 the proposed attorneys’ fees, litigation expenses, and the costs of administration; (3) details
26 about the final fairness hearing and how class members may elect to exclude themselves or make
27 an objection; (4) how class members can obtain additional information; and (5) each Class
28 Members’ Individual Class and PAGA Payments. *See* Class Notice (Exhibit 2 to Mankin Decl.).

1 The Court has wide discretion in approving the means of providing notice, so long as the
2 class representative “provide(s) meaningful notice in a form that should have a reasonable
3 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
4 (1976) 15 Cal.3d 853, 861. Here, the Notice will be disseminated directly to the Class Members
5 by first class mail by the Settlement Administrator, since Defendants have the last known
6 addresses of all class members and the Settlement Administrator will perform a skip trace and
7 update those addresses for any Notices that are returned and re-send the same.

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

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

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

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

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

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

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

14 The Settlement Agreement provides an incentive award payment of \$10,000 to the Class
15 Representative, which is reasonable given the large recovery Class Members will receive on
16 average, as well as the time and effort she devoted to this case. Her efforts included providing
17 factual background for the litigation; providing documents and information about Defendants’
18 compensation plan; participating in phone calls to discuss litigation and settlement strategy;
19 making herself available throughout the litigation to assist with analyzing the claims and
20 defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
21 documents. The Class Representative also assumed significant risk in bringing this litigation—
22 namely, had she lost, she could have been ordered to pay Defendants’ costs.⁴

23 The requested service award falls within the range of incentive payments typically
24 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*

25
26
27 ⁴ In addition to the wage and hour claims at issue in this Settlement, Plaintiff also, separately
28 alleged individual claims of discrimination, harassment, retaliation and wrongful termination
under the Fair Employment and Housing Act. To resolve these claims, Plaintiff and Defendants
have entered into a separate individual settlement agreement. That Agreement does not release
any claims at issues in this settlement.

Enterprises, Inc. (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement).

VI. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR

Subject to the Court’s approval, the parties agreed to Phoenix Settlement Administrators serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$8,000. (Mankin Decl. ¶ 43; Exhibit 3 to Mankin Decl. [Phoenix’s bid]).

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 150 days after the Preliminary Approval Date, as follows:

September 12, 2024	Preliminary Approval (PA) hearing
45 days after PA is granted	Deadline for Defendants to provide Class Data to Administrator.
3 business days after receipt of Class Data	Administrator shall provide number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data, and whether the Escalator Clause has been triggered. If the Escalator Clause has been triggered, Defendants shall inform the Administrator and Class Counsel of their selected option for increasing the Gross Settlement Amount or shortening the Class Period within (3) business days.

14 days after PA	Deadline for Administrator to complete first mailing of the Notice to all Class Members.
30 days after mailing Notice	Deadline for Class Members to submit Requests for Exclusion, Objections and Disputes 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.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD (proposed date: 150 days after PA)	Final Approval Hearing

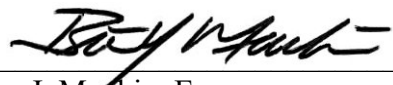
VIII. CONCLUSION

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

Dated: August 20, 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 August 20, 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; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER

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

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

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

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

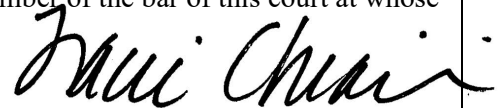
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 20, 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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