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

VIRGINIA ALVARADO, individually, on
a representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ALTA RESOURCES CORP., a Wisconsin
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2304861
*[Assigned to Hon. Joseph Ortiz, Dept S17, for
all purposes]*

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

Hearing

Date: January 13, 2025

Time: 1:30 p.m.

Dept.: S17

Complaint filed: April 13, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 13, 2025, at 1:30 p.m. or as soon thereafter as
the matter may be heard by the Honorable Joseph Ortiz, in Department S17 of the San
Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415,
Plaintiff Virginia Alvarado, individually and on behalf of all others similarly situated, will and
hereby does move the Court for entry of an Order preliminarily approving the Class Action and
PAGA Settlement Agreement ("Settlement Agreement") between Plaintiff and Defendant Alta
Resources Corp., including:

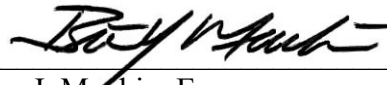
1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
4. Preliminarily approving the class action settlement as fair, adequate,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

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declarations of Plaintiff's counsel (Brian Mankin and Kristina Carlson) and Plaintiff Virginia Alvarado, as well as the Settlement Agreement; the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and other evidence as may be presented to the Court at the hearing of this motion.

Dated: December 18, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Virginia Alvarado seeks preliminary approval of a \$2,000,000 wage-and-hour
4 class action settlement on behalf of all persons employed by Alta Resources Corp. (“Defendant”
5 or “ALTA”) in California and classified as a non-exempt employee who worked for ALTA at
6 any time from April 12, 2019, through Preliminary Approval (the “Class Period”).

7 Under the terms of the Settlement Agreement¹, Defendant will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorney’s fees not to exceed one-third of the
9 Gross Settlement Amount, litigation expenses not to exceed \$30,000, Settlement Administrator
10 Costs of \$14,000, PAGA penalties of \$50,000 (with 75% to the LWDA and 25% to the
11 Aggrieved Employees on a pro rata basis), and a Service Payment of \$10,000, plus \$7,500, for a
12 full release of Plaintiff’s individual claims to Plaintiff Virginia Alvarado (“Class
13 Representative”). (S.A. ¶ 3.2 et seq.)

14 After all Court-approved deductions from the Settlement Amount, it is estimated that
15 \$1,229,333.33 will be available to pay the Class Members, as follows:

16

<i>Gross Settlement Amount</i>	\$ 2,000,000.00
Attorneys’ Fees (1/3)	\$ 666,666.67
Litigation Costs (not to exceed)	\$ 30,000.00
Administrator Costs (not to exceed)	\$ 14,000.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 10,000.00
Class Representative Release Payment	\$7,500.00
<i>Net Settlement Amount</i>	\$ 1,221,833.33

21

22 Assuming approximately 1,500 Class Members, the average payment to each class
23 member will be approximately \$814.55 each (NSA / 1,500). Of course, the actual payment will
24 be calculated on a pro-rata basis according to the number of Workweeks during the Class Period.
25 Further, the Settlement includes an optional Escalator Clause in the event that the total
26 Workweek count exceeds Defendant’s projections at mediation by more than 10%, with
27

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

1 Defendant having the election to cut-off the Class Period when the escalator threshold is reached
2 (S.A. ¶ 8). In addition, the Aggrieved Employees will receive a share of the \$12,500 PAGA
3 Penalties (25% of the total \$50,000 PAGA allocation), calculated pro-rata based on approximate
4 Pay Periods worked during the PAGA Period. (S.A. ¶ 3.2.5).

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

13 **II. BACKGROUND**

14 **A. THE SETTLEMENT CLASS**

15 The Class is defined as follows:

16 All persons employed by ALTA in California and classified as a
17 non-exempt employee who worked for ALTA at any time during the
18 Class Period. (S.A. ¶ 1.5).

19 **B. PROCEDURAL HISTORY**

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

24 That same day, Plaintiff filed a class action complaint in this action. Once the 65-day
25 exhaustion period expired to bring PAGA claims, Plaintiff filed a first amended complaint that
26 added PAGA claims, which alleged causes of action for: (1) failure to pay proper minimum
27 wages, (2) failure to pay overtime wages, (3) failure to provide compliant meal periods, (4)
28 failure to provide compliant rest periods, (5) failure to timely pay final wages, (6) failure to

1 provide accurate itemized wage statements, (7) unfair and unlawful competition, including
2 failure to reimburse for business expenses, and (8) related PAGA claims. (Mankin Decl. ¶ 14).

3 Defendant retained counsel and immediately began to defend the case, including alleging
4 in the Joint Initial Status Conference Report that “Defendant generally denies Plaintiff’s material
5 allegations and any alleged violations of the California Labor Code [and] Defendant further
6 denies that this action is appropriate for class or PAGA treatment and disputes Plaintiff’s ability
7 to prosecute this matter on a class or PAGA representative basis.” However, prior to engaging in
8 discovery and contested class certification process, the Parties agreed to submit the matter to
9 mediation. (Mankin Decl. ¶ 15).

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

22 On August 29, 2024, Plaintiff and Defendant participated in mediation before Steve
23 Rottman, a highly regarded and experienced wage-and-hour class action mediator. The matter
24 resolved at mediation pursuant to a mediator’s proposal, which was accepted by the Parties.
25 (Mankin Decl. ¶ 17). The Parties now seek the Court’s preliminary approval of the Settlement.

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

27 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
28 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.

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

First, Plaintiff alleged that Defendant failed to pay all required overtime when Defendant did not factor in the earned additional compensation (in the form of incentives and referral bonuses) into the regular rate calculations, resulting in underpaid overtime compensation.

Second, Plaintiff alleged that Defendant failed to pay all required minimum wages to herself and the Class due to Defendant requiring Plaintiff and the Class Members to perform off-the-clock work each day due booting up a computer-based timekeeping system before each shift that required Plaintiff and Class Members to set up *before* clocking in and booting up the computer, logging in, and then opening the relevant timekeeping program.

Another primary claim in this action was based on Defendant's failure to provide Plaintiff and the Class with compliant meal periods and rest breaks.

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

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

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

As outlined in the Declaration of Plaintiff Virginia Alvarado ("Alvarado Decl."), Plaintiff asserts that she is an adequate class representative that has claims that are common and typical of the Class. Notably, Plaintiff asserts that her claims are typical of the other Class Members because all Class Members were subjected to the Defendant's uniform practices in regard to payment of wages, calculation of the regular rate of pay and overtime, meal and rest breaks, wage statements, along with other issues. For example, Plaintiff earned a base hourly rate of pay plus additional nondiscretionary compensation during her employment, just as the other Class

Members did – and Plaintiff asserts that Defendant applied a uniform class-wide practice as to how overtime, sick pay, and meal premiums were paid on such occasions. Similarly, at the start of every shift, Plaintiff asserts that she, like the other Class Members, was required to go through various computer “boot up” tasks before being allowed to clock in, and she was not paid for that time – just like Defendant’s other employees. Finally, Plaintiff and the Class Members were all subject to the same uniform policies regarding meal and rest breaks. (Alvarado Decl. ¶ 4).

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The \$2,000,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) a Class Counsel Fee Payment not to exceed one-third of the Settlement Amount and Litigation Expenses not to exceed \$30,000, as approved by the Court; (2) a Class Representative Service Payment of \$10,000, plus \$7,500, for a full release of Plaintiff’s individual claims subject to approval by the Court; (3) Administrator Expenses not to exceed \$14,000; (4) PAGA Penalties of \$50,000, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual Class Payments of the Participating Class Members. (S.A. ¶ 3.2 and subparts). Defendant will separately pay its share of employer payroll taxes and withholdings through the Administrator. (S.A. ¶ 3.1).

B. NOTICE PROCEDURES

The proposed Class Notice will be provided to the Class Members showing the estimated amount that each Class Member will receive and the credited number of Workweeks during the Class Period and pay periods during PAGA Period (See Exhibit 2 to the Mankin Decl.). Within 21 days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of Class Members containing names, addresses, telephone numbers, Social Security Numbers, and the total Weeks Worked in the Class Period and PAGA Pay Periods worked in the PAGA Period (the “Class Data”). (S.A. ¶¶ 1.8 and 4.2).

1 Within 14 days of receipt of the Class Data, the Administrator shall calculate the number
2 of Weeks Worked for each Class Member, populate the Class Notice for each, and send each
3 Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 7.4.2).

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

8 **C. EXCLUSION AND OBJECTION PROCEDURES**

9 Class Members who do not timely Opt-Out of the Settlement will be deemed to
10 participate in the Settlement and shall become a Participating Class Member without having to
11 submit a claim form or take any other action. To Opt-Out of the class portion of the Settlement,
12 the Class Member must submit a written request to the Administrator no later than 45 days after
13 being mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 1.41). Any Opt-
14 Out request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 7.5.1).

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

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

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

24 Additionally, each “Aggrieved Employee” will receive a share of the \$12,500 of PAGA
25 Penalties allocated to the Aggrieved Employees based on the number of PAGA Pay Periods
26 during the PAGA Period. (S.A. ¶ 3.2.5).

27 The Class Notice will inform Class Members of the estimated Workweeks, PAGA Pay
28 Periods, Individual Class Payment, and Individual PAGA Payment. Class Members may dispute

1 their Workweeks and PAGA Pay Periods if they feel they worked more in California as a non-
2 exempt employee during the Class Period or PAGA Period than Defendant's records show by
3 timely submitting evidence to the Settlement Administrator. (S.A. ¶ 7.6).

4 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

5 Defendant is required to deposit the Settlement Amount, along with the employer's share
6 of payroll taxes owed, with the Settlement Administrator, within 30 calendar days after the
7 "Effective Date" and these funds will be used to pay: (1) Class Counsel's Fees and Expenses
8 Payment, as approved by the Court; (2) the Service Payment, as approved by the Court; (3)
9 Administrator Expenses, as approved by the Court; (4) PAGA Penalties; and (5) the aggregate of
10 all Individual Class Payments of Participating Class Members. Within 14 days after receiving the
11 funds, the Settlement Administrator shall issue payments to cover all court-approved payments.
12 (S.A. ¶ 4.3 to 4.4).

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

16 **F. TAX TREATMENT**

17 The Parties agree that 20% of the Individual Class Payment will be allocated as wages
18 subject to withholding of all applicable local, state and federal taxes; and the remaining 80% will
19 be allocated as non-wage damages and interest (pursuant to, e.g., California Labor Code sections
20 203, 210, 226, etc.) from which no taxes will be withheld. (S.A. ¶ 3.2.4.1). Additionally, the
21 PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties
22 and shall be reported as required on an IRS Form 1099.

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

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

26 In exchange for these payments, the Settlement Agreement at ¶¶ 1.37 and 5.2 provides
27 that the Participating Class Members will release the Released Parties of:
28

1 All claims that were alleged, or reasonably could have been alleged,
2 based on the facts stated in the Complaints, including all of the
3 following claims for relief: (a) failure to pay minimum wages,
4 regular wages and/or overtime pay; (b) failure to provide or pay
5 premium payments for meal periods; (c) failure to provide or pay
6 premium payments for rest periods; (d) failure to reimburse for
7 business expenses; (e) failure to provide complete and accurate
8 wage statements; (f) failure to pay wages upon termination; (g)
9 violations of the California Business & Professions Code §§ 17200
10 et seq. These claims include, but are not limited to, California Labor
11 Code sections 200, 201-203, 204, 208, 210, 218.6, 221-223, 226,
12 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1194, 1194.2,
13 1197, 1197.1, 1198, 1199, 2802 and all related provisions of the
14 California Code of Regulations, the California Industrial Wage
15 Orders, the California Business & Professions Code sections 17200
16 et seq. (“Released Class Claims”). The Released Class Claims
17 extend to all theories of relief regardless of whether the claim is, was
or could have been alleged under federal law, state law or common
law (including, without limitation, as violations of the California
Labor Code, the Wage Orders, applicable regulations, and
California’s Business and Professions Code section 17200), and
includes all types of relief available for the above-referenced claims,
including, any claims for damages, restitution, losses, penalties,
fines, liens, attorneys’ fees, costs, expenses, debts, interest,
injunctive relief, declaratory relief, or liquidated damages. The
operative release period for the Released Class Claims is the Class
Period.

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

19 The Settlement Agreement at ¶¶ 1.38 and 5.3 also defines the “Released PAGA Claims”
20 as follows:

21 all claims for civil penalties under the Private Attorneys General
22 Act, Labor Code § 2698 et seq., that were alleged, or reasonably
23 could have been alleged, based on the allegations, the facts, and/or
24 legal theories under PAGA contained in the Complaints and the and
25 in Plaintiff’s PAGA Notice to the LWDA (including any
26 amendments thereto), including all of the following claims for relief:
27 (a) failure to pay minimum wages, regular wages and/or overtime
28 pay; (b) failure to provide or pay premium payments for meal
periods; (c) failure to provide or pay premium payments for rest
periods; (d) failure to reimburse for business expenses; (e) failure to
provide complete and accurate wage statements; (f) failure to pay
wages each pay period and upon termination (“Released PAGA
Claims”). The Released PAGA Claims include, but are not limited
to, California Labor Code sections 200, 201-203, 204, 208, 210.

1 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558,
2 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and all related
3 provisions of the California Code of Regulations, and the California
4 Industrial Wage Orders. The time period governing the Released
5 PAGA Claims shall be the entire time during the PAGA Period. The
6 Released PAGA Claims do not release any potential claims for
wages or statutory penalties, but does not otherwise alter the release
provide if the aggrieved employee is also a Participating Class
Member.

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

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

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

24 **A. ASCERTAINABILITY AND NUMEROSITY**

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

1 class is ascertainable if the class members can be objectively identified and given notice of the
2 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
3 are approximately 1,500 Class Members that are easily identifiable and fall within the defined
4 Class. Thus, the proposed Class meets the ascertainability and numerosity requirements.

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

6 *1. Commonality*

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

14 *2. Typicality*

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

24 *3. Adequacy of Representation*

25 The proposed class representative must establish that he or she will adequately represent
26 the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
27 546. Specifically, Plaintiff contends that she is adequate to represent the class because she was
28 employed by Defendant during the Class Period, experienced the same wage and hour practices

as the rest of the Class, understood her duties as a Class Representative, has been willing to undergo the risks of litigation, and has no conflict of interest.

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

4. Superiority

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

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

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

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

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate

1 conclusions on the contested issues of fact and law which underlie the merits of the dispute.”
2 *Officers for Justice*, 688 F.2d at 625.

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

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

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

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

23
24 At the preliminary approval stage, the Court need only determine that the settlement falls
25 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
26 the fairness hearing are worthwhile. See *Newberg* § 11:25. Indeed, the Court should grant
27 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .
28 . . and [the settlement] appears to fall within the range of possible approval.” *Manual For*

1 *Complex Litigation* (Third) § 30.41 (1995); see *Dunk*, 48 Cal.App.4th at 1802. A “presumption
2 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
3 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
4 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
5 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
6 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 her 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 relating to the Class Members prior to mediation.

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

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

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

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

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

21 Based upon detailed data obtained through informal discovery and information
22 exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation:
23 (1) 1,317 Class Members, (2) 83,925 workweeks during the Class Period, (3) 369,167 shifts
24 worked during the Class Period, and (4) approximately 13,893 wage statements during the
25 PAGA Period. (Mankin Decl. ¶ 26)

26 Here, there were several categories of claims alleged by Plaintiff, including but not
27 limited to: (1) unpaid wage claims under various theories, (2) meal and rest break violations, (3)
28 derivative claims for waiting time and both direct and derivative wage statement penalties due to

1 the other alleged violations, and (4) PAGA claims. (Mankin Decl. ¶ 27)

2 As to the unpaid wage claims, Plaintiff alleged various distinct theories of liability. First,
3 Plaintiff alleged that Defendant failed to pay all required overtime when Defendant did not factor
4 in the earned additional compensation (in the form of incentives and referral bonuses) into the
5 regular rate calculations, resulting in underpaid overtime compensation. Second, Plaintiff alleged
6 that Defendant failed to pay all required minimum wages to herself and the Class due to
7 Defendant requiring Plaintiff and the Class Members to perform off-the-clock work each day due
8 booting up a computer-based timekeeping system before each shift that required Plaintiff and
9 Class Members to set up *before* clocking in and booting up the computer, logging in, and then
10 opening the relevant timekeeping program. In total, Plaintiff's counsel estimated the maximum
11 value of these unpaid wages to be \$2,684,828. (Mankin Decl. ¶ 28)

12 However, Defendant vehemently opposed these unpaid wage claims on the merits and as
13 to the propriety of class certification. For example, as to the boot up time, Defendant argued that
14 such time was de minimis for the Class Members. Furthermore, Defendant argued that any
15 additional compensation paid to Plaintiff and the Class was discretionary and/or rarely issued in
16 a pay period where overtime was also earned. Moreover, in addition to its other defenses on the
17 merits, Defendants argued that Plaintiff would be unable to meet its evidentiary burden at
18 summary judgment and/or trial because Plaintiff and the Class would be unable to introduce
19 evidence as to the amount of unpaid wages due to computer boot up time, thus defeating liability.
20 (Mankin Decl. ¶ 29)

21 Due to these defenses and arguments, Plaintiff assigned a 30% risk for the unpaid wages
22 claim at the class certification stage. And, due to the defenses as to the merits, Plaintiff assigned
23 a 30% merits-based risk. In sum, Plaintiff's counsel calculated the risk-adjusted value of the
24 unpaid wage claims as \$1,315,566. (Mankin Decl. ¶ 30)

25 Plaintiff also alleged meal and rest break claims against Defendant. Given the total
26 number of shifts at issue (an estimate of 369,167 at mediation), and when incorporating violation
27 rates from expert review of the timekeeping records and other evidence, Plaintiff's expert
28 calculated a 43.9% violation rate for meal breaks and a rest break violation rate of 15.2%,

1 leading to 147,591 alleged meal violations and 56,113 alleged rest break violations. This
2 established a maximum potential value for these claims of \$3,389,641 (203,704 violations
3 multiplied by the average hourly rate of \$16.64 as the applicable premium rate under § 226.7).
4 (Mankin Decl. ¶ 31)

5 However, Defendant raised numerous arguments in response to this claim, including that
6 it maintained fully compliant written policies and specifically authorized the Class Members to
7 take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
8 short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for
9 each Class Member whether a break was missed and why, and why a break was noncompliant or
10 nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.
11 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
12 questions regarding whether the meal and rest break claims could be certified, and Plaintiff
13 placed a 20% risk at the class certification stage for meal periods and a 20% risk for rest breaks.
14 Second, these defenses also go toward the merits given the evidentiary question of proving the
15 number of meal and rest violations. As such, Plaintiff placed a 20% risk on the merits for meal
16 breaks, and an additional 20% risk on the merits for rest breaks, setting the risk-adjusted value
17 for the combined meal and rest break claims at \$2,169,370. (Mankin Decl. ¶ 32)

18 Finally, Plaintiffs alleged claims for waiting time penalties and wage statement
19 violations, including failure to accurately state all applicable hourly rates and total hours worked.
20 Some of these claims were derivative of the claims above, meaning that they only had merit if
21 the claims for unpaid wages or meal/rest breaks were successful. The maximum values for these
22 claims were as follows: (1) \$3,598,234 for waiting time penalties [estimated 901 former
23 employees x \$16.64 per hour x 8 hours per day x 30 days], and (2) \$1,385,200 for wage
24 statement violations [13,893 wage statements at the \$50/\$100 formula under § 226(e)]. (Mankin
25 Decl. ¶ 33)

26 But Defendant raised a variety of defenses to these derivative claims that impacted the
27 valuation. Namely, as to the wage statement violations, Defendant argued that its wage
28 statements did not violate Labor Code §§ 226, 212, and 213, and even if there was a "technical"

1 violation, that Plaintiffs would be unable to prove the required “knowing and intentional” and
2 “injury” elements. Based on these facts and defenses, Plaintiff placed a 30% risk at class
3 certification and estimated another 20% risk the merits, leading to a risk-adjusted value of
4 \$775,712 for the wage statement claims. (Mankin Decl. ¶ 34)

5 Then, as to the waiting time penalty claim, Plaintiffs’ valuation had to account for the
6 fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
7 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
8 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
9 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
10 the merits, Plaintiffs would have to prove that the violations (if any existed) were “willful” under
11 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding
12 of a “willful” violation since they had compliant written policies and any deviations there from
13 were inadvertent and unintentional. As a result of this analysis, Plaintiffs’ counsel applied a 30%
14 risk at class certification and a 20% risk on the merits, leading to a risk-adjusted value of
15 \$2,015,011. (Mankin Decl. ¶ 35)

16 And while the PAGA penalties had a maximum value in the low seven figures, this fails
17 to acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts
18 and circumstances of a particular case” and if “to do otherwise would result in an award that is
19 unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover,
20 Defendant argued against the merits of the underlying claims and particularly that the
21 “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and
22 rendered any such penalties as uncertain. Defendant also argued it is improper to stack civil
23 penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that
24 this settlement is fair and reasonable. (Mankin Decl. ¶ 36)

25 1. The Risks Associated with the PAGA Claim

26 Plaintiff’s Counsel believed Defendants’ maximum exposure could theoretically reach
27 the low seven figures under Lab. Code § 2699(f). However, Defendant argued against the merits
28 of the underlying claims which would also be a defense to potential PAGA penalties. Defendant

also argued that it would be improper to “stack” civil penalties on top of statutory penalties for the same violations. Also, courts have wide latitude to reduce PAGA penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Courts have often awarded significantly lesser amounts in cases when they assess a penalty. *See, e.g., Carrington v. Starbucks Corp.* (2017) 30 Cal. App. 5th 504, 669 (PAGA penalties reduced by 90%); *Morales v. Bridgestone*, Case No. 30-2017-00900244 (Orange County Super. Ct.) (Aug. 2, 2018) (PAGA penalties reduced by 94%). Given these factors, Plaintiff allocated \$50,000 of the total Settlement Amount to civil penalties. Allocating less of the settlement to PAGA penalties is justified because it maximizes payments to class members and furthers the public policies underlying PAGA by providing a “robust” remedy for alleged violations of the Labor Code. *See Mejia v. Walgreen Co.* (E.D. Cal. Mar. 24, 2021) 2021 WL 1122390, at *5. (Mankin Decl. ¶ 37)

In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

• Unpaid Wage Claims	\$ 1,315,566
• Meal and Rest Break Claims	\$ 2,169,370
• Wage Statement Claims	\$ 775,712
• Waiting Time Penalty Claims	\$ 2,015,011
• PAGA Penalties	<u>\$ 50,000</u>
• Total Risk Adjusted Penalties and Damages	\$ 6,325,659

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 31.6% of the risk-adjusted class damages and penalties. *See, e.g., Hopson v. Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, *8 (“The settlement ... represents less than two percent of that amount,” but “may be justifiable ... given ... significant defenses that increase the risks of litigation.”); *Balderas v. Massage Envy Franchising* (N.D. Cal. 2014) 2014 WL 3610945 (settlement approved despite only 5% of projected maximum recovery). *Villegas v. J.P. Morgan Chase* (N.D. Cal. 2012) 2012 WL 5878390 (approved settlement that was 15% of

1 potential recovery). Thus, the Parties submit that this settlement is fair and reasonable. (Mankin
2 Decl. ¶ 38)

3 **PLAINTIFF’S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION**

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

8 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been
9 named by the LA Times as one “Southern California Leading Lawyers” in the May 2023 issue of
10 Consumer Attorney’s of Southern California, being named as a “Super Lawyer” in employment
11 litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and
12 verdicts, including one of the largest PAGA awards in California’s history, collecting over \$250
13 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among
14 other things. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-6). Plaintiff’s counsel, operating at arm’s
15 length, weighed the strengths and risks of this case, and are of the view that this is a fair and
16 reasonable settlement considering the nature of the claims, realistic risk adjusted value, the
17 complexities of the case, state of the law, and uncertainties of class certification and litigation.

18 **E. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

19 The proposed Class Notice should be approved, as it fully informs the Class Members of
20 the nature of the lawsuit and each Class Member’s rights under terms of the Settlement
21 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as
22 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
23 of the proposed settlement.

24 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
25 the Class Notice to the last known address of all class members complies with all the
26 requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed
27 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys’ fees,
28 litigation expenses, and the costs of administration; (3) details about the final fairness hearing

1 and how class members may elect to exclude themselves or make an objection; and (4) how class
2 members can obtain additional information. *See* Class Notice (Exhibit 2 to the Mankin Decl.). In
3 addition, it will inform Class Members of their estimated settlement share.

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

12 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement
13 Class Members with all due process protections required by the United States Constitution.
14 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
15 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
16 contentions or denials of the parties; (2) a statement that the court will exclude the member from
17 the class if the member so requests by a specified date; (3) a procedure for the member to follow
18 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
19 not, will bind all members who do not request exclusion; and (5) a statement that any member
20 who does not request exclusion may, if the member so desires, enter an appearance through
21 counsel. The 45-day deadline for Class Members to exclude themselves is reasonable, as it
22 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
23 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically
24 be sent a settlement check.

25 **F. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
26 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

27 The fact that each member who does not opt out of the Settlement shall be mailed a check
28 ensures that every Class Member will be paid unless they affirmatively acts to exclude

1 themselves. Moreover, the Settlement Amount is non-reversionary, which means that no
2 settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline,
3 the funds will be transferred to the State Controller's Office subject to approval of the Court.
4 Such terms are favored by Courts and demonstrate that there was no collusion between counsel
5 for the parties and that the Settlement is fair and favorable to the Class Members.

6 **G. THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR**

7 Under the terms of the Settlement Agreement, Class Counsel is requesting attorneys'
8 fees equal to one-third of the Settlement Amount, which is estimated to be \$666,666.67 unless
9 the Escalator Clause is triggered. See, e.g., *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th.
10 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, when class
11 action litigation establishes a monetary fund for the benefit of the class members, the trial court
12 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
13 fund created); see also *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
14 (approving fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court
15 noted that the fee award of 1/3 of the total settlement was "well within the range of percentages
16 which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton*
17 *Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee award of
18 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14,
19 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour
20 class action, noting: "[f]ee awards in class actions average around one-third of the recovery.");
21 *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at
22 *8 (approving fees of 1/3 of common fund).

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

25 Once the Court grants preliminary approval, Plaintiff's counsel will submit a request for
26 attorneys' fees and costs with its final approval motion.

27 ///

28 ///

1 **H. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE**

2 The Settlement Agreement provides an incentive award payment of \$10,000, plus \$7,500
3 in exchange for signing a full release and Civil Code § 1542 waiver and foregoing the right to
4 bring separate individual claims, to the Class Representative, which is reasonable given the
5 recovery Class Members will receive on average, as well as the time and effort she devoted to
6 this case. Additionally, in exchange for the above-requested incentive award request and release
7 payment, Plaintiff has agreed to settle her claims for wrongful termination and pregnancy
8 discrimination. Plaintiff alleged that her employment with Defendant was terminated shortly
9 after the birth of her baby and her desire to take off time for baby-bonding. Prior to the
10 termination of her employment, Plaintiff alleged that Defendant would make it difficult for her to
11 take off time for the necessary doctor appointments leading to the birth of her child.

12 Moreover, her efforts included providing factual background for the Class and PAGA
13 complaint; providing documents and information about Defendant's compensation plan;
14 participating in phone calls to discuss litigation and settlement strategy; making herself available
15 throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel
16 prepare for the mediation; and reviewing the settlement documents. The Class Representative
17 also assumed significant risk in bringing this litigation—namely, had she lost, she could have
18 been ordered to pay Defendant's costs. Finally, the Class Representative agreed to release all
19 claims in exchange for the Service Award and forego her right to bring individual claims,
20 whereas the Class Members are merely releasing the claims alleged.

21 The requested service award falls within the range of incentive payments typically
22 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
23 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service award to each
24 of the two class representatives in a trucker meal break class action; *Ross v. US Bank National*
25 *Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award
26 to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast*
27 *Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the
28 amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v.*

1 *Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (“the court finds
2 Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.*
3 (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to
4 each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found.*
5 *Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000
6 incentive award for each Class Representative” in wage an hour settlement).

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

9 Subject to the Court’s approval, the parties stipulated to Phoenix Settlement
10 Administrators serving as the Administrator. Phoenix Settlement Administrators is experienced
11 in administering class action settlements and has provided a flat-fee proposal to administer this
12 settlement for \$14,000. (Mankin Decl. ¶ 50; Exhibit 3; and Moore Decl. ¶ 17).

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

14 The last step in the approval process is the formal hearing, whereby proponents of the
15 settlement may explain and describe its terms and conditions and offer argument in support of
16 approval, and Class Members or their counsel may be heard in support of or in opposition to the
17 settlement. Subject to the Court’s approval, the Parties propose that the Court schedule a hearing
18 for final approval at least 150 days after Preliminary Approval is granted.

19 **VIII. CONCLUSION**

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

22 Dated: December 18, 2024

LAUBY, MANKIN & LAUBY LLP

23
24 BY:



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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On December 18, 2024, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

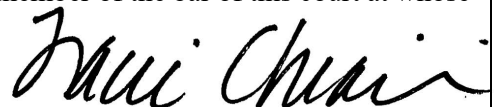
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 18, 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

SERVICE LIST

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