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

JOSHUA LORENZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HAWK TRANSPORTATION INC., a
California Corporation; BEANT
BHANGU, an Individual; JEET SINGH,
an Individual; MANPRIT SANDHU, an
Individual; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2303256
*[Assigned to Hon. Christian Towns, Dept S26,
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 17, 2024
Time: 8:30 a.m.
Dept.: S26

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 17, 2024, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard by the Honorable Christian Towns in Department S26 of the San
4 Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA
5 92415, Plaintiff Joshua Lorenz, individually and on behalf of all others similarly situated, will
6 and hereby does move the Court for entry of an Order preliminarily approving the Parties' Class
7 Action and 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 Joshua Lorenz; the Class Action and PAGA Settlement Agreement and Release of
20 Claims (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the
21 Settlement; all other records, pleadings, and papers filed in this action; and upon such other
22 evidence or argument as 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 Joshua Lorenz seeks preliminary approval of a \$210,000 class action settlement
4 on behalf of approximately 31 California resident truck drivers employed by Defendant Hawk
5 Transportation, Inc.¹ during the “Class Period” of April 7, 2019, through May 8, 2024.

6 Under the terms of the Settlement Agreement,² Defendants will not oppose Plaintiff
7 Counsel’s application for a reasonable award of attorneys’ fees not to exceed \$70,000 (1/3 of the
8 Gross Settlement Amount), litigation expenses not to exceed \$25,000, an Administration Costs
9 of \$4,500, PAGA penalties of \$10,000 (with 75% to the LWDA and 25% to the Aggrieved
10 Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff Joshua Lorenz
11 (“Class Representative”). (S.A. ¶ 47)

12 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
13 that \$90,500 will be available to pay the Class Members, as follows:

14

<i>Gross Settlement Amount</i>	\$ 210,000.00
Attorneys’ Fees (1/3)	\$ 70,000.00
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 4,500.00
PAGA Penalties	\$ 10,000.00
Class Representative Service Payment	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 90,500.00

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18

19 Assuming 31 Class Members, the average payment will be approximately \$2,919.35
20 (\$90,500 / 31).³ However, the actual payments will be calculated on a pro-rata basis according
21 to the number of Weeks Worked by each Class Member during the Class Period. In addition, the
22 PAGA “Aggrieved Employees” will receive a share of the \$2,500 PAGA Penalties (25% of the
23 \$10,000 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period.

24
25
26 ¹ Plaintiff brings the claims against Defendants Hawk Transportation, Inc., along with its alleged
owners/officers: Beant Bhangu, Jeet Singh, and Manprit Sandhu (collectively, “Defendants”).

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

28 ³ The Net Settlement Amount payable to the Class will likely increase at final approval because
Plaintiff’s Counsel does not anticipate using the full \$25,000 cost allocation.

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

8 **II. BACKGROUND**

9 **A. THE CLASS**

10 The Class is defined as follows:

11 All current and former California resident truck drivers employed
12 by Defendant Hawk Transportation, Inc. during the Class Period
(April 7, 2019, through May 8, 2024). (S.A. ¶¶ 6, 10).

13 **B. PROCEDURAL HISTORY**

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

18 Then, on April 7, 2023, Plaintiff filed this class action, alleging that Defendant violated
19 various sections of the Labor Code. After the LWDA declined to assert jurisdiction over the
20 PAGA claims, Plaintiff later filed the operative First Amended Complaint, alleging putative class
21 and representative PAGA claims against all Defendants named herein. (Mankin Decl. ¶ 14).

22 Defendants retained counsel and immediately began to defend the case. The Parties then
23 engaged in substantial written discovery as Plaintiff prepared for class certification, and this
24 included a lengthy meet and confer process and an IDC regarding Defendants' responses.
25 Ultimately, after discussions among counsel, the Parties agreed to attend private mediation prior
26 to further discovery and motion practice. (Mankin Decl. ¶ 15).

27 In preparation for mediation, the Parties informally exchanged documents and
28 information that allowed both sides to calculate the potential damages and evaluate potential risk,

1 including policies and procedures pertaining to the claims, statistics relating to the number of
2 current and former employees, number of shifts, pay periods worked, and other things. This
3 information enabled both parties to take a deep dive into the claims. Additionally, during this
4 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
5 including matters related to the calculation of damages, trial, and appellate issues and risks.
6 (Mankin Decl. ¶ 16).

7 On May 8, 2024, Plaintiff and Defendants participated in mediation with Glenn Lerman,
8 Esq. a well-respected employment mediator. Although the matter did not resolve at mediation,
9 the Parties engaged in continued negotiations through the mediator and ultimately reached this
10 Settlement on June 10, 2024. The Parties now seek the Court’s preliminary approval of the
11 Settlement. (Mankin Decl. ¶ 17).

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

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

17 For instance, Plaintiff alleged Defendants failed to pay proper wages due to a “piece-rate”
18 pay policy that only paid Class Members “per-mile” driven. Plaintiff thus alleged that this policy
19 failed to pay for all hours worked, including time spent performing non-driving tasks. As a
20 result, Plaintiff argued that these violations resulted in unpaid wages, waiting time penalties
21 under Labor Code § 203, and other derivative penalties. However, Defendants opposed this
22 claim on the merits and as to the propriety of class certification. (Mankin Decl. ¶ 19).

23 Plaintiff also alleged that Defendants’ wage statements failed to comply with Labor Code
24 § 226 because the documents did not provide any information as to “total hours worked” as
25 required by Labor Code § 226(a)(2). But Defendants again disputed the merits of this claim, and
26 argued that that subsection of § 226 does not apply to piece-rate drivers and, moreover, any
27 violations (if any were found) would not be deemed “knowing and intentional” under § 226(e) so
28 no liability or penalties could attach. (Mankin Decl. ¶ 20).

1 Finally, Plaintiff alleged that he and the Class Members were required to use their
2 personal cell phones to carry out their tasks for Defendants, without reimbursement, in violation
3 of Labor Code § 2802. However, Defendants vehemently opposed this claim and argued that the
4 Class Members were not required to use their phones, nor was such use “necessary” under the
5 law because these truck drivers had access to onboard computer systems through which they
6 could communicate with dispatch to complete their tasks. (Mankin Decl. ¶ 21).

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

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

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

12 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

13 The \$210,000 Settlement Amount⁴ is non-reversionary and will be paid to Class
14 Members without the need to submit a claim form or take any affirmative action. It includes (1)
15 Plaintiff’s attorneys’ fees and costs, as approved by the Court; (2) a service payment of \$10,000
16 to Plaintiff, subject to approval by the Court; (3) Administration Costs of \$4,500; (4) a \$10,000
17 PAGA award, 75% paid to the LWDA and 25% to the Aggrieved Employees; and (5) the
18 aggregate of all Individual Class Payments of the Participating Class Members. (S.A. ¶ 47 and
19 subparts). Defendants will separately pay their share of employer payroll taxes and
20 withholdings. (S.A. ¶¶ 37, 47).

21 **B. NOTICE PROCEDURES**

22 The proposed Notice will be provided to the Class showing the estimated amounts that
23 each Class Member will receive, the number of Work Weeks credited as a Class Member and as
24 an Aggrieved Employee (*See* Exhibit 2 to Mankin Decl.). Within 14 calendar days after
25 Preliminary Approval, Defendants shall provide the Administrator with the “Class Data”
26

27
28 ⁴ The Settlement Amount is subject to increase if the “Escalator Clause” is triggered (S.A. ¶ 17).
If this clause is triggered, other figures will also shift upward, such as attorneys’ fees (but this is
still constrained to 1/3 of the new Settlement Amount).

1 consisting of Class Member names, addresses, Social Security Numbers, Weeks Worked during
2 the Class/PAGA Period(s). (S.A. ¶¶ 9, 61).

3 Within 10 calendar days of receipt of the Class Data, the Administrator shall calculate the
4 numbers for each Class Member, populate the Notice, and send each Class Member the Notice
5 via first-class, United States mail. (S.A. ¶ 63).

6 If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall
7 perform a skip trace search and seek an address correction for the Class Member(s), and a second
8 Notice will be sent to any new or different address obtained. (S.A. ¶ 64).

9 **C. EXCLUSION AND OBJECTION PROCEDURES**

10 Class Members who do not timely Opt-Out of the Settlement will be deemed to
11 participate in the Settlement and shall become a Participating Class Member without having to
12 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
13 must submit a Request for Exclusion to the Administrator no later than 30 days after being
14 mailed by the Administrator (“Response Deadline”). (S.A. ¶¶ 35, 68(a)). Any Opt-Out request
15 not postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
16 case the Class Member’s exclusion or objection must be returned by the later of the original
17 Notice Response Deadline or 15 calendar days after remailing. (S.A. ¶¶ 64, 68(a)).

18 The Class Notice shall inform Class Members of their right to object to the Settlement.
19 Any Participating Class Member who wishes to object to the Settlement must provide their
20 objection no later than the Response Deadline. (S.A. ¶ 68(c)).

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

22 The amount of each Class Member’s Individual Class Payment is tied to the number of
23 Weeks Worked by each Class Member for Defendants during the Class Period. Therefore,
24 Individual Class Payments will be calculated by: (a) dividing the Net Settlement Amount by the
25 total number of Weeks Worked by all Participating Class Members during the Class Period, and
26 (b) multiplying the result by each Participating Class Members’ Weeks Worked. (S.A. ¶ 47(c)).
27 Additionally, each “Aggrieved Employee” will receive an Individual PAGA Payment, calculated
28 by dividing and distributing the \$2,500 on a pro-rata Workweek basis. (S.A. ¶ 47(h)).

1 The Class Notice will inform Class Members of the number of Weeks Worked during the
2 relevant periods and the estimated Individual Class and PAGA Payments. Class Members may
3 dispute their Weeks Worked by timely submitting evidence to the Administrator. (S.A. ¶ 66).

4 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

5 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
6 Settlement Amount, plus Defendants' share of payroll taxes owed on the Individual Class
7 Payments, by the later of April 1, 2025, or 15 days after the Effective Date. (S.A. ¶ 69). Within
8 10 days after receiving the funds, the Administrator shall issue payments to cover all court-
9 approved payments. (S.A. ¶ 70).

10 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 71). If a Class
11 Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to
12 the California State Controller in the name of the Class Member/Aggrieved Employee. (*Id.*).

13 **F. TAX TREATMENT**

14 The Parties agree that twenty percent (20%) of the Individual Class Payments will be
15 allocated as wages subject to withholding of all applicable local, state and federal taxes and the
16 remaining eighty-five percent (80%) will be allocated for interest and penalties (pursuant to, *e.g.*,
17 California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A.
18 ¶ 47(d)). The Individual PAGA Payments will be classified entirely as civil penalties and shall
19 be reported as required on an IRS Form 1099. (S.A. ¶ 47(h)).

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

21 In exchange for these payments, the Settlement Agreement at ¶ 31 defines the "Released
22 Class Claims" as follows:

23 all claims stated in the Complaint and those based solely upon the
24 facts in the Complaint, including: (1) failure to pay minimum wages,
25 (2) failure to pay for rest and recovery periods and other
26 nonproductive time under Labor Code § 226.2, (3) failure to
27 reimburse business expenses, (4) unlawful deduction of wages, (5)
28 failure to timely pay final wages, (6) failure to provide accurate
itemized wage statements, and (7) unfair and unlawful competition.

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

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

7 The Settlement Agreement at ¶ 32 defines the "Released PAGA Claims" as follows:

8 all PAGA claims that Plaintiff alleged against the Released Parties,
9 based on the facts stated in the relevant LWDA notice letters and only
10 to the extent that they are alleged in the Complaint, including all
11 PAGA claims seeking civil penalties premised upon: (1) failure to
12 pay minimum wages, (2) failure to pay for rest and recovery periods
13 and other nonproductive time under Labor Code § 226.2, (3) failure
14 to reimburse business expenses, (4) unlawful deduction of wages, (5)
15 failure to timely pay wages each period, (6) failure to timely pay final
wages, (7) failure to provide accurate itemized wage statements, and
(8) all other claims for civil penalties recoverable under the Private
Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts
or claims alleged in the LWDA notice letters and Complaint.

16 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
17 that individual will still be subject to the Released PAGA Claims and will receive a pro-rata share
18 of PAGA Penalties. (S.A. ¶ 52).

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

21 California Rule of Court 3.769(d) provides that the Court may make an order approving
22 certification of a provisional settlement class at the preliminary approval stage. It is well-
23 established that trial courts should use a "lesser standard of scrutiny" for determining the
24 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
25 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
26 1982) 688 F.2d 615, 633 ("[C]ertification issues raised by class action litigation that is resolved
27 short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v.*
28 *Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class

1 certification, a district court need not inquire whether the case, if tried, would present intractable
2 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
3 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
4 as defined above, under Code of Civil Procedure § 382.

5 **A. ASCERTAINABILITY AND NUMEROSITY**

6 In determining whether a class is ascertainable, the court considers “(1) the class
7 definition, (2) the size of the class, and (3) the means available for identifying the class
8 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
9 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
10 class is ascertainable if the class members can be objectively identified and given notice of the
11 litigation without unreasonable time or expense). Here, according to Defendants’ records, there
12 are approximately 31 Class Members that are easily identifiable and fall within the defined
13 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

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

15 *1. Commonality*

16 To justify certification, the class proponent must show that questions of law or fact
17 common to the class predominate over the questions affecting the individual members. *Arenas v.*
18 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends the Class was
19 subjected to common policies and practices relating to unpaid wages, expenses reimbursements,
20 and so on. While the Parties dispute whether a class would be appropriate if the litigation were to
21 continue, they agree to class certification for the purposes of this settlement only.

22 *2. Typicality*

23 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
24 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
25 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Here, typicality is satisfied because
26 Plaintiff was employed by Defendants during the Class Period and alleges that he experienced
27 the same wage and hour violations as the rest of the Class, based on Defendants’ uniform
28 policies. (Lorenz Decl. ¶ 4). Thus, although Defendants dispute whether Plaintiff’s claims are

1 typical of the Class for the purposes of any continued litigation, the Parties agree that, for the
2 purposes of this settlement only, Plaintiff asserts claims regarding Defendants' pay policies,
3 wage statements, among other claims, which are at the core of the lawsuit.

4 3. Adequacy of Representation

5 The proposed class representative must establish that he or she will adequately represent
6 the proposed class. *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.
7 Specifically, Plaintiff is adequate to represent the class because he understood his duties as a
8 Class Representative, has been willing to undergo the risks of litigation, and has no conflict of
9 interest. (Lorenz Decl. ¶¶ 2-5).

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

14 4. Superiority

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

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

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

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

1 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
2 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

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

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

18 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
19 **NEGOTIATIONS**

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

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 the applicable law and that any purported deviations therefrom were individualized in
2 nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a
3 suitable case for certification, he realizes that there is always a significant risk associated with
4 class certification proceedings, which could limit the claims he 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 Gross Settlement Amount is, of
7 course, a compromise figure, the potential risks and opportunities of both parties were effectively
8 weighed and considered by the parties, resulting in a fair and equitable settlement.

9 Based upon data obtained through formal and informal discovery, and by applying
10 violations rates derived from documents and data, Plaintiff calculated that, assuming all claims
11 were entirely successful at trial, the maximum class damages and penalties would be
12 approximately \$1,500,000. (Mankin Decl. ¶ 29). However, this figure failed to incorporate or
13 acknowledge many risks at class certification and on the merits, defenses, and other issues (such
14 as violation rates and evidentiary burdens of proof); when taking those into account, Plaintiff
15 calculated the risk-adjusted award at trial for the class claims to be \$500,000. (*Id.*). The full
16 analysis of the maximum and risk-adjusted values is contained in the Mankin Decl. at ¶¶ 24-30
17 (and, for the sake of brevity, that information is not duplicated in this Motion).

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

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

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

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

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

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

19 The proposed Notice and proposed plan for the Administrator to mail the Notice to the
20 last known address of all class members complies with all the requirements of Cal. Rule of Court
21 3.769(f) and 3.766(b). The proposed Notice includes: (1) the material terms of the settlement; (2)
22 the proposed attorneys’ fees, litigation expenses, and the costs of administration; (3) details
23 about the final fairness hearing and how class members may elect to exclude themselves or make
24 an objection; (4) how class members can obtain additional information; and (5) each Class
25 Members’ Individual Class and PAGA Payments. *See* Class Notice (Exhibit 2 to Mankin Decl.).

26 The Court has wide discretion in approving the means of providing notice, so long as the
27 class representative “provide(s) meaningful notice in a form that should have a reasonable
28 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,

1 (1976) 15 Cal.3d 853, 861. Here, the Notice will be disseminated directly to the Class Members
2 by first class mail by the Administrator, since Defendants have the last known addresses of all
3 class members and the Administrator will perform a skip trace and update those addresses for
4 any Notices that are returned and re-send the same.

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

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

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

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

27 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
28 of up to \$25,000 in litigation costs, along with attorneys’ fees equal to one-third of the Gross

1 Settlement Amount. See, e.g., *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving
2 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
3 action litigation establishes a monetary fund for the benefit of the class members, the trial court
4 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
5 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
6 (approving fee 1/3 from settlement amount of \$4.5 million since 1/3 was “well within the range
7 of percentages which courts have upheld as reasonable in other class action lawsuits”).

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

10 **I. THE SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE**

11 The Settlement Agreement provides an incentive award payment of \$10,000 to the Class
12 Representative, which is reasonable given the recovery Class Members will receive on average,
13 as well as the time and effort he devoted to this case. His efforts included providing factual
14 background for the litigation; providing documents and information about Defendants'
15 compensation plan; participating in phone calls to discuss litigation and settlement strategy;
16 making himself available throughout the litigation to assist with analyzing the claims and
17 defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
18 documents. The Class Representative also assumed significant risk in bringing this litigation—
19 namely, had he lost, he could have been ordered to pay Defendants' costs.⁵

20 The requested service award falls within the range of incentive payments typically
21 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
22 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in class
23 action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2
24 (approving \$20,000 enhancement award in California wage-and-hour class settlement); *Vasquez*
25 *v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of
26 \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores,*

27
28 ⁵ In addition to the wage-and-hour claims in this matter, Plaintiff also alleged that Defendants
retaliated against and wrongfully terminated him once learning of the filing of this lawsuit.
Plaintiff and Defendants entered into a separate individual settlement to resolve those claims.

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 Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$4,500. (Mankin Decl. ¶ 42; and Exhibit 4 [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 120 days after Preliminary Approval, as follows:

September 17, 2024	Preliminary Approval (PA) hearing
October 11, 2024	<u>24 days after PA</u> : Deadline for Administrator to complete first mailing of the Notice
November 11, 2024	<u>30 days after mailing Notice</u> : Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff’s Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD	Final Approval Hearing

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1 **VIII. CONCLUSION**

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

5 Dated: August 20, 2024

LAUBY, MANKIN & LAUBY LLP

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7 BY: 
8 Brian J. Mankin, Esq.
9 Attorneys for Plaintiff and the Class
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On 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.

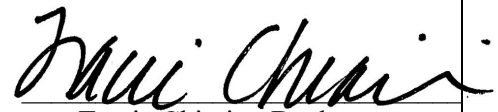
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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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