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

VICTOR MEDINA and FRANCISCO
CRUZ, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

HOWARD ROOFING COMPANY, INC.,
a California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVSB2312233
*[Assigned to Hon. Jessica Morgan, Dept S26, for
all purposes]*

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

Hearing

Date: June 26, 2024

Time: 8:30 a.m.

Dept.: S26

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 26, 2024 at 8:30 a.m. or as soon thereafter as the
3 matter may be heard by the Honorable Jessica Morgan in Department S26 of the San Bernardino
4 County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiffs
5 Victor Medina and Francisco Cruz, individually and on behalf of all others similarly situated,
6 will and hereby do move the Court for entry of an Order preliminarily approving the Parties'
7 class action settlement, including:

- 8 1. Certifying the class for purposes of settlement only;
- 9 2. Preliminarily appointing Plaintiffs as class representatives for settlement purposes;
- 10 3. Appointing Plaintiffs' counsel as class counsel for purposes of settlement only;
- 11 4. Preliminarily approving the class action settlement as fair, adequate, and reasonable,
12 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 the
16 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 Plaintiffs' counsel (Brian Mankin, Peter Carlson, Daniel J. Hyun and
19 David Alami); the Class Action and PAGA Settlement Agreement and Release of Claims (the
20 "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement;
21 all other records, pleadings, and papers filed in this action; and upon such other evidence or
22 argument as may be presented to the Court at the hearing of this motion.

23 Dated: June 3, 2024

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Medina and Cruz seek preliminary approval of a \$970,000 wage-and-hour class action settlement on behalf of approximately 500 current and former non-exempt employees who worked for Defendant Howard Roofing Company, Inc., (“Defendant”) in California at any time from May 30, 2019, through May 4, 2024 (the “Class Period”).

Under the terms of the Settlement Agreement,¹ Defendant will not oppose Plaintiffs Counsel’s application for a reasonable award of attorney’s fees not to exceed \$323,333.33 (1/3 of the Gross Settlement Amount), litigation expenses not to exceed \$25,000, Settlement Administrator Costs of \$9,500.00, PAGA penalties of \$50,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and Service Payments of \$10,000 each to Plaintiffs (collectively “Class Representatives”). (S.A. ¶ 49.)

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$542,166.67 will be available to pay the Class Members, as follows:

<i>Gross Settlement Amount</i>	\$ 970,000.00
Attorneys’ Fees (1/3)	\$ 323,333.33
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 9,500.00
PAGA Penalties	\$ 50,000.00
Class Representatives Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 542,166.67

Assuming 500 Class Members, the average payment to each Class Member will be approximately \$1,084.33 (\$542,166.67 / 500). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately \$22.59 (\$542,166.67 / 24,000 estimated Work Weeks). In addition, approximately 300 Aggrieved Employees will receive a share of the \$12,500 PAGA Penalties (25% of the total \$50,000 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period. (S.A. ¶ 49(h)).

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

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

9 **II. BACKGROUND**

10 **A. THE SETTLEMENT CLASS**

11 The Class is defined as follows:

12 All current and former non-exempt employees who worked for
13 Defendant in California during the Class Period (which is May 30,
14 2019, through May 4, 2024). (S.A. ¶ 6; 10).

15 **B. PROCEDURAL HISTORY**

16 On May 30, 2023, Plaintiff Medina filed a putative class action complaint against
17 Defendant in San Bernardino County Superior Court. Plaintiff later filed a first amended
18 complaint, alleging putative class and representative PAGA claims, including: (a) failure to pay
19 minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d)
20 failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay
21 wages upon separation of employment, (g) failure to provide accurate itemized wage statements,
22 (h) unfair and unlawful competition, and (i) related claims under PAGA. (S.A. ¶ 41).

23 Then on June 30, 2023, Plaintiff Cruz filed a separated class action against Defendant in
24 Los Angeles County Superior Court, entitled *Francisco Cruz v. Howard Roofing Company*
25 *Incorporated*, Los Angeles County Superior Court Case No. 23STCV15380, which generally
26 alleged the same wage-and-hour violations as Plaintiff Medina's action. (S.A. ¶ 42).

27 After learning that two separate cases were pending against Defendant, the Plaintiffs
28 agreed to join forces and proceed in a consolidated manner. (Mankin Decl. ¶ 13).

1 Defendant retained counsel and immediately began to defend the cases. Then, after
2 discussions among counsel and to avoid a costly class certification battle, the Parties agreed to
3 attend private mediation. (Mankin Decl. ¶ 14).

4 In preparation for the mediation, the Parties informally exchanged documents and
5 information that allowed both sides to calculate the potential damages and evaluate potential risk,
6 including policies and procedures pertaining to each claim alleged, and statistics relating to the
7 number of current and former employees, number of shifts, weeks worked and other things.
8 Defendant also provided their written policies and practices and a robust sampling of payroll and
9 timekeeping records for Class Members. This information enabled both parties to take a deep
10 dive into the claims. Additionally, during this process, Plaintiffs and their counsel analyzed,
11 researched, and investigated the potential issues, including matters related to the calculation of
12 damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 15).

13 On March 4, 2024, Plaintiffs and Defendant participated in mediation before Todd Smith,
14 a well-respected wage-and-hour mediator. The mediation was successful, and the Parties
15 reached a global settlement that resolved all claims brought by both Plaintiffs, and both Plaintiffs
16 agreed to proceed in one Consolidated Action in this Court and thereby dismiss the Los Angeles
17 Superior Court matter without prejudice. (Mankin Decl. ¶ 16).

18 The Consolidated Complaint has been filed in this Court on April 10, 2024, and alleges
19 the following class claims: (i) failure to pay all regular rate wages, minimum wages, straight time
20 wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to
21 provide compliant rest breaks and recovery/cool down periods; (iv) failure to timely pay wages
22 during employment; (v) failure to provide complete, accurate wage statements; (vi) failure to pay
23 wages timely at time of termination or resignation; (vii) failure to reimburse or indemnify
24 necessary business expenses; (viii) failure to pay sick leave and/or vacation pay; (ix) failure to
25 pay reporting time pay; (x) failure to provide fresh drinking water and (xi) unfair business
26 practices (the “Released Class Claims”). Now the Parties seek the Court’s preliminary approval
27 of the Settlement.
28

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

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

3 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

4 The \$970,000 Settlement Amount is non-reversionary and will be paid out to Class
5 Members without the need to submit a claim form or take any affirmative action. It includes (1)
6 Plaintiffs' attorneys' fees and costs, as approved by the Court; (2) a service award of \$10,000 to
7 Plaintiff Medina and \$10,000 to Plaintiff Cruz, subject to approval by the Court; (3) Settlement
8 Administrator Costs of \$9,500; and (4) \$50,000 toward PAGA Penalties, 75 percent of which is
9 to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the
10 Aggrieved Employees. Defendant will separately pay its share of employer payroll taxes and
11 withholdings. (S.A. ¶ 49).

12 **B. NOTICE PROCEDURES**

13 The proposed Class Notice will be provided to the Class Members showing the estimated
14 amount that each Class Member will receive, the number of Work Weeks credited as a Class
15 Member and Aggrieved Employee (Exhibit A to the S.A.). Within 21 calendar days after entry
16 by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement
17 Administrator with a list containing Class Member names, addresses, phone numbers, Social
18 Security Numbers, Weeks Worked during the Class Period and PAGA Period (the "Class Data").
19 (S.A. ¶¶ 9, 63).

20 Within 10 calendar days of receipt of the Class Data, the Settlement Administrator shall
21 calculate the numbers for each Class Member, populate the Class Notice, and send each Class
22 Member the Class Notice via first-class, United States mail. (S.A. ¶ 64).

23 In the event that any Class Notice mailed to a Class Member is returned as having been
24 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
25 search and seek an address correction for such Class Member(s), and a second Class Notice will
26 be sent to any new or different address obtained. (S.A. ¶ 66).

27 ///

28 ///

1 **C. EXCLUSION AND OBJECTION PROCEDURES**

2 Class Members who do not timely Opt-Out of the Settlement will be deemed to
3 participate in the Settlement and shall become a Participating Class Member without having to
4 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
5 must submit a written request to the Settlement Administrator no later than 30 days after being
6 mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 37, 70(a)). Any Opt-
7 Out request that is not postmarked by the Response Deadline will be invalid, unless a Notice was
8 remailed in which case the Class Member’s exclusion or objection must be returned by the later
9 of the original Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶
10 70).

11 The Class Notice shall inform Class Members of their right to object to the Settlement.
12 Any Participating Class Member who wishes to object to the Settlement may submit a written
13 objection to the Settlement Administrator no later than the Response Deadline. (S.A. ¶ 70(c)).

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

15 The amount of each Class Member’s Individual Class Payment is tied to the number of
16 Weeks Worked by each Class Member for Defendant during the Class Period. Individual Class
17 Payments are calculated by (a) dividing the Net Settlement Amount by the total number Weeks
18 Worked by all Participating Class Members during the Class Period, and (b) multiplying the
19 result by each Participating Class Member’s Weeks Worked. (S.A. ¶ 49(c)).

20 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
21 based on a pro-rata basis. Thus, the \$12,500 PAGA Penalties allocated to the Aggrieved
22 Employees will be divided and paid on a Week Worked basis. (S.A. ¶ 49(h)).

23 The Class Notice will inform Class Members of the estimated share and the number of
24 Weeks Worked during the Class Period, as well as number of Weeks Worked during the PAGA
25 Period. Class Members may dispute Weeks Worked if they feel they worked more in the Class
26 or PAGA Periods than Defendant’s records show by timely submitting evidence to the
27 Settlement Administrator. (S.A. ¶ 68).

1 As noted, assuming 500 Class Members, the average payment to each Class Member will
2 be approximately \$1,084.33 (\$542,166.67 / 500). However, the actual payment will be
3 calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member
4 during the Class Period, with each Work Week having a value of approximately \$22.59
5 (\$542,166.67/ 24,000 estimated Work Weeks). In addition, approximately 300 Aggrieved
6 Employees will receive a share of the \$12,500 PAGA Penalties (25% of the total \$50,000
7 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period. (Mankin Decl.
8 8).

9 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

10 Defendant is required to deposit the Settlement Amount, along with the employer's share
11 of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
12 "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as
13 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
14 expenses, as approved by the Court; (4) the PAGA Penalties; and (5) the aggregate of all
15 Individual Settlement Amounts of Participating Class Members. Within 10 calendar days after
16 receiving the funds, the Settlement Administrator shall issue payments to cover all court-
17 approved payments. (S.A. ¶¶ 71-72).

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

21 **F. TAX TREATMENT**

22 The Parties agree that 10% of the Individual Class Payments will be allocated as wages
23 subject to withholding of all applicable local, state and federal taxes and the remaining 90% will
24 be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210,
25 226, etc.) from which no taxes will be withheld. (S.A. ¶ 49(d)). Additionally, the PAGA
26 Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and
27 shall be reported as required on an IRS Form 1099. (S.A. ¶¶ 49(h)). These allocations are in line
28 with the claim valuations in the *Kullar* analysis discussed below (*i.e.*, the penalty claims [§§ 203

1 and 226] comprise the majority of risk-adjusted value). Defendant will separately pay its share of
2 employer payroll taxes on the sum allocated to wages. (S.A. ¶ 49(a)).

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

4 In exchange for these payments, the Settlement Agreement at ¶ 32 provides that the
5 Participating Class Members will release the Released Parties of the Released Class Claims,
6 which includes:

7 “all causes of action and claims that were alleged in the Actions or
8 reasonably could have been alleged based on the facts and legal
9 theories contained in the complaints filed, including the operative
10 Complaint, including all of the following claims for relief: (i) failure
11 to pay all regular rate wages, minimum wages, straight time wages,
12 and overtime wages due; (ii) failure to provide compliant meal
13 periods; (iii) failure to provide compliant rest breaks and
14 recovery/cool down periods; (iv) failure to timely pay wages during
15 employment; (v) failure to provide complete, accurate wage
16 statements; (vi) failure to pay wages timely at time of termination or
17 resignation; (vii) failure to reimburse or indemnify necessary
18 business expenses; (viii) failure to pay sick leave and/or vacation
19 pay; (ix) failure to pay reporting time pay; (x) failure to provide
20 fresh drinking water and (xi) unfair business practices that could
21 have been premised on the claims, causes of action or legal theories
22 of relief described above or any of the claims, causes of action or
23 legal theories of relief pleaded in the operative complaint. The Class
24 Members who cash their Settlement Checks further acknowledge
25 they are releasing any claims under the Fair Labor Standards Act
26 (“FLSA”) directly based on or arising out of the Released Class
27 Claims. Additionally, this definition of “Released Class Claims”
28 expressly excludes all claims for vested benefits, wrongful
termination, unemployment insurance, disability, social security,
workers’ compensation, claims while classified as exempt, and
claims outside of the Class Period.”

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

28 ///

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

2 The Settlement Agreement at ¶ 33 also defines the “Released PAGA Claims,” which
3 includes the following claims for relief:

4 “all causes of action and claims for civil penalties under the
5 California Labor Code Private Attorneys General Act of 2004 that
6 were alleged in the operative complaint in the Actions or reasonably
7 could have been alleged based on the facts contained in the operative
8 complaint in the Actions, including claims for civil penalties based
9 on the following: (i) failure to pay all regular rate wages, minimum
10 wages, straight time wages, and overtime wages due; (ii) failure to
11 provide compliant meal periods; (iii) failure to provide compliant
12 rest breaks; (iv) failure to timely pay wages during employment; (v)
13 failure to provide complete, accurate wage statements; (vi) failure
14 to pay wages timely at time of termination or resignation; (vii)
15 failure to reimburse or indemnify necessary business expenses; (viii)
failure to pay sick leave and/or vacation pay; (ix) failure to pay
reporting time pay (x) failure to provide fresh drinking water (xi)
failure to maintain records in accordance with Labor Code Section
1174; and/or (xi) claims, causes of action or legal theories of relief
seeking civil penalties under the California Labor Code Private
Attorneys General Act of 2004 plead in the operative Complaint and
underlying LWDA exhaustion letters.”

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 to the fullest extent permitted
18 by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶¶ 54 and 70(a)).

19 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS**
20 **APPROPRIATE FOR 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 Defendant’s records, there
12 are approximately 500 Class Members that are easily identifiable and fall within the defined
13 Class. Thus, Plaintiffs’ 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, Plaintiffs contend that the Class
19 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,
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 Plaintiffs’ 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). Again, the Parties dispute whether
26 Plaintiffs’ claims are typical of the Class for the purposes of any continued litigation of the
27 Action, but agree for the purposes of this settlement only, that Plaintiffs assert claims regarding
28 Defendant’s pay policies, meal and rest break practices, wage statements, and the provisions

governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Specifically, Plaintiffs are adequate to represent the class because they performed work for Defendant during the Class Period, experienced the same wage and hour practices as the rest of the Class, understood their duties as a Class Representative, have been willing to undergo the risks of litigation, and have 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, Plaintiffs are represented by Class Counsel with extensive experience in wage and hour class actions. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-6; Hyun Decl. ¶¶ 2-20).

4. Superiority

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;

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. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.
5 Nevertheless, in considering a potential settlement for approval, a court is not to turn the
6 approval hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
7 conclusions on the contested issues of fact and law which underlie the merits of the dispute.”
8 *Officers for Justice*, 688 F.2d at 625.

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

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

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

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

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

12 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
13 **NEGOTIATIONS**

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

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

25 Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and
26 weaknesses of this case before reaching the settlement. As described above, the settlement was
27 reached after extensive investigation and research, thorough calculations and risk evaluation, and
28 a substantial exchange of information relating to the Class Members prior to mediation.

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

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

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

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

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

26 Based upon detailed data obtained through informal discovery and information
27 exchanges, Plaintiffs’ counsel estimated the following data points through the date of mediation:
28 (1) 420 class members, (2) 220 class members that separated from employment during the 3-year

1 lookback for Labor Code § 203, (3) a projected 23,418 workweeks and 107,722 shifts worked
2 through mediation, and (4) 9,632 wage statements through mediation. (Mankin Decl. ¶ 19).

3 Here, there were several categories of claims alleged by Plaintiffs, including but not
4 limited to: (1) unpaid wage claims under various theories, (2) meal and rest break violations, (3)
5 derivative claims for waiting time and wage statement penalties due to the other alleged
6 violations, (4) unreimbursed expense claims, and (5) PAGA claims. (Mankin Decl. ¶ 20).

7 As to the unpaid wage claims, Plaintiffs alleged various distinct theories of liability.
8 First, Plaintiffs alleged that Defendant paid at the base rate of pay instead of overtime for certain
9 tasks, despite that the employee worked over 8 hours in a day or 40 in a week. Second, Plaintiffs
10 alleged that Defendant failed to pay all required overtime due to a practice of paying the Class
11 two or more base rates in a week, yet paying overtime at the “rate in effect” method instead of
12 the “weighted average” method. Third, Plaintiffs argued that Defendant failed to pay for all
13 compensable hours worked when traveling to a job site or when there was “gap time” between
14 two different tasks for timekeeping purposes. Fourth, Plaintiffs alleged that Defendant failed to
15 pay all required “reporting time pay” when Class Members were required to arrive at job sites,
16 only to be sent home without work (or compensation) because the company determined that they
17 would not perform work on that day. In total, Plaintiffs’ counsel estimated the maximum value
18 of these unpaid wages to be approximately \$550,000. (Mankin Decl. ¶ 21).

19 However, Defendant vehemently opposed these unpaid wage claims on the merits and as
20 to the propriety of class certification. Moreover, in addition to its other defenses on the merits,
21 Defendants argued that Plaintiffs would be unable to meet its evidentiary burden at summary
22 judgment and/or trial because Plaintiffs and the Class would be unable to introduce evidence as
23 to the amount of unpaid wages (since certain claims are not apparent from the timekeeping
24 records alone), thus defeating liability. (Mankin Decl. ¶ 22).

25 Due to these defenses and arguments, Plaintiffs assigned a 30% risk for these unpaid
26 wage claims at the class certification stage. And, due to the defenses as to the merits, Plaintiffs
27 assigned an additional 30% merits-based risk to each claim. In sum, Plaintiffs’ counsel
28 calculated the risk-adjusted value of the unpaid wage claims as \$269,500. (Mankin Decl. ¶ 23).

1 Plaintiffs also alleged meal and rest break claims against Defendant. Given the total
2 number of shifts at issue (an estimate of 107,722), and when incorporating violation rates from
3 expert review of the timekeeping records and other evidence, Plaintiffs' counsel estimated a
4 55.6% violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 59,893
5 alleged meal violations and 53,861 alleged rest break violations. This established a maximum
6 potential value for these claims of \$3,309,103 (113,754 violations multiplied by the average
7 hourly rate of \$29.09 as the applicable premium rate under § 226.7). (Mankin Decl. ¶ 24).

8 However, Defendant raised numerous arguments in response to this claim, including that
9 it maintained fully compliant written policies and specifically authorized the Class Members to
10 take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
11 short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for
12 each Class Member whether a break was missed and why, and why a break was noncompliant or
13 nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.
14 These defenses are factored into Plaintiffs' analysis in two ways. First, these issues raise
15 questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
16 placed a 40% risk at the class certification stage for meal periods and a 50% risk for rest breaks.
17 Second, these defenses also go toward the merits given the evidentiary question of proving the
18 number of meal and rest violations. As such, Plaintiffs placed a 40% risk on the merits for meal
19 breaks, and an additional 50% risk on the merits for rest breaks, setting the risk-adjusted value
20 for the combined meal and rest break claims at \$1,018,927. (Mankin Decl. ¶ 25).

21 Plaintiffs also alleged claims for waiting time penalties and wage statement violations.
22 The maximum values for these claims were as follows: (1) \$1,535,952 for waiting time penalties
23 [220 former employees x \$232.72 average daily pay x 30 days], and (2) \$950,700 for wage
24 statement violations [9,632 wage statements at the \$50/\$100 formula under § 226(e)]. (Mankin
25 Decl. ¶ 26).

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, and even if there was a "technical" violation, that

1 Plaintiffs would be unable to prove the required “knowing and intentional” and “injury”
2 elements. Based on these facts and defenses, Plaintiffs placed a 30% risk at class certification
3 and estimated another 40% risk the merits, leading to a risk-adjusted value of \$399,294 for the
4 wage statement claims. (Mankin Decl. ¶ 27).

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 therefrom
13 were inadvertent and unintentional. As a result of this analysis, Plaintiffs’ counsel applied a 30%
14 risk at class certification and a 40% risk on the merits, leading to a risk-adjusted value of
15 \$645,100. (Mankin Decl. ¶ 28).

16 Finally, Plaintiffs alleged that Defendant required the Class Members to purchase,
17 provide, and maintain their own tools and equipment to carry out tasks for Defendant, without
18 reimbursement. Plaintiffs calculated the maximum potential unreimbursed expenses as \$210,000
19 based on \$500 in unreimbursed expenses per Class Member. However, Defendant disputed that
20 it failed to reimburse expenses and argued that Class Members were provided all tools and
21 equipment needed to perform their tasks. Thus, Defendant argued that any expenses (if any were
22 incurred) were not “reasonable” or “necessary” and, thus, Defendant did not have an obligation
23 to reimburse for such expenses. Given the fact-intensive nature of this claim, and possible
24 individualized issues, Plaintiffs placed a 50% risk at the class certification stage and a 50% risk
25 on the merits. This resulted in a risk-adjusted value of \$52,500 for the unreimbursed expense
26 claim. (Mankin Decl. ¶ 29).

27 In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate
28 the risk-adjusted class recovery as follows:

•	Unpaid Wage Claims	\$	269,500
•	Meal and Rest Break Claims	\$	1,018,927
•	Wage Statement Claims	\$	399,294
•	Waiting Time Penalty Claims	\$	645,100
•	Unreimbursed Expense Claims	\$	<u>52,500</u>
•	Total Risk Adjusted Penalties and Damages	\$	2,385,321

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 40.7% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the low seven figures, this fails to acknowledge that courts have wide latitude to reduce the civil 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). Moreover, Defendant argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

E. PLAINTIFFS’ COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION

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

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

1 claims, realistic risk adjusted value, the complexities of the case, state of the law, and
2 uncertainties of class certification and litigation.

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

4 The proposed Class Notice should be approved, as it fully informs the Class Members of
5 the nature of the lawsuit and each Class Member's rights under terms of the Settlement
6 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as
7 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
8 of the proposed settlement.

9 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
10 the Class Notice to the last known address of all class members complies with all the
11 requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed
12 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,
13 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
14 and how class members may elect to exclude themselves or make an objection; and (4) how class
15 members can obtain additional information. *See* Class Notice, which attached as Exhibit A to the
16 Settlement Agreement (which is attached as Exhibit 1 to the Mankin Declaration). In addition, it
17 will inform Class Members of their estimated settlement share.

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

26 The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Settlement
27 Class Members with all due process protections required by the U.S. Constitution. Moreover,
28 the contents of the Class Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes,

1 without limitation (1) a detailed explanation of the case, including the basic contentions or
2 denials of the parties; (2) a statement that the court will exclude the member from the class if the
3 member so requests by a specified date; (3) a procedure for the member to follow in requesting
4 exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind
5 all members who do not request exclusion; and (5) a statement that any member who does not
6 request exclusion may, if the member so desires, enter an appearance through counsel. The 30-
7 day deadline to opt-out or object is also reasonable, as it provides Class Members sufficient time
8 to do so and, if they so choose, to seek independent legal advice in the interim. If a Class
9 Member does not opt-out, he or she will automatically be sent a settlement check.

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

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

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

20 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
21 of up to \$25,000 in litigation costs, along with \$323,333.33 in attorneys’ fees (one-third of the
22 Settlement Amount). See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480
23 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that
24 when class action litigation establishes a monetary fund for the benefit of the class members,
25 the trial court may determine the amount of a reasonable fee by choosing an appropriate
26 percentage of the fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL
27 3155645 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3
28 was “well within the range of percentages which courts have upheld as reasonable in other class

1 action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL
2 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers*
3 *Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of
4 common fund, noting: “[f]ee awards in class actions average around one-third of the
5 recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL
6 5478576, at *8 (approving fees of 1/3 of common fund).

7 Once the Court grants preliminary approval of the Settlement Agreement and Class
8 Notice is disseminated, Plaintiffs’ counsel will submit a comprehensive request for attorneys’
9 fees and costs with its final approval motion.

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

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

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 awards in
24 trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010
25 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class
26 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493
27 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
28 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28

(finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement).

VI. THE COURT SHOULD APPOINT PHOENIX AS THE ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to Phoenix Settlement Administrators serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$9,500. (Mankin Decl. ¶ 42; Exhibit 3 [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 130 days after the Preliminary Approval Date, as follows:

June 26, 2024	Preliminary Approval (PA) hearing
July 29, 2024 (33 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Class Members.
August 28, 2024 (30 days after mailing Class Notice)	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval and application for award of attorneys’ fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs’ Motion for Final Approval, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD (Approximately November 4, 2024 - 130 days after Preliminary Approval)	Final Approval Hearing.

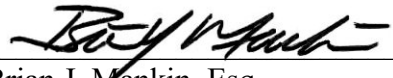
1 **VIII. CONCLUSION**

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

4 Dated: June 3, 2024

LAUBY, MANKIN & LAUBY LLP

5
6 BY:



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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On June 3, 2024, I caused to be served the foregoing document(s) described as follows:

PLAINTIFFS' 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 June 3, 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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