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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DEE DEVER, individually, on a representative basis, and on behalf of all others similarly situated; Plaintiff, vs. RESCUE 1 FINANCIAL, LLC, a California Limited Liability Company; and DOES 1 through 20, inclusive; Defendants.	Case No.: 30-2023-01360010-CU-OE-CXC *[Assigned to Hon. Melissa McCormick, Dept CX104, for all purposes]* **PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER** Hearing Date: July 3, 2025 Time: 2:00 p.m. Dept.: CX104 **Reservation #: 74575928** Complaint filed: November 8, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 3, 2025, at 2:00 p.m. or as soon thereafter as the matter may be heard by the Honorable Melissa McCormick in Department CX104 of the Orange County Superior Court, 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Dee Dever, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Parties' Class Action and PAGA Action

Settlement Agreement and Release of Claims ("Settlement Agreement"), including:

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

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

Dated: June 2, 2025 LAUBY, MANKIN & LAUBY LLP

BY: ______________________

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Dee Dever seeks preliminary approval of a $490,000 wage-and-hour class action settlement on behalf of approximately 500 current and former sales employees of Defendant Rescue 1 Financial, LLC, in California who were eligible to receive commission pay as an "Inside Sales" exempt employee at any time during the Class Period of November 8, 2019, through October 1, 2024.

Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff's Counsel's application for a reasonable award of attorney's fees not to exceed the total amount of $163,333.33 (1/3 of the Settlement Amount), Plaintiff's Counsel's litigation expenses not to exceed $25,000, Administration Costs of $8,000[1], a Service Payment of $5,000 to Plaintiff, and a PAGA Payment of $20,000 (of which $15,000 or 75% will be paid to the Labor and Workforce Development Agency ("LWDA") and the remaining $5,000 or 25% will be paid pro-rata to the Aggrieved Employees). (S.A. ¶ 47(a-e)).

After all Court-approved deductions from the Settlement Amount, it is estimated that $268,666.67 (the "Net Settlement Amount" or "NSA") will be available to pay the Class:

Settlement Amount	**$ 490,000.00**
Attorneys' Fees (1/3)	$ 163,333.33
Litigation Costs (not to exceed)	$ 25,000.00
Administrator Costs	$ 8,000.00
PAGA Penalties	$ 20,000.00
Class Representative Service Award	$ 5,000.00
Net Settlement Amount	**$ 268,666.67**

Assuming an estimated 35,000 Workweeks worked during the Class Period, each Workweek will have a gross value of $14.00/Workweek ($490,000 / 35,000), and the workweek value payable to the Class Members after the deductions set forth above will be approximately $7.67/Workweek ($268,666.67 / 35,000). Based on a class size of 500 Class Members, the average payment will be approximately $537.33 to each Class Member ($268,666.67 / 500), the

[1] The Parties selected Phoenix Settlement Administrators as the Administrator, who provided an all-in bid of $7,950, to administer the Settlement.

potential high payment is $1,963.52 for an employee who worked all 256 Workweeks during the Class Period (at $7.67 per Workweek), and the lowest potential payment is $7.67 for a short-term employee that only worked one Workweek during the Class Period. Of course, the actual payments will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period. In addition, an estimated 300 Aggrieved Employees (*i.e.,* Class Members that worked during the PAGA Period) will receive a pro rata share of the $5,000 PAGA Penalties (25% of the total $20,000 allocation). (S.A. ¶ 47(h)).

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

II. BACKGROUND

A. The Class

The putative Class is defined as follows:

> All current and former sales employees of Defendant in California who were eligible to receive commission pay as an "Inside Sales" exempt employee at any time during the Class Period of November 8, 2019, through October 1, 2024, including employees with the job title of Financial Consultant and/or a sales individual entitled to earn commission from enrollment of debt resolution clients. (S.A. ¶ 6).

B. Procedural History

On November 7, 2023, Plaintiff sent a letter to the LWDA notifying it and Defendant that Plaintiff intended to pursue claims against Defendant under the PAGA for violation of California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 ("LWDA Notice Letter"). (Mankin Decl. ¶ 11, Exhibit C).

The following day, Plaintiff filed a putative class action in the Orange County Superior Court.[2] Ultimately, the LWDA declined to assert jurisdiction over the PAGA Claims, so on January 12, 2024, Plaintiff filed the operative first amended complaint (the "Complaint"), adding PAGA Claims. The Complaint alleges Class Claims and PAGA Claims for: (1) failure to pay minimum wages (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to pay vested vacation; (7) failure to timely pay wages upon separation of employment; (8) failure to provide accurate itemized wage statements; (9) unfair and unlawful competition; and (10) claims for PAGA penalties. (S.A. ¶ 40; Mankin Decl. ¶ 12).

Defendant retained counsel, denied the allegations and began vigorously defending the case, including arguing that Plaintiff was required to submit the matter to binding arbitration and dismiss his class claims. However, before incurring significant costs and expenses in protracted discovery and litigation, the Parties agreed to explore an early resolution through mediation. In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk, including extensive policies and procedures pertaining to each claim alleged, and statistics relating to the number of current and former employees and number of shifts, workweeks, and pay periods. In this regard, Defendant provided a comprehensive pre-mediation production of policy documents, employee handbooks, and a sampling of payroll and timekeeping records which included over 3,500 PDF pages and over 4,400 rows of excel data. This robust sampling enabled both Parties and their experts to take a deep dive into the claims. During this process, Plaintiff's Counsel and their retained expert (Sean Berger of Berger Consulting Group) evaluated the potential claims, risks, and defenses as to all similarly situated employees. (Mankin Decl. ¶ 13).

On September 11, 2024, Plaintiff and Defendant participated in a full-day mediation with Hon. Dalila Lyons (Ret.), who has a long history of handling Mandatory Settlement Conferences

[2] Plaintiff submitted the LWDA Notice Letter and filed the initial complaint using a pseudonym ("John Doe") to protect his privacy and to protect the interests of the putative class members. However, after a series of meet and confers, the Parties stipulated that Plaintiff would disclose his identity in exchange for certain agreements including that Defendant is prohibited from contacting Plaintiff and his family members (other than through Plaintiff's counsel) during the pendency of this litigation.

for the LA Superior Court system, including for class actions and PAGA cases, and who now serves as a private mediator. At the conclusion of mediation, the Parties agreed to settle for the Settlement Amount and thereafter memorialized the terms of the Settlement in a long-form settlement agreement. The Parties now seek the Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 14; Exhibit A).

C. Summary of the Claims and Defenses

Defendant vigorously contested and denied each of Plaintiff's material allegations on the merits and as to the propriety of a class action or PAGA representative action, as discussed herein. Notably, Defendant argued that Plaintiff and the Class Members each signed binding and enforceable arbitration agreements that would defeat the Class claims (a claim that Plaintiff disputed). Still, Plaintiff alleged numerous strong claims on behalf of the Class Members. (Mankin Decl. ¶ 15).

First, Plaintiff alleged that the Class Members were not paid all wages owed due to three distinct violations. For example, Defendant paid the Class Members on an hourly basis plus commission pay, yet Defendant failed to include earned commissions in the regular rate calculations, leading to underpayments for overtime, vacation pay, and sick pay (under Labor Code § 246). Additionally, Plaintiff alleged that he and the Class Members were required to perform off-the-clock work each day due a computer-based timekeeping system that: (a) required the Class to clock in *after* booting up the computer, logging in, and then opening the relevant timekeeping program, and (b) after the shift, required the Cass to clock out and then perform various tasks to shut down the computer. Finally, Plaintiff alleged that Defendant used a timekeeping system that recorded and separately paid for rest breaks, but Defendant paid for this rest break time at the base rate of pay, even when those hours put the employee's total hours above the daily or weekly overtime threshold, leading to an underpayment of overtime hours. However, Defendant vehemently opposed these claims, arguing that Defendant properly paid for all hours worked and all overtime owed. And Defendant further argued that, as to the commission and regular rate claims, those would fail because the Class Members were subject to the "Inside Sales Exemption." (Mankin Decl. ¶ 16).

Second, Plaintiff alleged that Plaintiff and Class Members were often subjected to meal period and rest break violations due to a hectic workload and scheduling practice that did not permit all such breaks. However, Defendant argued it provided and made all mandated breaks available to the Class, and any employee who did not take a break did so of their own volition. Thus, Defendant argued these claims were without merit because, for each violation, a factfinder must determine why a break was noncompliant, because if it was by the employee's choice, no liability attaches to Defendant. Additionally, Defendant pointed to the payroll and timekeeping records to argue that, when a compliant break was not recorded, Defendant complied with its obligations to pay the "premium" required by Labor Code § 226.7. (Mankin Decl. ¶ 17).

Third, Plaintiff alleged that Defendant required Class Members to incur necessary business-related expenses and costs, such as home office expenses for remote employees, without reimbursement. Defendant, however, argued it did not require the Class to incur any expenses and, thus, it did not fail to reimburse any such expenses. (Mankin Decl. ¶ 18).

Finally, Plaintiff alleged a variety of other, derivative claims (all of which Defendant disputed), such as the failure to timely pay wages each period (under Labor Code § 204), failure to timely pay all wages upon separation of employment (Labor Code §§ 201 – 203), and failure to provide accurate itemized wage statements (Labor Code § 226). However, Defendant argued against the merits of each claim and, further, argued that these type of "derivative" claims have no merit. (Mankin Decl. ¶ 19).

Despite the disputed nature of the claims, the Parties concluded that this Settlement was the best result to limit further risk, expense, and protracted litigation.

D. Other Cases Impacted by this Settlement

The Parties have met and conferred and are unaware of any related cases that may be affected by this Settlement. (Mankin Decl. ¶ 21).

III. SUMMARY OF THE PROPOSED SETTLEMENT

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

A. Settlement Consideration and Allocation

The $490,000 Settlement Amount is non-reversionary and will be paid out to Class

Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's attorneys' fees and costs, as approved by the Court; (2) Administration Costs of $8,000; (3) a Service Payment of $5,000 to Plaintiff; (4) a $20,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Settlement Payments to the Participating Class Members and Aggrieved Employees. (S.A. ¶ 47). Defendant will separately pay its share of employer's payroll taxes and withholdings.

After all Court-approved deductions from the Settlement Amount, it is estimated that $268,666.67 will be available to pay the Individual Class Payments to approximately 500 Class Members. Thus, the average settlement payment will be approximately $537.33.

B. Notice Procedures

The proposed Notice – to be mailed in English only[3] – will be accompanied by separate Request for Exclusion and Objection Forms (*see* S.A. ¶ 69) as required by this Court, will be provided to the Class Members showing how each Class Member's Individual Class Payment and, if applicable, Individual PAGA Payment will be calculated, the number of Workweeks credited as a Class Member and/or Aggrieved Employee (*See* Exhibit B to Mankin Decl.). Within 20 calendar days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Administrator with the "Class Data" consisting of Class Member names, addresses, Social Security Numbers, Weeks Worked during the Class/PAGA Period(s), and total number of Workweeks in which the Class Member received commission pay and overtime pay in the same Workweek. (S.A. ¶¶ 9, 62).

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

If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall perform a skip trace search and seek an address correction for the Class Member(s), and a second

[3] Defendant represented that its workforce – and the Class – all speak, write, and read English without difficulty, so there is no need for Spanish (or other) translation.

Notice will be sent to any new or different address obtained. (S.A. ¶ 65).

C. Exclusion and Objection Procedures

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Class Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. There is no opt-out right as to the PAGA Settlement. To Opt-Out of the Settlement, the Class Member must complete and submit the Request for Exclusion Form to the Administrator no later than 45 days after being mailed by the Administrator ("Response Deadline"). (S.A. ¶¶ 34, 69(a)). Any Opt-Out request that is not postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which case the Class Member's exclusion or objection must be returned by the later of the original Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶¶ 65, 69).

The Class Notice shall inform Class Members of their right to object to the Settlement. Any Participating Class Member who wishes to object to the Settlement may submit the Objection Form to the Administrator no later than the Response Deadline. Alternatively, the Class Member may elect to make an oral objection at the Final Approval hearing, or 15 calendar days after the remailing of the notice. (S.A. ¶ 69(c)).

D. Calculation of Individual Class Payments

Individual Class Payments will be calculated and apportioned from the Net Settlement Amount based on the percentage of Workweeks each Class Member worked during the Class Period. Likewise, Individual PAGA Payments will be calculated based on the number of Workweeks each Aggrieved Employee worked during the PAGA Period. The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Administrator shall proportionally increase the Individual Class Payments for each Participating Class Member according to the number of Weeks Worked, so that the amount actually distributed to the Class equals 100% of the Net Settlement Amount. (S.A. ¶ 47(c)).

Additionally, each Aggrieved Employee will receive an Individual PAGA Payment calculated based on the number of Workweeks worked during the PAGA Period. Thus, the

$5,000 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Workweek basis. (S.A. ¶ 47(h)). Aggrieved Employees may not opt-out of the PAGA Penalties.

The Class Notice will inform Class Members of the estimated share and the number of Weeks Worked during the Class Period and PAGA Period. Class Members may dispute their Weeks Worked if they feel they worked more weeks in the Class or PAGA Periods than Defendant's records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 67).

As noted, assuming a class size of approximately 500 Class Members, the average payment to each class member will be approximately $537.33, although the actual payment will be calculated on a pro-rata basis as shown above. Assuming an estimated 35,000 Workweeks worked during the Class Period, each Workweek will have a value of approximately $7.67.

Moreover, it is estimated that there will be approximately 300 Aggrieved Employees who will share in the $5,000 PAGA award on a pro rata basis.

E. Timing of Settlement Disbursements

Within 21 calendar days of the Effective Date, Defendant shall deposit the Settlement Amount with the Settlement Administrator to pay: (1) the class attorney fees and expenses, as approved by the Court; (2) Administration Costs, as approved by the Court; (3) Service Payment as approved by the Court; (4) PAGA Penalties; and (5) the aggregate of all Individual Class Payments of Participating Class Members. (S.A. ¶ 70). Defendant shall also fund its share of payroll taxes, as directed by the Settlement Administrator. Within 10 days thereafter, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 71).

Class Members will have 180 days to cash their settlement check. If a Class Member fails to cash their check by the deadline, then the Settlement Administrator shall issue the unclaimed funds to the State Controller's Office for the State of California in the name of the Class Member. (S.A. ¶ 71(a)).

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F. Tax Treatment

The Settlement Agreement provides that 20% of each Individual Class Payment shall constitute wages (for which each Participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute interest and penalties (for which each Participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (S.A. ¶ 47(d)). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099.

G. Participating Class Members' Release of Claims

In exchange for these payments, the Settlement Agreement ¶ 30 provides that the Participating Class Members will release the Released Parties of the Released Class Claims, as follows:

> "Released Class Claims" means all claims that were alleged in the Complaint, or that reasonably could have been alleged based upon the facts stated in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition. The time period governing the Released Class Claims shall be the Class Period.

It is understood and agreed that the Settlement Agreement will not release any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes including, without limitation, the California Fair Employment and Housing Act, the California Government Code § 12940, et seq.; the Unruh Civil Rights Act, the California Civil Code § 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and all of their implementing regulations and interpretive guidelines.

H. Aggrieved Employees' Release of Claims

The Settlement Agreement ¶ 31 also defines the "Released PAGA Claims" as follows:

> "Released PAGA Claims" means the PAGA claims alleged in the Complaint, or that reasonably could have been based on the facts stated in the Complaint and in the relevant LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay wages each period, (8) failure to timely pay wages upon separation of employment, (9) failure to provide accurate itemized wage statements, and (10) 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.

The time period governing the Released PAGA Claims is November 8, 2022, through September 11, 2024 ("PAGA Period"; SA ¶ 24). Moreover, even if an Aggrieved Employee requests exclusion from the Class Settlement, that individual will still be subject to the Released PAGA Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 51).

IV. <u>PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT</u>

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.").

As discussed below, for the purposes of this Settlement only, Plaintiff requests that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 382.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. See Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. See *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. Here, according to Defendant's records, there will be approximately 500 Class Members as of the Preliminary Approval Hearing. This satisfies the numerosity requirement.

B. Well-Defined Community of Interest

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. See *Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913). Plaintiff contends that the Class was subject to common policies and practices relating to the payment of wages to the sales employees, as well the provision of meal and rest breaks, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this Settlement.

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." See Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiff's claims are typical of the Class for any continued litigation of the Action, but agree for the purposes of this Settlement only, that Plaintiff asserts claims on behalf of the sales employees regarding Defendant's 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, Plaintiff is adequate to represent the Class because she was employed by Fleet Services during the Class Period, experienced the same wage and hour practices as the rest of the Class, understood his duties as a Class Representative, has been willing to undergo the risks of litigation, and has no conflict of interest.

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

4. Superiority

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 REASAONABLE

A. Class Action Settlements are Subject to Judicial Review

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1382. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. See Cal. R. Ct. 3.769(c), (e-g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235. Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice*, *supra*, 688 F.2d at 625.

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. See *Dunk*, *supra*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, *supra*, 688 F.2d at 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742-743 (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation)). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

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

Dunk, supra, 48 Cal.App.4th at 1801 (detailing non-exhaustive list of factors for court's consideration at final approval).

The above factors are not exclusive "and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, *supra*, 91 Cal.App.4th at 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Id.* The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id.* (cleaned up).

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

B. The Settlement Resulted from Serious, Informed, Non-Collusive Negotiations

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

C. The Extent of the Investigation was More than Sufficient

Plaintiff, his counsel, and their retained expert thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. As described above, the Settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial exchange of information relating to the Class Members prior to mediation. (Mankin Decl. ¶¶ 10-13, 24-46).

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D. The Settlement is a Reasonable Compromise of Claims

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

However, *Kullar* does **not** require review of the outer reaches of possible exposure without considering actual risks of certification, decertification, dispositive motions, and trial. Instead, as clarified by the *Munoz* court, *Kullar* does not "require any such explicit statement of [maximum] value"; *Kullar* only requires a party to provide a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 408-409. Thus, a settlement is not judged against what *might have been recovered* had a plaintiff prevailed at trial on all claims, nor must the settlement provide 100% of the damages sought to be fair and reasonable. *Wershba,* 91 Cal.App.4th at 250 ("Compromise is inherent and necessary in [settlement] … even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.")

Here, Defendant raised significant legal and factual defenses that weigh in favor of the reasonableness of the proposed Settlement. In addition to disputing the merits of Plaintiff's claims, Defendant strongly disputed that Plaintiff could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendant further argued that it complied with the applicable law and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always a significant risk associated with arbitration and class certification proceedings, which could limit the claims he could pursue on a class basis.

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

Based upon data obtained through informal discovery, Plaintiff's Counsel estimated the following data through mediation: (1) 420 Class Members, (2) 240 *former* Class Members for purposes of Labor Code § 203, (3) 32,000 workweeks, (4) 160,000 shifts, and (4) approximately 4,500 biweekly wage statements during the PAGA Period. (Mankin Decl. ¶ 22).

Here, there were several claims alleged by Plaintiff, including: (1) several unpaid wage claims, (2) meal and rest break violations, (3) failure to reimburse business expenses, (4) derivative claims for waiting time and wage statement penalties. (Mankin Decl. ¶ 23). An exhaustive description of the risks Plaintiff faced at the class certification stage and on the merits for each claim is included in the Mankin Decl. at ¶¶ 15-19 and 24-44.

Then, by applying violations rates derived from analysis of extensive documents and data from Defendant, along with the assistance of a statistical expert, and by incorporating the many risks at class certification and on the merits, defenses, and other issues (such as violation rates and evidentiary burdens of proof); Plaintiff calculated the risk-adjusted award at trial for the class claims to be $495,916, with the following subtotals of risk-adjusted total values by claim: (1) unpaid wage claims = $112,102, (2) meal and rest break claims = $164,250, (3) unreimbursed expenses = $89,600, (4) waiting time penalties = $288,466, and (4) wage statement penalties of $141,498. (Mankin Decl. ¶ 44). The full analysis of these risk-adjusted values, and the specific risks and defenses that applied to each claim, is contained in the Mankin Decl. at ¶¶ 24-44 (and, for the sake of brevity, that information is not duplicated in this Motion).

Then, as to the PAGA claims, the analysis and valuation acknowledged 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). Under this discretionary authority, many courts have greatly reduced PAGA claims where, such as here, the company raised several good faith arguments that, if successful, would have defeated the claims (such as the Inside Sales Exemption, compliant written policies, and so forth). *See, e.g.*, *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (approving of trial court applying only $5 per violative pay period);

Fleming v. Covidien Inc. (C.D. Cal. 2011) 2011 WL 7563047 (82% reduction in PAGA penalties); *Aguirre v. Genesis Logistics* (C.D. Cal. 2013) 2013 WL 10936035 (72% reduction in PAGA penalties). Defendant also 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. Moreover, Defendant took the position that Plaintiff would not be entitled to "stack" more than one PAGA civil penalty per employee per pay period (regardless of whether there was one Labor Code violation or five). Without conceding ground on this "stacking" defense, Plaintiff and her counsel acknowledged the possibility that a court may rule that only $100 (total) per pay period was available in PAGA penalties, regardless of the number of violations. With these considerations, defenses, and risks in mind, the Parties believe – in sum – that the PAGA penalties payable under the settlement are fair and reasonable given only 4,500 PAGA periods at mediation; as such, the settlement is fair and reasonable given the claim-specific risks, especially where it is *more* than the amount awarded in *Carrington* after trial and prevailing on the merits. (Mankin Decl. ¶ 46).

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

E. Plaintiff's Counsel Is Experienced in Similar 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, *aff'd* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account "the experience and view of counsel") (internal quotation and citation omitted).

Plaintiff's Counsel is highly experienced in Class and PAGA litigation, having been named by the LA Times as one "Southern California Leading Lawyers" in the May 2023 issue of Consumer Attorney's of Southern California, being named as a "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). Plaintiff's 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 in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (*Id.* ¶¶ 15-46).

F. The Class Notice Conforms to All Applicable Statutes and Rules

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

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all Class Members complies with all the requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed Class Notice include (1) the material terms of the Settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (3) details about the final fairness hearing and how Class Members may elect to exclude themselves or make an objection; and (4) how Class Members can obtain additional information. *See* Class Notice (Exhibit 2 to the Mankin Decl.). In addition, it will inform Class Members of their estimated settlement share.

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

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

G. The Non-Reversionary "Checks Cashed" Distribution Ensures Maximal Recovery for Class Members

The fact that each Class Member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless they affirmatively act to exclude themselves. Moreover, the Settlement Amount is non-reversionary, which means that no settlement funds will revert to Defendant; instead, if any checks are not cashed before the Response Deadline, the funds will be transferred to the State Controller Office in the name of the employee, subject to approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the Parties and that the Settlement is fair and favorable to the Class Members.

H. The Attorney Fee and Cost Allocation Under the Settlement is Fair

Under the terms of the Settlement Agreement, Class Counsel is requesting one-third of the Settlement Amount for attorneys fees (estimated to be $163,333.33 assuming the Escalator Clause is not triggered). S*ee, e.g. Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503 (approving 1/3 fee in the amount of $6.33 million at a 2.13 lodestar multiplier because "when class action litigation establishes a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created'); see also *Stuart v. RadioShack Corp*. (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645, *18 (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million as "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc*. (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

In addition, Plaintiff's Counsel may seek reimbursement of actual litigation costs not to exceed $25,000. Once the Court grants preliminary approval of the Settlement Agreement and the Class Notice is disseminated, Plaintiff's Counsel will submit a comprehensive request for attorneys' fees and costs with its final approval motion.

I. The Requested Service Award is Fair and Reasonable

The Settlement Agreement provides an incentive award payment of $5,000 to the Class Representative, which is reasonable given the recovery Class Members will receive on average, as well as the time and effort he devoted to this case. His efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Defendant's compensation plan; participating in phone calls to discuss litigation and settlement strategy; making himself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement documents. The Class Representative also assumed significant risk in bringing this litigation—namely, had he lost, he could have been ordered to pay Defendant's costs.[4]

[4] Plaintiff has also separately resolved individual FEHA and released claims against Defendant.

The requested service award falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. See, *e.g.*, *Bond v. Ferguson Enterprises, Inc*. (E.D. Cal. June 29, 2011) 2011 WL 2648879, *37 (approving $11,250 service award to each of the two class representatives in a trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) 2010 WL 3833922, at *2 (approving $20,000 enhancement award to a class representative in a California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 482, 491 (approving service awards in the amount of $5,000 each from a $300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc*. (E.D. Cal. Oct. 19, 2006) 2006 U.S. Dist. LEXIS 76558, at *28 ("[T]he court finds Plaintiff's enhancement payments of $15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*. (N.D. Cal. Jan. 26, 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. Oct. 6, 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 SETTLEMENT ADMINISTRATOR

The Parties stipulated to Phoenix Settlement Administrators serving as the Settlement Administrator. Phoenix Settlement Administrators is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for $8,000. (Mankin Decl. ¶ 58; Exhibit "D"). The Administrator will host case documents on its website.

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 and/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.

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VIII. CONCLUSION

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

Dated: June 2, 2025

LAUBY, MANKIN & LAUBY LLP

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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On June 2, 2025, I caused to be served the foregoing document(s) described as follows:

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

[X] **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.

[X] **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 2, 2025, 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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