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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ISABELLE FLORES, individually, on a representative basis, and on behalf of all others similarly situated; Plaintiff, vs. PREMIER MEDICAL TRANSPORT, INC., a California Corporation; and DOES 1 through 20, inclusive; Defendants.	Case No.: CVRI2402632 *[Assigned to Hon. Harold Hopp, Dept 1, for all purposes]* **PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *Filed Concurrently with Declarations in Support Thereof and [Proposed] Order* <u>Hearing</u> Date: March 4, 2025 Time: 8:30 a.m. Dept.: 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 4, 2025, 8:30 a.m., or as soon thereafter as the matter may be heard by the Honorable Harold Hopp in Department 1 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff Isabelle Flores, 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 Private Attorneys General Act ("PAGA") settlement,[1] 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 and PAGA 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 Declaration of Plaintiff's counsel (Brian Mankin and Peter Carlson); the Declaration of Plaintiff; the Declaration of Defendant's counsel; the Declaration of Defendant's Representative); the Declaration of Michael Moore on behalf of Phoenix Settlement Administrators; the Class Action and PAGA Settlement Agreement (the "Settlement Agreement"); 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: February 18, 2025

LAUBY, MANKIN & LAUBY LLP

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

[1] Due to delays obtaining signatures, Defendant agreed to waive the required statutory notice.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Isabelle Flores seeks preliminary approval of a $1,950,000 class action settlement on behalf of approximately 2,000 current and former nonexempt (hourly paid) employees employed by Defendant Premier Medical Transport, Inc. ("Premier" or "Defendant") in California at any time during the Class Period of May 14, 2020, through December 31, 2024.

Under the terms of the Settlement Agreement,[2] Defendant will not oppose Plaintiff Counsel's application for a reasonable award of attorneys' fees not to exceed $650,000 (1/3 of the Settlement Amount), litigation expenses not to exceed $25,000, Settlement Administrator Costs of $18,000, PAGA penalties of $50,000 (75% to LWDA and 25% to Aggrieved Employees), and a Service Payment of $5,000 to Plaintiff Isabelle Flores (the "Class Representative"). (S.A. ¶ 48).

After all Court-approved deductions from the Settlement Amount, it is estimated that $1,202,000 will be available to pay the Class Members, as follows:

Settlement Amount	**$ 1,950,000.00**
Attorneys' Fees (1/3)	$ 650,000.00
Litigation Costs (not to exceed)	$ 25,000.00
Administrator Costs	$ 18,000.00
PAGA Penalties	$ 50,000.00
Class Representative Service Award	$ 5,000.00
Net Settlement Amount	**$ 1,202,000.00**

Assuming 2,000 total Class Members, the average payment will be approximately $601 ($1,202,000 / 2,000). However, 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. (S.A. ¶ 48(c); Mankin Decl. ¶¶ 46-48 [description of high/low payments]). In addition, approximately 1,100 Aggrieved Employees will receive a share of the $12,500 PAGA Penalties (25% of the $40,000 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period. (S.A. ¶ 48(h)).

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

Because the settlement is fair, reasonable, and 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 Administrator, and scheduling a hearing for final approval.

II. BACKGROUND

A. THE CLASS

The Class is defined as follows:

> All current and former nonexempt (hourly paid) employees employed by Defendant in California during the Class Period (May 14, 2020, through December 31, 2024). (S.A. ¶¶ 4, 8).

B. PROCEDURAL HISTORY

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

On May 14, 2024, Plaintiff filed this class action, alleging that Premier violated various sections of the Labor Code. Then, on July 19, 2024, Plaintiff filed a First Amended Complaint adding PAGA causes of action. (Mankin Decl. ¶ 14).

Defendant retained counsel and immediately began to defend the case. Then, after early discussions among counsel, the Parties agreed to attend private mediation. In preparation for mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk, including policies and procedures pertaining to the claims, statistics relating to the number of current and former employees, number of shifts, workweeks and pay periods worked and other things, and an extensive sampling of payroll and timekeeping records for Class Members. This information enabled both parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and her counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 15).

On November 13, 2024, Plaintiff and Defendant participated in mediation before Todd Smith, Esq. a well-respected employment mediator. At the conclusion of mediation, and after extensive arms-length negotiations, Mr. Smith issued a mediator's proposal which was ultimately accepted by the Parties. The Parties now seek the Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 16).

C. Brief Overview of Claims and Defenses

Plaintiff alleged numerous wage and hour violations on behalf of the Class Members. However, Defendant vigorously contested and denied Plaintiff's material allegations on the merits and as to the propriety of a class action or PAGA representative action. Still, Plaintiff believed there were several strong claims. (Mankin Decl. ¶ 17).

For instance, Plaintiff raised two strong unpaid wage claims. First, Plaintiff alleged that she and the Class Members were paid on an hourly basis plus other forms of earned compensation, such as shift differentials, yet those amounts were not included in the calculations for overtime and various other payments. Second, Plaintiff alleged that Defendant failed to pay all vested vacation owed, in violated Labor Code § 227.3, due to a practice that paid vacation to departing employees at the base rate instead of the "final rate." Plaintiff also argued these violations resulted in significant unpaid wages, waiting time penalties under Labor Code § 203 and other derivative penalties. However, Defendant opposed each unpaid wage claim on the merits and as to the propriety of class certification. (Mankin Decl. ¶ 18).

Plaintiff also alleged that the Class Members were often denied compliant meal and rest breaks due to the nature of the work. However, Defendant argued it had a complete defense to this claim via the Emergency Ambulance Employee Safety and Preparedness Act, Labor Code §§ 880 – 889 (the "EAESPA") and, further, that it provided and made all mandated meal and rest breaks available to the Class. Thus, Defendant argued these claims were without merit because, for each violation, a fact-finder would have to determine why a break was noncompliant, because if it was the employee's choice, no liability attaches. (Mankin Decl. ¶ 19).

Finally, Plaintiff alleged a variety of other claims (all of which Defendant disputed), such as the failure to timely pay wages each period, failure to timely pay all wages upon separation of employment, and failure to provide accurate itemized wage statements. (Mankin Decl. ¶ 20).

Despite the disputed nature of the claims, the Parties concluded that further litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled to limit further risk, expense, and protracted litigation. (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 $1,950,000 Settlement Amount[3] 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) a service award of $5,000 to Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed $18,000; (4) a $50,000 PAGA award, with 75% paid to the LWDA and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 48). Defendant will separately pay its share of employer payroll taxes and withholdings. (*Id.*).

B. NOTICE PROCEDURES

Here, the Parties will provide notice of this settlement in strict compliance with Court's Class Action Case Management Order #1, issued on May 20, 2024 (the "CMO"). Thus, as required by CMO ¶ G, the Parties will send each Class Member a Class Notice, a Request for Exclusion Form, an Objection Form, and a Dispute Form. (S.A. ¶ 60), which are attached to the Mankin Decl. as Exhibits B, C, D, and E, respectively.

Notably, the proposed Notice complies with CMO ¶ G(5) because it informs each Class Member of the estimated recovery, the number of Weeks Works that each Class Members is credited with, and the applicable average payments, minimum, and high payments. And the

[3] If the "Escalator Clause" is triggered, Defendant must increase the Settlement Amount for any workweeks above 84,700. S.A. ¶¶ 15, 48(a). If this occurs, other figures will also shift upward along with the Settlement Amount, such as attorneys' fees (but this is still constrained to 1/3 of the Settlement Amount) along with increased Administration Costs (*see* S.A. ¶ 48(g)).

Notice Packet will be provided in both English and Spanish to ensure that each Class Member can read and understand the contents.

Within 14 calendar days after entry of the Preliminary Approval Order, Premier shall provide the Settlement Administrator with the "Class Data" consisting of Class Member names, addresses, Social Security Numbers, and Weeks Worked during the applicable periods. (S.A. ¶¶ 7, 58). Within 10 calendar days of receipt of the Class Data, the Settlement Administrator shall calculate the numbers for each Class Member, populate the Notice, and send each Class Member the Notice Packet via first-class, United States mail. (S.A. ¶ 60).

If a Notice is returned as undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace and seek an address correction for the Class Member(s), and a second Notice will be sent to any new or different address obtained. (S.A. ¶ 61).

C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member must submit a written request to the Administrator no later than 45 days after being mailed by the Settlement Administrator ("Response Deadline"). (S.A. ¶ 34). 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. ¶¶ 61, 65).

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 must complete the Objection Form in the Notice Packet. To be valid, any Objection Form must be mailed to the Settlement Administrator and postmarked on or before the Response Deadline. (S.A. ¶ 65(c)).

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Class Member's Individual Class Payment is tied to the number of Weeks Worked by each Class Member for Defendant in California during the Class Period. Therefore, Individual Class Payments will be calculated by: (a) dividing the Net Settlement

Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Members' Weeks Worked. (S.A. ¶ 48(c)). Additionally, each "Aggrieved Employee" will receive an Individual PAGA Payment, calculated by dividing and distributing the $12,500 on a pro-rata Weeks Worked basis. (S.A. ¶ 48(h)).

The Class Notice will inform Class Members of the number of Weeks Worked during the relevant periods and the estimated Individual Class and PAGA Payments. Class Members may dispute their Weeks Worked by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 63).

E. TIMING OF SETTLEMENT DISBURSEMENTS

Pursuant to the terms of the Settlement Agreement, Premier is required to fund the Settlement Amount, plus its share of payroll taxes owed on the Individual Class Payments, within 15 days of the Effective Date. (S.A. ¶ 99). Within 10 days after receiving the funds, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 67).

Class Members will have 180 days to cash the settlement check. (S.A. ¶ 68). If a Class Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California State Controller in the name of the Class Member/Aggrieved Employee. (*Id.*). As required by CMO ¶ G(3)(c)(i), Plaintiff's Counsel explains the reasoning for this method of distribution at Mankin Decl. ¶¶ 52-57.

F. TAX TREATMENT

The Parties agree that twenty percent (20%) of the Individual Class Payments will be allocated as wages subject to withholding of all applicable local, state and federal taxes and the remaining eighty percent (80%) will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 48(d)). The Individual PAGA Payments will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 48(h)).

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G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for these payments, and in strict compliance with CMO ¶ G(3)(e), the Settlement Agreement at ¶ 30 defines the "Released Class Claims" as follows:

> all claims stated in the Complaint and those based solely upon the facts 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) timely pay final wages, (8) failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition.

Additionally, as required by CMO ¶ G(3)(e)(iii), the "time period governing the Released Class Claims shall be any time during the Class Period." (S.A. ¶ 30). And, pursuant to CMO ¶ G(3)(e)(i), the "Released Parties" are limited to Defendant, together with its officers, directors, employees, and agents. (S.A. ¶ 32).

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 any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS

The Settlement Agreement at ¶ 31 also complies with CMO ¶¶ G(3)(e)(iv) and G(9)(d) as it defines the "Released PAGA Claims" as follows:

> all PAGA claims that Plaintiff alleged against the Released Parties on behalf of herself and the State of California and LWDA, based on the facts stated in the relevant LWDA notice letters and only to the extent that they are alleged in the Complaint, 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 CMO, at ¶¶ G(3)(e)(iv) and G(9)(d)(i), also requires that the "release of claims for PAGA penalties shall bind only the named plaintiff and the State of California." The Settlement Agreement strictly complies with this requirement. (*See* S.A. ¶ 52 ["Plaintiff – in her individual capacity and on behalf of the State of California and LWDA – shall completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Period"]).

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the Released PAGA Claims and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 53; CMO ¶ G(9)(c)).

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

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; *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 ("[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. ASCERTAINABILITY AND NUMEROSITY

In determining whether a class is ascertainable, the court considers "(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members." *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense). Here, according to Defendant's records, there are approximately 2,000 Class Members that are easily identifiable and fall within the defined Class. Thus, Plaintiff's proposed Class meets the ascertainability and numerosity requirements.

B. <u>WELL-DEFINED COMMUNITY OF INTEREST</u>

1. <u>Commonality</u>

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. *Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class was subjected to common policies and practices relating to payment of wages, meal/rest breaks, and so on. 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 only.

2. <u>Typicality</u>

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* § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding 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. <u>Adequacy of Representation</u>

The proposed class representative must establish that he or she will adequately represent the proposed class. *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 Defendant during the Class Period, experienced the same wage and hour practices as the rest of the Class, understood her duties as a Class Representative, has been willing to undergo the risks of litigation, and has no conflict of interest. (Flores Decl. ¶¶ 2-5).

Adequacy may be established by the fact that counsel are experienced practitioners. See *Local Joint Exec. Bd. 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 this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-9).

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; 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. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. And the Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *Dunk,* 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard).

Thus, 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*, *supra* (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. <u>THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS</u>

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 her 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 the defenses, the employees may not have received any monetary recovery.

C. <u>THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT</u>

Plaintiff 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 prior to mediation. *See Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 410 (approving settlement where "considerable information [exists] from which to assess the strength of the class claims" and litigation risks).

D. <u>THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS</u>

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, rather only 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 408-9. Thus, a settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to 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, Premier 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. Premier 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. Thus, while Plaintiff asserts that this is a suitable case for certification, she realizes that there is always a significant risk associated with class certification proceedings, which could limit the claims she 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 formal and informal discovery, Plaintiff's counsel estimated the following through mediation: (1) 1,700 Class Members, (2) 900 *former* Class Members for Labor Code § 203, (3) 76,500 workweeks, (4) 252,450 shifts worked, and (4) approximately 37,000 wage statements during the PAGA Period. (Mankin Decl. ¶ 25).

From these numbers, and by applying violations rates derived from analysis of extensive documents and data from Defendant, Plaintiff calculated the following maximum amounts assuming all claims were entirely successful at trial: class damages and penalties of $13,364,5745 and PAGA penalties of $12,605,200. (Mankin Decl. ¶ 45). Then, by applying risks at class certification and on the merits, and when considering other factors (such as evidentiary burdens of proof), Plaintiff calculated the risk-adjusted award at trial for the class claims to be $4,486,309 and for PAGA as $720,820. (Mankin Decl. ¶ 45). As required by CMO ¶ G(3)(a)(i and ii), the full analysis of the maximum and risk-adjusted values is contained in the Mankin Decl. at ¶¶ 22-45 (and, for the sake of brevity, that information is not duplicated in this Motion).

Thus, the reasonableness of the settlement is apparent from the fact that the proposed settlement is 43.5% of the risk-adjusted class damages and penalties. And, for that reason and the others discussed in this Motion, the Parties submit that this settlement is fair and reasonable.

E. <u>PLAINTIFF'S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION</u>

The view of attorneys conducting the litigation is entitled to significant weight deciding whether to approve a 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 consider "the experience and view of counsel"). Here, Plaintiff's Counsel are 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; Carlson Decl. ¶¶ 3-9). 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 considering the nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law, and uncertainties of class certification and litigation.

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

The proposed 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 way the Class Notice shall be disseminated ensures that all or nearly all of the Class Members shall be properly notified of the proposed settlement.

The proposed Notice and proposed plan for the Administrator to mail the Notice to the last known address of all class members complies with all the requirements of Cal. Rule of Court 3.769(f) and 3.766(b). The proposed Notice includes: (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; (4) how class members can obtain additional information; and (5) each Class Members' Individual Class and PAGA Payments. *See* Class Notice (Exhibit B to Mankin Decl.).

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 Notice Packet will be disseminated directly to the Class Members by first class mail by the Settlement Administrator, since Defendant have the last known addresses of all class members and the Settlement Administrator will perform a skip trace and update those addresses for any Notice Packets that are returned and re-send the same.

The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members with all due process protections required by the U.S. Constitution. Moreover, the contents of the Notice comply with Cal. R. Ct. 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 to opt-out or object is also reasonable, as it provides Class Members 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, he or she will automatically be sent a settlement check.

G. THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

The fact that each 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 themself. Moreover, the Settlement Amount is non-reversionary, which means that no settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline, the funds will be transferred to the State Controller's Office 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'S FEES AND COSTS ALLOCATION IS FAIR

Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement of up to $25,000 in litigation costs, along with attorneys' fees equal to one-third of the Settlement Amount. See, *e.g.*, *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of $6.33 million at a 2.13 lodestar multiplier, and holding that 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); *Stuart v. RadioShack Corp*. (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee 1/3 from settlement amount of $4.5 million since 1/3 was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits").

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

I. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE

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 she devoted to this case. Her efforts included providing factual background for the litigation; providing documents and information about Defendant's compensation plan; participating in phone calls to discuss litigation and settlement strategy; making herself 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 she lost, she could have been ordered to pay Defendant's costs.[4]

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

VI. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR

Subject to the Court's approval, the parties agreed to Phoenix Settlement Administrators serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for $7,000. (Mankin Decl. ¶ 86; Decl. of Michael Moore of Phoenix and exhibits).

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

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

settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing for final approval approximately 160 days after the Preliminary Approval Date, as follows:

March 4, 2025	Preliminary Approval (PA) hearing
March 28, 2025 *(24 days after PA)*	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
May 12, 2025 *(45 days after mailing)*	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
Approx. June 23, 2025 (approx. 110 days after PA)	Final Approval Hearing

VIII. CONCLUSION

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

Dated: February 18, 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 February 18, 2025, I caused to be served the foregoing document(s) described as follows:

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

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 February 18, 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

SERVICE LIST

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