LAW OFFICE OF ROBERT A. WALLER, JR.
Robert A. Waller, Jr. (SBN 169604)
P.O. Box 999
Cardiff-by-the-Sea, CA 92007
Tele: 760.753.3118
Fax: 760.753.3206
robert@robertwallerlaw.com

ROMANCORE LAW, P.C.
Robert Radulescu (SBN 317447)
401 West A Street, Suite 1100
San Diego, CA 92101
Tele: 619.766.2626
robert@romancorelaw.com

Attorneys for Plaintiff
FLORIN VRANCEANU

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

FLORIN VRANCEANU,

Plaintiff,

vs.

MERCK, SHARP & DOHME CORP., a New Jersey Corporation; and DOES 1 through 25, inclusive,

Defendants.

Lead Case No. 37-2020-11926-CU-OE-CTL
(*Consolidated with Case No.: 37-2020-00018042-CU-BT-CTL*)

Hon. Timothy Taylor
Dept. C-72

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

HEARING:
DATE: April 8, 2022
TIME: 1:30 P.M.
DEPT: C-72

Other Scheduled Hearings:
Case Management Conf: April 8, 2022
Final Approval: July 29, 2022

Complaint Filed: March 3, 2020
Amended Complaint Filed: May 26, 2020
Related Complaint Filed: June 2, 2020

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I. STATEMENT OF THE CASE

This class and representative action is brought by Plaintiff FLORIN VRANCEANU ("Plaintiff") on behalf of himself and a putative class, and other aggrieved employees (collectively "class members"), located in California against his former employer, Defendant MERCK, SHARP & DOHME CORP. ("Defendant" or "Merck"), for Merck's alleged failure to timely pay Plaintiff and the class members their accrued but unused vacation wages upon separation of employment in violation of California Labor Code §227.3, §201 and/or §202. Plaintiff and the class members were eventually paid their accrued but unused vacation wages but Plaintiff alleges that he and other class members are entitled to statutory waiting time penalties pursuant to California Labor Code §203. In the proposed settlement, Plaintiff recovered for himself and all other class members waiting time penalties pursuant to California Labor Code §203 based on the number of days they were not paid timely.

On or about February 1, 2020, Plaintiff submitted a pre-filing letter to the California Labor Workforce Development Agency ("LWDA") notifying the agency of his intent to seek civil penalties on behalf of himself and other similarly situated "aggrieved employees" under the PAGA for alleged Labor Code violations relating to the late payment of final vacation wages.

On or about March 3, 3020, Plaintiff filed an individual action against Defendant in San Diego Superior Court, Case No. 37-2020-00011926-CU-OE-CTL, asserting claims for failure to pay wages in violation of California Labor Code §201, and waiting time penalties pursuant to California Labor Code §203, based on Merck's alleged failure to pay his accrued but unused vacation wages until a month after his separation date. On or about May 26, 2020, Plaintiff filed a First Amended Complaint ("FAC") adding a representative PAGA claim.

On or about June 2, 2020, Plaintiff filed a second lawsuit against Defendant in San Diego Superior Court, Case No. 37-2020-00018042-CU-OE-CTL, alleging similar claims but on behalf of a putative class of employees in California. Following meet and confer efforts and a stipulation between the parties' counsel, Plaintiff filed a consolidated amended complaint on or about September 17, 2020, in the lead case, Case No. 37-2020-00011926, consolidating the two actions (the "Action").

During the pendency of the litigation, Plaintiff conducted a thorough investigation into the facts of the Action. This included propounding written discovery to Merck, including Form Interrogatories, two sets of Requests for Admission, three sets of Special Interrogatories, and four sets of Requests for Production focusing on Merck's written policies and practices for paying vacation wages at the end of employment, and production of payroll records and termination data for Plaintiff and the class members. The Parties also engaged in substantial discussion of their various legal contentions regarding Plaintiff's claims and Defendant's defenses. The results of Plaintiff's discovery efforts and the Parties' mutual informal efforts to exchange information were instrumental in reaching the proposed settlement.

The Parties also discussed participating in private mediation but were able to engage in extensive and productive arms-length settlement negotiations and made progress without the need and added cost of a private mediator. After considerable arms-length negotiations between counsel, on December 31, 2021, the parties reached a settlement. *See*, ¶11 of Decl. of Attorney Robert Radulescu ("Radulescu Dec.").

At the heart of the settlement is Defendant's agreement to pay $925,000.00, inclusive of attorney's fees and costs, as a common fund, to settle all claims by Plaintiff and all other employees who were not paid vacation wages on the date of separation from June 1, 2017 to the date of preliminary approval. As part of the settlement, Defendant agreed to pay the costs of the settlement administrator, Phoenix Settlement Administrators. in addition to the $925,000 settlement fund. The costs of administration are expected to be approximately $5,000, which adds additional financial benefit to the class by not having those expenses paid out of the settlement funds.

Plaintiff and those class members who do not opt out of the settlement will provide a release in exchange for the consideration paid by Defendant. If finally approved, the settlement will ensure cash payment to approximately 160 former employees of Defendant, and will conclude this litigation between the parties, which is one of the primary goals for the Court's management of this case. *See*, California Rules of Court ("CRC") 3.700. Based on the following, Plaintiff requests the court grant preliminary approval of the settlement.

II. SUMMARY OF THE CLASS ACTION AND PAGA CLAIMS

A. The Class Definition

This settlement is on behalf of a settlement class defined as "all individuals who previously were employed by Defendant in California and whose employment ended in California on or after June 1, 2017, and whose final vacation pay was issued after the separation date." *See*, Settlement Agreement ¶38.

B. Size of Settlement Class and Manner Determined

The number of persons within the class definition ("Class Members") was identified by Defendant in response to written discovery, analysis of employee records and payroll data, and consists of approximately 160 individuals. This number depends, in part, on whether additional employees are fired or resign between the execution of the Settlement Agreement and approval of the settlement by the Court and who are not timely paid any accrued but unused vacation wages. Given the fact this case was brought, and the amount Merck has agreed to pay to settle these claims, Plaintiff anticipates Merck has cured its business practice that gave rise to this lawsuit and there will not likely be additional unidentified class members. The number of class members was determined from Defendant's employee records, payroll data, and discovery propounded by Plaintiff to Defendant.

C. Summary of Claims

Plaintiff and class members are those who were employed by Merck in California and who did not receive timely payment of their accrued but unused vacation wages upon separation of employment. *See*, Settlement Agreement ¶42. Plaintiff alleged, on behalf of himself and the putative class, claims for untimely payment of vacation wages as required by Cal. Labor Code §202, §203 and §227.3, and waiting time penalties as provided by California Labor Code §203. *See*, Consolidated Amended Complaint.

D. Investigation and Prosecution of Claims

The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting extensive exchange of informal and formal discovery including Plaintiff propounding written discovery to Merck consisting of Form Interrogatories, two sets of Requests

for Admission, three sets of Special Interrogatories, and four sets of Requests for Production focusing on Merck's written policies and practices for paying vacation wages at the end of employment, and production of payroll records and termination data for Plaintiff and the class members including a detailed Excel spreadsheet identifying the employees by anonymous numbers who defined the proposed class definition. Class Counsel was required to analyze, sort, and manipulate the data to be able to identify the number of class members and their respective claims and potential waiting time penalties to which they may be entitled.

As the Parties have also discussed, *supra*, counsel each engaged in detailed discussions and legal research relating to their legal contentions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses. These efforts were instrumental in reaching the settlement Class Counsel did for the benefit of the class.

E. Settlement Was Reached Through Arms-Length Negotiation

After reviewing employee records and providing the violations analysis to Defendant's counsel, the parties, through counsel, began settlement discussion. Counsel for the respective parties engaged in arms-length settlement discussions directly in part to avoid unnecessary expenses associated with private mediation. All settlement discussions were conducted at arms-length and liability was disputed by defense counsel throughout the negotiations. The Settlement Agreement, which is the result of considerable arms-length negotiations, is fair, adequate and reasonable and provides a specific, defined benefit to the class. See, Radulescu Dec. ¶ 2.

F. Summary of Potential Recovery at Contested Hearing; Risk of Loss

The parties reached a settlement whereby Merck agrees to pay the gross amount of $925,000 to resolve all claims. The net settlement (after deduction for attorney fees and costs) will be divided on a pro rata basis among the class members based on the number of days they were not paid the vacation wages. The settlement therefore presents Plaintiff and each class member with a fair and equitable share of the settlement proceeds.

Given this action centers on recovery of California Labor Code §203 waiting time penalties, there is a probability Plaintiff or any class member may not prevail in a contested

hearing for a number of reasons, including that the trier of fact could determine Merck's alleged conduct was not willful as required by Labor Code §203 in order for any class member to be able to recover anything since they were paid their actual vacation wages, just not on the date of separation, and many other employees did receive there vacation wages on or before the separation date, suggesting that individualized inquiries could arise as to the reason why some employees received their vacation wages later than others relative to the separation date.

With regard to any class member recovering anything in a contested hearing, if Plaintiff or a particular class member was required to prove they suffered damages, and was owed penalties due to vacation wage payment delays, it is estimated that any particular class member would be able to recover anywhere from $100 on the low end, to a few thousand dollars on the high end, .depending on each employee's individual regular rate, and the number of days they were not paid vacation wages following their separation from Merck. Under the terms of the settlement class members would be eligible to recover their proportionate share of the Maximum Distributable Amount. The Net Settlement Amount designated to the Class Claims will be allocated to each Participating Class Member based on his or her proportionate number of Estimated Days compared to the total number of Estimated Days for all Participating Class Members during the Class Period. *See*, Settlement Agreement ¶49(c)(ii).

G. Summary of Relief Provided by the Settlement

This Settlement Agreement allows the class members to recover significant monetary compensation for Defendant's alleged violations of the California Labor Code. The Parties agree to settle this Action for the gross, non-reversionary, amount of Nine Hundred and Twenty-Five Thousand Dollars ($925,000) ("the Settlement Amount"). *See*, Settlement Agreement ¶49(a). While the Settlement Amount will be divided among the class members on a pro rata basis of the number of days they were not paid, if each class member were treated the same, the gross settlement amount would provide an average value of $5,781.25 to each class member before computation of attorney fees and costs and incentive award for Plaintiff VRANCEANU. As noted, the Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid separately by Defendant and are not to be taken from the Gross

Settlement Amount. *See*, Settlement Agreement ¶63. Class Counsel are requesting the Court award Plaintiff VRANCEANU a service or incentive award not to exceed $10,000 for bringing the case. Defendant does not oppose this request. *See*, Settlement Agreement ¶49(d). The Service Payment to the Class Representative will be paid out of the Gross Settlement Amount. *Id*. Class counsel are requesting the Court to award attorneys' fees equal to one-third (33.33%) of the Gross Settlement Amount, inclusive of reasonable litigation costs. Defendant does not oppose that request. *See*, Settlement Agreement ¶49(e).

Moreover, this is a "non-reversionary" settlement. *See*, Settlement Agreement ¶50. Under no circumstances will any portion of the Settlement Amount revert to Defendant. *Id*. Settlement Class Members will not have to make a claim in order to receive an Individual Settlement Amount. *Id*. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Participating Class Member. *Id*. Likewise, if the number of class members increases by more than ten percent (10%) Merck has agreed to increase the settlement fund by a corresponding factorial. See, Settlement Agreement ¶69.

1. Allocation of Settlement to PAGA Claims

Plaintiff's complaint includes a PAGA claim. To resolve the PAGA claims, the parties have agreed, subject to court approval pursuant to California Labor Code §2699.3(b)(4), to allocate twelve thousand ($12,000) from the Gross Settlement Amount as recoverable PAGA penalties. *See*, Settlement Agreement ¶49(c)(i). Twenty-five percent (25%), or $3,000, shall be paid out to PAGA Settlement Employees. *Id*. Each PAGA Settlement Employee shall receive a portion of the $3,000 proportionate to the number of the PAGA Settlement Employee's Estimated Days compared to the total number of Estimated Days for all PAGA Settlement Employees during the PAGA Period. *Id.*

H. Whether The Proposed Settlement Is Fixed Fund or Claims Made

The settlement is fixed, non-reversionary, fund. Settlement Class Members will not have to make a claim in order to receive an Individual Settlement Amount. *See*, Settlement Agreement ¶50. The class members are thus guaranteed considerable monetary recovery.

1. The Claims Process

As noted, *supra,* no class member will be required to make a claim in order to recover from the settlement fund. The settlement administration process will be administered by Phoenix Settlement Administrators subject to approval by the court. Defendant will pay all fees and costs associated with claims administration.

The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail within twenty-five (25) business days following entry of the Preliminary Approval Order. *See,* Settlement Agreement ¶66. The Settlement Administrator will take steps to ensure that the Notice is correctly mailed to all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. *See*, Settlement Agreement ¶67. Notices will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. *Id*. The Notice will be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice. *Id*.

2. The Right To Opt-Out and Object

Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating Settlement Class by submitting a "Request for Exclusion" to Defendant, postmarked on or before the Notice Response Deadline. *See,* Settlement Agreement ¶70(a). Likewise, any class member may object to the settlement and may appear at the Final Approval Hearing and object whether or not they have filed a written objection. See, Settlement Agreement ¶70(c)

I. No Coupon Settlement

This is not a coupon settlement. No part of the settlement involves issuance or redemption of coupons to participating class members.

J. Qualified Settlement Fund

The Parties agree that the Settlement Administrator shall establish a Qualified Settlement Fund ("QSF") that is intended to be pursuant to Section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR § 1.468B-1 et seq., and will be administered by the Settlement Administrator as such. *See*, Settlement Agreement ¶64. With respect to the QSF, the Settlement Administrator shall: (1) open and administer a settlement account in such a manner as to qualify and maintain the qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the Code and Treas. Reg. §1.468B-1; (2) satisfy all federal, state and local income and other tax reporting, return, and filing requirements with respect to the QSF; and (3) satisfy out of the QSF all fees, expenses, and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Agreement. *Id*. The aforementioned fees, costs, and expenses shall be treated as and included in the costs of administering the QSF and as Settlement Administration Expenses. *Id*.

K. There Are No Known Similar Cases Against Defendant MERCK

There are no known, and Plaintiff's counsel has not been made aware of any, similar cases pending against Defendant in California involving the same claims or parties.

III. ARGUMENT

A. The Settlement Class Should Be Provisionally Certified

Plaintiffs (with the stipulation of Defendant) seek provisional certification of a class for purposes of settlement only. *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 618 ("the 'settlement only' class has become a stock device.") It is proper to certify a settlement class in connection with a class settlement provided the requirements for certification, other than manageability concerns[1], are established. *Amchem*, 521 U.S. 591, 619-621 (1977); *see also, Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 732, 744 (same). California courts apply a "lesser standard of scrutiny" to certification of settlement classes. *See, Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19 (addressing the two purposes of the certification

[1] See, *Amchem Products, Inc*., 521 U.S. at 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 by no trial.")

scrutiny: "(1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the non-representative class members," and explaining that the first of these purposes is inapplicable to settlement classes while the second purpose if fulfilled through the final fairness review process"); *see also, Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859 (noting the lesser standard of scrutiny for settlement classes.)

A party seeking certification of a class must establish the existence of both an ascertainable class and a well-defined community of interest among the class members. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Id*.

The settlement includes certification of the following stipulated settlement class:

> All individuals who previously were employed by Defendant in California and whose employment ended in California on or after June 1, 2017, through Preliminary Approval Date, and whose final vacation pay was issued after the separation date.

See, Settlement Agreement ¶38, 39.

Defendant has stipulated, for settlement purposes only, that the Settlement Class Members described herein who do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement class and that the PAGA Settlement Employees are appropriate for representative treatment for purposes of settlement only. *See*, Settlement Agreement ¶48.

1. <u>Ascertainable Class/Numerosity</u>

The proposed settlement class consists of approximately identified 160 persons. The numerosity requirement is therefore satisfied. Given the number of settlement class members it would be impractical to bring all of the potential settlement class members before the Court. *See, Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (finding 28 members sufficient to maintain a class action); *Occidental Land, Inc. v. Superior Court* (1976) 18 Cal.3d 355, 364 fn. 7 (ruling that more than 150 members sufficient to maintain class action). The class is therefore ascertainable: it is precise, objective and the identity of all potential settlement class members can

be determined from Defendant's own business and employee records. *Hicks v. Kaufman & Broad Home Corp*. (2001) 89 Cal.App.4th 908, 916.

2. Commonality/Predominance

"Predominance is a comparative concept, 'and the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-on Drug Stores, Inc.*, *supra*. 34 Cal.4th at 334 (citations omitted). Predominance may be established "when a defendant's tortious acts, as here, 'allegedly are the same with regard to each plaintiff.'" *Id*, quoting *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1107). "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must prove individually their damages." *Hicks*, 89 Cal.App.4th at 916.

Here, common questions predominate over any isolated or individual issues, and class treatment is appropriate. Plaintiff alleges the putative class of employees in California did not receive timely payment of their accrued but unused vacation wages upon separation of employment. The overarching common questions of law or fact are whether Defendant had a common policy and practice of failing to timely pay their California employees their earned but unused vacation wages at the time of separation. Thus, the commonality and predominance elements are satisfied.

3. Plaintiff VRANCEANU's Claims Are Typical of the Class

Plaintiff VRANCEANU's claims are typical of the settlement class because he was not timely paid his accrued but unused vacation wages upon separation of employment. "'Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.' [...] The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Johnson v. GlaxoSmithKline, Inc*. (2008) 166 Cal.App.4th 1497, 1509, quoting *Seastrom v. Neways, Inc*. (2007) 149 Cal.App.4th 1496, 1502). The typicality requirement is therefore satisfied.

4. Adequate Representation

A representative party must fairly and adequately protect the interests of the class. *Lockheed Martin Corp*., supra, 29 Cal.4th at 1104). Plaintiff VRANCEANU has the same interests as all other similarly-situated employees of Defendant Merck who were not timely paid their accrued but unused vacation wages upon separation of employment, and Plaintiff is seeking to hold Defendant responsible for their alleged failure to comply with applicable the California Labor Code for himself and all others similarly situated.

There is, moreover, no antagonism or conflict between Plaintiff VRANCEANU and the other members of the class. Plaintiff has fairly and adequately represented the interests of the class throughout this action. For example, Plaintiff abandoned his claim before the California Department of Labor Standards Enforcement (the Labor Board) in order to pursue a class and PAGA representative action for the benefit of all others similarly affected by Defendant's policy and practice.

Furthermore, Plaintiff requests the court preliminary appoint attorneys Robert Radulescu and Robert A. Waller, Jr., as class counsel. Attorneys Radulescu and Waller have diligently prosecuted the action on behalf of all class members and have no antagonism or conflict with any class members or opposing counsel. Plaintiff's counsel has demonstrated they are capable of representing the class because they have been and are willing and able to continue to vigorously, efficiently and expeditiously prosecute this action for the benefit of the class as a whole and have experience in successfully handling class and/or multi-party actions and complex litigation involving California Labor Code violations and related issues. *See*, Waller Decl. ¶22, ¶23.; Radulescu Decl. ¶ 3.

B. The Settlement Should Be Preliminarily Approved

Rule 3.769 of the California Rules of Court (CRC) sets forth the procedures for settlement of class actions. A two-step process is required. First, the court preliminarily approves the settlement and the class members are notified as directed by the court. Cal. Rules of Court, Rule 3.769(c)-(f).) Second, the court conducts a final approval hearing "to inquire into the fairness of the proposed settlement." Cal. Rules of Court, Rule 3.769(g). The decision to approve or reject a

proposed settlement is committed to the Court's sound discretion. *See*, *Wershba*, 91 Cal.App.4th at 234-35 (affirming approval of nationwide class action settlement); *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal.App.4th 1135, 1145-46 (same); *Dunk*, 48 Cal.App.4th at 1801 (same). "Public policy generally favors the compromise of complex class action litigation." (*In re Cellphone Termination Fee Cases (Sprint)* (2009) 180 Cal.App.4th 1110, 1117-1118, quoting, *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723 at n. 14).

In considering a potential settlement, "the operative word is 'settlement."' See, *7-Eleven Owners for Fair Franchising*, *supra*., 85 Cal. App. 4th at 1150. Thus, "the merits of the underlying class claims are not a basis for upsetting the settlement of a class action." *Id*. Moreover, the "proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." *Wershba*, 91 Cal. App. 4th at 246, 251. In reviewing the fairness of a class action settlement, "' [d]ue regard'... 'should be given to what is otherwise a private consensual agreement between the parties. 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, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *In re Cellphone Fee Termination Cases (Verizon)* (2010) 186 Cal.App.4th 1380, 1389, quoting *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1145 (quoting *Dunk*, 48 Cal.App.4th at 1801). Even at a final fairness hearing, the question is not whether the settlement "could be prettier, smarter, or snazzier," but solely "whether it is fair, adequate, and free from collusion." (*Hanlon v. Chrysler Corp*., (9th Cir. 1998) 150 F.3d 1011, 1027).

At this preliminary approval stage, the Court need only review the proposed settlement to determine whether it is within the permissible "range of possible judicial approval" and thus, whether the notice to the class and the scheduling of the formal fairness hearing is appropriate. *See*, *Federal Judicial Center, Manual for Complex Litigation*, § 21.632 (4th ed.2004); 4 William B. Rubenstein et al., *Newberg on Class Actions § 11:25* (4th ed. 2002); *see also*, *Gautreaux v. Pierce* (7th Cir.1982) 690 F.2d 616, 621 n. 3 (stating that the purpose of a preliminary approval hearing is "to ascertain whether there is any reason to notify the class members of the proposed

settlement and to proceed with a fairness hearing.") Preliminary approval should be granted "[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." *See*, *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997); *see also*, *Vasquez v. Coast Valley Roofing, Inc*., 670 F.Supp.2d 1114, 1125 (E.D.Cal. 2009) (same); *In re Tableware Antitrust Litigation*, 484 F.Supp.2d 1078, 1079-80 (N.D.Cal. 2007) (same).

There is not, nor could there be, any evidence of collusion between counsel and/or any of the parties regarding the settlement. Quite to the contrary, the proposed settlement resulted from intensive, arm's length negotiation between experienced attorneys. *See*, Radulescu Decl. ¶2. The parties entered into the settlement negotiations only after investigation of the facts and law including, *inter alia*, the exchange of information between the parties, numerous conversations and conferences between counsel, review of employee records, payroll records of numerous employees, preparation of violations/damages spreadsheets for evaluation by counsel, interviews of Plaintiff. See, Radulescu Decl. ¶4. These efforts provided Plaintiff VRANCEANU and his experienced counsel with sufficient information to thoroughly analyze the strengths and weaknesses of the case, and subsequently negotiate and consummate the Settlement Agreement proposed to the Court for approval. The negotiations have produced a result that Plaintiff and his counsel believe to be in the best interests of the proposed class, taking into account the costs and risks of continued litigation. See, Radulescu Decl. ¶5.

The Settlement does not improperly grant preferential treatment to segments of the class or the class representative. All class members are entitled to the same proportionate relief in regard to receiving monetary compensation. Furthermore, the requested incentive award of up to $10,000 to compensate Plaintiff VRANCEANU for his time and work does not evidence any improper preferential treatment. Rather, "[i]ncentive awards are fairly typical in class action cases." *See*, *Rodriguez v. West Publishing Corp.* (9th Cir.2009) 563 F.3d 948, 958, citing 4 *Newberg on Class Actions*, § 11:38, p. 81). Such awards "are discretionary ... and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or

reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *See, Rodriguez,* at pp. 958-958.; see also, *In re Cellphone Fee Termination Cases (Verizon),* 186 Cal.App.4th 1380 (affirming incentive award); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399 (same).

The proposed settlement provides monetary benefits which directly address the breaches in question without the considerable risks and delays associated with continued litigation, trial and appeal. Indeed, if this litigation were to proceed to trial, the apparent strengths of any particular plaintiff's case are no guarantee of obtaining class certification on an opposed basis, nor are they any guarantee the defense would not prevail on the merits. Even if a judgment were obtained against Defendant at trial, the recovery might be of no greater value to class members, and indeed might be substantially less valuable, than the proposed settlement, after taking into consideration the additional costs and expenses associated with trial and/or appeal. Moreover, even if Plaintiff and the class ultimately prevailed, it could be years before the class received any recovery. The Settlement is the best vehicle for settlement class members to receive the relief to which they are entitled in a prompt and efficient manner. In short, the Settlement not only falls within the range of possible approval, it is indisputably fair, reasonable, and adequate, satisfying the standards for preliminary approval as well as final approval. (Radulescu Decl. ¶6).

IV. CONCLUSION

Plaintiff respectfully requests that the Settlement Agreement be granted Preliminary Approval under CRC 3.769, that the Settlement Class be conditionally certified for purposes of settlement, that the Court approve the Notice Plan attached as Exhibit "B" and order distribution of the proposed notices, claim forms and request for exclusion forms to the settlement class members, and that the Court set the hearing re: final approval.

Respectfully submitted,

Dated: March 11, 2022

ROMANCORE LAW, P.C.

/s/ Robert Radulescu
Robert Radulescu
Attorney for Plaintiff and the Class

Dated: March 11, 2022

LAW OFFICE OF ROBERT A. WALLER, JR.

/s/ Robert A. Waller, Jr.
Robert A. Waller, Jr.
Attorneys for Plaintiff and the Class