Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY, LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JIMMY MACIEL, individually, on a representative basis, and on behalf of all others similarly situated;

Plaintiff,

vs.

SHAMBAUGH & SON, L.P., a Texas Limited Partnership; and DOES 1 through 20, inclusive;

Defendants.

Case No.: 20STCV30747
[Assigned to Hon. Judge Elihu M. Berle, Dept 6, for all purposes]

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

Hearing
Date: January 17, 2023
Time: 11:00 a.m.
Dept.: 6

Complaint filed: August 19, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

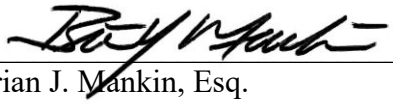
PLEASE TAKE NOTICE that on January 17, 2023, at 11:00 a.m. or as soon thereafter as the matter may be heard by the Honorable Elihu M. Berle in Department 6 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Jimmy Maciel, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Parties' class action settlement, 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 Declaration of Plaintiff's counsel (Brian Mankin and Peter Carlson) and Defendant's counsel (Joshua Kienitz) in support thereof; 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: November 18, 2022

LAUBY, MANKIN & LAUBY LLP

BY: 

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jimmy Maciel seeks preliminary approval of a $450,000 wage-and-hour class action settlement on behalf of approximately 100 current and former non-exempt/hourly employees of Defendant Shambaugh & Son, L.P., who are not represented by any union (i.e., non-union employees) and who worked for Defendant in California at any time from August 19, 2017, to November 30, 2022 (the "Class Period").

Under the terms of the Settlement Agreement,[1] Defendant will not oppose Plaintiff Counsel's application for a reasonable award of attorney's fees not to exceed $150,000 (1/3 of the Gross Settlement Amount), litigation expenses not to exceed $15,000, Settlement Administrator Costs of $7,060.16, PAGA penalties of $40,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment of $5,000 to Plaintiff Jimmy Maciel ("Class Representative"). (S.A. ¶ 3.2 et seq.)

After all Court-approved deductions from the Settlement Amount, it is estimated that $232,939.84 will be available to pay the Class Members, as follows:

Gross Settlement Amount	**$ 450,000.00**
Attorneys' Fees (1/3)	$ 150,000.00
Litigation Costs (not to exceed)	$ 15,000.00
Administrator Costs	$ 7,060.16
PAGA Penalties	$ 40,000.00
Class Representative Service Award	$ 5,000.00
Net Settlement Amount	**$ 232,939.84**

Assuming 100 Class Members, the average payment to each Class Member will be approximately $2,329.40 ($232,939.84 / 100). However, the actual payment will be calculated on a pro-rata basis according to the number of hours each Class Member worked during the Class Period, with each hour worked having a value of approximately $0.79/hour ($232,939.84 / 295,224 total hours worked), which is equivalent to $19.75/week worked ($0.79/hour x 8 hours

[1] The Class Action and PAGA Settlement Agreement (the "Settlement Agreement" or "S.A.") is attached as Exhibit A to the Declaration of Brian Mankin ("Mankin Decl.") and is based on the new model long-form agreement created by the Los Angeles County Superior Court. To facilitate the Court's review of the S.A., a redlined version is attached as Exhibit B to the Mankin Decl. to compare the S.A. to the model agreement.

per shift x 5 shifts in a week)[2]. In addition, approximately 65 Aggrieved Employees will receive a share of the $10,000 PAGA Penalties (25% of the total $40,000 PAGA allocation), calculated pro-rata based on approximately 2,543 Pay Periods Weeks Worked during the PAGA Period. (S.A. ¶ 9).

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 Class Action Administrators as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

II. BACKGROUND

A. THE SETTLEMENT CLASS

The Class is defined as follows:

> all current and former non-exempt/hourly employees of Defendant, who are not represented by any union (i.e., non-union employees) and who worked for Defendant in California at any time during the Class Period. (S.A. ¶ 1.6).[3]

B. PROCEDURAL HISTORY

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

[2] Defendant preferred using an "hours worked" metric as that would most accurately track a pro rata distribution based on the actual amount of time each Class Member worked during the Class Period, whereas a metric based on weeks worked or pay periods worked would not be quite as accurate if, for example, an employee only worked one day during a week and took vacation the other days.

[3] The following defined terms are used in this class definition: "Defendant" means Shambaugh & Son, L.P. [S.A. ¶ 1.18]; "Class Period" means the period from August 19, 2017, to November 30, 2022 [S.A. ¶ 1.13].

On August 19, 2021, Plaintiff commenced this Action by filing a complaint alleging class action causes of action against Defendant 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 Pay Vested Vacation; (6) Failure to Timely Pay Final Wages; (7) Failure to Provide Accurate Itemized Wage Statements; and (8) Unfair and Unlawful Competition. On November 8, 2021, Plaintiff filed a first amended complaint that added the PAGA claims (the operative first amended complaint shall be referred to as the "Complaint"). (S.A. ¶ 2.1).

Defendant retained counsel and immediately began to defend the case. Then, after early discussions among counsel, the Parties agreed to attend private mediation. (Mankin Decl. ¶ 15).

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 policies and procedures pertaining to each claim alleged, and statistics relating to the number of current and former employees, number of shifts, pay periods worked and other things. Defendant also provided their written policies and practices and a robust 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 his counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 16).

On August 30, 2022, Plaintiff and Defendant participated in mediation before Jeff Ross, a highly regarded wage-and-hour mediator. The matter resolved at mediation pursuant to a mediator's proposal which was accepted by both Parties. (Mankin Decl. ¶ 17). The Parties now seek the Court's preliminary approval of the Settlement.

C. SUMMARY OF THE 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.

One of the primary claims in this action was for wage statement violations due to Defendant's alleged failure to state: (1) the pay period start date, and (2) the company's name

and address. Defendant disputed Plaintiff's claim and specifically disputed that the wage statements were inaccurate or that they otherwise failed to comply with Labor Code section 226. Furthermore, Defendant contends that, even if Plaintiff could identify a technical error in some employees' wage statements, Plaintiff's claims still fail for multiple reasons, including without limitation, because Plaintiff cannot establish a "knowing and intentional" violation or that Plaintiff and other employees suffered an "injury" as required by Labor Code section 226(e). Defendant further contended that class treatment was inappropriate and that this matter could not be manageably litigated on a representative basis. (Mankin Decl. ¶ 19).

Plaintiff also argued that the Class Members were often denied compliant meal and rest breaks due to the nature of the work. However, Defendant argued that it provided and made available meal and rest breaks to all employees, and any employee who did not take a meal or rest break did so entirely of his or her own volition. In this regard, Defendant produced its written policies and practices, which it argued show full compliance with the law. As such, Defendant argued that these claims were without merit because, for each violation, a fact-finder would have to determine why a break was noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the Defendant. (Mankin Decl. ¶ 20).

Additionally, Plaintiff alleged that Defendant failed to pay all required minimum and overtime wages because of the failure record and compensate for all hours worked. For instance, Plaintiff alleged that Defendant used a "rounding" policy that only paid the Class in quarter- or half-hour increments. But Defendant vehemently opposed these claims and argued that it had a written policy that strictly prohibited any off-the-clock work and that there was no rounding policy that deprived the Class of wages. (Mankin Decl. ¶ 21).

Furthermore, Plaintiff alleged that Defendant failed to pay all vested and accrued vacation to Class Members that separated from their employment. However, Defendant argued that this violation (if there was one) was individualized to Plaintiff; other Class Members were paid in full for all vested and accrued vacation upon separation of employment, in line with Defendant's written policy which stated "Employees will be paid for their accrued but unused vacation at the time of termination." (Mankin Decl. ¶ 22).

Plaintiff also alleged various other Class and PAGA claims, such as the failure to timely pay all wages each period and upon separation of employment, in violation of Labor Code §§ 201 - 204. However, Defendant argued that these other claims, as well as the "derivative" claims, have no merit. (Mankin Decl. ¶ 23).

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.

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 $450,000 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) a service award of $5,000 to Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed $7,060.16; (4) a $40,000 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 Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 3.2 and subparts). Defendant will separately pay its share of employer payroll taxes and withholdings. (S.A. ¶ 3.1).

B. NOTICE PROCEDURES

The proposed Class Notice will be provided to the Class Members showing the estimated amount that each Class Member will receive, the number of credited hours worked as a Class Member and the number of Pay Periods Worked as an Aggrieved Employee (Exhibit A to the S.A.). Within 10 business days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of Class Members containing names, addresses, telephone numbers, Social Security Numbers, and hours worked during the Class Period and Pay Periods Worked during the PAGA Period (the "Class Data"). (S.A. ¶¶ 1.9 and 4.2).

Within 10 business days of receipt of the Class Data, the Settlement Administrator shall calculate the numbers for each Class Member, populate the Class Notice, and send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 8.4.2).

In the event that any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. (S.A. ¶ 8.4.3).

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 Settlement Administrator no later than 45 days after being mailed by the Settlement Administrator ("Response Deadline"). (S.A. ¶¶ 1.45). 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 will have an additional 14 days to respond. (S.A. ¶ 8.5.1).

The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Participating Class Member who wishes to object to the Settlement may submit a written objection to the Settlement Administrator no later than the Response Deadline or, in the alternative, may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. (S.A. ¶ 8.7.2).

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Settlement Class Member's Individual Class Payment is tied to the number of hours worked by each Class Member for Defendant during the Class Period. Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of hours worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's hours worked. (S.A. ¶ 3.2.4).

/ / /

Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the $10,000 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Pay Periods Worked basis. (S.A. ¶ 3.2.5.1).

The Class Notice will inform Class Members of the estimated share and the number of hours he/she worked during the Class Period, as well as number of Pay Periods Worked during the PAGA Period. Class Members may dispute their hours/pay periods worked if they feel they worked more in the Class or PAGA Periods than Defendant's records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 8.6).

As noted, assuming 100 Class Members, the average payment to each Class Member will be approximately $2,329.40 ($232,939.84 / 100). However, the actual payment will be calculated on a pro-rata basis according to the number of hours each Class Member worked during the Class Period, with each hour worked having a value of approximately $.79/hour ($232,939.84 / 295,224 total hours worked), which is equivalent to $19.75/week worked ($.79/hour x 8 hours per shift x 5 shifts in a week)[4]. In addition, approximately 65 Aggrieved Employees will receive a share of the $10,000 PAGA Penalties (25% of the total $40,000 PAGA allocation), calculated pro-rata based on approximately 2,543 Pay Periods Weeks Worked during the PAGA Period. (S.A. ¶ 9).

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant is required to deposit the Settlement Amount, along with the employers' share of payroll taxes owed, with the Settlement Administrator, within 10 business days after the "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as approved by the Court; (2) the service award, as approved by the Court; (3) administrative expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual Settlement Amounts of Participating Class Members. Within 10 business days after receiving the

[4] Defendant preferred using an "hours worked" metric as that would most accurately track a pro rata distribution based on the actual amount of time each Class Member worked during the Class Period, whereas a metric based on weeks worked or pay periods worked would not be quite as accurate if, for example, an employee only worked one day during a week and took vacation the other days.

funds, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 4.4).

Class Members will have 180 days to cash the settlement check. (S.A. ¶ 4.4.1). If a Class Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the California State Controller in the name of the Class Member. (S.A. ¶ 4.4.3).

F. TAX TREATMENT

The Parties agree that ten percent (10%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and ninety percent (90%) will be allocated for interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A. ¶ 3.2.4.1). 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. (S.A. ¶¶ 3.2.5.1 and 3.2.5.2).

Defendant will separately pay its share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 3.1).

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for these payments, the Settlement Agreement at ¶ 6.2 provides that the Participating Class Members will release the Released Parties of:

> all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the operative Complaint, including claims for overtime; minimum wages; meal period premiums; rest break premiums; vested vacation; wage statements; waiting time penalties; expense reimbursement; and based on violations of Labor Code sections 200, 201-204, 204.1, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, IWC Wage Order 9, including §§ 3(A), 4, 3(A), 11, 12, or Industrial Welfare Commission Order #4, or Business and Professions Code section 17200, et seq., which are premised on the same allegations, and Cal. Code Regs., tit. 8, section 11090 (the "Released Class Claims"). The operative release period for the Released Class Claims is 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 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. (S.A. ¶ 6.2).

H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS

The Settlement Agreement at ¶ 6.3 also defines the "PAGA Released Claims" as follows:

> all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including violations premised on violation of Labor Code sections 200, 201-204, 204.1, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, IWC Wage Order 9, including §§ 3(A), 4, 3(A), 11, 12, and Cal. Code Regs., tit. 8, section 11090 (the "Released PAGA Claims"). The operative release period for the Released PAGA Claims is the PAGA Period.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the PAGA Released Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 8.5.4).

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT 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 100 Class Members that are easily identifiable and fall within the defined Class. Thus, Plaintiff's proposed Class meets the ascertainability and numerosity requirements.

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. *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. 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 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. 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 he was employed by Defendant 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 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. See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. 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,* 688 F.2d at 625.

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. See *Dunk,* 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742-43 (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) (citations omitted). 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 (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*, 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.* (citation and internal quotation marks omitted).

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. THE SETTLEMENT IS THE RESULT OF 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 the defenses, the employees may not have received any monetary recovery.

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

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 relating to the Class Members prior to mediation.

/ / /

/ / /

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, 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.")

Of particular relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. First, 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 class certification proceedings, which could significantly limit the claims that he could pursue on a class basis.

In light of 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 detailed data obtained through informal discovery and information exchanges, Plaintiff's counsel estimated the following data points through the date of mediation: (1) 68 class members, (2) 39 class members that separated from employment during the 3-year

lookback for Labor Code § 203, (3) 2,376 workweeks, (4) 26,299 shifts worked, and (4) approximately 1,188 wage statements during the PAGA Period. (Mankin Decl. ¶ 24).

Plaintiff contended that his strongest claim was for wage statement violations due to the failure to include the pay period start date *and* the employer name/address on paystubs. On a Class basis, Plaintiffs' counsel calculated the maximum potential statutory violations for this claim at time of mediation as $97,500 (under Labor Code § 226(e), with $50 for 50 initial violations and $100 for each of the remaining 950 violations). However, this theoretical maximum fails to account for the variety of risks and defenses raised by Defendant, namely that the wage statements did not violate Labor Code § 226 and, even if there was a "technical" violation, that Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements. Additionally, Defendant contended that (without admitting liability), it modified the format of its wage statements during the relevant period to include all required information under § 226 (which is why Plaintiff's *maximum* calculations use only 1,000 wage statements rather than the 1,188 figure for PAGA pay periods). Based on these facts and defenses, Plaintiff placed a nominal 5% risk at the class certification stage and estimated a 90% chance of success on the merits, leading to a risk-adjusted value of $83,363 for the wage statement claims. (Mankin Decl. ¶ 25).

Plaintiff also alleged meal and rest break claims against Defendant. Given the total number of shifts at issue, and when incorporating violation rates from the timekeeping records and other evidence, Plaintiff's counsel estimated a 80% violation rate for each claim, leading to 21,039 alleged meal violations and 21,039 alleged rest break violations. This established a maximum potential value for these claims of $979,164 (using $23.27 as the applicable premium rate under § 226.7). However, Defendant raised numerous arguments in response to this claim, including that it: (1) maintained fully compliant written policies, (2) posted the applicable IWC Wage Order at the worksite, (3) specifically authorized the Class Members to take meal and rest breaks, and (4) scheduled meal and rest breaks for all employees at the same time, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member whether a break was

missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiffs placed a 40% risk at the class certification stage. Second, these defenses also go toward the merits given the evidentiary question of proving the number of meal and rest violations. As such, Plaintiff placed a 40% risk on the merits, setting the risk-adjusted value for the meal and rest break claims at $352,500. (Mankin Decl. ¶ 26).

Additionally, Plaintiff alleged that Defendant failed to pay all wages owed and, after investigating the alleged frequency of violations, Plaintiff's counsel estimated that there were an alleged 2,192 unpaid hours during the Class Period at an applicable rate of pay of $47.91.[5] Thus, the maximum potential value for the unpaid wage claims was $104,998. However, Defendant vehemently opposed these unpaid wage claims by arguing that it had policies to pay employees for all hours worked and other policies requiring employees to accurately record their own hours worked. Thus, Defendant argued that there was no "off-the-clock" time and, even if there were, it had no actual or constructive notice of the same and would not be liable. As such, Defendant alleged that, due to these defenses, Plaintiff's claims are the prototypical example of "individualized issues" for which certification would not be proper. Thus, Plaintiff placed a 30% risk on these claims at the class certification stage. Moreover, in addition to its other defenses on the merits, Defendant argued that Plaintiff would be unable to meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class would be unable to identify when these alleged wage violations occurred (since the claims are not apparent from the timekeeping records), thus defeating liability. For this reason, Plaintiff's counsel assigned another 30% risk on the merits. When factoring in these risks and defenses, Plaintiff calculated the risk-adjusted value of the unpaid wage claims to be $51,444. (Mankin Decl. ¶ 27).

[5] Since these unpaid hours were alleged to occur *after* 8 hours in a day, this blended rate is the overtime rate plus liquidated damages (for unpaid minimum wages) under Labor Code § 1194.2.

Plaintiff also alleged that Defendant failed to pay all vested vacation wages due and owing upon separation of employment under Labor Code § 227.3. This claim was based on Defendant's documents showing that Plaintiff was allegedly required to forfeit 22.5 hours during the calendar year transition from 2020 to 2021 and that, on termination, he was then unpaid for those forfeited wages. Plaintiff's individual alleged losses in this regard were $483.75 [22.5 forfeited hours x $21.50 rate of pay]. However, leading up to and at mediation, Defendant argued and provided documentation showing that this issue was specific and individualized to Plaintiff, and that the alleged forfeiture was merely a clerical error. Defendant further argued that the error was likely only a *display issue* in that calculations for Plaintiff's final PTO payout included the hours that allegedly disappeared between 2020 and 2021. To further support the defense that this was individualized, Defendant produced its written policies which did not contain any forfeiture or "use-it-or-lose-it" provisions; instead, the policy merely placed a cap on accrual that Defendant contended was legal under *Boothby v. Atlas Mechanical, Inc.* (1992) 6 Cal.App.4th 1595 among other cases. Although Plaintiff did not concede on the merit of these claims entirely, Plaintiff's counsel factored these defenses heavily into the valuation of this claim and placed a small risk-adjusted value of only $10,000 on these claims. (Mankin Decl. ¶ 28).

Finally, Plaintiff alleged that Defendant failed to timely pay all wages owed to the Class Members upon separation of employment since the Class Members. The maximum potential value of this claim was $231,420 based on 39 *former* employees being entitled to the full waiting time penalty of 30 days of pay. But this maximum value failed to account for many risks and defenses. For instance, this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums). If those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiffs would have to prove that the violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding of a "willful" violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff's

counsel applied a 20% risk at class certification and a 20% risk on the merits, leading to a risk-adjusted value of $148,109. (Mankin Decl. ¶ 29).

In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

• Wage Statement Claims	$	83,363
• Meal and Rest Break Claims	$	352,500
• Unpaid Wage Claims	$	51,444
• Vested Vacation Claims	$	10,000
• Waiting Time Penalty Claims	$	148,109
• **Total Risk Adjusted Penalties and Damages**	**$**	**645,414**

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 69.7% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the six figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims and particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

E. PLAINTIFF'S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION

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

Plaintiff's Counsel is also highly experienced in Class/PAGA litigation, having repeatedly been named "Super Lawyer" in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, including one of the largest

PAGA awards in California's history, collecting over $250 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6; 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.

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 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; and (4) how class members can obtain additional information. *See* Class Notice (Exhibit B to 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 afford Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance 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 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 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 he or she affirmatively acts to exclude himself or herself. 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 requesting $150,000 in attorneys' fees, which is 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, 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 (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "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).

Additionally, Plaintiff is seeking up to $15,000 in litigation costs, pursuant to the Settlement Agreement.

Once the Court grants preliminary approval of the Settlement Agreement and 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 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 large 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.

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 award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of $15,000 each 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 ("the court finds Plaintiff's enhancement payments of $ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*. (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of $25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc*. (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving "$25,000 incentive award for each Class Representative" in wage an hour settlement).

VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties stipulated to Phoenix 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 $7,060.16. Additionally, Phoenix has agreed to undertake the rules and responsibilities set forth in the new model agreement. (See Decl. of Mike Moore). No party or counsel has any financial interest or ties to the proposed class administrator. (See Mankin Decl. ¶ 7; Kienitz Decl. ¶ 3).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing for final approval approximately 120 days after the Preliminary Approval Date, as follows:

/ / /

/ / /

January 17, 2023	Preliminary Approval (PA) hearing
February 14, 2023 *(20 business days after PA)*	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
March 31, 2023 (*45 days after mailing Class Notice*)	Deadline for Settlement 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 of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately May 17, 2023 - 120 days after Preliminary Approval is granted)	Final Approval Hearing.

VIII. CONCLUSION

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

Dated: November 18, 2022

LAUBY, MANKIN & LAUBY LLP

BY: 

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

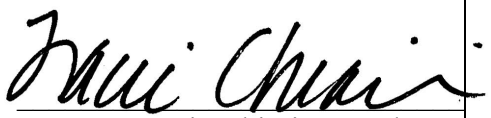
PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE:

I, Tracie Chiarito, declare I am a citizen of the United States of America and am employed in Riverside, California; I am over the age of 18 years and am not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504. On November 18, 2022, I served the within **PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER** in said action by electronic filing service Case Home Page website to the parties on the service list maintained on the Case Home Page website for this case pursuant to the Court Order establishing the case website and authorizing service of documents.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 18, 2022, at Riverside, California.



Tracie Chiarito, Declarant

SERVICE LIST

Amy Todd-Gher, Esq.
Shelley Murray, Esq.
Joshua Kienitz, Esq.
LITTLER MENDELSON, P.C.
501 W. Broadway, #900
San Diego, CA 92101-3577
619-515-1872-direct
619-923-3711-fax
ATodd-Gher@littler.com
SMurray@littler.com
JKienitz@littler.com
Attorney for SHAMBAUGH & SON, LP