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

ANTHONY MASINAS, individually, and
on behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

FLEETPRIDE, INC., an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: STK-CV-UOE-2018-0015792

Honorable Jayne Lee
Department 10C

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declarations of Proposed Class Counsel
(Edwin Aiwazian, Kevin T. Barnes, and
Raphael A. Katri); Declarations of Proposed
Class Representatives (Anthony Masinas and
Juan Partida); and [Proposed] Order filed
concurrently herewith]

Date: August 3, 2021
Time: 9:00 a.m.
Department: 10C

Complaint Filed: December 18, 2018
Trial Date: None Set

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that, as soon thereafter as the matter may be heard before the Honorable Jayne Lee in Department 10C of the Superior Court of California for the County of San Joaquin, located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiff Anthony Masinas (“Plaintiff”) and Proposed Plaintiff Juan Partida (“Proposed Plaintiff”) (collectively, “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting Plaintiff leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“First Amended Complaint” or “Operative Complaint”) which is attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Anthony Masinas and Juan Partida as Class Representatives;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC, Kevin T. Barnes and Gregg Lander of Law Offices of Kevin T. Barnes, and Raphael A. Katri of Law Offices of Raphael A. Katri as Class Counsel;

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- Approving the proposed Notice of Class Action Settlement (“Notice”), attached as “**EXHIBIT 2**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payments for Plaintiffs, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement, allow the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwasian, Kevin T. Barnes, and Raphael A. Katri) and Proposed Class Representatives (Anthony Masinas and Juan Partida) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: July 12, 2021

LAWYERS for JUSTICE, PC

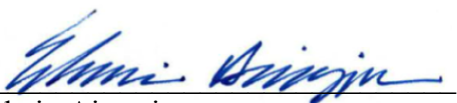
By: 
Edwin Aiwasian
Attorneys for Plaintiff Anthony Masinas

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Anthony Masinas (“Plaintiff”) and Proposed Plaintiff Juan Partida (“Proposed Plaintiff”) (collectively, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Fleetpride, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle the Actions for a Total Settlement Amount of two million five hundred thousand dollars (\$2,500,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payments of up to ten thousand dollars (\$10,000.00) each to Plaintiffs (\$20,000.00 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or \$875,000.00, and reimbursement of litigation costs and expenses not to exceed thirty five thousand dollars (\$35,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed fifteen thousand dollars (\$15,000.00);⁵ and (5) the amount of one hundred thousand dollars (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to all current and former hourly non-exempt individuals who are or were employed by Defendant at any time from February 13, 2019 through February 17, 2021 (“Aggrieved Employees”).⁶ The number of

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ I8.kk.

² *Id.*, ¶ 16.a.

³ *Id.*, ¶ 13.

⁴ *Id.*, ¶ 12.

⁵ *Id.*, ¶ 14.

⁶ *Id.*, ¶¶ 8.a & 15.

Aggrieved Employees is estimated to be approximately three hundred and sixty-one (361) as of August 5, 2020.⁷

Plaintiffs also seek to provisionally certify the following Class for settlement purposes, which Defendant does not oppose:

All current and former hourly non-exempt individuals who are or were employed by Defendant at any time from December 18, 2014 through February 17, 2021 (“Class” or “Class Members”).⁸

The Class is estimated to consist of approximately seven hundred and sixteen (716) individuals, of August 5, 2020.⁹

Class Members who do not submit a valid and timely Request for Exclusion (“Settlement Class Member”) will receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based upon the number of weeks each Class Member worked for Defendant as an hourly non-exempt employee in California during the time period from December 18, 2014 through February 17, 2021 (“Workweeks”).¹⁰

The Settlement resolves the Released Class Claims of Plaintiffs and all Settlement Class Members against the Released Parties and the Released PAGA Claims of all Aggrieved Employees against the Released Parties.¹¹

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and provisional certification of the Class for settlement purposes, Plaintiffs also move for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

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⁷ See Settlement Agreement, ¶ 8.a.

⁸ Settlement Agreement, ¶8.e. The time period from December 18, 2014 through February 17, 2021 is defined as “Class Period.” See *id.*, ¶ 8.h.

⁹ Aiwasian Decl., ¶ 9; see also, Settlement Agreement ¶ 8.e.

¹⁰ Settlement Agreement, ¶¶ 8.s, 8.jj, 8.ll. The Workweeks through August 5, 2020 are estimated to be approximately 62,234. See *id.*, ¶ 8.ll.

¹¹ See *id.* at ¶ 8.cc, for the full scope of the “Released Class Claims,” ¶ 8.dd for the full scope of the “Released PAGA Claims,” and *id.* at ¶ 8.ee for the definition of the “Released Parties.”

1 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

2 Defendant specializes in selling parts and providing services for heavy-duty trucks and
3 trailers, and operates over 275 locations nationwide. Plaintiff Anthony Masinas and Proposed
4 Plaintiff Juan Partida are former employees of Defendant.

5 On December 18, 2018, Plaintiff Anthony Masinas filed a Class Action Complaint for
6 Damages (“Original Complaint”) against Defendant in the San Joaquin County Superior Court
7 (“Court”), thereby commencing the above-captioned action entitled *Anthony Masinas v.*
8 *Fleetpride, Inc.*, Case No. STK-CV-UOE-2018-0015792 (the “Masinas Action”). The Masinas
9 Action alleged causes of action for violation of California Labor Code and California Business
10 & Professions Code §§ 17200, *et seq.* on behalf of all current and former hourly-paid or non-
11 exempt employees who worked for Defendant within the State of California at any time since
12 December 18, 2014 for failure to pay overtime wages, failure to provide meal periods and
13 premium payments in lieu thereof, failure to provide rest periods and premium payments in lieu
14 thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to
15 timely pay wages during employment, failure to provide compliant wage statements, failure to
16 maintain complete and accurate payroll records, and failure to reimburse necessary business
17 expenses. On February 27, 2019, Defendant filed an Answer to Plaintiff’s Complaint.

18 On February 13, 2020, Juan Partida provided written notice by certified mail to the Labor
19 and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of
20 the California Labor Code that Defendant violated. On April 20, 2020, Juan Partida filed a
21 Complaint in the Los Angeles County Superior Court thereby commencing the action entitled
22 *Juan Partida. v. Fleetpride, Inc.*, Case No. 20STCV15187 (the “Partida Action”), alleging
23 causes of action for violation of California Labor Code, California Business & Professions Code
24 §§ 17200, *et seq.*, and applicable Wage Order on behalf of all California citizens employed by
25 Defendant as hourly-paid non-exempt employees at any time since December 18, 2014 for
26 failure to pay all wages (including overtime, straight-time, and minimum wages), failure to
27 provide meal periods and premium payments in lieu thereof, failure to provide rest periods and
28 premium payments in lieu thereof, failure to timely pay wages upon termination, and failure to

1 provide compliant wage statements.

2 Plaintiffs' core allegation is that Defendant has violated the California Labor Code by
3 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
4 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
5 and rest periods and associated premium pay, failing to timely pay wages during employment
6 and upon termination of employment, failing to provide compliant wage statements, failing to
7 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
8 thereby engaged in unfair business practices in violation of California Business and Professions
9 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to the Private
10 Attorneys General Act, California Labor Code § 2698, *et seq.* ("PAGA"). Plaintiffs contend
11 that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including
12 and not limited to, penalties pursuant to PAGA), and attorneys' fees.

13 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
14 associated with any of the allegations in the *Masinas* Action and the *Partida* Action (which are
15 collectively referred to as the "Actions"), and further denies that either of the Actions is
16 appropriate for class treatment or representative adjudication for any purpose other than for
17 settlement purposes only.

18 The Parties have actively litigated this matter since the *Masinas* Action was commenced
19 on December 18, 2018. Plaintiffs propounded extensive formal discovery requests in various
20 forms onto Defendant. The Parties have conducted significant formal and informal discovery
21 and investigation into the claims. The Parties engaged in extensive discussions about the
22 strengths and weaknesses of Plaintiffs' claims and Defendant's defenses thereto, to try to resolve
23 the Actions. On November 19, 2020, the Parties participated in a formal, full-day mediation
24 conducted by mediator David A. Rotman, Esq., a well-regarded mediator experienced in
25 mediating complex labor and employment matters. Ultimately, after continued settlement
26 negotiations and with the assistance of the mediator's evaluations, the Parties reached the
27 proposed settlement described herein to resolve the Actions in their entirety.

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1 **III. REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

2 To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties
3 agree that leave should be granted for Plaintiff Masinas to file an amended complaint in the
4 *Masinas* Action order to, *inter alia*, add the plaintiff and claims of the *Partida* Action, for the
5 purposes of resolution of the Actions.¹² As such, Plaintiff Masinas respectfully requests leave
6 to file the First Amended Class Action Complaint for Damages and Enforcement under the
7 Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“First Amended Complaint”
8 or “Operative Complaint”) so that the operative complaint in *the Masinas* Action formally
9 asserts the causes of action and allegations that have been investigated, litigated, mediated, and
10 ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.¹³

11 **IV. SUMMARY OF THE SETTLEMENT TERMS**

12 Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to
13 resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a
14 timely and valid Request for Exclusion (i.e., Settlement Class Member) and the Released PAGA
15 Claims of all Aggrieved Employees with respect to the Released Parties.¹⁴ Subject to approval
16 by the Court, the Net Settlement Amount will be calculated by deducting the following amounts
17 from the Total Settlement Amount: (1) attorneys’ fees in an amount up to eight hundred seventy-
18 five thousand dollars (\$875,000.00) (i.e., up to 35% of the Total Settlement Amount) and
19 reimbursement of costs and expenses in an amount not to exceed thirty five thousand dollars
20 (\$35,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2)
21 settlement administration costs, which are currently estimated not to exceed fifteen thousand
22 dollars (\$15,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3)
23 payment in the amount of one hundred thousand dollars (\$100,000.00) allocated toward
24 penalties under the Private Attorneys General Act, California Labor Code Section 2698, *et*
25 *seq.* (“PAGA Amount”), of which seventy-five percent (75%), or \$75,000.00, will be paid to
26 the LWDA (“LWDA Payment”) and twenty-five percent (25%) or, \$25,000.00, will be

27 ¹² Aiwazian Decl., ¶ 8; Settlement Agreement, ¶ 3.

28 ¹³ Settlement Agreement, ¶¶ 3 & 8.w.

¹⁴ *Id.*, ¶¶ 8.cc-8.ee, & 32.

distributed to Aggrieved Employees; and (4) payments in the amount of up to ten thousand dollars (\$10,000.00) each to Plaintiffs Anthony Masinas and Juan Partida (for a combined total of \$20,000.00) (“Enhancement Payments”).¹⁵ The Parties have agreed to retain Phoenix Class Action Administration Solutions (“Phoenix Class Action Administration Solutions” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s share of the available Net Settlement Amount (“Individual Settlement Share”), in accordance with the Settlement Agreement, based on the Class Members’ Workweeks and as follows:

- a. The Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Member to yield the “Workweek Value”;¹⁶ and
- b. The Settlement Administrator will then multiply each Settlement Class Member's individual Workweeks by the Workweek Value to yield his or her Individual Settlement Share.¹⁷

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee’s share of the from the 25% portion of the PAGA Amount that is allocated to Aggrieved Employees (“Individual PAGA Payment”), in accordance with the Settlement Agreement, based on each Aggrieved Employee’s number of pay periods that he or she was issued a wage statement by Defendant during the PAGA Period (“Pay Periods”)¹⁸ and as follows:

- c. The Settlement Administrator will divide the 25% portion of the PAGA Amount attributed to Aggrieved Employees, i.e., \$25,000.00, by the total number of Pay Periods worked by all Aggrieved Employees resulting in the “Pay Period Value”;¹⁹ and
- d. The Settlement Administrator will then multiply the Pay Period Value by the number of Pay Periods of each individual Aggrieved Employee to yield his or her Individual PAGA Payment.²⁰

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: one-third (1/3) wages (the “wage portion”), which will be reported on an IRS Form W-

¹⁵ Settlement Agreement, ¶¶ 8.b, 8.n, 8.t, 8.u, 8.ii, 8.kk, 11-15.

¹⁶ *Id.*, ¶ 16.a.

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶ 8.aa.

¹⁹ *Id.*, ¶ 16.b.

²⁰ *Ibid.*

2; and two-thirds (2/3) penalties and interest, which will be reported on an IRS Form 1099.²¹ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").²² Any payment for an Individual PAGA Payment will be allocated as penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.²³ Defendant will pay the employer's share of taxes and contributions on the wages portion of Individual Settlement Shares separately and in addition to the Total Settlement Amount.²⁴

Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.²⁵ All funds associated with such cancelled checks will be transmitted to the State Controller's Office, Unclaimed Property Division in the name of the absent Aggrieved Employee or Settlement Class Members.²⁶

Class Members who wishes to be excluded from the Class Settlement (i.e., opt out) must submit a timely letter indicating a request to be excluded from the Class Settlement ("Request for Exclusion") to the Settlement Administrator, by mail, by the date that is forty-five (45) calendar days from the initial mailing of the Notice ("Response Deadline"), or, the event that a Notice is re-mailed to a Class Member, the Response Deadline for that Class Member will be the extended by fifteen (15) calendar days.²⁷ The Request for Exclusion must: (a) contain the case name and number of the *Masinas* Action, (b) be signed by the Class Member, (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion, (d) clearly state that the Class Member

²¹ Settlement Agreement, ¶ 27.

²² *Id.*, ¶¶ 8.r & 27.

²³ *Id.*, ¶ 27.

²⁴ *Ibid.*

²⁵ *Id.*, ¶ 21.

²⁶ *Ibid.*

²⁷ *Id.*, ¶¶ 8.ff, 8.gg, & 22.

1 does not wish to be included in the Class Settlement, and (e) be returned by mail to the
2 Settlement Administrator at the specified address, postmarked on or before the Response
3 Deadline.²⁸ Class Members who submit a valid and timely Request for Exclusion will not be
4 not be a Settlement Class Member and will not have any right to object, appeal, or comment
5 on the Class Settlement; however, if the Class Member worked during the PAGA Period, he
6 or she will remain an Aggrieved Employee, will receive an Individual PAGA Payment, and
7 will be bound by the PAGA Settlement and Released PAGA Claims.²⁹

8 Only Class Members who have not opted out of the Settlement (i.e., Settlement Class
9 Members) have standing to object to the Class Settlement.³⁰ Settlement Class Members who
10 wish to object to the Settlement must submit a valid and timely written objection to the Class
11 Settlement (“Notice of Objection”) to the Settlement Administrator, by mail, on or before the
12 Response Deadline.³¹ The Notice of Objection must be in writing and include: (a) the case
13 name and number of the *Masinas* Action; (b) the objector’s full name, signature, address, and
14 telephone number, and the last four digits of his or her Social Security number, (c) a written
15 statement of all grounds for the objection accompanied by any legal support for such objection,
16 and (d) copies of any papers, briefs, or other documents upon which the objection is based.³²

17 Class Members who wish to dispute the number of Workweeks credited to them in their
18 Notice may do so by submitting a written letter to the Settlement Administrator that: (a)
19 contains the case name and number of the *Masinas* Action, (b) is signed by the Class Member,
20 (c) contains the full name, address, telephone number, and the last four digits of the Social
21 Security Number of the disputing Class Member, (d) clearly states that the Class Member
22 disputes the number of Workweeks credited to him or her and what he or she contends is the
23 correct number to be credited to him or her, (e) includes information and/or attaches
24 documentation demonstrating that the number of Workweeks that he or she contends should
25

26 ²⁸ Settlement Agreement, ¶ 8.ff.

27 ²⁹ *Id.* ¶ 22.

28 ³⁰ *Id.*, ¶ 24.

³¹ *Id.*, ¶¶ 8.v & 24.

³² *Id.*, ¶ 8.v.

be credited to him or her are correct, and (f) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³³

V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

³³ Settlement Agreement, ¶ 20.

1 In considering a potential class settlement, a court need not reach any ultimate
2 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
3 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495
4 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
5 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required
6 for the trial court to grant provisional class certification and preliminary approval; the court may
7 grant such relief upon an informal application by the settling parties and may conduct any
8 necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

9 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

10 The trial court has broad powers to determine whether a proposed settlement is fair under
11 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
12 this fairness determination, courts must consider several relevant factors, including “the strength
13 of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the
14 risk of maintaining class action status through trial, the amount offered in settlement, the extent
15 of discovery completed and the stage of the proceedings, the experience and view of counsel,
16 the presence of a governmental participant, and the reaction of the class members to the
17 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
18 and the court is free to engage in a balancing and weighing of the factors depending on the
19 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
20 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
21 at 1027 (citation omitted).

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
24 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

1 A. The Settlement Resulted from Arm's-Length Negotiations Based Upon
2 Extensive Investigation and Discovery.

3 The Parties actively litigated the Actions since the *Masinas* Action was commenced on
4 December 18, 2018. Both sides used the pre-mediation time period to investigate the veracity,
5 strength, and scope of the claims, and Class Counsel were actively preparing the matters for
6 class certification and trial.³⁴

7 Prior to engaging in mediation, Class Counsel conducted significant investigation and
8 formal and informal discovery regarding the facts of the cases, including and not limited to, the
9 exchange, review, and analysis of thousands of pages of documents and data produced by
10 Defendant.³⁵ The volume of data and documents that Class Counsel reviewed and analyzed
11 included and was not limited to: employment records of Plaintiffs and other Class Members, a
12 detailed sampling of Class Members' time and pay data, company policy acknowledgements
13 (including, but not limited to, regarding Defendant's California Meal/Rest Break Policy and exit
14 process), internal memoranda, job descriptions, operations and employment practices
15 (including, but not limited to, Defendant's Employee Handbook and Team Member Handbook,
16 as well as a California Handbook Supplement), procedures (including, but not limited to,
17 Defendant's Distribution Center Guidelines), and policies (including, but not limited to,
18 Defendant's policies regarding Meal and Rest Periods, Recording of Hours, Pay Practices,
19 Overtime, Call-Back/Report In Pay, Payday, and Expense Reimbursement), among other
20 information and documents.³⁶ Class Counsel interviewed Plaintiffs and other Class Members
21 to gather facts and to identify potential witnesses.³⁷ Class Counsel propounded multiple sets of
22 formal written discovery requests on Defendant, reviewed Defendant's responses and
23 supplemental responses thereto, and worked with Plaintiffs to provide objections and responses
24 to multiple sets of discovery requests that were propounded by Defendant.³⁸ Class Counsel

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26 ³⁴ Aiwazian Decl., ¶¶ 11-13.

27 ³⁵ *Id.*, ¶ 12.

28 ³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

1 noticed the depositions of Defendant's Person Most Knowledgeable designees regarding
2 organizational structure and job duties and prepared for and defended the deposition of Plaintiff
3 Anthony Masinas.³⁹ Counsel for the Parties also met and conferred on numerous occasions, e.g.,
4 to discuss issues relating to the pleadings, discovery, and the production of documents and data
5 prior to the mediation.⁴⁰ Class Counsel also drafted Plaintiffs' mediation brief and prepared for
6 and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴¹

7 The Parties engaged in extensive settlement negotiations and participated in a formal,
8 full-day mediation conducted by David A. Rotman, Esq., a well-respected mediator experienced
9 in mediating complex labor and employment matters.⁴² Prior to and during the mediation and
10 settlement discussions, the Parties exchanged class information and engaged in an intensive
11 discussion regarding their evaluations of the cases and various aspects of the matter, including
12 but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
13 with class certification and/or representative adjudication, the law relating to off-the-clock
14 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
15 well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴³
16 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
17 adversarial position.⁴⁴ Arriving at a settlement that was acceptable to both Parties was not easy.
18 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
19 certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class
20 certification and prevail at trial.⁴⁵ After conducting investigations, significant formal and
21 informal discovery, negotiating a Belaire West notice process, extensive settlement
22 negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the
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24
25 ³⁹ *Ibid.*

26 ⁴⁰ *Ibid.*

27 ⁴¹ *Ibid.*

28 ⁴² Aiwazian Decl., ¶ 11.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶¶ 11, 16-18.

1 matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims,
2 as well as the costs and risks to both sides that would attend further litigation.⁴⁶

3 The Settlement takes into account the strengths and weaknesses of each side's position
4 and the uncertainty of how the cases might have concluded at certification and trial.⁴⁷ The
5 Parties have had the opportunity to interview and obtain information from their respective
6 witnesses.⁴⁸ Counsel for the Parties have also reviewed documents and information relating to
7 Plaintiffs' and the Class Members' employment with Defendant and performed significant
8 research into the law concerning class certification, PAGA representative actions, off-the-clock
9 theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's
10 defenses thereto, as well as facts discovered.⁴⁹ The Parties have reached the Settlement based
11 on this large volume of facts, evidence, and investigation. In addition, Class Counsel have
12 extensive experience in employment class actions, including significant experience in California
13 wage-and-hour litigation.⁵⁰

14 **B. The Settlement Is Fair, Reasonable, and Adequate.**

15 The Settlement, which provides for a Total Settlement Amount of two million five
16 hundred thousand dollars (\$2,500,000.00), represents a fair, adequate, and reasonable resolution
17 of the matter.⁵¹ The Settlement was calculated using the information and data uncovered during
18 litigation, case investigation, as well as the formal and informal exchange of information.⁵² The
19 Settlement takes into account the potential risks and rewards inherent in any case and, in
20 particular, in the matter at issue.⁵³ Moreover, considering all of the facts and circumstances of
21 the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁴

22 ///

23 ⁴⁶ *Ibid.*

24 ⁴⁷ *Ibid.*

25 ⁴⁸ *Ibid.*

26 ⁴⁹ Aiwazian Decl., ¶¶ 11-13 & 16-18.

27 ⁵⁰ *Id.*, ¶¶ 6-7; Declaration of Kevin T. Barnes ("Barnes Decl."), ¶¶ 2-7; Declaration of Raphael A. Katri ("Katri
Decl."), ¶¶ 2-4.

28 ⁵¹ Aiwazian Decl., ¶¶ 11, 13, 14 & 21.

⁵² *Id.*, ¶¶ 11-13.

⁵³ *Id.*, ¶¶ 16-18.

⁵⁴ *Id.*, ¶¶ 11, 13, & 21.

Assuming that the Attorneys' Fees and Costs, Enhancement Payments, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be one million four hundred fifty-five thousand dollars (\$1,455,000.00).⁵⁵ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks.⁵⁶ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁷ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁸ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop

⁵⁵ Aiwasian Decl., ¶ 14.

⁵⁶ Settlement Agreement, ¶ 16.a.

⁵⁷ Aiwasian Decl., ¶¶ 11, 13, & 21.

⁵⁸ *Id.*, ¶¶ 11-13 & 18.

valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁹ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶⁰

VII. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶¹ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs' claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the cases. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to

⁵⁹ Aiwazian Decl., ¶ 18.

⁶⁰ Aiwazian Decl., ¶¶ 11-13 & 16-18.

⁶¹ Settlement Agreement, ¶¶ 9-10.

1 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
2 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
3 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

4 This matter involves a class of approximately seven hundred and sixteen (716)
5 individuals.⁶² This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
6 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
7 requirement as joinder is not practical at that point). Further, all Class Members can and will
8 be identified by Defendant to the Settlement Administrator through a review of Defendant’s
9 employment records regarding non-exempt employees in California during the Class Period. As
10 such, the Class is ascertainable and sufficiently numerous.

11 **B. The Class Members Share a Well-Defined Community of Interest.**

12 The community of interest requirement “embodies three factors: (1) predominant
13 common questions of law or fact; (2) class representative with claims or defenses typical of the
14 class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34
15 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate*
16 *that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of*
17 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
18 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether
19 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
20 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

21 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
22 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
23 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
24 the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as
25 applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

26 Here, common issues of fact and law predominate as to each of the claims alleged and
27 asserted in the Operative Complaint. Based on the documents and information obtained through
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⁶² Aiwazian Decl., ¶ 9; Settlement Agreement, ¶ 8.e.

1 formal and informal discovery and exchange of information in the cases, Plaintiffs contend that
2 Class Members were subject to the same or similar job duties and uniform operations and
3 employment practices, policies, and procedures during the time period at issue.⁶³ Plaintiffs'
4 claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to
5 Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
6 wages for all hours worked, failing to provide compliant meal and rest periods and associated
7 premium pay, failing to timely pay wages during employment and upon termination of
8 employment, failing to provide complaint wage statements, failing to keep requisite payroll
9 records, and failing to reimburse necessary business-related expenses.⁶⁴

10 Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect
11 to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁵
12 As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all
13 compensation due to them from Defendant during the time period at issue.⁶⁶

14 Plaintiffs maintain that the outcome of this litigation would be determined by
15 Defendant's alleged uniform operations and employment policies and procedures that applied
16 across its non-exempt employees who worked in California during the Class Period.
17 Accordingly, the Court should certify the Class for settlement purposes only.

18 **VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
19 **ATTORNEYS' FEES AND COSTS**

20 Class Counsel have litigated the matter for over two years, and were actively preparing
21 the matter for class certification and trial.⁶⁷ The ongoing work has been extensive, demanding,
22 and ultimately successful in achieving a substantial settlement resolution. Class Counsel
23 conducted extensive investigations into the facts of the cases and formal and informal discovery,
24 including, and not limited to, propounding multiple formal written discovery requests onto
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26 ⁶³ Aiwazian Decl., ¶ 16.

27 ⁶⁴ *Ibid.*

28 ⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶¶ 11-13.

Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees and prepared for an defended the deposition of Plaintiff Anthony Masinas. Class Counsel reviewed thousands of pages of documents and data⁶⁸ and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷⁰

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷¹

The Settlement establishes a Total Settlement Amount of two million five hundred thousand dollars (\$2,500,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e., \$875,000.00) and an amount not to exceed thirty five thousand dollars (\$35,000.00) for costs and expenses.⁷² The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel have shown, (4) the results that Class Counsel have achieved throughout the litigation, (5) the value of the Settlement that Class Counsel have achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷³

⁶⁸ Aiwazian Decl., ¶ 12.

⁶⁹ *Ibid.*

⁷⁰ *Id.*, ¶ 11.

⁷¹ *Id.*, ¶¶ 6-7.

⁷² Settlement Agreement, ¶ 12.

⁷³ *Id.*, Exh. A.

1 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
2 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
3 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
4 “experienced trial judge is the best judge of the value of professional services rendered in his
5 court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
6 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
7 achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
8 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
9 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
10 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
11 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
12 settlement fund and the settlement agreement provides that the defendant agrees to paying the
13 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

14 The propriety of calculating and awarding attorneys’ fees as a percentage of a settlement
15 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
16 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
17 Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar
18 cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check
19 and use other means to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he
20 percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

21 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
22 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
23 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
24 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
25 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
26 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
27 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
28 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class

actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁴

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs' motion for final approval of the Settlement and application for the Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

IX. THE PROPOSED NOTICE IS ADEQUATE

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Notice⁷⁵ describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, a Request for Exclusion from the Class Settlement, and/or a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁶

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁷ The proposed

⁷⁴ Aiwazian Decl., ¶ 19.

⁷⁵ Settlement Agreement, Exh. A.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

1 Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁸ The
2 proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement
3 Share is calculated and the number of Workweeks credited to them.⁷⁹

4 The proposed Notice satisfies all due process requirements and complies with the
5 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
6 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; *see also Cartt, supra*, 50 Cal.App.3d at 960 (“The
7 essentials of due process of law in class suits would appear to be afforded by fair representation
8 in the assertion of claims of class members against the opposing parties in any lawsuit, and
9 notice of the pending suit.”). Accordingly, the Court should approve the proposed Notice.

10 **X. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION**
11 **SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR**

12 The Parties have selected Phoenix Class Action Administration Solutions to administer
13 the Settlement.

14 The Settlement Administrator will update the mailing addresses and mail the Notice to
15 each Class Member by First-Class U.S. Mail and make efforts to re-mail Notices which were
16 returned as undeliverable.⁸⁰ The Settlement Administrator will receive and process Requests
17 for Exclusion, Notices of Objection, and any disputes regarding Workweeks.⁸¹

18 The Settlement Administrator will calculate the amounts of the Individual Settlement
19 Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal
20 taxes in connection with the wage portion of Individual Settlement Shares; issue the Individual
21 Settlement Payments and Individual PAGA Payments by way of one (1) check to the
22 Settlement Class Members; issue W-2 and 1099 forms; undertake amended and/or supplemental
23 tax filings and reporting, required under applicable local, state, and federal tax laws, that are
24 necessitated due to the cancellation of any Individual Settlement Payment and Individual PAGA
25 Payment checks; calculate and disburse the Attorneys’ Fees and Costs, Enhancement Payments,

26 ⁷⁸ *Ibid.*

27 ⁷⁹ *Ibid.*

28 ⁸⁰ Settlement Agreement, ¶ 19.

⁸¹ *Id.*, ¶¶ 20, 22, & 24.

1 and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the
2 Settlement Agreement.⁸² The Settlement Administration Costs are currently estimated to be
3 fifteen thousand dollars (\$15,000.00) and will be paid out of the Total Settlement Amount,
4 subject to approval by the Court.⁸³

5 Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Class Action
6 Administration Solutions as the Settlement Administrator and direct the mailing of the Notice
7 to the Class Members in the manner outlined and based on the proposed deadlines as described
8 herein and set forth in the Settlement Agreement.

9 **XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

10 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
11 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
12 entails mailing of the Notice, in the form approved by the Court, to all known and reasonably
13 ascertainable Class Members based on Defendant's records.⁸⁴

14 Within twenty-one (21) calendar days after the date on which the Court grants
15 preliminary approval of the Settlement, Defendant will provide the Settlement Administrator
16 with each Class Member's full name, last known mailing address, Social Security Number,
17 dates worked for Defendant during the Class Period, and such other information as is necessary
18 for the Settlement Administrator to calculate Workweeks and Pay Periods ("Class List").⁸⁵

19 Within fourteen (14) calendar days of receipt of the Class List, the Settlement
20 Administrator will mail the Notice to the Class Members via First-Class U.S. Mail.⁸⁶ With
21 respect to Notices that are returned as undeliverable on or before the Response Deadline, the
22 Settlement Administrator will search for an alternate address by way of skip-trace and re-mail
23 the Notice within five (5) calendar days.⁸⁷ The Response Deadline to submit a Request for
24 Exclusion, Notice of Objection, or dispute regarding Workweeks for Class Members to whom

25 ⁸² Settlement Agreement, ¶¶ 16.a-b, 21; Aiwazian Decl., ¶ 15.

26 ⁸³ Settlement Agreement, ¶ 14.

27 ⁸⁴ *Id.*, ¶¶ 8.d & 19.a.

28 ⁸⁵ *Id.*, ¶¶ 8.d & 18.

⁸⁶ *Id.*, ¶ 19.a.

⁸⁷ *Id.*, ¶ 19.b.

a Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be extended by fifteen (15) calendar days.⁸⁸

Defendant will make a one-time deposit of the Total Settlement Amount into a qualified settlement fund to be established by the Settlement Administrator, within fifteen (15) calendar days after the Effective Date.⁸⁹ Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement Administrator will issue payments due under the settlement and approved by the Court, as follows: (a) Individual Settlement Payments to the Settlement Class Members; (b) Individual PAGA Payments to the Aggrieved Employees; (c) the Court-approved LWDA Payment to the LWDA; (d) the Court-approved Enhancement Payments to Plaintiffs; (e) the Court-approved Attorneys' Fees and Costs to Class Counsel; and (5) the Court-approved Settlement Administration Costs to itself.⁹⁰

Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.⁹¹ All funds associated with such cancelled checks will be transmitted to the State Controller's Office, Unclaimed Property Division in the name of the absent Aggrieved Employee or Settlement Class Members.⁹²

XII. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT PAYMENTS

Plaintiffs Anthony Masinas and Juan Partida respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount up to ten thousand dollars (\$10,000.00) each to Plaintiffs Anthony Masinas and Juan Partida (for a combined total of \$20,000.00).⁹³ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class

⁸⁸ *Ibid.*

⁸⁹ Settlement Agreement, ¶ 11.

⁹⁰ *Ibid.*

⁹¹ *Id.*, ¶ 21.

⁹² *Ibid.*

⁹³ *Id.*, ¶ 13.

representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents, past employment records, and/or providing the facts and evidence necessary to attempt to prove the allegations.⁹⁴ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁵ Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Payment for their services on behalf of the Class, in addition to their Individual Settlement Payments and Individual PAGA Payments (if applicable).

XIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant leave to file the First Amended Complaint; grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC, Kevin T. Barnes and Gregg Lander of Law Offices of Kevin T. Barnes, and Raphael A. Katri of Law Offices of Raphael A. Katri as Class Counsel; preliminary appoint and designate Plaintiffs Anthony Masinas and Juan Partida as Class Representatives; appoint Phoenix Class Action Administration Solutions as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, PAGA Amount, and Settlement Administration Costs; approve the proposed Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the

⁹⁴ Aiwazian Decl., ¶ 20; Declaration of Anthony Masinas in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Masinas Decl."), ¶ 4; Declaration of Juan Partida in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Partida Decl."), ¶ 9.

⁹⁵ Aiwazian Decl., ¶ 20; Masinas Decl., ¶¶ 3-6; Partida Decl., ¶¶ 3-6.

Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: July 12, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian

Attorneys for Plaintiff Anthony Masinas