

1 (Counsel listed on the next page)
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN BERNARDINO
11

12 ARTHUR BARNES, JOSEPH D.
13 ORNELAS AND RODNEY ALAN
14 ROBINSON, JR., on behalf of himself and
all others similarly situated,

15 Plaintiffs,

16 vs.

17 TARGET CORPORATION, a Minnesota
18 Corporation; and DOES 1 through 10,
inclusive,

19 Defendants.
20
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22

Lead Case No. CIVDS2007761
[Consolidated with Case Nos. CIVDS2012750
and CIVDS2004578]

**MEMORANDUM IN SUPPORT OF JOINT
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS; APPOINTMENT OF CLASS
REPRESENTATIVES, CLASS COUNSEL
AND SETTLEMENT ADMINISTRATOR;
APPROVAL OF CLASS NOTICE
PACKET; AND SETTING OF FINAL
APPROVAL HEARING**

Date: January 5, 2021
Time: 10:00 a.m.
Dept.: S26
Judge: Hon. David Cohn

1 JOSEPH R. BECERRA (Cal. State Bar No. 210709)
BECERRA LAW FIRM
2 4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
3 Telephone: (213) 542-8501
Facsimile: (213) 542-5556
4 jbecerra@jrbecerrallaw.com

5 TOREY JOSEPH FAVAROTE (Cal. State Bar No. 198521)
GLEASON & FAVAROTE LLP
6 4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
7 Telephone: (213) 452-0510
Facsimile: (213) 452-0514
8 tfavarote@gleasonfavarote.com

9 Attorneys for Plaintiffs
ARTHUR BARNES, JOSEPH D. ORNELAS, AND
10 RODNEY ALAN ROBINSON, JR.

11 JEFFREY D. WOHL (Cal. State Bar No. 096838)
RYAN D. DERRY (Cal. State Bar No. 244337)
12 PAUL A. HOLTON (Cal. State Bar No. 313047)
ANNA M. SKAGGS (Cal. State Bar No. 319179)
13 PAUL HASTINGS LLP
101 California Street, 48th Floor
14 San Francisco, California 94111
Telephone: (415) 856-7000
15 Facsimile: (415) 856-7100
jeffwohl@paulhastings.com
16 ryanderry@paulhastings.com
paulholton@paulhastings.com
17 annaskaggs@paulhastings.com

18 Attorneys for Defendant
TARGET CORPORATION
19
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1 **I. INTRODUCTION/SUMMARY OF ARGUMENT**

2 Plaintiffs Arthur Barnes, Joseph D. Ornelas, and Rodney Alan Robinson, Jr. (“Plaintiffs”),
3 and defendant Target Corporation (“Target”) seek preliminary approval of their proposed class
4 action settlement (the “Settlement”).¹ Subject to court approval, Plaintiffs have settled their class
5 claims against Target for \$14,000,000.00. The Settlement resolves all of the claims of Plaintiffs,
6 the approximately 9,200 proposed class members, and class counsel against Target based upon
7 the factual allegations in the four class actions described below, all of which were originally filed
8 in this Court.

9 The Settlement satisfies all of the criteria for preliminary settlement approval and falls
10 well within the range of possible approval. Accordingly, the parties request that the Court
11 provisionally certify the proposed class for settlement purposes only, grant preliminary approval
12 of the Settlement, direct the distribution to the Class of notice of the Settlement and the
13 opportunity to object to the Settlement or elect not to participate in the Settlement, and schedule a
14 final approval hearing.

15 **II. BACKGROUND**

16 **A. Procedural History and the Parties’ Contentions.**

17 Target operates seven distribution centers across California to supply Target stores and
18 Target.com guests with merchandise. (Favarote Decl., ¶ 2.) Plaintiff Arthur Barnes (“Barnes”)
19 was employed by Target as a non-exempt warehouse worker at Target’s T-3806 distribution
20 center in Rialto, California from May 2006 until October 2019. (Barnes Decl., ¶¶ 1,2.) Plaintiff
21 Joseph D. Ornelas (“Ornelas”) has been employed as a non-exempt mechanic at Target’s T-0553
22 distribution center in Fontana, California since June 2000. (Ornelas Decl., ¶¶ 1,2.) Plaintiff
23 Rodney Alan Robinson, Jr. (“Robinson”) has been employed as a non-exempt warehouse worker

24 ¹ A copy of the fully executed Settlement Agreement, including its exhibits, is
25 attached as Exhibit 1 to the Declaration of Torey Joseph Favarote in Support of Joint Motion for
26 Approval of Class Action Settlement; Conditional Certification of Settlement Class; Appointment
27 of Class Representatives, Class Counsel, and Settlement Administrator; Approval of Class Notice
28 Packet; and Setting of Final Approval Hearing (“Favarote Decl.”), ¶ 46, Exh. 1. The exhibits to
 the Settlement Agreement include the form of notice to the class (Settlement Agreement, Exh. A),
 the form of the class members’ election not to participate in settlement (Settlement Agreement,
 Exh. C), and the proposed form of order granting this motion (Settlement Agreement, Exh. D).

1 at Target's T-0555 distribution center in Woodland, California since May 2016. (Robinson Decl.,
2 ¶¶ 1,2.)

3 On August 19, 2019, Ornelas and Robinson commenced an action in this Court, entitled
4 "*Joseph D. Ornelas and Rodney Alan Robinson, Jr., on behalf of themselves and all others*
5 *similarly situated, Plaintiffs, vs. Target Corporation, a Minnesota corporation; and DOES 1*
6 *through 10, inclusive, Defendants,*" No. CIVDS1924533 (the "*Ornelas Action*"). (Favarote
7 Decl., ¶ 4.) In the *Ornelas Action*, Ornelas and Robinson contend that Target failed to pay
8 overtime compensation based on an alleged invalid alternative workweek schedule ("AWS"),
9 failed to provide accurate wage statements, and failed to pay all wages at termination. (*Id.*, ¶ 4.)
10 On September 20, 2019, Target removed the *Ornelas Action* to the U.S. District Court for the
11 Central District of California (the "District Court") pursuant to the Class Action Fairness Act of
12 2005, 28 U.S.C. § 1332(d) ("CAFA"), where it was designated as Case No. 5:19-cv-01814-JVS-
13 SP. (*Id.*, ¶ 4.) On October 23, 2019, Ornelas and Robinson amended their complaint in the
14 *Ornelas Action* to add a claim for violation of the Labor Code Private Attorneys General Act of
15 2004, Cal. Lab. Code § 2698, *et seq.* ("PAGA"). (*Id.*, ¶ 4.) Ornelas and Robinson previously
16 gave notice to the California Labor and Workforce Development Agency (the "LWDA") of the
17 allegations against Target in the *Ornelas Action* on August 16, 2019. (*Id.*, ¶ 4.) The LWDA did
18 not indicate within 60 days after receiving the notice that it intended to investigate the allegations.
19 (*Id.*, ¶ 4.)

20 On February 13, 2020, Ornelas and Robinson commenced a second action in this Court
21 entitled "*Joseph D. Ornelas and Rodney Alan Robinson, Jr., on behalf of themselves and all*
22 *others similarly situated, Plaintiffs v. Target Corporation, a Minnesota corporation, and Does 1*
23 *through 10, Defendants,*" No. CIVDS2004578 (the "*Ornelas II Action*"). (Favarote Decl., ¶ 5.)
24 In the *Ornelas II Action*, Ornelas and Robinson allege that Target failed to reimburse its
25 California distribution center employees for all necessary business expenses and failed to pay
26 reporting-time pay to Target distribution center employees that showed up for work but were not
27 provided with work or pay in lieu thereof because of errors in the "myTime" mobile application
28 scheduling system. (*Id.*, ¶ 5.) Ornelas and Robinson gave notice to the LWDA of the allegations

1 in the *Ornelas II* Action against Target on February 11, 2020. (*Id.*, ¶ 5.) The LWDA did not
2 indicate within 60 days after receiving the notice that it intended to investigate the allegations.
3 (*Id.*, ¶ 5.)

4 On March 13, 2020, Barnes commenced this action (the “*Barnes* Action”). In his initial
5 complaint in the *Barnes* Action, Barnes alleged Target failed to pay overtime compensation,
6 failed to provide accurate wage statements, and failed to pay all wages at termination to Target
7 employees who worked at his distribution center: T-3806. (Favarote Decl., ¶ 7.) On April 17,
8 2020, Target removed the *Barnes* Action to the District Court. However, the District Court
9 remanded this action to this Court on June 25, 2020. (*Id.*, ¶ 7.)

10 On March 2, 2020, Barnes gave notice to the LWDA of allegations against Target similar
11 to those raised in the *Barnes* Action pursuant to PAGA. (Favarote Decl., ¶ 8.) The LWDA did
12 not indicate within 60 days after receiving the notice that it intended to investigate the allegations.
13 (*Id.*, ¶ 7.) Then, on June 23, 2020, Barnes commenced a second action in this Court entitled
14 “*Arthur Barnes, on behalf of himself and all other aggrieved employees, Plaintiff v. Target*
15 *Corporation, a Minnesota Corporation; and Does 1 through 10, Defendant,*”
16 No. CIVDS2012750 (the “*Barnes II* Action”). (*Id.*, ¶ 8.) In the *Barnes II* Action, Barnes alleges
17 that Target violated PAGA by failing to pay overtime compensation to him and other aggrieved
18 employees at Target distribution center T-3806, based on an invalid AWS. (*Id.*, ¶ 8.) Barnes also
19 alleges that Target failed to provide accurate wage statements and failed to pay all wages at
20 termination to him and other potentially aggrieved employees. (*Id.*, ¶ 8.)

21 On October 19, 2020, in connection with the Settlement, the parties filed a stipulation in
22 this action (the *Barnes* Action) requesting (i) consolidation of the *Barnes* Action, the *Barnes II*
23 Action, and the *Ornelas II* Action and (ii) leave to file a single amended complaint in the *Barnes*
24 Action to add Ornelas and Robinson as plaintiffs and add the claims at issue in the *Barnes II*
25 Action, the *Ornelas* Action, and the *Ornelas II* Action (collectively, all four cases are referred to
26 herein as the “Actions”).² (Favarote Decl., ¶ 9.) The Court entered an order granting the

27 ² On September 5, 2020, the parties filed a Notice of Settlement in the *Ornelas*
28 Action, informing the District Court that the parties have reached a settlement. (Favarote Decl.,
¶ 9.) On September 8, 2020, the District Court dismissed without prejudice the *Ornelas* Action

1 stipulation and deeming the First Amended Complaint filed on October 28, 2020, and in
2 compliance with Labor Code section 2699(l)(1) Plaintiffs provided notice to the LWDA on
3 November 5, 2020. (*Id.*, ¶ 9.)

4 Target denies all of Plaintiffs' material allegations in the Actions. Specifically, Target
5 contends, among other things, that the AWSs under which Plaintiffs and others worked were
6 validly adopted; that Plaintiffs were paid all wages to which they were entitled and were paid
7 those wages timely; that Plaintiffs either did not incur any reimbursable expenses or were paid all
8 such expenses; that there is no basis to award liquidated damages or penalties; that a class could
9 not be appropriately certified in the Actions; and that if a class were certified, Target's defenses to
10 Plaintiffs' claims would be applicable to the claims of the class. (Declaration of Jeffrey D. Wohl
11 in Support of Joint Motion for Approval of Class Action Settlement; Conditional Certification of
12 Settlement Class; Appointment of Class Representatives, Class Counsel, and Settlement
13 Administrator; Approval of Class Notice Packet; and Setting of Final Approval Hearing ("Wohl
14 Decl."), ¶ 3.)

15 **B. Discovery and Investigation of Facts.**

16 Plaintiffs' counsel have conducted significant investigation since the inception of the
17 Actions as detailed in the concurrently filed declarations of Torey Joseph Favarote and Joseph R.
18 Becerra (collectively referred to herein as "Putative Class Counsel"). Putative Class Counsels'
19 investigation as to the class claims, includes traveling to Minneapolis, Minnesota (Target's
20 corporate headquarters), to take the depositions of Target's corporate representative witnesses
21 over the course of two days; reviewing all of Target's policies, procedures and practices,
22 applicable during the class period, in regard to the claims alleged in the Actions; reviewing more
23 than 10,000 pages of documents produced by Target in response to 43 document-production
24 requests; reviewing Target's responses to 44 special interrogatories; and retaining an economics
25 expert to assess the detailed payroll and timekeeping records produced by Target. (Favarote
26 and gave the parties 75 days to reopen the action. (*Id.*, ¶ 9.) On October 16, the parties filed with
27 the District Court a Stipulation to Extend Date by Which the Ornelas Action May Be Reopened to
28 the date that is no sooner than 30 days after the Settlement is not finally approved by this Court
for any reasons. (*Id.*, ¶ 9.) The District Court entered an order approving that stipulation on
October 19, 2020.

Decl., ¶ 23.) Target took the deposition of Ornelas and Robinson, reviewed documents produced by Plaintiffs, and conducted an internal investigation of Plaintiffs' claims. (*Id.*, ¶ 23.)

All of this information, obtained through extensive formal discovery, informal discovery in preparation for the parties' two mediations, and the extensive motion practice on the merits in the proceedings before the District Court in the *Ornelas* Action, as noted below, provided the parties with a substantial basis to assess the strengths and weaknesses of their respective positions prior to the parties' second mediation. (Declaration of Joseph R. Becerra in Support of Joint Motion for Approval of Class Action Settlement; Conditional Certification of Settlement Class; Appointment of Class Representatives, Class Counsel, and Settlement Administrator; Approval of Class Notice Packet; and Setting of Final Approval Hearing ("Becerra Decl."), ¶ 11; Favarote Decl., ¶ 26.)

C. The Parties' Extensive Litigation and Motion Practice.

In some respects, this litigation is a continuation of *Loughrie v. Target Corporation*, No. CIVDS1720075 (the "*Loughrie* Action"), which was filed by Putative Class Counsel against Target in this Court in October 2017. (Favarote Decl., ¶ 20.) In the *Loughrie* Action, the plaintiffs asserted—as Plaintiffs assert in the Actions—that Target owed overtime compensation to team members who worked under an AWS at Target distribution centers in California. (Favarote Decl., ¶ 20.) This Court finally approved the class action settlement in the *Loughrie* Action on May 14, 2019. (*Id.*, ¶ 20.) Then, beginning August 11, 2019, Target discontinued its AWSs in its California distribution centers. (*Id.*, ¶ 20.)

The parties conducted significant litigation in the Actions before coming to the present Settlement. In the *Ornelas* Action, Target filed a series of dispositive motions, beginning on March 2, 2020, when Target moved for summary judgment of Plaintiffs' claim that the AWSs under which Ornelas and Robinson worked were adopted in compliance with California law. (Favarote Decl., ¶ 24.) On May 11, 2020, the District Court issued an order granting Target's motion with respect to all issues except whether the AWSs were validly adopted "because a genuine issue of material fact exists as to whether the 2007 AWS election was properly conducted given that Target allowed votes by absentee ballot[.]" (*Id.*, ¶ 24.) On May 22, 2020, Target filed

1 a successive motion for summary judgment or, in the alternative, motion for reconsideration of
2 the District Court's order denying summary judgment or, in the alternative, motion for
3 certification of the District Court's summary-judgment orders for interlocutory appeal. (Wohl
4 Decl., ¶ 5.) In its successive motion for summary judgment, Target argued that even if the
5 District Court is correct that absentee ballots may not be used in AWS elections, the AWSs at
6 issue passed by the required two-thirds majorities with absentee ballots excluded. (*Id.*, ¶ 5.) In
7 its motion for reconsideration, Target argued that the District Court committed manifest error by
8 ruling that absentee ballots may not be used in AWS elections. In its motion for certification for
9 interlocutory appeal, Target argued that the issue of whether absentee ballots may be used in
10 AWS elections is subject to a substantial difference of opinion and therefore appellate review was
11 warranted. (*Id.*, ¶ 5.) On June 21, 2020, the District Court issued an order denying Target's
12 motions and finding that use of absentee ballots invalidates an AWS election "as a matter of law."
13 (Favarote Decl., ¶ 24.)³

14 On May 22, 2020, Putative Class Counsel filed in the *Ornelas* Action a motion for class
15 certification. (Favarote Decl., ¶ 7.) The motion was fully briefed before the parties' August 31,
16 2020, mediation. (*Id.*, ¶ 7.) The hearing on the motion was set for September 14, 2020, but was
17 later vacated by the District Court in light of the parties' Settlement. (*Id.*, ¶ 7.)⁴

18 Throughout the Actions, the parties also have fully briefed a motion for remand that was
19 granted, a motion for protective order, and worked through numerous *ex-parte* applications and
20 discovery motions. (Favarote Decl., ¶ 25.) The outcome of the extensive and complex litigation
21 already performed in the Actions, and the uncertain outcome of the pending motion for class
22 certification, adequately prepared the parties for their second mediation. (*Id.*, ¶ 25.)

23 ///

24 _____
25 ³ Target continues to maintain that the District Court erred in these conclusions and,
26 but for the Settlement, would continue litigating the case and, should judgment be entered against
27 it, seek reversal of the District Court's decisions from the U.S. Court of Appeals for the Ninth
28 Circuit. (Wohl Decl., ¶ 5.)

⁴ "In the event that the Settlement is not finally approved, the parties will stipulate to
re-open the *Ornelas* Action and place back on the District Court's calendar on the first available
date Ornelas and Robinson's fully briefed motion for class certification." (Settlement Agreement,
§ III.E.1.)

1 **D. Mediation.**

2 The parties have participated in two mediations in an effort to resolve the Actions. The
3 first mediation was held on March 4, 2020, at the beginning of the COVID-19 pandemic.
4 (Favarote Decl., ¶ 27.) The parties travelled to Atlanta to mediate with Hunter Hughes, who
5 successfully mediated the *Loughrie* Action, and who is one of the pre-eminent class action
6 mediators in the country. (*Id.*, ¶ 27.) Although the parties had conducted substantial discovery
7 prior to that mediation, including deposing Ornelas, Robinson, and Target's Rule 30(b)(6)
8 witnesses, the parties were unable to come to an agreement.

9 On August 31, 2020, after the parties fully briefed Ornelas and Robinson's motion for
10 class certification in the *Ornelas* Action, the parties participated in a second mediation. (Favarote
11 Decl., ¶ 28.) This time, the parties attended a private day-long mediation conducted by David
12 Rotman of Mediated Negotiations, a preeminent wage-and-hour mediator with considerable
13 experience mediating in California. (*Id.*, ¶ 28.) At the conclusion of the mediation, the parties
14 were too far apart to reach an agreement, resulting in Mr. Rotman making a mediator's proposal
15 of \$14 million for a complete settlement of all claims in the Actions. (*Id.*, ¶ 28.) On
16 September 3, 2020, four days after the second mediation, during which time the parties continued
17 to engage in good-faith, arm's-length bargaining, the parties accepted the mediator's proposal.
18 The parties then continued to negotiate over the details of the Settlement during the following two
19 months. (*Id.*, ¶ 28.) On November 17, 2020, the parties fully executed the Settlement Agreement
20 that they now present to this Court for preliminary approval. (*Id.*, ¶ 28.)

21 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

22 The following is a summary of the material elements of the Settlement.

23 **A. Procedural Terms.**

24 The parties agreed to stay all proceedings in the Actions prior to jointly seeking the
25 requisite approval of the Settlement from this Court through the *Barnes* Action. Accordingly, on
26 September 5, 2020, the parties filed a notice of settlement in the *Ornelas* Action, informing the
27 District Court that the parties have reached a settlement. (Favarote Decl., ¶ 10.) In light of the
28 parties' settlement, on September 8, 2020, the District Court dismissed without prejudice the

1 *Ornelas* Action and gave the parties 75 days to reopen the action. (*Id.*, ¶ 10.) On October 16,
2 2020, the parties caused to be filed with the District Court a stipulation and proposed order to
3 extend the date by which the *Ornelas* Action may be reopened to a date that is no sooner than 30
4 days after the Settlement is not finally approved by this Court. (*Id.*, ¶ 19.) On October 19, 2020,
5 the District Court granted the stipulation. (*Id.*, ¶ 19.)

6 Also, as part of the Settlement Agreement, on October 16, 2020, the parties requested
7 leave from this Court for plaintiff Barnes to file a First Amended Complaint in this action, the
8 *Barnes* Action, to add all the claims into one case and to add Ornelas and Robinson as named
9 plaintiffs. (Favarote Decl., ¶ 9.) On October 28, 2020, this Court granted the parties' request,
10 and the First Amended Complaint was deemed filed and served as of that day. (*Id.*, ¶ 10.)

11 **B. Principal Terms.**

12 Target will pay a total of \$14,000,000.00 (the "Maximum Settlement Amount") to settle
13 the Actions on a class wide basis for the approximately 9,200 Class Members. (Settlement,
14 § III.A.; Favarote Decl., ¶ 3.) The class to be conditionally certified is defined as:

15 "Class" means (i) all non-exempt team members who worked for Target under an
16 alternative workweek schedule at one or more of Target's seven California
17 distribution centers from March 21, 2019, through August 11, 2019 (the "AWS
18 Class"); and/or (ii) all non-exempt team members who worked for Target at one
19 or more of Target's seven California distribution centers from March 21, 2019, to
the date the Superior Court grants preliminary approval of the Settlement (the
"myTime Class"). The Class does not include any individuals who already have
resolved the claims asserted in the Actions, whether by settlement or adjudication.

20 (*Id.*, ¶ 3; Settlement § I.C.)

21 From the Maximum Settlement Amount will be paid: (i) a payment of \$400,000.00 for
22 PAGA penalties with 75% (\$300,000.00) going to the LWDA for its share of the civil penalties;
23 (ii) all Settlement Shares to be paid to all Class Members except those who elect not to participate
24 in the Settlement (no claim forms will be required for Class Members to receive their Settlement
25 Shares); (iii) Class Representative Payments to the three named Plaintiffs in the amount of
26 \$10,000.00 each, \$30,000.00 in aggregate (as approved by the Court) to compensate them for
27 their services to the Class in pursuing the Actions and the risk that they assumed on behalf of the
28 absent putative Class Members; (iv) Class Counsel Fees of \$4,662,000.00 (33.3% of the

1 Maximum Settlement Amount as approved by the Court) to compensate them for their services to
2 the Class in prosecuting the Actions and securing the Settlement, and Putative Class Counsels'
3 litigation expenses up to \$36,000.00 (as approved by the Court); (v) a payment to the Settlement
4 Administrator for its reasonable fees and expenses incurred in administering the Settlement,
5 which are estimated at up to \$60,000.00; (vi) Target's share of payroll taxes applicable to the
6 portion of the Settlement Shares allocated to wages; and (vii) any other fees or expenses (other
7 than attorneys' fees and expenses) incurred in implementing the terms and conditions of the
8 Settlement and securing the judgment from the Court pursuant to the Settlement. *None of the*
9 *Maximum Settlement Amount will revert to Target.* (Favarote Decl., ¶ 11; Settlement, §§ III.A.,
10 III.E.13.)

11 The Settlement Shares will be distributed to all Class Members who do not opt-out of the
12 Settlement as follows:

- 13 • The Net Settlement Amount will be split into the "AWS Net Settlement Amount"
14 (87.5% of the Net Settlement Amount) and the "myTime Net Settlement Amount"
15 (12.5% of the Net Settlement Amount).
- 16 • Each AWS Class Member's AWS Settlement Share will equal the AWS Net
17 Settlement Amount times the ratio of the number of workweeks worked under an
18 alternative workweek schedule by the AWS Class Member for Target at any of its
19 seven California Distribution Centers from March 21, 2019, through August 11,
20 2019 (the "AWS Settlement Period") to the total number of workweeks worked
21 under an alternative workweek schedule by all such AWS Class Members for
22 Target at any of its seven California Distribution Centers during the AWS
23 Settlement Period (other than those who elected not to participate in the
24 Settlement).
- 25 • Each myTime Class Member's myTime Settlement Share will equal the myTime
26 Net Settlement Amount times the ratio of the number of workweeks worked by the
27 myTime Class Member for Target at any of its seven California Distribution
28 Centers from March 21, 2019, through the date the Superior Court grants

1 Preliminary Approval of the Settlement (the “myTime Settlement Period”) to the
2 total number of workweeks worked by all such myTime Class Members for Target
3 at any of its seven California Distribution Centers during the myTime Settlement
4 Period (other than those who elected not to participate in the Settlement).
5 Regardless of the calculated amount, the minimum payment a myTime Class
6 Member will receive as his or her myTime Settlement Share is \$25.00.

7 (Favarote Decl., ¶ 12; Settlement, § III.B.1.)

8 In the event of a dispute over a Class Member’s Settlement Share, the Settlement
9 Administrator will resolve the dispute based on information provided by Target and the Class
10 Member and after consultation with Putative Class Counsel, the Class Members and Target.
11 (Settlement, § III.E.5.a.) Before individual payroll taxes, the average AWS Settlement Share is
12 expected to be approximately \$1,468.82, with the minimum estimated to be approximately \$82.64
13 and the maximum estimated to be approximately to be \$1,676.46; and the average myTime
14 Settlement Share is estimated to be approximately \$106.31, with the minimum to be \$25.00 and
15 the maximum estimated to be approximately to be \$212.29.⁵ (Favarote Decl., ¶ 14)

16 Once the judgment becomes final, Class Members who do not opt out of the Settlement
17 will release their respective claims against Target and its related entities, under federal or
18 California law, that were raised or that could have been raised in the Actions or otherwise based
19 on or related to the factual allegations made in the Actions that Target failed to pay wages, failed
20 to provide itemized wage statements, failed to timely pay final wages; and failed to reimburse
21 business expenses for the period from March 21, 2019, to the last date a Class Member may mail
22 to the Settlement Administrator a timely Election Not to Participate in Settlement. (Favarote
23 Decl., ¶ 15; Settlement, § III.F.2.)

24 **C. Additional Terms.**

25 Within 25 days after preliminary approval of the Settlement is granted by the Court,
26 Target will provide the Settlement Administrator with the Class Members’ Data, which includes

27 ⁵ myTime Class Members will receive a minimum payment of \$25.00 regardless of
28 the number of workweeks he or she worked during the myTime Class Period. (Favarote Decl.,
¶ 14.)

1 the names and last known addresses of the Class Members, their Social Security numbers, the
2 number of workweeks they worked under an AWS for Target as a non-exempt team member at a
3 distribution center in California from March 21, 2019, through August 11, 2019, and the number
4 of workweeks worked at a Target distribution center in California from August 12, 2019, through
5 the date the Court preliminarily approves the Settlement. (Settlement, § III.E.4.a.) Within 15
6 days of receiving the Class Members' Data, the Settlement Administrator will send to all Class
7 Members (in English and Spanish) a Class Notice Packet, which will include a Class Notice; a
8 Class Member Settlement Information Sheet, which will show each Class Member his or her
9 reported number of workweeks worked as a non-exempt team member during the Class Periods
10 and an estimate of his or her Settlement Share; and the form of Election Not to Participate in
11 Settlement. (Settlement § III.E.4., Exhs. A, B, C.)

12 The Class Notice Packet will be sent to Class Members by first-class regular U.S. Mail
13 based upon the last known addresses provided by Target, unless modified by any updated address
14 information that the Settlement Administrator obtains in the course of administration of the
15 Settlement. (Settlement § III.E.4.b.) For any notices returned, the Settlement Administrator will
16 make reasonable efforts to find corrected addresses. (*Id.*, § III.E.4.c.)

17 Class Members will have 45 days after the Class Notice Packets are mailed to object to
18 the Settlement. (Settlement § III.E.5.b.) If they do not wish to participate in the Settlement, Class
19 Members will have 45 days after the Class Notice Packets are mailed to return a completed
20 Election Not to Participate in Settlement form; those who do not timely return properly completed
21 elections will be bound by the Settlement (and be paid their Settlement Shares). (*Id.*, § III.E.5.c.)
22 If by the deadline 5% or more of all Class Members, or a number of Class Members whose
23 Settlement Shares represent 5% or more of the Settlement Shares of all Class Members, elect not
24 to participate in the Settlement, then Target will have the right, but not the obligation, to rescind
25 the Settlement, which it must do within 10 days after the Settlement Administrator notifies the
26 parties of the final number of valid Elections Not to Participate in Settlement. (*Id.*, § III.E.6.)

27 Assuming that the Settlement is not rescinded, the parties will jointly move this Court for
28 final approval of the Settlement, payment to the LWDA, and payment of the Settlement

1 Administrator's reasonable fees and expenses. (Settlement § III.E.8.a.)

2 **IV. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY APPROVAL**

3 **A. Class Action Settlements Are Subject to Court Review and Approval**
4 **Under the California Rules of Court.**

5 California Rule of Court 3.769 requires court approval for class action settlements.⁶
6 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
7 settlement." Cal. R. Ct. 3.769(g). Rule 3.769 further requires a noticed motion for preliminary
8 approval of class settlements:

- 9 (a) A settlement or compromise of an entire class action, or of a cause
10 of action in a class action, or as to a party, requires the approval of
the court after hearing. ...
- 11 (c) Any party to a settlement agreement may serve and file a written
12 notice of motion for preliminary approval of the settlement. The
13 settlement agreement and proposed notice to class members must
be filed with the motion, and the proposed order must be lodged
with the motion.

14 Cal. R. Ct. 3.769(a), (c).

15 Courts act within their discretion in approving settlements that are fair, not collusive, and
16 take into account "all the normal perils of litigation as well as the additional uncertainties inherent
17 in complex class actions." *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 179-80 (5th Cir.
18 1979), *cert. denied sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n*, 452
19 U.S. 905 (1981) (citation omitted). Where a settlement is reached on terms agreeable to all
20 parties, a court should disapprove of the settlement "only with considerable circumspection."
21 *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975).

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

23 In deciding whether to approve a proposed class action settlement under California Code
24 of Civil Procedure section 382, a court must find that a proposed settlement is "fair, adequate and
25 reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for*

26 ⁶ The California Supreme Court has authorized California's trial courts to use
27 Federal Rule of Civil Procedure 23 and cases applying it for guidance in considering class issues.
28 *See Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971); *Green v. Obledo*, 29 Cal. 3d 126, 145-
46 (1981). Where appropriate, therefore, the parties cite Federal Rule 23 and federal case law in
addition to California law.

1 *Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, *Byrd v. Civil Serv.*
2 *Comm'n*, 459 U.S. 1217 (1983)). The court must consider all relevant factors, such as the
3 following:

4 the strength of plaintiffs' case, the risk, expense, complexity and likely duration
5 of further litigation, the risk of maintaining class action status through trial, the
6 amount offered in settlement, the extent of discovery completed and the stage of
7 the proceedings, the experience and views of counsel, the presence of a
8 governmental participant, and the reaction of the class members to the proposed
9 settlement.

10 *Id.* The court's primary function is to determine that the settlement is not the product of fraud,
11 overreaching, or collusion, and taken as a whole, is fair, reasonable and adequate to all concerned.

12 *Id.*

13 A proposed class action settlement is *presumed* fair under the following circumstances:
14 (i) the parties reached settlement after arm's-length negotiations; (ii) investigation and discovery
15 were sufficient to allow counsel and the court to act intelligently; (iii) counsel is experienced in
16 similar litigation; and (iv) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1802.
17 The Becerra, Favarote, Barnes, Robinson, Ornelas, and Wohl declarations filed with this motion
18 demonstrates that: (i) the Settlement was the product of serious, informed, and non-collusive
19 negotiations conducted at arm's-length and facilitated by respected and experienced neutral
20 mediators; (ii) the parties have engaged in both extensive formal discovery and extensive motion
21 practice such that the parties and their counsel are able to make an informed recommendation
22 about the Settlement; and (iii) the putative Class is represented by counsel experienced in wage-
23 and-hour class actions.⁷

24 Thus, the Settlement, at this time, is entitled to the presumption that it is fair and in all
25 other respects proper, and should be preliminarily approved.

26 **1. The Settlement Is the Result of Serious, Informed, Non-**
27 **Collusive Negotiations.**

28 The Settlement was reached as a result of the extensive arm's-length negotiations

27 ⁷ The fourth factor—the number of objectors—cannot be known until after the
28 notice of the Settlement has been disseminated to Class Members and they have had an
opportunity to react to it and respond.

1 facilitated by both Hunter Hughes and David Rotman, two well-respected and experienced wage-
2 and-hour class action mediators. (Favarote Decl., ¶ 26, 27; Becerra Decl., ¶ 25; Wohl Decl.,
3 ¶ 9,10.) Though cordial and professional, the settlement negotiations have been adversarial and
4 non-collusive in nature. (Favarote Decl., ¶ 27; Wohl Decl., ¶ 13.) The settlement reached is the
5 product of substantial effort by the parties and their counsel after more than a year of very hard-
6 fought litigation. (Favarote Decl., ¶ 54; Becerra Decl., ¶ 25; Wohl Decl., ¶ 13.) While Plaintiffs
7 believe they have a high probability of success of certifying their claims based upon the motion
8 for class certification that was fully briefed in the *Ornelas* Action, they also recognize the
9 inherent risks of litigation and understand the benefit of the Class receiving settlement funds
10 immediately rather than risking potential unfavorable decisions on class certification, at trial, on
11 the damages awarded, and/or on an appeal that could take several more years to litigate.
12 (Favarote Decl., ¶ 42; Becerra Decl., ¶ 25.) Further, litigating Plaintiffs' claims, which involve
13 over 9,200 Class Members during the relevant periods, would have required substantial additional
14 preparation and discovery, as well as the consideration, preparation and analysis of expert reports.
15 Therefore, should litigation have progressed any further, each side would have incurred
16 significant expense. (Favarote Decl., ¶ 42; Wohl Decl., ¶ 14.)

17 **2. The Extent of Discovery and the Stage of the Proceedings**
18 **Support Settlement.**

19 The parties thoroughly investigated and evaluated the factual strengths and weaknesses of
20 the Actions before reaching the Settlement and engaged in sufficient investigation and formal
21 discovery along with extensive motion practice, as described above, to support the Settlement.
22 (Favarote Decl., ¶ 28.) Putative Class Counsels' investigation as to the proposed class
23 representatives' claims, included traveling to Minneapolis, Minnesota to take the depositions of
24 Target's corporate representative witnesses over the course of two days; reviewing all of Target's
25 relevant policies, procedures and practices in place during the entirety of the class period, in
26 regards to the claims alleged in the Actions; reviewing almost 10,000 pages of documents
27 produced by Target in response to 43 document-production requests; reviewing Target's
28 responses to 44 special interrogatories; and retaining an economics expert to assess the detailed

1 payroll and timekeeping records produced by Target. (Favarote Decl., ¶¶ 28; Becerra Decl.,
2 ¶¶ 11.) Target deposed Ornelas and Robinson, reviewed documents produced by Plaintiffs, and
3 conducted an investigation of Plaintiffs' claims. (Favarote Decl., ¶ 28; Wohl Decl., ¶ 9.) The
4 settlement amount is, of course, a compromise figure. It took into account risks related to
5 liability, damages, and all of the defenses asserted by Target. (Favarote Decl., ¶ 54; Wohl Decl.,
6 ¶ 13.)

7 Thus, the Settlement came only after counsel investigated the case and the parties engaged
8 in extensive motion practice on the merits, as set forth above. This litigation, therefore, has
9 reached the stage where the parties "certainly have a clear view of the strengths and weaknesses
10 of their cases" sufficient to support the Settlement. *In re Warner Commc'ns Sec. Litig.*, 618 F.
11 Supp. 735, 745 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986).

12 **3. The Parties' Counsel Are Experienced in Similar Litigation.**

13 Both Putative Class Counsel and Target's counsel, Paul Hastings LLP, have significant
14 experience litigating wage-and-hour class actions. (Favarote Decl., ¶ 57; Becerra Decl., ¶ 29;
15 Wohl Decl., ¶ 2) Having prosecuted dozens of cases on behalf of tens of thousands of employees
16 for California Labor Code violations, Putative Class Counsel represent that they are qualified to
17 evaluate the class claims and to evaluate settlement versus trial on a fully informed basis.
18 (Favarote Decl., ¶¶ 57; Becerra Decl., ¶¶ 29.)

19 Counsel on both sides share the view that this is a fair and reasonable settlement in light of
20 the complexities of the Actions, the state of the law, and uncertainties of class certification.
21 (Favarote Decl., ¶¶ 54; Becerra Decl., ¶¶ 26.) Given the risks inherent in litigation and the
22 defenses asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the
23 Class, and should be preliminarily approved. (Favarote Decl., ¶ 54; Becerra Decl., ¶ 26; Wohl
24 Decl., ¶ 13.)

25 Experienced counsel, operating at arm's length, have weighed the strengths of the case,
26 examined all of the issues and risks of litigation, and endorse the proposed Settlement. (Favarote
27 Decl., ¶ 54; Becerra Decl., ¶ 26; Wohl Decl., ¶ 13.) The view of the attorneys actively
28 conducting the litigation "is entitled to significant weight" in deciding whether to approve the

1 settlement. *Fisher Bros. v. Cambridge-Lee Indus, Inc.*, 630 F. Supp. 482, 488 (E.D. Pa. 1985);
2 *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th
3 Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

4 Accordingly, the parties submit the Settlement, having satisfied the three requirements of
5 *Dunk* at this stage, sufficient for the Court to grant preliminary approval. (Favarote Decl., ¶ 55;
6 Becerra Decl., ¶ 25; Wohl Decl., ¶ 13.)

7 **4. The Settlement Is Fair and Reasonable Based on the Risks and**
8 **Costs of Further Litigation.**

9 Plaintiffs and their counsel have concluded it was reasonable to enter into the Settlement
10 at this stage of the litigation in the Actions. (Favarote Decl., ¶ 55; Becerra Decl., ¶ 25.) Target
11 has vigorously contested and continues to contest any liability for the claims asserted in the
12 Actions. Although Target believes that it would ultimately prevail on the merits, it nevertheless
13 agreed to attempt resolution of the Actions to avoid the expense, distraction, and uncertainty of
14 protracted litigation. (Wohl Decl., ¶ 11.)

15 There are significant legal uncertainties associated with cases such as this, as they can
16 require protracted litigation to resolve. On the one hand, Plaintiffs believe their claims are very
17 well suited for certification and that their own motion for summary adjudication on the merits
18 following certification will be successful because Target's relevant policies are applied uniformly
19 across all distribution centers and to all Class Members. (Favarote Decl., ¶ 20.) Plaintiffs further
20 contend that their claims involve common questions of law and fact, and common proof.
21 (Favarote Decl., ¶¶ 49.) On the other hand, Target maintains that resolution of each claim would
22 require highly individualized analysis of the facts and circumstances of each Class Member's
23 employment. (Wohl Decl., ¶ 12.) Target maintains that because individualized issues would
24 predominate over common facts, certification would likely be deemed inappropriate.
25 Accordingly, while Plaintiffs continue to believe this is a strong case for certification and on the
26 merits, there is always risk and significant expenses associated with class certification
27 proceedings and appeals. (Favarote Decl., ¶¶ 42.) Decertification motions and reversals
28 following trial are also a legitimate risk in light of the U.S. Supreme Court decision in *Wal-Mart*

1 *Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011).

2 These uncertainties bore heavily on the negotiations leading to the Settlement. In the face
3 of these legal uncertainties, the parties agreed to a compromise settlement of \$14,000,000.00. A
4 settlement is not judged *solely* against what might have been recovered had a plaintiff prevailed at
5 trial, nor does a settlement have to provide 100% of the damages sought to be fair and reasonable.
6 *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246, 250 (2001) (“Compromise is
7 inherent and necessary in the settlement process ... [E]ven if the relief afforded by the proposed
8 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
9 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
10 settlement in which each side gives ground in the interest of avoiding litigation.”) (internal
11 quotation marks and citation omitted); *Officers for Justice*, 688 F.2d at 628 (“It is well-settled law
12 that a cash settlement amounting to only a fraction of the potential recovery will not . . . render
13 the settlement inadequate or unfair.”).

14 **5. The Settlement Is a Reasonable Compromise of Claims.⁸**

15 **a. Plaintiffs’ Alternative Work Schedule Overtime Claim.**

16 Plaintiffs contended that Class Members who worked an AWS are owed overtime pay
17 because the schedules were improperly implemented and are therefore invalid, a position that was
18 twice confirmed by the District Court in the *Ornelas* Action. (Favarote Decl., ¶ 24.) However,
19 Target contends that all relevant AWS were properly implemented and maintains that it would be
20 successful on appeal in overturning the District Court’s orders holding that permitting absentee
21 ballots in an AWS election renders the AWS invalid “as a matter of law.” (Wohl Decl., ¶ 5.)

22 **b. Plaintiffs’ Expense Reimbursement Claim.**

23 Plaintiffs contended that Target failed to reimburse Class Members for all necessary
24 business expenses, including the use of their personal cellular telephones and data services in
25 order to download and use the myTime mobile scheduling application. (Favarote Decl., ¶ 21.)
26 Plaintiffs contend that Target employees were required to use the myTime mobile application in

27 _____
28 ⁸ See Favarote Decl., ¶¶ 31-41, for a full *Kullar* analysis by Plaintiffs of the claims
alleged in the Actions.

1 the performance of their job duties. (*Id.*, ¶ 21.) Plaintiffs acknowledge, however, that Target
2 offers an array of voluntary options for team members to receive scheduling information and to
3 submit requests for or acceptance of scheduling changes at their California distribution centers,
4 including doing so in person at the distribution center, using posted information at the distribution
5 center, and using the myTime application. (*Id.*, ¶ 23.) Target contends that it maintains lawful
6 policies, which provide for reimbursement of all necessary business expenses. (Wohl Decl., ¶ 7.)

7
8 **c. Plaintiffs' Reporting-Time Pay Claim.**

9 Plaintiffs contended that Class Members were not paid reporting-time pay when the
10 myTime application would not function properly and employees would report to work when they
11 had in fact been “scheduled down” but the information was not updated on the mobile
12 application. (Favarote Decl., ¶ 22; Barnes Decl., ¶ 3; Ornelas Decl., ¶ 3; Robinson Decl., ¶ 3.)
13 However, Target contends that it maintains lawful policies, which includes payment of reporting-
time pay, when applicable. (Wohl Decl., ¶ 7.)

14 **d. Plaintiffs' Derivative Claims for Failure to Provide**
15 **Accurate Itemized Wage Statements, Failure to Pay All**
16 **Wages Due Upon Termination, Unfair Business**
Practices, and PAGA Claims.

17 Plaintiffs' claim for failure to provide accurate itemized wage statements pursuant to
18 Labor Code section 226; claim for failure to maintain accurate payroll records pursuant to Labor
19 Code sections 226, 558 and 1198; claim for failure to pay all wages due upon termination under
20 Labor Code section 203; claim for unfair business practices in violation of Business &
21 Professions Code section 17200; and claim for civil penalties pursuant to PAGA are derivative of
22 their other claims. (Favarote Decl., ¶¶ 20-22.) Since these claims are derivative, they entail the
23 same risks as the claims outlined above. Furthermore, Target contends that even if one of those
24 claims were to survive or be certified as a class, the wage statement and waiting-time claims
25 would fail if Target prevailed on its defenses that, even if some wages were owed, it did not
26 “knowingly and intentionally” issue inaccurate wage statements or “willfully” fail to pay all
27 wages due upon termination or fail to maintain required records. *See* Cal. Lab. Code §§ 226(e);
28 203(a); 1174.5. (Wohl Decl., ¶ 8.)

1 In light of the risks involved in the Actions, the \$14,000,000.00 Maximum Settlement
2 Amount is a reasonable compromise. (Favarote Decl., ¶ 46; Wohl Decl., ¶ 13.)

3 Putative Class Counsel are convinced that the Settlement is in the best interest of the Class
4 based on the negotiations and a detailed knowledge of the issues present in the Actions.
5 (Favarote Decl., ¶ 46; Becerra Decl., ¶ 26.) The length and risks of trial and other normal perils
6 of litigation were all weighed in reaching the Settlement. (Favarote Decl., ¶ 54; Becerra Decl.,
7 ¶ 26.) In addition, the affirmative defenses asserted by Target, the uncertainty of class
8 certification, the difficulties of complex litigation, and the lengthy process of establishing specific
9 damages and various possible delays and appeals, were also carefully considered by Putative
10 Class Counsel in agreeing to the Settlement. (Favarote Decl., ¶¶ 54.) In light of the above, the
11 Settlement is well within the “ballpark” of reasonableness and should be granted preliminary
12 approval. (*Id.*, ¶ 42.)

13 **V. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

14 In California, there are two certification prerequisites: (i) the existence of an
15 “ascertainable class,” and (ii) “a well defined community of interest in the questions of law and
16 fact involved affecting the parties to be represented.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695,
17 704 (1967) (citations omitted).

18 A lesser standard of scrutiny applies when evaluating these criteria for settlement
19 purposes, and courts should take settlement into account in evaluating class certification.
20 Because the Court is certifying this action for settlement purposes only, it need not determine
21 whether the Class would be manageable. *Amchen Prods., Inc. v. Windsor*, 521 U.S. 591, 620
22 (1977).

23 Plaintiffs assert that the Class here would meet the requirements of numerosity (Favarote
24 Decl., ¶ 48), commonality (*id.*, ¶ 49), typicality (*id.*, ¶ 51), adequacy of representation (*id.*, ¶ 51),
25 and superiority of the class action device over individual litigation. Target maintains that the
26 Class cannot properly be certified, but does not oppose conditional certification of the Class for
27 settlement purposes only, acknowledging the low threshold required under such circumstances.
28 (Wohl Decl., ¶ 12.)

VI. **PROPOSED SETTLEMENT TIMELINE**

Should the Court grant preliminary approval of the Settlement at the January 5, 2021, hearing, the parties propose the following settlement timeline:

<u>Date</u>	<u>Event</u>
January 5, 2021	Court grants preliminary approval
February 1, 2021	Last day for Target to provide Settlement Administrator with class data (25 days after preliminary approval order; January 30, 2021, is a Saturday)
February 16, 2021	Last day for Settlement Administrator to mail out to Class Members Class Notice Packets (15 days after Target provides class data to Settlement Administrator)
April 2, 2021	Last day for Class Members to dispute information on Class Member Settlement Information Sheets (45 days after Class Notice is mailed) Last day for Class Members to file objections to Settlement (45 days after Class Notice is mailed) Last day for Class Members to mail Election Not to Participate in Settlement to Settlement Administrator (45 days after Class Notice is mailed)
April 9, 2021	Last day for Settlement Administrator to provide the parties with a complete and accurate list of all Class Members who submitted timely and valid Elections Not to Participate (7 days after the deadline for submission of Elections Not to Participate in Settlement)
April 19, 2021	Last day for Target to exercise right to rescind Settlement (if applicable) (10 days after the Settlement administrator reports to parties on Class Members who have elected not to participate in Settlement)
April 29, 2021	Last day for Settlement Administrator to provide the parties with a declaration of due diligence setting forth its compliance with its obligations under the Agreement and information regarding claims submissions (16 court days before the Final Approval hearing) Last day for parties to jointly file with the Court a motion for a final approval of the Settlement, the LWDA payment, and payment of the Settlement Administrator's fees and expenses (16 court days before the Final Approval Hearing) Last day for plaintiff and Putative Class Counsel to serve on Target and file with the Court a motion for awards of the Class Representative Payments and the Class Counsel Fees and Expenses Payment (16 court days before the Final Approval Hearing)
May 21, 2021	Final approval hearing

1	<u>Date</u>	<u>Event</u>
2	<i>(All dates that follow assume final approval</i>	
3	<i>granted and noticed on May 21, 2021)</i>	
4	July 26, 2021	Last day for parties to file with the District Court a stipulation for
5		dismissal of the <i>Ornelas</i> Action with prejudice and a proposed order
6		granting the stipulation (5 days after Judgment becomes Final; July 25,
7		2021, is a Sunday)
8	10 days after the later	Last day for Target to pay to the Settlement Administrator the
9	of (i) the Judgment	Maximum Settlement Amount
10	becoming Final and	
11	(ii) the <i>Ornelas</i> Action	
12	being dismissed by the	
13	District Court with	
14	prejudice pursuant to	
15	the parties' stipulation.	
16	7 days after the	Settlement Administrator to pay to Class Members the Settlement
17	Settlement	Shares; to Plaintiffs, the Class Representative Payments; to Putative
18	Administrator receives	Class Counsel, the Class Counsel Fees and Expenses Payment; to the
19	the Maximum	LWDA, the LWDA Payment; and to the Settlement Administrator, its
20	Settlement Amount	reasonable fees and expenses
21	///	
22	///	
23	///	
24	///	
25	///	
26	///	
27	///	
28	///	

1 **VII. CONCLUSION**

2 The parties respectfully submit that the Settlement is in the best interests of the Class, as it
3 is fair, adequate, and reasonable, and one that could ultimately be granted final approval. Under
4 the applicable class action criteria and guidelines, the Settlement should be preliminarily
5 approved by the Court, the Class should be conditionally certified for purposes of settlement only,
6 the class notice and related papers should be approved, the Settlement Administrator should be
7 appointed, and the final approval hearing should be set for May 21, 2021 or the next date
8 available to the Court.

9
10 Dated: December 10, 2020

JOSEPH R. BECERRA
BECERRA LAW FIRM

11
12 By: _____

Joseph R. Becerra
Attorneys for Plaintiffs
Arthur Barnes, Joseph D. Ornelas,
and Rodney Alan Robinson, Jr.

13
14
15 Dated: December 10, 2020

TOREY JOSEPH FAVAROTE
GLEASON & FAVAROTE LLP

16
17 By: _____

Torey Joseph Favarote
Attorneys for Plaintiffs
Arthur Barnes, Joseph D. Ornelas,
and Rodney Alan Robinson, Jr.

18
19
20 Dated: December 10, 2020

JEFFREY D. WOHL
RYAN D. DERRY
PAUL A. HOLTON
ANNA M. SKAGGS
PAUL HASTINGS LLP

21
22
23
24 By: _____

Jeffrey D. Wohl
Attorneys for Defendant
Target Corporation

1 **VII. CONCLUSION**

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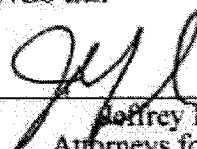
9
10 Dated: December 10, 2020 JOSEPH R. BECERRA
BECERRA LAW FIRM

11 By: _____
12 Joseph R. Becerra
13 Attorneys for Plaintiffs
14 Arthur Barnes, Joseph D. Ornelas,
and Rodney Alan Robinson, Jr.

15 Dated: December 10, 2020 TOREY JOSEPH FAVAROTE
16 GLEASON & FAVAROTE LLP

17 By: _____
18 Torey Joseph Favarote
19 Attorneys for Plaintiffs
Arthur Barnes, Joseph D. Ornelas,
and Rodney Alan Robinson, Jr.

20 Dated: December 10, 2020 JEFFREY D. WOHL
21 RYAN D. DERRY
22 PAUL A. HOLTON
ANNA M. SKAGGS
23 PAUL HASTINGS LLP

24 By: _____
25 
26 Jeffrey D. Wohl
27 Attorneys for Defendant
28 Target Corporation

PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On December 10, 2020, I served a copy(ies) of the following document(s):

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT; CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS; APPOINTMENT OF CLASS REPRESENTATIVES, CLASS
COUNSEL AND SETTLEMENT ADMINISTRATOR; APPROVAL OF CLASS NOTICE
PACKET; AND SETTING OF FINAL APPROVAL HEARING**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

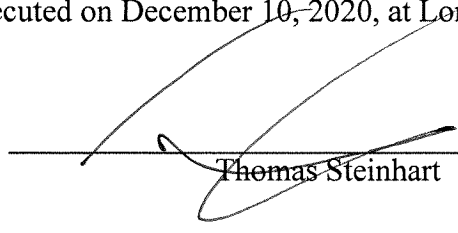
Attorney	Party(ies) Served	Method of Service
JEFFREY D. WOHL RYAN D. DERRY PAUL A. HOLTON ANNA M. SKAGGS PAUL HASTINGS LLP 101 California Street, 48th Floor San Francisco, California 94111 Tel: (415) 856-7000 Fax: (415) 856-7100 jeffwohl@paulhastings.com ryanderry@paulhastings.com paulholton@paulhastings.com annaskaggs@paulhastings.com meredithmitchell@paulhastings.com	Attorneys for Defendant TARGET CORPORATION	By email per service agreement

☐ [BY OVERNIGHT COURIER] I caused the sealed envelope(s) to be delivered by a commercial courier service for overnight delivery to the offices of the addressee(s).

☐ [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the service list to be delivered by Ace Attorney Service, Inc. this date.

☒ [BY ELECTRONIC TRANSMISSION] I caused said document to be sent by electronic transmission to the e-mail address indicated for the party(ies) listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on December 10, 2020, at Long Beach, California.



Thomas Steinhart