

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff MEAGAN HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ç, individually, and on behalf of other
members of the general public similarly
situated; E'MONII CRUMBY, individually,
and on behalf of all other members of the
general public similarly situated,

Plaintiffs,

vs.

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

Defendants.

MEAGAN HERNANDEZ, E'MONII
CRUMBY, individually, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiffs,

vs.

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

Defendants.

Case No.: RG20053333 (lead case)
Case No.: RG20061729

Honorable Frank Roesch
Department 17

CLASS ACTION

**PLAINTIFF MEAGAN
HERNANDEZ'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of
Proposed Class Representative (Meagan
Hernandez); and [Proposed] Order filed
concurrently herewith]

Reservation No.: R-2295005

Date: October 28, 2021
Time: 9:00 a.m.
Department: 17

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

PLEASE TAKE NOTICE that on October 28, 2021, at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Frank Roesch in Department 17 of the Superior Court of California for the County of Alameda, located at 1221 Oak Street Oakland, California 94612, Plaintiff Meagan Hernandez (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- 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 Attorneys’ Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Meagan Hernandez as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Margaux V. Roussel of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Proposed Class Action Settlement (“Notice of Settlement”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice of Settlement to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators 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 Attorneys' Costs to Class Counsel, Enhancement Payment for Plaintiff, 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 Aiwanian) and Proposed Class Representative (Meagan Hernandez) 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: October 5, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian

Attorneys for Plaintiff MEAGAN HERNANDEZ

TABLE OF CONTENTS

I.	SUMMARY OF MOTION	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	2
III.	SUMMARY OF THE SETTLEMENT TERMS	4
IV.	LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS	7
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT... 8	
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.	9
B.	The Settlement Is Fair, Reasonable, and Adequate.	11
C.	The Settlement Is of Significant Value.	12
VI.	CERTIFICATION OF THE CLASS IS APPROPRIATE	13
A.	The Class Is Ascertainable and Sufficiently Numerous.	14
B.	The Class Members Share a Well-Defined Community of Interest.	14
VII.	APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND ATTORNEYS’ COSTS	16
VIII.	THE PROPOSED NOTICE OF SETTLEMENT IS ADEQUATE	18
IX.	APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR	19
X.	PROPOSED DEADLINES FOR THE NOTICE PROCESS.....	21
XI.	APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT	22
XII.	CONCLUSION	23

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	9
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816.....	14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	18
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676.	14
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960.....	18, 19
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	18
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448.....	8
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268	7
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7, 8, 9
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	18
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	7, 9
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908.....	14
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418.....	12
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494.....	18
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	12
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480.....	17
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	17
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	14
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338	18
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006)	18
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615.....	8
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	14
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	13, 14, 15

<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800.....	7
<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294.....	22
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	7, 9

Statutes

Cal. Code Civ. Proc. § 1781	18
Cal. Code Civ. Proc. § 1781(f)	7

Other Authorities

Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	8
Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	21
Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	12
Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	18
Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	19
Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	19
<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007).....	19
<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007).....	19

Rules

Fed. R. Civ. P. 23(c)(2).....	19
Fed. R. Civ. P. 23(e)	19

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Meagan Hernandez (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Peloton Interactive, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of one million five hundred thousand dollars and no cents (\$1,500,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of ten thousand dollars and no cents (\$10,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Attorneys’ Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$525,000.00, and reimbursement of litigation costs and expenses not to exceed thirty thousand dollars and no cents (\$30,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed thirteen thousand dollars and no cents (\$13,000.00);⁵ and (5) the amount of one hundred fifty thousand dollars and no cents (\$150,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$112,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$37,500.00) will be distributed to Participating Class Members as a part of the Net Settlement Amount.⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwasian (“Aiwasian Decl.”), § 9.gg.

² *Id.* § 17.

³ *Id.* § 14.

⁴ *Id.* § 13.

⁵ *Id.* § 15.

⁶ *Id.* § 16.

All current and former non-exempt employees who worked for Defendant in the State of California at any time between February 4, 2016 and November 17, 2020, inclusive (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately seven hundred sixteen (716) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Participating Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Participating Class Members was employed by Defendant in California in a non-exempt or hourly-paid position during the period from February 4, 2016 through November 17, 2020 (“Workweeks”).⁹

The Settlement resolves the Released Claims of Plaintiff and Participating Class Members, against the Released Parties.¹⁰

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, Plaintiff also moves 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).

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a tech company that delivers fitness equipment to customers, including fitness bikes and treadmills, and provides at-home access to live streaming and on-demand fitness classes. Plaintiff is a former employee of Defendant.

On February 4, 2020, Plaintiff and other plaintiff E’Monii Crumby filed a Class Action Complaint for Damages in the Alameda County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

///

⁷ Settlement Agreement, § 9.e. “Class Period” is defined as the period of time from February 4, 2016 through November 17, 2020. *See id.*, § 9.g.

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

⁹ Settlement Agreement, §§ 9.ff., 9.r., and 9.hh.

¹⁰ *See id.* at § 9.z., for the full scope of the “Released Claims,” and *id.* at § 9.aa. for the definition of the “Released Parties.”

1 On March 9, 2020, Defendant filed an Answer to Plaintiff's Class Action Complaint for
2 Damages.

3 On May 13, 2020, Plaintiff and plaintiff E'Monii Crumby filed a Complaint for
4 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*
5 in the Alameda County Superior Court, Case No. RG20061729 ("PAGA Complaint").

6 On July 8, 2020, Defendant filed an Answer to Plaintiffs' Complaint as well as Peloton
7 Interactive, Inc.'s Notice of Related Cases.

8 On November 5, 2020, the Court issued an Order granting Defendant's motion to
9 consolidate the Action and the PAGA Complaint for all purposes, with the Action to be the lead
10 case.

11 Plaintiff's core allegation is that Defendant has violated the California Labor Code by
12 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
13 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
14 and rest periods and associated premium pay, failing to timely pay wages during employment
15 and upon termination of employment, failing to provide compliant wage statements, failing to
16 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
17 thereby engaged in unfair business practices in violation of California Business and Professions
18 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
19 contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
20 (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

21 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
22 associated with any of the allegations in the Action, and further denies that the Action is
23 appropriate for class treatment or representative adjudication for any purpose other than for
24 settlement purposes only.

25 On April 9, 2020, Plaintiff propounded multiple sets of discovery including Requests for
26 Production of Documents, (Set One & Two); Special Interrogatories, (Set One, Two & Three);
27 and Form Interrogatories, (Set One), on Defendant. On April 9, 2020, Plaintiff also noticed the
28 deposition of Defendant's person most knowledgeable regarding job duties and organizational

1 structure of Defendant. Thereafter, on June 12, 2020, Defendant responded to Plaintiff's
2 discovery requests.

3 On August 20, 2021, Class Counsel filed a Motion to Be Relieved as Counsel for plaintiff
4 E'Monii Crumby only, and, on September 30, 2021, the Court signed and entered the Order
5 granting the motion. As of October 5, 2021, Class Counsel has been relieved as counsel for
6 plaintiff E'Monii Crumby.

7 The Parties have actively litigated the Action since it was commenced on February 4,
8 2020. On November 17, 2020, the Parties participated in a formal, full-day mediation conducted
9 by Paul Grossman, Esq., a respected mediator of complex wage and hour actions. With the aid
10 of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to
11 resolve the Action in its entirety.

12 **III. SUMMARY OF THE SETTLEMENT TERMS**

13 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to
14 resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and
15 valid request to be excluded from the Settlement (i.e., Participating Class Members) with respect
16 to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be
17 calculated by deducting the following amounts from the Gross Settlement Amount: (1) court-
18 approved attorneys' fees in an amount not to exceed five hundred twenty five thousand dollars
19 and no cents (\$525,000.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement
20 of costs and expenses in an amount not to exceed thirty thousand dollars and no cents
21 (\$30,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Attorneys'
22 Costs"); (2) court-approved settlement administration costs, which are currently estimated not
23 to exceed thirteen thousand dollars and no cents (\$13,000.00) to the Settlement Administrator
24 ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA
25 Amount (i.e., \$112,500.00 out of \$150,000.00) ("LWDA Payment"); and (4) payment in the
26 amount of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff ("Enhancement
27

28 ¹¹ Settlement Agreement, § 9.gg.

1 Payment”).¹² The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix”
2 or “Settlement Administrator”) to handle the notice and settlement administration process.

3 The Parties have agreed that the Settlement Administrator will determine each
4 Participating Class Members’ share of the available Net Settlement Amount (“Individual
5 Settlement Share”), in accordance with the Settlement Agreement and as follows:

- 6 a. The Settlement Administrator will calculate each Class Members’ number of
7 Workweeks to yield the “Estimated Workweeks Value,” and multiply each Class
8 Member’s individual Workweeks by the Estimated Workweeks Value to yield his or
9 her estimated Individual Settlement Share that he or she may be eligible to receive
10 under the Settlement.¹³
11 b. After Final Approval of the Settlement, the Settlement Administrator will divide the
12 final Net Settlement Amount by the Workweeks of all Participating Class Members
13 to yield the “Final Workweeks Value,” and multiply each Participating Class
14 Member’s individual Workweeks by the Final Workweeks Value to yield his or her
15 Individual Settlement Share, which shall be paid from the Net Settlement Amount,
16 less applicable employee-side tax withholdings.¹⁴

17 Each Participating Class Members’ Individual Settlement Share will be allocated as
18 follows: one-third (1/3) as wages (the “wage portion”), which will be reported on an IRS Form
19 W-2; and the remaining two-thirds (2/3) as penalties and interest, which will be reported on an
20 IRS Form 1099.¹⁵ The Settlement Administrator will withhold the employee’s share of taxes
21 and withholdings with respect to the wage portion of each Individual Settlement Share and issue
22 checks to Participating Class Members for their Individual Settlement Payments (i.e., payment
23 of their Individual Settlement Share net of these taxes and withholdings).¹⁶ Defendant will pay
24 the employer’s share of payroll taxes with respect to the wage portion of Individual Settlement
25 Shares separately and in addition to the Gross Settlement Amount.¹⁷

26 The Individual Settlement Payments checks issued to Participating Class Members will
27 be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁸
28 Individual Settlement Payments checks that are not negotiated within the 180-day period will

¹² Settlement Agreement, § 9.gg.; see also, §§ 13 – 16.

¹³ *Id.*, § 17(a).

¹⁴ *Id.*, § 17(b).

¹⁵ *Id.*, § 28.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*, § 22.

1 be cancelled.¹⁹ The funds from associated with such cancelled checks will be transmitted to the
2 Unclaimed Property Fund maintained by the California State Controller's Office.²⁰

3 Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify
4 the Settlement Administrator in writing by sending a letter indicating that they want to exclude
5 themselves.²¹ To be timely, the Class Member must mail a written Request for Exclusion to the
6 Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from
7 the initial mailing of the Notice of Settlement ("Response Deadline").²² A request for exclusion
8 must: (a) contain the case name and number of the Class Action, (b) be signed by the Class
9 Member, (c) contain the full name, address, telephone number, and the last four digits of the
10 Social Security Number of the Class Member requesting exclusion, (d) clearly state that the
11 Class Member does not wish to be included in the settlement, and (e) be returned by mail to the
12 Settlement Administrator at the specified address, postmarked on or before the Response
13 Deadline.²³ Class Members who submit a valid and timely request for exclusion will not be
14 bound by the terms of the Settlement and Final Approval Order and Judgment.²⁴

15 Only Class Members who do not exclude themselves from the Settlement (i.e.,
16 Participating Class Members) have standing to object to the Settlement.²⁵ Participating Class
17 Members who wish to object to the Settlement must file with the Court, and serve the Settlement
18 Administrator with, a notice of objection on or before the Response Deadline.²⁶ The objection
19 must contain: (a) the case name and number of the Class Action; (b) the objector's full name,
20 signature, address, and telephone number, and the last four digits of his or her Social Security
21 number, (c) a written statement of all grounds for the objection accompanied by any legal
22 support for such objection (if any), and (d) copies of any papers, briefs, or other documents upon
23 which the objection is based (if any).²⁷

24 ¹⁹ *Ibid.*

25 ²⁰ *Ibid.*

26 ²¹ Settlement Agreement, § 23

27 ²² *Id.*, § 9.cc.

28 ²³ *Id.*, § 9.bb.

²⁴ *Id.*

²⁵ *Id.*, § 9.u.

²⁶ *Ibid.*

²⁷ *Ibid.*

Class Members who wish to dispute the number of Workweeks credited to them in their Notice of Settlement may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.²⁸ The letter must (a) contain the case name and number of the Class Action, (b) be signed by the Class Member, (c) contain the full name, address, telephone number, and last four digits of the Social Security Number of the disputing Class Member, (d) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her, (e) include information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct, and (f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁹

IV. 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

²⁸ Settlement Agreement, § 21.

²⁹ *Ibid.*

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).

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the

1 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
2 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
3 at 1027 (citation omitted).

4 The proponent of the settlement has the burden to show that it is fair and reasonable.
5 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
6 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
7 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
8 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
9 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
10 1151.

11 A. **The Settlement Resulted from Arm’s-Length Negotiations Based Upon**
12 **Extensive Investigation and Discovery.**

13 The Parties actively litigated the Action since it was commenced on February 4, 2020.
14 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
15 the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁰

16 Prior to engaging in mediation, Class Counsel conducted significant investigation and
17 formal and informal discovery regarding the facts of the case, including and not limited to, the
18 exchange, review, and analysis of thousands of pages of documents and data produced by
19 Defendant.³¹ The volume of data and documents that Class Counsel reviewed and analyzed
20 included and was not limited to: Plaintiff and other Class Members’ employment records, a
21 detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant's
22 Employee Handbook, company policy acknowledgements, internal memoranda, job
23 descriptions, Defendant's operations and employment practices, forms (including but not limited
24 to Authorization for Background Check, Acknowledgement of Receipt of Employee Handbook,
25 Acknowledgement of Guide to Meal and Rest Breaks, and Acknowledgement to Guide to
26 Attendance and Time Keeping, and the Employee Proprietary Information and Invention
27

28 ³⁰ Aiwazian Decl., ¶¶ 11-13.

³¹ *Id.*, ¶ 12.

Agreement), procedures (including but not limited to Defendant's Guide to Meal and Rest Period Breaks, Defendant's Guide to Attendance and Time Keeping, and How To Clock Time), and policies (including but not limited to Travel and Expense Policy), among other information and documents.³² Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³³ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.³⁴ Class Counsel prepared for and took the deposition of Defendant's Person Most Knowledgeable witness and prepared for and defended the deposition of Plaintiff.³⁵ Class Counsel also interviewed and obtained information from Plaintiff and other Class Members, including and not limited to the names of potential witnesses. Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, motion practice, discovery, *Belair-West* notice administration, and the production of documents and data prior to the mediation.³⁶ Class Counsel also drafted pleadings and Plaintiff's mediation brief, and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a respected mediator of complex wage and hour actions.³⁸ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁹ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁰ After conducting investigations, significant

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Aiwazian Decl., ¶ 11.

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶¶ 11, 16-18.

1 formal and informal discovery, extensive settlement negotiations, and with the aid of the
2 mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
3 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides
4 that would attend further litigation.⁴¹

5 The Settlement takes into account the strengths and weaknesses of each side's position
6 and the uncertainty of how the case might have concluded at certification and trial.⁴² The Parties
7 have had the opportunity to interview and obtain information from their respective witnesses.⁴³
8 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
9 the Class Members' employment with Defendant and performed significant research into the
10 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
11 rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto,
12 as well as facts discovered.⁴⁴ The Parties have reached the Settlement based on this large volume
13 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
14 employment class actions, including significant experience in California wage-and-hour
15 litigation.⁴⁵

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

17 The Settlement, which provides for a Gross Settlement Amount of one million five
18 hundred thousand dollars and no cents (\$1,500,000.00), represents a fair, adequate, and
19 reasonable resolution of the matter.⁴⁶ The Settlement was calculated using the information and
20 data uncovered during litigation, case investigation, as well as the formal and informal exchange
21 of information.⁴⁷ The Settlement takes into account the potential risks and rewards inherent in
22 any case and, in particular, in the case at issue.⁴⁸ Moreover, considering all of the facts and
23

24
25 ⁴¹ *Ibid.*

26 ⁴² *Ibid.*

27 ⁴³ *Ibid.*

28 ⁴⁴ Aiwazian Decl., ¶¶ 11-13 & 16-18.

⁴⁵ *Id.*, ¶¶ 6-7.

⁴⁶ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁷ *Id.*, ¶¶ 11-13.

⁴⁸ *Id.*, ¶¶ 11, 18, 19, & 21.

1 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
2 for the Class.⁴⁹

3 Assuming that the Attorneys' Fees and Attorneys' Costs, Enhancement Payment,
4 LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in
5 the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement
6 Amount that is currently estimated to be seven hundred seventy two thousand dollars and no
7 cents (\$772,000.00).⁵⁰ As discussed in Part III, *supra*, the entire Net Settlement Amount will
8 be fully paid out to the Participating Class Members, in accordance with the Settlement
9 Agreement. The amount of each Participating Class Member's Individual Settlement Share will
10 be calculated based on his or her Workweeks.⁵¹ There is no reason to doubt the fairness of the
11 proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even
12 at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis
13 [to warrant approval], particularly if recommended by experienced and competent class
14 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
15 127 F.Supp.2d 418, 429-30.

16 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
17 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵²
18 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
19 the recommendations into account, particularly if Class Counsel appears to be competent, and
20 has experience with this type of litigation, and investigation have been completed, as is the case
21 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
22 Settlement.

23 **C. The Settlement Is of Significant Value.**

24 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
25 conducted significant formal and informal discovery and exchanged thousands of pages of
26

27 ⁴⁹ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁵⁰ *Id.*, ¶ 14.

⁵¹ Settlement Agreement, § 17.

⁵² Aiwazian Decl., ¶¶ 11, 13, & 21.

documents, data, and information prior to mediation.⁵³ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁴ 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.⁵⁵

VI. 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.⁵⁶ 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, Plaintiff's 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 case. The Class is amenable to class certification for settlement purposes as discussed below.

///

///

⁵³ Aiwazian Decl., ¶¶ 11-13 & 18.

⁵⁴ *Id.*, ¶ 18.

⁵⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁶ Settlement Agreement, § 35.a.

1 **A. The Class Is Ascertainable and Sufficiently Numerous.**

2 “Ascertainability is required in order to give notice to putative class members as to whom
3 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
4 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
5 by describing a set of common characteristics sufficient to allow a member of that group to
6 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
7 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
8 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

9 This Action involves a class of approximately seven hundred sixteen (716) individuals.⁵⁷
10 This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
11 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as
12 joinder is not practical at that point). Further, all Class Members can and will be identified by
13 Defendant to the Settlement Administrator through a review of Defendant’s employment
14 records regarding hourly-paid or non-exempt employees in California during the Class Period.
15 As such, the Class is ascertainable and sufficiently numerous.

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

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

26 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
27 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
28

⁵⁷ Aiwazian Decl., ¶ 9.

Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Action and PAGA Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁸ Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages and associated premium pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁵⁹

Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁰ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶¹

Plaintiff maintains that the outcome of this litigation would be determined by Defendant’s alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

///

///

///

⁵⁸ Aiwazian Decl., ¶ 16.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND ATTORNEYS' COSTS

Class Counsel has litigated the matter for over a year, and was actively preparing the matter for class certification and trial.⁶² The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data⁶³ and also interviewed and obtained information from Plaintiff 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.⁶⁴ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁵

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁶

The Settlement establishes a Gross Settlement Amount of one million five hundred thousand dollars and no cents (\$1,500,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Attorneys' Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$525,000.00) and an amount not to exceed thirty thousand dollars and no cents (\$30,000.00) for costs and expenses.⁶⁷ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class

⁶² Aiwazian Decl., ¶¶ 11-13.

⁶³ *Id.*, ¶¶ 12 & 18.

⁶⁴ *Ibid.*

⁶⁵ *Id.*, ¶ 11.

⁶⁶ *Id.*, ¶¶ 6-7.

⁶⁷ Settlement Agreement, §§9.gg. and 13.

Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Notice of Settlement provides Class Members with information about the amount allocated toward the Attorneys' Fees and Attorneys' Costs, and that an award of the Attorneys' Fees and Attorneys' Costs will be sought, as provided for by the Settlement.⁶⁸

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

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

⁶⁸ Settlement Agreement, Exh. A.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower 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 has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁹

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Attorneys' Fees and Attorneys' 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.

VIII. THE PROPOSED NOTICE OF SETTLEMENT 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 Notice of Settlement⁷⁰ describes the Settlement, the deadlines and procedures to file and serve an objection to the Settlement, mail a request for exclusion from the

⁶⁹ Aiwazian Decl., ¶ 19.

⁷⁰ Settlement Agreement, Exh. A.

Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷¹

The proposed Notice of Settlement 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 of Settlement summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷² The proposed Notice of Settlement recognizes that the Court has not yet granted final approval of the settlement.⁷³ The proposed Notice of Settlement also appries the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.⁷⁴

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

IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will mail the Notice of Settlement to each Class Member by First-Class U.S. mail.⁷⁵ Any undeliverable Notice of Settlement that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Settlement Agreement, § 20.a.

1 be re-mailed to the forwarding address.⁷⁶ With respect to any undeliverable Notice of Settlement
2 returned on or before the Response Deadline without a forwarding address, the Settlement
3 Administrator will make reasonable efforts to obtain an updated mailing address, including but
4 not limited to conducting one skip-trace, and re-mail the Notice of Settlement to the Class
5 Member.⁷⁷ The Response Deadline to submit a request for exclusion, objection, or dispute
6 regarding Workweeks for Class Members to whom a Notice of Settlement is re-sent, after having
7 been returned as undeliverable to the Settlement Administrator, will be fifteen (15) calendar
8 days from the date of the re-mailing.⁷⁸ The Settlement Administrator will receive and process
9 requests for exclusion, objections, and any disputes regarding Workweeks.⁷⁹

10 The Settlement Administrator will calculate the amounts of the Individual Settlement
11 Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage
12 portion of Individual Settlement Shares; mail the Individual Settlement Payments checks to
13 Participating Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys'
14 Fees and Attorneys' Costs, Enhancement Payment, and LWDA Payment; and perform such
15 other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁰ The Settlement
16 Administration Costs are currently estimated to be thirteen thousand dollars and no cents
17 (\$13,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the
18 Court.⁸¹

19 Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix Settlement
20 Administrators as the Settlement Administrator and direct the mailing of the Notice of
21 Settlement to the Class Members in the manner outlined and based on the proposed deadlines
22 as described herein and set forth in the Settlement Agreement.

23 ///

24 ///

25
26 ⁷⁶ Settlement Agreement, § 20.b.

27 ⁷⁷ *Ibid.*

28 ⁷⁸ *Ibid.*

⁷⁹ *Id.*, § 15.

⁸⁰ *Ibid.*; Aiwazian Decl., ¶ 15.

⁸¹ Settlement Agreement, § 15.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice of Settlement, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸²

Within twenty-eight (28) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security Number; (4) dates worked for Defendant during the Class Period in a non-exempt/hourly-paid position and (5) such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively, "Class List").⁸³

Within fourteen (14) calendar days of receipt of the Class List from Defendant, the Settlement Administrator will mail the Notice of Settlement to the Class Members via First-Class U.S. Mail.⁸⁴ If a Notice of Settlement is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Notice of Settlement to the forwarding address.⁸⁵ If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Notice of Settlement to the Class Member.⁸⁶ Class Members will have until the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding Workweeks, and/or to file and serve an objection.⁸⁷

Defendant will make a one-time deposit of the Gross Settlement Amount into a qualified settlement account ("QSF") to be established by the Settlement Administrator, within thirty (30) business days of the Effective Date.⁸⁸ Within seven (7) calendar days of the funding of the Gross Settlement Amount, the Settlement Administrator will issue payments due under the

⁸² Settlement Agreement, § 20.a.

⁸³ *Id.*, §§ 9.d & 19.

⁸⁴ *Id.*, § 20.a

⁸⁵ *Id.*

⁸⁶ *Id.*, § 20.b.

⁸⁷ *Id.*, § 9.cc.

⁸⁸ *Id.*, § 12.

Settlement and approved by the Court, as follows: (1) Individual Settlement Payments to Participating Class Members; (2) Enhancement Payment to Plaintiff; (3) Attorneys' Fees and Attorneys' Costs to Class Counsel; (4) LWDA Payment to the LWDA; and (5) Settlement Administration Costs to itself.⁸⁹

The Individual Settlement Payments checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁰ Checks that are not negotiated within the 180-day period will be cancelled.⁹¹ The funds associated with such cancelled checks will be transmitted to the Unclaimed Property Fund maintained by the California State Controller's Office.⁹²

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff.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 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 Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing

⁸⁹ Settlement Agreement, § 12.

⁹⁰ *Id.*, § 22.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Id.*, §§ 14 & 35.c.

the facts and evidence necessary to attempt to prove the allegations.⁹⁴ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.⁹⁵ For example, Plaintiff prepared for and attended a deposition, and reviewed her transcripts thereafter.⁹⁶ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for her services on behalf of the Class, in addition to her Individual Settlement Payments.

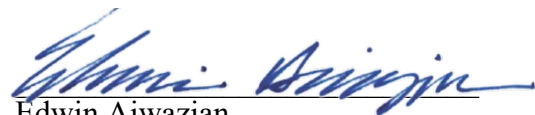
XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Margaux V. Roussel of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Meagan Hernandez as Class Representative; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Attorneys' Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Costs; approve the proposed Notice of Settlement; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately mid-April 2022; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 5, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff MEAGAN HERNANDEZ

⁹⁴ Aiwazian Decl., ¶ 20; Declaration of Meagan Hernandez in Support of Plaintiff Meagan Hernandez's Motion for Preliminary Approval of Class Action Settlement ("Hernandez Decl."), ¶ 4.

⁹⁵ Aiwazian Decl., ¶ 20; Hernandez Decl., ¶¶ 4-6.

⁹⁶ Aiwazian Decl., ¶ 20; Hernandez Decl., ¶ 5.