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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JEFFREY CESARIO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

HARTWELL CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 30-2018-00976928-CU-OE-CXC

Honorable Peter J. Wilson
Department CX102

CLASS ACTION

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

[Plaintiff's Motion for Preliminary Approval
of Class Action Settlement; Declarations of
Proposed Class Counsel (Edwin Aiwazian);
Declaration of Proposed Class Representative
(Jeffrey Cesario); and [Proposed] Order filed
concurrently herewith.]

Hearing Date: July 16
~~June 11~~, 2020
Hearing Time: 2:00 p.m.
Department: CX102

Complaint Filed: March 1, 2018
Trial Date: None Set

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

PLEASE TAKE NOTICE that on a date convenient for the Court, or on ~~XXXX~~ July 16, 2020, at 2:00 p.m. before the Honorable Peter J. Wilson in Department CX102 of the Orange County Superior Court, Civil Complex Center, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Jeffrey Cesario (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting Plaintiff Cesario leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“First Amended Complaint”) which is attached as “EXHIBIT A” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “EXHIBIT 1” to the Declaration of Edwin Aiwasian, 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 (“PAGA Payment”), Attorneys’ Fees and Litigation Expenses to Class Counsel, Service Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Jeffrey Cesario as Class Representative;
- Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- Approving the Notice of Class Action Settlement (“Notice”), attached as “EXHIBIT A” to the Settlement Agreement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;

- Approving Phoenix Class Action Administration Solutions as 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 Attorneys' Fees and Litigation Expenses, the Service Payment to Plaintiff, and Settlement Administration Costs.

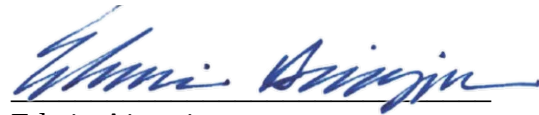
This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and Proposed Class Representative (Jeffrey Cesario) 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: April 9, 2020

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jeffrey Cesario (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint 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 Hartwell Corporation (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this matter for a Maximum Settlement Consideration of three million six hundred thousand dollars (\$3,600,000.00).¹ The Maximum Settlement Consideration includes the following: (1) Individual Settlement Shares² to Settlement Class Members (inclusive of their share of twenty-five percent (25%) of the civil penalties under the Private Attorneys General Act, Cal. Labor Code §2698 *et seq.* (“PAGA Payment”); (2) Service Payment³ to Plaintiff; (3) attorneys’ fees and reimbursement of actual litigation costs and expenses to Class Counsel (“Attorneys’ Fees” and “Litigation Expenses”); (4) the California Labor and Workforce Development Agency’s (“LWDA”) seventy-five percent (75%) share of the PAGA Payment (“LWDA Payment”); and (5) Settlement Administration Costs to Settlement Administrator. Defendant’s legal fees and costs or expenses incurred in the lawsuit and its share of any applicable payroll taxes with respect to the wage-portion of the Individual Settlement Shares provided under this Settlement (“Employer Taxes”) will paid by Defendant separately and in addition to the Maximum Settlement Consideration.⁴

¹ Joint Stipulation of Class Action and PAGA Settlement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Aiwazian Decl.”) §1.1.15. Maximum Settlement Consideration means the maximum amount that Defendant will pay under the terms of this Settlement (not including employer’s side payroll taxes) of Three Million Six Hundred Thousand Dollars (\$3,600,000).

² Settlement Agreement § 6.6.1. “Individual Settlement Share” means each Settlement Class Member’s *pro rata* share of his or her portion of the Net Settlement Consideration.

³ Settlement Agreement § 1.1.26. “Service Payment” means the payment of up to twelve thousand dollars (\$12,000) to the Class Representative.

⁴ *Id.*, §§ 6.6.1 through 6.4.

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

3 All individuals employed by Defendant within the State of
4 California in an hourly, non-exempt position at any time during the
5 period from March 1, 2014 through the date on which the Court
6 grants preliminary approval of the Settlement (“Class” or “Class
7 Members”).⁵

8 Class Members who do not opt out of the Settlement by submitting a timely and valid
9 written request to be excluded from the Settlement (“Request for Exclusion”)⁶ (“Settlement
10 Class Members”) will receive a *pro rata* share of the Net Settlement Consideration based on the
11 gross wages he or she earned during the Class Period⁷ as a non-exempt employee of Defendant
12 in California (“Gross Earned Wages”) in comparison with the Gross Earned Wages of all
13 Settlement Class Members, multiplied by the Net Settlement Consideration.⁸ As of April 7, 2020
14 there were approximately 497 Class Members.⁹ The Settlement resolves Plaintiff’s and
15 Settlement Class Members’ Released Claims against Released Parties.¹⁰

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

17 Defendant designs, develops, and manufactures latches and latching systems for
18 commercial and military aircraft applications. Plaintiff Jeffrey Cesario is a former employee of
19 Defendant.

20 On March 1, 2018, Plaintiff filed a Class Action Complaint for Damages in Superior
21 Court of the State of California, County of Orange, Case No. 30-2018-00976928-CU-OE-CXC
22 (the “Original Complaint”). On April 16, 2018, Defendant filed an Answer to Plaintiff’s Original
23 Complaint.

24 ///

25 ⁵ *Id.*, § 1.1.2.

26 ⁶ *Id.*, §§ 1.1.19 & 8.8.5.

27 ⁷ *Id.*, § 1.1.5. “Class Period” means the period from March 1, 2014 through the date of preliminary approval is
28 granted of the Settlement.

⁸ *Id.*, §6.6.2.

⁹ Aiwazian Decl., ¶ 9.

¹⁰ See Settlement Agreement, §10.10.1 for the full scope of the “Released Claims,” and for the definition of the
“Released Parties.”

1 On April 26, 2018, Plaintiff propounded Form Interrogatories, Special Interrogatories,
2 and Requests for Production of Documents on Defendant, and noticed the deposition of
3 Defendant's Persons Most Knowledgeable. On June 18, 2018, Defendant served responses to
4 the discovery propounded by Plaintiff.

5 On May 21, 2018, and May 22, 2018, Plaintiff again noticed the depositions of
6 Defendant's Persons Most Knowledgeable. Thereafter, on June 22, 2018, Plaintiff took the
7 deposition of Defendant's Person Most Knowledgeable.

8 On October 11, 2018, Plaintiff filed the Motion to Compel Defendant to Provide Further
9 Responses to Plaintiff's Requests for Production of Documents and Request for Monetary
10 Sanctions ("Motion to Compel"). On November 14, 2018, Defendant filed an Opposition to the
11 Motion to Compel. On November 15, 2018, the Parties informally resolved the discovery
12 dispute and Plaintiff withdrew the Motion to Compel and filed the Notice of Withdrawal of
13 Motion.

14 On March 31, 2020, Plaintiff provided written notice by online submission to the LWDA,
15 and by U.S. Certified Mail to Defendant, of the California Labor Code he alleges have been
16 violated, including the facts and theories to support the alleged violations ("PAGA Notice").
17 The sixty-five (65) calendar day waiting period for Plaintiff to receive a response from LWDA
18 expires on June 4, 2020.

19 Plaintiff's core allegation is that Defendant has violated the California Labor Code by
20 engaging in a uniform practice and procedure, with respect to Plaintiff and Class Members, of,
21 *inter alia*, failing to pay all regular, overtime, and minimum wages due and owing (including,
22 *inter alia*, due to failure to correctly calculate the overtime rate of pay), failing to provide
23 compliant meal period and rest periods and associated premium pay, failing to timely pay wages
24 during employment and upon termination, failing to provide compliant wage statements, failing
25 to maintain requisite payroll records, and failing to reimburse necessary business expenses, and
26 that Defendant thereby engaged in unfair business practices under California Business and
27 Professions Code and owes penalties recoverable under the Private Attorneys General Act,
28 California Labor Code section 2698, et seq. ("PAGA"). Plaintiff contends that he and Class

Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, civil penalties pursuant to PAGA), and attorneys' fees.

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Lawsuit¹¹, and further denies that the lawsuit is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

After extensive investigation into the facts of the case and the veracity, strength, scope and value of the claims, on April 9, 2019, the Parties participated in formal mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation and proposal, the Parties reached the Settlement described herein to resolve the Lawsuit.

III. REQUEST FOR LEAVE TO FILE AMENDED CONSOLIDATED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff Cesario to file an amended complaint in the lawsuit in order to, *inter alia*, add an additional cause of action for PAGA claims, and for the purposes of resolution of the Lawsuit.¹² As such, Plaintiff Cesario respectfully requests leave to file the First Amended Complaint so that the operative complaint in this Lawsuit formally reflects the allegations that have been investigated, litigated, mediated, and ultimately settled by the Parties, and so that the terms of the Settlement may be effectuated.¹³

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Maximum Settlement Consideration of three million six hundred thousand dollars (\$3,600,000.00) to resolve the Released Claims of Plaintiff and Settlement Class Members with respect to the Released Parties.¹⁴ Subject to approval by the Court, the Net Settlement Consideration will be calculated

¹¹ *Id.*, §1.1.12. "Lawsuit" means the civil action entitled *Jeffrey Cesario v. Hartwell Corporation*, Case No. 30-2018-00976928-CU-OE-CXC, pending in the Superior Court of the State of California, County of Orange. Also referred to as "Original Complaint."

¹² Aiwasian Decl., ¶ 8.

¹³ Aiwasian Decl., ¶ 8.

¹⁴ Settlement Agreement, §1.1.15 & § 6.6.1.

by deducting the following amounts from the Maximum Settlement Consideration: (1) Attorneys' Fees of up to thirty-five percent (35%) of the Maximum Settlement Consideration (i.e., \$1,260,000 out of \$3,600,000), (2) and Litigation Expenses of up to twenty eight thousand dollars (\$28,000) to Class Counsel; (3) Service Payment of up to twelve thousand dollars (\$12,000) to Plaintiff; (4) LWDA Payment in the amount of two hundred and six thousand two hundred fifty dollars (\$206,250) (i.e., 75% of the PAGA Payment) to the LWDA; and (5) Settlement Administration Costs, which are currently estimated to be up to ten thousand dollars (\$10,000) to the Settlement Administrator.¹⁵ The Parties have agreed to retain Phoenix Class Action Administration Solutions ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.¹⁶

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the available Net Settlement Consideration ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows: each Settlement Class Member's share will be based on the ratio of his or her Gross Earned Wages, in comparison with the Gross Earned Wages of all Settlement Class Members, multiplied by the Net Settlement Consideration.¹⁷

Each Individual Settlement Share will be allocated as follows: one-fourth (1/4) of each Individual Settlement Share constitutes wages (the "wages portion"), which will be reported on an IRS Form W-2; the remaining three-fourths (3/4) will constitute non-wages such as penalties and interest, which will be reported on an IRS Form 1099.¹⁸ Settlement Class Members will be issued payment of their Individual Settlement Share checks after reduction for employee's share of taxes and withholdings with respect to the wages portion of their Individual Settlement Share.¹⁹

The Individual Settlement Share checks issued to Settlement Class Members will remain

¹⁵ Settlement Agreement, §§ 1.1.1; 1.1.4; 1.1.13; 1.1.26; 1.1.27 and §§ 6.6.4 & 7.

¹⁶ *Id.* §§ 6.6.2 & 8.8.1 through 8.8.8.

¹⁷ *Id.*, § 6.6.2.

¹⁸ *Id.* § 6.6.3.

¹⁹ *Ibid.*

negotiable for one hundred eighty (180) calendar days from the date of mailing.²⁰ If a Settlement Class Member does not negotiate his or her settlement check, within five (5) business days following ninety (90) calendar days from the date of mailing, the Settlement Administrator will mail a reminder postcard to the Settlement Class Member, advising that the check will expire after the 180-day period.²¹ Funds associated with checks that have not been cashed or negotiated within the 180-day period will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, for the benefit of the Settlement Class Members who did not cash their checks, until such time that they claim their property.²²

A Class Member who wishes to opt out of the Settlement must submit a Request for Exclusion from the Settlement to the Settlement Administrator.²³ To be timely, the Class Member must submit a Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is thirty (30) calendar days after the Settlement Administrator mails the Notice to the Class (“Response Deadline”).²⁴ In the case of a re-mailed Notice, the Response Deadline will be extended by twenty (20) calendar days.²⁵ A Request for Exclusion from the Settlement must: (1)) state the case name and number of the Lawsuit; (2) state the Class Member’s full name, address, telephone number, and the last four digits of his/her Social Security number; (3) clearly state that the Class Member intends to Opt Out of the Settlement; (4) be signed by the Class Member or his or her lawful representative; (5) be mailed to the Settlement Administrator and postmarked no later than the Response Deadline.²⁶ Any Class Member who requests to be excluded from the Settlement will not be entitled to any recovery under the Settlement, and will not be bound by the terms of the Settlement.²⁷ Class Members who fail to submit a valid and timely written Request for Exclusion on or before the applicable

²⁰ Settlement Agreement, § 9.9.4.

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.* § 8.8.5.

²⁴ *Id.* §§ 1.1.25; 8.8.5 & 8.8.7.

²⁵ *Id.*, § 8.8.7.

²⁶ *Id.* § 8.8.5.

²⁷ *Ibid.*

Response Deadline will be deemed a Settlement Class Member, will be issued payment of his or her Individual Settlement Share under the terms of this Settlement, and will be bound by all terms and conditions of the Settlement and any final judgment entered in this lawsuit if the Settlement is approved by the Court.²⁸

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) can object to the Settlement.²⁹ Settlement Class Members who wish to object to the Settlement must submit a written objection and supporting papers (“Objection”) to the Settlement Administrator by U.S. mail on or before the Response Deadline.³⁰ The Class Member must submit a written Objection to the Settlement Administrator. To be complete and timely, the Objection must: (1) state the case name and number of the Lawsuit; (2) state the Settlement Class Member’s full name, address, telephone number, and the last four digits of his/her Social Security number; (3) if the Settlement Class Member is represented by counsel, state the contact information of said counsel; (4) contain the word “objection” and/or “object” and describe, in clear and concise terms, the Settlement Class Member’s objection and the legal and factual arguments supporting the objection; (5) list witness(es) the objector may call to testify at the Final Approval Hearing; (6) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; (7) be signed by the Settlement Class Member or his/her lawful representative; and (8) be mailed to the Settlement Administrator and postmarked no later than the Response Deadline.³¹

Class Members who wish to dispute the Gross Earned Wages credited to them and listed on their Notice must submit a timely and complete written dispute to the Settlement Administrator (“Dispute”) that must: (1) state the case name and number of the Lawsuit; (2) state the Class Member’s full name, address, telephone number, and last four digits of his/her Social Security number; (3) clearly state the amount of Gross Earned Wages that the Class Member contends should be credited to him/her (4) be signed by the Class Member or his/her

²⁸ *Ibid.*

²⁹ *Id.*, § 8.8.4.

³⁰ *Ibid.*

³¹ *Ibid.*

lawful representative; and (5) be mailed to the Settlement Administrator and postmarked no later than the Response Deadline³²

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 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).

³² *Id.*, § 6.6.2.

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

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

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

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

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

3 The Parties actively litigated this matter since it commenced on March 1, 2018. Both
4 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
5 claims, and Class Counsel was actively preparing the lawsuit for class certification.³³

6 Prior to engaging in mediation, Plaintiff conducted significant investigation regarding
7 the facts of the case and formal and informal discovery, including and not limited to, the
8 exchange, review, and analysis of tens of thousands of pages of documents and data produced
9 by Defendant.³⁴ Plaintiff propounded Form Interrogatories, (Set One), Special Interrogatories
10 (Set One) and (Set Two), Requests for Production of Documents (Set One), and noticed and
11 took the deposition of Defendant’s person most knowledgeable at Defendant Hartwell
12 Corporation. Plaintiff also reviewed Defendant’s responses to Plaintiff’s discovery, including:
13 Defendant’s responses to Plaintiff’s Form Interrogatories (Set 1), Defendant’s responses to
14 Plaintiff’s Special Interrogatories (Set 1) and (Set Two), and Defendant’s responses to Plaintiff’s
15 Request for Production of Documents (Set 1). The volume of data and documents that Class
16 Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment
17 records; Class Members’ time and pay data (such as: time punch records, payroll data, and class
18 information), Defendant’s Employee Handbook (including: Acknowledgement Form of
19 Employee Handbook), agreements internal memoranda, forms, checklists, and Defendant’s
20 operations and employment practices, procedures, and policies, (such as: Acknowledgement and
21 Receipt of Attendance Policy), among other information and documents.³⁵ Class Counsel
22 interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.
23 Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues
24 relating to the pleadings, discovery, and the production of documents and data prior to
25 mediation.³⁶ Class Counsel also drafted Plaintiff’s mediation brief, and prepared for and
26

27 ³³ Aiwazian Decl., ¶¶ 11-13.

28 ³⁴ Aiwazian Decl., ¶ 12.

³⁵ Aiwazian Decl., ¶ 12.

³⁶ *Ibid.*

attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁸ Prior to and during the mediation and settlement discussions, the Parties exchanged class information, engaged in an extensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁹

During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ 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.⁴¹ As a result of Plaintiff and Class Counsel's extensive efforts, Defendant made many changes to its wage and hour policies and practices.⁴² After conducting investigations and exchange of information, extensive settlement negotiations and with the aid of the mediator's evaluations, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴³

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and/or trial.⁴⁴ The Parties have had the opportunity to interview and obtain information from their respective

³⁷ Aiwazian Decl., ¶ 12.

³⁸ Aiwazian Decl., ¶ 11.

³⁹ Aiwazian Decl., ¶ 11.

⁴⁰ Aiwazian Decl., ¶ 11.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Aiwazian Decl., ¶ 18.

witnesses.⁴⁵ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered.⁴⁶ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁷

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

The Settlement, which provides for a Maximum Settlement Consideration of three million six hundred thousand dollars (\$3,600,000), represents a fair, adequate, and reasonable resolution of this matter.⁴⁸ The Settlement was calculated using the information and data uncovered during the litigation, case investigation, as well as the informal exchange of information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this action.⁵⁰ Moreover, considering all of the facts and circumstances of the action, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵¹

Assuming that the Attorneys' Fees, Litigation Expenses, Service Payment, LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Consideration that is currently estimated to be two million, eighty three thousand seven hundred fifty dollars (\$2,083,750).⁵² As discussed in Part III, *supra*, the entire Net Settlement Consideration will be paid out to the Settlement Class Members in accordance with the Settlement. The amount of each Settlement Class Member's Individual Settlement Share will

⁴⁵ *Ibid.*

⁴⁶ Aiwazian Decl., ¶¶ 11-13 & 16-18.

⁴⁷ Aiwazian Decl., ¶¶ 6-7.

⁴⁸ Aiwazian Decl., ¶¶ 11, 13, 14 & 21.

⁴⁹ Aiwazian Decl., ¶¶ 11-13.

⁵⁰ Aiwazian Decl., ¶¶ 16-18.

⁵¹ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁵² Aiwazian Decl., ¶ 14.

1 be calculated based on his or her Gross Earned Wages.⁵³ The Parties agree that Gross Earned
2 Wages is a fair basis for determining a Settlement Class Member's Individual Settlement Share.

3 There is no reason to doubt the fairness of the proposed plan of allocation of the
4 settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n
5 allocation formula need only have a reasonable, rational basis [to warrant approval], particularly
6 if recommended by experienced and competent class counsel." *In re American Bank Note*
7 *Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

8 In light of the foregoing considerations, Class Counsel believe that the Settlement as a
9 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁴
10 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
11 the recommendations into account, particularly if Class Counsel appear to be competent, and
12 have experience with this type of litigation, and significant discovery and investigation have
13 been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant
14 preliminary approval of the Settlement.

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

16 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
17 exchanged and reviewed tens of thousands of pages of documents, data, and information prior
18 to the mediation.⁵⁵ The discovery and information that Class Counsel obtained from Defendant
19 and through other sources allowed Class Counsel to develop valuation models in order to
20 evaluate the potential value and merit of the claims, and to perform a complete evaluation of
21 Defendant's defenses thereto.⁵⁶ As outlined in the Declaration of Edwin Aiwazian, Class
22 Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to
23 entering into the Settlement.⁵⁷

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26 ⁵³ Settlement Agreement, § 6.6.2.

27 ⁵⁴ Aiwazian Decl., ¶¶ 11, 12, 13, & 21.

28 ⁵⁵ Aiwazian Decl., ¶¶ 11-13 & 18.

⁵⁶ *Id.*, ¶ 18.

⁵⁷ *Id.*, ¶¶ 11-13 & 16-18.

VI. **CONDITIONAL CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES 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.⁵⁸ 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 so numerous as to make it impracticable to join all Class Members. Plaintiff asserts, and Defendant agrees for the limited purpose of settlement, that there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiff asserts that his claims are typical of the claims of 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.

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

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

⁵⁸ Settlement Agreement, § 5.

This action involves a class of approximately 497 individuals.⁵⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time from March 1, 2014 through the date on which the Court grants Preliminary Approval of the Settlement. As such, the Class is ascertainable and sufficiently numerous.

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

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

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155 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, Plaintiff asserts that common issues of fact and law predominate as to each of the claims alleged and asserted in the lawsuit. Based on the documents and information obtained through informal exchange of information in this case, Plaintiff contends that all of the hourly-

⁵⁹ Aiwazian Decl., ¶ 9.

1 paid or non-exempt individuals employed by Defendant in California were subject to the same
2 or similar job duties and uniform operations and employment practices, policies, and procedures
3 during the time period at issue.⁶⁰ Plaintiff's claims arise from Defendant's alleged uniform
4 policy and systematic scheme, with respect to Plaintiff and Class Members, of, *inter alia*, failing
5 to properly pay overtime and minimum wages for all hours worked, failing to provide compliant
6 meal and rest periods and associated premium pay, failing to timely pay wages during and after
7 employment, failing to provide compliant wage statements, failing to maintain requisite payroll
8 records, and failing to reimburse necessary business-related expenses.⁶¹

9 Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect
10 to Plaintiff and Class Members were substantially the same during the time period at issue.⁶² As
11 a result, Plaintiff claims that all Class Members were uniformly not paid all compensation due
12 to them from Defendant during the time period at issue.⁶³

13 Plaintiff maintains that the outcome of this litigation would be determined by
14 Defendant's alleged uniform operations and employment policies and procedures that applied
15 across all current and former hourly-paid or non-exempt individuals employed by Defendant in
16 California during the relevant time period. While Defendant disputes that class certification
17 would be appropriate if litigation in this matter continued, Defendant does not dispute
18 conditional certification of the Class for settlement purposes only. Accordingly, the Court
19 should certify the Class for settlement purposes only.

20 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
21 **ATTORNEYS' FEES**

22 Class Counsel have pursued this matter since filing the Lawsuit on March 1, 2018 and
23 was actively preparing for class certification and trial.⁶⁴ The ongoing work has been extensive,
24 demanding, and ultimately successful in achieving a substantial settlement resolution. Plaintiff
25 conducted significant investigations and formal and informal discovery regarding the facts of

26 ⁶⁰ Aiwazian Decl., ¶ 16.

27 ⁶¹ Aiwazian Decl., ¶ 16.

28 ⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Id.*, ¶¶ 11-13.

the case, including and not limited to, the exchange, review, and analysis of tens of thousands of pages of documents and data produced by Defendant.⁶⁵ Class Counsel 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 the mediation.⁶⁶ Counsel for the Parties also undertook extensive settlement discussions, and participated in a full-day formal mediation session.⁶⁷

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁸

The Settlement establishes a Maximum Settlement Consideration of three million six hundred thousand dollars (\$3,600,000). The Settlement provides that Class Counsel may apply to the Court for Attorneys' Fees in the amount up to thirty-five percent (35%) of the Maximum Settlement Consideration (i.e., \$1,260,000). It also provides that Class Counsel may petition the Court for Litigation Expenses not to exceed twenty-eight thousand dollars (\$28,000) for reimbursement of actual litigation costs and expenses.⁶⁹

Class Counsel contemplates seeking Attorneys' Fees in the amount of one million two hundred and sixty thousand dollars (\$1,260,000). The Attorneys' Fees provided by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating this case; (2) the extensive time, effort and expense that Class Counsel dedicated to the case; (3) the skills and determination that Class 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 their time and efforts to this matter. The proposed Notice informs Class

⁶⁵ *Id.*, ¶ 12.

⁶⁶ Aiwazian Decl., ¶¶ 12 & 18.

⁶⁷ *Id.*, ¶ 11.

⁶⁸ *Id.*, ¶¶ 6-7.

⁶⁹ Settlement Agreement, §§ 1.1.1; 1.1.13; 1.1.15; and 1.1.16.

Members that the Attorneys' Fees and Litigation Expense will be sought, as provided for by the Settlement.⁷⁰

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 [...] method survives in California." *Id.* (internal quotation marks omitted).

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 AntitSimpluris 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.*

⁷⁰ Aiwazian Decl., ¶ 15, 18-21.

(S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹

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 Attorneys’ Fees and Litigation Expenses 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 is well within the range of reasonableness.

VIII. THE PROPOSED NOTICE IS ADEQUATE.

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

The proposed Notice⁷² describes the Settlement, the deadlines and procedures to submit an Objection, Request for Exclusion, and/or Dispute, and the date and time set for the Final Approval Hearing.⁷³ The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁴ The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁵ The proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Shares are calculated and the amount of Gross Earned Wages credited to them.⁷⁶

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members

⁷¹ Aiwazian Decl., ¶ 19.

⁷² Settlement Agreement, Exh. 1.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004).

The proposed Notice 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.

IX. APPOINTMENT OF PHOENIX CLASS ACTION SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Class Action Administration Solutions (hereinafter, “Phoenix” or “Settlement Administrator”) to administer the Settlement.

The Settlement Administrator will mail the Notice to all Class Members by First Class U.S. mail.⁷⁷ Prior to mailing the Notice to the Class Members, the Settlement Administrator will run the Last Known Address and Social Security Numbers of Class Members through the United States National Change of Address (“NCOA”) and utilize other skip trace procedures to verify each Class Member’s address.⁷⁸ If a Notice is returned to the Settlement Administrator without a forwarding address before the Response Deadline, the Settlement Administrator will perform a skip trace search to locate a more current address.⁷⁹ The Settlement Administrator will receive Requests for Exclusion to the Settlement, Objections, and Disputes.⁸⁰

The Settlement Administrator will be responsible for: (a) calculating each Class Members’ Gross Earned Wages; (b) printing, and mailing the Notice to the Class Members; (c) receiving and reporting the Objection, Requests for Exclusion, and Disputes; (d) processing and mailing payments to the Class Representative, Class Counsel, LWDA, and Settlement Class Members; (e) distributing tax forms; and (f) other tasks as the Parties mutually agree or the

⁷⁷ Settlement Agreement, § 8.8.2.

⁷⁸ *Id.* at § 8.8.3.

⁷⁹ *Id.*, § 8.8.7.

⁸⁰ *Id.*, §§ 6.6.2; 8.8.4 & 8.8.5.

1 Court orders the Settlement Administrator to perform.⁸¹ The Settlement Administration Costs
2 are currently estimated not to exceed ten thousand dollars (\$10,000) and will be paid out of the
3 Maximum Settlement Consideration, subject to approval by the Court.⁸²

4 Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix as the
5 Settlement Administrator and direct the mailing of the Notice to the Class Members in the
6 manner outlined and based on the proposed deadlines as described herein and set forth in the
7 Settlement Agreement.

8 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

9 At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for
10 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
11 entails mailing of the Notice, in the form approved by the Court, to all known and reasonably
12 ascertainable Class Members based on Defendant's records.⁸³

13 Within thirty (30) calendar days from when the First Amended Complaint is deemed
14 filed, or the date on which the Court grants preliminary approval of the Settlement, whichever
15 is later,⁸⁴ Defendant will provide the Settlement Administrator with the following information
16 for each Class Member: (1) full name; (2) Last Known Address; (3) last known telephone
17 number; (4) Social Security number; and (5) dates of employment with Defendant in an hourly,
18 non-exempt position, and (6) the Gross Earned Wages (collectively, "Class Information").⁸⁵

19 Not later than fifteen (15) calendar days of receipt of the Class Information, the
20 Settlement Administrator will mail the Notice to the Class Members via First Class U.S. Mail.⁸⁶
21 Class Members will have thirty (30) calendar days from the date the Settlement Administrator
22 mails the Notice (i.e., Response Deadline) to mail and postmark a Request for Exclusion,
23 Objection, and/or Dispute regarding Gross Earned Wages to the Settlement Administrator.⁸⁷

24 ⁸¹ Settlement Agreement, §§ 6.6.2; 8.8.2; 8.8.3; 8.8.4; 9.9.3; 9.9.7; see also, Aiwazian Decl., ¶ 15.

25 ⁸² Settlement Agreement, § 1.1.27.

26 ⁸³ Settlement Agreement, §§ 8.8.1 & 8.8.2.

27 ⁸⁴ The Parties stipulate to the filing of the First Amended Complaint which cannot be filed until the expiration of
the 65-day waiting period for PAGA Notice has lapsed (i.e., June 4, 2020), pursuant to California Labor Code
§2698 et. seq.

28 ⁸⁵ *Id.* § 8.8.1.

⁸⁶ *Id.*, § 8.8.2.

⁸⁷ *Id.*, §§ 1.1.25.

The Response Deadline will be extended by twenty (20) calendar days from the original Response Deadline for any re-mailed Notices.⁸⁸

Within thirty (30) calendar days of the Effective Date, Defendant will provide the Maximum Settlement Consideration to the Settlement Administrator.⁸⁹ No later than forty five (45) calendar days following the Effective Date, the Settlement Administrator will distribute the Court-approved payments under the Settlement.⁹⁰

The Individual Settlement Share checks issued to Settlement Class Members will remain negotiable for one hundred eighty (180) calendar days from the date of mailing.⁹¹ Within five (5) business days following ninety (90) calendar days from the initial date of mailing, the Settlement Administrator will mail a reminder postcard to Settlement Class Members who have not yet deposited or cashed their Individual Settlement Share, advising them that the check will expire after the 180-day period.⁹² Checks that are not cashed or negotiated within the 180-day period will be cancelled, and all funds associated with such canceled checks will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, for the benefit of the Settlement Class Members who did not cash their checks until such time that they claim their property.⁹³

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE AWARD

Plaintiff Jeffrey Cesario respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the request for a Service Payment to him in an amount of up to twelve thousand dollars (\$12,000) as provided for by the Settlement.⁹⁴ It is within the Court's discretion to award payment to a class representative for his 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

⁸⁸ *Ibid.*

⁸⁹ *Id.*, § 9.9.2. See *id.*, § 1.1.10 for the definition of "Effective Date."

⁹⁰ *Id.*, § 9.9.3.

⁹¹ Settlement Agreement, § 9.9.4.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*, §§ 1.1.26 & 6.6.4.

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 Service Payment to Plaintiff, provided for by the Settlement, is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹⁶ Accordingly, it is appropriate and just for Plaintiff to receive a reasonable Service Payment for his services on behalf of the Class, in addition to his Individual Settlement Share.

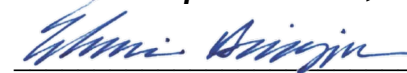
XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint Lawyers for Justice, PC as Class Counsel; preliminarily appoint Plaintiff Jeffrey Cesario as Class Representative; appoint Phoenix as Settlement Administrator; preliminarily approve means of allocation and distribution of funds in connection with the Attorneys' Fees, Litigation Expenses, Service Payment, PAGA Payment, and Settlement Administration Costs; approve the proposed Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place approximately six months after preliminary approval of the Settlement is granted.

Dated: April 9, 2020

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiff

⁹⁵ Aiwanian Decl., ¶ 21; Declaration of Jeffrey Cesario In Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Cesario Decl."), ¶¶ 3-4.

⁹⁶ Aiwanian Decl., ¶ 20; Cesario Decl., ¶¶ 3, 4, & 7.