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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

CHRISTIAN WIRTH, BRANDON TREIBER, GIANCARLO MONROY, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

vs.

MB2 RACEWAY, INC., a California corporation; MB2 RACEWAY T.O., INC., a California corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No. 20STCV22600

Honorable Elihu M. Berle
Department 6

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Declaration of Proposed Class Counsel (Ryan Slinger); Declaration of Proposed Class Representatives (Christian Wirth, Brandon Treiber & Giancarlo Monroy); and [Proposed] Order filed concurrently herewith]

Date:	May 24, 2024
Time:	10:00 a.m.
Department:	6
Complaint Filed:	June 11, 2020
FAC Filed:	January 13, 2021
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on May 24, 2024 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Elihu M. Berle in Department 6 of the Superior Court of the State of California for the County of Los Angeles, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Christian Wirth, Brandon Treiber and Giancarlo Monroy ("Plaintiffs" or "Class Representatives") will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the parties' Joint Stipulation of Class Action and PAGA Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Ryan Slinger in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement, including the means of allocation and distribution of the Total Settlement Amount, and the allocations for Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs, and the PAGA Penalty Amount;
- Certifying the proposed Class for settlement purposes only;
- Preliminarily appointing Plaintiffs Christian Wirth, Brandon Treiber and Giancarlo Monroy as Class Representatives;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh and Ryan Slinger of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement;
- Appointing Phoenix Class Action Administration Solutions as the Settlement Administrator to handle the notice and administration process for the Settlement and preliminarily approving the Settlement Administration Costs;
- Directing the Settlement Administrator to mail the Class Notice to the proposed Class;
- Approving the proposed deadlines for the notice and administration process as reflected

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herein and in the Settlement Agreement; and

- Scheduling a hearing to consider final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for an award of the Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs, and the PAGA Penalty Amount.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which provide for approval by the Court the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, and permits 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 (Ryan Slinger) and Proposed Class Representatives (Christian Wirth, Brandon Treiber & Giancarlo Monroy) in support thereof; as well as 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: May 13, 2024

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By: Ryan Slinger

Ryan Slinger
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Christian Wirth, Brandon Treiber and Giancarlo Monroy ("Plaintiffs" or "Class Representatives") seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants MB2 Raceway, Inc. and MB2 Raceway T.O., Inc. ("Defendants"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the "Parties") have agreed to settle the lawsuits for a Total Settlement Amount of Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00).[1] The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Awards of Five Thousand Dollars and Zero Cents ($5,000.00) to each Plaintiff [3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or $87,500.00 if the Total Settlement Amount remains $250,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00)[4]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount estimated to be up to Nine Thousand Dollars and Zero Cents ($9,000.00);[5] and (5) the amount of Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $18,750.00) will be distributed to the

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Ryan Slinger ("Slinger Decl."), ¶ 7.u. Defendants represent that, during the period from June 11, 2016, to July 10, 2023, the Class Members worked, collectively, approximately 22,000 Workweeks. Should the qualifying workweeks increase beyond 5% worked by the Class Members during the period from June 11, 2016 to October 22, 2023, (i.e., more than 1,100 workweeks), Defendants shall increase the Total Settlement Amount on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the Class Members above five percent (5%), meaning Defendants will increase the Total Settlement Amount by the percentage amount above five percent (5%) (e.g., if the number of workweeks increases by 6% to 23,320 workweeks, the Total Settlement Amount will increase by one percent (1%)). ¶ 37.

[2] *Id.*, ¶ 15.

[3] *Id.*, ¶ 12.

[4] *Id.*, ¶ 11.

[5] *Id.*, ¶ 13.

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Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $6,250.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendants in California employed during the PAGA Release Period ("Aggrieved Employees").[6]

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

> All current or former hourly-paid or non-exempt employees of Defendants in California employed at either the Thousand Oaks or Sylmar locations during the Class Release Period ("Class" or "Class Members").[7]

The Class is estimated to consist of approximately three hundred fifty (350) individuals.[8]

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement ("Settlement Class Members") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment") and Aggrieved Employees will receive a *pro rata* share of the Aggrieved Employee Amount ("Individual PAGA Payment") on a *pro rata* basis based upon workweeks during the Class Release Period and/or PAGA Release Period when Class Members and/or Aggrieved Employees were employed by Defendants as an hourly-paid or non-exempt employee and recorded time worked ("Workweeks").[9]

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiffs and Settlement Class Members, and the Released PAGA Claims of Plaintiffs, Aggrieved Employees, and the State of California, against the Released Parties.[10]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants own and operate an indoor Go-Kart Racetrack. Plaintiffs are former employees of Defendants.

On April 2, 2020, provided written notice by electronic upload to the LWDA and written notice by certified mail to Defendants of the specific provisions of the California Labor Code

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[6] Settlement Agreement, ¶¶ 7.x, 7.y, & 14; "PAGA Release Period" means the period from April 2, 2019, through October 22, 2023. *See id.*, ¶ 7.aa.
[7] *Id.*, ¶ 7.d; "Class Release Period" is defined as the period from June 11, 2016, through October 22, 2023. *See id.*, ¶ 7.f.
[8] Slinger Decl., ¶ 9.
[9] Settlement Agreement, ¶¶ 7.ll, 7.r, 7.q, & 7.mm.
[10] *Id.*, ¶ 31.

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and Industrial Welfare Commission Wage Order that were alleged to be violated ("Wirth PAGA Notice").

On April 17, 2020, Plaintiff Wirth sent an additional, follow-up correspondence to the Labor and Workforce Development Agency and Defendants regarding the specific provisions of the California Labor Code and Industrial Welfare Commission Wage Orders that are alleged to have been violated by Defendants ("PAGA Notice Returned Resend Letter").

On June 11, 2020, Plaintiffs Wirth and Treiber filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*., thereby commencing a putative class action entitled *Wirth, et al. v. MB2 Raceway, Inc.* in the Superior Court of California for the County of Los Angeles, Case No. 20STCV22600 ("Action") against Defendant MB2 Raceway, Inc.

On May 8, 2020, Plaintiff Treiber provided notice by electronic upload to the Labor and Workforce Development Agency and written notice by certified mail to Defendants of the specific provisions of the California Labor Code and Industrial Welfare Commission Wage Order that are alleged to have been violated by Defendants ("Treiber PAGA Notice").

On June 12, 2020, Plaintiff Monroy provided notice by electronic upload to the Labor and Workforce Development Agency and written notice by certified mail to Defendants of the specific provisions of the California Labor Code and Industrial Welfare Commission Wage Order that are alleged to have been violated by Defendants ("Monroy PAGA Notice").

On January 13, 2021, Plaintiffs filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. in the Action. (the "Operative Complaint")(collectively, the Wirth PAGA Notice, Treiber PAGA Notice, and the Monroy PAGA Notice are herein referred to as "PAGA Notices").

Plaintiffs' core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment

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and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

Prior to reaching Settlement, Class Counsel conducted significant investigation into the facts of the case and engaged in formal and informal discovery and review and analysis of a large volume of information, documents, and data obtained from Plaintiffs, Defendants, and other sources.

On January 3, 2022, the Parties participated in a Mandatory Settlement Conference with the Honorable Zaven Sinanian but were not able to resolve the matter.

The Parties have actively litigated the Action since the Action was commenced. On July 10, 2023, the Parties participated in a formal, full-day mediation conducted by Henry Bongiovi, Esq. ("Mediator"), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiffs and Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement (i.e., Settlement Class Members) and the Released PAGA Claims of Plaintiffs, Aggrieved Employees, and the State of California with respect to the Released Parties.[11] Subject to approval by the Court, the Net Settlement

[11] Settlement Agreement, ¶ 31.

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Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed Eighty-Seven Thousand Five Hundred Dollars and Zero Cents (i.e., $87,500.00) and reimbursement of costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated to be up to Nine Thousand Dollars and Zero Cents ($9,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Penalty Amount of Twenty-Five Thousand Dollars and Zero Cents ($25,000.00), of which seventy-five percent (75%) (i.e., $18,750.00 out of $25,000.00) will be paid to the LWDA ("LWDA Payment") and twenty-five percent (25%) (i.e., $6,250.00 out of $25,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis ("Individual PAGA Payments"); and (4) payment in the amount of up to Five Thousand Dollars and Zero Cents ($5,000.00) to each Plaintiff ("Enhancement Awards").[12] The Parties have agreed to retain Phoenix Class Action Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.[13]

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount (i.e., Individual Settlement Share), in accordance with the Settlement Agreement and as follows: The Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members during the Class Release Period to yield the "Estimated Workweek Value," and multiply each Settlement Class Member's individual Workweeks during the Class Release Period by the Estimated Workweek Value to yield his or her Individual Settlement Share. If any Class Member submits a timely and valid Request for Exclusion, his or her Individual Settlement Share will remain part of the Net Settlement Amount and will proportionally increase each Settlement Class Member's Individual Settlement Share.[14]

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[12] *Id.*, ¶¶ 11-14.
[13] *Id.*, ¶ 7.jj.
[14] Settlement Agreement, ¶ 15.

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The Parties have agreed that the Settlement Administrator will determine each Individual PAGA Payment, in accordance with the Settlement Agreement and as follows: Individual PAGA Payments will be calculated and apportioned from the Aggrieved Employee Amount based on the Aggrieved Employees' Workweeks during the PAGA Release Period, as follows: the Settlement Administrator will divide the Aggrieved Employee Amount by the total number of Workweeks of all Aggrieved Employees during the PAGA Release Period to yield the "PAGA Workweek Value," and multiply each Aggrieved Employee's individual Workweeks during the PAGA Release Period by the PAGA Workweek Value to yield his or her estimated Individual PAGA Payment.[15]

Each Settlement Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining ninety percent (80%) as penalties, interest and other non-wage damages, which will be reported on an IRS Form 1099.[16] Any payment for an Individual PAGA Payment will be allocated as penalties, will not be subject to taxes or withholding, and will be reported on an IRS Form-1099, if necessary.[17] Settlement Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.[18] Defendants will pay the employer's share of payroll taxes and contributions on the wages portion of Individual Settlement Payments ("Employer Taxes") in addition to the Total Settlement Amount.[19]

The Individual Settlement Payment and Individual PAGA Payment checks shall be valid and negotiable for one hundred eighty (180) calendar days after mailing by the Settlement Administrator, and thereafter, shall be canceled.[20] The funds associated with such canceled checks will be transmitted by the Settlement Administrator to the Controller of the State of California, in accordance with California Code of Civil Procedure section 384.[21]

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[15] *Id.*, ¶ 16.
[16] *Id.*, ¶ 26.
[17] Ibid.
[18] Ibid.
[19] *Id.*, ¶ 7.m.
[20] *Id.*, ¶ 20.
[21] Settlement Agreement, ¶ 21.

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must send a written request to be excluded from the Class Settlement ("Request for Exclusion") to the Settlement Administrator, by mail, postmarked no later than forty-five (45) calendar days after the Class Notice is mailed to Class Members ("Response Deadline").[22] A Request for Exclusion 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 the last four digits of the Social Security Number of the Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included in the Class Settlement; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[23] Unless a Class Member submits a timely and valid Request for Exclusion with respect to the Class Settlement described in the Agreement, he or she shall be bound by the terms and conditions of the Agreement as it pertains to the Class Settlement, and shall also be bound by the Final Approval Order and Judgment as it pertains to the Class Settlement.[24] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[25]

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement ("Objection").[26] Settlement Class Members who wish to object to the Class Settlement must submit an Objection to the Settlement Administrator, by mail, on or before the Response Deadline.[27] Any such written Objection must: (a) include the case name and number of the Action; (b) include the objector's full name, signature, address, and telephone number, and the last four digits of his or her Social Security number; (c) include a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) attach copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement

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[22] *Id.*, ¶¶ 7.hh & 7.ii.
[23] *Id.*, ¶ 7.hh.
[24] *Id.*, ¶ 22.
[25] Ibid.
[26] Ibid.
[27] *Id.*, ¶ 23.

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Administrator at the specified address, postmarked on or before the Response Deadline.[28] In addition to or as an alternative to a written Objection, Settlement Class Members may also appear at the Final Approval Hearing to orally present their objection to the Class Settlement.[29]

Class Members and Aggrieved Employees who wish to dispute the number of Workweeks credited to them in their Class Notice by mailing a written letter to the Settlement Administrator on or before the Response Deadline.[30] The letter must: (a) contains the case name and number of the Action, (b) is signed by the Class Member and/or Aggrieved Employee, (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member and/or Aggrieved Employee, (d) clearly states that the Class Member and/or Aggrieved Employee 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) includes 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) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[31]

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

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[28] Settlement Agreement, ¶ 7.w.
[29] *Id.*, ¶ 23.
[30] *Id.*, ¶ 20.c
[31] *Id.*, ¶ 7.nn.

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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).

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. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT</u>

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

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

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

A. <u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.</u>

The Parties actively litigated the Action since the Action commenced on June 11, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.[32]

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of information, documents, and data obtained from Defendants, Plaintiffs, and other sources .[33] Lawyers *for* Justice, PC propounded multiple sets of written discovery requests on Defendants (specifically, Special Interrogatories (Set One), Special Interrogatories (Set Two), Special Interrogatories (Set Three) and Form Interrogatories

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[32] Slinger Decl., ¶¶ 11-13.
[33] *Id*., ¶ 12.

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(Set One) and reviewed Defendants' responses thereto.[34] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs' employment records, a detailed sampling of Plaintiffs' and other Class Members' time and pay data, Employee Non-Disclosure Agreement, Employee Handbook, the Employee Handbook Addendum, company policy acknowledgments, forms, procedures and policies (including, but not limited to, Phone Monitoring Policy, Email, Internet and Computer Use Policy, Kart Safety Practice and Procedure, Negligence Policy, Track Conduct During Races & Meal Period Information), among other information and documents.[35] Class Counsel had the opportunity to interview Plaintiffs and other Class Members to gather information regarding the facts and circumstances surrounding Plaintiffs' and Class Members' employment and to identify potential witnesses.[36] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.[37] Class Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[38]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Henry Bongiovi, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[39] In the course of litigation and in connection with mediation and settlement discussions, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the cases and various aspects of the cases, 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, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[40] During all settlement discussions, the Parties

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[34] Slinger Decl., ¶ 12.
[35] Ibid
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] *Id.*, ¶ 11.
[40] Slinger Decl., ¶ 11.

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conducted their negotiations at arm's length in an adversarial position.[41] Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[42] After conducting investigations, formal and informal discovery, exchange of information, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' 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 cases might have concluded at certification and trial.[44] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[45] Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiffs' claims, and Defendants' 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 has 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 Total Settlement Amount of Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00), represents a fair, adequate, and reasonable resolution of the matter.[48] The Settlement was calculated using the information and data

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[41] Ibid.
[42] *Id.*, ¶¶ 11 & 16-18.
[43] *Id.*, ¶ 11.
[44] *Id.*, ¶ 18.
[45] *Id.*, ¶ 11.
[46] *Id.*, ¶¶ 11-13 & 16-18.
[47] Slinger Decl., ¶¶ 7.
[48] Settlement Agreement, ¶ 7.u..

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uncovered during 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 the matter at issue.[50] Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[51]

Assuming that the Attorneys' Fees and Costs, Enhancement Awards, PAGA Penalty Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Seventy-Eight Thousand Five Hundred Dollars and Zero Cents ($78,500.00).[52] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Payment will be calculated based on his or her Workweeks during the Class Release Period, and the amount of each Aggrieved Employee's Individual PAGA Payment will be calculated based on his or her Workweeks during the PAGA Release Period.[53]

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.[54] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. <u>The Settlement Is of Significant Value.</u>

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[49] Slinger Decl., ¶¶ 11-13.
[50] *Id.*, ¶¶ 16-18.
[51] *Id.*., ¶¶ 11, 13, & 22.
[52] Slinger Decl., ¶¶ 14, 19 & 20.
[53] Settlement Agreement, ¶¶ 15 & 16.
[54] Slinger Decl., ¶¶ 11, 13, & 22.

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Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[55] The discovery and information that Class Counsel obtained from Defendants 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 Defendants' defenses thereto.[56] As outlined in the Declaration of Ryan Slinger, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[57]

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

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[55] Slinger Decl., ¶¶ 11-13 & 18.
[56] *Id.*, ¶ 18.
[57] *Id.*, ¶¶ 11-13 & 16-18.
[58] Settlement Agreement, ¶ 8 & 9.

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A. The Class Is Ascertainable and Sufficiently Numerous.

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

This matter involves a class of approximately three hundred fifty (350) 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 Defendants to the Settlement Administrator through a review of Defendants' employment records regarding hourly-paid or non-exempt employees in California during the Class Release Period. 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 Defendants' 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

[59] Slinger Decl., ¶ 9.

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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 Actions. Based on the documents and information obtained through formal and informal discovery and exchange of information in the cases, Plaintiffs contend 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.[60] Plaintiffs' claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, 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 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[61]

Plaintiffs also contend that Defendants' payroll and recordkeeping practices with respect to Plaintiffs and the Class Members was substantially the same during the time period at issue.[62] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.[63]

Plaintiffs maintain that the outcome of this litigation would be determined by Defendants' 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 Release Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. <u>APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS</u>

Class Counsel has litigated the matter for over two (2) years and was actively preparing

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[60] Slinger Decl., ¶ 16.
[61] Ibid.
[62] Ibid.
[63] Ibid.

the matter for class certification and trial.[64] 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 cases and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendants. Class Counsel reviewed a large volume of documents and data[65] and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[66] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[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 Total Settlement Amount of Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount and an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00) for costs and expenses.[69] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel 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 Class Notice provides Class Members with information about the amount allocated toward the

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[64] Slinger Decl., ¶¶ 11-13.
[65] *Id.*, ¶ 12.
[66] Ibid.
[67] *Id.*, ¶ 11.
[68] *Id.*, ¶¶ 7.
[69] Settlement Agreement, ¶ 10

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Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs 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 of fund 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 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).

[70] Settlement Agreement, Exh. A.

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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).

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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 Plaintiffs' Motion for Final Approval of the Settlement and application for the Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS 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 Class Notice[72] describes the Settlement, the deadlines and procedures to submit an Objection to the Class Settlement, mail a Request for Exclusion from the Class Settlement, and/or dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.[73]

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

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[71] Slinger Decl., ¶ 19.
[72] Settlement Agreement, Exh. A.
[73] Ibid.

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members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[74] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[75] The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks Worked and PAGA Workweeks Worked credited to them.[76]

The proposed Class 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 Class Notice.

IX. <u>APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR</u>

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

The Settlement Administrator will mail the Class Notice to each Class Member and Aggrieved Employee by First-Class U.S. mail in English.[77] The Settlement Administrator shall, within five (5) calendar days, re-mail by First-Class US. mail the Class Notice returned by the post office with a forwarding address, and shall re-mail by First-Class US. mail the Class Notice to any Class Member who personally provides an updated address to the Settlement Administrator and requests a re-mailed Class Notice on or before the Response Deadline.[78] In the event that the first mailing of the Class Notice to any Class Member is returned without a

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[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Settlement Agreement, ¶ 20.
[78] Ibid

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forwarding address on or before the Response Deadline, the Settlement Administrator will immediately perform skip trace(s) if necessary using social security numbers provided by Defendants, as needed, to verify the accuracy of the addresses provided and will conduct a re-mailing of the Class Notice by First-Class US. mail within five (5) days.[79] The Settlement Administrator will receive and process Objections, Requests for Exclusions, and/or disputes regarding Workweeks.[80]

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Awards, and PAGA Penalty Amount; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[81] The Settlement Administration Costs are currently estimated to be Nine Thousand Dollars and Zero Cents ($9,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.[82]

Accordingly, Plaintiffs respectfully requests that the Court appoints Phoenix as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

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 Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members and Aggrieved Employees based on Defendants' records.[83]

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[79] Ibid.
[80] *Id.*, ¶¶ 22 & 23.
[81] Slinger Decl., ¶ 15.
[82] Settlement Agreement, ¶ 13.
[83] Settlement Agreement, ¶ 20.

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Within twenty-one (21) calendar days after the Preliminary Approval Order is entered, Defendants shall provide to the Settlement Administrator a list of Class Members and Aggrieved Employees formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member's (1) full name, (2) last known mailing address, (3) Social Security Number, (4) dates worked for Defendants during the Class Release Period and, if applicable, during the PAGA Release Period, and (5) such other information and data as necessary for the Settlement Administrator to independently calculate the Workweeks (collectively, "Class List").[84]

Within fourteen (14) calendar days after receipt of the Class List from Defendants, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and shall send the Class Notice to each Class Member's last known address or updated address (if applicable) via First-Class U.S. mail.[85] With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip trace(s) if necessary using social security numbers provided by Defendants, as needed, to verify the accuracy of the addresses provided and will conduct a re-mailing of the Class Notice by First-Class US. mail within five (5) calendar days.[86] Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, Objection, and/or dispute regarding Workweeks.[87]

Defendant shall fund the Total Settlement Amount in two equal installments. The first installment shall be paid within ten (10) days after the Court grants Preliminary Approval ("First Installment") and the second installment shall be paid ten (10) days after the Court grants Final Approval ("Second Installment").[88] Within seven (7) calendar days of the funding of the Total Settlement Amount, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to

[84] *Id.*, ¶¶ 7.c & 19.
[85] *Id.*, ¶ 20.
[86] Ibid.
[87] Settlement Agreement, ¶ 7.ii.
[88] *Id.*, ¶ 10.b.

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Settlement Class Members; (b) Individual PAGA Payments to Aggrieved Employees; (c) LWDA Payment to the LWDA; (d) Enhancement Awards to Plaintiffs; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to the Settlement Administrator.[89]

Individual Settlement Payment and Individual PAGA Payment checks shall be valid and negotiable for one hundred eighty (180) calendar days after mailing by the Settlement Administrator, and thereafter, shall be canceled.[90] Subject to Court approval, funds (and any interest accrued thereon) associated with such canceled checks shall be transmitted to the Controller of the State of California in accordance with California Code of Civil Procedure section 384.[91]

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT AWARDS

Plaintiffs Christian Wirth, Brandon Treiber and Giancarlo Monroy respectfully requests that the Court appoint them as the Class Representatives and preliminarily approve Enhancement Awards in an amount up to Five Thousand Dollars and Zero Cents ($5,000.00) to each Plaintiff.[92] 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 Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing

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[89] *Id.*, ¶ 10.c.
[90] *Id.*, ¶ 21.
[91] Ibid.
[92] Settlement Agreement, ¶ 12.

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the facts and evidence necessary to attempt to prove the allegations.[93] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[94] Accordingly, it is appropriate and just for Plaintiffs to receive Enhancement Awards for their services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to her individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Christian Wirth, Brandon Treiber and Giancarlo Monroy as Class Representatives; appoint Phoenix as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Awards, PAGA Penalty Amount, and Settlement Administration Costs; approve the proposed Class 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; schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: May 13, 2024

LAWYERS *for* JUSTICE, PC

By: Ryan Slinger

Ryan Slinger
Attorneys for Plaintiffs

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[93] Slinger Decl., ¶ 20; Declaration of Christian Wirth in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Wirth Decl."), ¶ 4; Declaration of Brandon Treiber in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Treiber Decl."), ¶ 4; Declaration of Giancarlo Monroy in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Monroy Decl."), ¶ 4;

[94] Slinger Decl., ¶ 20; Wirth Decl., ¶¶ 3-6; Treiber Decl., ¶¶ 3-6; Monroy Decl., ¶¶ 3-6;

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