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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

EARL URIZAR , 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,

Plaintiff,

v.

INLAND KENWORTH US INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 20STCV30676

Honorable Kenneth R. Freeman
Department SSC14

CLASS ACTION

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

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

Date: May 4, 2021
Time: 11:00 a.m.
Department: SSC14

Complaint Filed: August 12, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on May 4, 2021 at 11:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Kenneth R. Freeman in Department SSC14 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Earl Urizar (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Stipulation of Class and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Earl Urizar as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

1 for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to
2 Plaintiff, and Settlement Administration Costs to Settlement Administrator.

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

6 This motion is based upon the following memorandum of points and authorities, the
7 Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and
8 Proposed Class Representative (Earl Urizar) in support thereof, the pleadings and other records
9 on file with the Court in this matter, and such evidence and oral argument as may be presented
10 at the hearing on this motion.

11 Dated: April 2, 2021

LAWYERS for JUSTICE, PC

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13 By: 
14 Edwin Aiwazian
15 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Earl Urizar (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Stipulation of Class 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 Inland Kenworth US Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of one million seven hundred thousand dollars and no cents (\$1,700,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount;² (2) the Enhancement Payment of seven thousand five hundred dollars and no cents (\$7,500.00) to 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 \$595,000.00, and reimbursement of litigation costs and expenses not to exceed twenty thousand dollars and no cents (\$20,000.00);⁴ (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed eleven thousand dollars (\$11,000.00);⁵ and (5) the amount of one hundred thousand dollars and no cents (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 6 (cc).

² *Id.*, § 9.

³ *Id.*, § 11.

⁴ *Id.*, § 10.

⁵ *Id.*, § 12.

⁶ *Id.*, § 13.

1 All current and former hourly-paid, nonexempt employees who worked for
2 Defendant at any time from August 12, 2016 through March 1, 2021 (“Class” or
3 “Class Members”).⁷

4 The Class is estimated to consist of approximately three hundred and thirty-seven (337)
5 individuals.⁸

6 Class Members who do not submit a timely and valid request to be excluded from the
7 Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount
8 (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each
9 Settlement Class Member worked for Defendant at any time from August 12, 2016 through
10 Preliminary Approval or March 1, 2021, whichever date is earlier (“Workweeks”).⁹

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

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

14 Defendant is a Canadian automotive service and collision repair corporation that was
15 founded in 1949. Defendant is in the business of operating truck dealerships, offering retail
16 sales of new and used automobiles, as well as providing parts repair, maintenance, and truck
17 leasing services. Plaintiff Earl Urizar is a former employee of Defendant.

18 On August 12, 2020, Plaintiff filed a Class Action Complaint for Damages &
19 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
20 in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned
21 lawsuit (“Action”).

22 On October 6, 2020, Defendant filed a Notice of Appearance to Plaintiff’s Class Action
23 Complaint.

24 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
25 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,

26 ⁷ Settlement Agreement, § 6 (d). “Class Period” is defined as the period of time from August 12, 2016 through
27 March 1, 2021. See *Id.*, § 6 (f).

28 ⁸ Aiwazian Decl., ¶ 9; see also, Settlement Agreement § 6 (d).

⁹ Settlement Agreement, §§ 6 (f), 6 (p), 6 (dd), and 14.

¹⁰ See *Id.* at §6 (v), for the full scope of the “Released Claims,” and *Id.* at § 6 (w) for the definition of the “Released Parties.”

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 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. Plaintiff contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, 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 Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the Action since it was commenced on August 12, 2020. On December 1, 2020, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., 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, Defendant will pay a Total Settlement Amount to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Member) with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed five hundred ninety five thousand dollars and no cents (\$595,000.00) (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed twenty thousand dollars and no cents (\$20,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement

¹¹ Settlement Agreement, § 6 (bb).

administration costs, which are currently estimated not to exceed eleven thousand dollars and no cents (\$11,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) payment to the LWDA of its 75% share of the PAGA Amount (i.e., \$75,000.00 out of \$100,000.00) (“LWDA Payment”); and (4) payment in the amount of up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff (“Enhancement Payment”).¹² The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.

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

- a. The Settlement Administrator will calculate each Class Member’s number of Workweeks by determining the number of days between the start and end dates of employment as an hourly-paid, non-exempt employee during the Class Period, divided by seven (7).¹³
- b. The Settlement Administrator will calculate each Class Member’s estimated Individual Settlement Share by dividing the Net Settlement Amount by the Workweeks of all class members to yield the “Estimated Workweek Value,” and multiplying each Class Member’s individual Workweeks by the Estimated Workweek Value.¹⁴
- c. The Settlement Administrator will calculate each Settlement Class Member’s Individual Settlement Share by dividing the final Net Settlement Amount by the Workweeks of all Settlement Class Members, resulting in the “Final Workweek Value,” and multiplying each individual Settlement Class Member’s number of Workweeks by the Final Workweek Value.¹⁵

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁶ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement

¹² Settlement Agreement, §§ 9, 10, 11, 12, and 13.

¹³ *Id.*, § 6 (dd).

¹⁴ *Id.*, § 14 (a).

¹⁵ *Id.*, § 14 (b).

¹⁶ *Id.*, § 25.

Share (the net payment is referred to as an “Individual Settlement Payment”).¹⁷ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares in addition to the Total Settlement Amount.¹⁸

The Individual Settlement Payment checks issued to Settlement Class Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁹ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.²⁰ The funds from associated with such cancelled checks will be transmitted by the Settlement Administrator to the Unclaimed Property Fund maintained by the California State Controller’s Office.²¹

Class Members who wishes to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a letter indicating that they want to exclude themselves.²² To be timely, the Class Member must mail a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Notice (“Response Deadline”).²³ A request for exclusion must contain: (a) contain the case name and number of the 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 settlement, and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁴ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.²⁵

¹⁷ Settlement Agreement, §§ 6 (o) and 25.

¹⁸ *Id.*, § 6 (cc).

¹⁹ *Id.*, § 19.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, §§ 6 (x) and 20.

²³ *Id.*, §§ 6 (y) and 20.

²⁴ *Id.*, § 6 (x).

²⁵ *Id.* §§ 20 and 21.

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.²⁶ Settlement Class Members who wish to object to the Settlement must mail the Settlement Administrator a notice of objection on or before the Response Deadline.²⁷ The objection must contain: (a) the case name and number of the Action; (b) the objector's full name, signature, address, and telephone number, and the last four digits of his or her Social Security number, (c) a written statement of all grounds for the objection accompanied by any legal support for such objection, and (d) copies of any papers, briefs, or other documents upon which the objection is based.²⁸

Class Members who wish to dispute the number of Workweeks credited to them in their Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.²⁹ The letter must contain: (a) the case name and number of the Action, (b) the signature of the Class Member, (c) the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member, (d) a clear statement that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her, and (e) information and/or attached documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct.³⁰

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

²⁶ Settlement Agreement, § 20.

²⁷ *Id.*, § 20.

²⁸ *Id.* 6 (s).

²⁹ *Id.*, § 18.

³⁰ *Ibid.*

1 and reasonable, whether certification of the class was proper, and whether the attorney fee award
2 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
3 decision to approve a class action settlement may be reversed only upon a strong showing of
4 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
5 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

27 The trial court has broad powers to determine whether a proposed settlement is fair under
28 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make

1 this fairness determination, courts must consider several relevant factors, including “the strength
2 of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the
3 risk of maintaining class action status through trial, the amount offered in settlement, the extent
4 of discovery completed and the stage of the proceedings, the experience and view of counsel,
5 the presence of a governmental participant, and the reaction of the class members to the
6 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
7 and the court is free to engage in a balancing and weighing of the factors depending on the
8 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
9 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
10 at 1027 (citation omitted).

11 The proponent of the settlement has the burden to show that it is fair and reasonable.
12 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
13 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
14 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
15 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
16 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
17 1151.

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

20 The Parties actively litigated the Action since it was commenced on August 12, 2020.
21 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
22 the claims, and Class Counsel was actively preparing the case for class certification and trial.³¹

23 Prior to engaging in mediation, Class Counsel conducted significant investigation and
24 informal discovery regarding the facts of the case, including and not limited to, the exchange,
25 review, and analysis of a volume of documents and data produced by Defendant.³² The volume
26 of data and documents that Class Counsel reviewed and analyzed included and was not limited
27

28 ³¹ Aiwazian Decl., ¶¶ 11-13.

³² *Id.*, ¶ 12.

to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members' time and pay data, Defendant's California Employee Handbook, internal memoranda, checklists (including but not limited to California New Hire Check Off List and Pre-Hire Check Off List), Defendant's operations and employment practices, forms (including but not limited to Defendant's Inland Employee Orientation Form, The Inland Group Confidentiality Agreement, Inland Email and Internet Usage Policy, and Employee Statement acknowledgment form), procedures (including but not limited to Defendant's Timeclock Meal Out/Meal Return Punch Instructions, Meal Break Waiver Agreement, Overtime, Time Cards, and Time Sheets), and policies (including but not limited to Inland Kenworth US, Inc. Meal and Rest Period Policy, , Tool and/or Safety Shoe Allowance, and Dress Code), among other information and documents.³³ Class Counsel interviewed Plaintiff to gather facts and to identify potential witnesses.³⁴ 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.³⁵ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended settlement negotiations and the mediation, among other tasks.³⁶

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁷ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive 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.³⁸

³³ Aiwazian Decl., ¶ 12.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Id.*, ¶ 11.

³⁸ *Ibid.*

During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁹ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁰ After conducting investigations, extensive informal discovery, 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 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴¹

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 trial.⁴² Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the 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 Defendant's defenses thereto, as well as facts discovered.⁴³ 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.⁴⁴

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

The Settlement, which provides for a Total Settlement Amount of one million seven hundred thousand dollars and no cents (\$1,700,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁵ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of

³⁹ Aiwazian Decl., ¶ 11.

⁴⁰ *Id.*, ¶¶ 11, 16-18.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁴ *Id.*, ¶¶ 6-7.

⁴⁵ *Id.*, ¶¶ 11, 13, 14 & 21.

information.⁴⁶ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁷ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁸

Assuming that the Attorneys' Fees and Costs, Enhancement 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 Amount that is currently estimated to be nine hundred ninety-one thousand five hundred dollars and no cents (\$991,500.00).⁴⁹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks.⁵⁰ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵¹ 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.

⁴⁶ Aiwasian Decl., ¶¶ 11-13.

⁴⁷ *Id.*, ¶¶ 16-18.

⁴⁸ *Id.*, ¶¶ 11, 13, & 21.

⁴⁹ *Id.*, ¶ 14.

⁵⁰ Settlement Agreement, § 14.

⁵¹ Aiwasian Decl., ¶¶ 11, 13, and 21.

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

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted extensive informal discovery and exchanged a volume of documents, data, and
4 information prior to mediation.⁵² The documents and information that Class Counsel obtained
5 from Defendant and through other sources allowed Class Counsel to develop valuation models
6 in order to evaluate the potential value and merit of the claims, and perform a complete
7 evaluation of Defendant’s defenses thereto.⁵³ As outlined in the Declaration of Edwin Aiwazian,
8 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior
9 to entering into the Settlement.⁵⁴

10 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE**

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁵
13 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
14 one of a common or general interest, of many persons, or when the Parties are numerous, and it
15 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
16 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” *Id.*

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact that predominate over any questions
21 affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of
22 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
23 Class. Finally, prosecution of separate actions by individual Class Members would create the
24 risk of inconsistent or varying adjudications, and a class action is superior to other available
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27 ⁵² Aiwazian Decl., ¶¶ 11-13, and 18.

28 ⁵³ *Id.*, ¶¶ 18 and 24.

⁵⁴ *Id.*, ¶¶ 11-13, 16-18, and 21-25.

⁵⁵ Settlement Agreement, § 7.

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 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 Action involves a class of approximately three hundred thirty-seven (337) individuals.⁵⁶ 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 non-exempt employees in California during the Class 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 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).

⁵⁶ Aiwazian Decl., ¶ 9.

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

6 Here, common issues of fact and law predominate as to each of the claims alleged and
7 asserted in the Complaint. Based on the documents and information obtained through informal
8 discovery and exchange of information in this case, Plaintiff contends that Class Members were
9 subject to the same or similar job duties and uniform operations and employment practices,
10 policies, and procedures during the time period at issue.⁵⁷ Plaintiff’s claims arise from
11 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
12 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
13 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
14 to timely pay wages during employment and upon termination of employment, failing to provide
15 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
16 necessary business-related expenses.⁵⁸

17 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect
18 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁵⁹
19 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
20 compensation due to them from Defendant during the time period at issue.⁶⁰

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

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27 ⁵⁷ Aiwazian Decl., ¶ 16.

28 ⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

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

Class Counsel has litigated the matter for nearly one year, and was actively preparing the matter for class certification and trial.⁶¹ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Class Counsel reviewed a volume of documents and data and also interviewed and obtained information from Plaintiff, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶² Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶³

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁴

The Settlement establishes a Total Settlement Amount of one million seven hundred thousand dollars and no cents (\$1,700,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount up to thirty-five percent (35%) of the Total Settlement Amount (i.e., \$595,000.00) and an amount not to exceed twenty thousand dollars and no cents (\$20,000.00) for costs and expenses.⁶⁵ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class 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

⁶¹ Aiwarzian Decl., ¶¶ 11-13.

⁶² *Id.*, ¶ 12.

⁶³ *Id.*, ¶ 11.

⁶⁴ *Id.*, ¶¶ 6-7.

⁶⁵ Settlement Agreement, §§ 9 and 10.

1 Notice provides Class Members with information about the amount allocated toward the
2 Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought,
3 as provided for by the Settlement.⁶⁶

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

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

24 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
25 depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin*
26 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45%
27 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*

28 ⁶⁶ Settlement Agreement, Exh. A.

(S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁷

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

VIII. THE PROPOSED NOTICE IS ADEQUATE

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

The proposed Notice describes the Settlement, the deadlines and procedures to mail an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁶⁸

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* §

⁶⁷ Aiwazian Decl., ¶ 19.

⁶⁸ Settlement Agreement, Exh. A.

21.311 at 413 (4th ed. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁶⁹ The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁰ The proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.⁷¹

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 SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Settlement Administrators to administer the Settlement.

The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. mail.⁷² Any undeliverable Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.⁷³ With respect to any undeliverable Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Notice to the Class Member.⁷⁴ The Response Deadline to submit a request for exclusion, objection, or dispute regarding Workweeks for Class Members to whom a Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be

⁶⁹ Settlement Agreement, Exh. A.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Settlement Agreement, § 17 (a).

⁷³ *Id.*, § 17 (b).

⁷⁴ *Ibid.*

1 fifteen (15) calendar days from the date of the original sixty (60) calendar day deadline.⁷⁵ The
2 Settlement Administrator will receive and process requests for exclusion, objections, and any
3 disputes regarding Workweeks.⁷⁶

4 The Settlement Administrator will calculate the amounts of the Individual Settlement
5 Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage
6 portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to
7 Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys'
8 Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks
9 necessary to effectuate the terms of the Settlement Agreement.⁷⁷ The Settlement Administration
10 Costs are currently estimated not to exceed eleven thousand dollars and no cents (\$11,000.00)
11 and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁷⁸

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

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

17 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
18 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
19 entails mailing of the Notice, in the form approved by the Court, to all known and reasonably
20 ascertainable Class Members based on Defendant's records.⁷⁹

21 Within twenty-one (21) calendar days after the date on which the Court grants
22 preliminary approval of the Settlement, Defendant will provide the Settlement Administrator
23 with the following information for each Class Member: (1) full name; (2) last known mailing
24 address; (3) Social Security number; (4) dates worked for Defendant during the Class Period,
25 and (5) such other information as is necessary for the Settlement Administrator to calculate

26 ⁷⁵ Settlement Agreement, § 17 (b).

27 ⁷⁶ *Id.*, §§ 6 (y), 18, 20 and 22.

28 ⁷⁷ *Id.*, §§ 9, 14 (b), 19, 25, and 26; Aiwasian Decl., ¶ 15.

⁷⁸ Settlement Agreement, § 12.

⁷⁹ *Id.*, § 6 (c) and Exh. A.

Workweeks (collectively, “Class List”).⁸⁰

Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Notice to the Class Members via First-Class U.S. Mail.⁸¹ If a Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Notice to the forwarding address.⁸² If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Notice to the Class Member.⁸³ Class Members will have until the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding Workweeks, and/or to mail an objection.⁸⁴

Defendant will make a one-time deposit of the Total Settlement Amount, together with an amount sufficient to pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares, into a settlement account to be established by the Settlement Administrator, within thirty (30) calendar days after the Effective Date.⁸⁵ Within seven (7) calendar days of the funding of the Total Settlement Amount, the Settlement Administrator will distribute: (1) the Individual Settlement Shares to Settlement Class Members; (2) the Court-approved Enhancement Payment to Plaintiff; (3) the Court-approved Attorneys’ Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁸⁶

The Individual Settlement Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁸⁷ Checks that are not negotiated within the 180-day period will be cancelled.⁸⁸ The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Unclaimed Property Fund maintained

⁸⁰ Settlement Agreement, §§ 6 (c) and 16.

⁸¹ *Id.*, §17 (a).

⁸² *Id.*, §17 (b).

⁸³ *Ibid.*

⁸⁴ *Id.*, § 6 (y).

⁸⁵ *Id.*, § 9.

⁸⁶ *Ibid.*

⁸⁷ *Id.*, § 19.

⁸⁸ *Ibid.*

by the California State Controller's Office.⁸⁹

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR
ENHANCEMENT PAYMENT**

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff.⁹⁰ 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 determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹¹ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹² Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, in addition to his Individual Settlement Payment.

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 and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and

⁸⁹ Settlement Agreement, § 19.

⁹⁰ *Id.*, § 11.

⁹¹ Aiwazian Decl., ¶ 20; Declaration of Earl Urizar in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Urizar Decl."), ¶ 4.

⁹² Aiwazian Decl., ¶ 20; Urizar Decl., ¶¶ 3-6.

1 designate Plaintiff Earl Urizar as Class Representative; appoint Phoenix Settlement
2 Administrators as Settlement Administrator; preliminarily approve the allocations for
3 Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment, and Settlement
4 Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator
5 to undertake the notice and settlement administration process in conformity with the deadlines
6 and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing
7 to take place in approximately five (5) months.

8 Dated: April 2, 2021

LAWYERS for JUSTICE, PC

9
10 By:



Edwin Aiwanian
Attorneys for Plaintiff