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

SAUL ANDRADE, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiff,

v.

MACH 1 GLOBAL, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

SAUL ANDRADE, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

MACH 1 GLOBAL, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: RG20069104 (Lead)
RG21108078

Honorable Somnath Raj Chatterjee
Department 517

CLASS ACTION

**PLAINTIFF'S 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
(Ovsanna Takvoryan); and [Proposed]
Order filed concurrently herewith]

Date: January 26, 2023
Time: 2:30 p.m.
Department: 517

Reservation ID: 685619066690

Complaints Filed: July 28, 2020;
June 25, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on January 26, 2023, at 2:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Somnath Raj Chatterjee in Department 517 of the Superior Court of California for the County of Alameda, located at Hayward Hall of Justice, 24405 Amador Street, Hayward, California 94544, Plaintiff Saul Andrade (“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 Class and Representative Action Settlement Agreement and Release of Claims (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Ovsanna Takvoryan, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Attorneys’ Fees and Costs to Class Counsel, Class Representative Service Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Saul Andrade as Class Representative;
- Preliminarily appointing 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 Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and

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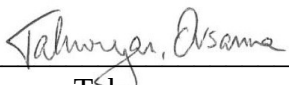
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Class Representative Service Award for Plaintiff, and Settlement Administration Costs to Settlement Administrator.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which provide for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Ovsanna Takvoryan) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: December 29, 2022

LAWYERS for JUSTICE, PC

By: 
Ovsanna Takvoryan
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Saul Andrade (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class and Representative Action Settlement Agreement and Release of Claims (“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 Mach 1 Global Services, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of three hundred sixty thousand dollars and no cents (\$360,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Service Award of five thousand dollars and no cents (\$5,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of one-third (1/3) of the Gross Settlement Amount, or \$120,000.00, and reimbursement of litigation costs and expenses not to exceed twenty four thousand dollars and no cents (\$24,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in an amount currently estimated not to exceed seven thousand dollars and no cents (\$7,000.00);⁵ and (5) the amount of thirty six thousand dollars and no cents (\$36,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$27,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$9,000.00) will be distributed to PAGA Aggrieved Employee Group (the “PAGA Settlement Fund”).⁶

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¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Ovsanna Takvoryan (“Takvoryan Decl.”), § 1.17.

² *Id.*, § 1.18.

³ *Id.*, § 5.3.

⁴ *Id.*, § 5.2.

⁵ *Id.*, § 5.1.

⁶ *Id.*, §§ 1.26, 1.28, & 5.4.3.

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

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately eighty-four (84) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of workweeks in which each Settlement Class Member was employed by Defendant during the Class Period, and received any regular pay (“Eligible Workweeks”).⁹ All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period (“PAGA Aggrieved Employee Group”), will receive a share of the PAGA Settlement Fund (“PAGA Settlement Payment”) on a *pro rata* basis, based on the number of Eligible Workweeks worked by each member of the PAGA Aggrieved Employee Group during the period from May 21, 2019 through the date of the Preliminary Approval Order (“PAGA Period”).¹⁰

The Settlement resolves the Released Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of PAGA Aggrieved Employees against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is an international transportation and supply chain logistics provider. Plaintiff Saul Andrade is a former employee of Defendant.

On May 21, 2020, Plaintiff provided written notice by online submission to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the

⁷ Settlement Agreement, § 1.6. “Class Period” is defined as the time from July 28, 2016 through the date of the Preliminary Approval Order. *See id.*, § 1.40.

⁸ Takvoryan Decl., ¶ 9.

⁹ Settlement Agreement, §§ 1.14, 1.18 and 5.5.1.

¹⁰ *Id.*, §§ 1.30, 5.4, & 5.4.3.

¹¹ *See id.* at § 1.34, for the full scope of the “Released Claims,” *id.* at § 1.36, for the full scope of the “Released PAGA Claims,” and *id.* at § 1.35 for the definition of the “Released Parties.”

specific provisions of the California Labor Code and Industrial Welfare Commission Wage Orders that were violated by Defendant.

On July 28, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Alameda County Superior Court (“Court”), against Defendant thereby commencing the above-captioned lawsuit (“PAGA Action”).

On September 16, 2020, Defendant filed an Answer in the PAGA Action.

On September 18, 2020, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), on Defendant. Additionally, on September 18, 2020, Plaintiff noticed the depositions of Defendant’s Person Most Knowledgeable designees regarding wage and hour practices and organizational structure of Defendant.

On June 25, 2021, Plaintiff filed a Class Action Complaint for Damages, against Defendant, on behalf of himself and other members of the general public similarly situated, alleging and asserting claims for (1) unpaid overtime in violation of California Labor Code §§ 510 and 1198; (2) unpaid meal period premiums in violation of California Labor Code §§ 226.7 and 512(a); (3) unpaid rest period premiums in violation of California Labor Code § 226.7; (4) unpaid minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (5) failure to timely pay final wages in violation of California Labor Code § 201, 202 and 203; (6) failure to timely pay wages during employment in violation of California Labor Code § 204; (7) non-compliant wage statement in violation of California Labor Code § 226(a); (8) failure to keep requisite payroll records in violation of California Labor Code § 1174(d); (9) failure to reimburse for business expenses in violation of California Labor Code §§ 2800 and 2802; and (10) violation of California Business and Professions Code § 17200, et seq., in the Alameda County Superior Court, thereby commencing a putative class action against Defendant (“Class Action”).

On September 23, 2021, Defendant filed an Answer in the Class Action.

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the PAGA Action and the Class Action (collectively referred to herein, as 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 this matter since the PAGA Action was commenced on July 28, 2020. On August 27, 2021, the Parties participated in a formal, full-day mediation conducted by the Honorable Suzanne Segal (Retired), 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.

To effectuate the Settlement efficiently and before a single Court, the Parties agreed, subject to Court approval to file, for settlement purposes only, a Joint Stipulation to Consolidate the PAGA Action and the Class Action and to designate the earlier filed PAGA Action as the lead case for purposes of the settlement approval procedures, incorporating all of the claims and Parties in the Actions under a single master caption. On April 11, 2022, the Court entered an order consolidating the PAGA Action and the Class Action for purposes of class action and PAGA settlement and designating the PAGA Action as the lead case for purposes of the Class Action and PAGA settlement approval procedures.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross 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) and Released PAGA Claims of PAGA Aggrieved Employees with respect to the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys’ fees one-third of the Gross Settlement Amount (i.e., 120,000.00), and reimbursement of costs and expenses in an amount not to exceed twenty four thousand dollars and no cents (\$24,000.00) to Class Counsel

¹² Settlement Agreement, § 1.17.

(collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are currently estimated not to exceed seven thousand dollars and no cents (\$7,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) payment to the LWDA of its 75% share of the PAGA Allocation (i.e., \$27,000.00 out of \$36,000.00) (“LWDA Payment”); (4) payment of the remaining 25% of the PAGA Allocation (i.e., \$9,000.00 out of \$36,000.00) to the PAGA Aggrieved Employee Group on a *pro rata* basis (“PAGA Settlement Fund”); and (4) payment in the amount of up to five thousand dollars and no cents (\$5,000.00) to Plaintiff Saul Andrade (“Class Representative Service Award”).¹³ The Parties have agreed to retain Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.¹⁴

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

- a. Defendant will calculate each Class Member’s number of Eligible Workweeks worked during the Class Period and include this information in the Class Data sent to the Settlement Administrator.¹⁵
- b. The Settlement Administrator will divide the number of Eligible Workweeks attributed to the Settlement Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount.¹⁶

The Parties have also agreed that the Settlement Administrator will determine each PAGA Aggrieved Employee Group member’s share of the PAGA Settlement Payment, in accordance with the Settlement Agreement and as follows:

- a. Defendant will calculate each Class Member’s number of Eligible Workweeks worked during the PAGA Period and include this information in the Class Data sent to the Settlement Administrator.¹⁷
- b. The Settlement Administrator will divide the number of Eligible Workweeks in the PAGA Period attributed to the member of the PAGA Aggrieved Employee Group by all Eligible Workweeks in the PAGA Period attributed to all the members of the PAGA Aggrieved Employee Group, multiplied by the PAGA Settlement Fund.¹⁸

¹³ Settlement Agreement, §1.22; see also, §§ 5.1-5.4.

¹⁴ *Id.*, § 1.38.

¹⁵ *Id.*, § 3.3.

¹⁶ *Id.*, § 5.5.1.

¹⁷ *Id.*, § 3.3.

¹⁸ *Id.*, § 5.4.3.

Each Settlement Class Member's Individual Settlement Payment 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 1099.¹⁹ One hundred percent (100%) of the PAGA Settlement Payment is in settlement of claims for penalties and shall be reported on IRS Form 1099, unless not required by law.²⁰ 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.²¹ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares ("Employer Taxes") in addition to the Gross Settlement Amount.²²

Individual Settlement Payment checks issued to Settlement Class Members and PAGA Settlement Payment checks issued to members of the PAGA Aggrieved Employee Group will be negotiable for one hundred eighty (180) calendar days from the date of the mailing of the check.²³ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.²⁴ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator, after the expiration of the 180-day period, to the California Unclaimed Property Fund in the name of the Class Member whose check is cancelled.²⁵

Class Members may request to be excluded from the Settlement by mailing a written request ("Request for Exclusion") to the Settlement Administrator.²⁶ To be timely, the Class Member must mail a Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the date of mailing of the Class Notice ("Response Deadline").²⁷ A Request for Exclusion must contain: (1) the name and case number

¹⁹ Settlement Agreement, § 5.5.3.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, § 1.17.

²³ *Id.*, § 5.5.2.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Id.*, § 1.37.

²⁷ *Id.*, § 1.9

of the Consolidated Action, (2) the full name, signature, address, telephone number, and the last four digits of the social security number of the Class Member requesting to opt-out, (3) a clear statement that the Class Member does not wish to be included in the Settlement, and (4) be returned to the Settlement Administrator at the address specified in the Class Notice postmarked on or before the Response Deadline.²⁸ A Class Member who submits a valid and timely Request for Exclusion will not be bound by the Settlement and will not receive an Individual Settlement Payment; however, if the Class Member is also a member of the PAGA Aggrieved Employee Group, he or she will nevertheless be bound by the Released PAGA Claims and shall receive their pro rata share of the PAGA Settlement Fund.²⁹

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.³⁰ Settlement Class Members who wish to object to the Settlement may present their objection orally at the Final Approval Hearing and/or submit a valid and timely written objection (“Notice of Objection”) to the Settlement Administrator on or before the Response Deadline.³¹ The Notice of Objection must include: (1) the name and case number of the Consolidated Action, (2) the full name, signature, address, telephone number, and the last four digits of the social security number of the Class Member making the objection, (3) the specific reason(s) for the objection, and (4) all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) upon which the objection is based.³²

Class Members who wish to dispute the number of Eligible Workweeks credited to them in their Class Notice may do so by submitting a written letter to the Settlement Administrator that contains: (1) the name and case number of the Consolidated Action (or reasonable portion thereof); (2) the full name, telephone number, last four digits of their social security number, and current address of the Class Member disputing his or her Eligible Workweeks; (3) clear statement that the Class Member disputes the number of Eligible Workweeks credited to him or

²⁸ Settlement Agreement, § 1.37.

²⁹ *Id.*, § 4.2.3.

³⁰ *Id.*, § 4.3.

³¹ *Id.*, § 4.3.1.

³² *Id.*, § 1.24.

her and what he or she contends is the correct number to be credited to him or her; (4) information and/or attach documentation demonstrating that the number of Eligible Workweeks that he or she contends should be credited to him or her are correct; and (5) is returned by fax or mail to the Settlement Administrator at the address and/or facsimile number specified in the Class Notice, postmarked or fax-stamped on or before the Response Deadline.³³

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made

³³ Settlement Agreement, § 4.4.

only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

The Parties actively litigated the Action since it was commenced on July 28, 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.³⁴

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 documents and data produced by Defendant.³⁵ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, Class Members’ time and pay data, company policy acknowledgements (including but not limited to acknowledgments of Privacy Practices, Code of Business Conduct, Mach 1 Company Computer and Internet Policy, Drivers Manual Receipt, Receipt of Equipment, Permission to Obtain Driving Record, Company Policy and Procedures on Driver and Vehicle Tickets, Fuel Grade Agreement, Portable 2 Way Radios/Cellular Phones, Mach 1 Handheld Communication Devices, Driver’s Manual Receipt, Driver Certification for Other Compensated Work, Code of Safe Practices, Mach 1 Receipt of Equipment, and Employee Release Authorization), internal memoranda, job descriptions, new hire orientation checklists, operations and employment practices (including but not limited to Driver’s Pick Up and Delivery Handbook, Driver Safety Award Program, CSA Factsheets, Driver Daily Production, Accident Information Guide, Driver Break Period Off-Duty, Driver Certification for Other Compensated Work, and Driver Data Sheet for Casuals, New Hires, & Temporary Employees), forms (including but not limited to Drivers Daily Pick Up and Delivery Log, Inspection Checklist, Weekly Vehicle Odometer, Tire

³⁴ Takvoryan Decl., ¶¶ 11-13.

³⁵ *Id.*, ¶ 12.

Pressure, and Tire Depth Report, and New Employee HR Form), procedures and policies (including but not limited to United States Personnel Policy Handbook, Drug and Alcohol Policy, Policy re hours of service, rest break, meal break, time records, etc., Policy re Commercial Vehicle Inspections, Accident check list, Policy re Handheld Communication Devices while operating a commercial motor vehicle, Company Policy and Procedures on Driver and Vehicle Tickets, Seat Belt Policy, Hourly Employee Lunch Break Policy, and Payroll Distribution Policy) among other information and documents.³⁶ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁷ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.³⁸ 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.³⁹ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴⁰

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by the Honorable Suzanne Segal (Retired), a well-respected mediator experienced in mediating complex labor and employment matters.⁴¹ 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 cases and various aspects of the matter, 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

³⁶ Takvoryan Decl., ¶ 12.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶ 11.

appeals, among other things.⁴² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴³ 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.⁴⁴ After conducting investigations, significant formal and 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.⁴⁵

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.⁴⁶ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁷ 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.⁴⁸ 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.⁴⁹

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

The Settlement, which provides for a Gross Settlement Amount of three hundred sixty thousand dollars and no cents (\$360,000.00), represents a fair, adequate, and reasonable

⁴² Takvoryan Decl., ¶ 11.

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 11, 16-18.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁹ *Id.*, ¶¶ 6-7.

1 resolution of the matter.⁵⁰ The Settlement was calculated using the information and data
2 uncovered during litigation, case investigation, as well as the formal and informal exchange of
3 information.⁵¹ The Settlement takes into account the potential risks and rewards inherent in any
4 case and, in particular, in the matter at issue.⁵² Moreover, considering all of the facts and
5 circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate
6 recovery for the Class.⁵³

7 Assuming that the Attorneys' Fees and Costs, Class Representative Service Award,
8 LWDA Payment, PAGA Settlement Fund, and Settlement Administration Costs are approved
9 by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides
10 for a Net Settlement Amount that is currently estimated to be one hundred sixty eight thousand
11 dollars and no cents (\$168,000.00).⁵⁴ As discussed in Part III, *supra*, the entire Net Settlement
12 Amount will be fully paid out to the Settlement Class Members, in accordance with the
13 Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement
14 Payment will be calculated based on their Eligible Workweeks.⁵⁵ There is no reason to doubt
15 the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary
16 approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable,
17 rational basis [to warrant approval], particularly if recommended by experienced and competent
18 class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y.
19 2001) 127 F.Supp.2d 418, 429-30.

20 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
21 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, the
22 PAGA Aggrieved Employee Group, and the State of California.⁵⁶ Although the
23 recommendations of Class Counsel are not conclusive, the Court can properly take the
24 recommendations into account, particularly if Class Counsel appears to be competent, and has

25 ⁵⁰ Takvoryan Decl., ¶¶ 11, 13, 14 & 21.

26 ⁵¹ *Id.*, ¶¶ 11-13.

27 ⁵² *Id.*, ¶¶ 16-18.

28 ⁵³ *Id.*, ¶¶ 11, 13, 19, & 22.

⁵⁴ *Id.*, ¶ 14.

⁵⁵ Settlement Agreement, § 5.5.1.

⁵⁶ Takvoryan Decl., ¶¶ 11, 13, 19, & 22.

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. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁷ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁸ As outlined in the Declaration of Ovsanna Takvoryan, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁹

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.⁶⁰ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiff's claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the

⁵⁷ Takvoryan Decl., ¶¶ 11-13 & 18.

⁵⁸ *Id.*, ¶ 18.

⁵⁹ *Id.*, ¶¶ 11-13 & 16-18.

⁶⁰ Settlement Agreement, § 2.6.

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.

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 eighty-four (84) individuals.⁶¹ 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 hourly-paid and 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

⁶¹ Takvoryan Decl., ¶ 9.

1 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
2 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

8 Here, common issues of fact and law predominate as to each of the claims alleged and
9 asserted in the Action. Based on the documents and information obtained through formal and
10 informal discovery and exchange of information, Plaintiff contends that Class Members were
11 subject to the same or similar job duties and uniform operations and employment practices,
12 policies, and procedures during the time period at issue.⁶² Plaintiff’s claims arise from
13 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
14 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
15 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
16 to timely pay wages during employment and upon termination of employment, failing to provide
17 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
18 necessary business-related expenses.⁶³

19 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect
20 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁴
21 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
22 compensation due to them from Defendant during the time period at issue.⁶⁵

23 Plaintiff maintains that the outcome of this litigation would be determined by
24 Defendant’s alleged uniform operations and employment policies and procedures that applied
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27 ⁶² Takvoryan Decl., ¶ 16.

28 ⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

1 across its hourly-paid or non-exempt employees who worked in California during the Class
2 Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

5 Class Counsel has litigated the matter for over two years and was actively preparing the
6 matter for class certification and trial.⁶⁶ The ongoing work has been extensive, demanding, and
7 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
8 extensive investigations into the facts of the cases and formal and informal discovery, including,
9 and not limited to, propounding multiple formal written discovery requests onto Defendant.
10 Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable
11 designees. Class Counsel reviewed a large volume of documents and data⁶⁷ and also interviewed
12 and obtained information from Plaintiff and other Class Members, researched applicable law,
13 undertook damages/valuation calculations, and met and conferred with Defendant's counsel
14 regarding the pleadings, discovery, and the production of documents and data prior to
15 mediation.⁶⁸ Counsel for the Parties also undertook extensive settlement discussions, which
16 included participating in a formal, full-day mediation.⁶⁹

17 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
18 experience to obtain a great result for the Class.⁷⁰

19 The Settlement establishes a Gross Settlement Amount of three hundred sixty thousand
20 dollars and no cents (\$360,000.00), and provides for Class Counsel to apply to the Court for
21 Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed one third
22 (1/3) of the Gross Settlement Amount (i.e., \$120,000.00) and an amount not to exceed twenty
23 four thousand dollars and no cents (\$24,000.00) for reimbursement of actual litigation costs and
24 expenses.⁷¹ The attorneys' fees provided for by the Settlement is commensurate with: (1) the
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26 ⁶⁶ Takvoryan Decl., ¶¶ 11-13.

27 ⁶⁷ *Id.*, ¶ 12.

28 ⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶ 11.

⁷⁰ *Id.*, ¶¶ 6-7.

⁷¹ Settlement Agreement, § 5.2.

1 risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort
2 and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class
3 Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5)
4 the value of the Settlement that Class Counsel has achieved for the Class, PAGA Aggrieved
5 Employee Group, and the State of California, and (6) the other cases that Class Counsel had to
6 turn down in order to devote its time and efforts to this matter. The proposed Class Notice
7 provides Class Members with information about the amount allocated toward the Attorneys'
8 Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided
9 for by the Settlement.⁷²

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

23 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
24 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
25 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
26 Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar
27 cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check
28

⁷² Settlement Agreement, Exh. A.

1 and use other means to evaluate the reasonableness of a requested percentage fee[.]” and “[t]he
2 percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

3 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
4 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
5 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
6 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
7 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
8 fees). California courts routinely approve class action attorneys’ fee awards “average[ing]
9 around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11
10 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in
11 class actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court
12 Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County
13 Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

14 Class Counsel has borne all of the risks and costs of litigation and will not receive any
15 compensation until recovery is obtained.⁷³

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

21 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

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28

⁷³ Takvoryan Decl., ¶ 19.

1 The proposed Class Notice⁷⁴ describes the Settlement, the deadlines and procedures to
2 mail a request for exclusion from the Settlement, an objection to the Settlement, and/or a dispute
3 regarding Eligible Workweeks, and the date and time set for the Final Approval Hearing.⁷⁵

4 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
5 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
6 members to make an informed decision about their participation.” *Manual for Complex*
7 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
8 proceedings to date and the terms and conditions of the Settlement in an informative and
9 coherent manner.⁷⁶ The proposed Class Notice recognizes that the Court has not yet granted
10 final approval of the settlement.⁷⁷ The proposed Class Notice also apprises the Class Members
11 of, *inter alia*, how their Individual Settlement Payment and, if applicable, their PAGA
12 Settlement Payment are calculated and the number of Eligible Workweeks credited to them.⁷⁸

13 The proposed Class Notice satisfies all due process requirements and complies with the
14 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23©(2) and 23(e); *Newberg*,
15 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The
16 essentials of due process of law in class suits would appear to be afforded by fair representation
17 in the assertion of claims of class members against the opposing parties in any lawsuit, and
18 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

19 **IX. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION**
20 **SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR**

21 The Parties have selected Phoenix to administer the Settlement.

22 The Settlement Administrator will mail the court-approved Class Notice to the Class
23 Members by First-Class U.S. mail.⁷⁹ Any undeliverable Class Notice that is returned to the
24 Settlement Administrator with a forwarding address on or before the Response Deadline, will
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26 ⁷⁴ Settlement Agreement, Exh. A.

27 ⁷⁵ *Ibid.*

28 ⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Id.*, § 3.4.

be re-mailed to the forwarding address via First Class U.S. Mail within five (5) calendar days.⁸⁰ With respect to any undeliverable Class 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 a computer based skip-trace search, and re-mail the Class Notice to the Class Member via First Class U.S. Mail within ten (10) calendar days.⁸¹ In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline to submit a Request for Exclusion, Notice of Objection, or dispute regarding Eligible Workweeks for that Class Members shall be extended by fifteen (15) calendar days.⁸² The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objections, and any disputes regarding Eligible Workweeks.⁸³

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and PAGA Settlement 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 the PAGA Settlement Payments to PAGA Aggrieved Employee Group members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Class Representative Service Award, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁴ The Settlement Administration Costs are currently estimated not to exceed seven thousand dollars and no cents (\$7,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁵

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

⁸⁰ Settlement Agreement, § 3.4.

⁸¹ *Ibid.*

⁸² *Id.*, § 1.9.

⁸³ *Id.*, § 4.1.1.

⁸⁴ *Id.*, §§ 3, 4, & 5; Takvoryan Decl., ¶ 15.

⁸⁵ Settlement Agreement, § 5.1.

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 based on Defendant's records.⁸⁶

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) employee ID number; (3) last known address and telephone number; (4) number of Eligible Workweeks worked during the Class Period and PAGA Period; and (5) social security number (collectively, "Class Data").⁸⁷

Within fifteen (15) calendar days of receipt of the Class Data, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁸ If a Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁹ 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 a computer based skip-trace search, and re-mail the Class Notice to the Class Member.⁹⁰ In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days.⁹¹ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, Notice of Objection, and/or a dispute regarding Eligible Workweeks.⁹²

By fifteen (15) calendar days after the Effective Date, Defendant will deposit all of the Gross Settlement Amount into the QSF established by the Settlement Administrator.⁹³ Within

⁸⁶ Settlement Agreement, § 3.3.

⁸⁷ *Ibid.*

⁸⁸ *Id.*, § 3.4.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Id.*, § 1.9.

⁹² *Id.*, § 4.1.1.

⁹³ *Id.*, § 5.6.

thirty (30) calendar days of the Effective Date, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) the individual PAGA Settlement Payments to members of the PAGA Aggrieved Employee Group; (3) the Court-approved Class Representative Service Award to Plaintiff; (4) the Court-approved Attorneys' Fees and Costs to Class Counsel; (5) the LWDA Payment to the LWDA; and (6) the Court-approved Settlement Administration Costs to itself.⁹⁴

Individual Settlement Payment checks issued to Settlement Class Members and PAGA Settlement Payment checks issued to members of the PAGA Aggrieved Employee Group will be negotiable for one hundred eighty (180) calendar days from the date of the mailing of the check.⁹⁵ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.⁹⁶ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator, after the expiration of the 180-day period, to the California Unclaimed Property Fund in the name of the Class Member whose check is cancelled.⁹⁷

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

Plaintiff Saul Andrade respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Service Award in an amount up to five thousand dollars and no cents (\$5,000.00).⁹⁸ 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

⁹⁴ Settlement Agreement, §§ 5.2.2, 5.3.2, 5.4.2, 5.4.5, and 5.5.2.

⁹⁵ *Id.*, § 5.5.2.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Id.*, § 7.4.

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 Class Representative Service Award 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.⁹⁹ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.¹⁰⁰ Accordingly, it is appropriate and just for Plaintiff to each receive a Class Representative Service Award for his services on behalf of the Class, in addition to his Individual Settlement Payment and PAGA Settlement Payment.

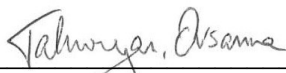
XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Saul Andrade as Class Representative; appoint Phoenix as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Class Representative Service Award, PAGA Allocation, 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 six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: December 29, 2022

LAWYERS for JUSTICE, PC

By:



Ovsanna Takvoryan
Attorneys for Plaintiff

⁹⁹ Takvoryan Decl., ¶ 21; Declaration of Saul Andrade in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Andrade Decl."), ¶ 4.

¹⁰⁰ Takvoryan Decl., ¶ 21; Andrade Decl., ¶¶ 3-6.