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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

Coordination Proceeding Special Title (Rule 3.550)

TOTAL AIRPORT SERVICES, LLC WAGE AND HOUR CASES

Including Actions:

Cassandra Olomua v. Total Airport Services, LLC, Superior Court of California, San Mateo County, Case No. 19-CIV-06044

Delmy Rivera v. Total Airport Services, LLC, Superior Court of California, Los Angeles County, Case No. 19STCV32847

Fernando Aguilera, et al. v. Total Airport Services, LLC, Superior Court of California, Alameda County, Case No. RG20067972

Judicial Council Coordination Proceeding No.: 5084

Hon. David S. Cunningham
Department SSC11

CLASS ACTION

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

[Declarations of Class Counsel (Vartan Madoyan, Kevin Mahoney, Katherine J. Odenbreit); Declarations of Proposed Class Representatives (Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera); and [Proposed] Order filed concurrently herewith]

Date:	March 19, 2025
Time:	11:00 a.m.
Department:	SSC-11

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

PLEASE TAKE NOTICE that on March 19, 2025 at 11:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David S. Cunningham in Department SSC-11 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera ("Plaintiffs" or "Class Representatives") will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and Private Attorneys General Act Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Vartan Madoyan, 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, Class Counsel Fees and Class Counsel Litigation Expenses to Class Counsel, Class Representative Service Payments to Plaintiffs, and Administration Expenses to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC and Mahoney Law Group, APC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement and Hearing Date For Final Court Approval ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement Agreement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;

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- Approving Phoenix Class Action Administration Solutions as the Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees and Class Counsel Litigation Expenses to Class Counsel, Class Representative Service Payments to Plaintiffs, and Administration Expenses to the Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Vartan Madoyan, Kevin Mahoney, and Katherine J. Odenbreit) and Proposed Class Representatives (Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera) 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: November 11, 2024

LAWYERS *for* JUSTICE, PC

By: Vartan S. Madoyan

Vartan Madoyan
Attorneys for Plaintiffs Cassandra Olomua, Elijah Miller, and Fernando Aguilera

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera ("Plaintiffs" or "Class Representatives") seek preliminary approval of the Class Action and Private Attorneys General Act Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of the Class Members and the State of California with respect to the Affected Employees, on the one hand, and Defendant Total Airport Services, LLC ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the "Parties") have agreed to settle this lawsuit for a gross settlement amount of Four Million Six Hundred Thousand Dollars and Zero Cents ($4,600,000.00) ("Gross Settlement Amount").[1] The Gross Settlement Amount includes the following: (1) Individual Class Payments to Participating Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Class Representative Service Payments of Fifteen Thousand Dollars and Zero Cents ($15,000.00) each to Plaintiffs Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera[3]; (3) the Class Counsel Fees and Class Counsel Litigation Expenses, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or $1,610,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00)[4]; (4) the Administration Expenses to the Administrator in the amount currently estimated not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00);[5] (5) PAGA Settlement Amount of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $375,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $125,000.00) will be distributed to all current and former hourly-paid or non-

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Vartan Madoyan ("Madoyan Decl."), ¶ 1.21.
[2] *Id.*, ¶ 1.22.
[3] *Id.*, ¶¶ 1.14 & 3.6(a).
[4] *Id.*, ¶¶ 1.7, 1.8, & 3.6(b).
[5] *Id.*, ¶¶ 1.2 & 3.6(c).

exempt employees of Defendant in California employed at any time during the PAGA Period ("Affected Employees") on a *pro rata* basis, based on their PAGA Pay Periods.[6]

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

> All current and former hourly-paid or non-exempt employees of Defendant in California employed at any time during the Class Period ("Class").[7]

Based on information provided by Defendant, as of December 31, 2022,[8] the Class is estimated to consist of approximately 2,836 Class Members who collectively worked a total of approximately 206,056 Workweeks, and approximately 2,093 Affected Employees who worked a total of approximately 55,684 PAGA Pay Periods.[9]

Class Members who do not submit a valid and timely Request for Exclusion from the Settlement ("Participating Class Members") will receive a share of the Net Settlement Amount ("Individual Class Payment") on a *pro rata* basis based on the number of weeks during the Class Period in which the Class Member worked for Defendant in California in a non-exempt position on at least one day ("Workweeks").[10]

Each Affected Employee will receive a share of the 25% of the PAGA Settlement Amount ("Individual PAGA Payment") on a *pro rata* basis based on the number of pay periods during the PAGA Period during which the Affected Employee worked for Defendant in California in a non-exempt position for at least one day ("PAGA Pay Period").[11]

The Settlement resolves the Released Class Claims of Plaintiffs and Participating Class Members, and the Released PAGA Claims of Plaintiffs, the State of California, and the Affected Employees, against the Released Parties.[12]

In order to efficiently present the Court with adequate information to determine whether

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[6] Settlement Agreement, ¶¶ 1.4, 1.23, & 1.33. "PAGA Period" is defined as the period from May 12, 2019, through and including December 31, 2022. *See id*., ¶ 1.32.

[7] *Id*., ¶ 1.5. "Class Period" is defined as the period from September 16, 2015, through and including December 31, 2022. *See* i*d*., ¶ 1.12.

[8] Defendant was acquired by a separate entity in January 2023, and consequently, the class of employees covered by this Settlement closed as of December 31, 2022,

[9] Madoyan Decl., ¶ 9.

[10] Settlement Agreement, ¶¶ 1.22, 1.34, & 1.46.

[11] *Id*., ¶¶ 1.23 & 1.31.

[12] *See id*. at ¶ 1.38 for the full scope of the "Released Class Claims," *id*. at ¶ 1.39 for the full scope of the "Released PAGA Claims," and *id*. at ¶ 1.40, for the definition of the "Released Parties."

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to grant preliminary approval of the Settlement, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Total Airport Services, LLC is an aviation service company providing cargo aircraft handling, cargo warehousing, passenger aircraft ramp services, fueling, and other airport support services. Plaintiffs are former employees of Defendant.

On September 16, 2019, Plaintiff Rivera filed a Class Action Complaint for Damages against Defendant in the Superior Court of the State of California, County of Los Angeles, Case No. 19STCV32847 ("the *Rivera* Action").

On October 15, 2019, Plaintiff Olomua filed a Class Action Complaint for Damages against Defendant in the Superior Court of the State of California, County of San Mateo, Case No. 19-CIV-06044 ("the *Olomua* Action").

On May 12, 2020, Plaintiff Aguilera provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated (the "Aguilera PAGA Notice").

On May 12, 2020, Plaintiff Miller provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated (the "Miller PAGA Notice").

On July 17, 2020, Plaintiffs Aguilera and Miller filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code Section 2698, Et Seq. against Defendant in the Superior Court of the State of California, County of Alameda, Case No. RG20067972 ("the *Aguilera/Miller* Action").

Defendant filed answers in the *Rivera* Action, the *Olomua* Action, and the *Aguilera/Miller* Action, denying the allegations in each of the complaints, denying any failure to comply with the laws identified in the complaints, and denying any and all liability for the causes of action alleged.

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On January 17, 2020, Defendant filed a petition to coordinate the *Rivera* Action and the *Olomua* Action. On March 11, 2020, Defendant's petition to coordinate the *Rivera* Action and the *Olomua* Action was granted, and the class actions were coordinated in the Superior Court of the State of California, County of Los Angeles, and the coordinated actions were designated *Total Airport Services Wage and Hour Cases,* Case No. JCCP5084.

On September 1, 2020, Defendant filed a petition to add the *Aguilera/Miller* Action to the coordinated proceedings. On September 30, 2020, Defendant's petition to add the *Aguilera/Miller* Action to the coordinated proceedings was granted.

As part of this Settlement, on October 28, 2024, Plaintiffs filed the Operative Complaint (i.e. the Consolidated Complaint) in the *Total Airport Services Wage and Hour Cases*.

Prior to mediation, the Parties completed a *Belaire-West* notice mailing to 2,532 employees. Plaintiffs also served form interrogatories, 46 special interrogatories, and 94 requests for production of documents, and Defendant responded to each of these requests.

The Court also ordered Defendant to produce time records and wage records for 400 putative Class Members. Prior to mediation, Defendant completed the production of such records as well as relevant portions of the personnel files for approximately 250 Class Members. Additionally, Defendant produced information and data regarding: (a) the number of Defendant's non-exempt employees in California during the various time periods applicable to Plaintiffs' claims, including from September 16, 2015, to December 31, 2022 (for Plaintiffs' expense reimbursement and unfair competition claims), from December 2, 2016, to December 31, 2022 (for Plaintiffs' statutory wage and waiting time penalty claims), from September 16, 2018, to December 31, 2022 (for Plaintiffs' wage statement penalty claims), and from May 12, 2019, to December 31, 2022 (for Plaintiffs' PAGA penalty claims); (b) the number of workweeks worked by Defendant's non-exempt employees in California during these same for time periods; (c) the average hourly rate paid to Defendant's non-exempt employees in California from September 16, 2015, to December 31, 2022, and from December 2, 2016, to December 31, 2022; and (d) the number of meal and rest period premiums paid to Defendant's

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non-exempt employees in California from December 2, 2016, to December 31, 2022.[13] In addition, Defendant produced each version of its employee handbook in effect from September 16, 2015, through December 31, 2022, as well as other policy documents regarding timekeeping, reporting for work, meal periods, rest periods, payroll, and expense reimbursements. In total, Defendant produced thousands of pages of documents.

Thus, Plaintiffs obtained sufficient documents and information to sufficiently investigate the claims in accordance with the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801, and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130.

On November 8, 2023, the Parties participated in a formal, full-day mediation conducted by Eve Wagner, 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 Actions in their entirety.

Plaintiffs' core allegations are that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and the Affected Employees of, *inter alia*, failing to pay minimum and overtime wages for all time worked including but not limited to rounding of time punches and off-the-clock time spent (i) traveling on shuttles from a parking lot to work locations; and (ii) waiting to clock in; failing to pay all wages due, including but not limited to overtime, double-time, meal period premium, rest period premium, reporting time, vacation, and sick leave wages, at the correct regular rate of pay; failing to provide meal periods; failing to provide rest periods; failing to provide accurate itemized wage statements (including through Aline cards); failing to pay all wages due upon termination of employment (including when payment of wages was made through Aline cards); failing to pay employees within 7 days of the close of the payroll period (including when payment of wages was made through Aline cards); failing to maintain records; failing to reimburse employees for business expenses, including but not limited to cell phone service and

[13] Plaintiffs' statutory wage claims and derivative waiting time and wage statement penalty claims were limited by a prior settlement covering those claims through December 1, 2016. Only Plaintiffs' expense reimbursement claim ran back to the four years prior to the filing of the *Rivera* complaint, i.e., the first complaint in this action.

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uniforms; failing to pay reporting time pay; and thereby engaging in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiffs contend that they, the Class Members, and the Affected Employee are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), interest, and attorneys' fees and costs.

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

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a gross settlement amount of Four Million Six Hundred Thousand Dollars and Zero Cents ($4,600,000.00) (i.e., the Gross Settlement Amount) to resolve the Released Class Claims of Plaintiffs and the Class Members who does not submit a valid and timely Request for Exclusion from the Settlement (i.e., Participating Class Members) with respect to the Released Parties, and to resolve the PAGA claims included within the definition of Released PAGA Claims of Plaintiffs, the State of California, and the Affected Employees with respect to the Released Parties.[14] 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 in an amount not to exceed One Million Six Hundred Ten Thousand Dollars and Zero Cents ($1,610,000.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00) to Class Counsel (referred to as the "Class Counsel Fees" and "Class Counsel Litigation Expenses," respectively); (2) Administration Expenses, which are currently estimated not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00) to the Administrator ("Administration Expenses"); (3) PAGA Settlement Amount of Five Hundred Thousand Dollars and Zero Cents ($500,000.00), of which

[14] Settlement Agreement, ¶¶ 1.21, 1.34, 1.38, 1.39, & 6.

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seventy-five percent (75%) (i.e., $375,000.00) will be distributed to the LWDA ("LWDA PAGA Payment") and twenty-five percent (25%) (i.e., $125,000.00) will be distributed to the Affected Employees on a *pro rata* basis; and (4) payment in the amount of up to Fifteen Thousand Dollars and Zero Cents ($15,000.00) each to Plaintiffs Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera ("Class Representative Service Payments").[15] The Parties have agreed to Phoenix Class Action Administration Solutions ("Phoenix" or "Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Administrator will determine each Participating Class Member's share of the available Net Settlement Amount (i.e., Individual Class Payment) as follows:

> Step 1: Calculate Each Participating Class Member's Individual Workweek Value: add (A) 10% of each Participating Class Member's individual Workweeks from September 16, 2015, to December 1, 2016;[16] and (B) each Participating Class Members' individual Workweeks from December 2, 2016, to December 31, 2022;[17]
>
> Step 2: Calculate All Participating Class Members' Total Workweeks: add (A) 10% of all Participating Class Members' individual Workweeks from September 16, 2015, to December 1, 2016; and (B) all Participating Class Members' individual Workweeks from December 2, 2016, to December 31, 2022;[18]
>
> Step 3: Calculate the Percent of the Net Settlement Amount That Each Participating Class Member is Entitled to Receive: divide each Participating Class Member's individual Workweek value determined at Step 1 by the Total Workweeks of all Participating Class Members as determined at Step 2;[19] and
>
> Step 4: Calculate the Individual Class Payments: multiply the result in Step 3 for each Participating Class Member by the Net Settlement Amount.[20]

The Administrator will calculate each Individual PAGA Payment by: (a) dividing the amount of the Affected Employees' 25% share of the PAGA Settlement Amount ($125,000) by the total number of PAGA Pay Periods; and (b) multiplying the result by each Affected

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[15] *Id.*, ¶ 1.26.; *see also id.*, ¶¶ 3.6(a), 3.6(b), 3.6(c), 3.6(d), & 3.6(e).

[16] Again, Plaintiffs' statutory wage claims and derivative waiting time and wage statement penalty claims were released through December 1, 2016, by a prior settlement. Therefore, the parties agreed to allocate only a 10% value to the workweeks worked between September 16, 2015, and December 1, 2016, the time period for which Plaintiffs are releasing only the expense reimbursement claim.

[17] Settlement Agreement, ¶ 3.6(e).

[18] Ibid.

[19] Ibid.

[20] Ibid.

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Employee's PAGA Pay Periods.[21] Affected Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.[22]

Each Individual Class Payment will be allocated as twenty percent (20%) wages (the "Wages Portion"), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) will be allocated as penalties and interest (the "Non-Wages Portion"), which will be reported on an IRS Form 1099.[23] Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.[24] Defendant will pay the employer share of payroll taxes associated with the Individual Class Payments separately from the Gross Settlement Amount.[25]

The face of each check shall prominently state the Void Date, which is 181 days after the date of mailing, when the check will be voided.[26] For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the Void Date, the Administrator shall transmit the funds represented by such checks to Legal Aid Foundation of Los Angeles in a manner consistent with California Code of Civil Procedure Section 384.[27]

Class Members who wish to exclude themselves (opt out of) the Class Settlement must send the Administrator, by mail, a signed written request ("Request for Exclusion") no later than sixty (60) days after the Administrator mails the Class Notice ("Response Deadline").[28] A Request for Exclusion is a letter from a Class Member or his/her representative that indicates that they do not wish to participate in the Settlement in the *Total Airport Services Wage and Hour Cases*, or some other descriptor that identifies the case; is signed by the person requesting

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[21] *Id.*, ¶ 3.6(d)(i). The parties did not discount the value of any PAGA Pay Periods because no portion of Plaintiffs' PAGA claims were affected by a prior release.
[22] *Id.*, ¶ 3.6(d)(ii).
[23] *Id.*, ¶ 3.6(e).
[24] Ibid.
[25] *Id.*, ¶ 1.21.
[26] *Id.*, ¶ 5.2.
[27] *Id.*, ¶ 5.4.
[28] *Id.*, ¶¶ 1.41 & 1.42.

exclusion; and includes the Class Member's name, address and email address or telephone number.[29]

Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement.[30] Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under the Settlement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.[31] All Affected Employees, including Non-Participating Class Members, are deemed to release the Released PAGA Claims identified in the Agreement and are eligible for an Individual PAGA Payment regardless of whether they opt out of the Class Settlement.[32]

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees, Class Counsel Litigation Expenses and/or Class Representative Service Payments.[33] To be valid, the Notice of Objection must: (i) contain the name, address and telephone number of the Class Member and the approximate dates s/he worked for Defendant; (ii) identify the case, e.g., by stating the Notice of Objection relates to the *Total Airport Services Wage and Hour Cases*, or some other descriptor that identifies the case; (iii) state the basis for the objection; (iv) be signed by the Class Member; and (v) be postmarked on or before the Response Deadline. Participating Class Members may send written Notices of Objection to the Administrator, by mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.[34]

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[29] *Id.*, ¶ 8.5(a).
[30] *Id.*, ¶ 8.5(d).
[31] *Id.*, ¶ 8.5(c).
[32] *Id.*, ¶ 8.5(d).
[33] Settlement Agreement, ¶ 8.6(a).
[34] *Id.*, ¶ 8.6(b).

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IV. <u>LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS</u>

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

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

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

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

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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 plaintiffs' 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 of showing 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 Actions since they were commenced. Both sides used

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the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.[35]

Prior to reaching the Settlement, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.[36] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to employment records of Plaintiffs, a detailed sampling of Class Members' time and pay data, Defendant's Employee Handbooks, earning statements, job descriptions, new hire checklists, internal memorandum, company policy acknowledgments (including but not limited to, Employee Handbook Acknowledgements, Policy Information Manual Acknowledgements, Attendance & Punctuality Acknowledgments, Company-Owned Equipment Acknowledgments, Company Equipment Return Agreements, and E-Mail and Internet Policy Acknowledgements), Defendant's employment operations and employment practices, forms (including but not limited to Meal Break Waiver Agreements, On-Duy Meal Period Agreements, Wage Payment Election and Consent Forms, and Training Attendance Forms), and policies (including but not limited to Meal and Rest Period Policy, Attendance & Punctuality Policy, and Technology and Communication Policy), among other information and documents.[37] Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.[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 Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[40]

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[35] Madoyan Decl., ¶¶ 11-13.
[36] *Id.*, ¶ 12.
[37] Madoyan Decl., ¶ 12.
[38] Ibid.
[39] Ibid.
[40] Ibid.

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The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Eve Wagner, a well-respected mediator experienced in mediating complex labor and employment matters.[41] In the course of litigation and in connection with mediation and settlement discussions, the Parties exchanged class and aggrieved employee 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 theories, 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.[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 all Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[44] After conducting investigations, 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 Plaintiffs' 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 case 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 Plaintiffs' and the Class Members' employment with Defendant and performed significant research into the applicable law, concerning class certification, PAGA representative actions, off-the-clock

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[41] Madoyan Decl., ¶ 11.
[42] Ibid.
[43] Ibid.
[44] Madoyan Decl., ¶ 11.
[45] Ibid.
[46] *Id.*, ¶¶ 17-18.
[47] *Id.*, ¶ 12.

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theories, meal and rest periods, wage-and-hour law and enforcement, Plaintiffs' claims, and damages, 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. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Gross Settlement Amount of Four Million Six Hundred Thousand Dollars and Zero Cents ($4,600,000.00), represents a fair, adequate, and reasonable resolution of the matter.[50] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[51] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[52] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, Affected Employees, and the State of California.[53]

Assuming that the Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payments, PAGA Settlement Amount, and Administration Expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount to Class Members that is currently estimated to be Two Million Three Hundred Seventy Thousand Dollars ($2,370,000.00).[54] As to PAGA, 75% of the PAGA Settlement Amount (i.e., $375,000.00) will be distributed to the LWDA, and 25% of the PAGA Settlement Amount (i.e., $125,000.00) will be distributed to the Affected Employees. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, and the PAGA Settlement Amount will be fully paid out to the LWDA and the Affected Employees, in accordance with the Settlement Agreement.

[48] *Id.*, ¶¶ 11-13 & 16-18.
[49] *Id.*, ¶¶ 2-7.
[50] *Id.*, ¶¶ 11, 13, 14, & 27.
[51] *Id.*, ¶¶ 11-13.
[52] Madoyan Decl., ¶¶ 16-18.
[53] *Id.*, ¶¶ 11, 13, & 27.
[54] *Id.*, ¶ 14.

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The amount of each Participating Class Member's Individual Class Payment will be calculated based on his or her Workweeks worked for Defendant during the Class Period and each Affected Employee's Individual PAGA Payment will be calculated based on his or her PAGA Pay Periods worked for Defendant during the PAGA Period.[55] 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.[56] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. 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 in the course of litigation and in connection with mediation and settlement negotiations.[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 Vartan Madoyan, Class

[55] Settlement Agreement, ¶¶ 3.6(i) & 3.6(e).
[56] Madoyan Decl., ¶¶ 11, 13, & 27.
[57] Madoyan Decl., ¶¶ 11-13 & 18.
[58] *Id.*, ¶ 18.

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

[59] *Id.*, ¶¶ 11-13, 16-18, & 21-26.
[60] Settlement Agreement, ¶ 3.1.

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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.

Based on information provided by Defendant, the Class is estimated to consist of at least 2,836 individuals.[61] This class is therefore 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 Administrator through a review of Defendant's employment records of hourly-paid and non-exempt employees employed 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).

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

California Rule of Court 3.769(d) provides that the Court may issue an order approving certification of a provisional class at the preliminary approval stage. Trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as

[61] Madoyan Decl., ¶ 9.

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opposed to a litigation class. *Dunk, supra,* 48 Cal.App.4th at p. 1807 n.19. Because no trial is anticipated in a settlement, case management issues inherent in determining if the class should be certified need not be confronted, and the trial court's fairness review of the settlement protects the interests of the class members. *Id.* Here, for the purposes of this settlement only, Plaintiffs ask this Court to provisionally certify the Class.

VII. <u>APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES AND CLASS COUNSEL LITIGATION EXPENSES</u>

Class Counsel have actively litigated the settled matter since the Actions commenced and were actively preparing the matter for class certification and trial.[62] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery.[63] Class Counsel reviewed a large volume of documents and data[64] and also interviewed and obtained information from Plaintiffs, Defendant, and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, and the production of documents and data prior to mediation.[65] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[66]

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[67]

The Settlement establishes a Gross Settlement Amount of Four Million Six Hundred Thousand Dollars and Zero Cents ($4,600,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees and Class Counsel Litigation Expenses, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., $1,610,000.00) and an amount not to exceed Thirty Thousand Dollars and Zero

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[62] Madoyan Decl., ¶¶ 11-13.
[63] *Id.*, ¶ 12.
[64] Ibid.
[65] Ibid.
[66] *Id.*, ¶ 11.
[67] *Id.*, ¶¶ 6-7.

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Cents ($30,000.00) for litigation costs and expenses.[68] 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 Actions, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel have 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 have to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Fees and Class Counsel Litigation Expenses, and that an award of the Class Counsel Fees and Class Counsel Litigation Expenses will be sought, as provided for by the Settlement.[69]

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

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California

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[68] Settlement Agreement, ¶ 3.6(b).
[69] *Id*., Exhibit A.

Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). 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 have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[70]

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. *See* Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject

[70] Madoyan Decl., ¶ 19.

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matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Class Notice[71] describes the Settlement, the deadlines and procedures to submit a written Notice of Objection to the Class Settlement or present the objection orally at the Final Approval Hearing, or submit a Request for Exclusion from the Class Settlement, and the date and time set for the Final Approval Hearing.[72]

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg,* at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[73] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[74] The proposed Class Notice also apprises the Class Members and the Affected Employees of, *inter alia*, how their Individual Class Payment and their share of the PAGA Settlement Amount are calculated and the number of Workweeks worked and/or PAGA Pay Periods credited to them.[75]

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

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71 Settlement Agreement, Exhibit A.
72 Ibid.
73 Ibid.
74 Ibid.
75 Ibid.

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IX. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION AS THE ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement, based on the reasonable quote and quality of their services. The Administrator will mail the Class Notice to each Class Member by First-Class U.S. Mail.[76] The Administrator will receive and process Requests for Exclusion and written Notices of Objections.[77]

The Administrator will also mail the Class Notice to Class Members; post notice of entry of final order and judgment approving the Class Settlement and approving this Settlement Agreement; handle inquiries from Class Members concerning the Class Notice; determine Individual Class Payment and Individual PAGA Payments; process Requests for Exclusion and Notices of Objections; maintain the Settlement funds in an appropriate interest-bearing account; mail Individual Class Payments, Individual PAGA Payments, Class Counsel Fees, Class Counsel Litigation Expenses, Administration Expenses, and LWDA PAGA Payment; issue a final report, and perform such other duties as the Parties or the Court may direct.[78] The Administration Expenses are currently estimated to be no more than Thirty Thousand Dollars and Zero Cents ($30,000.00) based on the "not to exceed" bid submitted by Phoenix, and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[79]

Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix as the 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.

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

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[76] Settlement Agreement., ¶ 5.2.
[77] *Id*., ¶ 8.1.
[78] Ibid; Madoyan Decl., ¶ 15.
[79] Settlement Agreement, ¶ 1.2.; Madoyan Dec., ¶ 15.

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reasonably ascertainable Class Members based on Defendant's records.[80]

No later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide the Administrator with the following information for each Class Member: name; last-known mailing address; social security number; the number of workweeks worked in a non-exempt position for Defendant in California between September 16, 2015, and December 1, 2016; the number of workweeks worked in a non-exempt position for Defendant in California between December 2, 2016, and December 31, 2022; and the number of pay periods worked in a non-exempt position for Defendant in California between May 12, 2019, and December 31, 2022 ("Class Data").[81]

No later than twenty-one (21) days after receiving the Class Data, the Administrator will send the Court approved Class Notice to the Class Members via First-Class U.S. Mail at their last known addresses.[82] Not later than seven (7) days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[83] If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[84] The Administrator has no obligation to make further attempts to locate or send a Class Notice to Class Members whose Class Notice is returned by the USPS as undelivered a second time.[85] Class Members will have until the applicable Response Deadline to submit a Request for Exclusion or Notice of Objection.[86] The deadline for Class Members' written Notices of Objection and Requests for Exclusion will not be extended on account of a re-mailed Class Notice.[87]

[80] Settlement Agreement, ¶ 5.2.
[81] *Id.*, ¶¶ 1.9 & 4.3.
[82] *Id.*, ¶ 8.4(b).
[83] Id., ¶ 8.4(c).
[84] Ibid.
[85] Ibid,
[86] *Id.*, ¶ 1.42.
[87] *Id.*, ¶ 8.4(d).

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting such funds to the Administrator no later than fourteen (14) days after the Effective Date.[88]

Within 30 days following the Effective Date, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses, the Class Counsel Fees, the Class Counsel Litigation Costs, and the Class Representative Service Payments.[89]

Before checks are mailed, the Administrator shall update address information through the National Change of Address database.[90] The Administrator will send checks for Individual Class Payments to all Participating Class Members and Individual PAGA Payments to all Affected Employees for whom it has confirmed valid mailing addresses through the notice process.[91] The Administrator shall not mail checks to Participating Class Members or Affected Employees for whom it could not confirm a valid mailing address through the notice process, but instead shall hold those funds for distribution to the *cy pres*, Legal Aid Foundation of Los Angeles.[92] The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment.[93]

The face of each check shall prominently state the Void Date, which is 181 days after the date of mailing, when the check will be voided.[94] For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the Void Date, the Administrator shall transmit the funds represented by such checks to Legal Aid Foundation of Los Angeles in a manner consistent with California Code of Civil Procedure Section 384.[95]

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[88] *Id.*, ¶ 4.4.
[89] Settlement Agreement, ¶ 5.1.
[90] *Id.*, ¶ 8.4(b).
[91] Ibid.
[92] *Id.*, ¶ 5.2.
[93] Ibid.
[94] Ibid.
[95] Ibid.

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XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENTS

Plaintiffs Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Class Representative Service Payments in an amount up to Fifteen Thousand Dollars and Zero Cents ($15,000.00) each to Plaintiffs.[96] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Class Representative Service Payments are fair and appropriate. Plaintiffs 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.[97] Plaintiffs also spent significant time reviewing and providing verified discovery responses and accompanying document productions. In addition, Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[98] Accordingly, it is appropriate and just for Plaintiffs to receive Class Representative Service Payments for their services on behalf of the Class, Affected

[96] Settlement Agreement, ¶ 3.6(a).

[97] Madoyan Decl., ¶ 20; Declaration of Cassandra Olomua in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Olomua Decl."), ¶¶ 4-5; Declaration of Elijah Miller in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Miller Decl."), ¶¶ 4-5; Declaration of Fernando Aguilera in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Aguilera Decl."), ¶¶ 4-5; Declaration of Delmy Rivera in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Rivera Decl."), ¶¶ 5-8.

[98] Madoyan Decl., ¶ 20; Olomua Decl., ¶¶ 3-8; Miller Decl., ¶¶ 3-8; Aguilera Decl., ¶¶ 3-8.

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Employees, and the State of California, in addition to their Individual Class Payments and Individual PAGA Payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC and Mahoney Law Group, APC as Class Counsel; preliminary appoint and designate Plaintiffs Cassandra Olomua, Elijah Miller, Fernando Aguilera, and Delmy Rivera as Class Representatives; appoint Phoenix as Administrator; preliminarily approve the allocations for Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payments, PAGA Settlement Amount, and Administration Expenses; approve the proposed Class Notice; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five (5) months; and permit the filing of a memorandum that exceeds the page limit.

Respectfully Submitted,

Dated: November 11, 2024

LAWYERS *for* JUSTICE, PC

By: Vartan S. Madoyan
Vartan Madoyan
Attorneys for Plaintiffs Cassandra Olomua, Elijah Miller, and Fernando Aguilera

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