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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RIGOBERTO PEREZ, individually, and on behalf of other members of the general public similarly situated; JEANNETTE BELLO, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

v.

AC&A LLC, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2018-01018729-CU-OE-CXC

Honorable Lon F. Hurwitz
Department CX103

<u>CLASS ACTION</u>

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

[Declaration of Proposed Class Counsel (Brian J. St. John); Declarations of Proposed Class Representatives (Rigoberto Perez and Jeannette Bello); and [Proposed] Order filed concurrently herewith]

Date:	September 8, 2023
Time:	1:30 p.m.
Department:	CX103
Complaint Filed:	September 14, 2018
FAC Filed:	August 13, 2020
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on [MPA Date] at [MPA Time] or as soon thereafter as the matter may be heard before the Honorable Lon F. Hurwitz in Department CX103 of the Superior Court of California for the County of Orange, located at 700 W Civic Center Dr., Santa Ana, California 92701, Plaintiffs Rigoberto Perez and Jeannette Bello ("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 Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT A**" to the Declaration of Brian J. St. John, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Expenses to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Rigoberto Perez and Jeannette Bello as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix 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, Enhancement Awards for Plaintiffs, and Settlement Administration Expenses to Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, 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 (Brian J. St. John) and Proposed Class Representatives (Rigoberto Perez and Jeannette Bello) 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: August 9, 2023 **LAWYERS *for* JUSTICE, PC**

By: ______________________________
Brian J. St. John
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Rigoberto Perez and Jeannette Bello ("Plaintiffs" or "Class Representatives") seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant AC&A Enterprises, 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 Settlement Fund of one million seven hundred fifty thousand dollars and no cents ($1,750,000.00).[1] The Settlement Fund includes the following: (1) Individual Class Payments to Participating Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Awards of seven thousand five hundred dollars and no cents ($7,500.00) to Plaintiff Rigoberto Perez ("Plaintiff Perez") and five thousand dollars and no cents ($5,000.00) to Plaintiff Jeannette Bello ("Plaintiff Bello") ($12,500 total)[3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Settlement Fund, or $612,500.00, and reimbursement of litigation costs and expenses not to exceed fifty five thousand dollars and no cents ($55,000.00)[4]; (4) the Settlement Administration Expenses to the Settlement Administrator in the amount not to exceed ten thousand dollars and no cents ($10,000.00);[5] and (5) the amount of fifty thousand dollars and no cents ($50,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $37,500.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $12,500.00) will be distributed to 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.[6]

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[1] Settlement Agreement, attached as "**EXHIBIT A**" to Declaration of Brian J. St. John ("St. John Decl."), § I.v
[2] *Id.*, § I.m.
[3] *Id.*, § VIII.8.b.
[4] *Id.*, § VIII.8.a.
[5] *Id.*, § VIII.4.a.
[6] *Id.*, §§ I.o-I.r & VIII.4.a; "PAGA Period is defined as the period from September 14, 2017 through the date on which the Court grants preliminary approval of the Settlement. *See id.*, § I.s.

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 who worked for Defendant within the State of California at any time during the period from September 14, 2014 through Preliminary Approval ("Class" or "Class Members").[7]

The Class is estimated to consist of approximately five hundred sixty-two (562) individuals.[8]

Class Members who do not submit a timely and valid request to be excluded from the Settlement ("Participating Class Member") will receive a share of the Net Settlement Amount ("Individual Class Payment") on a *pro rata* basis based upon the total gross wages earned by a Class Member for hours worked as an hourly-paid or non-exempt employee for Defendant during the Class Period ("Class Wages").[9] All PAGA Members will receive a share ("Individual PAGA Payment") of the twenty-five percent (25%) portion of the PAGA Payment allocated to PAGA Members ("Employee PAGA Amount") on a *pro rata* basis based upon the total gross wages earned by a PAGA Member for hours worked as an hourly-paid or non-exempt employee for Defendant during the PAGA Period ("PAGA Wages").[10]

The Settlement resolves the Released Class Claims of Plaintiffs and Participating Class Members and the Released PAGA Claims of Plaintiffs, the State of California (with respect to the PAGA Members) and PAGA Members, against the Released Parties.[11]

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

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[7] Settlement Agreement, § I.c. "Class Period" is defined as the period of time from September 14, 2014 through the date on which the Court grants Preliminary Approval of the Settlement. *See id.*, § I.e.

[8] St. John Decl., ¶ 9.

[9] Settlement Agreement, §§ I.l, I.m, I.t, & VIII.5.a.

[10] *Id.*, §§ I.h, I.l, I.n, & VIII.5.b.

[11] See *id.* at § V.III.1, for the full scope of the "Released Class Claims," "Released PAGA Claims" and "Released Parties."

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant manufactures and supplies complex composite parts and tooling to the aerospace industry. Plaintiff Rigoberto Perez is a former employee of Defendant and Jeannette Bello is a current employee of Defendant.

On September 14, 2018, Plaintiffs filed a Class Action Complaint for Damages in the Orange County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On November 20, 2018, Defendant filed an Answer to Plaintiffs' Class Action Complaint.

On August 13, 2020, Plaintiffs filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("Operative Complaint").

Plaintiffs' core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On September 15, 2020, Defendant filed an Answer to Plaintiffs' First Amended Complaint.

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

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On November 19, 2018, Plaintiff Perez 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. On January 2, 2019, Plaintiff Perez propounded additional sets of discovery including Requests for Production of Documents, (Set Two), and Special Interrogatories, (Set Three), on Defendant. Thereafter, on January 22, 2019 and February 4, 2019, Defendant responded to Plaintiffs' discovery requests. On February 8, 2019, Defendant propounded multiple sets of discovery, including Requests for Production of Documents, (Set one), and Special Interrogatories, (Set One), on Plaintiff Perez. Thereafter, on April 5, 2019, Plaintiff Perez responded to Defendant's discovery requests. Plaintiff Perez noticed the depositions of Defendant's Person Most Knowledgeable designee, and, on January 21, 2019 and January 22, 2019, Class Counsel took the depositions of Defendant's Person Most Knowledgeable designee.

The Parties have actively litigated the Action since it was commenced on September 14, 2018. On December 4, 2019, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. Although the Parties did not resolve the matter at mediation, with the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Settlement Fund to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Participating Class Member) and Released PAGA Claims of Plaintiffs, the State of California, and PAGA Members, 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 Settlement Fund: (1) attorneys' fees in an amount not to exceed six hundred twelve thousand five hundred dollars and no cents ($612,500.00) (i.e., up to 35% of the Settlement Fund) and reimbursement of costs and expenses

[12] Settlement Agreement, § VIII.1.

in an amount not to exceed fifty five thousand dollars and no cents ($55,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed ten thousand dollars and no cents ($10,000.00) to the Settlement Administrator ("Settlement Administration Expenses"); (3) payment in the amount of fifty thousand dollars and no cents ($50,000.00) allocated to penalties under PAGA ("PAGA Payment"); and (4) payments in the amount of up to seven thousand five hundred dollars and no cents ($7,500.00) to Plaintiff Perez and up to five thousand dollars and no cents ($5,000.00) to Plaintiff Bello (for a combined total of $12,500) ("Enhancement Awards").[13] The Parties have agreed to retain Phoenix Class Action Administration Solutions ("Phoenix Class Action Administration Solutions" or "Settlement Administrator") to handle the notice and settlement administration process.

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

> The Settlement Administrator will calculate the total Class Wages of all Participating Class Members. A Participating Class Member's individual Class Wages will be divided by the total Class Wages of all Participating Class Members, and the resulting figure will be multiplied by the Net Settlement Amount to yield his or her Individual Class Payment. [14]

The Parties have agreed that the Settlement Administrator will also determine each PAGA Member's *pro rata* share of the Employee PAGA Amount (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows::

> The Settlement Administrator will calculate the total PAGA Wages of all PAGA Members. A PAGA Member's individual PAGA Wages will be divided by the total PAGA Wages of all PAGA Members, and the resulting figure will be multiplied by the Employee PAGA Amount to yield his or her Individual PAGA Payment. [15]

Each Participating Class Member's Individual Class 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 non-wages for penalties and interest,

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[13] Settlement Agreement, § VIII.4.a; see also, §§ VIII.8.a & VIII.8.b.
[14] *Id.*, § VIII.5.a.
[15] *Id.*, § VIII.5.b.

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which will be reported on an IRS Form 1099.[16] Participating Class Members will be issued payment of their Individual Class Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Class Payment.[17] Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Class Payments in addition to the Settlement Fund.[18] Each PAGA Member's Individual PAGA Payment will be allocated as one hundred percent (100%) penalties.[19]

The Individual Class Payment checks issued to Participating Class Members and Individual PAGA Payment checks issued to PAGA Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.[20] Individual Class Payment checks that are not negotiated within the 180-day period will be cancelled.[21] The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §§ 1500 *et seq*., for the benefit of those Participating Class Members and/or PAGA Members who did not cash their checks until such time that they claim their property.[22]

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by submitting a letter indicating that they want to exclude themselves.[23] To be timely, the Class Member must mail a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Notice ("Response Deadline").[24] A request for exclusion must contain: (a) the Class Member's name, address, telephone number, signature, and the last four (4) digits of his or her Social Security number; (b) the case name and number of the Action;

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[16] Settlement Agreement, § VIII.6.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] *Id.*, § VIII.7.c.
[21] Ibid.
[22] Ibid.
[23] *Id.*, § VIII.15.d.
[24] *Id.*, § I.x.

and (c) a statement clearly indicating that he or she wishes to opt out of the Settlement.[25] Class Members who submit a valid and timely request for exclusion will not be bound by the release of Released Class Claims and will not receive an Individual Class Payment.[26] All PAGA Members will be bound to the release of Released PAGA Claims and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.[27]

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) have standing to object to the Settlement.[28] Participating Class Members who wish to object to the Settlement must mail the Settlement Administrator a notice of objection on or before the Response Deadline.[29] The objection must contain: (a) the Participating Class Member's name, address, telephone number, and the last four (4) digits of his or her Social Security number; (b) the case name and number of the Action; (c) a statement clearly indicating that he or she objects and providing the reasons why he or she objects.[30] Even if a Class Member has not submitted a written objection to the Settlement, he or she may still attend and be present their objection at the Final Approval Hearing.[31]

Class Members who wish to dispute the Class Wages and/or PAGA Wages credited to them in their Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.[32] The letter must contain: (a) the Class Member's name, telephone number, and the last four (4) digits of his or her Social Security number; (b) the case name and number of the Action; (c) a statement clearly indicating that he or she wishes to dispute Class Wages and/or PAGA Wages credited to him or her; and (d) any and all supporting documents.[33]

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[25] Settlement Agreement, § VIII.15.d.
[26] Ibid.
[27] Ibid.
[28] *Id.*, §§ VIII.15.c-d.
[29] *Id.*, § VIII.15.c.
[30] Ibid.
[31] Ibid.
[32] *Id.*, § VIII.15.a.
[33] Ibid.

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IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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

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 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.

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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 September 14, 2018. 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 case 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 case, including and not limited to, the exchange, review, and analysis of thousands of pages 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 Plaintiffs and other Class Members, a detailed sampling of Class Members' time and pay data, Applied Composites Employee Handbook, company policy acknowledgements, internal memoranda, job descriptions, new hire orientation checklists, operations and employment practices, forms, procedures, and policies (including but not limited to Employee Development Policy, Work Schedules and Procedures, Voluntary Meal Waiver, AC&A LLC On The Job Training Record, and Employment At-Will & Arbitration Agreement), among other information and documents.[36] Class Counsel interviewed Plaintiffs 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, reviewed Defendant's responses, noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties, and worked with Plaintiff Perez to provide responses to discovery requests that were propounded by Defendant.[38] Class Counsel prepared for and took depositions of Defendant's Person Most Knowledgeable witness.[39] 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

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[34] St. John Decl., ¶¶ 11-13.
[35] *Id.*, ¶ 12.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid.

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documents and data prior to the mediation.[40] Class Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[41]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[42] In the course of litigation and in connection with mediation and settlement negotiations, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[43] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[44] 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 Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[45] 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 Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.[46]

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.[47] The Parties

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[40] St. John Decl., ¶ 12.
[41] Ibid.
[42] *Id.*, ¶ 11.
[43] Ibid.
[44] Ibid.
[45] *Id.*, ¶¶ 11, 16-18.
[46] Ibid.
[47] Ibid.

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have had the opportunity to interview and obtain information from their respective witnesses.[48] 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, which is constantly evolving as it relates to class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims and damages, and Defendant's defenses thereto, as well as facts discovered.[49] 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.[50]

B. **<u>The Settlement Is Fair, Reasonable, and Adequate.</u>**

The Settlement, which provides for a Settlement Fund of one million seven hundred fifty thousand dollars and no cents ($1,750,000.00), represents a fair, adequate, and reasonable resolution of the matter.[51] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[52] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[53] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[54]

Assuming that the Attorneys' Fees and Costs, Enhancement Awards, PAGA Payment, and Settlement 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 that is currently estimated to be one million ten thousand dollars (1,010,000.00).[55] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class

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[48] St. John Decl., ¶¶ 11, 16-18.
[49] *Id.*, ¶¶ 11-13 & 16-18.
[50] *Id.*, ¶¶ 6-7.
[51] *Id.*, ¶¶ 11, 13, 14 & 21.
[52] *Id.*, ¶¶ 11-13.
[53] *Id.*, ¶¶ 16-18.
[54] *Id.*, ¶¶ 11, 13, & 21.
[55] *Id.*, ¶ 14; Settlement Agreement, § VIII.5.

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Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Class Payment will be calculated based on his or her Class Wages and the amount of each PAGA Member's Individual PAGA Payment will be calculated based on his or her PAGA Wages.[56] 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.[57] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information in the course of litigation and in connection with mediation and settlement negotiations.[58] The discovery and information that Class Counsel obtained from Defendant, Plaintiffs, and 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.[59] As outlined in the Declaration of Brian J. St. John, Class

[56] Settlement Agreement, §§ V.III.5.a-b.
[57] St. John Decl., ¶¶ 11, 13, & 21.
[58] *Id.*, ¶¶ 11-13 & 18.
[59] *Id.*, ¶ 18.

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Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[60]

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

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

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[60] St. John Decl., ¶¶ 11-13 & 16-18.

[61] Settlement Agreement, § II.

Glendale Federal Bank (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This action involves a class of approximately five hundred sixty-two (562) individuals.[62] This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contend that

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[62] St. John Decl., ¶ 9.

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Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[63] Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[64]

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.[65] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.[66]

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

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

Class Counsel has litigated the matter for over four years, and was actively preparing the matter for class certification and trial.[67] 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, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable

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[63] St. John Decl., ¶ 16.
[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] *Id*., ¶¶ 11-13.

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designees. Class Counsel reviewed thousands of pages of documents and data[68] and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages and penalties valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[69] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[70]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[71]

The Settlement establishes a Settlement Fund of one million seven hundred fifty thousand dollars and no cents ($1,750,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Settlement Fund (i.e., $612,500.00) and an amount not to exceed fifty five thousand dollars and no cents ($55,000.00) for costs and expenses.[72] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[73]

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.*

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[68] St. John Decl., ¶ 12.
[69] Ibid.
[70] *Id.*, ¶ 11.
[71] *Id.*, ¶¶ 6-7.
[72] Settlement Agreement, §§ VIII.4.a & VIII.8.a-b.
[73] *Id.*, Exh. 1.

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Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). 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

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No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[74]

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

VIII. THE PROPOSED NOTICE IS ADEQUATE

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

The proposed Notice[75] describes the Settlement, the deadlines and procedures to mail a written objection to the Settlement, a request for exclusion from the Settlement, and/or mail a dispute regarding Class Wages and/or PAGA Wages, and the date and time set for the Final Approval Hearing.[76]

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[77] The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.[78] The

[74] St. John Decl., ¶ 19.
[75] Settlement Agreement, Exh. 1.
[76] Ibid.
[77] Ibid.
[78] Ibid.

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proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Class Payment is calculated and the number of Class Wages credited to them.[79]

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

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

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

The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. mail.[80] Any undeliverable Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.[81] With respect to any undeliverable Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Notice to the Class Member.[82] The Response Deadline to submit a request for exclusion, objection, or dispute regarding Class Wages for Class Members to whom a Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be fourteen (14) calendar days from the date of the re-mailing or the original sixty (60) calendar day deadline, whichever is later.[83] The Settlement Administrator will receive and process

[79] Settlement Agreement, Exh. 1..
[80] *Id.*, § VIII.14.b.
[81] Ibid.
[82] Ibid.
[83] Ibid.

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requests for exclusion, objections, and any disputes regarding Class Wages and/or PAGA Wages.[84]

The Settlement Administrator will calculate the amounts of the Individual Class Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Class Payments; mail the Individual Class Payment checks to Participating Class Members and Individual PAGA Payment checks to PAGA members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Awards, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[85] The Settlement Administration Expenses are currently estimated to be ten thousand dollars and no cents ($10,000.00) and will be paid out of the Settlement Fund, subject to approval by the Court.[86]

Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Class Action Administration Solutions as the Settlement Administrator and direct the mailing of the 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 Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.[87]

Within fifteen (15) 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) most current mailing address; (3) most current telephone number; (4) Social Security number; (4) start and end dates of active employment as an hourly and/or non-exempt employee of Defendant in California during the

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[84] Settlement Agreement, §§ VIII.15.a-d.
[85] *Id.*, § VIII.14.a; St. John Decl., ¶ 15.
[86] Settlement Agreement, § VIII.4.a.
[87] *Id.*, §§ VIII.14.

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Class Period; and (5) amount of Class Wages and PAGA Wages during the Class Period and PAGA Period, respectively (collectively, "Class List").[88]

Within thirty (30) calendar days of receipt of the Class List, the Settlement Administrator will mail the Notice to the Class Members via First-Class U.S. Mail.[89] If a Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Notice to the forwarding address.[90] If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Notice to the Class Member.[91] Class Members will have until the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding Class Wages, and/or to file and serve an objection.[92]

Defendant will make a one-time deposit of the Settlement Fund, together with an amount sufficient to pay employer taxes, into a Qualified Settlement Account to be established by the Settlement Administrator, within sixty (60) calendar days after the Effective Date.[93] Within sixty (60) calendar days of the Effective Date, the Settlement Administrator will distribute: (1) the Individual Class Payments to Participating Class Members; (2) the Individual PAGA Payments to PAGA Members; (3) the Court-approved Enhancement Awards to Plaintiffs; (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 Expenses to itself.[94]

The Individual Class Payment and Individual PAGA Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.[95] Checks that are not negotiated within the 180-day period will be cancelled.[96] The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law,

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[88] Settlement Agreement, § VIII.10.
[89] *Id*, § VIII.14.b.
[90] Ibid.
[91] Ibid.
[92] *Id.*, §§ VIII.15.a-d.
[93] *Id.*, § VIII.7.a.
[94] *Id.*, §§ VIII.7.a & VIII.9.
[95] *Id.*, § VIII.7.c.
[96] Ibid.

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California Civil Code §§ 1500 et seq., for the benefit of those Participating Class Members and/or PAGA Members who did not cash their checks until such time that they claim their property.[97]

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT AWARDS

Plaintiffs Rigoberto Perez and Jeannette Bello respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Awards in an amount up to seven thousand five hundred dollars and no cents ($7,500.00) to Plaintiff Perez and an amount up to five thousand and no cents ($5,000.00) to Plaintiff Bello (for a combined total of $12,500).[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 duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Enhancement Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations, including and not limited to, Plaintiff Perez working with Class Counsel to prepare responses to discovery requests that were propounded on him by Defendant.[99] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit

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[97] Settlement Agreement, § VIII.7.c. .
[98] *Id.*, § VIII.8.b.
[99] St. John Decl., ¶ 20; Declaration of Rigoberto Perez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Perez Decl."), ¶ 4; Declaration of Jeannette Bello in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Bello Decl."), ¶ 4.

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of class and PAGA claims.[100] Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Award for their services on behalf of the Class, in addition to their Individual Class Payments and/or 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 as Class Counsel; preliminary appoint and designate Plaintiffs Rigoberto Perez and Jeannette Bello as Class Representatives; appoint Phoenix Class Action Administration Solutions as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Awards, PAGA Amount, and Settlement Administration Expenses; approve the proposed Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; 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.

Dated: August 9, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________

Brian J. St. John
Attorneys for Plaintiffs

[100] St. John Decl., ¶ 20; Perez Decl., ¶¶ 3-6; Bello Decl., ¶¶ 3-6.