

Jonathan M. Lebe (State Bar No. 284605)  
Jon@lebelaw.com  
Annaliz Loera (State Bar No. 334129)  
Annaliz@lebelaw.com  
Nicolas W. Tomas (State Bar No. 339752)  
Nicolas@lebelaw.com  
**Lebe Law, APLC**  
777 S. Alameda Street, Second Floor  
Los Angeles, CA 90021  
Telephone: (213) 444-1973

Attorneys for Plaintiffs  
SYDNEY ELLIOTT-BRAND, BERNARDO  
BUCHSBAUM, and JOSIE MEISTER,  
and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

SYDNEY ELLIOTT-BRAND,  
BERNARDO BUCHSBAUM, and JOSIE  
MEISTER, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

KFORCE, INC.; KFORCE FLEXIBLE  
SOLUTIONS, LLC, and DOES 1-20,  
inclusive,

Defendants.

Case No.: 20STCV49193

Hon. Elihu M. Berle – Dept. 6

**PLAINTIFFS’ MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

[Declaration of Jonathan M. Lebe, Report re:  
Compliance with Court’s Checklist,  
Declaration of Sydney Elliott-Brand,  
Declaration of Bernardo Buchsbaum,  
Declaration of Josie Meister, and [Proposed]  
Order Filed Herewith]

**Hearing Information:**

Date: March 17, 2022

Time: 10:00 a.m.

Location: Dept. 6

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on March 17, 2022 at 10:00 a.m., in Department 6 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, CA 90012, Plaintiffs Sydney Elliott-Brand, Bernardo Buchsbaum and Josie Meister, individually and on behalf of the settlement class members described herein, will and hereby do move for an order: (1) preliminarily approving the proposed class action, Fair Labor Standards Act (“FLSA”) and Private Attorneys General Act (“PAGA”) settlement pursuant to the Parties’ Settlement Agreement; (2) appointing Plaintiffs as Class Representatives for settlement purposes only; (3) appointing Jonathan M. Lebe, Annaliz Loera and Nicolas Tomas of Lebe Law, APLC as Class Counsel for settlement purposes only; (4) preliminarily certifying the proposed class for settlement purposes only; (5) appointing CPT Group, Inc. as the third party settlement administrator; (6) approving the proposed form notice of the class action settlement and PAGA settlement and the form notice of the FLSA settlement; (7) approving the schedule for dissemination of notice to the class and PAGA group members and FLSA collective members; and (8) scheduling a final fairness hearing.

This motion is based on this notice and motion, the attached memorandum of points and authorities, the declarations of Jonathan M. Lebe and Plaintiffs, all documents on file in this action, and upon such oral argument as may be presented at the time of hearing.

Dated: February 15, 2022

**Lebe Law, APLC**

By:



Jonathan M. Lebe  
Annaliz Loera  
Nicolas Tomas

Attorneys for Plaintiffs Sydney Elliott-Brand, Bernardo Buchsbaum, and Josie Meister, individually and on behalf of all others similarly situated

## **TABLE OF CONTENTS**

|             |                                                                                                                                                                 |           |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>I.</b>   | <b>INTRODUCTION.....</b>                                                                                                                                        | <b>1</b>  |
| <b>II.</b>  | <b>FACTUAL BACKGROUND.....</b>                                                                                                                                  | <b>2</b>  |
| <b>A.</b>   | <b>Procedural History.....</b>                                                                                                                                  | <b>2</b>  |
| <b>B.</b>   | <b>Duplicative Lawsuits Were Filed After Settlement Was Reached In This Matter.....</b>                                                                         | <b>3</b>  |
| <b>C.</b>   | <b>The Settlement.....</b>                                                                                                                                      | <b>5</b>  |
| 1.          | Settlement Negotiations .....                                                                                                                                   | 5         |
| 2.          | Settlement Terms .....                                                                                                                                          | 5         |
| 3.          | Notice To Class Members And Right To Opt Out Or/Object To Settlement .....                                                                                      | 8         |
| <b>III.</b> | <b>LEGAL ARGUMENT.....</b>                                                                                                                                      | <b>9</b>  |
| <b>A.</b>   | <b>Standard For Preliminary Settlement Approval .....</b>                                                                                                       | <b>9</b>  |
| <b>B.</b>   | <b>The Proposed Settlement Satisfies The Standards For Preliminary Approval .....</b>                                                                           | <b>10</b> |
| 1.          | The Settlement Is the Result of Arm’s Length Bargaining.....                                                                                                    | 10        |
| 2.          | There Has Been Extensive Investigation and Discovery to Allow Plaintiffs and the Court to Act Intelligently and Evaluate the Settlement.....                    | 11        |
| 3.          | Plaintiffs and Their Counsel Support the Proposed Settlement and Counsel Are Experienced in Similar Litigation.....                                             | 111       |
| 4.          | There Is No Known Opposition to the Settlement .....                                                                                                            | 12        |
| 5.          | The Proposed Settlement Is Fair and Reasonable Given the Substantial Benefits to Class Members and the Risks and Expense of Complex and Protracted Litigation . | 12        |
| <b>C.</b>   | <b>The Court Should Certify A Settlement Class .....</b>                                                                                                        | <b>17</b> |
| 1.          | The Proposed Settlement Class Is Ascertainable.....                                                                                                             | 17        |
| 2.          | The Proposed Settlement Class Comprises a Community of Interest .....                                                                                           | 18        |
| <b>D.</b>   | <b>The Court Should Approve The Proposed Notice .....</b>                                                                                                       | <b>19</b> |
| <b>IV.</b>  | <b>CONCLUSION .....</b>                                                                                                                                         | <b>20</b> |

## **TABLE OF AUTHORITIES**

### **Cases**

|                                                                                                       |            |
|-------------------------------------------------------------------------------------------------------|------------|
| <u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal. App. 4th 1135, 1145 ..  | 9          |
| <u>Aguirre v. Amscan Holdings, Inc.</u> (2015) 234 Cal. App. 4th 1290 .....                           | 18         |
| <u>Armstrong v. Bd. of Sch. Directors of City of Milwaukee</u> (7th Cir. 1980) 616 F.2d 305, 314..... | 9          |
| <u>Bartold v. Glendale Fed. Bank</u> (2000) 81 Cal. App. 4th 816, 828 .....                           | 18         |
| <u>Chavez v. Netflix, Inc.</u> (2008) 162 Cal. App. 4th 43, 56.....                                   | 19         |
| <u>Cho v. Seagate Tech. Holdings, Inc.</u> (2009) 177 Cal. App. 4th 734, 748 .....                    | 10         |
| <u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal. App. 4th 1794, 1800-01.....                              | 9, 10, 17  |
| <u>Felzen v. Andreas</u> (7th Cir. 1998) 134 F.3d 873 .....                                           | 9          |
| <u>Fernandez v. Southside Hosp.</u> (E.D.N.Y. 1984) 593 F. Supp. 840, 842 .....                       | 4          |
| <u>Global Minerals &amp; Metals Corp. v. Superior Court</u> (2003) 113 Cal. App. 4th 836, 849 .....   | 17         |
| <u>In re Cellphone Termination Fee Cases</u> (2009) 180 Cal. App. 4th 1110, 1122-23 .....             | 10         |
| <u>In re Microsoft I-V Cases</u> (2006) 135 Cal. App. 4th 706, 723 .....                              | 9, 10      |
| <u>In re Piper Aircraft Distrib. Sys. Antitrust Litig.</u> (8th Cir. 1977) 551 F.2d 213, 219 .....    | 4          |
| <u>Kullar v. Foot Locker Retail, Inc.</u> (2008) 168 Cal. App. 4th 116.....                           | 10, 13     |
| <u>Litwin v. iRenew Bio Energy Solutions, LLC</u> (2014) 226 Cal. App. 4th 877, 883 .....             | 19         |
| <u>Luckey v. Superior Court</u> (Oct. 29, 2014) 228 Cal. App. 4th 81, 93.....                         | 9, 17      |
| <u>McGhee v. Bank of Am.</u> (1976) 60 Cal. App. 3d 442, 450.....                                     | 19         |
| <u>Munoz v. BCI Coca-Cola Bottling Co. of L.A.</u> (2010) 186 Cal. App. 4th 399, 410-11 .....         | 13, 14     |
| <u>Nelson v. Napolitano</u> (7th Cir. 2011) 657 F.3d 586, 587 .....                                   | 4          |
| <u>Noland v. Flohr Metal Fabricators Inc.</u> (D. Alaska 1984) 104 F.R.D. 83, 85 .....                | 4          |
| <u>Rose v. City of Hayward</u> (1981) 126 Cal. App. 3d 926, 934.....                                  | 18         |
| <u>Safeguard Business Sys., Inc. v. Hoeffel</u> (D. Kan. Jan. 16, 1991) 1991 U.S. Dist. LEXIS 1334 at |            |
| *13.....                                                                                              | 4          |
| <u>Sav-on Drug Stores, Inc. v. Superior Court</u> (2004) 34 Cal. 4th 319, 326.....                    | 17, 18     |
| <u>Torrise v. Tucson Elec. Power Co.</u> (9th Cir. 1993) 8 F.3d 1370, 1375.....                       | 20         |
| <u>Webb v. Nolan</u> (4th Cir. 1973) 361 F. Supp. 418, 420, aff'd, 484 F.2d 1049 .....                | 4          |
| <u>Wershba v. Apple Computer, Inc.</u> , (2001) 91 Cal. App. 4th 224, 239-40.....                     | 17, 18, 19 |

Williams v. Costco Wholesale Corp. (S.D. Cal. July 7, 2010) 2010 U.S. Dist. LEXIS 67731.... 20

Statutes

Cal. Rule of Court 3.769(c)..... 9

Cal. Rules of Court 3.769(e) ..... 9

Cal. Rule of Court 3.770(a)..... 9

Treatises

Newberg on Class Actions § 11.51 (3d ed. 1992) ..... 10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Sydney Elliott-Brand, Bernardo Buchsbaum and Josie Meister (“Plaintiffs”), as  
4 representatives of the putative settlement class, respectfully request preliminary approval of a class  
5 action, collective action and Private Attorneys General Act (“PAGA”) representative action  
6 settlement to resolve this action in its entirety. The crux of Plaintiffs’ claims in this case is that  
7 Defendants Kforce Inc. and Kforce Flexible Solutions, LLC (“Defendants”) allegedly violated  
8 California wage and hour laws by their misclassification of recruiter employees as exempt and  
9 thereby failing to pay for all hours worked, including minimum and overtime wages, failing to  
10 provide accurate itemized wage statements, failing to provide legally-compliant meal and rest  
11 breaks, failing to reimburse all necessary business expenses, including but not limited to use of  
12 personal cellular telephone and home internet expenses, and failing to timely pay all final wages.  
13 Defendants also failed to pay for all hours worked over 40 in a workweek or minimum wages in  
14 violation of the Fair Labor Standards Act (“FLSA”).

15 The Parties have entered into a Settlement Agreement which, subject to approval by this  
16 Court, fully releases Defendants from all class, collective and PAGA claims in this action in  
17 exchange for lump sum payment of \$3,250,000. The lump sum is allocated as follows: \$1,500,000  
18 for the resolution of the claims of California class members for California Labor Code and FLSA  
19 claims (“California Class Members”), \$1,500,000 for the resolution of the claims of non-California  
20 class members for claims under the FLSA (“FLSA Collective Members”), and \$250,000 for the  
21 resolution of the PAGA claims (“PAGA Group Members”).

22 The Settlement Agreement was reached through arm’s-length negotiations by informed  
23 counsel following extensive investigation of the asserted claims and relevant law, the exchange of  
24 informal discovery, and a mediation with Henry J. Bongiovi on November 12, 2021. The  
25 settlement provides significant benefits to members of the settlement, which will be distributed to  
26 the members, less Plaintiff’s counsels’ fees and costs, settlement administration costs, payment to  
27 the Labor Workforce and Development Agency, and enhancement awards to Plaintiffs for their  
28 services. Once appropriate deductions have been made from the gross settlement fund, members

1 will recover an average of approximately **\$1,303.99 per FLSA Collective Member, \$2,857.51**  
2 **per California Class Member, and \$3,452.75 per California Class Member/PAGA Group**  
3 **Member.** Plaintiffs respectfully request that the Court preliminarily approve this settlement  
4 because it reflects a fair and reasonable compromise of the disputed claims in this action.

5 To effectuate the settlement, Plaintiffs respectfully request that the Court: (1) grant  
6 preliminary approval of the settlement in accordance with the Parties' Settlement Agreement; (2)  
7 certify the proposed settlement classes for settlement purposes only; (3) appoint Jonathan M. Lebe,  
8 Annaliz Loera and Nicolas Tomas of Lebe Law, APLC as class counsel for settlement purposes;  
9 (4) appoint Plaintiffs as the class representatives for settlement purposes; (5) approve the proposed  
10 class and PAGA notice and FLSA collective action notice, which is attached as Exhibits A and B  
11 to the Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Jonathan M.  
12 Lebe ("Lebe Decl."); (6) approve the schedule for dissemination of the class and PAGA notice  
13 and FLSA collective action notice; (7) appoint CPT Group, Inc. as the third party administrator  
14 for the settlement; and (8) schedule a fairness hearing for final approval of the settlement.

15 Further, Plaintiffs submit that the proposed settlement complies with the Court's checklist  
16 for class action settlements, as specifically detailed in Plaintiffs' Report Re: Compliance with the  
17 Court's Checklist for Preliminary Approval of Class Action Settlements, which is filed  
18 concurrently with this Motion. Accordingly, Plaintiffs respectfully request that the Court grant  
19 this motion.

## 20 **II. FACTUAL BACKGROUND**

### 21 **A. Procedural History**

22 Plaintiffs worked for Defendants during the Class Period, PAGA Period, and FLSA Period  
23 in California. (Lebe Decl., ¶ 13; Declaration of Sydney Elliott-Brand, ¶ 2; Declaration of Bernardo  
24 Buchsbaum, ¶ 2; Declaration of Josie Meister, ¶ 2.)

25 On September 3, 2020, Plaintiff Bernardo Buchsbaum, on behalf of himself and other  
26 allegedly similarly aggrieved employees, filed a PAGA lawsuit against Defendants in the Superior  
27 Court of the State of California, San Diego County, Case No. Case No. 37-2020-00030994-CU-  
28 OE-CTL. (Lebe Decl., ¶ 14.) On January 19, 2021, Plaintiff Buchsbaum filed a First Amended

Complaint, clarifying the group of aggrieved employees he seeks to represent. (*Id.*) Plaintiff Buchsbaum’s PAGA action is based on a recruiter employee misclassification theory, resulting in multiple alleged California Labor Code violations, including failure to: pay minimum wages, pay overtime wages, provide meal and rest breaks, provide accurate wage statements, reimburse business expenses, and pay unused, vested vacation wages. (*Id.*)

On December 24, 2020, Plaintiff Sydney Elliott-Brand filed a putative class action complaint in the Superior Court of the State of California, Los Angeles County, Case No. 20STCV49193. (Lebe Decl., ¶ 15.) The Complaint is also based on a misclassification theory and alleges nine causes of action, as follows: (1) Failure To Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Failure To Pay All Wages; (4) Failure To Provide Meal Periods; (5) Failure To Permit Rest Breaks; (6) Failure To Reimburse All Business Expenses; (7) Failure To Provide Accurate And Itemized Wage Statements; (8) Failure To Pay All Wages And Vacation Pay Due Upon Separation Of Employment; and (9) Violation Of Business And Professions §§ 17200, *et seq.* (*Id.*)

On July 31, 2021, Plaintiff Darryn Lewis filed a putative collective action complaint in the U.S. District Court for the Southern District of California alleging a single cause of action for failure to pay overtime pay under the Fair Labor Standards Act, 29 U.S.C. section § 201 *et seq.*, also based on a misclassification theory. (Lebe Decl., ¶ 16.)

On January 7, 2022, Plaintiff Sydney Elliott-Brand filed a First Amended Complaint, adding Bernardo Buchsbaum and Josie Meister as named plaintiffs and adding claims under the California Private Attorneys General Act of 2004, California Labor Code Section 2968, *et seq.* (“PAGA”), and Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (Lebe Decl., ¶ 17.)

**B. Duplicative Lawsuits Were Filed After Settlement Was Reached In This Matter**

On January 6, 2022, Werman Salas P.C., Rosen Marsili Rapp LLP, and The Law Office of Peter T. Nicholl filed a class action complaint in the Superior Court of the State of California, Los Angeles County, Case No. 22STCV00602 titled Jessica Cook, et al. v. Kforce Inc. (Lebe Decl., ¶ 24.) The complaint contains the same causes of action as this case, specifically alleging six causes

of action, as follows: (1) Unpaid Overtime; (2) Failure to Timely Pay Wages Upon Termination; (3) Failure to Provide and Maintain Accurate, Itemized Wage Statements; (4) Meal Break Violations; (5) Rest Break Violations; and (6) Unlawful, Unfair, and/or Deceptive Business Practices pursuant to Business And Professions §§ 17200, *et seq.* (*Id.*) Additionally, on January 6, 2022, Werman Salas P.C., Rosen Marsili Rapp LLP, and The Law Office of Peter T. Nicholl filed a FLSA collective action for failure to overtime wages in the U.S. District Court for the Middle District of Florida, Case No. 8:22-cv-00056 titled Sam Whiteman v. Kforce, Inc. (Lebe Decl., ¶ 25.)

Werman Salas P.C., Rosen Marsili Rapp LLP, and The Law Office of Peter T. Nicholl had previously filed a lawsuit with these claims on March 19, 2021 in the U.S. District Court for the Central District of California, Case No. 2:21-cv-02453 titled Jessica Cook v. Kforce, Inc. (Lebe Decl., ¶ 26.) This matter was originally filed months after Plaintiff Buchsbaum and Plaintiff Elliott-Brand filed their suits and included claims and class allegations already covered by these earlier-filed suits. (*Id.*) Thereafter, on June 28, 2021, this case was voluntarily dismissed. (*Id.*)

The voluntary dismissal terminated the lawsuit **as if it never was brought.** Nelson v. Napolitano (7th Cir. 2011) 657 F.3d 586, 587 (“A suit that is voluntarily dismissed under Rule 41(a) generally is treated as if it had never been filed”); In re Piper Aircraft Distrib. Sys. Antitrust Litig. (8th Cir. 1977) 551 F.2d 213, 219 (“[t]he effect of a voluntary dismissal without prejudice is to render the proceedings a nullity and leave the parties as if the action had never been brought”); Noland v. Flohr Metal Fabricators Inc. (D. Alaska 1984) 104 F.R.D. 83, 85 (“[l]eaves the situation as if the suit had never been instituted” in personal injury products liability action); Safeguard Business Sys., Inc. v. Hoeffel (D. Kan. Jan. 16, 1991) 1991 U.S. Dist. LEXIS 1334 at \*13 (“render proceedings a nullity”); Fernandez v. Southside Hosp. (E.D.N.Y. 1984) 593 F. Supp. 840, 842 (defendants not entitled to attorney’s fees when plaintiffs dismissed suit); Webb v. Nolan (4th Cir. 1973) 361 F. Supp. 418, 420, *aff’d*, 484 F.2d 1049 (voluntary dismissal functions “as if suit had never been filed”).

///

### C. The Settlement

1                   **1.       Settlement Negotiations**

2           On November 12, 2021, the Parties mediated with Henry J. Bongiovi, a very experienced  
3 mediator of wage and hour class actions. (Lebe Decl., ¶ 18.) In advance of the mediation, the  
4 Parties engaged in informal discovery, whereby Defendants provided the following information  
5 related to Defendants' employees as of the time shortly before the mediation: (1) the number of  
6 California Class Members, FLSA Collective Members and PAGA Group Members; (2)  
7 workweeks worked; (3) the number of pay periods; (4) company policies pertaining to wage and  
8 hour issues; and (5) all pay data for California Class Members, FLSA Collective Members and  
9 PAGA Group Members. (Id.)

10           The Parties engaged in settlement negotiations at the mediation after months of analysis  
11 and informal discovery. (Lebe Decl., ¶ 19.) At the mediation, on November 12, 2021, the Parties  
12 engaged in settlement negotiations, including the exchange of legal analysis and data pertaining to  
13 the claims. (Id.) Negotiations were rigorous and conducted at arms' length. (Id.) After a full day  
14 of negotiations with the assistance of the mediator, the Parties were able to reach a settlement.  
15 (Id.) The Parties agreed to settle the class action, PAGA action and FLSA collective action. (Id.)

16           Defendants adamantly deny any wrongdoing and believe that they have meritorious  
17 defenses to the class issues and on the merits but have concluded that the further defense of this  
18 action would be lengthy and expensive for all parties. (Id.) Plaintiffs and their counsel have  
19 considered the uncertainty and risk involved in further litigation, including the difficulties and  
20 potential delays in seeking class certification and potential appeals. (Id.) Based upon these  
21 considerations, Plaintiffs and proposed class counsel have determined that the settlement is fair,  
22 adequate, and reasonable, and is in the best interests of the class. (Id.)

23                   **2.       Settlement Terms**

24           The settlement was reached on a class, FLSA collective, and PAGA basis. The California  
25 Class Members includes all individuals employed by Defendant during the Class Period in  
26 California as salaried, exempt employees in one or more of following job positions: (1) Talent  
27 Representatives, (2) Talent Representatives FA, (3) Talent Representative Search, (4) Talent  
28 Associates, (5) Talent Associates FA, (6) Talent Associate Search, (7) Talent Manager Search, (8)

Talent Manager, (9) Talent Manager F&A, (10) Talent Senior Manager, (11) Talent Senior Manager F&A, (12) Talent Senior Manager Search, (13) Talent Director, (14) Talent Director FA, (15) Talent Director Search, (16) Talent Executive, (17) Talent Executive FA, (18) Talent Executive Search, (19) Talent Partner, (20) Talent Partner FA, (21) Talent Partner Search, (22) Vertical/National Delivery Specialist Tech, (23) Vertical/National Delivery Specialist FA, (24) Vertical/National Delivery Senior Specialist Tech, (25) Vertical/National Delivery Senior Specialist FA, (26) Vertical/National Delivery Representative Tech, (27) Vertical/National Delivery Representative FA, (28) Vertical Delivery Senior Representative Tech, (29) Vertical Delivery Senior Representative FA, (30) Vertical Delivery Associate Tech, (31) Vertical Delivery Associate FA, (32) Vertical Delivery Senior Associate Tech, (33) Vertical Delivery Senior Associate FA, (34) Vertical Delivery Senior Tech, and/or (35) Vertical Delivery Senior FA, or similar job titles identified by Defendant (“At-Issue California Positions”). Any individuals who have asserted wage and hour claims against Defendant through counsel other than Plaintiffs’ Counsel shall be excluded from this definition. (Settlement Agreement, ¶ 1.5.) The Class Period is from December 24, 2016 through the date of the Preliminary Approval of the Settlement, or February 14, 2022, whichever is earlier. (Settlement Agreement, ¶ 1.6.)

The FLSA collective members includes all individuals employed by Defendant during the FLSA Period as salaried, exempt employees in one or more of the following job positions: (1) Talent Representatives, (2) Talent Representatives FA, (3) Talent Associates, (4) Talent Associates FA, (5) Talent Representative Search, (6) Talent Associate Search, (7) Vertical/National Delivery Specialist Tech, (8) Vertical/National Delivery Specialist FA, (9) Vertical/National Delivery Senior Specialist Tech, (10) Vertical/National Delivery Senior Specialist FA; (11) Vertical/National Delivery Representative Tech; (12) Vertical/National Delivery Representative FA, (13) International Recruiter; (14) ISS Talent Associate; (15) ISS Talent Manager; (16) ISS Talent Manager Senior; (17) ITS Resource Manager; (18) ITS Resource Manager Senior; (19) VSD Talent Associate; (20) VSD Talent Representative NE; (21) VSD Talent Manager; (22) VSD Talent Manager Senior; and/or (23) VSD Talent Director, and who did not sign an arbitration agreement prior to working in one of these twenty-three (23) positions

during the FLSA Period (“At-Issue FLSA Positions”). Any individuals who have asserted wage and hour claims against Defendant through counsel other than Plaintiffs’ Counsel shall be excluded from this definition. (Settlement Agreement, ¶ 1.13.) The FLSA Period is from March 18, 2018 through the date of the Preliminary Approval of the Settlement, or February 14, 2022, whichever is earlier. (Settlement Agreement, ¶ 1.14.)

The PAGA Group Members includes all individuals employed by Defendant during the PAGA Period in California as salaried, exempt employees in one or more of the following job positions: (1) Talent Representatives, (2) Talent Representatives FA, (3) Talent Representative Search, (4) Talent Associates, (5) Talent Associates FA, (6) Talent Associate Search, (7) Talent Manager Search, (8) Talent Manager, (9) Talent Manager F&A, (10) Talent Senior Manager, (11) Talent Senior Manager F&A, (12) Talent Senior Manager Search, (13) Talent Director, (14) Talent Director FA, (15) Talent Director Search, (16) Talent Executive, (17) Talent Executive FA, (18) Talent Executive Search, (19) Talent Partner, (20) Talent Partner FA, (21) Talent Partner Search, (22) Vertical/National Delivery Specialist Tech, (23) Vertical/National Delivery Specialist FA, (24) Vertical/National Delivery Senior Specialist Tech, (25) Vertical/National Delivery Senior Specialist FA, (26) Vertical/National Delivery Representative Tech, (27) Vertical/National Delivery Representative FA, (28) Vertical Delivery Senior Representative Tech, (29) Vertical Delivery Senior Representative FA, (30) Vertical Delivery Associate Tech, (31) Vertical Delivery Associate FA, (32) Vertical Delivery Senior Associate Tech, (33) Vertical Delivery Senior Associate FA, (34) Vertical Delivery Senior Tech, and/or (35) Vertical Delivery Senior FA, or similar job titles identified by Defendant. Any individuals who have asserted wage and hour claims against Defendant through counsel other than Plaintiffs’ Counsel shall be excluded from this definition. (Settlement Agreement, ¶ 1.27.) The PAGA Period is from April 6, 2019 through the date of the Preliminary Approval of the Settlement, or February 14, 2022, whichever is earlier. (Settlement Agreement, ¶ 1.28.)

In exchange for a release of claims, Defendants are providing substantial compensation to Plaintiffs and the settlement members. (Lebe Decl., ¶ 20.) Defendants have agreed to pay an amount of \$3,250,000 to settle the class, FLSA collective and PAGA claims, of which \$1,500,000

1 is allocated for the resolution of the class action, \$1,500,000 is allocated for the resolution of the  
2 FLSA collective action, and \$250,000 is allocated for the resolution of the PAGA action. (Id.)  
3 The settlement includes the following: (1) Plaintiffs’ attorneys’ fees up to one-third of the gross  
4 settlement amount (i.e., \$1,083,333.33); (2) Plaintiffs’ counsels’ reasonable litigation costs  
5 necessary to prosecute and settle this litigation and administer the Agreement, supported by  
6 adequate documentation; (3) a \$15,000 enhancement award to each Plaintiff; (4) settlement  
7 administration costs not to exceed \$20,000, currently estimated at \$12,500; (5) and a payment of  
8 \$187,500 to the Labor & Workforce Development Agency (“LWDA”), which represents 75  
9 percent of the PAGA settlement amount. (Id.) After deduction of these amounts, the remaining  
10 net settlement fund of \$1,914,166.67, which includes \$62,500 reserved for the PAGA Group  
11 Members, will be distributed to the settlement members based on individual compensation divided  
12 by total class compensation multiplied by class settlement payment in the case of Class Members  
13 and FLSA Collective Members, and based on each PAGA Group Member’s total number of Pay  
14 Periods during the PAGA Period divided by the total number of Pay Periods worked by all PAGA  
15 Group Members during that period, then multiplied by the PAGA Payment, in the case of PAGA  
16 Group Members. (Id.) California and PAGA settlement members will not be required to return  
17 any claim form. (Id.) FLSA Collective Members will cash their settlement check to opt-into the  
18 FLSA settlement rather than completing a claim form. (Id.)

19 **3. Notice To Class Members And Right To Opt Out Or/Object To**  
20 **Settlement**

21 Following preliminary approval of the settlement, and in accordance with California Rule  
22 of Court 3.769(f), a Notice of Settlement together with a change of address form, and pre-printed  
23 return envelope (“Notice Packet”), will be mailed by first-class mail to each settlement class  
24 member at the last known address according to Defendants’ records. (Lebe Decl., ¶ 21.) The  
25 proposed Notice of Class Action Settlement (“class notice”) and Notice of FLSA Collective Action  
26 Settlement (“FLSA notice”) are attached as Exhibits A and B to the Settlement Agreement. (Id.)  
27 The class notice includes information on the claims asserted, the material settlement terms, the  
28 right to object, or to opt out and the timing and manner to do either. (Id.) The FLSA notice

1 includes information on the claims asserted, the material settlement terms, the right to object, or  
2 to opt in and the timing and manner to do either. (*Id.*) Members will have 45 days to object or  
3 request exclusion from the settlement. The class and FLSA notices will also inform the class of  
4 the date, place and time of the final approval hearing. (*Id.*)

5 The settlement administrator will use standard skip-tracing methods to obtain forwarding  
6 addresses of any class members whose Notice Packets are returned as undeliverable. (*Id.*)

### 7 **III. LEGAL ARGUMENT**

#### 8 **A. Standard For Preliminary Settlement Approval**

9 To prevent fraud, collusion, or unfairness to the class, settlement of a class action requires  
10 court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1800-01, as modified  
11 (Sept. 30, 1996) (citations omitted); Cal. Rules of Court 3.769(c), 3.770(a).) When “the court  
12 grants preliminary approval, it must set a final approval hearing, and provide for notice . . . to the  
13 class.” (*Luckey v. Superior Court* (Oct. 29, 2014) 228 Cal. App. 4th 81, 93, *review denied*; see  
14 Cal. Rule of Court 3.769(e).)

15 The preliminary approval stage “is not a fairness hearing.” (*Armstrong v. Bd. of Sch.*  
16 *Directors of City of Milwaukee* (7th Cir. 1980) 616 F.2d 305, 314 (*overruled on other grounds*  
17 *Felzen v. Andreas* (7th Cir. 1998) 134 F.3d 873). At the preliminary approval stage, the court  
18 “limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not  
19 the product of fraud or overreaching by, or collusion between, the negotiating parties.” (*In re*  
20 *Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723, (internal citations omitted); *7-Eleven*  
21 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1145.)

22 A class action settlement is presumed to be fair where: “(1) the settlement is reached  
23 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel  
24 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
25 percentage of objectors is small.” (*Chavez*, 162 Cal. App. 4th at 52 [citing *Dunk*, 48 Cal. App. 4th  
26 at 1802]; *In re Microsoft I-V Cases*, 135 Cal. App. 4th at 723; *7-Eleven Owners for Fair*  
27 *Franchising*, 85 Cal. App. 4th at 1146.) Where there is no extrinsic evidence of fraud or collusion,  
28 the court should assume that negotiations were conducted in good faith. (*Newberg on Class*

1 Actions § 11.51 (3d ed. 1992); Cho v. Seagate Tech. Holdings, Inc. (2009) 177 Cal. App. 4th 734,  
2 748, (denying objector's request for discovery where there was no evidence of collusion between  
3 the parties during negotiations); In re Cellphone Termination Fee Cases (2009) 180 Cal. App. 4th  
4 1110, 1122-23 [citing Cho, 177 Cal. App. 4th at 748].) Here, when measured against the above  
5 standards, the settlement satisfies the requirements for preliminary approval, because it is well  
6 within the range of possible approval, reached after extensive litigation in which both parties have  
7 thoroughly evaluated the claims, and there are no grounds to doubt its fairness.

8 **B. The Proposed Settlement Satisfies The Standards For Preliminary Approval**

9 In Kullar v Foot Locker Retail, Inc. (2008) 168 Cal. App. 4th 116, the California Appellate  
10 Court held that a presumption of fairness exists when:

- 11 • The settlement is reached through arm's-length bargaining;
- 12 • Investigation and discovery are sufficient to allow counsel and the court to act  
13 intelligently;
- 14 • Counsel is experienced in similar litigation; and
- 15 • The percentage of objectors is small.

16 The Court also confirmed that the trial court should give considerable weight to the  
17 competency and integrity of counsel and the involvement of a neutral mediator in assuring itself  
18 that a settlement agreement represents an arm's-length transaction entered without self-dealing or  
19 other potential misconduct. (Kullar, 168 Cal. App. 4th at 129.) Here, all four Kullar elements are  
20 met.

21 **1. The Settlement Is the Result of Arm's Length Bargaining**

22 The parties engaged in settlement negotiations at the mediation after months of analysis  
23 and informal discovery. (Lebe Decl., ¶ 22.) Counsel aggressively pursued their respective  
24 positions before eventually reaching an agreement. (Id.) Each side provided the other with several  
25 detailed settlement proposals before the agreement was reached. (Id.) The negotiations were  
26 rigorous and conducted at arm's length and facilitated by a respected, experienced wage and hour  
27 class action mediator. (Id.) The settlement cannot be described as fraudulent or collusive. (Id.)  
28

1 Rather, the settlement is the product of informed and rigorous negotiations by experienced counsel.  
2 (Id.) The settlement is fair, adequate, and reasonable for Plaintiff and the class. (Id.)

3 **2. There Has Been Extensive Investigation and Discovery to Allow**  
4 **Plaintiffs and the Court to Evaluate the Settlement**

5 Prior to reaching agreement to settle the class, FLSA collective, and representative claims,  
6 the Parties engaged in substantial informal discovery. In advance of the mediation, the Parties  
7 engaged in informal discovery, whereby Defendants provided the following information related to  
8 Defendants' employees as of the time shortly before the mediation: (1) the number of California  
9 Class Members, FLSA Collective Members, and PAGA Group Members; (2) workweeks worked;  
10 (3) the number of pay periods; (4) company policies pertaining to wage and hour issues; and (5)  
11 all payroll data for California Class Members, FLSA Collective Members and PAGA Group  
12 Members. (Lebe Decl., ¶ 19.) Counsel for Plaintiffs did an extensive analysis of the wage and  
13 hour claims presented by this class, FLSA collective, and PAGA action, including a detailed  
14 exposure analysis brought to the mediation, upon which settlement negotiations were based at the  
15 mediation. The investigation permitted counsel for Plaintiffs to do a rigorous damages analysis  
16 and come up with Defendants' total exposure presented by this case, which is detailed below.

17 **3. Plaintiffs and Their Counsel Support the Proposed Settlement and**  
18 **Counsel Are Experienced in Similar Litigation**

19 Plaintiffs and their counsel fully support the settlement. (Lebe Decl., ¶ 9; Declaration of  
20 Sydney Elliott-Brand, ¶ 17; Declaration of Bernardo Buchsbaum, ¶ 17; Declaration of Josie  
21 Meister, ¶ 17.) Plaintiffs' counsel has considerable experience prosecuting class wage and hour  
22 litigation, having been approved as class counsel and co-class counsel in numerous class actions.  
23 (Lebe Decl., ¶¶ 3-11.)

24 Plaintiffs' counsel were prepared to litigate Plaintiffs' claims through trial and any  
25 resulting appellate proceeding. (Lebe Decl., ¶ 9.) However, because of the interest in avoiding  
26 the risks and expenses associated with this litigation, and the substantial benefits the settlement  
27 confers upon settlement class members and the named Plaintiffs, Plaintiffs and their counsel have  
28 determined that the settlement is in the best interests of Plaintiffs and the class. (Id.)

1                   **4.       There Is Currently No Known Opposition to the Settlement**

2           To date, Plaintiffs are unaware of any opposition to the settlement. (Lebe Decl., ¶ 23.) To  
3 the extent there are objectors to the class action following the mailing of the Notice Packet,  
4 California Class Members will have the opportunity to file objections to or opt-out of the class  
5 action settlement. (*Id.*) To the extent there are objectors to the FLSA collective action following  
6 the mailing of the Notice Packet, FLSA Collective Members will have the opportunity to file  
7 objections to or not opt-in to the FLSA collective settlement. (*Id.*)

8                   **5.       The Proposed Settlement Is Fair and Reasonable Given the Substantial**  
9                   **Benefits to Class Members and the Risks and Expense of Complex and**  
10                  **Protracted Litigation**

11           The settlement confers substantial benefits on settlement members. In particular,  
12 Defendants have agreed to a lump sum payment of \$3,250,000, which will be allocated as follows:  
13 \$1,500,00 for the resolution of the class action, \$1,500,000 for the resolution of the FLSA  
14 collective action, and \$250,000 for the resolution of the PAGA action. The settlement will be  
15 distributed to the class, less Plaintiffs’ counsel’s fees and costs, settlement administration costs,  
16 payment to the LWDA, and the enhancement awards to Plaintiffs for their services. Once  
17 appropriate deductions have been made from the gross settlement fund, FLSA Collective Members  
18 will recover an average of approximately \$1,303.99 and California Class Members will recover an  
19 average of approximately \$2,857.51. Additionally, the LWDA and PAGA Group Members will  
20 receive \$250,000 for PAGA penalties. Moreover, if the California Class Member is also a member  
21 of the PAGA Action, then he or she will recover approximately \$3,452.75. Plaintiffs respectfully  
22 request that the Court preliminarily approve this settlement because it reflects a fair and reasonable  
23 compromise of the disputed claims in this action.

24           This concrete and substantial benefit compares favorably to the uncertainty associated with  
25 continued litigation over contested issues. (See Munoz v. BCI Coca-Cola Bottling Co. of L.A.  
26 (2010) 186 Cal. App. 4th 399, 410-11.) Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal. App.  
27 4th 116, requires information be presented to the Court, acting as a fiduciary for the absent class  
28 members “... to ensure that the recovery represents a reasonable compromise, given the magnitude

1 and apparent merit of the claims being released, discounted by the risks and expenses of attempting  
2 to establish and collect on those claims by pursuing the litigation...” (Kullar, 168 Cal. App.4th at  
3 129.)

4 Here, Plaintiffs’ Counsel calculated Defendants’ total potential exposure assuming  
5 Plaintiffs prevailed on all aspects of their claims at trial but weighed that value against the chance  
6 of succeeding at class certification and trial. In order to calculate this exposure, prior to mediation,  
7 Plaintiffs received informal discovery from Defendants and crucial information for calculating  
8 damages in this case, as of the time shortly before the mediation, including: the number of  
9 California Class Members, FLSA Collective Members and PAGA Group Members, the number  
10 of workweeks, the number of pay periods, and all pay data for the California Class Members,  
11 FLSA Collective Members, and PAGA Group Members. (Lebe Decl., ¶ 29.) Defendants also  
12 produced the company policies pertaining to wage and hour issues. (Id.) Below is a detailed  
13 breakdown of the exposure analysis performed by counsel for Plaintiffs. Plaintiffs’ Counsel have  
14 reviewed the data and, with the help of an expert’s analysis, estimated damages based on the  
15 allegation and evidence in this case as explained below and in Plaintiffs’ Counsel’s Declaration.

16 Summary of California Class Exposure Analysis: The approximate breakdown for each  
17 claim is as follows: (1) Unpaid Overtime - \$6,582,681; (2) Failure to Provide Timely and  
18 Compliant Meal Periods - \$756,531; (3) Failure to Provide Timely and Compliant Rest Breaks -  
19 \$756,531; (4) Failure to Reimburse All Reasonable and Necessary Business Expenses - \$400,869;  
20 (5) Failure to Provide Accurate and Itemized Wage Statements - \$256,200; and (6) Failure to  
21 Timely Pay All Wages due to Terminated/Separated Employees - \$984,815. Therefore, Plaintiffs  
22 estimated that Defendants’ maximum potential exposure on class claims was **\$9,737,777** and with  
23 interest could have reached approximately **\$11,965,690** if Plaintiffs had successfully certified each  
24 claim, overcame Defendants’ arguments that the classes should not be certified due to  
25 individualized issues, and prevailed on the merits at trial. (Lebe Decl., ¶ 36.)

26 While the amount of the class members’ maximum potential damages – if proven – is  
27 substantial, the legitimate and serious risks outlined above compelled a considerable discount for  
28 settlement. (Id.) The risks associated with proceeding to trial are meaningful. Indeed, if Plaintiffs

1 were unsuccessful in proving that they were misclassified as exempt, the maximum damages  
2 would be **reduced to \$512,964** (which are the estimated damages under the expense  
3 reimbursement theory, with interest). Defendants also argue that none of their wage and hour  
4 policies are facially invalid, and that Defendants appropriately paid their employees at all times  
5 and were compliant with all applicable wage-and-hour laws. Moreover, Defendants argue that the  
6 class members had ample opportunity to take and did take meal and rest breaks and that Defendants  
7 properly reimbursed all reasonable business expenses. In addition, Defendants argue that a  
8 substantial portion of putative class members have signed arbitration agreements with class action  
9 waivers and thus could not participate in the lawsuit even if class certification was granted.

10 Further, the issue of class certification had not yet been presented to the Court. Defendants  
11 argue that its employees were properly classified as exempt from receiving overtime under the  
12 administrative exemption and/or other exemptions, and individual issues would predominate as to  
13 what extent class members were entitled to receive overtime wages. If Defendants were successful  
14 at defeating a class certification motion, the California Class Members would recover **nothing** as  
15 a result of this litigation. Class certification is a major hurdle for Plaintiff and the California Class  
16 Members. (See Munoz, 186 Cal. App. 4th at 411 [uncertainty of class treatment was significant  
17 question which supported the decision to settle].) Class certification briefing would be lengthy  
18 and expensive and both sides risked an unfavorable ruling. Based on the significant benefits to  
19 the class and equally significant potential risks to proceeding to trial, Plaintiffs believe the  
20 settlement is in the best interest of the class. (Lebe Decl., ¶ 42.)

21 Thus, the \$1,500,000 proposed settlement amounts to approximately 12.5 percent of the  
22 maximum damages of the primary claims of California Class Members in this action. (Id.)  
23 Plaintiffs submit that the settlement is fair, reasonable and provides a good result for the class.  
24 (Id.) Moreover, to the extent there is a material increase in Pay Periods between the mediation and  
25 Final Approval, there is an Escalator Clause in the Settlement Agreement to account for this and  
26 increase the total settlement amount proportionally. (Id.)

27 Summary of PAGA Exposure Analysis: Plaintiffs and their expert calculated Defendants'  
28 maximum liability under the PAGA to be approximately **\$8,454,450**. (Lebe Decl., ¶ 39.) Plaintiffs

1 reached this figure by multiplying the number of pay periods during the PAGA period in which an  
2 alleged violation occurred by the applicable civil penalty for subsequent violations for overtime  
3 wage violations under PAGA Labor Code section 510, meal and rest break violations under PAGA  
4 Labor Code 226.7, wage statement violations under PAGA Labor Code section 226, and business  
5 expense violations under PAGA Labor Code section 2802. (Id.)

6 The relevant exposure related to PAGA penalties was reduced by Plaintiffs' counsel for  
7 various reasons. (Id.) First, the PAGA claims could have been deemed unmanageable by the  
8 Court based on the recent California Court of Appeal holding in Wesson v. Staples. Second, the  
9 Court has discretion to reduce the PAGA award based on whether the amount of the award would  
10 be "unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). (Id.) For  
11 instance, it is within a trial court's discretion to significantly reduce PAGA penalties even when  
12 there is a finding that a violation of the Labor Code occurred. (See Carrington v. Starbucks, (2018)  
13 30 Cal. App. 5th 504.) (Id.) In theory, the Court could reduce the award by 99%. (Id.) In  
14 addition, a discount is justified based on the U.S. Supreme Court's grant of certiorari in Viking  
15 River Cruises v. Moriana, as the U.S. Supreme Court may decide in that case that representative  
16 action waivers, including PAGA waivers, as Kforce argues it has here, are enforceable. Based on  
17 the foregoing, Plaintiffs believe the \$250,000 for distribution to the LWDA and PAGA Group  
18 Members for the settlement of the PAGA civil penalty claims is appropriate. (Id.)

19 Summary of FLSA Overtime Exposure Analysis: Plaintiffs' claim for failure to pay for  
20 overtime is premised on the theory that Defendants misclassified FLSA Collective Members as  
21 exempt and did not pay for overtime wages. (Lebe Decl., ¶ 40.) Plaintiffs and their expert  
22 calculated Defendants' exposure as to this cause of action based on the applicable statute, 29  
23 U.S.C. § 207, which requires overtime pay for time worked over 40 hours in a week. (Id.)

24 By using the information provided by Defendants in advance of and during the mediation  
25 and the records of FLSA Collective Members, Plaintiffs and their expert were able to calculate the  
26 exposure of Defendants for this causes of action. (Id.) Specifically, by multiplying the total  
27 number of pay periods, the number of full-time equivalent employees and the regular rate of pay  
28 during the FLSA Period by an estimated 20 overtime hours per pay period, Plaintiffs and their

expert estimated that Defendants' maximum exposure for this claim was **\$13,927,037** and with interest could have reached approximately **\$16,593,605**. (*Id.*) Further, as the opt in rate for FLSA class actions that have been certified is typically between 15 and 30 percent, this brings the actual exposure of the FLSA claims to between **\$2,489,041** and **\$4,978,082**. (*Id.*)

While the amount of the FLSA Collective Members' maximum potential damages – if proven – is substantial, the legitimate and serious risks outlined above compelled a considerable discount for settlement. (Lebe Decl., ¶ 41.) The risks associated with proceeding to trial are meaningful. Indeed, the issue of class certification has not yet been presented to the Court. Defendants argue that its employees were exempt from receiving overtime under the administrative exemption and/or other exemptions, and individual issues would predominate as to what extent FLSA Collective Members were entitled to receive overtime wages, especially given that the claims cover a nationwide population working at a wide variety of locations. Indeed, if Defendants were successful at defeating a conditional certification motion or successful in securing decertification at the second stage, FLSA Collective Members would recover nothing as a result of this litigation. Conditional certification and defending decertification are major hurdles for Plaintiff and the FLSA Collective Members. (See *Munoz*, 186 Cal. App. 4th at 411 [uncertainty of class treatment was significant question which supported the decision to settle].) Conditional certification and decertification briefing would be lengthy and expensive and both sides risked an unfavorable ruling. Based on the significant benefits to the FLSA Collective Members and equally significant potential risks to proceeding to trial, Plaintiffs believe the settlement is in the best interest of the Members. (Lebe Decl., ¶ 41.)

Thus, the \$1,500,000 proposed settlement amounts to approximately 9 percent of the maximum damages of the primary claims of all FLSA Class Members in this action and between **30 to 60 percent** of the actual exposure presented by this claim, due to the 15 to 30 percent typical opt in rate of FLSA class actions. (*Id.*) Plaintiff submits that the settlement is fair, reasonable and provides a good result for the class. (*Id.*) Moreover, to the extent there is a material increase in Pay Periods between the mediation and Final Approval, there is an Escalator Clause in the Settlement Agreement to account for this and increase the total settlement amount proportionally.

1 (Id.)

2 **C. The Court Should Certify A Settlement Class**

3 California courts may certify a “settlement class” for settlement purposes only. (*See*  
4 *Wershba*, 91 Cal. App. 4th at 237-38; *Dunk*, 48 Cal. App. 4th at 1807.) Where a court evaluates  
5 class certification in the context of settlement, the evaluation may differ from the litigation context.  
6 (*Luckey*, 228 Cal. App. 4th at 93.) For example, protecting absent class members “by blocking  
7 unwarranted or overbroad class definitions require[s] heightened scrutiny in the settlement-only  
8 class context” since the court will lack the opportunity to adjust the class based on information  
9 ascertained through litigation. (*Id.* at 94.) “The court is, in short, acting in a fiduciary capacity as  
10 guardian of the rights” of absent class members. (*Id.* at 103.)

11 Before granting class certification in the settlement context, the court must find that the  
12 proposed class satisfies the requirements of California Code of Civil Procedure § 382. (*See*  
13 *Wershba*, 91 Cal. App. 4th at 237.) The parties must show the existence of “an ascertainable class  
14 and a well-defined community of interest among class members.” (*Sav-on Drug Stores, Inc. v.*  
15 *Superior Court* (2004) 34 Cal. 4th 319, 326.) Here, both elements are present.

16 **1. The Proposed Settlement Class Is Ascertainable**

17 “Whether a class is ascertainable is determined by examining (1) the class definition, (2)  
18 the size of the class, and (3) the means available for identifying class members.” (*Global Minerals*  
19 *& Metals Corp. v. Superior Court* (2003) 113 Cal. App. 4th 836, 849.) Here, the proposed  
20 California Class Members consists of individuals employed by Defendants in California as  
21 salaried, exempt employee who held an At-Issue California Position from December 24, 2016  
22 through the date of the Preliminary Approval of the Settlement, or February 14, 2022, whichever  
23 is earlier. The proposed FLSA Collective Members are individuals employed by Defendants  
24 during the FLSA Periods as salaried, exempt employee who held an At-Issue FLSA Position. The  
25 proposed PAGA Group Members are individuals employed by Defendants in California as  
26 salaried, exempt employees who held an At-Issue California Position from April 6, 2019 through  
27 the date of the Preliminary Approval of the Settlement, or February 14, 2022, whichever is earlier.  
28 These class definitions provide “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.” (Aguirre v. Amscan Holdings, Inc. (2015) 234 Cal. App. 4th 1290, 1300, *reh’g denied, review denied* (June 17, 2015); Bartold v. Glendale Fed. Bank (2000) 81 Cal. App. 4th 816, 828, *overturned due to legislative action on other grounds*).

There are approximately 710 individuals in the FLSA Collective Action during the entire FLSA period, approximately 324 individuals in the Class Action during the entire Class Period, and approximately 105 PAGA Group Members during the entire PAGA Period, which is sufficient to meet the numerosity requirement of section 382. (See Rose v. City of Hayward (1981) 126 Cal. App. 3d 926, 934.) And, Members can easily be identified, since Defendants maintains for each Member their last known address and social security number.

## **2. The Proposed Settlement Class Comprises a Community of Interest**

The proposed settlement class comprises a sufficient community of interest. A community of interest exists where (i) legal or factual questions common to the class predominate over questions affecting individual class members; (ii) claims of the class representatives are typical of the claims or defenses of the class; and (iii) the class representatives are able to protect adequately and fairly the interests of the class. (See Sav-on, 34 Cal. 4th at 326; Wershba, 91 Cal. App. 4th at 238.)

Here, the proposed settlement class satisfies the above three factors. For settlement purposes, the members share questions of law or fact that are substantially similar. (Wershba, 91 Cal. App. 4th at 238.) Plaintiffs allege Defendants misclassified recruiter employees as exempt and therefore failed to pay overtime wages, failed to provide accurate itemized wage statements, failed to provide legally compliant meal and rest breaks, failed to reimburse all necessary business expenses, including but not limited to use of personal cellular telephone and home internet expenses, and failed to pay all final wages. Moreover, Plaintiffs allege that Defendants also failed to pay for all hours worked over 40 in a workweek or minimum wages in violation of the FLSA. For these same reasons, Plaintiffs’ claims are typical of the claims of the members, as the Plaintiff and all members worked for Defendants and suffered the same violations.

Third, Plaintiffs can adequately protect the interests of the settlement classes. (See

1 Wershba, 91 Cal. App. 4th at 238.) This factor considers whether Plaintiffs’ attorneys are qualified  
2 to conduct the litigation and the plaintiff’s interests are not antagonistic to the interests of the class.  
3 (McGhee v. Bank of Am. (1976) 60 Cal. App. 3d 442, 450.) Here, Plaintiffs’ counsel has no  
4 conflicts of interest, have vigorously prosecuted this action on behalf of Plaintiffs and the  
5 settlement classes, and have significant experience litigating class actions, including those  
6 involving similar claims. Further, no conflict exists between the named Plaintiffs and the  
7 members. The Plaintiffs and members have co-extensive claims and the terms of the settlement  
8 apply to all members equally. There is no potential for conflicts in allocating the settlement fund  
9 since funds will be distributed on a *pro rata* basis to settlement members based on individual  
10 compensation divided by total compensation multiplied by the settlement amount. In short, the  
11 Court should certify the classes for settlement purposes only.

12 **D. The Court Should Approve The Proposed Notice**

13 Rule of Court 3.769(f) requires notice of the final approval hearing to be provided to class  
14 members in the manner specified by the court. “The notice must contain an explanation of the  
15 proposed settlement and procedures for class members to follow in filing written objections to it  
16 and in arranging to appear at the settlement hearing and state any objections to the proposed  
17 settlement.” (See Litwin v. iRenew Bio Energy Solutions, LLC (2014) 226 Cal. App. 4th 877,  
18 883.) Notice should provide each class member sufficient information to decide whether to accept  
19 the benefit he would receive under the settlement, or to opt out and pursue his own claim. (Chavez  
20 v. Netflix, Inc. (2008) 162 Cal. App. 4th 43, 56.)

21 The proposed notices meet this standard; it reasonably informs all members of the nature  
22 and status of the litigation and the important terms of the settlement. In particular, the notices  
23 provide each member with an estimate of the value of their share of the settlement, explains their  
24 right to object to the settlement at the fairness hearing, and informs class members of their right to  
25 opt out of the settlement. In short, the notices provide settlement members with ample information  
26 to allow an informed decision about their participation in the settlement.

27 The proposed manner of notice and timetable for further proceedings are also reasonable.  
28 Under the proposed schedule, notice will be sent via first-class mail to all members within fifteen

(15) calendar days after the Administrator receives the Settlement Class List from Defendants. Members will then have forty-five (45) calendar days from the mailing date of notice to request exclusion from the settlement or object to the settlement. This is more than sufficient time. (See Torrise v. Tucson Elec. Power Co. (9th Cir. 1993) 8 F.3d 1370, 1375 [approving 31 day period for written objections]; Williams v. Costco Wholesale Corp. (S.D. Cal. July 7, 2010), 2010 U.S. Dist. LEXIS 67731 at \*4-5 [approving 30-day opt-out period].) Following the end of this time period, Plaintiff will file a motion for final approval of the settlement. The parties will take all needed actions to secure final approval of the settlement.

#### IV. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court grant preliminary approval of the proposed settlement and enter the proposed Order Granting Preliminary Approval, authorize mailing of the class and PAGA and FLSA notices, and set a date for a final approval hearing.

Dated: February 15, 2022

**Lebe Law, APLC**

By:



Jonathan M. Lebe  
Annaliz Loera  
Nicolas Tomas

Attorneys for Plaintiffs Sydney Elliott-Brand, Bernardo  
Buchsbaum and Josie Meister, individually and on behalf of  
all others similarly situated