

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

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

CINDY ARAICA, individually, and on
behalf of other members of the general public
similarly situated; KEVIN ESTRADA,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiffs,

vs.

DIGITAL ROOM INC., a California
corporation; DIGITAL ROOM LLC, a
California limited liability company; AMC
ACQUISITION LLC, an unknown business
entity; and DOES 2 through 100, inclusive,

Defendants.

Case No.: BC680445

Honorable William F. Highberger
Department SSC10

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Cindy Araica and Kevin
Estrada); and [Proposed] Order filed
concurrently herewith.]

Date: November 3, 2020
Time: 3:30 p.m.
Department: SSC10

Complaint Filed: October 19, 2017
FAC Filed: January 10, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 3, 2020 at 3:30 p.m., or as soon thereafter as the matter may be heard before the Honorable William F. Highberger in Department SSC10 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Cindy Araica and Kevin Estrada will, and hereby do, move for an order:

- Granting Plaintiffs Cindy Araica and Kevin Estrada leave to file the [Proposed] Second Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Second Amended Complaint”) which is attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement (“Proposed Order”), filed concurrently herewith;
- 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 Edwin Aiwazian, 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, the allocations for Attorneys’ Fees Award, reimbursement litigation costs and expenses, Service Awards, and Settlement Administration Costs;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers *for* Justice, PC as Class Counsel;
- Preliminarily appointing Plaintiffs Cindy Araica and Kevin Estrada as Class Representatives;

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- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT B**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for Attorneys’ Fees Award, reimbursement of litigation costs and expenses, Service Awards, and Settlement Administration Costs.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and allow 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 (Edwin Aiwazian) and Proposed Class Representatives (Cindy Araica and Kevin Estrada) 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: October 13, 2020

LAWYERS for JUSTICE, PC

By: 

Edwin Aiwazian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Cindy Araica and Kevin Estrada (“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, on the one hand, and Defendants Digital Room, LLC, formerly organized as Digital Room Inc. (which has been converted into Digital Room LLC) and AMC Acquisition LLC (collectively, “Defendants”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of One Million Seven Hundred Thousand Dollars (\$1,700,000).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Participating Class Members; (2) Service Awards in the amount of Seven Thousand Five Hundred Dollars (\$7,500) each to Plaintiffs (for a combined amount of \$15,000); (3) Attorneys’ Fees Award in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount, or \$595,000, to Class Counsel; (4) reimbursement of litigation costs and expenses in an amount not to exceed \$25,000 to Class Counsel; (5) penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”) in the amount of Two Hundred Thousand Dollars (\$200,000), of which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) will be part of the Net Settlement Amount for distribution to Participating Class Members; and (6) Settlement Administration Costs to the Settlement Administrator.²

Plaintiffs also seeks to provisionally certify the following class for settlement purposes, which Defendants do not oppose³:

Any and all current and former non-exempt employees who worked for any of Defendants, including Digital Room Inc., in the State of California at any time

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 15; Aiwazian Decl., ¶ 14.

² Settlement Agreement, §§ 15 & 48, 50, 51.

³ *Id.*, § 46.

1 during the time period from October 19, 2013 to the date of the Court's Order
2 granting preliminary approval of the Settlement ("Class" or "Class Members").⁴

3 The Class is estimated to consist of approximately seven hundred and three (703)
4 individuals.⁵

5 Class Members who do not submit a timely and valid request to be excluded from the
6 Settlement ("Participating Class Members") will receive a share of the Net Settlement Amount
7 on a *pro rata* basis, based upon the number of weeks worked by each Class Member during the
8 time period from October 19, 2013 to the date of the Court's Order granting preliminary
9 approval of the Settlement based on Defendants' records ("Compensable Workweeks").⁶ The
10 Net Settlement Amount refers to the Gross Settlement Amount, less the following amounts:
11 Attorneys' Fees Award, litigation costs and expenses, Service Awards, Settlement
12 Administration Costs, and the LWDA's seventy-five percent (75%) share of the amount
13 allocated from the Gross Settlement Amount toward penalties under PAGA ("LWDA
14 Payment").⁷

15 The Settlement resolves Plaintiffs' and the Participating Class Members' Released
16 Claims against the Released Parties.⁸

17 In order to efficiently present the Court with adequate information to determine whether
18 to grant preliminary approval of the Settlement and provisional certification of the Class for
19 settlement purposes, Plaintiffs also move for an order permitting the filing of this memorandum,
20 although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

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

22 Defendants offer printing services for small and medium-sized businesses in the United
23 States. Plaintiffs Cindy Araica and Kevin Estrada are former employees of Defendants.

24 ⁴ *Id.*, §§ 3 & 7. "Class Period" means the time period from October 19, 2013 to the date of the Court's Order
granting preliminary approval of the Settlement" See *id.*, § 7.

25 ⁵ *Id.*, § 37; Aiwazian Decl., ¶ 9.

26 ⁶ Settlement Agreement, §§ 8 & 21. Compensable Workweeks will be calculated by the Settlement Administrator
by determining the number of days between the start/rehire and end dates of employment as an hourly-paid or non-
27 exempt employee for Defendants within the Class Period (using October 19, 2013, and using the date of the
Preliminary Approval Order as the end date), dividing the resulting number by seven (7), and rounding to the
nearest whole number (i.e., rounding down for numbers ending in .00 to .49 and up for numbers ending .50 to .99).
28 Class Members will be credited with at least one (1) Compensable Workweek. *Id.*, § 8.

⁷ *Id.*, §§ 18 & 19.

⁸ See *id.* at § 25, for the full scope of the "Released Claims" and § 26 for the definition of the "Released Parties."

1 On October 19, 2017, Plaintiff Araica filed the Class Action Complaint for Damages
2 against Defendants, individually and on behalf of all current and former non-exempt employees
3 who worked for Defendants within the State of California at any time since October 19, 2013.
4 The action was filed in the Superior Court of California, County of Los Angeles, Case No.
5 BC680445 (the “Action”).

6 On December 11, 2017, Defendants filed an answer to Plaintiff Araica’s Class Action
7 Complaint.

8 On, October 16, 2019, Plaintiff Estrada commenced an action entitled *Estrada v. AMC*
9 *Acquisition LLC*, Case No. 19STCV36875 in the Los Angeles County Superior Court of
10 California (“*Estrada Action*”).⁹

11 On January 10, 2020, pursuant to stipulation by the Parties and the Court’s order granting
12 leave thereon, Plaintiffs filed a First Amended Class Action Complaint for Damages,
13 consolidating the plaintiffs and claims from the action filed by Plaintiff Estrada with those of
14 the Action.

15 Plaintiffs’ core allegations, which Defendants deny, are that Defendants violated the
16 California Labor Code and California Business and Professions Code by engaging in a uniform
17 practice and procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing
18 to properly pay overtime and minimum wages, failing to provide compliant meal periods and
19 rest periods and associated premium pay, failing to timely pay wages during employment and
20 upon termination, failing to provide compliant wage statements, failing to keep requisite payroll
21 records, and failing to reimburse necessary business expenses, and have thereby engaged in
22 unfair business practices in violation of California Business and Professions Code section
23 17200, *et seq* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that
24 they and the Class Members are entitled to, *inter alia*, unpaid wages, penalties (including and
25 not limited to, penalties pursuant to PAGA), and attorneys’ fees.

26 ///

27 ///

28 _____
⁹ On June 18, 2020, the *Estrada Action* was dismissed.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the lawsuit, and further deny that the lawsuit is appropriate for class treatment for any purpose other than for settlement purposes only.

On October 10, 2019, the Parties participated in a formal, full-day mediation conducted by the Honorable Gail Andler, a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation and settlement negotiations, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiffs to amend the complaint in order to flesh out and formally allege allegations that were ascertained through discovery and investigation in the action.¹⁰ The Second Amended Complaint will add a claim under the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. ("PAGA") also and add details to the alleged claims regarding the facts and legal theories. As such, Plaintiffs respectfully request leave to file the Second Amended Complaint so that the operative complaint in this action formally fleshes out the allegations that have been investigated, litigated, mediated, and ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.¹¹

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount in the amount of One Million Seven Hundred Thousand Dollars (\$1,700,000) to resolve the Released Claims of Plaintiffs and the Class Members who do not request exclusion from the Settlement (i.e., Participating Class 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 Gross Settlement Amount: (1) attorneys' fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, or Five Hundred Ninety-Five Thousand (\$595,000)

¹⁰ Aiwazian Decl., ¶ 10.

¹¹ Settlement Agreement, §§ 9 & 34.

¹² *Id.*, §§ 15 & 21.

1 (“Attorneys’ Fees Award”) and reimbursement of litigation costs and expenses in an amount not
2 to exceed Twenty-Five Thousand Dollars (\$25,000) to Class Counsel; (2) Service Awards of up
3 to Seven Thousand Five Hundred Dollars (\$7,500) each to Plaintiffs (for a combined amount of
4 \$15,000); (3) the LWDA Payment in the amount of One Hundred Fifty Thousand Dollars
5 (\$150,000); and (4) Settlement Administration Costs, which are not to exceed Thirteen
6 Thousand Dollars (\$13,000), to the Settlement Administrator.¹³ The Parties have agreed to
7 retain Phoenix Class Action Administrators (“Phoenix” or “Settlement Administrator”) to
8 handle the notice and settlement administration process.¹⁴

9 The Parties have agreed that the Settlement Administrator will determine each Class
10 Member’s *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based
11 on his or her Compensable Workweeks during the Class Period.¹⁵ Compensable Workweeks
12 will be calculated by the Settlement Administrator by determining the number of days between
13 the start/rehire and end dates of employment as an hourly-paid or non-exempt employee for
14 Defendants within the Class Period (using October 19, 2013, and using the date of the
15 Preliminary Approval Order as the end date), dividing the resulting number by seven (7), and
16 rounding to the nearest whole number (i.e., rounding down for numbers ending in .00 to .49 and
17 up for numbers ending .50 to .99).¹⁶ The Settlement Administrator will divide each Participating
18 Class Member’s Compensable Workweeks by the total Compensable Workweeks for all
19 Participating Class Members, resulting in a Payment Ratio for each Participating Class
20 Member.¹⁷ The Settlement Administrator will then multiply each Participating Class Member’s
21 Payment Ratio by the Net Settlement Amount to determine his or her estimated Individual
22 Settlement Share.¹⁸

23 Class Members who do not submit timely and valid requests to be excluded from the
24 Settlement (i.e. Participating Class Members) will be issued payment of an Individual
25

26 ¹³ Settlement Agreement, §§ 48-51.

27 ¹⁴ *Id.*, § 30.

28 ¹⁵ *Id.*, § 7.

¹⁶ *Id.*, § 8.

¹⁷ *Id.*, §§ 16 & 49(b).

¹⁸ *Ibid.*

1 Settlement Share.¹⁹ Each Participating Class Member's Individual Settlement Share will be
2 allocated as follows: one-third (1/3) as wages ("Wages Portion"); and two-thirds (2/3) as
3 penalties and interest.²⁰ The Wages Portion of the of the Individual Settlement Share will be
4 reported on an IRS Form W-2 and the portions allocated to penalties and interest will be reported
5 on an IRS Form 1099.²¹ Participating Class Members will be issued payment of their Individual
6 Settlement Share subject to reduction for employee's share of payroll taxes and withholdings
7 with respect to the Wages Portion (the net payment is their "Individual Settlement Payment").²²

8 The Individual Settlement Payment checks issued to Participating Class Members will
9 remain valid and negotiable for one hundred eighty (180) calendar days from the date of
10 issuance.²³ After that time, the funds from any uncashed checks will be delivered by the
11 Settlement Administrator to the Unclaimed Property Fund maintained by the California State
12 Controller's Office, to be held for the relevant Participating Class Member pursuant to
13 California's Unclaimed Property Law.²⁴ Participating Class Members who cash their Individual
14 Settlement Payment checks will be deemed to have opted in for purposes of the Fair Labor
15 Standards ("FLSA") and thereby release the Released Parties from the Released Claims which
16 arise under the FLSA.²⁵

17 Class Members who wish to exclude themselves from the Settlement must submit a
18 timely and valid request for exclusion from the Settlement to the Settlement Administrator.²⁶
19 To be timely, the request for exclusion must be postmarked no later than forty-five (45) calendar
20 days after the date on which the Settlement Administrator initially mails the Class Notice
21 ("Response Deadline") or in the case of a re-mailed Class Notice, fifteen (15) calendar days
22 from the Response Deadline.²⁷ A request for exclusion must contain: (1) the case name and
23 number of the Action; (2) the Class Member's name, address, telephone number, and the last

24 ¹⁹ Settlement Agreement, § 49.

25 ²⁰ *Id.*, § 49(c).

26 ²¹ *Ibid.*

27 ²² *Id.*, §§ 17 & 49(c).

28 ²³ *Id.*, § 49(e).

²⁴ *Ibid.*

²⁵ *Id.*, § 39.

²⁶ *Id.*, § 45(e).

²⁷ *Id.*, § 27, 47(b), & 47(e).

four digits of his or her Social Security number; (3) a clear statement indicating that the Class Member seeks to exclude himself or herself from the Settlement; and (4) the Class Member's signature.²⁸ Class Members who do not submit a valid and timely request for exclusion will be bound by all terms of the Settlement and any final Judgment entered by the Court in this Action.²⁹

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) can object to the Settlement.³⁰ Participating Class Members who wish to object to the Settlement must submit a written statement of objection ("Notice of Objection") to the Settlement Administrator postmarked by the Response Deadline.³¹ The Notice of Objection must contain: (1) the case name and number of the Action; (2) the name, address, telephone number, and last four digits of the Social Security number of the person objecting to the Settlement; (3) a clear statement indicating that the individual seeks to object to the Settlement; (4) the specific legal and/or factual reason(s) in support of the objection; (5) a statement of whether the objector intends to appear at the Final Approval Hearing and whether he or she is represented by counsel; and (6) the individual's signature.³²

Class Members who disagree with Defendants' records regarding their number of Compensable Workweeks and/or Individual Settlement Share may dispute either in writing by providing documentation and/or an explanation showing contrary information directly to the Settlement Administrator by the Response Deadline.³³ The written dispute must: (1) contain the case name and number of the Action; (2) contain the Class Member's full name, address, telephone number, and the last four digits of his or her Social Security number; (3) contain a clear statement explaining that the Class Member wishes to dispute the number of Compensable Workweeks credited to him or her and also stating the number of Compensable Workweeks that he or she contends is correct; and (4) attach documentation demonstrating that the Class Member

²⁸ Settlement Agreement, § 47(e).

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Id.*, § 47(f).

³² *Ibid.*

³³ *Id.*, § 47(c).

was not credited with the correct number of Compensable Workweeks.³⁴ The Settlement Administrator will submit any submissions by Class Members to the Parties and the Parties will meet and confer to determine whether adjustments to the Class Member's Compensable Workweeks and/or Individual Settlement Share are warranted.³⁵

V. 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 Plaintiffs 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 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

³⁴ *Ibid.*

³⁵ *Ibid.*

1 and they have had an opportunity to voice their views of the settlement or to exclude themselves
2 from the settlement. Cal. R. Ct. 3.769(g).

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

11 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

12 The trial court has broad powers to determine whether a proposed settlement is fair under
13 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
14 this fairness determination, courts must consider several relevant factors, including “the strength
15 of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the
16 risk of maintaining class action status through trial, the amount offered in settlement, the extent
17 of discovery completed and the stage of the proceedings, the experience and view of counsel,
18 the presence of a governmental participant, and the reaction of the class members to the
19 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
20 and the court is free to engage in a balancing and weighing of the factors depending on the
21 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
22 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
23 at 1027 (citation omitted).

24 The proponent of the settlement has the burden to show that it is fair and reasonable.
25 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
26 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
27 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
28 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.

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

5 The Parties actively litigated the Action since it was commenced on October 19, 2017.
6 Both sides used the pre-settlement time period to investigate the veracity, strength, and scope of
7 the claims, and Class Counsel was actively preparing the case for class certification.³⁶

8 Prior to reaching the Settlement, the Parties conducted significant investigation into the
9 facts of the case and the Parties engaged in significant informal discovery, and the exchange,
10 review, and analysis of over a thousand pages of documents and data produced by Defendants.³⁷
11 The volume of data and documents that Class Counsel reviewed and analyzed included and was
12 not limited to: employment records of Plaintiffs and other Class Members, a sampling of Class
13 Members’ pay and time data, multiple iterations of Defendants’ Employee Handbook,
14 agreements (including, but not limited to, AMC – Employee Meal Period Waivers and
15 Proprietary Information & Invention Assignment Agreement), checklists, acknowledgements
16 (including, but not limited to, Employee Handbook Acknowledgement and New Employee
17 Orientation Checklist), internal memoranda, Defendants’ operations and employment practices,
18 forms, procedures and policies (including, but not limited to, Defendants’ California meal and
19 rest period policies and Reimbursement of Business Expenses policy), among other information
20 and documents.³⁸ Counsel for the Parties also met and conferred on numerous occasions, e.g.,
21 regarding the pleadings, discovery, and the production of documents and data prior to
22 mediation.³⁹ Class Counsel also drafted Plaintiffs’ mediation brief and prepared for and
23 attended settlement negotiations and the mediation, among other tasks.⁴⁰

24 The Parties engaged in extensive settlement negotiations and participated in a formal,
25 full-day mediation conducted by Hon. Gail Andler (Ret.), a well-respected mediator experienced

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³⁶ Aiwazian Decl., ¶¶ 11-13.

27 ³⁷ *Id.*, ¶ 12.

28 ³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

in mediating complex labor and employment matters.⁴¹ Prior to and during mediation and settlement discussions, the Parties exchanged extensive class information and engaged in an intensive discussion regarding their evaluations of the lawsuit and various aspects of the lawsuit, 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, PAGA representative actions, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴³ Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁴ After conducting investigations, informal discovery and exchange of documents and data, and settlement negotiations, 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.⁴⁵

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and/or trial.⁴⁶ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁷ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, off-the-clock theory, meal and rest periods, PAGA representative actions wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁸ The Parties have reached the Settlement based

⁴¹ Aiwazian Decl., ¶ 11.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 16-18.

⁴⁵ *Id.*, ¶ 18.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶¶ 11-13 & 16-18.

on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in complex employment litigation, including significant experience in California wage-and-hour class actions.⁴⁹

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

The Settlement, which provides for a Gross Settlement Amount of One Million Seven Hundred Thousand Dollars (\$1,700,000), represents a fair, adequate, and reasonable resolution of the matter.⁵⁰ The Settlement was calculated using the information and data uncovered during litigation and case investigation, as well as the informal exchange of information.⁵¹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵² Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵³

Assuming that the Attorneys' Fees Award, litigation costs and expenses, LWDA Payment, Service Awards, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Nine Hundred Two Thousand Dollars (\$902,000).⁵⁴ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully distributed to Participating Class Members, without reversion to Defendants.⁵⁵ The amount of each Class Member's Individual Settlement Share will be calculated based on his or her Compensable Workweeks.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*

⁴⁹ Aiwazian Decl., ¶¶ 6-7.

⁵⁰ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵¹ *Id.*, ¶¶ 11-13.

⁵² *Id.*, ¶¶ 16-18.

⁵³ *Id.*, ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶ 14.

⁵⁵ Settlement Agreement, § 48.

⁵⁶ *Id.*, §§ 16 & 49(b).

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 have experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a volume of documents, data, and information prior to reaching the Settlement.⁵⁸ The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.⁵⁹ As explained in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶⁰

VII. 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

⁵⁷ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁵⁸ *Id.*, ¶¶ 11-13 & 18.

⁵⁹ *Id.*, ¶ 18.

⁶⁰ *Id.*, ¶¶ 11-13 & 16-18.

⁶¹ Settlement Agreement, § 44.

1 “both [1] an ascertainable class and [2] a well-defined community of interest among class
2 members.” *Id.*

3 The Class is ascertainable and numerous as to make it impracticable to join all Class
4 Members, and there are common questions of law and fact that predominate over any questions
5 affecting any individual Class Member. Further, Plaintiffs’ claims are typical of the claims of
6 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
7 Class. Finally, prosecution of separate actions by individual Class Members would create the
8 risk of inconsistent or varying adjudications, and a class action is superior to other available
9 means for the fair and efficient adjudication of the case. The Class is amenable to class
10 certification for settlement purposes as discussed below.

11 **A. The Class Is Ascertainable and Sufficiently Numerous.**

12 “Ascertainability is required in order to give notice to putative class members as to whom
13 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
14 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
15 by describing a set of common characteristics sufficient to allow a member of that group to
16 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
17 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
18 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

19 This action involves a class that is estimated to consist of approximately seven hundred
20 and three (703) individuals.⁶² This class is sufficiently numerous. *See Rose v. City of Hayward*
21 (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the
22 numerosity requirement as joinder is not practical at that point). Further, all Class Members can
23 and will be identified by Defendants to the Settlement Administrator through a review of
24 Defendants’ employment records regarding their non-exempt or hourly-paid employees in
25 California during the Class Period. As such, the Class is ascertainable and sufficiently
26 numerous.

27 ///

28 _____
⁶² Settlement Agreement, § 37; Aiwasian Decl., ¶ 9.

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

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

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

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in the action. Plaintiffs contend that all of the Class Members were subject to the same
18 uniform operations and employment practices, policies, and procedures during the time period
19 at issue.⁶³ Plaintiffs’ claims arise from Defendants’ alleged uniform policies and systematic
20 schemes, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay
21 overtime and minimum wages for all hours worked, failing to provide compliant meal and rest
22 periods and associated premium pay, failing to timely pay wages during and after employment,
23 failing to provide compliant wage statements, failing to maintain requisite payroll records, and
24 failing to reimburse necessary business-related expenses.⁶⁴

25 Plaintiffs also contend that Defendants’ payroll and recordkeeping practices with respect
26 to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁵

27

63 Aiwazian Decl., ¶ 16.

28 64 *Ibid.*

 65 *Ibid.*

As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.⁶⁶

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

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

Class Counsel has litigated the matter for over two years and were preparing for class certification.⁶⁷ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigation and informal discovery into the facts of the case, reviewed a large volume of documents and data, interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents.⁶⁸ Counsel for the Parties also undertook extensive settlement discussions, including attending a formal full-day mediation session.⁶⁹

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

The Settlement establishes a Gross Settlement Amount of One Million Seven Hundred Thousand Dollars (\$1,700,000), and provides for Class Counsel to apply to the Court for an award in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$595,000) for Attorneys' Fees Award and reimbursement of costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000).⁷¹ The Attorneys' Fees Award

⁶⁶ *Ibid.*

⁶⁷ Aiwazian Decl., ¶¶ 11-13.

⁶⁸ *Id.*, ¶ 12.

⁶⁹ *Id.*, ¶ 11.

⁷⁰ ¶¶ 6-7.

⁷¹ Settlement Agreement, § 52.

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

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

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

⁷² *Id.*, Exh. 1.

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

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

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 Attorneys’ Fees Award and litigation costs and expenses, and, also at the Final Approval Hearing. Considering the work performed and the risks incurred, the Attorneys’ Fees Award and litigation costs and expenses provided for by the Settlement, and to be requested by Class Counsel, are well within the range of reasonableness.

IX THE PROPOSED CLASS NOTICE IS ADEQUATE

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

⁷³ Aiwazian Decl., ¶ 19.

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

3 The proposed Class Notice⁷⁴ describes the Settlement, the deadlines and procedures for
4 objecting to the Settlement, requesting exclusion from the Settlement, and/or disputing the
5 number of Compensable Workweeks and/or Individual Settlement Share credited to a Class
6 Member, and the date and time set for the Final Approval Hearing.⁷⁵

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

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

22 **X. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATORS AS THE**
23 **SETTLEMENT ADMINISTRATOR**

24 The Parties have selected Phoenix Class Action Administrators (“Settlement
25 Administrator” or “Phoenix”) to administer the Settlement.

26 ⁷⁴ Settlement Agreement, Exh. 1.

27 ⁷⁵ *Ibid.*

28 ⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

1 The Settlement Administrator will mail the Class Notice in English and Spanish to each
2 Class Member by First Class U.S. Mail.⁷⁹ Any and all Class Notices returned to the Settlement
3 Administrator as non-delivered on or before the Response Deadline will be re-mailed to any
4 forwarding addresses affixed thereto.⁸⁰ If no forwarding address is provided, the Settlement
5 Administrator will promptly attempt to determine a correct address by use of skip-tracing, or
6 other search, and will then perform a re-mailing of the Class Notice to any alternative address
7 that is identified by the Settlement Administrator.⁸¹ The Settlement Administrator will receive
8 requests for exclusion, Notices of Objection, and any written disputes regarding Compensable
9 Workweeks.⁸²

10 The Settlement Administrator will calculate the amounts of the Individual Settlement
11 Shares; deduct and transmit applicable state and/or federal taxes in connection with the Wages
12 Portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to
13 Participating Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys'
14 Fees Award, litigation costs and expenses, Service Awards, and LWDA Payment; and perform
15 such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸³ The
16 Settlement Administration Costs are currently estimated to be Thirteen Thousand Dollars
17 (\$13,000) and will be paid out of the Gross Settlement Amount, subject to approval by the
18 Court.⁸⁴

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

23 ///

24 ///

25
26 ⁷⁹ Settlement Agreement, § 45(a).

27 ⁸⁰ *Id.*, § 47(b).

28 ⁸¹ *Ibid.*

⁸² *Id.*, §§ 47(c), 47(e), and 47(f).

⁸³ *Id.*, §§ 49-53, 55, and 56.

⁸⁴ *Id.*, § 53.

XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸⁵

Within fifteen (15) calendar days after the date on which the Court's Order granting preliminary approval of the Settlement is entered, Defendants will provide the Settlement Administrator with a complete list of all Class Members which will include each Class Member's full name, last known address, last known telephone number, Social Security number, hire date, and rehire and end dates of employment, if applicable (collectively, "Class Information").⁸⁶ Upon receipt, the Settlement Administrator will perform a search based on the National Change of Address Database to update the Class Information and correct for any known or identifiable address changes.⁸⁷

Within seven (7) calendar days after receiving the Class Information from Defendants, the Settlement Administrator will mail the Class Notice to the Class in English and Spanish via First Class U.S. Mail.⁸⁸ Class Members will have until the Response Deadline, or fifteen (15) calendar days from the Response Deadline for re-mailed Class Notices, to submit a request for exclusion, Notice of Objection, and/or written dispute regarding their Compensable Workweeks to the Settlement Administrator.⁸⁹

Defendants will deliver the Gross Settlement Amount plus an amount sufficient to cover Defendants' share of payroll taxes to the Settlement Administrator within seven (7) business days of the Effective Date.⁹⁰ Within fourteen (14) calendar days after Defendants provide funds to the Settlement Administrator, the Settlement Administrator will distribute Individual Settlement Payments to Participating Class Members, Service Awards to Plaintiffs, Attorneys'

⁸⁵ Settlement Agreement, § 47.

⁸⁶ *Id.*, §§ 5 & 47.

⁸⁷ *Id.*, § 47(a).

⁸⁸ *Ibid.*

⁸⁹ *Id.*, §§ 47(b), 47(c), 47(e), and 47(f).

⁹⁰ *Id.*, §§ 13 & 48.

Fees Award and litigation costs and expenses to Class Counsel, and Settlement Administration Costs to itself.⁹¹

The Individual Settlement Payment checks issued to Participating Class Members will remain valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.⁹² After that time, the funds from any uncashed checks will be delivered by the Settlement Administrator to the Unclaimed Property Fund maintained by the California State Controller's Office, to be held for the relevant Participating Class Member pursuant to California's Unclaimed Property Law.⁹³

XII. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR SERVICE AWARDS

Plaintiffs Cindy Araica and Kevin Estrada respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Service Awards in an amount of up to Seven Thousand Five Hundred Dollars (\$7,500) to each of them (for a combined total of \$15,000).⁹⁴ It is within the Court's discretion to award payment to class representatives 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 incentive 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 contemplated Service Awards to Plaintiffs are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in looking for relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵

⁹¹ Settlement Agreement, §§ 49(d), 51, 52, 57.

⁹² *Id.*, § 49(e).

⁹³ *Ibid.*

⁹⁴ *Id.*, § 51.

⁹⁵ Aiwazian Decl., ¶ 20; Declaration of Cindy Araica in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Araica Decl."), ¶ 4; Declaration of Kevin Estrada in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Estrada Decl."), ¶ 4

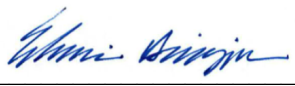
Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁶ Accordingly, it is appropriate and just for Plaintiffs to receive Service Awards for their services on behalf of the Class, in addition to their Individual Settlement Payments.

XIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant leave to file the First Amended Complaint; grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiffs Cindy Araica and Kevin Estrada as Class Representatives; appoint Phoenix Class Action Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees Award, litigation costs and expenses, Service Awards, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately five months after the entry of an order granting preliminary approval; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 13, 2020

LAWYERS for JUSTICE, PC

By: 
Edwin Aiwazian
Attorneys for Plaintiffs

⁹⁶ Aiwazian Decl., ¶ 20; Araica Decl., ¶¶ 3-6; Estrada Decl., ¶¶ 3-6.