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

IGNACIO PEREZ, and LISZANDRA  
PADILLA, individually, and on behalf of  
other members of the general public similarly  
situated; and KAREN RIOS, individually, and  
on behalf of other members of the general  
public similarly situated, and on behalf of  
other aggrieved employees pursuant to the  
California Private Attorneys General Act,

Plaintiffs,

vs.

COMMUNICARE HEALTH CENTERS, a  
California corporation; and DOES 1 through  
100, inclusive,

Defendants.

Case No.: CV-2019-469

Honorable Daniel M. Wolk  
Department 9

**CLASS ACTION**

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

[Declaration of Proposed Class Counsel  
(Annabel Blanchard); Declarations of  
Proposed Class Representatives (Ignacio  
Perez, Liszandra Padilla, and Karen Rios);  
and [Proposed] Order filed concurrently  
herewith]

Date: November 30, 2022  
Time: 9:00 a.m.  
Department: 9

Complaint Filed: March 7, 2019  
FAC Filed: June 4, 2019  
SAC Filed: September 5, 2019  
TAC Filed: December 12, 2019  
FAC Filed: June 28, 2022  
Trial Date: None Set

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

**PLEASE TAKE NOTICE** that on November 30, 2022, at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Daniel M. Wolk in Department 9 of the Superior Court of California for the County of Yolo, located at 1000 Main Street, Woodland, California 95695, Plaintiffs Ignacio Perez, Karen Rios, and Lizabeth Padilla (“Plaintiffs”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as **“EXHIBIT A”** to the Declaration of Annabel Blanchard, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Litigation Costs to Class Counsel, Enhancement Awards to Plaintiffs and to Class Representatives Ignacio Perez, Lizabeth Padilla, and Karen Rios, and Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Ignacio Perez, Lizabeth Padilla, and Karen Rios as Class Representatives;
- Preliminarily appointing Edwin Aiwazian, Esq., Arby Aiwazian, Esq., Joanna Ghosh, Esq., and Annabel Blanchard, Esq. of Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Proposed Class Action Settlement and Workweeks Dispute Form (“Notice Packet” or “Notice”), attached as **“EXHIBIT 1”** and **“EXHIBIT 2”** to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;

- Approving Phoenix Settlement 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 the Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Awards, Administration Costs to Settlement Administrator, and allocation for the PAGA Penalties.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Annabel Blanchard) and Proposed Class Representatives (Ignacio Perez, Lizzandra Padilla, and Karen Rios) 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 18, 2022

**LAWYERS for JUSTICE, PC**

By:



Annabel Blanchard  
*Attorneys for Plaintiffs*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiffs Ignacio Perez, Lizsandra Padilla, and Karen Rios (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant CommuniCare Health Centers (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of seven hundred sixty seven thousand five hundred dollars and no cents (\$767,500.00).<sup>1</sup> The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Fund<sup>2</sup>; (2) the Enhancement Awards of seven thousand five hundred dollars and no cents (\$7,500.00) each to Plaintiffs Perez and Rios, and two thousand five hundred dollars and no cents (\$2,500.00) to Plaintiff Padilla (\$17,500 total)<sup>3</sup>; (3) the Attorneys’ Fees and Litigation Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-four percent (34%) of the Maximum Settlement Amount, or \$262,500.00, and reimbursement of litigation costs and expenses not to exceed twenty five thousand dollars and no cents (\$25,000.00)<sup>4</sup>; (4) the Administration Costs to the Settlement Administrator in the amount not to exceed ten thousand dollars and no cents (\$10,000.00);<sup>5</sup> and (5) the amount of sixty five thousand dollars and no cents (\$65,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$48,750.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$16,250.00) will be distributed to Settlement Class Members who worked for Defendant during the PAGA Period.<sup>6</sup>

<sup>1</sup> Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Annabel Blanchard (“Blanchard Decl.”), § I (N)

<sup>2</sup> *Ibid.*

<sup>3</sup> *Id.*, at § I (H)

<sup>4</sup> *Id.*, at §§ I (B), IX

<sup>5</sup> *Id.*, at § I (A)

<sup>6</sup> *Id.*, at § I (Q)

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

3 All current and former hourly-paid or non-exempt employees (excluding licensed  
4 clinicians) who worked for Defendant within the State of California at any time  
5 during the period from March 7, 2015 through January 1, 2021 (“Class” or “Class  
Members”).<sup>7</sup>

6 The Class is estimated to consist of approximately four hundred sixty (460) individuals.<sup>8</sup>

7 Class Members who do not submit a timely and valid request to be excluded from the  
8 Settlement (“Settlement Class Members”) will receive a share of the Net Settlement Fund  
9 (“Individual Class Share”) on a *pro rata* basis based upon the number of weeks each Settlement  
10 Class Member worked (had a time worked entry in Defendant’s timekeeping system) for  
11 Defendant in California in a non-exempt or hourly-paid position (excluding time worked as a  
12 licensed clinician) during the period from March 7, 2015 through January 1, 2021  
13 (“Workweeks”).<sup>9</sup>

14 The Settlement, if granted preliminary and final approval by the Court, will operate to  
15 resolve the Released Claims of Plaintiffs and Settlement Class Members, against the Released  
16 Parties.<sup>10</sup>

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

18 Defendant is a Federally Qualified Health Center headquartered in Davis, California.  
19 Defendant’s services include primary medical and dental health care, and behavioral health  
20 services, among other health services. Plaintiffs Ignacio Perez, Lizarda Padilla, and Karen  
21 Rios are former employees of Defendant.

22 On March 7, 2019, Plaintiff Ignacio Perez filed a Class Action Complaint for Damages  
23 in the Yolo County Superior Court (“Court”), thereby commencing the above-captioned lawsuit  
24 (“Action”). The Complaint alleged: (1) failure to pay overtime pursuant to Labor Code sections  
25 510 and 1198; (2) failure to provide meal period premiums in violation of sections 226.7 and

26 \_\_\_\_\_  
27 <sup>7</sup> Settlement Agreement, § I (E) “Class Period” is defined as the period of time from March 7, 2015 through January  
1, 2021

28 <sup>8</sup> Blanchard Decl., ¶ 9

<sup>9</sup> Settlement Agreement, § I (BB)

<sup>10</sup> See *id.* at § VII, for the full scope of the “Released Claims,” and for the definition of the “Released Parties.”

512(a); (3) failure to provide rest period premiums in violation of section 226.7; (4) failure to pay minimum wages pursuant to sections 1194, 1197, and 1197.1; (5) failure to timely pay wages upon termination in violation of sections 201 and 202; (6) failure to timely pay wages during employment in violation of section 204; (7) failure to provide accurate and itemized wage statements in violation of section 226(a); (8) failure to keep requisite payroll records in violation of section 1174(d); (9) failure to reimburse business expenses in violation of sections 2800 and 2802; and (10) violations of California Business and Professions Code §§ 17200 et seq.

On June 4, 2019, Plaintiff Perez filed his First Amended Complaint. On July 9, 2019, Defendant filed a Demurrer, arguing that Plaintiff's Complaint failed to state a cause of action against CommuniCare Health Centers. Defendant's Demurrer was sustained with leave to amend on August 8, 2019.

On September 5, 2019, Plaintiff Perez filed his Second Amended Complaint. On November 12, 2019, Defendant filed a Motion to Strike portions of Plaintiff's Second Amended Complaint and filed a Demurrer arguing that the Complaint failed to state facts sufficient to constitute a cause of action for any of its claims. On November 26, 2019, the Court granted Defendant's Motion to Strike in part, including granting the motion to strike the seventh cause of action. The Court sustained Defendant's Demurrer to Plaintiff's eighth cause of action without leave to amend. The Court overruled Defendant's Demurrer as to the first, second, third, fourth, fifth, sixth, ninth, and tenth causes of action.

On December 7, 2020, Plaintiff Karen Rios filed her Complaint For Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. alleging violations of the California Labor Code for: failure to pay overtime wages; failure to provide meal and rest periods; failure to pay minimum wages; failure to timely pay wages during employment and upon termination; failure to provide complete and accurate wage statements; failure to keep requisite payroll records; and failure to reimburse business expenses.

On December 12, 2019, Plaintiff Ignacio Perez filed his Third Amended Complaint ("Operative Complaint"), which removed claims for: (1) failure to provide accurate and itemized wage statements in violation of section 226(a); (2) failure to keep requisite payroll records in

violation of section 1174(d). Defendant filed an answer to Plaintiff's Third Amended Complaint on January 10, 2020.

On December 8, 2021, the Court Ordered the *Perez* and *Rios* actions consolidated for purposes of settlement approval and entry of judgment thereon, and designated the *Perez* Action, Yolo County case number CV-2019-469, as the lead case.

On June 17, 2022 Plaintiffs Ignacio Perez and Karen Rios sought leave of the Court to file their Fourth Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698 Et Seq. and, having been granted leave to amend the complaint, on June 28, 2022 Plaintiffs Ignacio Perez, Liszandra Padilla and Karen Rios filed their Fourth Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698 Et Seq.

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

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

On May 31, 2019, Plaintiff Perez propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); Form Interrogatories, (Set One); and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. On July 2, 2019,

Defendant responded and objected to each of the Plaintiff's discovery requests and deposition notices. On September 18, 2020, Plaintiff Perez propounded additional sets of Requests for Production of Documents, (Set Two); Form Interrogatories, (Set Two); and Special Interrogatories, (Set Three), and, again, noticed the deposition of Defendant's person most knowledgeable regarding job duties and Defendant's organizational structure. On September 25, 2020, Defendant filed a Motion for a Protective Order. On September 30, 2020, Plaintiff Perez filed three Motions to Compel Defendant to respond to discovery requests. Thereafter, on December 11, 2020 and January 8, 2021, Defendant responded to Plaintiff's discovery requests. Class Counsel also drafted pleadings and Plaintiffs' mediation brief, engaged in *Belaire-West* notice administration, and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.

The Parties have actively litigated the Action since it was commenced on March 7, 2019. On June 23, 2020, the Parties participated in a formal, full-day mediation conducted by Lynn S. Frank, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

### **III. SUMMARY OF THE SETTLEMENT TERMS**

Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount to resolve the Released Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) with respect to the Released Parties.<sup>11</sup> Subject to approval by the Court, the Net Settlement Fund will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed two hundred sixty-two thousand five hundred dollars and no cents (\$262,500.00) (i.e., up to 34% of the Maximum Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed twenty five thousand dollars and no cents (\$25,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Litigation Costs"); (2) settlement administration costs, not to exceed ten thousand dollars and

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<sup>11</sup> Settlement Agreement, page 2, opening paragraph

no cents (\$10,000.00) to the Settlement Administrator (“Administration Costs”); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$48,750.00 out of \$65,000.00) (“LWDA Payment”); (4) Defendant’s Prior Payment Credit; and (5) payments in the amount of up to seven thousand five hundred dollars and no cents (\$7,500.00) each to Plaintiffs Ignacio Perez and Karen Rios and payment in the amount of up to two thousand five hundred dollars and no cents (\$2,500.00) to Plaintiff Liszandra Padilla (for a combined total of \$17,500) (“Enhancement Awards”).<sup>12</sup> The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.

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

- a. The Individual Settlement Payment combines a Settlement Class Member’s Individual Class Share (after reduction for the employees share of taxes on the wage portion) and Individual PAGA Share (if applicable).
- b. Defendant will calculate the number of Workweeks of each Settlement Class Member during the Class Period and during the PAGA Period.<sup>13</sup>
- c. The 25% portion of the PAGA Penalties dedicated to aggrieved employees shall be disturbed to all Settlement Class Member who worked for Defendant during the PAGA Period, regardless of whether they have received a prior settlement check from Defendant, based on Workweeks during the PAGA Period. Specifically, the 25% of the PAGA Penalties shall be divided by the total number of Workweeks worked by all Settlement Class Members during the PAGA Period in order to establish the “PAGA Workweek Point Value.” Each Settlement Class Member’s Workweeks during the PAGA Period will then be multiplied by the PAGA Workweek Point Value to derive his or her Individual PAGA Share.
- d. The Net Settlement Fund shall be distributed to Settlement Class Members as follows:
  - i. 61.85% of the Net Settlement Fund will be allocated to all Settlement Class members who have not previously signed a settlement agreement with Defendant or cashed a settlement check from Defendant to release claims in the Litigation (i.e., Unpaid Settlement Class Members), based on their Workweeks during the Class Period. Specifically, this portion of the Net Settlement Fund shall be divided by the total number of Workweeks worked by all Unpaid Settlement Class Members during the Class Period in order to establish the “Unpaid Workweek Point Value.” Each Unpaid Settlement Class Member’s Workweeks during the Class Period will then be multiplied by the Unpaid Workweek Point Value to derive his or her Individual Class Share.

<sup>12</sup> *Id.*, at §§ I(O), VII, VIII IX, X and XI

<sup>13</sup> Settlement Agreement, at § XIV (A) 2

- 1           ii.   38.15% of the Net Settlement Fund will be allocated to all Settlement Class  
2           Members who have previously signed a settlement agreement with Defendant  
3           or cashed a settlement check from Defendant to release claims in the Litigation  
4           (i.e., Paid Settlement Class Members), based on their Workweeks during the  
5           Class Period. Specifically, this portion of the Net Settlement Fund shall be  
6           divided by the total number of Workweeks worked by all Paid Settlement  
7           Class Members during the Class Period in order to establish the “Paid  
8           Workweek Point Value.” Each Paid Settlement Class Member’s Workweeks  
9           during the Class Period will then be multiplied by the Paid Workweek Point  
10          Value to derive his or her Individual Class Share.<sup>14</sup>

11           Each Settlement Class Member’s Individual Class Share will be allocated as follows:  
12           thirty-three percent (33%) as wages (the “wage portion”), which will be reported on an IRS  
13           Form W-2; and the remaining sixty-seven percent (67%) as penalties, interest, and other non-  
14           wage damages, which will be reported on an IRS Form 1099.<sup>15</sup> Settlement Class Members will  
15           be issued payment of their Individual Class Share subject to reduction for the employee’s share  
16           of taxes and withholdings with respect to the wage portion of each Individual Class Share (the  
17           net payment, plus the Settlement Class Member’s Individual PAGA Share, if applicable, is  
18           referred to as an “Individual Settlement Payment”).<sup>16</sup> Defendant will pay the employer’s share  
19           of payroll taxes and contributions with respect to the wage portion of Individual Class Shares  
20           (“Employer Taxes”) separately and in addition to the Maximum Settlement Amount.<sup>17</sup>

21           The Individual Settlement Payment checks issued to Settlement Class Members will be  
22           negotiable for one hundred eighty (180) calendar days from the date of issuance.<sup>18</sup> Individual  
23           Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.<sup>19</sup>  
24           The funds associated with such cancelled checks will be transmitted by the Settlement  
25           Administrator and sent to the Legal Services of Northern California, in the name of the  
26           Settlement Class Member whose check is cancelled and in the respective amount of the  
27           cancelled check.<sup>20</sup>

28           Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify  
the Settlement Administrator in writing by sending a letter indicating that they want to exclude

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<sup>14</sup> *Id.*, § XIV (A) 4

<sup>15</sup> *Id.*, at § XV (C)

<sup>16</sup> Settlement Agreement, § XIV (A) 5

<sup>17</sup> *Id.*, at § XV (E)

<sup>18</sup> *Id.*, at § XIV (C) 2

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

1 themselves.<sup>21</sup> To be timely, the Class Member must mail a written request for exclusion to the  
2 Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from  
3 the initial mailing of the Notice (“Response Deadline”).<sup>22</sup> A request for exclusion must contain:  
4 (1) the case name and number of the Litigation; (2) the Class Member’s full name, address,  
5 telephone number, signature, and the last four digits of his or her Social Security number; and  
6 (3) a clear statement indicating that he or she wishes to be excluded from the Settlement.<sup>23</sup> Class  
7 Members who submit a valid and timely request for exclusion will not be bound by the terms of  
8 the Settlement and Final Approval Order and Judgment. However, any Class Member who  
9 submits a timely and valid request to be excluded will still be bound by the PAGA release, and  
10 will receive his or her Individual PAGA Share, if applicable.<sup>24</sup>

11 Only Class Members who do not exclude themselves from the Settlement (i.e.,  
12 Settlement Class Members) have standing to object to the Settlement.<sup>25</sup> Settlement Class  
13 Members who wish to object to the Settlement may do so by serving the Settlement  
14 Administrator with a notice of objection on or before the Response Deadline.<sup>26</sup> The objection  
15 must contain: (1) the case name and the number of the Litigation; (2) the Settlement Class  
16 Member’s name, address, telephone number, signature, and the last four digits of his or her  
17 Social Security number; (3) clearly state the grounds for the objection; and (4) state whether the  
18 Settlement Class Member intends to appear at the Final Approval Hearing.<sup>27</sup>

19 Class Members who wish to dispute the number of Workweeks credited to them in their  
20 Notice, or to dispute that they signed a prior settlement agreement or cashed a prior settlement  
21 check from Defendant, must mail a written letter to the Settlement Administrator on or before  
22 the Response Deadline.<sup>28</sup> The letter must contain: (a) the case name and number of the  
23 Litigation; (b) the Class Member’s full name, address, telephone number, signature, and the last  
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25 <sup>21</sup> *Id.*, at § XII (C)

26 <sup>22</sup> *Id.*, at § I (X)

27 <sup>23</sup> *Id.*, at § XII (C)

28 <sup>24</sup> *Id.*, at § XII (C) 2

<sup>25</sup> Settlement Agreement, § XII (B)

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Id.*, § XIII

four digits of his or her Social Security number; (c) a statement setting forth the number of Workweeks that he or she believes is correct; and (d) any relevant documentation in support of the Class Member's dispute or a statement that the Class Member did not sign a settlement agreement or cash a settlement check.<sup>29</sup>

#### IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members

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<sup>29</sup> *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 **V. 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 March 7, 2019.  
6           Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of  
7           the claims, and Class Counsel was actively preparing the case for class certification and trial.<sup>30</sup>

8           Prior to engaging in mediation, Class Counsel conducted significant investigation and  
9           formal and informal discovery regarding the facts of the case, including and not limited to, the  
10          exchange, review, and analysis of thousands of pages of documents and data produced by  
11          Defendant.<sup>31</sup> The volume of data and documents that Class Counsel reviewed and analyzed  
12          included and was not limited to: employment records of Plaintiffs and other Class Members, a  
13          detailed sampling of Class Members’ time and pay data, company policy acknowledgements  
14          (including acknowledgements of Defendant’s Drug and Alcohol policy and of Defendant’s  
15          Domestic Violence/ Abuse Reporting policy, and acknowledgement of receipt of Employee  
16          Handbook), job descriptions, new hire information checklists, termination checklists, employee  
17          evaluations, Defendant’s confidential financial information (including but not limited to  
18          operating budgets, financial statements, and balance sheets), Defendant’s operations and  
19          employment practices (including multiple signed Arbitration Agreements and prior Settlement  
20          and Release Agreements with individual employees, along with check stubs evidencing payment  
21          under prior settlement agreements), among other information and documents.<sup>32</sup> Class Counsel  
22          interviewed Plaintiffs and other Class Members to gather facts and to identify potential  
23          witnesses.<sup>33</sup>

24          Class Counsel propounded multiple sets of formal written discovery requests on  
25          Defendant, reviewed Defendant’s responses and supplemental responses thereto, noticed the

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27          <sup>30</sup> Blanchard Decl., ¶¶ 11-13.

28          <sup>31</sup> Blanchard Decl., ¶ 12.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.<sup>34</sup> Class Counsel prepared for the deposition of Defendant's Person Most Knowledgeable witness.<sup>35</sup> Class Counsel also interviewed and obtained information from Plaintiffs and other Class Members, including and not limited to the names of potential witnesses. Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, *Belaire-West* notice administration, and the production of documents and data prior to the mediation.<sup>36</sup> Class Counsel also drafted pleadings and Plaintiffs' mediation brief, engaged in *Belaire-West* notice administration, and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.<sup>37</sup>

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Lynn Frank, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.<sup>38</sup> Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, Defendant's financial condition, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>39</sup> During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.<sup>40</sup> Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.<sup>41</sup> After conducting

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Id.*, ¶ 11.

<sup>39</sup> Blanchard Decl., ¶ 11.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Id.*, ¶¶ 11, 16-18.

1 investigations, significant formal and informal discovery, extensive settlement negotiations, and  
2 with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited  
3 for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs  
4 and risks to both sides that would attend further litigation.<sup>42</sup>

5 The Settlement takes into account the strengths and weaknesses of each side's position  
6 and the uncertainty of how the case might have concluded at certification and trial.<sup>43</sup> The Parties  
7 have had the opportunity to interview and obtain information from their respective witnesses.<sup>44</sup>  
8 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and  
9 the Class Members' employment with Defendant and performed significant research into the  
10 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and  
11 rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto,  
12 as well as facts discovered.<sup>45</sup> The Parties have reached the Settlement based on this large volume  
13 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in  
14 employment class actions, including significant experience in California wage-and-hour  
15 litigation.<sup>46</sup>

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

17 The Settlement, which provides for a Maximum Settlement Amount of seven hundred  
18 sixty seven thousand five hundred dollars and no cents (\$767,500.00), represents a fair,  
19 adequate, and reasonable resolution of the matter.<sup>47</sup> The Settlement was calculated using the  
20 information and data uncovered during litigation, case investigation, as well as the formal and  
21 informal exchange of information.<sup>48</sup> The Settlement takes into account the potential risks and  
22 rewards inherent in any case and, in particular, in the case at issue.<sup>49</sup> Moreover, considering all  
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25 <sup>42</sup> *Ibid.*

26 <sup>43</sup> *Ibid.*

27 <sup>44</sup> *Ibid.*

28 <sup>45</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>46</sup> Blanchard Decl., ¶¶ 6-7

<sup>47</sup> Blanchard Decl., ¶¶ 11, 13, 14 & 21.

<sup>48</sup> *Id.*, ¶¶ 11-13.

<sup>49</sup> *Id.*, ¶¶ 16-18.

of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.<sup>50</sup>

Assuming that the Attorneys' Fees and Litigation Costs, Enhancement Awards, PAGA Penalties, and 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 Fund that is currently estimated to be one hundred eighty-seven thousand, five hundred dollars and no cents (\$187,500.00).<sup>51</sup> As discussed in Part III, *supra*, the entire Net Settlement Fund will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Class Share will be calculated based on his or her Workweeks.<sup>52</sup> There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.<sup>53</sup> Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

**C. The Settlement Is of Significant Value.**

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of

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<sup>50</sup> *Id.*, ¶¶ 11, 13, & 21.

<sup>51</sup> *Id.*, ¶ 14.

<sup>52</sup> Settlement Agreement, § XIV

<sup>53</sup> Blanchard Decl., ¶¶ 11, 13, & 21.

documents, data, and information prior to mediation.<sup>54</sup> The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.<sup>55</sup> As outlined in the Declaration of Annabel Blanchard, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.<sup>56</sup>

**VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.**

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.<sup>57</sup> California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

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

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<sup>54</sup> *Id.*, ¶¶ 11-13 & 18.

<sup>55</sup> *Id.*, ¶ 18.

<sup>56</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>57</sup> Settlement Agreement, § IV

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

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

9           This action involves a class of approximately four hundred sixty (460) individuals.<sup>58</sup>  
10 This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,  
11 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as  
12 joinder is not practical at that point). Further, all Class Members can and will be identified by  
13 Defendant to the Settlement Administrator through a review of Defendant’s employment  
14 records regarding hourly-paid and non-exempt employees in California during the Class Period.  
15 As such, the Class is ascertainable and sufficiently numerous.

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

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

26           The “common issues” requirement “involves analysis of whether the proponent’s ‘theory  
27 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155

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58 Blanchard Decl., ¶ 9.

Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.<sup>59</sup> Plaintiffs’ claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.<sup>60</sup>

Plaintiffs also contend that Defendant’s payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.<sup>61</sup> As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.<sup>62</sup>

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

## **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND LITIGATION COSTS**

Class Counsel has litigated the matter for over three years, and was actively preparing

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<sup>59</sup> Blanchard Decl., ¶ 16.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> Blanchard Decl., ¶

the matter for class certification and trial.<sup>63</sup> The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data<sup>64</sup> and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, *Belaire-West* notice administration, and the production of documents and data prior to mediation.<sup>65</sup> Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.<sup>66</sup>

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.<sup>67</sup>

The Settlement establishes a Maximum Settlement Amount of seven hundred sixty-seven thousand five hundred dollars and no cents (\$767,500.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Litigation Costs, consisting of attorneys' fees in an amount not to exceed thirty-four percent (34%) of the Maximum Settlement Amount (i.e., \$262,500.00) and an amount not to exceed twenty five thousand dollars and no cents (\$25,000.00) for litigation costs and expenses.<sup>68</sup> The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has

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<sup>63</sup> *Id.*, ¶¶ 11-13.

<sup>64</sup> *Id.*, ¶ 12.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Id.*, ¶ 11.

<sup>67</sup> *Id.*, ¶¶ 6-7.

<sup>68</sup> Settlement Agreement, §§ I (B) & (N)

1 achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in  
2 order to devote its time and efforts to this matter. The proposed Notice provides Class Members  
3 with information about the amount allocated toward the Attorneys' Fees and Litigation Costs,  
4 and that an award of the Attorneys' Fees and Litigation Costs will be sought, as provided for by  
5 the Settlement.<sup>69</sup>

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

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

26 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,  
27 depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin*

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<sup>69</sup> *Id.*, Exh. A.

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

10 Class Counsel has borne all of the risks and costs of litigation and will not receive any  
11 compensation until recovery is obtained.<sup>70</sup>

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

17 **VIII. THE PROPOSED NOTICE IS ADEQUATE.**

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

23 The proposed Notice<sup>71</sup> describes the Settlement, the deadlines and procedures to serve  
24 an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a  
25 dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.<sup>72</sup>

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27 <sup>70</sup> Blanchard Decl., ¶ 19.

28 <sup>71</sup> Settlement Agreement, Exh. A.

<sup>72</sup> *Ibid.*

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

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

**IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR**

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. mail.<sup>76</sup> Any undeliverable Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.<sup>77</sup> With respect to any undeliverable Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Notice to the Class Member.<sup>78</sup> The Response Deadline to submit a request

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<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> Settlement Agreement, § XII (A) 3

<sup>77</sup> *Id.*, § XII (A) 5

<sup>78</sup> *Ibid.*

1 for exclusion, objection, or dispute regarding Workweeks for Class Members to whom a Notice  
2 is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be  
3 fifteen (15) calendar days from the date of the re-mailing or the original sixty (60) calendar day  
4 deadline, whichever is later.<sup>79</sup> The Settlement Administrator will receive and process requests  
5 for exclusion, objections, and any disputes regarding Workweeks.<sup>80</sup>

6 The Settlement Administrator will calculate the amounts of the Individual Class Shares  
7 and the Individual PAGA Shares; deduct and transmit applicable state and/or federal taxes in  
8 connection with the wage portion of Individual Class Shares; mail the Individual Settlement  
9 Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and  
10 disburse the Attorneys' Fees and Litigation Costs, Enhancement Awards, and LWDA Payment;  
11 and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.<sup>81</sup>  
12 The Administration Costs are currently estimated to be ten thousand dollars and no cents  
13 (\$10,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by  
14 the Court.<sup>82</sup>

15 Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Settlement  
16 Administrators as the Settlement Administrator and direct the mailing of the Notice to the Class  
17 Members in the manner outlined and based on the proposed deadlines as described herein and  
18 set forth in the Settlement Agreement.

19 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

20 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for  
21 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process  
22 entails mailing of the Notice, in the form approved by the Court, to all known and reasonably  
23 ascertainable Class Members based on Defendant's records.<sup>83</sup>

24 Within thirty (30) calendar days after the date on which the Court grants preliminary  
25 approval of the Settlement, Defendant will provide the Settlement Administrator with the

26 <sup>79</sup> *Ibid.*

27 <sup>80</sup> *Id.*, §§ XII (B) & (C), XIII

28 <sup>81</sup> *Ibid.*; Blanchard Decl., ¶ 15.

<sup>82</sup> Settlement Agreement, § I (A)

<sup>83</sup> Settlement Agreement, § XII

following information for each Class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) dates of employment with Defendant as an hourly-paid or non-exempt employee (5) Social Security number; (6) number of Workweeks during the Class Period; (7) number of Workweeks during the PAGA Period; and (8) whether or not the Class Member signed a settlement agreement or cashed a settlement check from Defendant (collectively, “Class List”).<sup>84</sup>

Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator will mail the Notice Packet, which will include the Notice and a Workweeks Dispute Form, to the Class Members via First-Class U.S. Mail.<sup>85</sup> If a Notice Packet is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Notice Packet to the forwarding address.<sup>86</sup> If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Notice to the Class Member.<sup>87</sup> Class Members will have until the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding Workweeks, and/or to file and serve an objection.<sup>88</sup>

Defendant will make a one-time deposit of the Maximum Settlement Amount (minus the \$200,000.00 Prior Payment Credit for settlement payments Defendant already made to Class Members), together with an amount sufficient to pay Employer Taxes, into an interest bearing account to be established by the Settlement Administrator, within fourteen (14) calendar days after the Effective Date.<sup>89</sup> Within twenty one (21) calendar days of the Effective Date, the Settlement Administrator will distribute: (1) the Individual Class Shares (and if applicable, Individual PAGA Shares) to Settlement Class Members; (2) the Court-approved Enhancement Awards to Plaintiffs; (3) the Court-approved Attorneys’ Fees and Litigation Costs to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Administration

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<sup>84</sup> *Id.*, § XII (A) 5

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> *Id.*, § I (X)

<sup>89</sup> Settlement Agreement, § XIV (B)

Costs to itself.<sup>90</sup>

The Individual Settlement Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.<sup>91</sup> Checks that are not negotiated within the 180-day period will be cancelled.<sup>92</sup> The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Legal Services of Northern California.<sup>93</sup>

**XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT AWARDS**

Plaintiffs Ignacio Perez, Lizzandra Padilla, and Karen Rios respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Awards in an amount up to seven thousand five hundred dollars and no cents (\$7,500.00) each to Plaintiffs Ignacio Perez and Karen Rios, and in an amount up to two thousand five hundred dollars and no cents to Plaintiff Lizzandra Padilla (for a combined total of \$17,500).<sup>94</sup> It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.<sup>95</sup> Plaintiffs were available

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<sup>90</sup> *Id.*, § XIV (C) 1

<sup>91</sup> *Id.*, § XIV (C) 2

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Id.*, § X

<sup>95</sup> Blanchard Decl., ¶ 20; Declaration of Ignacio Perez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Perez Decl."), ¶ 4; Declaration of Karen Rios in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Rios Decl."), ¶ 4.

1 whenever Class Counsel needed them and actively tried to obtain and provide information that  
2 would benefit the Class.<sup>96</sup> Accordingly, it is appropriate and just for Plaintiffs to each receive  
3 an Enhancement Payment for their services on behalf of the Class, in addition to their Individual  
4 Settlement Payments.

5 **XII. CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary  
7 approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary  
8 appoint and designate Edwin Aiwasian, Esq., Arby Aiwasian, Esq., Joanna Ghosh, Esq., and  
9 Annabel Blanchard, Esq. of Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and  
10 designate Plaintiffs Ignacio Perez, Liszandra Padilla, and Karen Rios as Class Representatives;  
11 appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve  
12 the allocations for Attorneys' Fees and Litigation Costs, Enhancement Awards, LWDA  
13 Payment, and Administration Costs; approve the proposed Notice; direct the Settlement  
14 Administrator to undertake the notice and settlement administration process in conformity with  
15 the deadlines and procedures provided by the Settlement Agreement; and schedule a Final  
16 Approval Hearing to take place in approximately six (6) months.

17  
18 Dated: October 18, 2022

**LAWYERS *for* JUSTICE, PC**

19  
20 By:



Annabel Blanchard  
Attorneys *for* Plaintiffs

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<sup>96</sup> Blanchard Decl., ¶ 20; Perez Decl., ¶¶ 3-6; Rios Decl., ¶¶ 3-6.