Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Tara Zabehi (SBN 314706)
Yasmin Hosseini (SBN 326399)
LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff Robert Harlow, Jr. and the Class

[Additional Counsel listed on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ROBERT HARLOW, JR., individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

COVENANT AVIATION SECURITY, LLC, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

MARY ALFARDI, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

COVENANT AVIATION SECURITY, LLC, an Illinois limited liability company; and DOES 1 through 100, inclusive,

Defendants.

ROBERT HARLOW, JR., individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

Case No.: 20-CIV-03986
(Consolidated with Case Nos. 23-CIV-05656 and 20-CIV05141)

Honorable Nancy L. Fineman
Department 4

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Notice of Motion and Motion for Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards; Declaration of Class Counsel (Tara Zabehi and Ronald H. Bae); Declaration of Class Representatives (Robert Harlow, Jr. and Mary Alfardi); Declaration of Settlement Administrator (Taylor Mitzner); [Proposed] Final Approval Order and Judgment; and [Proposed] Order Awarding Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards filed concurrently herewith]

Date:	September 17, 2024
Time:	2:00 p.m.
Department:	4
Complaint Filed:	September 16, 2020
Trial Date:	None Set

COVENANT AVIATION SECURITY, LLC, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Ronald H. Bae (SBN 186826)
Olivia Scharrer (SBN 291470)
Carson M. Turner (SBN 345992)
AEQUITAS LEGAL GROUP
A Professional Law Corporation
1156 E. Green Street, Suite 200
Pasadena, California 91106
Tel.: (213) 674-6080 / Fax: (213) 674-6081

Attorneys for Plaintiff Mary Alfardi and the Class

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

PLEASE TAKE NOTICE that on September 17, 2024, at 2:00 p.m., in Department 4 of the above-entitled Court, located at 800 N. Humboldt Street, San Mateo, California 94401, Plaintiff Robert Harlow, Jr., ("Plaintiff Harlow") and Plaintiff Mary Alfardi ("Plaintiff Alfardi") (together, "Plaintiffs" or "Class Representatives") will and hereby do move for an order granting final approval of:

1. The Class Action and PAGA Settlement Agreement and Stipulation to Amend and Modify the Class Action and PAGA Settlement Agreement (together, "Settlement," "Agreement," or "Settlement Agreement") on the grounds that the Settlement is fair, adequate, and reasonable because:

- A Net Settlement Amount of approximately **$2,418,058.88** will be fully distributed to all Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members");
- **No Notices of Objection** were submitted to the settlement administrator, Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator");
- Only **three (3) Requests for Exclusion** were submitted to Phoenix.

2. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq*., in the amount of $500,000.00 ("PAGA Penalty Amount"), of which seventy-five percent (75%), or **$375,000.00**, will be paid to the California Labor and Workforce Development Agency ("LWDA") ("LWDA Payment") and twenty-five percent (25%), or **$125,000.00**, will be distributed to Aggrieved Employees on a *pro rata* basis.

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

This motion is based upon the following Memorandum of Points and Authorities as well as the concurrently-filed Notice of Motion and Motion for Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards, the Declarations of Class Counsel (Tara Zabehi and Ronald H. Bae), Class Representatives (Robert Harlow, Jr., and Mary Alfardi), and the Settlement Administrator (Taylor Mitzner of Phoenix Settlement Administrators) in support

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: August 23, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________

Tara Zabehi
Attorneys for Plaintiff Robert Harlow Jr., and the Class

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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410 West Arden Avenue, Suite 203
Glendale, California 91203

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Robert Harlow, Jr., ("Plaintiff Harlow") and Plaintiff Mary Alfardi ("Plaintiff Alfardi") (together, "Plaintiffs" or "Class Representatives") seek final approval of the Class Action and PAGA Settlement Agreement and Stipulation to Amend and Modify the Class Action and PAGA Settlement Agreement (together, "Settlement," "Agreement," or "Settlement Agreement"), entered into by and between Plaintiffs and Defendant Covenant Aviation Security, LLC ("Defendant") (collectively, the "Parties").

The Settlement provides for a Total Settlement Amount of $5,000,000.00[1] and seeks relief on behalf of the following Class:

> All current and former hourly-paid or non-exempt employees who were employed by Defendant in the State of California at any time during the period from September 16, 2016 through April 3, 2024 ("Class" or "Class Members").[2]

Plaintiffs also move for final approval of all payments allocated and provided for by the Settlement[3], to be paid from the Total Settlement Amount, including and not limited to, (1) attorneys' fees in the amount of $2,000,000.00 which is forty percent (40%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the amount of $28,047.02 (together, "Attorneys' Fees and Costs") to Lawyers *for* Justice, PC and Aequitas Legal Group, APC (together, "Class Counsel")[4]; (2) Settlement Administration Costs in the amount of $28,894.10 to Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator")[5]; (3) Enhancement Awards in the amount of $12,500.00 each to Plaintiff Harlow and Plaintiff Alfardi[6]; and (4) allocation of $500,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq*. ("PAGA Penalty Amount"), of which $375,000.00 will be paid to the California Labor and Workforce

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[1] Class Action and PAGA Settlement Agreement and Stipulation to Amend and Modify the Class Action and PAGA Settlement Agreement (together, "Settlement Agreement"), ¶ 10.ll.

[2] *Id.*, ¶ 10.e. "Class Period" is defined as the period from September 16, 2016 through the date of Preliminary Approval (April 3, 2024) *See id.*, ¶ 10.g.

[3] In the interest of judicial efficiency, and in support of the allocations and requests for the Attorneys' Fees and Costs, Enhancement Awards, and Settlement Administration Costs, Plaintiffs respectfully refer the Court to Plaintiffs' Motion for Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards, and papers in support thereof, filed concurrently herewith.

[4] *Id.*, ¶¶ 10.b, 10.c, & 13.d.

[5] *Id.*, ¶¶ 10.ii, 10.jj, & 13.b.

[6] *Id.*, ¶¶ 10.n & 13.a.

Development Agency ("LWDA") for its portion of the PAGA Penalties ("LWDA Payment"), and $125,000.00 will be distributed to all current and former hourly-paid or non-exempt employees who were employed by Defendant in the State of California at any time during the PAGA Period ("Aggrieved Employees") on a *pro rata* basis.[7]

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during the mediation conducted by Paul Grossman, Esq., and settlement negotiations thereafter.

The Settlement is fair, adequate, and reasonable, and is the product of arm's-length, good-faith negotiations by experienced counsel presided over by a highly-regarded mediator who is experienced in mediating wage-and-hour class action lawsuits. The Settlement has been well received by the Class – *not a single Class Member has objected to any aspect of the Class Settlement, including the requested Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs or the allocation for PAGA Penalty Amount.*

Accordingly, the Court should grant final approval of the Settlement, and all payments allocated and provided for by the Settlement Agreement, including and not limited Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs, and the allocation for PAGA Penalty Amount in the amounts as fully disclosed to the Class and as requested herein and Plaintiffs' concurrently filed Motion for Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is an industry leader, providing legally compliant security and screening services for Airport Authorities, TSA, and airlines. In fact, Defendant is the largest private contractor providing Screening Partnership Program (SPP) services to TSA. Plaintiffs are former employees of Defendant.

On September 15, 2020, Plaintiff Harlow submitted notice to the California Labor & Workforce Development Agency ("LWDA") and Defendant of his intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, *et seq*.

[7] Settlement Agreement, ¶¶ 10.a, 10.a, & 13.c; "PAGA Period" is defined as the period from September 15, 2019 through the date of Preliminary Approval (April 3, 2024) *See id*., ¶ 10.y.

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410 West Arden Avenue, Suite 203
Glendale, California 91203

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410 West Arden Avenue, Suite 203
Glendale, California 91203

On September 16, 2020, Plaintiff Harlow filed a Class Action Complaint for Damages, in the San Mateo County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("*Harlow* Class Action").

On October 5, 2020, Plaintiff Alfardi filed a Class Action Complaint for Damages, in the San Francisco County Superior Court ("*Alfardi* Class Action").

On November 19, 2020, Plaintiff Harlow filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *et seq*., in the San Mateo Court ("*Harlow* PAGA Action").

Plaintiffs' core allegations are that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and the Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members and Aggrieved Employees, 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 Actions, and further denies that the Actions are appropriate for class treatment or representative adjudication for any purpose other than settlement.

The Parties have actively litigated the Actions since the *Harlow* Class Action was commenced on September 16, 2020. On September 14, 2022, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, 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 Actions in their entirety.

On November 29, 2023, the *Alfardi* Class Action was transferred to the San Mateo Superior Court.

On December 12, 2023, the *Alfardi* Class Action, the *Harlow* Class Action and the *Harlow* PAGA Action (together, the "Actions") were consolidated, with the *Harlow* Class Action designated as the lead case.

On December 29, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval"). On January 30, 2024, the Court issued a Minute Order raising certain points of inquiry regarding the Motion for Preliminary Approval and continuing the hearing on the Motion for Preliminary Approval. On February 9, 2024, Plaintiffs submitted supplemental briefing in support of the Motion for Preliminary Approval. On April 3, 2024, the Court issued an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of the Settlement and the allocation for PAGA Penalty Amount, and for approval of the requested Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs, as set forth in Plaintiffs' concurrently filed Motion for Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards.

III. <u>SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION</u>

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Total Settlement Amount of $5,000,000.00 by making a one-time deposit, into a settlement account to be established by the Settlement Administrator.[8] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of $2,000,000.00 and reimbursement of litigation costs and expenses in the amount of $28,047.02, to Class Counsel; (2) Enhancement Awards in the amount of $12,500.00 each to Plaintiff Harlow and Plaintiff Alfardi (combined amount $25,000.00); (3) Settlement Administration Costs in the

[8] Settlement Agreement, ¶ 13.

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amount of $28,894.10 to Phoenix; and (4) PAGA Penalty Amount in the amount of $500,000.00.[9] The Net Settlement Amount, which is estimated to be **$2,418,058.88**, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.[10]

The Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"), according to the following methodology: the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members during the Class Period to yield the "Final Class Workweek Value," and multiply each Settlement Class Member's individual Workweeks during the Class Period by the Class Period by the Final Class Workweeks to yield his or her Individual Settlement Share.[11]

The Settlement Administrator will determine each PAGA Group Member's *pro rata* share of 25% the PAGA Penalties ("Individual PAGA Payment"), according to the following methodology: the Settlement Administrator will divide the 25% share of the PAGA Penalty Amount by the Workweeks during the PAGA Period for all Aggrieved Employees to yield the "PAGA Workweeks Value" and multiply each Aggrieved Employee's individual Workweeks during the PAGA Period by the PAGA Workweeks Value to yield his or her Individual PAGA Payment.[12]

Class Members had sixty (60) calendar days from the initial mailing of the Class Notice ("Response Deadline") to submit a Request for Exclusion, Notice of Objection and/or dispute of the Workweeks.[13] The Response Deadline was June 24, 2024.[14] ***As of the date of this Motion, the Settlement Administrator has not received any Objection Forms or written objections to the***

[9] Settlement Agreement, ¶¶ 13.a, 13.b, 13.c and 13.d.
[10] This amount is higher than the amount stated in Paragraph 15 of the accompanying Declaration of Taylor Mitzner of Phoenix Settlement Administrator Regarding Notice and Settlement Administration ("Phoenix Declaration" or Phoenix Decl.") because the Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of $75,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only $28,047.02 for reimbursement of litigation costs and expenses, and the total difference of $46,952.98 will remain part of the Net Settlement Amount.
[11] Settlement Agreement, ¶¶ 10.t & 14.b.
[12] *Id.*, ¶ 15.
[13] *Id.*, ¶ 10.hh.
[14] Phoenix Decl., ¶¶ 8, 9 and 10.

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Class Settlement ("Notice of Objection") and only three (3) requests to be excluded from the Class Settlement and/or Opt-Out Forms ("Requests for Exclusion") from Class Members.[15]

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties and interest, which will be reported on an IRS Form 1099.[16] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Shares net of these taxes and withholdings).[17] The employer's share of taxes and contributions on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total Settlement Amount.[18] Individual PAGA Payments to Aggrieved Employees will be allocated as one hundred percent (100%) penalties, and will not be subject to deductions of any taxes and withholdings for this payment, and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.[19]

Class Members and Aggrieved Employees shall have one hundred and eighty days to cash, deposit, or negotiate their respective settlement checks under this Agreement.[20] All remaining funds associated with such canceled checks, plus any interest that has accrued thereon, will be transmitted to Legal Aid at Work (for use in San Mateo County), pursuant to California Code of Civil Procedure Section 384, subd. (b).[21] The Parties, Class Counsel, and Defense Counsel represent that they have no interest in or relationship, financial or otherwise, with Legal Aid at Work.[22] All Settlement Class Members and Aggrieved Employees shall be bound by the terms and conditions of this Settlement Agreement regardless of whether they cash or otherwise negotiate their Individual Settlement Payment check and/or Individual PAGA Payment check.[23]

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[15] Phoenix Decl., ¶¶ 8 & 9.
[16] Settlement Agreement, ¶ 21.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] *Id.*, ¶ 29.a.
[21] Ibid.
[22] Ibid.
[23] Ibid.

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IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix Settlement Administrators has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's Preliminary Approval Order.

On April 10, 2024, Defendant's counsel provided Phoenix the Class List that contained names, last known mailing addresses, Social Security numbers, and dates of employment for each Class Member ("Class List") during the Class Period.[24] The Class List contained data for three thousand four hundred six (3,406) Class Members who worked 461,448 Workweeks and two thousand five hundred seventy-six (2,576) Aggrieved Employees who worked a total of 277,338 weeks during the PAGA Period.[25] On April 11, 2024, Phoenix conducted a National Change of Address ("NCOA") search in an attempt to update the class list of addresses as accurately as possible.[26] A search of this database provides updated addresses for any individual who has moved in the previous four (4) years and notified the U.S. Postal Service of their change of address.[27]

On April 24, 2024, Phoenix mailed the Notice via U.S. first class mail, in English and Spanish, to all three thousand four hundred six (3,406) Class Members on the Class List.[28]

A total of twenty-four (24) Notices have been returned to Phoenix.[29] Of these, none were returned with a forwarding address.[30] For the twenty-four (24) Notices returned from the Post Office without a forwarding address, Phoenix attempted to locate a current mailing address using TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing.[31] Of the twenty-four (24) Notices that were skip traced, twenty-four (24) updated addresses were obtained and the Notice was promptly re-mailed to those Class Members via first class mail.[32] Ultimately, there are zero (0) Class Notices that remain undeliverable.[33]

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[24] Phoenix Decl., ¶ 3.
[25] *Id.*, ¶ 3 & 15
[26] *Id.*, ¶ 4.
[27] Ibid.
[28] *Id.*, ¶ 5.
[29] *Id.*, ¶ 6.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] *Id.*, ¶ 7.

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The Response Deadline was June 24, 2024.[34] As of the date of this Motion, the Settlement Administrator has not received any Notices of Objection.[35] As of the date of this Motion, the Settlement Administrator has received three (3) Requests for Exclusion from Class Members.[36]

To date, there are three thousand four hundred three (3,403) Class Members who did not submit timely and valid Requests for Exclusion ("Settlement Class Members"), and who will be paid their portion of the Net Settlement Amount.[37] Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately $2,418,058.88 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.[38] The highest Individual Settlement Share is currently estimated to be $2,023.06 and the average Individual Settlement Share is currently estimated to be $696.77.[39] The highest Individual PAGA Payment is currently estimated to be $144.68 and the average Individual PAGA Payment is currently estimated to be $48.52.[40]

V. <u>THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AND PAGA SETTLEMENT.</u>

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the settlement is fair and reasonable, courts consider relevant factors such as:

> the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

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[34] Phoenix Decl., ¶¶ 8, 9 and 10.
[35] *Id.,* ¶ 9.
[36] *Id.,* ¶ 8.
[37] *Id.,* ¶ 11.
[38] *Id.,* ¶ 13.
[39] *Id.,* ¶ 14. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses is less than $75,000 (the difference between the amount sought and the amount authorized under the Settlement, $46,952.98, will be part of the Net Settlement Amount). See n.10, *supra.*
[40] *Id.,* ¶ 15.

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410 West Arden Avenue, Suite 203
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"Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk*, *supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, *supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba*, *supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the cases were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id*.

A. <u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Informal Discovery.</u>

The Parties actively litigated the case since the Harlow Class Action commenced on September 16, 2020. Class Counsel conducted significant investigation and formal and informal discovery into the facts of the case, to assess the veracity, strength, and scope of the claims, and was preparing for class certification and trial prior to reaching the Settlement.[41]

The Parties conducted significant formal and informal discovery and investigation into the facts of the cases, and also formally and informally exchanged a large volume of information, documents, and data throughout the course of the litigation and in connection with the mediation

[41] Declaration of Tara Zabehi ("Zabehi Decl."), ¶¶ 5-7; Declaration of Ronald H. Bae ("Bae Decl."), ¶¶ 18-29.

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and settlement negotiations.[42] Class Counsel had the opportunity to interview Plaintiffs and other Class Members to gather facts and to identify potential witnesses.[43] Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with the mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and the production of information, documents, and data in the course of litigation and the mediation and settlement negotiations.[44] Class Counsel reviewed and analyzed information, documents, and data obtained from Plaintiffs, Defendant, and other sources.[45] Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, mediation brief, and motion-related papers; and preparing for and attending court proceedings, settlement negotiations, and the mediation, among other tasks.[46]

After conducting formal and informal discovery and investigation into the facts of the cases, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.[47] In the course of mediation and settlement negotiations, the Parties exchanged class information, documents, and data, and discussed all aspects of the cases, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to class certification, off-the-clock theory, rounding, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[48] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[49] Arriving at a settlement that was acceptable to the Parties was not easy.[50] Defendant and its counsel

[42] Zabehi Decl., ¶¶ 6-7; Bae Decl., ¶¶ 21-29.
[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Zabehi Decl., ¶ 8; Bae Decl., ¶¶ 30-34.
[48] Ibid.
[49] Zabehi Decl., ¶ 8; Bae Decl., ¶ 36.
[50] Zabehi Decl., ¶ 8; Bae Decl., ¶ 38.

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felt very strongly about Defendant ability to prevail on the merits and to avoid class certification.[51] Defendant and its counsel felt strongly about Defendant's ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[52] After conducting significant formal and informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the Parties that would attend further litigation.[53]

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, trial, and/or appeals. Class Counsel analyzed a large volume of information, documents, and data obtained from Defendant, Plaintiffs, and other sources, and performed research regarding applicable law, which is evolving as it relates to certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.[54] The Settlement was based on this large volume of facts, evidence, and investigation.[55] Additionally, Class Counsel have extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.[56]

B. <u>The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.</u>

The Settlement, which provides for a Total Settlement Amount of $5,000,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.[57] The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of

[51] Zabehi Decl., ¶ 8; Bae Decl., ¶ 38.
[52] Ibid.
[53] Ibid.
[54] Zabehi Decl., ¶ 7; Bae Decl., ¶ 37.
[55] Zabehi Decl., ¶¶ 6-8; Bae Decl., ¶¶ 18-29.
[56] Zabehi Decl., ¶¶ 13-18; Bae Decl., ¶¶ 39-44.
[57] Zabehi Decl., ¶ 21.

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mediation and ongoing settlement negotiations.[58] Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members and Aggrieved Employees after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the cases, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Additional discovery would have certainly arisen, which would have cost the Parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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[58] Zabehi Decl., ¶¶ 6-8; Bae Decl., ¶¶ 18-38.

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It would be grossly inefficient for such a large class of current and former employees to bring individual actions to recover from Defendant for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

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

The Settlement, which provides for a Total Settlement Amount of $5,000,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the cases, the Total Settlement Amount represents a considerable recovery.

Even after deducting Attorneys' Fees in the amount of $2,000,000.00, costs and expenses in the amount of $28,047.02, Enhancement Awards in the amount of $25,000.00, Settlement Administration Costs in the amount of $28,894.10, and the allocation of PAGA Penalty Amount of $500,000.00 from the Total Settlement Amount of $5,000,000.00, the Net Settlement Amount is currently estimated to be $2,418,058.88.[59] Under the Settlement Agreement, the Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her, and each Aggrieved Employee will be paid a *pro rata* share of 25% of the PAGA Penalty Amount, based on the number of Workweeks during the PAGA Period credited to him or her.[60] To date, there are three thousand four hundred three (3,403) Settlement Class Members, representing one hundred percent (99.91%) of the Class Members.[61] The highest Individual Settlement Share is currently

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[59] Phoenix Decl., ¶ 13.
[60] Settlement Agreement, ¶¶ 14 and 15.
[61] Phoenix Decl., ¶ 11.

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410 West Arden Avenue, Suite 203
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estimated to be $2,023.06 and the average Individual Settlement Share is currently estimated to be $696.77.[62] The highest Individual PAGA Payment is currently estimated to be $144.68 and the average Individual PAGA Payment is currently estimated to be $48.52.[63] These are significant individual recoveries, particularly in light of the risks of litigation.

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. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and Aggrieved Employees.[64] 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, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. <u>The Class Was Represented by Competent Counsel.</u>

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.[65] Class Counsel have been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.[66] Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

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[62] Phoenix Decl., ¶ 14; see n. 39, *supra*.
[63] *Id.*, ¶ 15.
[64] Zabehi Decl., ¶ 21.
[65] Zabehi Decl., ¶¶ 13-18; Bae Decl., ¶¶ 39-44.
[66] Ibid.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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E. There Are No Notices of Objection to the Class Settlement.

The Settlement has been well received by the Class – ***not a single Class Member objected to the Class Settlement.***[67] Specifically, no objections have been made as to the Total Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs, or the allocation for PAGA Penalty Amount. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba*, *supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, *supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Here, the lack of any objections speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk*, *supra*, 48 Cal.App.4th at 1802.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs, and the allocation for PAGA Penalty Amount, in their entirety, as sought herein and in Plaintiffs' concurrently filed Motion for Motion for Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards.

Dated: August 23, 2024

LAWYERS *for* JUSTICE, PC

By: Tara Zabehi
Tara Zabehi
Attorneys for Plaintiff Harlow and the Class

[67] Phoenix Decl., ¶ 9.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203