

Arby Aiwarzian (SBN 269827)
Joanna Ghosh (SBN 272479)
Ryan Slinger (SBN 351297)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

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

SANDEEP PUREWAL, 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;

Plaintiff,

vs.

ACC SENIOR SERVICES, an unknown
business entity; ASIAN COMMUNITY
CENTER OF SACRAMENTO VALLEY,
INC., an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 34-2020-00285518-CU-OE-
GDS

Honorable Jill H. Talley
Department 23

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Ryan Slinger); Declaration of Proposed
Class Representative (Sandeep Purewal)
and [Proposed] Order filed concurrently
herewith]

Date: July 19, 2024
Time: 9:00 a.m.
Department: 23

Complaint Filed: September 22, 2020
FAC Filed: November 20, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 19, 2024, at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Jill H. Talley in Department 23 of the Superior Court of California for the County of Sacramento, located at 720 9th Street, Sacramento, California 95814, Plaintiff Sandeep Purewal (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Ryan Slinger, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Sandeep Purewal as Class Representative;
- Preliminarily appointing Arby Aiwasian, Joanna Ghosh, and Ryan Slinger of Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class and Representative Action and Proposed Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix 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

1 for the Attorneys' Fees and Costs, Enhancement Payment for Plaintiff, and Settlement
2 Administration Costs to the Settlement Administrator.

3 This Motion is made pursuant to Rule 3.769, Rule 3.764, and Rule 3.1113(e) of the
4 California Rules of Court, which require approval by the Court of a class action settlement and
5 permit the Court to extend the page limit for memoranda.

6 This motion is based upon the following memorandum of points and authorities, the
7 Settlement Agreement, the Declarations of Proposed Class Counsel (Ryan Slinger) and
8 Proposed Class Representative (Sandeep Purewal) in support thereof, the pleadings and other
9 records on file with the Court in this matter, and such evidence and oral argument as may be
10 presented at the hearing on this motion.

11
12 Dated: May 21, 2024

LAWYERS for JUSTICE, PC

13
14 By: 
15 Ryan Slinger
16 Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	2
III.	SUMMARY OF THE SETTLEMENT TERMS	4
IV.	LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS.....	8
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT	9
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.	10
B.	The Settlement Is Fair, Reasonable, and Adequate.....	12
C.	The Settlement Is of Significant Value.....	14
VI.	CERTIFICATION OF THE CLASS IS APPROPRIATE	14
A.	The Class Is Ascertainable and Sufficiently Numerous.	15
B.	The Class Members Share a Well-Defined Community of Interest....	15
VII.	APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND COSTS	17
VIII.	THE PROPOSED CLASS NOTICE IS ADEQUATE	19
IX.	APPOINTMENT OF PHOENIX AS THE SETTLEMENT ADMINISTRATOR.....	20
X.	PROPOSED DEADLINES FOR THE NOTICE PROCESS	21
XI.	APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR THE ENHANCEMENT PAYMENT	24
XII.	CONCLUSION	25

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	10
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	15
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	19
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 15, 16	
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	19, 20
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	19
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	9
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 10
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	19
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	8, 10
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	15
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	13
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	19
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	18
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	14
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	18
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	18
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	15
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338	19
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006)	19
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	9
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	15

1	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	14, 15, 16
2	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	8
3	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	25
4	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	8, 10
5	Statutes	
6	Cal. Code Civ. Proc. § 1781.....	19
7	Cal. Code Civ. Proc. § 1781(f).....	8
8	Other Authorities	
9	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	9
10	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	21
11	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	14
12	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	19
13	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	20
14	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	20
15	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	20
16	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	20
17	Rules	
18	Fed. R. Civ. P. 23(c)(2)	20
19	Fed. R. Civ. P. 23(e).....	21
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Sandeep Purewal (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other PAGA Employees, on the one hand, and Defendants ACC Senior Services and Asian Community Center of Sacramento Valley, Inc. (together, “Defendants”) on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of Two Million Three Hundred Thousand Dollars and Zero Cents (\$2,300,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff³; (3) Attorneys’ Fees and Costs, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, (i.e. \$805,000.00, if the Total Settlement Amount remains \$2,300,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Eighteen Thousand Dollars and Zero Cents (\$18,000.00)⁴; (4) the Settlement Administration Costs in the amount not to exceed Twenty-Two Thousand Dollars and Zero Cents (\$22,000.00);⁵ and (5) the PAGA Amount of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$300,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) (“LWDA Payment”) and 25% (i.e., \$100,000.00) will be distributed to all Class Members employed by Defendants at any time during the PAGA Period (“PAGA Employees”).⁶

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Ryan Slinger (“Slinger Decl.”), ¶ 6.nn.

² *Id.*, ¶ 6.u.

³ *Id.*, ¶¶ 6.n. & 11.

⁴ *Id.*, ¶¶ 6.a. & 10.

⁵ *Id.*, ¶¶ 6.l & 12.

⁶ *Id.*, ¶¶ 6.w, 6.x., & 6.aa. “PAGA Period” is defined as the period from September 15, 2019 through the date the Court grants Preliminary Approval.

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendants does not oppose:

all current and former hourly-paid or non-exempt employees who were employed by Defendants within the State of California at any time during the Class Period (“Class” or “Class Member”).⁷

Based on information provided by Defendants, as of February 22, 2024, the Class is estimated to consist of approximately 1,061 individuals.⁸

Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of Workweeks each Class Member was employed by Defendants as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”).⁹

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants operate three facilities for housing and caring for elder members of the Asian American community. Plaintiff Sandeep Purewal is a former employee of Defendants, who worked from approximately May 2019 to approximately April 2020.

On September 22, 2020, Plaintiff filed his Class Action Complaint for Damages against Defendants in Sacramento County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On September 15, 2020, Plaintiff submitted a letter to the LWDA and Defendants, providing notice of his intent to pursue civil penalties against Defendants under PAGA for

⁷ Settlement Agreement, ¶ 6.d.

“Class Period” is defined as the time period from November 22, 2016 through the date the Court grants Preliminary Approval. ¶ 6.f.

⁸ Slinger Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 6.mm, 6.s., 6.oo & 14.

multiple alleged violations of California Labor Code (“PAGA Notice”).

On November 20, 2020, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”).

On January 8, 2021, Defendants filed an Answer to Plaintiff’s First Amended Class Action Complaint.

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

Defendants have 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.

Class Counsel has actively litigated the Action since it was commenced on September 22, 2020. On September 29, 2021, counsel for the Parties participated in a formal, full-day mediation conducted by Hon. Raul A. Ramirez (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator’s evaluations, the Parties agreed on monetary terms and some key elements of the Settlement described herein, however, the case did not resolve entirely at mediation, and did not resolve until January 2024, after substantial continued efforts.

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

2 Under the terms of the Settlement, Defendants will pay a Total Settlement Amount to
3 resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a
4 timely and valid Request for Exclusion (i.e., Settlement Class Members) and the Released
5 PAGA Claims of the State of California and the PAGA Employees with respect to the Released
6 Parties.¹⁰ Subject to approval by the Court, the Net Settlement Amount will be calculated by
7 deducting the following amounts from the Total Settlement Amount: (1) the Attorneys' Fees
8 and Costs, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Total
9 Settlement Amount, (i.e. \$805,000.00, if the Total Settlement Amount remains \$2,300,000.00),
10 and reimbursement of actual costs and expenses in an amount not to exceed Eighteen Thousand
11 Dollars and Zero Cents (\$18,000.00)("Attorneys' Fees and Costs")¹¹; (2) Settlement
12 Administration Costs, which are currently estimated not to exceed Twenty-Two Thousand
13 Dollars and Zero Cents (\$22,000.00) to the Settlement Administrator ("Settlement
14 Administration Costs")¹²; (3) Four Hundred Thousand Dollars and Zero Cents (\$400,000.00)
15 allocated to penalties under PAGA ("PAGA Amount")¹³; and (4) payment in the amount of up
16 to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff ("Enhancement Payment").¹⁴
17 The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement
18 Administrator") to handle the notice and settlement administration process.

19 The Parties have agreed that the Settlement Administrator will determine each
20 Settlement Class Member's *pro rata* share of the available Net Settlement Amount ("Individual
21 Settlement Share"), in accordance with the Settlement Agreement and as follows:

- 22 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
23 divide the Net Settlement Amount by the Workweeks of all Class Members to yield
24 the "Estimated Workweek Value," and multiply each Class Member's individual
25 Workweeks by the Estimated Workweek Value to yield his or her estimated
26 Individual Settlement Share that he or she may be eligible to receive under the Class

26 ¹⁰ Settlement Agreement, ¶ 6.hh.

27 ¹¹ *Id.*, ¶ 10.

28 ¹² *Id.*, ¶ 12.

¹³ *Id.*, ¶ 13.

¹⁴ *Id.*, ¶ 11.

Settlement.¹⁵

- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁶

The Parties have agreed that the Settlement Administrator will determine each PAGA Employee’s *pro rata* share of the twenty-five percent (25%) portion of the PAGA Amount (“Individual PAGA Payment”), in accordance with the Settlement Agreement and as follows: the Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the total number of PAGA Workweeks of all PAGA Employees to yield the “PAGA Workweek Value,” and multiply each PAGA Employee’s individual PAGA Workweeks by the PAGA Workweek Value to yield his or her Individual PAGA Payment.¹⁷

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 eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁸ 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.¹⁹ The Employer Taxes will be paid separately and in addition to the Total Settlement Amount.²⁰ Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.²¹

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.²² In recognition that South Sacramento Interfaith Partnership

¹⁵ Settlement Agreement, ¶ 14.a.

¹⁶ *Id.*, ¶ 14.b.

¹⁷ *Id.*, ¶ 15.

¹⁸ *Id.*, ¶ 25.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Settlement Agreement, ¶ 20.

1 is a non-profit organization providing charitable and other services to the public, pursuant to
2 California Code of Civil Procedure Section 384, all funds remaining in the settlement account,
3 associated with such canceled checks will be transmitted to South Sacramento Interfaith
4 Partnership.²³

5 Any Class Member wishing to be excluded from the Class Settlement must submit a
6 written letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked
7 on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice
8 by the Settlement Administrator (“Response Deadline”), unless the 60th day falls on a Sunday
9 or Federal Holiday, in which case the Response Deadline will be extended to the next day on
10 which the US. Postal Service is open.²⁴ In the event that the Class Notice is re-mailed to a
11 Settlement Class Member, the Response Deadline for that Settlement Class Member will be
12 extended to the date that is fifteen (15) calendar days after the original Response Deadline.²⁵ A
13 Request for Exclusion is a written letter indicating a request to be excluded from the Class
14 Settlement, which must: (a) contain the case name and number of the Action; (b) contain the
15 full name, signature, address, telephone number, and the last four (4) digits of the Social Security
16 number of the Class Member requesting exclusion; (c) clearly state that the Class Member does
17 not wish to be included in the Class Settlement; and (d) be submitted by mail to the Settlement
18 Administrator at the specified address, postmarked on or before the Response Deadline.²⁶ Any
19 Class Member who submits a timely and valid Request for Exclusion will not be bound by the
20 Class Settlement and will not be issued an Individual Settlement Payment.²⁷ Notwithstanding
21 the above, all PAGA Employees will be bound to the PAGA Settlement and will be issued their
22 Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.²⁸

23 To object to the Class Settlement, Class Members who have not opted out of the Class
24 Settlement (i.e., Settlement Class Members) must submit a timely and complete written

25
26 ²³ Ibid.

²⁴ *Id.*, ¶¶ 6.ii & 6.jj.

²⁵ *Id.*, ¶ 6.jj.

²⁶ Settlement Agreement, ¶ 6.ii.

²⁷ *Id.*, ¶ 21.

²⁸ Ibid.

1 objection to the Settlement Administrator (“Notice of Objection”), by mail, postmarked on or
2 before the Response Deadline. In the alternative, Settlement Class Members may appear in
3 Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
4 Hearing. A Settlement Class Member who elects to send a Notice of Objection to the
5 Administrator must do so not later than the Response Deadline.²⁹

6 A Notice of Objection must contain at least the following: (a) contain the case name and
7 number of the Action; (b) contain the objector’s full name, signature, address, telephone number,
8 and the last four (4) digits of his or her Social Security number; (c) contain a written statement
9 of all grounds for the objection accompanied by any legal and factual support for such objection;
10 (d) contain copies of any papers, briefs, or other documents upon which the objection is based;
11 and (e) be submitted by mail to the Settlement Administrator at the specified address,
12 postmarked on or before the Response Deadline.³⁰

13 The Class Notice will include a procedure by which a Class Member may dispute the
14 number of Workweeks or PAGA Workweeks allocated to the Class Member by submitting a
15 written dispute sent via U.S. Mail to the Settlement Administrator postmarked no later than the
16 Response Deadline (“Workweeks Dispute”).³¹ To be valid, a Workweeks Dispute must contain
17 the following: (a) contains the case name and number of the Action; (b) contains the full name,
18 signature, address, telephone number, and the last four (4) digits of the Social Security number
19 of the disputing Class Member; (c) clearly states that the Class Member disputes the number of
20 Workweeks and/or PAGA Workweeks credited to him or her and what he or she contends is the
21 correct number to be credited to him or her; (d) includes information and/or attaches
22 documentation demonstrating that the number of Workweeks and/or PAGA Workweeks that he
23 or she contends should be credited to him or her are correct; and (e) is submitted by mail to the
24 Settlement Administrator at the specified address, postmarked on or before the Response
25 Deadline.³² Absent evidence rebutting the accuracy of Defendants’ records and data as they

26
27 ²⁹ *Id.*, ¶ 22.

³⁰ *Id.*, ¶ 6.v.

³¹ *Id.*, ¶ 6.pp.

³² *Ibid.*

pertain to the number of Workweeks and/or PAGA Workweeks to be credited to a disputing Class Member, Defendants' records will be presumed correct and determinative of the dispute. However, if a Class Member produces information and/or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member and the Settlement Administrator will resolve and determine the number of eligible Workweeks and/or PAGA Workweeks that the disputing Class Member should be credited with under the Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.³³

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

³³ *Id.*, ¶ 19.

1 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement
2 class.

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

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

16 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

17 The trial court has broad powers to determine whether a proposed settlement is fair under
18 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
19 this fairness determination, courts must consider several relevant factors, including "the strength
20 of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the
21 risk of maintaining class action status through trial, the amount offered in settlement, the extent
22 of discovery completed and the stage of the proceedings, the experience and view of counsel,
23 the presence of a governmental participant, and the reaction of the class members to the
24 proposed settlement." *Dunk, supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive
25 and the court is free to engage in a balancing and weighing of the factors depending on the
26 circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
27 "proper deference to the private consensual decision of the parties." *Hanlon, supra*, 150 F.3d at
28 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

Class Counsel has actively litigated the Action since it was commenced on September 22, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁴

Prior to reaching the Settlement Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis a large volume of documents and data obtained from Defendants, Plaintiff and other sources.³⁵ Lawyers for Justice, PC propounded multiple sets of written discovery requests on Defendants (specifically, Special Interrogatories (Set One), Special Interrogatories (Set Two) and Form Interrogatories (Set One)) and reviewed Defendants’ responses thereto.³⁶ The documents and data that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, a random sampling of Class Members’ time data and wage records, and Defendants’ operations and employment practices, forms, procedures, acknowledgements and policies (including, and not limited to, acknowledgements of the ACC Compliance Program, receipt of MPN Information, Harassment Prevention Policy, Receipt of Job Description and the Employee Handbook), among other information and

³⁴ Slinger Decl., ¶¶ 12-14.

³⁵ *Id.*, ¶ 13.

³⁶ *Ibid*

documents.³⁷ Class Counsel interviewed Plaintiff and conducted investigations to gather information regarding the facts and circumstances surrounding Plaintiff's and class members' employment and to identify potential witnesses.³⁸ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁹ Class Counsel also drafted pleadings and the mediation brief, and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴⁰

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Hon. Raul A. Ramirez (Ret.) (the "Mediator"), a well-respected mediator experienced in mediating complex labor and employment matters.⁴¹ In the course of mediation and settlement discussions, counsel for the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, Defendants' 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 law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴² During all settlement discussions, both sides conducted their negotiations at arm's length in an adversarial position.⁴³ Arriving at a settlement that was acceptable to both sides was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁴ After conducting extensive investigations, formal and informal discovery, exchange of information, and settlement negotiations, and with the aid of the Mediator's evaluation, the Parties have

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ *Id.*, ¶ 12.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ *Id.*, ¶¶ 12, 18-19.

1 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's
2 principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁵

3 The Settlement takes into account the strengths and weaknesses of each side's position
4 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.⁴⁶
5 The Parties have had the opportunity to interview and obtain information from their respective
6 witnesses.⁴⁷ Counsel for the Parties have also reviewed documents and information relating to
7 Plaintiff's and the Class Members' employment with Defendants and performed significant
8 research into the law concerning class certification, PAGA representative actions, off-the-clock
9 theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and
10 Defendants' defenses thereto, as well as facts discovered.⁴⁸ The Settlement was based on this
11 large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive
12 experience in employment class actions, including significant experience in California wage-
13 and-hour litigation.⁴⁹

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

15 The Settlement, which provides for a Total Settlement Amount of Two Million Three
16 Hundred Thousand Dollars (\$2,300,000.00), represents a fair, adequate, and reasonable
17 resolution of the matter.⁵⁰ The Settlement was calculated using the information and data
18 uncovered during litigation, case investigation, as well as the formal and informal exchange of
19 information.⁵¹ The Settlement takes into account the potential risks and rewards inherent in any
20 case and, in particular, in the case at issue.⁵² Moreover, considering all of the facts and
21 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
22 for the Class, PAGA Employees, and the State of California.⁵³

23 ⁴⁵ Ibid.

24 ⁴⁶ *Id.*, ¶ 19.

25 ⁴⁷ *Id.*, ¶ 13.

26 ⁴⁸ *Id.*, ¶¶ 12-14 & 17-19.

27 ⁴⁹ *Id.*, ¶¶ 2-7.

28 ⁵⁰ Slinger Decl., ¶ 12, 14 & 24

⁵¹ *Id.*, ¶¶ 12-14.

⁵² *Id.*, ¶ 12.

⁵³ *Id.*, ¶¶ 12, 14, & 24.

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, and allocation of PAGA Amount are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be One Million Forty-Five Thousand Dollars and Zero Cents (\$1,045,000.00).⁵⁴ Additionally, 75% of PAGA Amount (i.e., the LWDA Payment), which is \$300,000.00 out of \$400,000.00, will be distributed to the LWDA and 25% of PAGA Amount, which is \$100,000.00 out of \$400,000.00, will be distributed to PAGA Employees on a *pro rata* basis, based on PAGA Workweeks during the PAGA Period (i.e., Individual PAGA Payment). As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members and the PAGA Amount will be fully paid out to the LWDA and PAGA Employees, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks, and the amount of each PAGA Employees Individual PAGA Payment will be calculated based on his or her PAGA Workweeks during the PAGA Period.⁵⁵ 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, the State of California, and PAGA Employees.⁵⁶ 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.

⁵⁴ *Id.*, ¶ 15.

⁵⁵ Settlement Agreement, 14 & 15.

⁵⁶ Slinger Decl., ¶¶ 12, 14, & 24.

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

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted extensive formal and informal discovery and exchanged a large volume of
4 documents, data, and information prior to mediation.⁵⁷ The discovery and information that Class
5 Counsel obtained from Defendants and through other sources allowed Class Counsel to develop
6 valuation models in order to evaluate the potential value and merit of the claims, and perform a
7 complete evaluation of Defendants’ defenses thereto.⁵⁸ As outlined in the Declaration of Ryan
8 Slinger, Class Counsel performed an extensive analysis of each and every claim pursuant to
9 *Kullar* prior to entering into the Settlement.⁵⁹

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

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶⁰
13 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
14 one of a common or general interest, of many persons, or when the Parties are numerous, and it
15 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
16 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” *Id.*

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact that predominate over any questions
21 affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of
22 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
23 Class. Finally, prosecution of separate actions by individual Class Members would create the
24 risk of inconsistent or varying adjudications, and a class action is superior to other available

25
26
27 ⁵⁷ *Id.*, ¶¶ 12-14 & 19.

28 ⁵⁸ *Id.*, ¶ 19.

⁵⁹ *Id.*, ¶¶ 12-14 & 17-19.

⁶⁰ Settlement Agreement, ¶ 33.a.

means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately one thousand sixty-one (1,061) individuals.⁶¹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants’ employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

⁶¹ Slinger Decl., ¶ 9.

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

6 Here, common issues of fact and law predominate as to each of the claims alleged and
7 asserted in the Operative Complaint. Based on the documents and information obtained through
8 formal and informal discovery and exchange of information in this case, Plaintiff contends that
9 Class Members were subject to the same or similar job duties and uniform operations and
10 employment practices, policies, and procedures during the time period at issue.⁶² Plaintiff’s
11 claims arise from Defendants’ alleged uniform policy and systematic scheme, with respect to
12 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
13 wages for all hours worked, failing to provide compliant meal and rest periods and associated
14 premium pay, failing to timely pay wages during employment and upon termination of
15 employment, failing to provide compliant wage statements, failing to keep requisite payroll
16 records, and failing to reimburse necessary business-related expenses.⁶³

17 Plaintiff also contends that Defendants’ payroll and recordkeeping practices with respect
18 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁴
19 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
20 compensation due to them from Defendants during the time period at issue.⁶⁵

21 Plaintiff maintains that the outcome of this litigation would be determined by
22 Defendants’ alleged uniform operations and employment policies and procedures that applied
23 across its hourly-paid or non-exempt employees employed by Defendants in California during
24 the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

25
26
27 ⁶² Slinger Decl., ¶ 17.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

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

Class Counsel has litigated the matter for more than three years and was actively preparing for class certification and trial.⁶⁶ 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 informal discovery. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents and data prior to mediation.⁶⁷ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁸

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁹

The Settlement establishes a Total Settlement Amount of Two Million Three Hundred Thousand Dollars (\$2,300,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e., \$805,000.00) and reimbursement of litigation costs in an amount not to exceed Eighteen Thousand Dollars (\$18,000.00) for costs and expenses.⁷⁰ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, State of California, and PAGA Employees, and (6) the other cases that Class Counsel had to turn down

⁶⁶ *Id.*, ¶¶ 12-14.

⁶⁷ *Id.*, ¶ 13.

⁶⁸ *Id.*, ¶ 12.

⁶⁹ *Id.*, ¶¶ 2-7.

⁷⁰ Settlement Agreement, ¶ 10.

1 in order to devote their time and efforts to this matter. The proposed Class Notice provides Class
2 Members with information about the amount allocated toward the Attorneys' Fees and Costs,
3 and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the
4 Settlement.⁷¹

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

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

25 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
26 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
27 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the
28

⁷¹ Settlement Agreement, Exh. A.

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷²

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's Motion for Final Approval of the Settlement. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks and/or PAGA Workweeks, and the date and time set for the Final Approval Hearing.⁷³

The proposed Class 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*

⁷² Slinger Decl., ¶ 20.

⁷³ Settlement Agreement, Exh. A

Litigation § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁵ The proposed Class Notice also apprises the Class Members and PAGA Employees of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payment is calculated and the number of Workweeks and Pay Periods credited to them.⁷⁶

The proposed Class 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 Class Notice.

IX. APPOINTMENT OF PHOENIX AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail in English and Spanish Requests for Exclusion, and/or Objections (i.e., the Response Deadline).⁷⁷ For any Class Notice returned prior to the Response Deadline as undeliverable, the Settlement Administrator shall perform a single search for an alternate address by way of skip-trace and perform a single re-mailing of the Class Notice within five (5) calendar days.⁷⁸ Individuals who have Class Notices re-mailed to them shall have their Response Deadline extended by fifteen (15) calendar days.⁷⁹

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ *Id.*, ¶ 18.a.

⁷⁸ *Id.*, ¶ 18.b.

⁷⁹ *Id.*, ¶ 6.jj.

Settlement Payment checks to Participating Class Members and Individual PAGA Payment checks to PAGA Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and PAGA Amount; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁰ The Settlement Administration Costs are currently estimated not to exceed Twenty-Two Thousand Dollars and Zero Cents (\$22,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁸¹

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸²

Within twenty-one (21) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator.⁸³ Within fourteen (14) calendar days after receiving the Class List from Defendants, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish (in the form attached as Exhibit A to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.⁸⁴ With respect to Class Notices that are returned as undeliverable on or before the Response Deadline,

⁸⁰ *Id.*, ¶ 12.

⁸¹ *Ibid.*

⁸² *Id.*, ¶ 18 & Exh. A.

⁸³ *Id.*, ¶ 17.

⁸⁴ *Id.*, ¶ 18.a.

1 after the initial mailing of the Class Notice, the Settlement Administrator will perform a single
2 search for an alternate address by way of skip-trace and perform a single re-mailing of the Class
3 Notice within five (5) calendar days.⁸⁵ Individuals who have Class Notices re-mailed to them
4 shall have their Response Deadline extended by fifteen (15) calendar days.⁸⁶

5 After Preliminary Approval, and prior to the Final Approval Hearing, the Settlement
6 Administrator will provide the Parties with an accounting estimate of the contemplated amounts
7 to be paid by Defendants pursuant to the terms of the Settlement and establish a qualified
8 settlement account for administration of the Settlement.⁸⁷ Based on review of Defendants'
9 financial records, Defendants were unable to fund the Settlement without a payment plan.⁸⁸

10 Within ninety (90) calendar days after Final Approval, Defendants will make a deposit
11 of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00), into the qualified settlement
12 account established by the Settlement Administrator ("First Installment").⁸⁹ One (1) year after
13 the funding of the First Installment, Defendants will make a deposit of Four Hundred Fifty
14 Thousand Dollars and Zero Cents (i.e., \$450,000.00), into the qualified settlement account
15 established by the Settlement Administrator ("Second Installment").⁹⁰ One (1) year after the
16 funding of the Second Installment, Defendants will make a deposit of Four Hundred Fifty
17 Thousand Dollars and Zero Cents (i.e., \$450,000.00), plus an amount sufficient to pay Employer
18 Taxes, into the qualified settlement account established by the Settlement Administrator ("Third
19 Installment").⁹¹ One (1) year after the funding of the Third Installment, Defendants will make a
20 deposit of Four Hundred Fifty Thousand Dollars and Zero Cents (i.e., \$450,000.00), into the
21 qualified settlement account established by the Settlement Administrator ("Fourth
22 Installment").⁹² One (1) year after the funding of the Fourth Installment, Defendants will make
23 a deposit of Four Hundred Fifty Thousand Dollars and Zero Cents (i.e., \$450,000.00), into the
24

25 ⁸⁵ *Id.*, ¶ 18.b.

26 ⁸⁶ *Id.*, ¶ 6.jj.

27 ⁸⁷ *Id.*, ¶ 9.a.

28 ⁸⁸ Slinger Decl., ¶ 12.

⁸⁹ Settlement Agreement, ¶ 9.b.i.

⁹⁰ *Id.*, ¶ 9.b.ii.

⁹¹ *Id.*, ¶ 9.b.iii.

⁹² *Id.*, ¶ 9.b.iv.

qualified settlement account established by the Settlement Administrator (“Fifth Installment”).⁹³
To the extent that any payment due date set forth in this Agreement falls on a Saturday, Sunday,
or legal holiday, that deadline shall be continued until the following business day.⁹⁴

The Settlement Administrator shall provide Defendants’ Counsel with electronic transfer
instructions for Defendants to tender payment to the Settlement Administrator as described in
this Agreement, as soon as possible after the qualified settlement account has been established.
The deadlines for Defendants’ payment of the Total Settlement Amount are contingent upon
receipt of the payment instructions. Defendants expressly agree to follow the Settlement
Administrator’s payment instructions. The Parties agree that the deadlines for Defendants’
payment obligations with respect to each installment payment made under this Agreement shall
be met upon initiating the electronic transfer of funds to the Settlement Administrator, pursuant
to its instructions, provided, however, that any unsuccessful electronic transfer of funds be of
no fault of Defendants. In the event of an unsuccessful electronic transfer of funds, the Parties
agree to cooperate in good faith to resolve the issues.⁹⁵

Within seven (7) calendar days of the funding of the First Installment, the Settlement
Administrator will distribute the LWDA Payment to the LWDA, the Enhancement Payment to
Plaintiff, and the first half (50%) of the Settlement Administration Costs to itself. Any funds
remaining after this distribution shall be retained in the account established by the Settlement
Administrator.⁹⁶ Within seven (7) calendar days of the funding of the Second Installment, the
Settlement Administrator will issue checks for the first half of the Individual Settlement
Payments to Settlement Class Members. The Settlement Administrator shall also set aside the
Employer Taxes on these payments, and all employee-side payroll taxes, contributions, and
withholdings, and timely forward these to the appropriate government authorities. Any funds
remaining after this distribution shall be retained in the account established by the Settlement
Administrator.⁹⁷ Within seven (7) calendar days of funding of the Third Installment, the

⁹³ *Id.*, ¶ 9.b.v.

⁹⁴ *Id.*, ¶ 9.b.vi.

⁹⁵ *Id.*, ¶ 9.b.vii.

⁹⁶ *Id.*, ¶ 9.d.i.

⁹⁷ *Id.*, ¶ 9.d.ii.

1 Settlement Administrator shall issue checks for the second half of the Individual Settlement
2 Payments to Settlement Class Members. The Settlement Administrator shall also set aside the
3 Employer Taxes on these payments, and all employee-side payroll taxes, contributions, and
4 withholdings, and timely forward these to the appropriate government authorities. Any funds
5 remaining after this distribution shall be retained in the account established by the Settlement
6 Administrator.⁹⁸ Within seven (7) calendar days of the funding of the Fourth Installment, the
7 Settlement Administrator shall issue checks for the Individual PAGA Payments to PAGA
8 Employees, distribute the second half of the Settlement Administration Costs to itself, and
9 distribute the Court-approved Litigation Costs to Class Counsel. Any funds remaining after this
10 distribution shall be retained in the account established by the Settlement Administrator.⁹⁹
11 Within seven (7) days of the funding of the Fifth Installment, the Settlement Administrator shall
12 distribute Court-Approved Attorneys' Fees to Class Counsel.¹⁰⁰

13 Each Individual Settlement Payment and Individual PAGA Payment check will be valid
14 and negotiable for one hundred eighty (180) calendar days from the date the checks are issued,
15 and thereafter, shall be cancelled.¹⁰¹ Pursuant to California Code of Civil Procedure Section
16 384, any remaining funds associated with checks issued to Participating Class Members and
17 PAGA Employees will be paid out in accordance with California Code of Civil Procedure
18 section 384(b) to South Sacramento Interfaith Partnership as the *cy pres* beneficiary.¹⁰²

19 **XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR**
20 **THE ENHANCEMENT PAYMENT**

21 Plaintiff respectfully requests that the Court appoint him as the Class Representative and
22 preliminarily approve the Enhancement Payment in an amount up to Ten Thousand Dollars and
23 Zero Cents (\$10,000.00).¹⁰³ It is within the Court's discretion to award payment to a class
24 representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901

25
26 ⁹⁸ *Id.*, ¶ 9.d.iii.

27 ⁹⁹ *Id.*, ¶ 9.d.iv.

28 ¹⁰⁰ *Id.*, ¶ 9.d.v.

¹⁰¹ *Id.*, ¶ 20

¹⁰² *Ibid.*

¹⁰³ *Id.*, ¶ 11.

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 Payment is fair and appropriate. Plaintiff spent time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.¹⁰⁴ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.¹⁰⁵ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, PAGA Employees, and the State of California, in addition to his Individual Settlement Payment and Individual PAGA Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Arby Aiwarzian, Joanna Ghosh and Ryan Slinger of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Sandeep Purewal as Class Representative; appoint Phoenix as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, and allocation of PAGA Amount; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule

¹⁰⁴ Slinger Decl., ¶ 21; Declaration of Sandeep Purewal in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Purewal Decl."), ¶¶ 3-5.

¹⁰⁵ Slinger Decl., ¶ 21; Purewal Decl., ¶ 3-4.

1 a Final Approval Hearing to take place in approximately six (6) months; and permit the filing
2 of a memorandum that exceeds the page limit.

3
4 Dated: May 21, 2024

LAWYERS for JUSTICE, PC

5
6 By:



Ryan Slinger
Attorneys for Plaintiff