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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

IMAHNI ISIS CUNNINGHAM, and
NINETTE AMAYA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiffs,

vs.

SERVICON SYSTEMS, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20STCV35595

Honorable Carolyn B. Kuhl
Department SSC-12

CLASS ACTION

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

[Declarations of Proposed Class Counsel
(Yasmin Hosseini and Raul Perez);
Declarations of Proposed Class
Representatives (Imahni Isis Cunningham,
Ninette Amaya, and Christopher Bell);
and [Proposed] Order filed concurrently
herewith]

Date: April 17, 2024
Time: 10:00 a.m.
Department: SSC-12

Complaint Filed: September 17, 2020
FAC Filed: October 10, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 17, 2024 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Carolyn B. Kuhl in Department SSC-12 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Imahni Isis Cunningham, Ninette Amaya, and Christopher Bell (together, “Plaintiffs”) 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 Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” “Settlement Agreement”) attached as “**EXHIBIT 1**” to the Declaration of Yasmin Hosseini, 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, Class Counsel Fees Payment to Class Counsel, Class Counsel Litigation Expenses to Class Counsel, Class Representative Service Payments to Plaintiff Imahni Isis Cunningham and Plaintiff Ninette Amaya, PAGA Representative Service Payment to Plaintiff Christopher Bell, and Administration Costs to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Imahni Isis Cunningham and Ninette Amaya as Class Representatives;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of Lawyers for Justice, PC and Raul Perez, Orlando Villalba, and Helga Hakimi of Capstone Law APC as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“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 Class Action Administration Solutions as the Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees Payment to Class Counsel, Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payments for Plaintiff Imahni Isis Cunningham and Ninette Amaya, and PAGA Representative Service Payment to Plaintiff Christopher Bell, and Administration Costs to Administrator.

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 the settlement of a putative class action, allows the Court to preliminarily certify a class for settlement purposes, and permits the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini and Raul Perez) and Proposed Class Representatives (Imahni Isis Cunningham, Ninette Amaya, and Christopher Bell) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: February 14, 2024

LAWYERS for JUSTICE, PC

By: _____


Yasmin Hosseini
Attorneys for Plaintiffs Imahni Isis Cunningham
and Ninette Amaya

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Imahni Isis Cunningham, Ninette Amaya, and Christopher Bell (together, “Plaintiffs”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Servicon Systems, Inc., (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of One Million Seven Hundred Thousand Dollars (\$1,700,000.00), subject to increase.¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representatives Service Payments of Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Imahni Isis Cunningham and Ninette Amaya (\$20,000.00)³; (3) the PAGA Representative Service Payment of Ten Thousand Dollars (\$10,000.00) to Plaintiff Christopher Bell⁴; (4) the Class Counsel Fees Payment and Class Counsel Litigation Expenses to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$595,000.00 if the Gross Settlement Amount remains \$1,700,000.00, and reimbursement of litigation costs and expenses not to exceed Twenty-Two Thousand Dollars (\$22,000.00)⁵; (5) the Administration Costs to the Administrator in the amount not to exceed Thirty-Five Thousand Dollars (\$35,000.00);⁶ and (6) the amount of Four Hundred Thousand Dollars (\$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 PAGA Payment”) and 25% (i.e.,

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), § 1.21.

² *Id.*, § 1.23.

³ *Id.*, § 3.2.1.

⁴ *Ibid.*

⁵ *Id.*, § 3.2.2.

⁶ *Id.*, § 3.2.3.

\$100,000.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant in California employed during the Class Period (“Aggrieved Employees”).⁷

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

All current and former hourly-paid or non-exempt non-union employees of Defendant in California who are not subject to arbitration agreements and who are or were employed during the Class Period (“Class” or “Class Members”).⁸

Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement (“Settlement Class Member”) will receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based on any week during which a Class Member worked for Defendant for at least one day during the Class Period (“Workweeks”).⁹

Aggrieved Employees will receive a *pro rata* share of the 25% portion of the PAGA Penalties (“Individual PAGA Payment”) on a *pro rata* basis, based on any week during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period (“PAGA Pay Periods”).¹⁰

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiffs Imahini Isis Cunningham and Ninette Amaya and Settlement Class Members, and the Released PAGA Claims of Plaintiff Christopher Bell, Aggrieved Employees, and the State of California, against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides exemplary custodial, environmental, and maintenance services for complex facilities. Plaintiffs Imahni Isis Cunningham, Ninette Amaya, and Christopher Bell are former employees of Defendant.

⁷ Settlement Agreement, § 3.2.4. “PAGA Period,” means the period from September 14, 2019 to October 17, 2023. *See id.*, § 1.29.

⁸ *Id.*, § 1.5. “Class Period” is defined as the period from September 17, 2016 to October 17, 2023. *See id.*, § 1.11.

⁹ *Id.*, §§ 1.24, 1.43 and 1.44.

¹⁰ *Id.*, §§ 1.22 and 1.28.

¹¹ *See id.* At § 1.38, for the full scope of the “Released Class Claims,” *id.* At § 1.39, for the full scope of the “Released PAGA Claims,” and *id.* At § 1.40, for the definition of the “Released Parties.”

1 On September 14, 2020, Plaintiff Imahni Isis Cunningham (“Plaintiff Cunningham”)
2 provided written notice to the California Labor & Workforce Development Agency (“LWDA”)
3 and Defendants of her intent to pursue civil penalties under the Private Attorneys General Act,
4 Cal. Labor Code § 2698, Et Seq.

5 On September 17, 2020, Plaintiff Cunningham filed a Class Action Complaint for
6 Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-
7 captioned lawsuit (“Cunningham Class Action”).

8 On November 18, 2020, Plaintiff Cunningham filed a Complaint for Damages and
9 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
10 in the Los Angeles County Superior Court Case No. 20SMCV01779 (“Cunningham PAGA
11 Complaint”).

12 On November 18, 2020, Plaintiff Christopher Bell (“Plaintiff Bell”) provided written
13 notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendants
14 of his intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code
15 § 2698, Et Seq.

16 On January 26, 2021, Plaintiff Bell filed a Complaint for Damages and Enforcement
17 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Kern
18 County Superior Court Case No. BCV-100173, which was transferred to Los Angeles County
19 Superior Court as Case No. 23STCV27083 (“Bell PAGA Action”).

20 On October 10, 2022, Plaintiff Cunningham filed the First Amended Class Action
21 Complaint for Damages (“Operative Complaint”), adding Plaintiff Ninette Amaya (“Plaintiff
22 Amaya”) as a named plaintiff.

23 On October 26, 2022, Plaintiff Amaya filed a Complaint for Damages and Enforcement
24 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Los
25 Angeles County Superior Court Case No. 22TRCV01038 (“Amaya PAGA Action”).

26 On February 9, 2024, the Parties filed a Joint Stipulation to Consolidate the Cunningham
27 Class Action (Case No. 20STCV35595), Cunningham PAGA Action (Case No.
28 20SMCV01779), Bell PAGA Action (Case No. 23STCV27083) and Amaya PAGA Action

(Case No. 22TRCV01038), seeking to consolidate the Cunningham Class Action, Cunningham PAGA Action, Bell PAGA Action, and Amaya PAGA Action (collectively, the “Actions”), which is currently being processed by the Court.

Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and 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, 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 for settlement purposes only.

The Parties have actively litigated the Action since it was commenced on September 17, 2020. The Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff Cunningham and Plaintiff Amaya and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Members) and the Released PAGA Claims of Plaintiff Bell, Aggrieved Employees, and the State of California, with respect to the Released Parties.¹² Subject to

¹² Settlement Agreement, §§ 5.2 and 5.3.

approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$595,000.00 if the Gross Settlement Amount remains \$1,700,000.00) ("Class Counsel Fees Payment") and reimbursement of costs and expenses in an amount not to exceed Twenty-Two Thousand Dollars (\$22,000.00) to Class Counsel ("Class Counsel Litigation Expenses Payment"); (2) administration costs, which are currently estimated not to exceed Thirty-Five Thousand Dollars (\$35,000.00) to the Administrator ("Administration Costs"); (3) payment of PAGA Penalties (\$400,000.00), of which 75% will be distributed to the LWDA (i.e., \$300,000.00) ("LWDA PAGA Payment") and the remaining 25% (i.e., \$100,000.00) will be distributed to Aggrieved Employees; (4) payment in the amount of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Bell ("PAGA Representative Service Payment") and (4) payments in the amount of up to Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Cunningham and Amaya ("Class Representative Service Payments").¹³ The Parties have agreed to retain Phoenix Class Action Administration Solutions ("Phoenix" or "Administrator") to handle the notice and settlement administration process.

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

- a. After Preliminary Approval of the Settlement, the Administrator will divide the Net Settlement Amount by the total number of Workweeks worked by all Class Members during the Class Period to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹⁴
- b. After Final Approval of the Settlement, the 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.¹⁵

¹³ Settlement Agreement, §§ 3.21., 3.2.2, 3.2.3, and 3.2.4.

¹⁴ *Id.*, § 3.2.5.a.

¹⁵ *Id.*, § 3.2.5.b.

The Parties have agreed that the Individual PAGA Payments will be calculated and apportioned from the 25% share of the PAGA Penalties based on the Aggrieved Employees' PAGA Pay Periods, as follows: the Administrator will divide the 25% share of PAGA Penalties attributed to Aggrieved Employees, i.e., \$100,000.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period resulting in the PAGA Pay Period Value and then multiplying the PAGA Pay Period Value by the number of PAGA Pay Periods worked by each individual Aggrieved Employee during the PAGA Period.¹⁶

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages (the "Wage Portion"), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as interest and penalties (the "Non-Wage Portion"), which will be reported on an IRS Form 1099.¹⁷ 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.¹⁸ Settlement Class Members assume full responsibility and liability for any employee taxes owed on their Individual Settlement Shares.¹⁹ 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 Gross Settlement Amount.²⁰

Each Individual Settlement Payment and Individual PAGA Payment check shall prominently state the date (not less than one hundred eighty (180) calendar days after the date of mailing) when the check will be voided.²¹ For any Class Member or Aggrieved Employee whose Individual Settlement Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class

¹⁶ Settlement Agreement, § 3.26.

¹⁷ *Id.*, § 3.2.7.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Id.*, § 3.1.

²¹ *Id.*, § 4.4.1.

Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).²²

Class Members who wish to be excluded from the Class Settlement (i.e., opt-out) must send the Administrator, by email or mail, a signed written request postmarked no later than sixty (60) calendar days after the Administrator first mails the Class Notice to Class Members and Aggrieved Employees (“Response Deadline”).²³ The Request for Exclusion must communicate that the Class Member is electing to be excluded from the Class Settlement and must include the Class Member’s name, address and email address or telephone number.²⁴ Class Members who submit a valid and timely Request for Exclusion from the Class Settlement are non-Settlement Class Members and shall not receive Individual Settlement Payments or have the right to object to the Class Settlement.²⁵ Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.²⁶

Only Settlement Class Members may object to the Class Settlement and/or this Agreement, including contesting the fairness of the Class Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments.²⁷ Settlement Class Members may send written objections to the Administrator, by email or mail.²⁸ A Class Member’s written objection to the Class Settlement must: (a) be signed by the Class Member; (b) contain the case name and number of the Cunningham Class Action; (c) contain the Class Member’s full name, telephone number, mailing address, and last four digits of their Social Security Number; (d) clearly state the factual and legal basis for objection to the Class Settlement; (e) indicate whether the Class Member is represented by counsel and identify said counsel with his or her full name, address, and telephone number; (f) indicate whether the Class Member intends to appear at the Final Approval Hearing and seeks to be heard at the Final Approval Hearing; and (g) be returned by

²² Settlement Agreement, § 4.4.3.

²³ *Id.*, §§ 1.41 and 1.42.

²⁴ *Id.*, § 7.5.1.

²⁵ *Id.*, § 7.5.4.

²⁶ *Id.*, § 7.5.1.

²⁷ *Id.*, § 7.7.1.

²⁸ *Id.*, § 7.7.2.

mail to the Administrator at the specified address, postmarked on or before the Response Deadline.²⁹ In the alternative, Settlement Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.³⁰ A Settlement Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline.³¹

Each Class Member and Aggrieved Employee shall have until the Response Deadline to challenge the number of Workweeks and/or PAGA Pay Periods (if any) allocated to the Class Member and/or Aggrieved Employee in the Class Notice.³² The Class Member and/or Aggrieved Employee may challenge the allocation by communicating with the Administrator via email or mail and the Administrator must encourage the challenging Class Member and/or Aggrieved Employee to submit supporting documentation.³³ In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data.³⁴

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

²⁹ Settlement Agreement, § 7.7.1.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Id.*, § 7.6.

³³ *Ibid.*

³⁴ *Ibid.*

1 decision to approve a class action settlement may be reversed only upon a strong showing of
2 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
3 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

25 The trial court has broad powers to determine whether a proposed settlement is fair under
26 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
27 this fairness determination, courts must consider several relevant factors, including “the strength
28 of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the

1 risk of maintaining class action status through trial, the amount offered in settlement, the extent
2 of discovery completed and the stage of the proceedings, the experience and view of counsel,
3 the presence of a governmental participant, and the reaction of the class members to the
4 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
5 and the court is free to engage in a balancing and weighing of the factors depending on the
6 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
7 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at
8 1027 (citation omitted).

9 The proponent of the settlement has the burden to show that it is fair and reasonable.
10 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
11 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
12 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
13 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
14 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
15 1151.

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

18 The Parties actively litigated the matter since the Cunningham Class Action was
19 commenced on September 17, 2020. Both sides used the pre-mediation time period to
20 investigate the veracity, strength, and scope of the claims, and Class Counsel was actively
21 preparing the cases for class certification and trial.³⁵

22 Prior to settlement, Class Counsel conducted significant investigation and formal and
23 informal discovery regarding the facts of the cases, including and not limited to, the exchange,
24 review, and analysis of a large volume of documents and data obtained from Defendant,
25 Plaintiffs, and other sources.³⁶ The volume of data and documents that Class Counsel reviewed
26 and analyzed included and was not limited to: employment records of Plaintiffs, Defendant’s
27

28 ³⁵ Hosseini Decl., ¶¶ 10-12.

³⁶ *Id.*, ¶ 11.

Employee Handbook, a sampling of time data, internal memoranda, operations and employment practices, forms (including but not limited to Self-Identification Form, Meal Period Waiver, Rest Break Notice), procedures, and policies (including but not limited to Commitment to Non-Discrimination and Non-Harassment, Attire and Grooming Policy), among other information and documents.³⁷ Class Counsel had the opportunity to interview Plaintiffs and other Class Members to gather facts 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, case management, discovery, *Belaire-West* process, and the production of documents and data prior to the settlement.³⁹ Class Counsel also prepared for and attended court proceedings, and settlement negotiations, among other tasks.⁴⁰

The Parties engaged in extensive settlement negotiations.⁴¹ Prior to and during the settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the cases and various aspects of the cases, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour 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, the Parties conducted their negotiations at arm's length in an adversarial position.⁴³ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁴ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, the Parties have agreed that the matter is

³⁷ Hosseini Decl., ¶ 11.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶ 10.

⁴² *Id.*, ¶ 10.

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 10, 15-17.

1 well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well
2 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 and trial.⁴⁶ The Parties
5 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁷
6 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs',
7 Class Members', and Aggrieved Employees' employment with Defendant and performed
8 significant research into the law concerning class certification, PAGA representative actions,
9 off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and
10 Defendant's defenses thereto, as well as facts discovered.⁴⁸ The Parties have reached the
11 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class
12 Counsel has extensive experience in employment class actions, including significant experience
13 in California wage-and-hour litigation.⁴⁹

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

15 The Settlement, which provides for a Gross Settlement Amount of One Million Seven
16 Hundred Thousand Dollars (\$1,700,000.00), 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 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 cases 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.⁵³

23
24

⁴⁵ *Ibid.*

25 ⁴⁶ *Ibid.*

26 ⁴⁷ *Ibid.*

27 ⁴⁸ Hosseini Decl., ¶¶ 10-12 & 15-17.

28 ⁴⁹ *Id.*, ¶¶ 6-7.

⁵⁰ *Id.*, ¶¶ 10, 12, 13 & 20.

⁵¹ *Id.*, ¶¶ 10-12.

⁵² *Id.*, ¶¶ 15-17.

⁵³ *Id.*, ¶¶ 10, 12, & 20.

Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, PAGA Representative Service Payment, PAGA Penalties, and Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Six Hundred and Eighteen Thousand Dollars (\$618,000.00).⁵⁴ Additionally, the 25% of the PAGA Penalties, which is \$100,000.00 out of \$400,000.00, will be distributed to Aggrieved Employees. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Period and the amount of each Aggrieved Employee's Individual PAGA Payment will be based on his or her PAGA Pay Periods 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, Aggrieved Employees, and the State of California.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.

C. The Settlement Is of Significant Value.

⁵⁴ Hosseini Decl., ¶ 13.

⁵⁵ Settlement Agreement, §§ 3.25 and 3.26.

⁵⁶ Hosseini Decl., ¶¶ 10, 11, & 20.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large volume of documents, data, and information prior to settlement.⁵⁷ The discovery and information that Class Counsel obtained from Defendant, Plaintiffs, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁸ As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁹

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

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

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

⁵⁷ Hosseini Decl., ¶¶ 10-12 & 17.

⁵⁸ *Id.*, ¶ 17.

⁵⁹ *Id.*, ¶¶ 10-12 & 15-17.

⁶⁰ Settlement Agreement, § 11.1.

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

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

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

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

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

25 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
26 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
27 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
28

the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Actions. Based on the documents and information obtained through formal and informal discovery and exchange of information in the cases, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶¹ Plaintiffs’ claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶²

Plaintiffs also contend that Defendant’s payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶³ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁴

Plaintiffs maintain that the outcome of this litigation would be determined by Defendant’s alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt non-union employees who worked in California who are not subject to arbitration agreements and who are or were employed during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT

⁶¹ Hosseini Decl., ¶ 15.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

Class Counsel has litigated the matter for over three (3) years, and was actively preparing the matter for class certification and trial.⁶⁵ 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 cases and formal and informal discovery. Class Counsel reviewed a large volume of documents and data⁶⁶ and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to settlement.⁶⁷ Counsel for the Parties also undertook extensive settlement discussions.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 Gross Settlement Amount of One Million Seven Hundred Thousand Dollars (\$1,700,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$595,000.00, if the Gross Settlement Amount remains \$1,700,000.00) and an amount not to exceed Twenty-Two Thousand Dollars and Zero Cents (\$22,000.00) 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 cases, (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, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount

⁶⁵ Hosseini Decl., ¶¶ 10-12.

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 10.

⁶⁹ *Id.*, ¶¶ 6-7.

⁷⁰ Settlement Agreement, § 3.2.2.

1 allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses
2 Payment, and that an award of the Class Counsel Fees Payment and Class Counsel Litigation
3 Expenses Payment will be sought, as provided for by the Settlement.⁷¹

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

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

24 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
25 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
26 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the
27 \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y.

28 ⁷¹ Settlement Agreement, Exh. A.

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

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

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

16 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

22 The proposed Class Notice⁷³ describes the Settlement, the deadlines and procedures to
23 mail an objection to the Class Settlement, Request for Exclusion from the Class Settlement,
24 and/or challenges regarding Workweeks and PAGA Pay Periods, and the date and time set for
25 the Final Approval Hearing.⁷⁴

26 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.

27 ⁷² Hosseini Decl., ¶ 18.

28 ⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Ibid.*

1 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
2 members to make an informed decision about their participation.” *Manual for Complex*
3 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
4 proceedings to date and the terms and conditions of the Settlement in an informative and
5 coherent manner.⁷⁵ The proposed Class Notice recognizes that the Court has not yet granted
6 final approval of the settlement.⁷⁶ The proposed Class Notice also apprises the Class Members
7 of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks
8 credited to them.⁷⁷

9 The proposed Class Notice satisfies all due process requirements and complies with the
10 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
11 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
12 essentials of due process of law in class suits would appear to be afforded by fair representation
13 in the assertion of claims of class members against the opposing parties in any lawsuit, and
14 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

15 **IX. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION**
16 **SOLUTIONS AS THE ADMINISTRATOR**

17 The Parties have selected Phoenix Class Action Administration Solutions to administer
18 the Settlement.

19 The Administrator will mail the Class Notice to all identified Class Members by First-
20 Class U.S. mail no later than three (3) business days after receipt of the Class Data.⁷⁸ Not later
21 than three (3) business days after the Administrator’s receipt of any Class Notice returned by
22 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding
23 address provided by the USPS.⁷⁹ If the USPS does not provide a forwarding address, the
24 Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to
25

26 ⁷⁵ *Ibid.*

27 ⁷⁶ *Ibid.*

28 ⁷⁷ *Ibid.*

⁷⁸ Settlement Agreement, § 7.4.2.

⁷⁹ *Id.*, § 7.4.3.

the most current address obtained.⁸⁰ The deadlines for Class Members' written objections to the Class Settlement, disputes regarding Workweeks and/or PAGA Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed.⁸¹ The Administrator will receive and process Requests for Exclusion, objections, and disputes regarding Workweeks and/or PAGA Pay Periods.⁸²

The Administrator's duties will include, translating the Class Notice to Spanish, calculating the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Share; mail the Individual Settlement Payment checks to the Settlement Class Members and Individual PAGA Payment checks to Aggrieved Employees; issue W-2 and 1099 forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations; calculate and disburse the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, PAGA Representative Service Payment, LWDA Payments; and perform such other tasks necessary to effectuate the terms of the Agreement.⁸³ The Administration Costs are currently estimated to be Thirty-Five Thousand Dollars (\$35,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁴

Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Class Action Administration Solutions as the Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees 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, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails

⁸⁰ *Ibid.*

⁸¹ Settlement Agreement, § 7.4.4.

⁸² *Id.*, §§ 7.5, 7.6 and 7.7.

⁸³ *Id.*, § 3.2.3.

⁸⁴ *Ibid.*

mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸⁵

Not later than fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will provide the Administrator with a complete list of all Class Members full name, last known mailing address, Social Security number, hire and termination dates reflecting the number of Class Period Workweeks and PAGA Pay Periods, dates worked for Defendant during the period September 17, 2016 to November 17, 2022, and any other information required by the Administrator to effectuate the terms of the Settlement Agreement.⁸⁶

Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice.⁸⁷ Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.⁸⁸ If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.⁸⁹ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, disputes regarding Workweeks and PAGA Pay Periods, and/or an objection.⁹⁰

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the Effective Date.⁹¹ Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Settlement Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Costs, the Class Counsel Fees

⁸⁵ Settlement Agreement, § 7.4.

⁸⁶ *Id.*, §§ 1.8 and 4.2.

⁸⁷ *Id.*, § 7.4.2.

⁸⁸ *Id.*, § 7.4.3.

⁸⁹ *Ibid.*

⁹⁰ *Id.*, §§ 7.5, 7.6 and 7.7.

⁹¹ *Id.*, § 4.3.

Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, and the PAGA Representative Service Payment.⁹²

Each Individual Settlement Payment and Individual PAGA Payment check shall prominently state the date (not less than one hundred and eighty (180) calendar days after the date of mailing) when the check will be voided.⁹³ For any Class Member or Aggrieved Employee whose Individual Settlement Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).⁹⁴

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENTS AND PAGA REPRESENTATIVE SERVICE PAYMENT

Plaintiffs Imahni Isis Cunningham and Ninette Amaya respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Class Representative Service Payments in an amount up to Ten Thousand Dollars (\$10,000.00) each, and a PAGA Representative Service Payment to Plaintiff Christopher Bell in the amount up to Ten Thousand Dollars (\$10,000.00), for a combined amount of \$30,000.00.⁹⁵ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the

⁹² Settlement Agreement, § 4.4.

⁹³ *Id.*, § 4.4.1.

⁹⁴ *Id.*, § 4.4.3.

⁹⁵ *Id.*, § 3.2.1.

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 Class Representative Service Payments and PAGA Representative Service Payment are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁶ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹⁷ Accordingly, it is appropriate and just for Plaintiffs to receive Class Representative Service Payments and PAGA Representative Service Payment for their services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC and Capstone Law APC as Class Counsel; preliminary appoint and designate Plaintiffs Imahni Isis Cunningham and Ninette Amaya as Class Representatives; appoint Phoenix Class Action Administration Solutions as Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, PAGA Representative Service Payment, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months.

⁹⁶ Hosseini Decl., ¶ 20; Declaration of Imahni Isis Cunningham in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Cunningham Decl."), ¶ 4; Declaration of Ninette Amaya in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Amaya Decl."), ¶ 4. Declaration of Christopher Bell in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Bell Decl."), ¶ 8.

⁹⁷ Hosseini Decl., ¶ 20; Cunningham Decl., ¶¶ 3-6; Amaya Decl., ¶¶ 3-6; Bell Decl., ¶¶ 5-8.

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Dated: February 14, 2024

LAWYERS *for* JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiffs Imahni Isis Cunningham
and Ninette Amaya