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

LES ARRIOLA, 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.

MULTI MECHANICAL, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

ARMANDO ZUNIGA, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiff,

vs.

MULTI MECHANICAL, INC., a California
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: RIC2003696
(Consolidated with Case No. CVRI2104327)

Honorable Craig G. Riemer
Department 1

CLASS ACTION

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

[Plaintiffs' Compliance Chart in Support of
Motion for Preliminary Approval of Class
Action Settlement; Declaration of Proposed
Class Counsel (Alexandra Rose); Declarations
of Plaintiffs (Les Arriola and Armando
Zuniga); Declaration of Defendant's Counsel
(Brandon L. Sylvia); Declaration of Proposed
Settlement Administrator (Michael Moore);
Declaration of Proposed Cy Pres Recipient
(Jose Padilla); and [Proposed] Order filed
concurrently herewith]

Reservation ID:	157380024790
Date:	November 14, 2022
Time:	8:30 a.m.
Department:	1

Arriola Action Filed:	September 16, 2020
Zuniga Action Filed:	September 22, 2021
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on November 14, 2022 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Craig G. Riemer in Department 1 of the Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside, California 92501, Plaintiffs Les Arriola and Armando Zuniga (“Plaintiffs”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement and Release of Claims (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as **“EXHIBIT 1”** to the Declaration of Alexandra Rose, 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 to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Les Arriola as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Alexandra Rose of Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), Exclusion Form (“Exclusion Form”), and Objection Form (“Objection Form”), attached as **“EXHIBIT 1,” “EXHIBIT 2,”** and **“EXHIBIT 3,”** respectively, to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice, Exclusion Form, and Objection Form (collectively, “Notice Packet”) to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;

- Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Awards for Plaintiffs, and Settlement Administration Costs to the Settlement 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 a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Compliance Chart, the Declarations of Proposed Class Counsel (Alexandra Rose), Plaintiffs (Les Arriola and Armando Zuniga), Defendant's Counsel (Brandon L. Sylvia), Proposed Settlement Administrator (Michael Moore), and Proposed *Cy Pres* Recipient (Jose Padilla) 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: September 20, 2022

LAWYERS for JUSTICE, PC

By:



Alexandra Rose
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Les Arriola and Armando Zuniga (together, “Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement and Release of Claims (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff Les Arriola (“Plaintiff Arriola”), individually and on behalf of all others similarly situated and other aggrieved employees, and Plaintiff Armando Zuniga (“Plaintiff Zuniga”), individually and on behalf of other aggrieved employees, on the one hand, and Defendant Multi-Mechanical, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle these lawsuits for a Settlement Fund of one million dollars and no cents (\$1,000,000.00).¹ The Settlement Fund includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Awards of seven thousand five hundred dollars and no cents (\$7,500.00) each to Plaintiffs (total, \$15,000)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Settlement Fund, or \$350,000.00, and reimbursement of litigation costs and expenses not to exceed fifteen thousand dollars and no cents (\$15,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed thirteen thousand dollars and no cents (\$13,000.00)⁵; and (5) the amount of one hundred thousand dollars and no cents (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to all non-exempt employees

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Alexandra Rose (“Rose Decl.”), § II 40. If the actual number of Workweeks increase by more than ten percent (10%) above 27,604 (i.e., by more than 2,760 Workweeks), Defendant will have the choice of either (a) paying an increase of the Settlement Fund on a proportional basis equal to the percentage increase in the number of Workweeks above 10% during the Class Period, or (b) ending the Class Period on such a date that is necessary to limit the number of Workweeks to 30,364 or fewer. See *id.*, § 56.

² *Id.*, § 21.

³ *Id.*, § 17.

⁴ *Id.*, § 4.

⁵ *Id.*, § 38.

of Defendant employed in California at any time during the PAGA Period (“Aggrieved Employees”).⁶

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

All non-exempt employees of Defendant employed in California at any time during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately four hundred ninety-one (491) individuals, of which two-hundred sixteen (216) individuals are considered to be Aggrieved Employees.⁸

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (“Participating Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks each Participating Class Member worked for Defendant as a non-exempt employee in California during the Class Period (“Workweeks”).⁹

The Settlement resolves the Class Released Claims of the Participating Class Members and PAGA Released Claims of the State of California (with respect to the Aggrieved Employees) and Aggrieved Employees, against the Released Parties.¹⁰

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and to address the requirements set forth in the Class Action Case Management Order #1 (“CMO”) issued by this Court, Plaintiffs also move 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.

⁶ Settlement Agreement, § 3. “PAGA Period” is defined as the period of time from October 28, 2019 through May 9, 2022. See *id.*, § 30.

⁷ *Id.*, § 7. “Class Period” is defined as the period of time from September 16, 2016 through May 9, 2022. See *id.*, § 10.

⁸ Rose Decl., ¶ 9.

⁹ Settlement Agreement, §§ 21, 33, & 41. “Class Settlement” is defined as the settlement and resolution of the Class Released Claims. See *id.*, § 12.

¹⁰ See *id.* at § 11, for the full scope of the “Class Released Claims,” *id.*, § 28, for the full scope of the “PAGA Released Claims,” and *id.* at § 36 for the definition of the “Released Parties.”

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

2 Defendant is a Heating, Ventilation, and Air Conditioning (HVAC) installation business
3 mainly serving its clients in Southern California. Plaintiffs Les Arriola and Armando Zuniga
4 are former employees of Defendant.

5 On September 16, 2020, Plaintiff Arriola filed a Class Action Complaint for Damages
6 (*“Arriola Complaint”*) against Defendant in the Riverside County Superior Court (*“Court”*),
7 thereby commencing the action entitled *Les Arriola v. Multi Mechanical Inc.*, Case No.
8 RIC2003696 (*“Arriola Action”*).

9 On October 28, 2020, Plaintiff Arriola provided written notice by certified mail to
10 Defendant and by online submission to the LWDA of the specific provisions of the California
11 Labor Code that were violated, and on January 8, 2021, Plaintiff Arriola provided a follow-up
12 notice as well (collectively, *“Arriola LWDA Letter”*).

13 On December 2, 2020, Defendant filed an Answer to the *Arriola Complaint*.

14 On April 5, 2021, Plaintiff Arriola filed a First Amended Class Action Complaint for
15 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
16 2698, Et Seq., adding a cause of action for civil penalties under PAGA (*“Arriola First Amended*
17 *Complaint”*).

18 On May 26, 2021, Defendant filed an Answer to the *Arriola First Amended Complaint*.

19 On July 16, 2021, Plaintiff Zuniga provided written notice by certified mail to Defendant
20 and by online submission to the LWDA of the specific provisions of the California Labor Code
21 that were violated (*“Zuniga LWDA Letter”*) (the *Arriola LWDA Letter* and *Zuniga LWDA*
22 *Letter* are collectively referred to as the *“LWDA Letters”*).

23 On September 22, 2021, Plaintiff Zuniga filed a Complaint for Enforcement Under the
24 Private Attorneys General Act, California Labor Code § 2698, Et Seq. (*“Zuniga PAGA*
25 *Complaint”*), asserting a single cause of action for PAGA civil penalties against Defendant in
26 the case entitled *Armando Zuniga v. Multi Mechanical, Inc.*, Case No. CVRI2104327 (*“Zuniga*
27 *Action”*).

28 ///

1 On December 1, 2021, Defendant filed an Answer to the *Zuniga* PAGA Complaint.

2 On December 30, 2021, the Court ordered the *Arriola* Action and *Zuniga* Action
3 (together, the “Actions”) to be consolidated, with the *Arriola* Action designated as the lead case.
4 Together, the *Arriola* First Amended Complaint and *Zuniga* PAGA Complaint are referred to
5 as the “Operative Complaints”.

6 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code and
7 Industrial Welfare Commission Wage Orders by engaging in a uniform practice and procedure,
8 with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all overtime and
9 minimum wages, failing to provide compliant meal and rest periods and associated premium
10 pay, failing to timely pay wages during employment and upon termination of employment,
11 failing to provide compliant wage statements, failing to maintain requisite payroll records, and
12 failing to reimburse necessary business expenses, and thereby engaged in unfair business
13 practices in violation of California Business and Professions Code section 17200, *et seq.* and
14 conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class
15 Members, are entitled to, *inter alia*, unpaid wages, statutory penalties, and attorneys’ fees, and
16 the State of California is entitled to civil penalties.

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

21 The Parties have actively litigated the Actions since the *Arriola* Action was commenced
22 on September 16, 2020. On March 10, 2022, the Parties participated in a formal, full-day
23 mediation conducted by Lynn S. Frank, Esq., a well-regarded mediator experienced in mediating
24 complex labor and employment matters. With the aid of the mediator, the Parties ultimately
25 reached the Settlement described herein to resolve the Actions in their entirety.

26 ///

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

2 Under the terms of the Settlement, Defendant will pay a Settlement Fund to resolve the
3 Class Released Claims of Participating Class Members and PAGA Released Claims of the State
4 of California (with respect to the Aggrieved Employees) and Aggrieved Employees, with respect
5 to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be
6 calculated by deducting the following amounts from the Settlement Fund: (1) attorneys' fees in
7 an amount not to exceed three hundred fifty thousand dollars and no cents (\$350,000.00) (i.e.,
8 up to 35% of the Settlement Fund) and reimbursement of costs and expenses in an amount not
9 to exceed fifteen thousand dollars and no cents (\$15,000.00) to Class Counsel (collectively
10 referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are
11 currently estimated not to exceed thirteen thousand dollars (\$13,000.00) to the Settlement
12 Administrator ("Settlement Administration Costs"); (3) payment in the amount of one hundred
13 thousand dollars and no cents (\$100,000.00) allocated to penalties under PAGA ("PAGA
14 Amount"); and (4) payments in the amount of up to seven thousand five hundred dollars and no
15 cents (\$7,500.00) each to Plaintiffs Les Arriola and Armando Zuniga (for a combined total of
16 \$15,000.00) ("Enhancement Awards").¹² The Parties have agreed to retain Phoenix Class
17 Action Administration Solutions ("Phoenix" or "Settlement Administrator") to handle the notice
18 and settlement administration process. To the extent the Settlement Administration Costs are
19 awarded in an amount that is less than \$13,000.00, the unawarded amount will be part of the
20 Net Settlement Amount.

21 The Parties have agreed that the Settlement Administrator will determine each
22 Participating Class Member's Individual Settlement Payment, in accordance with the Settlement
23 Agreement by dividing the Participating Class Member's number of Workweeks during the
24 Class Period by the total number of Workweeks of all Participating Class Members during the
25 Class Period and multiplying this figure by the Net Settlement Amount.¹³

26 ///

27 ¹¹ Settlement Agreement, §§ 51 & 52.

28 ¹² *Id.*, §§ 4, 23, 38, 55, 57.a., 57.b, 57.c, & 57.d,

¹³ *Id.*, § 57.e.i.

1 The Parties have agreed that the Settlement Administrator will determine each
2 Aggrieved Employee's *pro rata* share of the twenty-five percent (25%) portion of the PAGA
3 Amount ("Aggrieved Employee Amount") that an Aggrieved Employee is eligible to receive
4 for the PAGA Settlement ("Individual PAGA Payment"), in accordance with the Settlement
5 Agreement by dividing the Aggrieved Employee's number of Workweeks during the PAGA
6 Period by the total number of Workweeks of all Aggrieved Employees during the PAGA Period
7 and multiplying this figure by the Aggrieved Employee Amount.¹⁴

8 Individual Settlement Payments will be allocated as follows: twenty percent (20%) as
9 wages, which will be reported on an IRS Form W-2; and eighty percent (80%) as interest,
10 penalties, and non-wage damages, which will be reported on an IRS Form 1099.¹⁵ The
11 Settlement Administrator will withhold the employee's share of taxes and withholdings with
12 respect to the wages portion of the Individual Settlement Payments, and issue checks to
13 Participating Class Members net of these taxes and withholdings.¹⁶ The employer's share of
14 taxes and contributions in connection with the wages portion of Individual Settlement Payments
15 ("Employer Taxes") shall be paid separately and in addition to the Settlement Fund.¹⁷ The
16 Individual PAGA Payments will be considered one hundred percent (100%) penalties and will
17 be reported on an IRS Form 1099.¹⁸

18 Each Individual Settlement Payment and Individual PAGA Payment check will be valid
19 and negotiable for one hundred eighty (180) calendar days after mailing, and thereafter, will be
20 cancelled.¹⁹ Pursuant to California Code of Civil Procedure Section 384, all funds associated
21 with such cancelled checks will be transmitted to California Rural Legal Assistance, Inc., a non-
22 profit organization providing civil legal services to California's rural, indigent population,
23 including projects and work on behalf of workers who suffer wage and hour violations.²⁰

24
25 ¹⁴ Settlement Agreement, §§ 22, 29, & 57.f. "PAGA Settlement" is defined as the settlement and resolution of the
26 PAGA Released Claims. See *id.*, § 31.

27 ¹⁵ *Id.*, § 59.a.

28 ¹⁶ *Ibid.*

¹⁷ *Id.*, §§ 16 & 59.a.

¹⁸ *Id.*, § 59.a

¹⁹ *Id.*, § 64.e.

²⁰ *Ibid.*

California Rural Legal Assistance, Inc. was selected as the proposed *cy pres* recipient because of the work it does in the workplace for low income and indigent individuals throughout California and specifically in Riverside County.²¹ Neither the Parties, their attorneys, nor attorneys at their respective law firms have any relationship with the proposed *cy pres* recipient.²² The Settlement Administrator shall mail a reminder postcard to any Participating Class Member and/or Aggrieved Employee whose Individual Settlement Payment and/or Individual PAGA Payment check has not been negotiated within sixty (60) calendar days after the date of mailing.²³

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit a timely and valid Exclusion Form or a written letter indicating a request to be excluded from the Class Settlement (both of which are referred as an “Opt-Out Request”) to the Settlement Administrator by U.S. mail, postmarked on or before the date that is sixty (60) calendar days after the Notice Packet is initially mailed to Class Members (“Response Deadline”).²⁴ An Opt-Out Request must (a) contain the case name and number of the *Arriola* Action; (b) contain the Class Member’s full name, signature, address, telephone number, and last four (4) digits of Social Security Number; (c) contain a clear written statement indicating that the Class Member seeks exclusion from the Class Settlement; and (d) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁵ The proposed Exclusion Form that is attached as “EXHIBIT 2” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement includes this information. Unless a Class Member opts out of the Class Settlement, the Class Member will be bound by the terms and conditions of the Class Settlement, including the release of the Class Released Claims that arose

²¹ See Declaration of Jose Padilla on Behalf of Proposed Cy Pres Recipient California Rural Legal Assistance, Inc. (“Padilla Declaration”), ¶ 2.

²² Rose Decl., ¶ 23; Declaration of Les Arriola in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Arriola Decl.”), ¶ 8; Declaration of Armando Zuniga in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Zuniga Decl.”), ¶ 9; Declaration of Brandon L. Sylvia (“Sylvia Decl.”), ¶¶ 3-5.

²³ Settlement Agreement, § 64.e.

²⁴ *Id.*, §§ 27, 37, & 62.

²⁵ *Id.*, § 27.

1 during the Class Period.²⁶ Any Class Member who is also considered an Aggrieved Employee
2 and who opts out of the Class Settlement will still be bound by the terms and conditions of the
3 PAGA Settlement, including the release of the PAGA Released Claims that arose during the
4 PAGA Period, and will be issued their Individual PAGA Payment (if applicable).²⁷

5 Any Class Member who has not opted out of the Class Settlement (i.e., Participating
6 Class Member) may object to the Class Settlement by submitting a timely and valid Objection
7 Form or a written objection to the Class Settlement (both of which are referred to as an
8 “Objection”) by U.S. mail, postmarked on or before the Response Deadline to the Settlement
9 Administrator.²⁸ The Objection must: (a) contain the case name and number of the *Arriola*
10 Action; (b) contain the Class Member’s full name, signature, address, telephone number, and
11 last four (4) digits of Social Security Number; (c) contain a written statement of all grounds for
12 the objection accompanied by any legal support for such objection is based; and (e) be submitted
13 by mail to the Settlement Administrator at the specified address, postmarked on or before the
14 Response Deadline.²⁹ The proposed Objection Form that is attached as “EXHIBIT 3” to the
15 [Proposed] Order Granting Preliminary Approval of Class Action Settlement includes this
16 information. Participating Class Members who have not objected in writing may still appear
17 and object orally at the Final Approval Hearing.³⁰

18 Class Members who wish to dispute the number of Workweeks credited to them on their
19 Class Notice may do so by submitting a timely and valid written letter (“Workweeks Dispute”),
20 which must: (a) contain the case name and number of the *Arriola* Action; (b) contain the Class
21 Member’s full name, signature, address, telephone number, and last four (4) digits of Social
22 Security Number; (c) clearly state that the Class Member disputes the number of Workweeks
23 credited to him or her and what he or she contends is the correct number of Workweeks credited
24 to him or her; (d) attach any documentation that he or she has to support the dispute; and (e) be
25

26 ²⁶ Settlement Agreement, § 62.

27 ²⁷ *Ibid.*

28 ²⁸ *Id.*, §§ 25 & 63.

29 ²⁹ *Id.*, § 25.

30 ³⁰ *Id.*, § 63.

submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³¹

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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

³¹ Settlement Agreement, §§ 42 & 61.

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

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

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

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

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

3 The Parties actively litigated the Actions since the *Arriola* Action was commenced on
4 September 16, 2020. Both sides used the pre-mediation time period to investigate the veracity,
5 strength, and scope of the claims, and Class Counsel was actively preparing the matter for class
6 certification and trial.³²

7 Prior to reaching the Settlement, Class Counsel conducted significant investigation and
8 informal regarding the facts of the cases, including and not limited to, the exchange, review, and
9 analysis of a large volume of documents and data produced by Defendant.³³ The volume of data
10 and documents that Class Counsel reviewed and analyzed included and was not limited to:
11 Plaintiffs’ employment records, a detailed sampling of Class Members’ time and pay data,
12 Defendant’s Employee Handbook, acknowledgements (including, but not limited to, Employee
13 Handbook Acknowledgement, Receipt and Consent Form), and employment practices,
14 procedures, and policies (including, but not limited to, Timekeeping Requirements, Reporting
15 Time Pay, Meal Periods and Rest Breaks, Expense Reimbursements policies), among other
16 information and documents.³⁴ Class Counsel interviewed Plaintiffs and conducted
17 investigations to gather facts and circumstances surrounding Plaintiffs and putative class
18 members’ employment and to identify potential witnesses.³⁵ Counsel for the Parties also met
19 and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings and the
20 production of documents and data prior to the mediation.³⁶ Class Counsel also drafted Plaintiffs’
21 mediation brief and prepared for and attended court proceedings, settlement negotiations, and
22 the mediation, among other tasks.³⁷

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26 ³² Rose Decl., ¶¶ 11-13.

27 ³³ *Id.*, ¶ 12.

28 ³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Lynn S. Frank, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁸ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the 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.³⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ 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.⁴¹ After conducting investigations, significant informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴²

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.⁴³ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock

³⁸ Rose Decl., ¶ 11.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11, 16-18.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁶

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

The Settlement, which provides for a Settlement Fund of one million dollars and no cents (\$1,000,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the cases at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the matter, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

Assuming that the Attorneys' Fees and Costs, Enhancement Awards, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be five hundred seven thousand dollars and no cents (\$507,000.00).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Payment 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 calculated and apportioned from the Aggrieved Employee Amount based on his or her Workweeks during the PAGA Period.⁵² There is no reason to doubt

⁴⁵ Rose Decl., ¶¶ 11-13 & 16-18.

⁴⁶ *Id.*, ¶¶ 6-7.

⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 21.

⁵¹ *Id.*, ¶ 14.

⁵² Settlement Agreement, §§ 57.e.i & 57.f.

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.⁵³ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large amount of documents, data, and information prior to mediation.⁵⁴ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant’s defenses thereto.⁵⁵ As outlined in the Declaration of Alexandra Rose, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

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.⁵⁷ California Code of Civil Procedure Section 382 “authorizes class actions when the question is

⁵³ Rose Decl., ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶¶ 11-13 & 18.

⁵⁵ *Id.*, ¶ 18.

⁵⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, § 50.

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 cases. 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 matter involves a class of approximately four hundred ninety-one (491) individuals.⁵⁸ 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 Defendant to the Settlement Administrator through a review of Defendant’s

⁵⁸ Rose Decl., ¶ 9.

employment records regarding 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).

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaints. Based on the documents and information obtained through informal discovery and exchange of information in these 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.⁵⁹ 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

⁵⁹ Rose Decl., ¶ 16.

employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁰

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.⁶¹ 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.⁶²

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 non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for two years, and was actively preparing the matter for class certification and trial.⁶³ 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 informal discovery. Class Counsel reviewed a large volume of pages of documents and data⁶⁴ and also interviewed and obtained information from Plaintiffs, 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 mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

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

⁶⁰ Rose Decl., ¶ 16.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Id.*, ¶¶ 11-13.

⁶⁴ *Id.*, ¶ 12.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 6-7.

1 The Settlement establishes a Settlement Fund of one million dollars and no cents
2 (\$1,000,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and
3 Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the
4 Gross Settlement Amount (i.e., \$350,000.00) and an amount not to exceed fifteen thousand
5 dollars and no cents (\$15,000.00) for costs and expenses.⁶⁸ The attorneys' fees provided for by
6 the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and
7 litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to
8 the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class
9 Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class
10 Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to
11 turn down in order to devote its time and efforts to this matter. The proposed Class Notice
12 provides Class Members with information about the amount allocated toward the Attorneys'
13 Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided
14 for by the Settlement.⁶⁹

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

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28 ⁶⁸ Settlement Agreement, § 57.a.

⁶⁹ *Id.*, Exh. A.

1 settlement fund and the settlement agreement provides that the defendant agrees to paying the
2 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

10 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
11 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
12 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
13 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
14 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
15 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
16 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
17 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
18 actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
19 No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior
20 Court Case No. BC263646 (Sept. 2006) (wage and hour).

21 Class Counsel has borne all of the risks and costs of litigation and will not receive any
22 compensation until recovery is obtained.⁷⁰

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

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⁷⁰ Rose Decl., ¶ 19.

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 Notice⁷¹ describes the Settlement, the deadlines and procedures to submit an Objection, Opt-Out Request, and/or Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁷²

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 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.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members of, *inter alia*, how Individual Settlement Payments and Individual PAGA Payments are calculated and the number of Workweeks credited to them.⁷⁵

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.

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

1 **IX. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION**
2 **SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR**

3 The Parties have selected Phoenix to administer the Settlement.

4 The Settlement Administrator will mail the Notice Packet in English and Spanish to each
5 Class Member by First-Class U.S. mail.⁷⁶ The Settlement Administrator will remail any Notice
6 Packet returned by the United States Postal Service with a forwarding address promptly.⁷⁷ The
7 Settlement Administrator will use the appropriate skip tracing and National Change of Address
8 searches to increase the likelihood of delivery of the Notice Packet to Class Members, and to re-
9 mail the Notices Packets returned by the Postal Service without a forwarding address upon
10 locating new or alternative address after a reasonable search, within five (5) calendar days.⁷⁸
11 The Response Deadline to submit an Opt-Out Request, Objection, or Workweeks Dispute for
12 Class Members to whom a Notice Packet is re-mailed, after having been returned as
13 undeliverable to the Settlement Administrator, will be fifteen (15) calendar days from the initial
14 Response Deadline.⁷⁹ The Settlement Administrator will receive and process Opt-Out Requests,
15 Objections, and Workweeks Disputes.⁸⁰

16 The Settlement Administrator will calculate the amounts of the Individual Settlement
17 Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal
18 taxes in connection with the wage portion of Individual Settlement Payments; mail the
19 Individual Settlement Payment checks to Participating Class Members and Individual PAGA
20 Payments to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the
21 Attorneys' Fees and Costs, Enhancement Awards, and PAGA Amount; and perform such other
22 tasks necessary to effectuate the terms of the Settlement Agreement.⁸¹ The Settlement
23 Administration Costs are currently estimated to not exceed thirteen thousand dollars and no
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26 ⁷⁶ Settlement Agreement, § 60.a.

27 ⁷⁷ *Id.*, § 60.b.

28 ⁷⁸ *Id.*, § 60.c.

⁷⁹ *Id.*, § 37.

⁸⁰ *Id.*, §§ 61, 62, & 63.

⁸¹ *Id.*, §§ 39, 57.e-f, 59.a, 60, & 64; Rose Decl., ¶ 15.

cents (\$13,000.00) and will be paid out of the Settlement Fund, subject to approval by the Court.⁸²

Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Class Action Administration Solutions as the Settlement Administrator and direct the mailing of the Notice Packet 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, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice Packet, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸³

Within fourteen (14) calendar days after the date on which the Court enters the order preliminarily approving the Settlement, Defendant will provide the Settlement Administrator with a complete list of all Class Members that Defendant will diligently and in good faith compile from its records, which will include each Class Member's last-known full name, mailing address, telephone number, Social Security Number, dates employed as a non-exempt employee of Defendant in California during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively, "Class List").⁸⁴

Within fourteen (14) calendar days of receipt of the Class List from Defendant, the Settlement Administrator will send the Notice Packet in English and Spanish to each Class Member via First-Class U.S. Mail.⁸⁵ The Settlement Administrator will remail any Notice Packet returned by the United States Postal Service with a forwarding address promptly.⁸⁶ The Settlement Administrator will use the appropriate skip tracing and National Change of Address searches to increase the likelihood of delivery of the Notice Packet to Class Members, and to re-

⁸² Settlement Agreement, §§ 13, 55, & 57.b.

⁸³ *Id.*, §§ 60.b.

⁸⁴ *Id.*, §§ 8 & 60.

⁸⁵ *Id.*, § 60.a.

⁸⁶ *Id.*, § 60.b.

1 mail the Notices Packets returned by the Postal Service without a forwarding address upon
2 locating new or alternative address after a reasonable search, within five (5) calendar days.⁸⁷
3 Class Members will have until the applicable Response Deadline to submit an Opt-Out Request,
4 Objection, and/or Workweeks Dispute.⁸⁸

5 Within thirty (30) calendar days after the Effective Date, Defendant shall remit to the
6 Settlement Administrator: (i) the Settlement Fund and (ii) the Employer's Taxes.⁸⁹ No later
7 than twenty-one (21) calendar days after receipt of the Settlement Fund from Defendant, the
8 Settlement Administrator will distribute: (1) the Individual Settlement Payments to Participating
9 Class Members; (2) Individual PAGA Payments to Aggrieved Employees; (3) the Court-
10 approved Enhancement Awards to Plaintiffs; (3) the Court-approved Attorneys' Fees and Costs
11 to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Settlement
12 Administration Costs to itself.⁹⁰

13 Each Individual Settlement Payment and Individual PAGA Payment check will be valid
14 and negotiable for one hundred and eighty (180) calendar days after mailing, and thereafter, will
15 be cancelled.⁹¹ Pursuant to California Code of Civil Procedure Section 384, all funds associated
16 with such cancelled checks will be transmitted to California Rural Legal Assistance, Inc., a non-
17 profit organization providing civil legal services to California's rural, indigent population,
18 including projects and work on behalf of workers who suffer wage and hour violations.⁹² The
19 Settlement Administrator shall mail a reminder postcard to any Participating Class Member
20 and/or Aggrieved Employee whose Individual Settlement Payment and/or Individual PAGA
21 Payment check has not been negotiated within sixty (60) calendar days after the date of
22 mailing.⁹³

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25 ⁸⁷ Settlement Agreement, § 60.c.

26 ⁸⁸ *Id.*, § 61, 62, & 63.

27 ⁸⁹ *Id.*, § 64.b.

28 ⁹⁰ *Id.*, §§ 64.c & 64.d.

⁹¹ *Id.*, § 64.e.

⁹² *Ibid.*

⁹³ *Ibid.*

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

Plaintiffs Les Arriola and Armando Zuniga respectfully request that the Court appoint Plaintiff Arriola as the Class Representative and preliminarily approve the Enhancement Awards in an amount up to seven thousand five hundred dollars and no cents (\$7,500.00) each to Plaintiffs Les Arriola and Armando Zuniga (for a combined total of \$15,000).⁹⁴ 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 to a Class Representative 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.* An enhancement award may also be awarded in a PAGA representative action, so as to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. See *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 ("service payments" compensate named plaintiff "for [her] efforts in bringing the action"); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 ("an incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit'"); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation."); see also, e.g., *Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

⁹⁴ Settlement Agreement, §§ 17 & 57.c.

The Enhancement Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain information that would facilitate the pursuit of the class and PAGA claims.⁹⁶ Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Award, in addition to their Individual Settlement Payment and Individual PAGA Payment (if applicable), for services performed in the matter on behalf of the Class and State of California.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwasian, Arby Aiwasian, Joanna Ghosh, and Alexandra Rose of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Les Arriola as Class Representative; appoint Phoenix Class Action Administration Solutions as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Awards, PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice, Exclusion Form, and Objection Form (i.e., Notice Packet); 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 a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: September 20, 2022

LAWYERS for JUSTICE, PC

By: _____

Alexandra Rose
Attorneys for Plaintiffs

⁹⁵ Rose Decl., ¶ 20; Arriola Decl., ¶¶ 3-4; Zuniga Decl., ¶¶ 3-4.

⁹⁶ Rose Decl., ¶ 20; Arriola Decl., ¶¶ 3-4; Arriola Decl., ¶¶ 3-4