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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TREVOR JOHNSON, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

vs.

RENAUD'S BAKERY AND BISTRO,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 19STCV35046

Honorable Carolyn B. Kuhl
Department SSC12

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of
Proposed Class Representative (Trevor
Johnson); and [Proposed] Order filed
concurrently herewith]

Date: November 18, 2021
Time: 10:30 a.m.
Department: SSC12

Complaint Filed: October 2, 2019
Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 18, 2021 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Carolyn B. Kuhl in Department SSC12 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Trevor Johnson (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Stipulation of Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Litigation Costs to Class Counsel, Enhancement Award to Plaintiff, and Administration Costs to the Settlement Administrator;
- Granting Trevor Johnson leave to file the [Proposed] First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) which is attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement (“Proposed Order”);
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Trevor Johnson as Class Representative;
- Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Settlement for Members of the Settlement Class (“Notice”) attached as “**EXHIBIT B**” to the Proposed Order;
- Directing the mailing of the Notice 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 Litigation Costs to Class Counsel, Enhancement Award for Plaintiff, and Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and Proposed Class Representative (Trevor Johnson) 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: November 15, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Trevor Johnson (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Stipulation of Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Renaud's Bakery and Bistro, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Fund Value of two hundred sixty-five thousand dollars and no cents (\$265,000.00).¹ The Gross Fund Value includes the following: (1) Settlement Shares to Settlement Class Members which will be distributed from the Net Fund Value²; (2) the Enhancement Award of six thousand five hundred dollars and no cents (\$6,500.00) to Plaintiff³; (3) the Attorneys' Fees and Litigation Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Fund Value, or \$92,750.00, and reimbursement of litigation costs and expenses not to exceed twenty five thousand dollars and no cents (\$25,000.00)⁴; (4) the Administration Costs to the Settlement Administrator in the amount not to exceed twelve thousand dollars (\$12,000);⁵ and (5) the amount of twenty thousand dollars and no cents (\$20,000.00) to settle the claims under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$15,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$5,000.00) will be distributed to Settlement Class Members as a part of the Net Fund Value.⁶

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

///

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 12.

² *Id.*, § 13.

³ *Id.*, §§ 13 & 14.b.

⁴ *Id.*, §§ 13 & 14.a.

⁵ *Id.*, §§ 13 & 14.g.

⁶ *Id.*, §§ 13 & 14.c.

All current and former hourly-paid or non-exempt employees who worked for Defendant at any time during the period from October 2, 2015 through Preliminary Approval in California (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately 481 individuals.⁸

Class Members who do not opt out of the Settlement (“Settlement Class Member”) will receive a share of the Net Fund Value (“Settlement Share”) based upon the Settlement Class Member’s number of weeks worked during the Class Period (“Workweeks”).⁹

The Settlement resolves the Released Claims of Plaintiff and Settlement Class Members, against the Releasees.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a bakery and restaurant with multiple locations across Southern California. Plaintiff Trevor Johnson is a former employee of Defendant.

On October 2, 2019, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

The Parties have agreed that Plaintiff will file a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint” or “First Amended Complaint”), adding a cause of action under PAGA. Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties

⁷ Settlement Agreement, § 4. “Class Period” is defined as the period of time from October 2, 2015 through the date the court grants preliminary approval of this Settlement. *See id.*, § 3.

⁸ Aiwazian Decl., ¶ 9.

⁹ Settlement Agreement, §§ 4 and 14.d.

¹⁰ *See id.* at § 9 for the full scope of the “Released Claims,” and *id.* at § 10 for the definition of the “Releasees.”

pursuant to PAGA. Plaintiff contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Action since it was commenced on October 2, 2019. On March 20, 2020, the Parties participated in a formal, full-day mediation conducted by Jeff Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff to file an amended complaint in the Action in order to add a cause of action under PAGA. As such, Plaintiff respectfully requests leave to file the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. so that the terms of the Settlement may be effectuated.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Fund Value to resolve the Released Claims of Plaintiff and the Class Members who do not opt out of the Settlement (i.e., Settlement Class Member) with respect to the Releasees.¹¹ Subject to approval by the Court, the Net Fund Value will be calculated by deducting the following amounts from the Gross Fund Value: (1) attorneys' fees in an amount not to exceed ninety-two thousand seven hundred fifty dollars and no cents (\$92,750.00) (i.e., up to 35% of the Gross Fund Value) and reimbursement of costs and expenses in an amount not to exceed twenty-five thousand dollars and no cents

¹¹ Settlement Agreement, §§ 9 & 10.

1 (\$25,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Litigation
2 Costs”); (2) settlement administration costs, which are currently estimated not to exceed twelve
3 thousand dollars (\$12,000) to the Settlement Administrator (“Administration Costs”); (3)
4 payment to the LWDA of its 75% share of the PAGA Payment (i.e., \$15,000.00 out of
5 \$20,000.00) (“LWDA Penalty”); and (4) payment in the amount of up to six thousand five
6 hundred dollars and no cents (\$6,500.00) to Plaintiff Trevor Johnson (“Enhancement Award”).¹²
7 The Parties have agreed to retain Phoenix Class Action Administration Solutions (“Phoenix” or
8 “Settlement Administrator”) to handle the notice and settlement administration process.

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

- 12 a. The Settlement Administrator will multiply the Net Fund Value by a fraction, the
13 numerator of which is a Settlement Class Member’s Workweeks and the denominator
14 of which is the total number of Workweeks worked by all Settlement Class
15 Members.¹³
- 16 b. Workweeks shall be calculated from Defendant’s records, with Settlement Class
17 Members given credit for each workweek they actually worked for Defendant in
18 California at any time during the Class Period.¹⁴

19 Each Settlement Class Member’s Settlement Share will be allocated as follows: twenty
20 percent (20%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and
21 the remaining eighty percent (80%) as interest and penalties, which will be reported on an IRS
22 Form 1099.¹⁵ Settlement Class Members will be issued payment of their Settlement Share
23 subject to reduction for the employee’s share of taxes and withholdings with respect to the wage
24 portion of each Settlement Share.¹⁶ Defendant will pay the employer’s share of payroll taxes
25 and contributions with respect to the wage portion of Individual Settlement Shares in addition
26 to the Gross Fund Value.¹⁷

27 ¹² Settlement Agreement, §§ 13, 14.a-c., and 14.g.

28 ¹³ *Id.*, § 14.d.1.

¹⁴ *Id.*, § 14.d.2.

¹⁵ *Id.*, § 17.h.

¹⁶ *Ibid.*

¹⁷ *Id.*, § 12.

1 The Settlement Award checks issued to Settlement Class Members will be negotiable
2 for one hundred eighty (180) calendar days from the date of mailing.¹⁸ Settlement Share checks
3 that are not negotiated within the 180-day period will be cancelled.¹⁹ The funds associated with
4 such cancelled checks will be transmitted by the Settlement Administrator to the California
5 Unclaimed Wages Fund in the name of the Settlement Class Member whose check is cancelled
6 and in the respective amount of the cancelled check.²⁰

7 Class Members will have until sixty (60) calendar days from the date the Notices are
8 mailed by the Settlement Administrator (“Response Deadline”), or in the case of a re-mailed
9 Notice the latter of the original Response Deadline or fifteen (15) calendar days from the date
10 of the remailing, to postmark an Objection, request for exclusion, and Workweek Dispute.²¹

11 Only Class Members who do not exclude themselves from the Settlement (i.e.,
12 Settlement Class Members) have standing to object to the Settlement.²² Settlement Class
13 Members who wish to object to the Settlement must submit a written objection to the Settlement
14 Administrator (“Objection”) on or before the Response Deadline.²³ A valid and timely
15 Objection must: (1) contain the Settlement Class Member’s full name, telephone number, and
16 address; (2) list the case name and number of the action; (3) clearly state that the Settlement
17 Class Member objects to the Settlement and the factual and legal basis for his or her object; (4)
18 state the contact information for any attorneys who represent them; and (5) state whether or not
19 the Settlement Class Member intends to appear and comment or object at the final approval
20 hearing.²⁴

21 Class Members who wish to dispute the number of Workweeks credited to them in their
22 Notice may do so by mailing a written letter to the Settlement Administrator (“Workweek
23 Dispute”) on or before the Response Deadline.²⁵ A valid and timely Workweek Dispute must:

24
25 ¹⁸ Settlement Agreement, § 14.f.

26 ¹⁹ *Ibid.*

27 ²⁰ *Ibid.*

28 ²¹ *Id.*, §§ 14.j & 17.

²² *Id.*, § 23.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, § 14.j.

(1) contain the Class Member’s full name, telephone number, and address; (2) list the case name and number of the action; (3) clearly state that the Class Member contends the number of Workweeks allocated to him or her are incorrect and list the number of Workweeks the Class Member contends is correct; and (4) attach any written documentation supporting his or her contention.²⁶

V. 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

²⁶ Settlement Agreement, § 14.j.

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).

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

VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

The Parties actively litigated the Action since it was commenced on October 2, 2019. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.²⁷

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.²⁸ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, Class Members’ time and pay data, multiple iterations of Defendant’s Employee Handbook, Handbook Addendums, company policy acknowledgements, internal memoranda, new hire orientation checklists, Defendant’s operations and employment practices, forms (including but not limited to Defendant’s Employment Application, Waiver of Meal Period Form), procedures and policies (including but not limited to Company Dress Code, Company Cell Phone Policy), among other information and documents.²⁹ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁰ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, and the production of documents and data prior to the mediation.³¹ Class Counsel also drafted Plaintiff’s mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³²

²⁷ Aiwazian Decl., ¶¶ 11-13.

²⁸ *Id.*, ¶ 12.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

1 The Parties engaged in extensive settlement negotiations and participated in a formal,
2 full-day mediation conducted by Jeff Krivis, Esq., a well-respected mediator experienced in
3 mediating complex labor and employment matters.³³ Prior to and during the mediation and
4 settlement discussions, the Parties exchanged class information and engaged in an intensive
5 discussion regarding their evaluations of the case and various aspects of the case, including but
6 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
7 with class certification and/or representative adjudication, the law relating to off-the-clock
8 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
9 well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁴
10 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
11 adversarial position.³⁵ Arriving at a settlement that was acceptable to both Parties was not easy.
12 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
13 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
14 certification and prevail at trial.³⁶ After conducting investigations, significant informal
15 discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the
16 Parties have agreed that the matter is well-suited for settlement given the legal issues relating to
17 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further
18 litigation.³⁷

19 The Settlement takes into account the strengths and weaknesses of each side's position
20 and the uncertainty of how the case might have concluded at certification and trial.³⁸ The Parties
21 have had the opportunity to interview and obtain information from their respective witnesses.³⁹
22 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
23 the Class Members' employment with Defendant and performed significant research into the
24 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and

25 ³³ Aiwazian Decl., ¶ 11.

26 ³⁴ *Id.*, ¶ 11.

27 ³⁵ *Ibid.*

28 ³⁶ *Id.*, ¶¶ 11, 16-18.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁰ 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.⁴¹

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

The Settlement, which provides for a Gross Fund Value of two hundred sixty-five thousand dollars and no cents (\$265,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴² The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴³ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁴ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁵

Assuming that the Attorneys' Fees and Litigation Costs, Enhancement Award, LWDA Penalty, 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 Fund Value that is currently estimated to be one hundred thirteen thousand seven hundred fifty dollars (\$113,750).⁴⁶ As discussed in Part III, *supra*, the entire Net Fund Value will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Settlement Share will be calculated based on his or her Workweeks.⁴⁷ 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

⁴⁰ Aiwazian Decl., ¶¶ 11-13 & 16-18.

⁴¹ *Id.*, ¶¶ 6-7.

⁴² *Id.*, ¶¶ 11, 13, 14 & 21.

⁴³ *Id.*, ¶¶ 11-13.

⁴⁴ *Id.*, ¶¶ 16-18.

⁴⁵ *Id.*, ¶¶ 11, 13, & 21.

⁴⁶ *Id.*, ¶ 14.

⁴⁷ Settlement Agreement, § 14.d.

1 need only have a reasonable, rational basis [to warrant approval], particularly if recommended
2 by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc.*,
3 *Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

4 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
5 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁴⁸
6 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
7 the recommendations into account, particularly if Class Counsel appears to be competent, and
8 has experience with this type of litigation, and investigation have been completed, as is the case
9 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
10 Settlement.

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

12 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
13 conducted significant informal discovery and exchanged thousands of pages of documents, data,
14 and information prior to mediation.⁴⁹ The documents and information that Class Counsel
15 obtained from Defendant and through other sources allowed Class Counsel to develop valuation
16 models in order to evaluate the potential value and merit of the claims, and perform a complete
17 evaluation of Defendant's defenses thereto.⁵⁰ As outlined in the Declaration of Edwin Aiwazian,
18 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior
19 to entering into the Settlement.⁵¹

20 **VII. CERTIFICATION OF THE CLASS IS APPROPRIATE.**

21 For settlement purposes, the requisites for establishing class certification are met, and
22 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵²
23 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
24 one of a common or general interest, of many persons, or when the Parties are numerous, and it
25 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*

26 ⁴⁸ Aiwazian Decl., ¶¶ 11, 13, & 21.

27 ⁴⁹ *Id.*, ¶¶ 11-13 & 18.

28 ⁵⁰ *Id.*, ¶ 18.

⁵¹ *Id.*, ¶¶ 11-13 & 16-18.

⁵² Settlement Agreement, § 6.

(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, Plaintiff’s 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.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately 481 individuals.⁵³ 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 employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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⁵³ Aiwazian Decl., ¶ 9.

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

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

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

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in the Operative Complaint. Based on the documents and information obtained through
18 informal discovery and exchange of information in this case, Plaintiff contends that Class
19 Members were subject to the same or similar job duties and uniform operations and employment
20 practices, policies, and procedures during the time period at issue.⁵⁴ Plaintiff’s claims arise from
21 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
22 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
23 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
24 to timely pay wages during employment and upon termination of employment, failing to provide
25 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
26 necessary business-related expenses.⁵⁵

27
28 ⁵⁴ Aiwazian Decl., ¶ 16.

⁵⁵ *Ibid.*

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁵⁶ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁵⁷

Plaintiff maintains 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 employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over two years, and was actively preparing the matter for class certification and trial.⁵⁸ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Class Counsel reviewed thousands of pages of documents and data⁵⁹ and also interviewed and obtained information from Plaintiff 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 mediation.⁶⁰ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶¹

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶²

The Settlement establishes a Gross Fund Value of two hundred sixty-five thousand dollars and no cents (\$265,000.00), and provides for Class Counsel to apply to the Court for

⁵⁶ Aiwazian Decl., ¶ 16.

⁵⁷ *Ibid.*

⁵⁸ *Id.*, ¶¶ 11-13.

⁵⁹ *Id.*, ¶ 12.

⁶⁰ *Ibid.*

⁶¹ *Id.*, ¶ 11.

⁶² *Id.*, ¶¶ 6-7.

Attorneys' Fees and Litigation Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Fund Value (i.e., \$92,750.00) and an amount not to exceed twenty-five thousand dollars and no cents (\$25,000.00) for costs and expenses.⁶³ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, 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 Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Litigation Costs, and that an award of the Attorneys' Fees and Litigation Costs will be sought, as provided for by the Settlement.⁶⁴

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

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement

⁶³ Settlement Agreement, §§ 13 and 14.

⁶⁴ *Id.*, Exh. A.

that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁵

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

IX. THE PROPOSED 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

⁶⁵ Aiwazian Decl., ¶ 19.

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 Notice⁶⁶ describes the Settlement, the deadlines and procedures mail an Objection to the Settlement, request for exclusion from the Settlement, and/or Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁶⁷

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁶⁸ The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.⁶⁹ The proposed Notice also apprises the Class Members of, *inter alia*, how their Settlement Share is calculated and the number of Workweeks credited to them.⁷⁰

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

X. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR

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

The Settlement Administrator will mail the Notice to each Class Member by First-Class

⁶⁶ Settlement Agreement, Exh. A.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

U.S. mail.⁷¹ With respect to any undeliverable Notice, the Settlement Administrator will perform one skip-trace search within three (3) calendar days of receiving the Notice.⁷² The Response Deadline to submit a request for exclusion, Objection, or Workweek Dispute for Class Members to whom a Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be fifteen (15) calendar days from the date of the re-mailing or the original sixty (60) calendar day deadline, whichever is later.⁷³ The Settlement Administrator will receive and process requests for exclusion, Objections, and Workweek Disputes.⁷⁴ If the Settlement Administrator receives a defective request for exclusion, Objection, or Workweeks Dispute, it will mail a deficiency notice to the Class Member within two (2) business days.⁷⁵ The Class Member will have no later than the Response Deadline or seven (7) calendar days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies.⁷⁶

The Settlement Administrator will mail Notices; perform necessary skip traces on Notices returned as undeliverable; receive and process requests for exclusion, Objections, and Workweek Disputes; calculate, process, and mail of all Settlement Class Members' Settlement Share and Settlement Class Members' Settlement Share checks; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁷ The Administration Costs are currently estimated to be twelve thousand dollars and no cents (\$12,000.00) and will be paid out of the Gross Fund Value, subject to approval by the Court.⁷⁸

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

⁷¹ Settlement Agreement, § 16.

⁷² *Id.*, § 17.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Id.*, § 18.

⁷⁶ *Ibid.*

⁷⁷ *Id.*, § 14.g.; Aiwazian Decl., ¶ 15.

⁷⁸ *Ibid.*

XI. 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, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁷⁹

Within seven (7) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) name; (2) last known home address and telephone number; (3) Social Security Number; (4) dates of employment during the Class Period in covered positions for each class member; (5) the number of Workweeks allocated to him or her; and (6) any other pertinent information, such as leaves of absence, which may impact the Class Member's Workweek count (collectively referred to as "Class Data List").⁸⁰

Within ten (10) calendar days after the date on which the Court grants preliminary approval of the Settlement, the Settlement Administrator will mail the Notice to the Class Members via First-Class U.S. Mail.⁸¹ If no forwarding address is provided, then the Settlement Administrator will conduct one skip-trace, and re-mail the Notice to the Class Member within three (3) calendar days of receiving the returned noticed.⁸² Class Members will have until the applicable Response Deadline to mail a request for exclusion, Workweeks Dispute, or an Objection.⁸³ If the Settlement Administrator receives a defective request for exclusion, Objection, or Workweeks Dispute, it will mail a deficiency notice to the Class Member within two (2) business days.⁸⁴ The Class Member will have no later than the Response Deadline or seven (7) calendar days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies.⁸⁵

Defendant shall fund the Settlement as follows:

⁷⁹ Settlement Agreement, § 14.g.

⁸⁰ *Id.*, § 15.

⁸¹ *Id.*, § 16.

⁸² *Id.*, § 17.

⁸³ *Ibid.*

⁸⁴ *Id.*, § 18.

⁸⁵ *Ibid.*

1. Within sixty (60) business days after final approval is granted by the Court, Defendant will deposit \$100,000 into an interest-bearing account through the Settlement Administrator (“First Installment”).⁸⁶
2. Ten (10) months after the First Installment, Defendant shall deposit an additional \$100,000 into an interest-bearing account through the Settlement Administrator (“Second Installment”).⁸⁷
3. Six (6) months after the Second Installment, Defendant shall deposit the remaining \$65,000 into an interest-bearing account through the Settlement Administrator (“Third Installment”).⁸⁸

Any interest accrued on the account will be distributed to the Settlement Class Members except if final approval of the Settlement is reversed.⁸⁹ So long as the Effective Date has occurred, the Settlement Administrator will distribute the Settlement Shares to Settlement Class Members after the Second Installment. Within fifteen (15) business days after the Third Installment, the Settlement Administrator will distribute (1) the Court-approved Enhancement Award to Plaintiff; (2) the Court-approved Attorneys' Fees and Litigation Costs to Class Counsel; (3) the LWDA Penalty to the LWDA; and (5) the Court-approved Administration Costs to itself.⁹⁰

The Settlement Share checks will remain negotiable for one hundred and eighty (180) calendar days from the date of mailing.⁹¹ Checks that are not negotiated within the 180-day period will be cancelled.⁹² The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the California Unclaimed Wages Fund in the name of the Settlement Class Member.⁹³

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⁸⁶ Settlement Agreement, § 14.e.1.

⁸⁷ *Id.*, § 14.e.2.

⁸⁸ *Id.*, § 14.e.3.

⁸⁹ *Id.*, § 14.e.

⁹⁰ *Id.*, § 14.f.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

**XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR
ENHANCEMENT AWARD**

Plaintiff Trevor Johnson respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Award in an amount up to six thousand five hundred dollars and no cents (\$6,500.00).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 include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Award is fair and appropriate. Plaintiff 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 Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹⁶ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for his services on behalf of the Class, in addition to his Settlement Share.

XIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Trevor Johnson as Class Representative; appoint Phoenix Class Action Administration Solutions as Settlement Administrator; preliminarily approve the allocations for

⁹⁴ Settlement Agreement, §§ 13, and 14.b.

⁹⁵ Aiwazian Decl., ¶ 20; Declaration of Trevor Johnson in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Johnson Decl."), ¶ 4.

⁹⁶ Aiwazian Decl., ¶ 20; Johnson Decl., ¶¶ 3-6.

Attorneys' Fees and Litigation Costs, Enhancement Award, LWDA Penalty, and Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately seven months after preliminary approval is granted.

Dated: November 15, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiff