

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Annabel Blanchard (SBN 258135)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JENNY GARRIDO, individually, and on behalf of other members of the general public similarly situated; JUAN RIVAS, FRANKIE BETANCOURT, JESSE ORTIZ, 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,

Plaintiffs,

v.

ACORN ENGINEERING COMPANY, a California corporation; MORRIS GROUP INTERNATIONAL, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 19STCV36680

Honorable Carolyn B. Kuhl
Department SSC12

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Annabel Blanchard); Declarations of Proposed Class Representatives (Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz); and [Proposed] Order filed concurrently herewith]

Date: January 31, 2023
Time: 10:30 a.m.
Department: SSC12

Complaint Filed: October 15, 2019
FAC Filed: February 11, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on January 31, 2023 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Carolyn B. Kuhl in Department 12 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz (“Plaintiffs” or “Class Representatives”) 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 and Representative Action Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Annabel Blanchard, 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 (“PAGA”), Attorney Fees and Costs to Class Counsel, Service Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix 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 Attorney Fees and Costs to Class Counsel, Service Awards for Plaintiffs, and Settlement Administration Costs to 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 Declarations of Proposed Class Counsel (Annabel Blanchard) and Proposed Class Representatives (Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz) 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 30, 2022

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorney for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. SUMMARY OF MOTION..... 1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND..... 2

III. SUMMARY OF THE SETTLEMENT TERMS 4

**IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENTS..... 8**

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

**A. The Settlement Resulted from Arm’s-Length Negotiations Based
Upon Extensive Investigation and Discovery. 10**

B. The Settlement Is Fair, Reasonable, and Adequate..... 12

C. The Settlement Is of Significant Value..... 14

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE 14

A. The Class Is Ascertainable and Sufficiently Numerous. 15

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

**VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR
ATTORNEY FEES AND COSTS 17**

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE 19

**IX. APPOINTMENT OF PHOENIX AS THE SETTLEMENT
ADMINISTRATOR..... 20**

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS 22

**XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION
FOR SERVICE AWARDS..... 23**

XII. CONCLUSION 24

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	10
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	15
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	19
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 ..	16
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	20
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	19
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	9
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	9
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 10
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	19
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	9, 10
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	15
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	14
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	19
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	18
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	14
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	18, 19
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	18, 19
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	15
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	20
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	19
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	9
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	15
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	15, 16

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class and Representative Action Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Acorn Engineering Company (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Service Awards of Ten Thousand Dollars (\$10,000.00) each to Plaintiffs (\$40,000 total)³; (3) the Attorney Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or \$1,225,000.00, and reimbursement of litigation costs and expenses not to exceed Sixteen Thousand Dollars (\$16,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Thirteen Thousand Dollars (\$13,000.00);⁵ and (5) the amount of One Hundred Thousand Dollars (\$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 PAGA Group Members (“PAGA Group Member Amount”).⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Annabel Blanchard (“Blanchard Decl.”), ¶ I.15.

² *Ibid.*

³ *Id.*, ¶ III.51.

⁴ *Id.*, ¶ III.50.

⁵ *Id.*, ¶ III.53.

⁶ *Id.*, ¶¶ I.22 & III.52.

All current and former non-exempt, hourly-paid California employees who were employed by Defendant during the Class Period (“Class” or “Class Members”).⁷

At the time of mediation, the Class was estimated to consist of approximately five hundred sixty-nine (569) individuals; however, the Class will likely consist of over six hundred (600) individuals by the time of preliminary approval.⁸

Class Members who do not submit a timely and valid Request for Exclusion 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 total number of weeks the Class Member worked at least one shift for Defendant in a non-exempt, hourly-paid position in California during the Class Period. (“Workweeks”).⁹ All current and former non-exempt, hourly-paid California employees who were employed by Defendant during the PAGA Period (“PAGA Group”, or “PAGA Group Members”) will receive a share of the 25% portion of the PAGA Payment (“PAGA Group Member Amount”) on a *pro rata* basis, based on their Workweeks during the PAGA Period.¹⁰

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiffs and Participating Class Members and the Released PAGA Claims of Plaintiffs and PAGA Group Members against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Acorn Engineering Company manufactures various plumbing fixtures, such as hand washing stations, toilets and urinals, and electronic water management systems for schools, prisons, government, and commercial markets. Plaintiffs are former employees of Defendant.

On October 15, 2019, Plaintiff Jenny Garrido filed a Class Action Complaint for Damages (“Complaint”), against Defendant and Morris Group International, thereby

⁷ Settlement Agreement, ¶ I.3. “Class Period” is defined as the period of time from October 15, 2015 through Preliminary Approval. *See id.*, ¶ I.6.

⁸ Blanchard Decl., ¶ 9; Settlement Agreement, ¶ I.3.

⁹ Settlement Agreement, ¶¶ I.14, I.25 & I.36.

¹⁰ *Id.*, ¶¶ I.21 & I.22.

¹¹ *See id.* at ¶ I.30, for the full scope of the “Released Class Claims,” *id.* at ¶ I.31, for the full scope of the “Released PAGA Claims,” and *id.* at ¶ I.29, for the definition of the “Released Parties.”

commencing the above-captioned lawsuit. On December 6, 2019, Defendant and Morris Group International filed an Answer to the Complaint.

On September 29, 2020, Plaintiff Juan Rivas provided written notice to the Labor and Workforce Development Agency by certified mail to the LWDA, to Defendant, and to Morris Group International of the specific provisions of the California Labor Code that Plaintiff Juan Rivas alleges were violated (“Rivas PAGA Notice”). Additionally, on September 29, 2020, Plaintiff Frankie Betancourt provided written notice to the LWDA, Defendant, and Morris Group International of the specific provisions of the California Labor Code that were violated (“Betancourt PAGA Notice”). On October 7, 2020, Plaintiff Jesse Ortiz provided written notice to the LWDA, Defendant, and Morris Group International of the specific provisions of the California Labor Code that were violated (“Ortiz PAGA Notice”).

On May 1, 2020, Plaintiff Garrido propounded multiple sets of discovery including Requests for Production of Documents, (Sets One & Two); Special Interrogatories, (Sets One, Two & Three); and Form Interrogatories, (Set One), on Defendant and Morris Group International, and noticed the deposition of Defendant’s Person Most Knowledgeable designee regarding job duties and organizational structure of Defendant and Morris Group International. Thereafter, on June 5, 2020, Defendant and Morris Group International objected to Plaintiff Garrido’s notices of deposition, and on August 14, 2020, Defendant and Morris Group International responded to Plaintiff Garrido’s discovery requests.

On February 11, 2021, Plaintiffs filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative Complaint”), which added Plaintiffs Juan Rivas, Frankie Betancourt, and Jesse Ortiz as named Plaintiffs and added an eleventh cause of action for civil penalties under PAGA.

Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members, and PAGA Group 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

1 pay wages during employment and upon termination of employment, failing to provide
2 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse
3 necessary business expenses, and thereby engaged in unfair business practices in violation of
4 California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to
5 penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members and PAGA
6 Group Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited
7 to penalties pursuant to PAGA), and attorneys' fees.

8 On March 12, 2021, Defendant and Morris Group International answered the Operative
9 Complaint and identified that Morris Group International is not a legal entity.

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

14 The Parties have actively litigated the Action since it was commenced on October 15,
15 2019. On February 7, 2022, the Parties participated in a formal, full-day mediation conducted
16 by Steven Rottman Esq., a well-regarded mediator experienced in mediating complex labor and
17 employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached
18 the Settlement described herein to resolve the Action in its entirety.

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

20 Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount
21 to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a
22 timely and valid Request for Exclusion from the Class Settlement (i.e., Participating Class
23 Members) and Released PAGA Claims of Plaintiffs and PAGA Group Members with respect to
24 the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be
25 calculated by deducting the following amounts from the Maximum Settlement Amount: (1)
26 Attorney Fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement
27 Amount (i.e., \$1,225,000.00 if the Maximum Settlement Amount remains \$3,500,000.00) and
28

¹² Settlement Agreement, ¶¶ VI.76 & V77.

reimbursement of costs and expenses in an amount not to exceed Sixteen Thousand Dollars (\$16,000.00) to Class Counsel (collectively referred to as the “Attorney Fees and Costs”); (2) Settlement Administration Costs, which are currently estimated not to exceed Thirteen Thousand Dollars (\$13,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) PAGA Payment in the amount of One Hundred Thousand Dollars (\$100,000.00), of which seventy-five percent (75%), or \$75,000.00, will be paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%), or \$25,000.00, will be distributed to PAGA Group Members; and (4) payments in the amount of up to Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz (for a combined total of \$40,000.00) (“Service Awards”).¹³ The Parties have agreed to retain Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member’s share of the available Net Settlement Amount (“Individual Settlement Payment”), in accordance with the Settlement Agreement and as follows:

The Settlement Administrator will calculate the total number of Workweeks for all Participating Class Members worked during the Class Period. The Settlement Administrator will divide each Participating Class Member’s individual number of Workweeks by the total number of Workweeks of all Participating Class Members worked during the Class Period, and multiply the resulting fraction by the Net Settlement Amount.¹⁴

The Parties have agreed that the Settlement Administrator will determine each PAGA Group Member’s share of the PAGA Group Member Amount (“Individual PAGA Payment”), in accordance with the Settlement Agreement and as follows:

The Settlement Administrator will calculate the total number of Workweeks for all PAGA Group Members worked during the PAGA Period. The Individual PAGA Payment that each PAGA Group Member will be eligible to receive will be calculated by dividing each PAGA Group Member’s individual number of Workweeks worked during the PAGA Period by the total number of Workweeks of all PAGA Group Members worked during the PAGA Period and multiplying the resulting fraction by the PAGA Group Member Amount.¹⁵

///

¹³ Settlement Agreement, ¶¶ III.50, III.51, III.52 & III.53.

¹⁴ *Id.*, ¶ VI.69.b.

¹⁵ *Id.*, ¶ VI.69.a.

Individual Settlement Payments shall be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and eighty percent (80%) as non-wage damages and interest, which will be reported on an IRS Form 1099 by the Settlement Administrator.¹⁶ Individual PAGA Payments shall be allocated as one hundred percent (100%) as civil penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.¹⁷ Employer side payroll taxes in connection with the wages portion of the Individual Settlement Payments will be paid by Defendant separately, and in addition to, the Maximum Settlement Amount.¹⁸

Participating Class Members and PAGA Group Members must negotiate each of their Individual Settlement Payment and Individual PAGA Payment checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator.¹⁹ The Parties agree that any uncashed checks, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et. seq.* for the benefit of those Participating Class Members and PAGA Group Members who did not cash their checks until such time that they claim their property.²⁰

Class Members who wish to opt out of the Class Settlement must submit a written Request for Exclusion to the Settlement Administrator.²¹ To be timely, the Class Member must submit a Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice (“Response Deadline”).²² The Request for Exclusion must: (a) contain the case name and number of the Action; (b) contain the full name, signature, and the last four digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and € be submitted by mail or e-mail to the Settlement Administrator at the specified address or e-mail address, postmarked or e-

¹⁶ Settlement Agreement, ¶ VI.70.

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶ I.15.

¹⁹ *Id.*, ¶ VI.74.

²⁰ *Ibid.*

²¹ *Id.*, ¶ VI.3.a.

²² *Id.*, ¶ I.17.

1 mailed on or before the Response Deadline.²³ A Class Member who timely and validly submits
2 a Request for Exclusion from the Class Settlement will not become a Participating Class
3 Member, will not be bound by the Class Settlement, and will not have a right to appear at the
4 Final Approval hearing to have any objections to the Class Settlement heard by the Court.²⁴
5 Class Members who are also PAGA Group Members will not be permitted to exclude
6 themselves from the PAGA Settlement. Individual PAGA Payments in the appropriate amounts
7 will be distributed by the Settlement Administrator by U.S. First Class Mail to the PAGA Group
8 Members including to those Class Members who are PAGA Group Members, irrespective of
9 whether they submitted a Request for Exclusion.²⁵

10 Class Members who wish to object to the Class Settlement may submit a written Notice
11 of Objection to the Settlement Administrator on or before the Response Deadline.²⁶ The Notice
12 of Objection must contain: (a) the case name and number of the Action; (b) the objector's full
13 name, signature, address, telephone number, and last four (4) digits of the objector's Social
14 Security Number; (c) a written statement of all grounds for the objection accompanied by any
15 legal support for such objection; (d) copies of any papers, briefs, or other documents upon
16 which the objection is based; and (e) be submitted by mail or e-mail to the Settlement
17 Administrator at the specified address or e-mail address, postmarked or e-mailed on or before
18 the Response Deadline.²⁷ Class Members may also appear at the Final Approval hearing to
19 have their objections to the Class Settlement heard by the Court, regardless of whether they
20 submitted a written Notice of Objection.²⁸

21 Each Class Member shall have an opportunity to dispute the number of Workweeks
22 attributed to him or her as identified in the Class Notice by submitting a Workweeks Dispute to
23 the Settlement Administrator on or before the Response Deadline.²⁹ The letter must: (a) contain
24 the case name and number of the Action; (b) contain the full name, address, telephone number,

25 ²³ Settlement Agreement, ¶ I.32.

26 ²⁴ *Id.*, ¶ VI.63.d.

27 ²⁵ *Id.*, ¶ VI.63.i.

28 ²⁶ *Id.*, ¶ VI.64.

²⁷ *Id.*, ¶ I.18.

²⁸ *Id.*, ¶ VI.64.

²⁹ *Id.*, ¶ VI.65.

signature, and the last four digits of the Social Security Number of the disputing Class Member; (c) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (d) include information and/or attach documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct; and (e) be submitted by mail or e-mail to the Settlement Administrator at the specified address or e-mail address, postmarked or e-mailed on or before the Response Deadline.³⁰

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.

³⁰ Settlement Agreement, ¶ I.37.

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).

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.

V. 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

1 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
2 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
3 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
4 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
5 1151.

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

8 The Parties actively litigated the Action since it was commenced on October 15, 2019.
9 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
10 the claims, and Class Counsel was actively preparing the case for class certification and trial.³¹

11 Prior to engaging in mediation, Class Counsel conducted significant investigation and
12 formal and informal discovery regarding the facts of the case, including and not limited to, the
13 exchange, review, and analysis of a large volume of documents and data produced by
14 Defendant.³² The volume of data and documents that Class Counsel reviewed and analyzed
15 included and was not limited to: employment records of Plaintiffs and other Class Members, a
16 detailed sampling of Class Members' time and pay data, W-2 and Wage Statements, Timecards,
17 Performance Reviews, Defendant's Employee Handbook, company policy acknowledgements
18 (Acknowledgement of At-Will Employment, Acknowledgement of Receipt for Alcohol and
19 Drug Policy, Receipt of Transitional Return to Work Program Policy and Procedures for
20 Injuries on the Job, Receipt of Pamphlets), Defendant's operations and employment practices,
21 procedures and policies (including, and not limited to, Non-Disclosure of Confidential
22 Information/Trade Secrets, Attendance and Punctuality policy, Company Paid Sick Leave
23 policy, Photo Agreement, Workplace Accidents policy, Pre-Employment Medical Physical
24 Agreement, Confidentiality Agreement, Software Code of Ethics, Absence and Incident
25 Guidelines, Company Voicemail Policy, Company Email and Internet Policy, Cellphone and
26 Electronic Device Policy, Vendor Gratuity Policy, Company Policy Update), among other

27
28 ³¹ Blanchard Decl., ¶¶ 11-13.

³² *Id.*, ¶ 12.

information and documents.³³ Class Counsel had the opportunity to interview Plaintiffs and other Class Members to gather facts and to identify potential witnesses.³⁴ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.³⁵ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁶ Class Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Steven Rottman 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 case and various aspects of the case, 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 law and 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 their 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

³³ Blanchard Decl., ¶ 12.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.*, ¶ 11.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11, 16-18.

1 formal and informal discovery, extensive settlement negotiations, and with the aid of the
2 mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
3 the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides
4 that would attend further litigation.⁴²

5 The Settlement takes into account the strengths and weaknesses of each side's position
6 and the uncertainty of how the case might have concluded at certification and trial.⁴³ The Parties
7 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴
8 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and
9 the Class Members' employment with Defendant and performed significant research into the
10 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
11 rest periods, wage-and-hour law and enforcement, Plaintiffs' claims, and Defendants' defenses
12 thereto, as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this
13 large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive
14 experience in employment class actions, including significant experience in California wage-
15 and-hour litigation.⁴⁶

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

17 The Settlement, which provides for a Maximum Settlement Amount of Three Million
18 Five Hundred Thousand Dollars (\$3,500,000.00), represents a fair, adequate, and reasonable
19 resolution of the matter.⁴⁷ The Settlement was calculated using the information and data
20 uncovered during litigation, case investigation, as well as the formal and informal exchange of
21 information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any
22 case and, in particular, in the case at issue.⁴⁹ Moreover, considering all of the facts and
23
24

25 ⁴² Blanchard Decl., ¶¶ 11, 16-18.

26 ⁴³ *Ibid.*

27 ⁴⁴ *Ibid.*

28 ⁴⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁶ *Id.*, ¶¶ 6-7.

⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

1 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
2 for the Class.⁵⁰

3 Assuming that the Attorney Fees and Costs, Service Awards, PAGA Payment, and
4 Settlement Administration Costs are approved by the Court and paid in the full amounts
5 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
6 currently estimated to be Two Million One Hundred and Six Thousand Dollars
7 (\$2,106,000.00).⁵¹ Additionally, 25% of the PAGA Payment, which is \$25,000.00 out of
8 \$100,000.00, which will which will be distributed to the PAGA Group Members (“PAGA Group
9 Member Amount”). As discussed in Part III, *supra*, the entire Net Settlement Amount will be
10 fully paid out to the Participating Class Members, in accordance with the Settlement Agreement.
11 The amount of each Member’s Individual Settlement Payment and each PAGA Group
12 Members’ Individual PAGA Payment will be calculated based on his or her Workweeks.⁵²
13 There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds
14 for purposes of preliminary approval. Even at the final approval stage, “[a]n allocation formula
15 need only have a reasonable, rational basis [to warrant approval], particularly if recommended
16 by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc.*,
17 *Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

18 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
19 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA
20 Group Members, and the State of California.⁵³ Although the recommendations of Class Counsel
21 are not conclusive, the Court can properly take the recommendations into account, particularly
22 if Class Counsel appears to be competent, and has experience with this type of litigation, and
23 investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court
24 should grant preliminary approval of the Settlement.

25 ///

26
27 ⁵⁰ Blanchard Decl., ¶¶ 11, 13, & 21.

⁵¹ *Id.*, ¶ 14.

⁵² Settlement Agreement, ¶¶ I.13 & I.14.

⁵³ Blanchard Decl., ¶¶ 11, 13, & 21.

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

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

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

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁷
13 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
14 one of a common or general interest, of many persons, or when the Parties are numerous, and it
15 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
16 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” *Id.*

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact that predominate over any questions
21 affecting any individual Class Member. Further, Plaintiffs’ claims are typical of the claims of
22 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
23 Class. Finally, prosecution of separate actions by individual Class Members would create the
24 risk of inconsistent or varying adjudications, and a class action is superior to other available
25

26
27 ⁵⁴ Blanchard Decl., ¶¶ 11-13 & 18.

28 ⁵⁵ *Id.*, ¶ 18.

⁵⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, ¶ III.46.

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 more than five hundred sixty-nine (569) 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 Defendants to the Settlement Administrator through a review of Defendants' 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).

⁵⁸ Blanchard Decl., ¶ 9.

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 Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, 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 employment, failing to provide compliant 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 their 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.

///

⁵⁹ Blanchard Decl., ¶ 16.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

**VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEY
FEES AND COSTS**

Class Counsel has litigated the matter for over three 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 case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant and Morris Group International. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed a large volume of documents and data⁶⁴ and also had the opportunity to interview and obtain information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, 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

The Settlement establishes a Maximum Settlement Amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00), and provides for Class Counsel to apply to the Court for Attorney Fees and Costs, consisting of Attorney Fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$1,225,000.00) and an amount not to exceed Sixteen Thousand Dollars (\$16,000.00) for costs and expenses.⁶⁸ The Attorney Fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that

⁶³ Blanchard Decl., ¶¶ 11-13.

⁶⁴ *Id.*, ¶ 12.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 6-7.

⁶⁸ Settlement Agreement, ¶ III.50.

1 Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has
2 shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of
3 the Settlement that Class Counsel has achieved for the Class Members, PAGA Group Members,
4 and the State of California, and (6) the other cases that Class Counsel had to turn down in order
5 to devote its time and efforts to this matter. The proposed Class Notice provides Class Members
6 with information about the amount allocated toward the Attorney Fee and Costs, and that an
7 award of the Attorney Fees and Costs will be sought, as provided for by the Settlement.⁶⁹

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

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

28

⁶⁹ Settlement Agreement, Exh. 1.

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.⁷⁰

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs’ motion for final approval of the Settlement and application for the Attorney Fees and 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.

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 a Notice of Objection to the Class Settlement, Request for Exclusion from the Class

⁷⁰ Blanchard Decl., ¶ 19.

⁷¹ Settlement Agreement, Exh. 1.

Settlement, 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 their Individual Settlement Payment, and if applicable, their Individual PAGA Payment is 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.

IX. APPOINTMENT OF PHOENIX AS THE SETTLEMENT ADMINISTRATOR

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

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁷⁶ Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be sent to the forwarding address affixed thereto, if a forwarding address is provided.⁷⁷ If no forwarding address is provided, the Settlement

⁷² Settlement Agreement, Exh. 1.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Id.*, ¶ VI.62.b.

⁷⁷ *Id.*, ¶ VI.62.c.

1 Administrator shall promptly, but no later than five (5) business days after receiving notice that
2 the Class Notice was undeliverable, attempt to determine a correct mailing address using a skip-
3 trace, or similar search, using the name, address and/or Social Security Number of the Class
4 Member involved, and promptly re-mail the Class Notice.⁷⁸ The Response Deadline for any
5 Class Member who is re-mailed a Class Notice shall be extended fifteen (15) calendar days from
6 the date of the re-mailing or the original sixty (60) calendar day deadline, whichever is later.⁷⁹
7 The Settlement Administrator will receive and process Requests for Exclusion, Notice of
8 Objections, and Workweek Disputes.⁸⁰

9 The Settlement Administrator shall be responsible for printing and translating the Class
10 Notice from English into Spanish, distributing and tracking Class Notices, calculating Individual
11 Settlement Payments and Individual PAGA Payments, processing Requests for Exclusion,
12 Workweeks Disputes, and Notices of Objection, performing necessary skip-traces on Class
13 Notices returned as undeliverable, mailing Participating Class Members and PAGA Group
14 Members settlement checks, issuing any required tax reporting forms, distributing the Maximum
15 Settlement Amount and Net Settlement Amount and providing necessary reports and
16 declarations, as requested by the Parties, Class Counsel and Defendant's Counsel, among other
17 things in this Settlement Agreement.⁸¹ The Settlement Administration Costs are currently
18 estimated to be up to Thirteen Thousand Dollars (\$13,000.00) and will be paid out of the
19 Maximum Settlement Amount, subject to approval by the Court.⁸²

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

24 ///

25 ///

26 ⁷⁸ Settlement Agreement, ¶ VI.62.c.

27 ⁷⁹ *Ibid.*

28 ⁸⁰ Settlement Agreement, ¶¶ VI.63, VI.64, & VI.65.

⁸¹ *Id.*, ¶ I.35.; Blanchard Decl., ¶ 15.

⁸² Settlement Agreement, ¶ I.35.

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 Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸³

Within fifteen (15) calendar days from Preliminary Approval, Defendant shall provide the Class List to the Settlement Administrator which will include each Class Member's last-known full name, mailing address, telephone number, Social Security Number, Workweeks worked as a non-exempt, hourly-paid employee of Defendant in California during: (1) the period from October 15, 2015 to February 7, 2022; (2) the Class Period; and (3) the PAGA Period, (collectively, "Class List").⁸⁴

Within seven (7) calendar days after receipt of the Class List, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice, substantially in the form attached to the Proposed Order filed herewith as **Exhibit 1** and as approved by the Court, to the Class Members (in English and Spanish), by First Class U.S. Mail.⁸⁵ Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be sent to the forwarding address affixed thereto, if a forwarding address is provided.⁸⁶ If no forwarding address is provided, the Settlement Administrator shall promptly, but no later than five (5) business days after receiving notice that the Class Notice was undeliverable, attempt to determine a correct mailing address using a skip-trace, or similar search, using the name, address and/or Social Security Number of the Class Member involved, and promptly re-mail the Class Notice.⁸⁷ Class Members will have until the applicable Response

⁸³ Settlement Agreement, ¶ VI.62.a.

⁸⁴ *Id.*, ¶¶ VI.62.a & I.4.

⁸⁵ *Id.*, ¶ VI.62.a.

⁸⁶ *Id.*, ¶ VI.62.c.

⁸⁷ *Ibid.*

Deadline to mail a Request for Exclusion, Workweek Disputes, and/or Notice of Objection.⁸⁸

Defendant shall deposit the Maximum Settlement Amount, plus all employer taxes due on the wage portion of the Individual Settlement Payments, with the Settlement Administrator no later than thirty (30) calendar days after the Effective Date.⁸⁹ The Settlement Administrator shall disburse the Maximum Settlement Amount to the recipients designated herein no later than fifteen (15) calendar days after Defendant's payment.⁹⁰

Participating Class Members and PAGA Group Members must negotiate each of their Individual Settlement Payment and Individual PAGA Payment checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator.⁹¹ The Parties agree that any uncashed checks, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et. seq.* for the benefit of those Participating Class Members and PAGA Group Members who did not cash their checks until such time that they claim their property.⁹²

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR SERVICE AWARDS

Plaintiffs Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Service Awards in an amount up to Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz (for a combined total of \$40,000).⁹³ 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

⁸⁸ Settlement Agreement, ¶ I.17.

⁸⁹ *Id.*, ¶ III.49

⁹⁰ *Ibid.*

⁹¹ *Id.*, ¶ VI.74.

⁹² *Ibid.*

⁹³ *Id.*, ¶ III.51.

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 Service 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.⁹⁴ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁵ Accordingly, it is appropriate and just for Plaintiffs to each receive Service Awards for their services on behalf of the Class, in addition to their Individual Settlement Payments and Individual PAGA Payments.

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; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiffs Jenny Garrido, Juan Rivas, Frankie Betancourt, and Jesse Ortiz as Class Representatives; appoint Phoenix as Settlement Administrator; preliminarily approve the allocations for Attorney Fees and Costs, Service Awards, PAGA Payment, and Settlement 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; schedule a Final Approval Hearing to take place in approximately six months; and permit the filing of a memorandum that exceeds the page limit.

Dated: November 30, 2022

LAWYERS for JUSTICE, PC

By: 
Annabel Blanchard
Attorney for Plaintiffs

⁹⁴ Blanchard Decl., ¶ 20; Declaration of Jenny Garrido in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Garrido Decl."), ¶ 4; Declaration of Juan Rivas ("Rivas Decl."), ¶ 4; Declaration of Jesse Ortiz ("Ortiz Decl."), ¶ 4; Declaration of Frankie Betancourt ("Betancourt Decl."), ¶ 4.

⁹⁵ Blanchard Decl., ¶ 20; Garrido Decl., ¶¶ 3-6; Rivas Decl., ¶¶ 3-6; Ortiz Decl., ¶¶ 3-6; Betancourt Decl., ¶¶ 3-6.