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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

THERESA BINGHAM, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

HERITAGE HEALTH CARE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CIVSB2029495

Honorable David S. Cohn
Department S26

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
(Yasmin Hosseini); Declaration of
Proposed Class Representative (Theresa
Bingham); and [Proposed] Order filed
concurrently herewith]

Date: October 21, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: December 30, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 21, 2022 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David S. Cohn in Department S26 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Theresa Bingham (“Plaintiff”) will, and hereby does, move for an order:

- Granting Plaintiff leave to file the First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §§ 2698, *Et Seq.* (“First Amended Complaint”) which is attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including, but not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees to Class Counsel, Litigation Costs to Class Counsel, Enhancement Payment to Plaintiff, and Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes only;
- Preliminarily appointing Plaintiff Theresa Bingham as the Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel (“Class Counsel”);
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 2**” 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 CPT Group, Inc. 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 Attorneys' Fees to Class Counsel, Litigation Costs to Class Counsel, Enhancement Payment to Plaintiff, and Administration Costs to the Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action, allows the Court to preliminarily certify a class for settlement purposes only, and permits the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini) and Proposed Class Representative (Theresa Bingham) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: September 30, 2022

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorney for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Theresa Bingham (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement” or “Settlement Agreement”) entered into by and between Plaintiff, individually, and on behalf of other members of the general public similarly situated and other aggrieved employees pursuant to the California Private Attorneys General Act, on the one hand, and Defendant Heritage Health Care, 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 Maximum Settlement Amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of Nine Thousand Dollars (\$9,000.00) 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 Maximum Settlement Amount, or \$455,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars (\$35,000.00)⁴; (4) the Administration Costs to the Settlement Administrator in the amount not to exceed Seventeen Thousand Dollars (\$17,000.00);⁵ and (5) the amount of Two Hundred Sixty Thousand Dollars (\$260,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Penalties”), of which 75% (i.e., \$195,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and 25% (i.e., \$65,000.00) will be distributed to PAGA Group Members on a *pro rata* basis, based on PAGA Group Members’ Workweeks during the PAGA Period (“Employee PAGA Amount”).⁶

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), ¶ I.L.

² *Id.*, ¶ I.J.

³ *Id.*, ¶ XVI.

⁴ *Id.*, ¶ XV.

⁵ *Id.*, ¶ X.

⁶ *Id.*, ¶ XVIII.

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

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period (“Class” or “Class Members”).⁷

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks that a Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period (based on the number of Workweeks in the Class List that Defendant provides to the Settlement Administrator) (“Workweeks”).⁸ All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period (“PAGA Group Members”) will receive a *pro rata* share of the Employee PAGA Amount (“Individual PAGA Payment”) based on the number of Workweeks of each PAGA Group Member during the PAGA Period (“PAGA Workweeks”).⁹

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of the State of California and PAGA Group Members, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a facility providing skilled nursing and rehabilitation services to both short term and long-term care residents. Plaintiff Theresa Bingham is a former employee of Defendant.

On November 12, 2020, Plaintiff provided written notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of her intent to pursue civil penalties under the

⁷ Settlement Agreement, ¶ I.C. “Class Period” is defined as the period of time from December 30, 2016 through January 24, 2022. *See id.*, ¶ I.D.

⁸ *Id.*, ¶ I.W.

⁹ *Id.*, ¶¶ I.K., I.O., & XIII.B.1 “PAGA Period” is defined as the period from November 12, 2019 through January 24, 2022. *See id.*, ¶ I.P.

¹⁰ *See id.* at ¶ VIII.A, for the full scope of the “Released Class Claims,” *See id.* at ¶ VIII.B, for the full scope of the Released PAGA Claims,” and *id.* at ¶ VIII.A, for the definition of the “Released Parties.”

1 California Private Attorneys General Act, California Labor Code §§ 2698, Et. Seq. (“PAGA”),
2 on behalf of herself, the aggrieved employees, and the State of California (“LWDA Letter”).

3 On December 30, 2020, Plaintiff filed a Class Action Complaint for Damages (“Class
4 Action Complaint”) against Defendant in the San Bernardino County Superior Court, thereby
5 commencing the above-captioned lawsuit (“Class Action”).

6 On January 22, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
7 Attorneys General Act, California Labor Code § 2698, Et. Seq. against Defendant in the San
8 Bernardino County Superior Court, Case No. CIVSB2102827 (“PAGA Complaint”) entitled
9 *Theresa Bingham v. Heritage Health Care, Inc.* (“PAGA Action”).

10 The Class Action and PAGA Action are together referred to as the “Litigation”.

11 On May 13, 2021, Plaintiff propounded Special Interrogatories (Set One) onto
12 Defendant.

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

24 To effectuate the terms of the Settlement and intent of the Parties, the Parties have agreed
25 that leave should be granted for Plaintiff to file a First Amended Consolidated Class Action
26 Complaint for Damages and Enforcement under the Private Attorneys General Act, California
27
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Labor Code §§ 2698, *Et Seq.* (“First Amended Complaint”), consolidating the Class Action Complaint and the PAGA Complaint.¹¹

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

The Parties have actively litigated the Litigation since the Class Action commenced on December 30, 2020. On October 22, 2021, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, 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 Litigation in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Member) and Released PAGA Claims of the State of California and the PAGA Group Members with respect to the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys’ fees in an amount up to thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$455,000.00 if the Maximum Settlement Amount remains \$1,300,000.00), and reimbursement of costs and expenses in an amount up to Thirty-Five Thousand Dollars (\$35,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Litigation Costs”); (2) settlement administration costs, which are currently estimated not to exceed Seventeen Thousand Dollars (\$17,000.00) to the Settlement Administrator (“Administration Costs”); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$195,000.00

¹¹ Hosseini Decl, ¶ 8.

¹² Settlement Agreement, ¶ VIII.

out of \$260,000.00) (“LWDA Payment”) and 25%, or \$65,000.00, will be distributed to PAGA Group Members on a *pro rata* basis (“Employee PAGA Amount”); and (4) payment in the amount of up to Nine Thousand Dollars (\$9,000.00) to Plaintiff Theresa Bingham (“Enhancement Payment”).¹³ The Parties have agreed to retain CPT Group, Inc. (“Settlement Administrator”) to handle the notice and settlement administration process.

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

- a. The Settlement Administrator will divide the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members (“Class Workweek Point Value”).¹⁴
- b. Each Settlement Class Member’s individual Workweeks will be multiplied by the Class Workweek Point Value to arrive at his or her Individual Settlement Share.¹⁵

The Parties have agreed that the Settlement Administrator will determine each PAGA Group Member’s *pro rata* share of the Employee PAGA Amount (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the Employee PAGA Amount by the total number of PAGA Workweeks of all PAGA Group Members (“PAGA Workweek Point Value”).¹⁶
- b. Each PAGA Group Member’s individual PAGA Workweeks will be multiplied by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment.¹⁷

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁸ The Settlement Administrator will withhold the employee’s share of employment taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payment (i.e., payment of

¹³ Settlement Agreement, ¶¶ I.R, X, XV & XVI.

¹⁴ *Id.*, ¶ XIII.A.2.

¹⁵ *Id.*, ¶¶ XIII.A.2.

¹⁶ *Id.*, ¶ XIII.A.3.

¹⁷ *Id.*, ¶¶ XIII.B.2.

¹⁸ *Id.*, ¶ XVII.C.

their Individual Settlement Share net of these taxes and withholdings).¹⁹ The Individual PAGA Payments to PAGA Group Members will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form 1099, if necessary.²⁰ The employer's share of payroll taxes and contributions on the wages portion of Individual Settlement Shares will be paid by Defendant in addition to and not as a deduction from the Maximum Settlement Amount.²¹

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days after issuance, and thereafter, the checks will be cancelled.²² All funds associated with cancelled checks will be paid to Legal Aid at Work, after the Court enters an order approving the Parties' stipulation to amend the judgment, which they shall prepare and file in accordance with California Code of Civil Procedure section 384.5, *et seq.*²³

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit a written request for exclusion ("Request for Exclusion") to the Settlement Administrator.²⁴ To be timely, the Class Member must mail a written Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice ("Response Deadline").²⁵ The Request for Exclusion must: (1) contain the case name and number of the Litigation; (2) contain the Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed by the Class Member or his or her authorized representative; (4) contain a clear statement that the Class Member requests to be excluded from the Class Settlement; and (5) be mailed to the Settlement Administrator, postmarked no later than the Response Deadline.²⁶ Any Class Member who timely and validly submits a Request for Exclusion will

¹⁹ Settlement Agreement, ¶ XVII.A.

²⁰ *Id.*, ¶ XVII.D.

²¹ *Id.*, ¶ XVII.F.

²² *Id.*, ¶ XIII.C.4.

²³ *Ibid.*

²⁴ *Id.*, ¶ XI.C.1.

²⁵ *Id.*, ¶ XI.A.5.

²⁶ *Id.*, ¶ XI.C.1.

not be entitled to an Individual Settlement Payment, will not be bound by the Class Settlement, and will not have any right to object, appeal, or comment thereon.²⁷ All PAGA Group Members shall be bound to the PAGA Settlement regardless of their decision to participate in the Class Settlement.²⁸

Class Members who do not submit a Request for Exclusion may object to the Class Settlement.²⁹ To object to the Class Settlement, a Settlement Class Member may send a written objection to the Settlement Administrator or appear at the Final Approval Hearing with or without submitting a written objection to the Class Settlement.³⁰ A written objection to the Class Settlement must: (1) contain the case name and number of the Litigation; (2) contain the Settlement Class Member's full name, address, telephone number, signature, and last four digits of his or her Social Security number; (3) clearly state the grounds for the objection; (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing; and (5) be mailed to the Settlement Administrator, postmarked no later than the Response Deadline.³¹

Class Members and PAGA Group Members will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notice ("Workweeks Dispute").³² In order to dispute Workweeks, Class Members and/or PAGA Group Members must submit a written letter to the Settlement Administrator that must: (a) contain the case name and number of the Litigation; (b) contain the Class Member's full name, address, telephone number, signature, and last four digits of his or her Social Security number; (c) contain a statement setting forth the number of Workweeks during the Class Period and/or PAGA Period that he or she contends is correct and attaches any relevant documentation in support thereof; and (d) be mailed to the Settlement Administrator, postmarked no later than the Response Deadline.³³

²⁷ Settlement Agreement, ¶ XI.C.2.

²⁸ *Id.*, ¶ XI.C.3.

²⁹ *Id.*, ¶ XI.B.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Id.*, ¶ XII.A.

³³ *Ibid.*

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

3 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
4 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
5 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
6 1801, fn. 7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
7 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
8 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
9 and reasonable, whether certification of the class was proper, and whether the attorney fee award
10 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
11 decision to approve a class action settlement may be reversed only upon a strong showing of
12 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
13 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

26 In considering a potential class settlement, a court need not reach any ultimate
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
28 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 views 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 Litigation since the Class Action commenced on

December 30, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁴

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the matter, including, but not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.³⁵ The volume of data and documents that Class Counsel reviewed and analyzed included, and was not limited to: Plaintiff's employment records, a detailed sampling of Class Members' time and pay data, earning statements and summaries, multiple iterations of Defendant's Employee Handbook, company policy acknowledgements (including, but not limited to, Defendant's Employee Acknowledgement), internal memoranda, Defendant's operations and employment practices (including, but not limited to, Defendant's Confidentiality and Non-Disclosure Agreement, Employee Separation Report, Corrective or Disciplinary Warning Notice and New Employee Safety Orientation), procedures, and policies, (including, but not limited to, Defendant's Meal Break Agreement and Premium Only Plan) among other information and documents.³⁶ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁷ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, *Belaire-West* process, and the production of documents and data prior to the mediation.³⁸ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁹

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴⁰ Prior to and during the mediation and

³⁴ Hosseini Decl., ¶¶ 10-12.

³⁵ *Id.*, ¶ 11.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Hosseini Decl. ¶ 11.

⁴⁰ *Id.*, ¶ 10.

1 settlement discussions, the Parties exchanged class information and engaged in an intensive
2 discussion regarding their evaluations of the matter and various aspects of the matter, including,
3 but not limited to, Defendant's financial condition, the risks and delays of further litigation, the
4 risks to the Parties of proceeding with class certification and/or representative adjudication, the
5 law relating to the off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and
6 PAGA representative claims, as well as the evidence produced and analyzed, and the possibility
7 of appeals, among other things.⁴¹ During all settlement discussions, the Parties conducted their
8 negotiations at arm's length and in an adversarial position.⁴² Arriving at a settlement that was
9 acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their
10 ability to prevail on the merits and at certification, and Plaintiff and her counsel believed that
11 they would be able to obtain class certification and prevail at trial.⁴³ After conducting
12 investigations, significant informal discovery, extensive settlement negotiations, and with the
13 aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for
14 settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and
15 risks to both sides that would attend further litigation.⁴⁴

16 The Settlement takes into account the strengths and weaknesses of each side's position
17 and the uncertainty of how the matter might have concluded at certification and trial.⁴⁵ The
18 Parties have had the opportunity to interview and obtain information from their respective
19 witnesses.⁴⁶ Counsel for the Parties have also reviewed documents and information relating to
20 Plaintiff's, Class Members', and PAGA Group Members' employment with Defendant and
21 performed significant research into the law concerning class certification, PAGA representative
22 actions, the off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's
23 claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁷ The Parties have
24 reached the Settlement based on this large volume of facts, evidence, and investigation. In

25 ⁴¹ *Ibid.*

26 ⁴² *Ibid.*

27 ⁴³ *Id.*, ¶¶ 10, 15-17.

28 ⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 10-12 & 15-17.

1 addition, Class Counsel has extensive experience in employment class actions, including
2 significant experience in California wage-and-hour litigation.⁴⁸

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

4 The Settlement, which provides for a Maximum Settlement Amount of One Million
5 Three Hundred Thousand Dollars (\$1,300,000.00), represents a fair, adequate, and reasonable
6 resolution of the matter.⁴⁹ The Settlement was calculated using the information and data
7 uncovered during litigation, case investigation, as well as the informal exchange of
8 information.⁵⁰ The Settlement takes into account the potential risks and rewards inherent in any
9 case and, in particular, in the matter at issue.⁵¹ Moreover, considering all of the facts and
10 circumstances of the matter, the Settlement represents a fair, reasonable, and adequate recovery
11 for the Class.⁵²

12 Assuming that the Attorneys' Fees and Litigation Costs, Enhancement Payment, PAGA
13 Penalties, and Administration Costs are approved by the Court and paid in the full amounts
14 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
15 currently estimated to be Five Hundred Twenty-Four Thousand Dollars (\$524,000.00).⁵³
16 Additionally, the 25% of the PAGA Penalties (i.e. Employee PAGA mount), which is
17 \$65,000.00 out of \$260,000.00, will be distributed to PAGA Group Members. As discussed in
18 Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class
19 Members, in accordance with the Settlement Agreement. The amount of each Settlement Class
20 Member's Individual Settlement Share and each PAGA Group Member's Individual PAGA
21 Payment will be calculated based on his or her Workweeks and/or PAGA Workweeks.⁵⁴ There
22 is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for
23 purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula
24 need only have a reasonable, rational basis [to warrant approval], particularly if recommended

25 ⁴⁸ Hosseini Decl, ¶¶ 2-7.

26 ⁴⁹ *Id.*, ¶¶ 10, 12, 13 & 21.

27 ⁵⁰ *Id.*, ¶¶ 10-12.

28 ⁵¹ *Id.*, ¶¶ 15-17.

⁵² *Id.*, ¶¶ 11, 13, & 21.

⁵³ *Id.*, ¶ 13.

⁵⁴ Settlement Agreement, ¶¶ I.W & XIII.B.1.

by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interests of the Class Members, PAGA Group Members, and the State of California.⁵⁵ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁶ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant’s defenses thereto.⁵⁷ As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁹ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies

⁵⁵ Hosseini Decl., ¶¶ 12 & 21.

⁵⁶ *Id.*, ¶¶ 10-12 & 17.

⁵⁷ *Id.*, ¶ 17.

⁵⁸ *Id.*, ¶¶ 10-12 & 15-17.

⁵⁹ Settlement Agreement, ¶ V.A.

“both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

The Class is ascertainable and numerous so 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 only 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 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.

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) a class representative with claims or defenses typical of the class; and (3) a 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 a similarly situated plaintiff renders class certification appropriate.” *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Litigation. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiff contends 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.⁶⁰ Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶¹

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.⁶² As a result, Plaintiff claims that all of the Class Members were uniformly not paid all

⁶⁰ Hosseini Decl., ¶ 16.

⁶¹ *Id.*, ¶ 15.

⁶² *Ibid.*

1 compensation due to them from Defendant during the time period at issue.⁶³

2 Plaintiff maintains that the outcome of this litigation would be determined by
3 Defendant's alleged uniform operations and employment policies and procedures that applied
4 to its hourly-paid or non-exempt employees who worked in California during the Class Period.
5 Accordingly, the Court should certify the Class for settlement purposes only.

6 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
7 **ATTORNEYS' FEES AND LITIGATION COSTS**

8 Class Counsel has litigated the matter for approximately two (2) years and was actively
9 preparing the matter for class certification and trial.⁶⁴ The ongoing work has been extensive,
10 demanding, and ultimately successful in achieving a substantial settlement resolution. Class
11 Counsel conducted extensive investigations into the facts of the matter and informal discovery.
12 Class Counsel reviewed a large volume of documents and data⁶⁵ and also interviewed and
13 obtained information from Plaintiff and other Class Members, researched applicable law,
14 undertook damages/valuation calculations, and met and conferred with Defendant's counsel
15 regarding the pleadings, discovery, *Belaire-West* process, and the production of documents and
16 data prior to mediation.⁶⁶ Counsel for the Parties also undertook extensive settlement
17 discussions, which included participating in a formal, full-day mediation.⁶⁷

18 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
19 experience to obtain a great result for the Class.⁶⁸

20 The Settlement establishes a Maximum Settlement Amount of One Million Three
21 Hundred Thousand Dollars (\$1,300,000.00), and provides for Class Counsel to apply to the
22 Court for Attorneys' Fees and Litigation Costs consisting of attorneys' fees in an amount not to
23 exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$455,000.00) and
24 an amount not to exceed Thirty-Five Thousand Dollars (\$35,000.00) for costs and expenses.⁶⁹

25 _____
26 ⁶³ *Ibid.*

⁶⁴ Hosseini Decl., ¶¶ 10-12.

⁶⁵ *Id.*, ¶ 11.

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶ 11.

⁶⁸ *Id.*, ¶¶ 6-7.

⁶⁹ Settlement Agreement, ¶ XV.

The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the matter, (2) the extensive time, effort and expense that Class Counsel dedicated to the matter, (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, PAGA Group Members, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice provides Class Members and PAGA Group 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.⁷⁰

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 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

⁷⁰ *Id.*, Exh. A.

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.⁷¹

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 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.

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).

⁷¹ Hosseini Decl., ¶ 18.

The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁷³

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁵ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share, and, if applicable, their Individual PAGA Payment are calculated and the number of Workweeks credited to them.⁷⁶

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

IX. APPOINTMENT OF CPT GROUP, INC. AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected CPT Group, Inc. to administer the Settlement. The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. Mail.⁷⁷ Any Class Notices returned with a forwarding address to the Settlement Administrator before the Response Deadline, shall be re-mailed to the forwarding address affixed thereto.⁷⁸ If a Class

⁷² Settlement Agreement, Exh. A.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Id.*, ¶ XI.A.2.

⁷⁸ *Id.*, ¶ XI.A.4.

Notice is returned as undeliverable within thirty (30) calendar days after the initial mailing, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address within three (3) business days of receipt of the returned mail. If the Settlement Administrator is successful in locating an updated address, it will re-mail the Class Notice to the Class Member as soon as possible.⁷⁹ The Settlement Administrator will receive and process Requests for Exclusion, objections, and any Workweeks Disputes.⁸⁰

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of the Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and the Individual PAGA Payments to PAGA Group Members; issue W-2 and 1099 IRS forms; calculate and disburse the Attorneys' Fees and Litigation Costs, Enhancement Payment, and LWDA Payment; and perform other tasks necessary to effectuate the terms of the Settlement Agreement.⁸¹ The Administration Costs are currently estimated not to exceed Seventeen Thousand Dollars (\$17,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁸²

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸³

⁷⁹ *Ibid.*

⁸⁰ *Id.*, ¶¶ XI.B, XI.C & XII.

⁸¹ Settlement Agreement, ¶ X.; Hosseini Decl., ¶ 15.

⁸² Settlement Agreement, ¶ X.

⁸³ *Id.*, ¶ XI.A.2.

Within twenty-one (21) calendar days after the Preliminary Approval Date, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known address; (3) last known telephone number; (4) number of Workweeks worked during the Class Period; (5) number of Workweeks worked during the PAGA Period; (6) Social Security number; and (7) last known email address (collectively, “Class List”).⁸⁴

Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁵ Any Class Notices returned with a forwarding address to the Settlement Administrator before the Response Deadline, shall be re-mailed to the forwarding address affixed thereto.⁸⁶ If a Class Notice is returned as undeliverable within thirty (30) calendar days after the initial mailing, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address within three (3) business days of receipt of the returned mail.⁸⁷ If the Settlement Administrator is successful in locating an updated address, it will re-mail the Class Notice to the Class Member as soon as possible.⁸⁸ Class Members and PAGA Group Members will have until the applicable Response Deadline to mail a Request for Exclusion, Workweeks Dispute, and/or to submit an objection.⁸⁹

Within twenty-one (21) calendar days following the Effective Date (the “Initial Funding Date”), Defendant will make an initial deposit (the “First Installment”) of one-third of the Maximum Settlement Amount into an interest-bearing account established by the Settlement Administrator for administration of the Settlement.⁹⁰ Within one year of the Initial Funding Date (the “Second Funding Date”), Defendant will make a second deposit (the “Second Installment”) of one-third of the Maximum Settlement Amount into the account established by

⁸⁴ Settlement Agreement, ¶ XI.A.1. “Preliminary Approval Date” is defined as the date that the Court enters an order granting preliminary approval of the Settlement. *See id.*, ¶ VI.B.

⁸⁵ *Id.*, ¶ XI.A.2.

⁸⁶ *Id.*, ¶ XI.A.4.

⁸⁷ *Id.*

⁸⁸ *Ibid.*

⁸⁹ *Id.*, ¶ XI.A.5.

⁹⁰ *Id.*, ¶ XIII.C.1.

the Settlement Administrator for administration of the Settlement.⁹¹ Within one year of the Second Funding Date (the “Third Funding Date”) Defendant will make a third and final deposit (the “Third Installment”) of one-third of the Maximum Settlement Amount into the account established by the Settlement Administrator for administration of the Settlement.⁹²

The Settlement Administrator will distribute funds as follows in the following order of priority:

- a. Within fourteen (14) calendar days of the Initial Funding Date, any available funds shall be distributed by the Settlement Administrator in the following order: (1) payment of the Employee PAGA Amount to PAGA Group Members; (2) payment to Plaintiff of the Court-approved Enhancement Payment; (3) payment to the LWDA of the LWDA Payment; and (4) payment of one-half of the Settlement Administration Costs to the Settlement Administrator (to the extent available).⁹³
- b. Within fourteen (14) calendar days of the Second Funding Date, the Settlement Administrator shall distribute the funds as follows: (1) the Individual Settlement Payments to Settlement Class Members; (2) remaining payment of one-half of the Settlement Administration Costs to the Settlement Administrator; and (3) payment of Court-approved Litigation Costs to Class Counsel (to the extent available).⁹⁴
- c. Within fourteen (14) calendar days of the Third Funding Date, the Settlement Administrator shall distribute the funds as follows: (1) payment of Court-approved Attorneys’ Fees to Class Counsel.⁹⁵

Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Group Members will be valid and negotiable for one hundred and eighty (180) calendar days after issuance, and thereafter, the checks will be cancelled.⁹⁶ The funds remaining and associated with cancelled Individual Settlement Payment and/or Individual PAGA Payment checks will be paid to Legal Aid at Work, after the Court enters an order approving the Parties’ stipulation to amend the judgment, which they shall prepare and file in accordance with California Code of Civil Procedure section 384.5, *et seq.*⁹⁷

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⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Settlement Agreement, ¶ XIII.C.2.i.

⁹⁴ *Id.*, ¶ XIII.C.2.ii.

⁹⁵ *Id.*, ¶ XIII.C.2.iii.

⁹⁶ *Id.*, ¶ XIII.C.4.

⁹⁷ *Ibid.*

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

Plaintiff Theresa Bingham respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to Nine Thousand Dollars (\$9,000.00).⁹⁸ 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 Payment to Plaintiff 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.⁹⁹ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.¹⁰⁰ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for her services on behalf of the Class, State of California, and PAGA Group Members, in addition to her Individual Settlement Payment and Individual PAGA Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to file the First Amended Complaint; grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes only; preliminary appoint and designate Edwin

⁹⁸ *Id.*, ¶ XVI.

⁹⁹ Hosseini Decl., ¶ 19; Declaration of Theresa Bingham in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Bingham Decl.”), ¶ 4.

¹⁰⁰ Hosseini Decl., ¶ 19; Bingham Decl., ¶¶ 3-5.

Aiwazian, Arby Aiwasian, and Joanna Ghosh of Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Theresa Bingham as the Class Representative; appoint CPT Group, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Litigation Costs, Enhancement Payment, PAGA Penalties, 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 five (5) months.

Dated: September 30, 2022

LAWYERS *for* JUSTICE, PC

By:



Yasmin Hosseini
Attorney for Plaintiff