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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

JEANNETTE SALAZAR, 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 Act,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG CORPORATION, a Delaware corporation; and DOES 1 through 100, inclusive,

Defendant.

Case No.: 34-2021-00301017-CU-OE-GDS

Honorable Jill H. Talley
Department 27

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 (Brian J. St. John); Declaration of Proposed Class Representative (Jeannette Salazar); and [Proposed] Order filed concurrently herewith]

Date:	September 29, 2023
Time:	9:00 a.m.
Department:	27
Complaint Filed:	May 18, 2021
FAC Filed:	August 21, 2023
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on September 29, 2023 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Jill H. Talley in Department 25 of the Superior Court of California for the County of Sacramento, located at Gordon D. Schaber Courthouse, 720 Ninth Street, Sacramento, California 95814, Plaintiff Jeannette Salazar ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT A**" to the Declaration of Brian J. St. John, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Service Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Jeannette Salazar as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement Agreement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators 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

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for the Attorneys' Fees and Costs to Class Counsel, Service Payment for Plaintiff, 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.

Pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If a party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If the parties do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Brian J. St. John) and Proposed Class Representative (Jeannette Salazar) 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 6, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________________

Brian J. St. John
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jeannette Salazar ("Plaintiff" or "Class Representative") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant AmerisourceBergen Drug Corporation, (or "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 Two Million Four Hundred Fifty-Nine Thousand Dollars and No Cents ($2,459,000.00) ("Maximum Settlement Amount").[1] The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Service Payment of Five Thousand Dollars and No Cents ($5,000.00) to Plaintiff[3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or $860,650.00, and reimbursement of litigation costs and expenses not to exceed Eighteen Thousand Dollars and No Cents ($18,000.00)[4]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount currently estimated not to exceed Fifteen Thousand Dollars and No Cents ($15,000.00);[5] (5) Defendant's share of payroll taxes with respect to the wage portion of the Individual Settlement Shares; and (6) PAGA Allocation of Two Hundred Fifty Thousand Dollars and No Cents ($250,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $187,500.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $62,500.00) will be distributed to all current and former non-exempt employees employed by Defendant within the State of California at any time during the

[1] Settlement Agreement, attached as "**EXHIBIT A**" to Declaration of Brian J. St. John ("St. John Decl."), §§ 2.24 & 7.2.
[2] *Id.*, §2.20, 2.25.
[3] *Id.* §7.3.
[4] *Id.*, § 7.4.
[5] *Id.*, § 7.5.1.

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PAGA Period ("PAGA Members") on a *pro rata* basis, based on their Eligible Pay Periods during the PAGA Period.[6]

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

> All current and former non-exempt employees employed by Defendant within the State of California at any time during the period from May 1, 2018 through April 26, 2023 (Class" or "Class Members").[7]

The Class consists of approximately 1,216 individuals through October 2022.[8]

Class Members who do not submit a timely and valid Opt-Out Request ("Settlement Class Member") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis based upon the number of workweeks each Settlement Class Member worked for Defendant as a non-exempt employee in California during the Class Period ("Eligible Workweeks").[9]

PAGA Members will receive a share of the 25% of the PAGA Allocation on a *pro rata* basis ("Individual PAGA Payment").[10]

The Settlement resolves the Released Class Claims of Plaintiff and Settlement Class Members, and the Released PAGA Claims of Plaintiff, the State of California and PAGA Members, against the Releasees.[11]

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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[6] Settlement Agreement, §§ 2.31, 2.32, 7.71. "PAGA Period" is defined as the period of time from November 6, 2019 through April 26, 2023. *See id*., § 2.34, subject to § 7.2.2.

[7] *Id.*, § 2.3. "Class Period" is defined as the period of time from May 1, 2018 through April 26, 2023, subject to Section 7.22. *See id*., § 2.5. If the number of Eligible Workweeks exceeds a certain number, Defendant will have the option to supplement the settlement fund by a certain amount or shorten the end date of the settlement class period, as provided for in the Settlement Agreement. This determination will be made by Defendant before notice of the settlement is issued to the settlement class.

[8] St. John Decl., ¶ 9.

[9] Settlement Agreement, §§ 2.4.6, 2.21, 2.13, & 8.2.4.

[10] *Id*., §§ 2.19, 2.31 & 2.32.

[11] See *id.* at §§ 2.39, 2.40, for the full scope of the "Released Class Claims" and "Released PAGA Claims," and *id.* at § 2.41 for the definition of the "Releasees."

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides pharmaceutical products and distributes prescription drugs, health and beauty, home healthcare, proprietary drugs, and general merchandise products. Defendant was formed in Delaware and is headquartered in Pennsylvania. Plaintiff Jeannette Salazar is a former employee of Defendant.

On May 18, 2021, former plaintiff Sarah Andrews filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et seq. ("Original Complaint") against Defendant in the California Superior Court, County of Sacramento, captioned *Sarah Andrews v. AmerisourceBergen Drug Corporation,* Sacramento Superior Court Case No. 34-20221000301017-CU-OE-GD. The Original Complaint alleged a single cause of action for civil penalties Under PAGA on behalf of herself and other allegedly similarly aggrieved employees for alleged violations of the California Labor Code and applicable Industrial Welfare Commission Wage Orders.

On July 1, 2021, Defendant filed its Answer to the Original Complaint, which included general denial and affirmative defenses.

On February 3, 2022, former plaintiff Sarah Andrews propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), on Defendant, and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant.

On April 18, 2023, Plaintiff Jeannette Salazar provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated ("LWDA Notice.").

On August 21, 2023, Plaintiff and former plaintiff Sarah Andrews filed an Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et. Seq. ("Operative Complaint"), adding class claims based on the facts pled I the Original Complaint and LWDA Notice. Adding Plaintiff Jeannette Salazar, and dismissing former plaintiff Sarah Andrews.

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Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, the Class Members, and PAGA Members of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failure to pay reporting time pay, failing to timely pay wages during employment and upon termination of employment, including minimum wages, straight time wages, overtime wages, wages for vested vacation time, and premium pay, failure to include all renumeration into the calculation of the regular rate of pay, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business-related expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*; and 17203 based on the aforementioned, violations of the California Labor Code based on the aforementioned, but not limited to California Labor Code sections 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 510, 512, 551, 552, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, and 2810.5, and violations of the Industrial Welfare Commission Wage Orders, including, Industrial Wage Orders 1-2001, 4-2001, and 7-2001, and conduct that gives rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff contends that she, and the Class Members, and PAGA Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Action since it was commenced on May 18, 2021. On November 8, 2022, the Parties participated in a formal, full-day mediation conducted by Mark S. Rudy, Esq. a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

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III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount ($2,459,000.00) (i.e., the Maximum Settlement Amount) to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid Opt-Out Request (i.e., Settlement Class Members) with respect to the Released Parties, and the Released PAGA Claims of Plaintiff, the State of California, and the PAGA 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 not to exceed Eight Hundred sixty Thousand Six Hundred Fifty Thousand Dollars and No Cents ($860,650.00) (i.e., up to 35% of the Maximum Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Eighteen Thousand Dollars and No Cents ($18,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) Settlement Administration Costs, which are currently estimated not to exceed Fifteen Thousand Dollars and No Cents ($15,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Allocation of Two Hundred Fifty Thousand Dollars and No Cents ($250,000.00), of which seventy-five percent (75%) (i.e., $187,500.00) ("LWDA Payment") and twenty-five percent (25%) (i.e., $62,500.00) ("PAGA Member Amount") will be distributed to the PAGA Members on a *pro rata* basis; (4) payment in the amount of up to Five Thousand Dollars and No Cents ($5,000.00) to Plaintiff Jeannette Salazar ("Service Payment"); and (5) Defendant's share of the employer taxes on the wage portion of the Individual Settlement Payments.[13] The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "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 share of the available Net Settlement Amount (i.e., Individual Settlement Share), in accordance with the Settlement Agreement and as follows:

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[12] Settlement Agreement, §§ 2.24, 2.46 & 7.10.
[13] *Id.*, §§ 2.25; see also, *id.*, §§ 7.3 – 7.7.

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a. The Settlement Administrator will calculate each Settlement Class Member's number of Eligible Workweeks and the total aggregate number of Eligible Workweeks of all Settlement Class Members.[14]

b. The Settlement Administrator will divide the Net Settlement Amount by the total number of Eligible Workweeks of all Settlement Class Members to yield the "total number of Eligible Workweeks," and multiply each Settlement Class Member's individual number of Eligible Workweeks by the total number of Eligible Workweeks to yield his or her Individual Settlement Share.[15]

The Settlement Administrator will determine each PAGA Member's share of the PAGA Member Amount (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows:

a. The Settlement Administrator will divide the PAGA Member Amount, i.e., 25% of the PAGA Allocation, by the total number of Eligible Pay Periods of all PAGA Members ,and multiply it by each PAGA Member's individual number of Eligible Pay Period during the PAGA Periods.[16]

Each Individual Settlement Share will be allocated as thirty-three and one third percent (33.33%) wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining sixty-six and one sixth percent (66.66%) penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099 (if applicable).[17] The Settlement Administrator will withhold the employee's share of 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 Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).[18]

Each individual Settlement Payment check issued to Settlement Class Members and the Individual PAGA Payment check issued to the PAGA Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.[19] Individual Settlement Payment checks and Individual PAGA Payment checks that are not negotiated within the 180-day period will be cancelled.[20] The funds from associated with such cancelled checks will be transmitted by the Settlement Administrator after the expiration of the 180-day period, and sent

[14] Settlement Agreement, § 2.13.
[15] *Id.*, § 7.6.2.
[16] *Id.*, § 7.72.
[17] *Id.*, § 7.6.3.
[18] Ibid.
[19] *Id.*, § 8.4.3.
[20] Settlement Agreement, § 8.4.3.

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to the State Controller's Office, Unclaimed Property Division, in the name of the Settlement Class Member and/or PAGA Member whose check is cancelled and in the respective amount of the cancelled check.[21]

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a written Opt-Out Request to the Settlement Administrator, by mail, indicating that they want to exclude themselves.[22] To be timely, the Class Member must mail a written Opt-Out Request 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 to Class Members and PAGA Members ("Response Deadline") unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.[23] In the event that a Class Notice is re-mailed to the Class Member, the Response Deadline for that Class member shall be extended by fifteen (15) calendar days from the original Response Deadline.[24]

An Opt-Out Request must: (a) contain the case name and number of the Action, (b) contain the full name, signature, mailing address, telephone number, and the last four (4) 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 (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. [25] Class Members who submit a valid and timely Opt-Out Request will not be bound by the terms of the Class Settlement and Final Approval Order and Judgment.[26] All PAGA Members will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit an Opt-Out Request.[27]

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[21] Ibid.
[22] *Id.*, § 2.29.
[23] *Id.*, § 2.42.
[24] *Id.*, § 2.42.
[25] *Id.*, § 2.29.
[26] *Id*. § 8.2.4.
[27] Settlement Agreement, § 8.2.4.

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Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement.[28] Settlement Class Members who wish to object to the Class Settlement can either serve the Settlement Administrator with a written Objection on or before the Response Deadline[29] or present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a written Objection. The written Objection must contain: (a) the Settlement Class Member's full name, signature, mailing address, telephone number and the last four (4) digits of his or her Social Security number; (b) the case name and number of the Action; (c) a written statement clearly indicating that he or she objects and providing all grounds for the why he or she objects; and (d) include copies of any papers, briefs, or other documents upon which the objection is based, and be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[30]

Class Members and PAGA Members who wish to dispute the number of Eligible Workweeks and/or Eligible Pay Periods credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.[31] In order to dispute Eligible Workweeks and/or Eligible Pay Periods, Class Members and/or PAGA Members must submit a written letter to the Settlement Administrator that must: (a) contain the case name and number of the Action, (b) contain the full name, signature, mailing address, telephone number, and the last four (4) digits of the Social Security Number of the disputing Class Member, (c) clearly state that the Class Member disputes the number of Eligible 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 Eligible Workweeks and/or Eligible Pay Periods that he or she contends should be credited to him or her are correct, and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[32]

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[28] *Id.*, § 8.2.5.
[29] Ibid.
[30] *Id.*, § 2.27.
[31] *Id.*, § 8.2.6.
[32] Settlement Agreement, § 8.2.6.

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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

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

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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. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT</u>

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

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

A. <u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.</u>

The Parties actively litigated the Action since it was commenced on May 18, 2021. Both

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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.[33]

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.[34] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members' time and pay data, multiple iterations of Defendants Employee Handbook, company policy acknowledgements, internal memoranda, job descriptions, new hire orientation checklists, operations and employment practices, forms, procedures, and policies (including but not limited to Meal Periods and Rest Breaks Policy, Standards of Conduct, Meal Period waivers, Telephone and Cell Phone Policy, and Computer E-Mail Internet and Software Policy), among other information and documents.[35] Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.[36] Class Counsel propounded multiple sets of formal written discovery requests on Defendant, noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties[37] 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.[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 Mark S. Rudy, Esq., a well-respected mediator experienced in

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[33] St. John Decl., ¶¶ 11-13.
[34] *Id.*, ¶ 12.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid.

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mediating complex labor and employment matters.[40] In the course of litigation and in connection with 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 enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[41] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[42] Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[43] After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[44]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.[45] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[46] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the applicable law, concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and

[40] St. John Decl., ¶ 11.
[41] Ibid.
[42] *Id.*, ¶ 11.
[43] *Id.*, ¶¶ 11, 16-18.
[44] Ibid.
[45] Ibid.
[46] Ibid.

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damages, and Defendant's defenses thereto, as well as facts discovered.[47] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[48]

B. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Maximum Settlement Amount of Two Million Four Hundred Fifty Nine Thousand Dollars and No Cents ($2,459,000.00) represents a fair, adequate, and reasonable resolution of the matter.[49] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[50] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[51] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, PAGA Members, and the State of California.[52]

Assuming that the Attorneys' Fees and Costs, Service Payment, PAGA Allocation, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be One Million Three Hundred Ten Thousand Three Hundred Fifty Dollars and No Cents ($1,310,350.00).[53] The employer share of payroll taxes on the wage portion of Class Member settlement payments will be a part of the Net Settlement Amount. Additionally, 75% of the PAGA Allocation, i.e., $187,500, will be distributed to the LWDA, and 25% of the PAGA Allocation, i.e., $62,500, will be distributed to PAGA Members. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, and the PAGA Allocation will be fully paid out to the LWDA and PAGA Members, in accordance with the Settlement Agreement. The amount of each Settlement

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[47] St. John Decl., ¶¶ 11-13 & 16-18.
[48] *Id.*, ¶¶ 6-7.
[49] *Id.*, ¶¶ 11, 13, 14, & 21.
[50] *Id.*, ¶¶ 11-13.
[51] *Id.*, ¶¶ 16-18.
[52] *Id.*, ¶¶ 11, 13, & 21.
[53] *Id.*, ¶ 14.

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Class Member's Settlement Share will be calculated based on his or her Eligible Workweeks and each PAGA Member's Individual PAGA Payment will be calculated based on his or her Eligible Pay Periods.[54] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.[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 formal and informal discovery and exchanged a large volume of documents, data, and information in the course of litigation and in connection with mediation and settlement negotiations.[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 Brian J. St. John, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[58]

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[54] Settlement Agreement, §§ 7.6.2-7.7.2.
[55] St. John Decl., ¶¶ 11, 13, & 21.
[56] *Id*., ¶¶ 11-13 & 18.
[57] *Id.*, ¶ 18.
[58] *Id.*, ¶¶ 11-13 & 16-18.

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

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

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiff 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.

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[59] Settlement Agreement, § 7.1.

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This action involves a class of approximately 1,216 individuals through the time of mediation.[60] 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 non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and 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

[60] St. John Decl., ¶ 9.

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employment practices, policies, and procedures during the time period at issue.[61] 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 pay reporting time pay, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[62]

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.[63] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.[64]

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

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

Class Counsel has litigated the matter for over two years, and was actively preparing the matter for class certification and trial.[65] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant.[66] Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable

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[61] St. John Decl., ¶ 16.
[62] Ibid.
[63] Ibid.
[64] Ibid.
[65] *Id.*, ¶¶ 11-13.
[66] *Id.*, ¶ 12.

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designees. Class Counsel reviewed a large volume of documents and data[67] and also interviewed and obtained information from Plaintiff, Defendant, and other sources, 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.[68] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[69]

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[70]

The Settlement establishes a Maximum Settlement Amount of Two Million Four Hundred Fifty Nine Thousand Dollars and No Cents ($2,459,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., $860,650.00) and an amount not to exceed Eighteen Thousand Dollars and No Cents ($18,000.00) for costs and expenses.[71] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[72]

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.*

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[67] St. John Decl., ¶ 12.
[68] Ibid.
[69] *Id.*, ¶ 11.
[70] *Id.*, ¶¶ 6-7.
[71] Settlement Agreement, § 7.4.
[72] *Id.*, Exh. A.

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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 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.[73]

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Attorneys' Fees and 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 Notice[74] describes the Settlement, the deadlines and procedures to mail a written Objection to the Class Settlement or present the objection orally, at the Final Approval Hearing, and mail an Opt-Out Request for Exclusion from the Class Settlement, and/or mail a dispute regarding Eligible Workweeks, and the date and time set for the Final Approval Hearing.[75]

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

[73] St. John Decl., ¶ 19.
[74] Settlement Agreement, Exh. A.
[75] Ibid.

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coherent manner.[76] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[77] The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payments are calculated and the number of Eligible Workweeks and/or Eligible Pay Periods credited to them.[78]

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. <u>APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR</u>

The Parties have selected Phoenix Settlement Administrators to administer the Settlement.

The Settlement Administrator will mail the Class Notice in English to each Class Member by First-Class U.S. mail.[79] With respect to Class Notices that are returned as undeliverable with a forwarding address on or before the Response Deadline, the Settlement Administrator will re-mail the Class Notice within three(3) business days to the forwarding address.[80] With respect to Class Notices that are returned as undeliverable without a forwarding address on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within three (3) business days.[81] The Response Deadline to submit an Opt-Out Request, written Objection,

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[76] Settlement Agreement, Exh. A. .
[77] Ibid.
[78] Ibid.
[79] *Id.*, § 8.2.2.
[80] *Id.*, § 8.2.3.
[81] Ibid.

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and/or dispute of the Eligible Workweeks and/or Eligible Pay Periods for Class Members/PAGA Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be fifteen (15) calendar days from the date of the re-mailing or the original Forty Five (45) calendar day deadline.[82] The Settlement Administrator will receive and process requests Opt-Out Requests, written Objections, and any disputes regarding Eligible Workweeks or Eligible Pay Periods.[83]

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 Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Service Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[84] The Settlement Administration Costs are currently estimated to be no more than Fifteeen Thousand Dollars and No Cents ($15,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.[85]

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

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 of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.[86]

Within thirty (30) calendar days after the date on which the Court grants preliminary

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[82] Settlement Agreement, §2.42.
[83] *Id.*, §§ 2.27, 2.29, 8.2.6, & 25.
[84] *Id.*, §§ 8.4.3, 7.4, 7.6.3, 8.4.2; St. John Decl., ¶ 15.
[85] Settlement Agreement, §§ 7.5, 8.4.2.
[86] *Id.*, §§ 8.1, 8.2.1, 8.2.2.

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approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; and (4) number of Eligible Workweeks and Eligible Pay Periods (if applicable) (collectively, "Database").[87]

Within fourteen (14) calendar days of receipt of the Database, the Settlement Administrator will perform a search based on the National Change of Address Database, for information to update and correct for any known or identifiable address changes, and will mail the Class Notice to the Class Members via First-Class U.S. Mail.[88] If a Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address.[89] If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.[90] Class Members will have until the applicable Response Deadline to mail an Opt-Out Request, mail a dispute regarding Eligible Workweeks and/or Eligible Pay Periods, and/or to mail a written Objection.[91]

Defendant will fund the Maximum Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Settlement Administrator, within twenty-one (21) calendar days after the Effective Date.[92] Within seven (7) calendar days of the funding of the Maximum Settlement Amount, the Settlement Administrator will issue payments due under the Settlement and approved by the court as follows: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Court-approved Service Payment to Plaintiff; (3) the Court-approved Attorneys' Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; (5) the Individual PAGA Payments to PAGA Members; and (6) the Court-approved Settlement Administration Costs to itself

[87] Settlement Agreement, §§ 2.10, 8.2.1.
[88] *Id*, § 8.2.2.
[89] *Id.*, § 8.2.3.
[90] Ibid.
[91] *Id.*, §§ 2.27, 2.29, & 2.42.
[92] *Id.*, § 2.24, 8.4.1.

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(Settlement Administrator).[93]

The Individual Settlement Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.[94] Checks that are not negotiated within the 180-day period will be cancelled.[95] The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the State Controller's Office, Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Member.[96]

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Jeannette Salazar respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Service Payment in an amount up to Five Thousand Dollars and No Cents ($5,000.00) to Plaintiff Jeannette Salazar.[97] 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 Service Payment 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, including and not limited to, by way of working with Class Counsel to prepare responses to discovery requests that were propounded on her by Defendant.[98] Plaintiff was available whenever Class Counsel needed her and actively

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[93] Settlement Agreement, § 8.4.2.
[94] *Id.*, § 8.4.3.
[95] Ibid.
[96] Ibid.
[97] *Id.*, § 7.3.1.
[98] St. John Decl., ¶ 20; Declaration of Jeannette Salazar in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Salazar Decl."), ¶ 4.

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tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[99] Accordingly, it is appropriate and just for Plaintiff to receive a Service Payment for her services on behalf of the Class, PAGA Members, and the State of California, in addition to his individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Jeannette Salazar as Class Representative; appoint Phoenix as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Service Payment, 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 five (5) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: September 6, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________

Brian J. St. John
Attorneys for Plaintiff

[99] St. John Decl., ¶ 20; Salazar Decl., ¶¶ 3-6.

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