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

JUAN JUAREZ PEREZ, individually, and
on behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

JUPITER, LLC, an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG20084193

Honorable Brad Seligman
Department 23

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
(Selena Matavosian); Declaration of
Proposed Class Representative (Juan
Juarez Perez); Declaration of Defendant
(Dave Rowe); and [Proposed] Order filed
concurrently herewith]

Reservation ID: 938893576524
Date: May 2, 2023
Time: 9:15 a.m.
Department: 23

Complaint Filed: December 17, 2020
FAC Filed: January 12, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on May 2, 2023 at 9:15 a.m. or as soon thereafter as the matter may be heard before the Honorable Brad Seligman in Department 23 of the Superior Court of California for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612, Plaintiff Juan Juarez Perez (“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 1**” to the Declaration of Selena Matavosian, 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, Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff, and Settlement Administration Expenses to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Juan Juarez Perez as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Selena Matavosian of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff, and Settlement Administration Expenses to the Settlement Administrator.

This Motion is made pursuant to Rule 3.76, Rule 3.769, and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Selena Matavosian), Proposed Class Representative (Juan Juarez Perez), and Defendant's Director of Operations (Dave Rowe) 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: April 10, 2023

LAWYERS for JUSTICE, PC

By: _____



Selena Matavosian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Juan Juarez Perez (“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 Jupiter, LLC (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Service Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff³; (3) the Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$105,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00)⁴; (4) the Settlement Administration Expenses to the Settlement Administrator in the amount not to exceed Eleven Thousand Dollars and Zero Cents (\$11,000.00);⁵ and (5) the PAGA Payment of Sixty Thousand Dollars and Zero Cents (\$60,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$45,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$15,000.00) will be distributed to all current and former

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Selena Matavosian (“Matavosian Decl.”), § IV.A. Defendant has represented that for the period December 17, 2016 to January 10, 2022, there were approximately 19,797 Workweeks. If it is determined that the total number of Workweeks actually exceeds 19,797 by more than ten percent (10%) by August 5, 2022, Defendant will have the option to: (a) increase the Gross Settlement Amount on a *pro rata* basis by the number of Workweeks in excess of 10% or (b) shorten the Class Period (and also the PAGA Period) to the last date on which the Workweeks do not exceed 21,777 (“Alternate End Date”). See *id.*, § IV.C.5.

² *Id.*, § I.Q.

³ *Id.*, § I.FF.

⁴ *Id.*, § I.E.

⁵ *Id.*, § I.HH.

hourly-paid and/or non-exempt employees who were employed by Defendant in the State of California at any time during the PAGA Period (“PAGA Group Members”).⁶

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

All current and former hourly-paid and/or non-exempt employees who were employed by Defendant in the State of California at any time during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately three hundred eighty-five (385) individuals and the PAGA Group Members are estimated to consist of approximately one hundred forty-five (145) individuals.⁸

Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement (“Participating Class Members”) will receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) and PAGA Group Members will receive a *pro rata* share of the PAGA Group Member Amount (“Individual PAGA Payment”) on a *pro rata* basis based upon the number of weeks each Class Member was employed by Defendant as a hourly-paid and/or non-exempt employee in California during the Class Period and the number of weeks each PAGA Group Member was employed by Defendant as a hourly-paid and/or non-exempt employee in California during the PAGA Period (“Workweeks”).⁹

The Settlement resolves the Released Class Claims of Plaintiff and the Participating Class Members, and the Released PAGA Claims of the PAGA Group Members and the State of California, against the Released Parties.¹⁰

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⁶ Settlement Agreement, §§ I.V and I.W. “PAGA Period” is defined as the period from November 5, 2019 through August 5, 2022, or the Alternate End Date, if applicable pursuant to Section IV.C.5 of the Settlement Agreement. *See id.*, § I.X.

⁷ Settlement Agreement, § I.B. “Class Period” is defined as the period from December 17, 2016 through August 5, 2022, or the Alternate End Date, if applicable pursuant to Section IV.C.5 of the Settlement Agreement. *See id.*, § I.H.

⁸ Matavosian Decl., ¶ 9.

⁹ Settlement Agreement, §§ I.P, I.R, I.Z, and I.II.

¹⁰ *Id.*, § IV.E.1 and IV.E.2. *See id.* at § I.BB, for the full scope of the “Released Class Claims,” *id.* at § I.CC for the full scope of the “Released PAGA Claims,” and *id.* at § I.DD for the definition of the “Released Parties.”

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

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

6 Defendant is a restaurant business mainly operating its brewhouse-themed restaurant
7 Jupiter. A beer garden focusing on wood-fired pizza and handcrafted beer, Defendant is
8 headquartered in Berkeley, California, which is where the restaurant is located. Plaintiff Juan
9 Juarez Perez is a former employee of Defendant.

10 On November 5, 2020, Plaintiff provided written notice by online submission to the
11 LWDA and certified mail to Defendant of the specific provisions of the California Labor Code
12 and Industrial Welfare Commission Wage Orders that were violated.

13 On December 17, 2020, Plaintiff filed a Class Action Complaint for Damages in the
14 Alameda County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
15 (“Action”).

16 On January 12, 2021, Plaintiff filed a First Amended Class Action Complaint for
17 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
18 2698, *Et Seq.* (“Operative Complaint”).

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

1 On April 7, 2021, Defendant filed an Answer to Plaintiff's Operative Complaint.

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

6 On July 22, 2021, Plaintiff propounded multiple sets of formal written discovery requests
7 on Defendant including Requests for Production of Documents (Set One), Special
8 Interrogatories (Sets One & Two), and Form Interrogatories – General (Set One), and noticed
9 the depositions of persons most knowledgeable at Defendant regarding organizational structure
10 and wage-and-hour practices, along with accompanying requests for production of documents.

11 The Parties have actively litigated the Action since it was commenced on December 17,
12 2020. On February 8, 2022, the Parties participated in a formal, full-day mediation conducted
13 by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and
14 employment matters (the "Mediator"). With the aid of the Mediator's evaluation, the Parties
15 ultimately reached the Settlement described herein to resolve the Action in its entirety.

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

17 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to
18 resolve the Released Class Claims of Plaintiff and the Class Members and Participating Class
19 Members and the Released PAGA Claims of the PAGA Group Members and the State of
20 California with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net
21 Settlement Amount will be calculated by deducting the following amounts from the Gross
22 Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of
23 the Gross Settlement Amount (which is presently \$105,000.00) ("Class Counsel Fees Payment")
24 and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars
25 and Zero Cents (\$30,000.00) to Class Counsel ("Litigation Expenses Payment"); (2) settlement
26 administration costs, which are currently estimated not to exceed Eleven Thousand Dollars and
27 Zero Cents (\$11,000.00) to the Settlement Administrator ("Settlement Administration
28

¹¹ Settlement Agreement, § I.O.

Expenses”); (3) PAGA Payment of Sixty Thousand Dollars and Zero Cents (\$60,000.00), of which seventy five percent (75%) (i.e., \$45,000 out of \$60,000) will be paid to the LWDA (“LWDA Payment”), and twenty five percent (25%) (i.e., \$15,000 out of \$60,000) will be distributed to the PAGA Group Members on a *pro rata* basis (“PAGA Group Member Amount”); and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars And Zero Cents (\$7,500.00) to Plaintiff Juan Juarez Perez (“Service Payment”).¹² The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Settlement Administrator will determine each Individual Settlement Share, in accordance with the Settlement Agreement and as follows:

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will determine the Workweeks of each Class Member worked during the Class Period, divide the Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks during the Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹³
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members during the Class Period to yield the “Final Workweek Value,” and multiply each Participating Class Member’s individual Workweeks during the Class Period by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

The Settlement Administrator will determine each Individual PAGA Payment, in accordance with the Settlement Agreement and as follows: the Settlement Administrator will divide the PAGA Group Member Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the “PAGA Workweek Value,” and multiply each PAGA Group Member’s individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment that he or she is eligible to receive under the PAGA Settlement.¹⁵

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¹² Settlement Agreement, § I.T, IV.A., IV.B.1, IV.B.2, I.V.B.3, and I.V.B.4.

¹³ *Id.*, § IV.C.2.a. “Class Settlement” is defined as the settlement and release of all Released Class Claims. *See id.*, § I.I.

¹⁴ *Id.*, § IV.C.2.b.

¹⁵ *Id.*, § IV.B.3.a. “PAGA Settlement” is defined as the settlement and release of all Released PAGA Claims. *See id.*, § I.Y.

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages (the “Wage Portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and non-wage damages (the “Non-Wage Portion”), which will be reported on an IRS Form 1099.¹⁶ Participating Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the Wage Portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).¹⁷ Defendant will pay the employer’s share of payroll taxes on the Wage Portion of Individual Settlement Shares (“Employer Taxes”) separately and in addition to the Gross Settlement Amount.¹⁸ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.¹⁹

The Individual Settlement Payment and Individual PAGA Payment checks will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, shall be canceled.²⁰ The funds from associated with such canceled checks will be transmitted by the Settlement Administrator to the *cy pres*, Children’s Advocacy Institute, in accordance with California Code of Civil Procedure section 384.²¹ The Parties and their counsel have represented that they do not have any financial interest or otherwise have a relationship with the proposed *cy pres* recipient that creates or could create a conflict of interest.²²

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must send a written request (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked no later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice (“Response Deadline”).²³ A Request for Exclusion must: (1) contain the case name and number of the Action; (2) state the Class Member’s full name, address, telephone

¹⁶ Settlement Agreement, § IV.C.3.a.

¹⁷ *Id.*, §§ I.Q and IV.C.3.a.

¹⁸ *Id.*, §§ I.O and IV.C.3.a.

¹⁹ *Id.*, § IV.C.3.a.

²⁰ *Id.*, § IV.D.11.

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, §§ I.EE and IV.D.3.a.

number, and last four (4) digits of his or her Social Security number; (3) be signed; and (4) clearly state that the Class Member requests to be excluded from the Class Settlement.²⁴ Class Members who submit a valid and timely Request for Exclusion will not be bound by the of the Class Settlement or to portions of the Final Approval Order and Judgment that apply to the Class Settlement.²⁵ However, if a Class Member is a PAGA Group Member, they will be bound to the PAGA Settlement and the portions of the Final Approval Order and Judgment that apply to the PAGA Settlement, irrespective of whether they submit a Request for Exclusion.²⁶

Only Participating Class Members may object to the Class Settlement, either in writing or orally at the Final Approval Hearing.²⁷ Objections in writing must be submitted to the Settlement Administrator (who will provide copies to the Parties' counsel and attach copies to its declaration that is filed with the Court in advance of the Final Approval Hearing) by mail, postmarked no later than the Response Deadline.²⁸ A written objection must: (1) contain the case name and number of the Action; (2) state the Participating Class Member's full name, address, telephone number, and the last four (4) digits of his or her Social Security number; (3) be signed; (4) clearly set forth the grounds for the objection; (5) attach any documentation that the objection is based upon; and (6) identify any counsel representing the Participating Class Member with respect to the objection.²⁹ In addition to submitting a written objection, or alternatively, Participating Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Class Settlement or any aspect thereof.³⁰

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²⁴ Settlement Agreement, § IV.D.3.a.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Id.*, § IV.D.3.b.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

Class Members may dispute the number of Workweeks allocated to them during the Class Period and/or PAGA Period by sending a written dispute (“Workweeks Dispute”) to the Settlement Administrator, by mail, postmarked on or before the Response Deadline.³¹ A Workweeks Dispute must: (1) contain the case name and number of the Action; (2) state the Class Member’s full name, address, telephone number, and last four (4) digits of his or her Social Security number; (3) be signed; (4) clearly state that the Class Member disputes the number of Workweeks credited to him or her and state the number of Workweeks he or she believes is correct; and (d) attach any documentation to support the dispute.³²

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

³¹ Settlement Agreement, § IV.D.3.c.

³² *Ibid.*

1 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement
2 class.

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

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

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

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

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

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

The Parties actively litigated the Action since it was commenced on December 17, 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.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, a detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s Employee Handbook, company policy acknowledgments and forms (including, but not limited to, Defendant’s Handbook/Policy Employee Acknowledgment, Employee Acknowledgement of Receipt of the Meal Periods Policy and Rest Periods Policy, Employee Acknowledgement of Receipt of the Jupiter Timekeeping Policy, First Meal Period Waiver Form, Second Meal Period Waiver Form, and Meal Break Offer Acknowledgment), employment policies, practices, and procedures (including, but not limited to, Defendant’s California Meal Periods Policy and Rest Periods Policy, Overtime Policy, Dress Code Policy, Expenses Policy, and Timekeeping Policy), among other information and documents.³⁵ Class Counsel interviewed Plaintiff and conducted

³³ Matavosian Decl., ¶¶ 11-13.

³⁴ *Id.*, ¶ 12.

³⁵ *Ibid.*

1 investigations to gather facts and to identify potential witnesses.³⁶ Class Counsel propounded
2 multiple sets of formal written discovery requests onto Defendant (specifically, Requests for
3 Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form
4 Interrogatories – General (Set One)) and noticed the depositions of Defendant’s Person Most
5 Knowledgeable designees regarding organizational structure and wage-and-hour practices,
6 along with accompanying requests for production of documents.³⁷ Class Counsel also drafted
7 Plaintiff’s mediation brief and prepared for and attended court proceedings, settlement
8 negotiations, and the mediation, among other tasks.³⁸

9 The Parties engaged in extensive settlement negotiations and participated in a formal,
10 full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in
11 mediating complex labor and employment matters.³⁹ Prior to and during the mediation and
12 settlement discussions, the Parties exchanged class information and engaged in an intensive
13 discussion regarding their evaluations of the case and various aspects of the case, including but
14 not limited to, Defendant’s financial condition, the risks and delays of further litigation, the risks
15 to the Parties of proceeding with class certification and/or representative adjudication, the law
16 relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and
17 PAGA representative claims, as well as the evidence produced and analyzed, and the possibility
18 of appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their
19 negotiations at arm’s length in an adversarial position.⁴¹ Arriving at a settlement that was
20 acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their
21 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
22 they would be able to obtain class certification and prevail at trial.⁴² After conducting
23 investigations, significant formal and informal discovery, extensive settlement negotiations, and
24 with the aid of the Mediator’s evaluation, the Parties have agreed that the matter is well-suited

25 ³⁶ Matavosian Decl., ¶ 12.

26 ³⁷ *Ibid.*

27 ³⁸ *Ibid.*

28 ³⁹ *Id.*, ¶ 11.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Id.*, ¶¶ 11, 16-18.

1 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs
2 and risks to both sides that would attend further litigation.⁴³

3 The Settlement takes into account the strengths and weaknesses of each side's position
4 and the uncertainty of how the case might have concluded at certification and trial.⁴⁴ The Parties
5 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁵
6 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
7 the Class Members' employment with Defendant and performed significant research into the
8 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
9 rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto,
10 as well as facts discovered.⁴⁶ The Parties have reached the Settlement based on this large volume
11 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
12 employment class actions, including significant experience in California wage-and-hour
13 litigation.⁴⁷

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

15 The Settlement, which provides for a Gross Settlement Amount of Three Hundred
16 Thousand Dollars and Zero Cents (\$300,000.00), represents a fair, adequate, and reasonable
17 resolution of the matter.⁴⁸ The Settlement was calculated using the information and data
18 uncovered during litigation, case investigation, as well as the formal and informal exchange of
19 information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any
20 case and, in particular, in the case at issue.⁵⁰ Moreover, considering all of the facts and
21 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
22 for the Class, the PAGA Group Members, and the State of California.⁵¹

23 ///

24 ⁴³ Matavosian Decl., ¶¶ 11, 16-18.

25 ⁴⁴ *Ibid.*

26 ⁴⁵ *Id.*, ¶ 12.

27 ⁴⁶ *Id.*, ¶¶ 11-13 & 16-18.

28 ⁴⁷ *Id.*, ¶¶ 2-7.

⁴⁸ *Id.*, ¶¶ 11, 13, 14, & 75.

⁴⁹ *Id.*, ¶¶ 11-13.

⁵⁰ *Id.*, ¶¶ 16-18.

⁵¹ *Id.*, ¶¶ 11, 13, & 75.

Assuming that the Class Counsel Fees Payment, Litigation Expenses Payment, Service Payment, PAGA Payment, and Settlement Administration Expenses 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 Eighty-Six Thousand Five Hundred Dollars and Zero Cents (\$86,500.00).⁵² Additionally, 75% of the PAGA Payment, which is \$45,000 out of \$60,000, will be distributed to the LWDA (i.e., LWDA Payment) and 25% of the PAGA Payment, which is \$15,000 out of \$60,000, will be distributed to PAGA Group Members (i.e., PAGA Group Member Amount).⁵³ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members and the PAGA Payment will be fully paid out to the LWDA and PAGA Group Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Period and the amount of each PAGA Group Member's Individual PAGA Payment will be calculated based on his or her Workweeks during the PAGA Period.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, the PAGA 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

⁵² Matavosian Decl., ¶ 14.

⁵³ *Ibid.*

⁵⁴ Settlement Agreement, §§ IV.B.3.a. and IV.C.2.

⁵⁵ Matavosian Decl., ¶¶ 11, 13, & 75.

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 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 Selena Matavosian, 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 "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

⁵⁶ Matavosian Decl., ¶¶ 11-13 & 18.

⁵⁷ *Id.*, ¶ 18.

⁵⁸ *Id.*, ¶¶ 11-13, 16-18, & 23-73.

⁵⁹ Settlement Agreement, § III.

means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately three hundred eighty-five (385) individuals.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 hourly-paid and 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).

⁶⁰ Matavosian Decl., ¶ 9.

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through 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.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 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 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 its hourly-paid or non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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⁶¹ Matavosian Decl., ¶ 16.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND LITIGATION EXPENSES PAYMENT

Class Counsel has litigated the matter for over two (2) 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. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed a large volume of documents and data⁶⁶ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁷ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁸

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁹

The Settlement establishes a Gross Settlement Amount of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00), and provides for Class Counsel to apply to the Court for the Class Counsel Fees Payment, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$105,000.00) and the Litigation Expenses Payment in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00) for costs and expenses.⁷⁰ 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

⁶⁵ Matavosian Decl., ¶¶ 11-13.

⁶⁶ *Id.*, ¶ 12.

⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 11.

⁶⁹ *Id.*, ¶¶ 2-7.

⁷⁰ Settlement Agreement, §§ I.E and IV.B.2.

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, the PAGA Group Members, and the State of California, 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 Class Counsel Fees Payment and Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment and Litigation Expenses Payment will be sought, as provided for by the Settlement.⁷¹

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 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

⁷¹ Settlement Agreement, Exh. A.

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.⁷²

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 Class Counsel Fees Payment and Litigation Expenses Payment 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).

⁷² Matavosian Decl., ¶ 19.

The proposed Class Notice⁷³ describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, Request for Exclusion, and/or dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁴

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.⁷⁵ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁶ The proposed Class Notice also apprises the Class Members of, *inter alia*, how Individual Settlement Shares and Individual PAGA Payments are calculated, and the number of Workweeks credited to them.⁷⁷

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

IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. mail.⁷⁸ The Settlement Administrator will receive and process Requests for Exclusions, objections to the Class Settlement, and any Workweeks

⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Id.*, § IV.D.2.b.

Disputes.⁷⁹

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 Individual Settlement Shares; mail the Individual Settlement Payment checks to Participating Class Members and the Individual PAGA Payment checks to the PAGA Group Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment, Litigation Expenses Payment, Service Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁰ The Settlement Administration Expenses are currently estimated not to exceed Eleven Thousand Dollars and Zero Cents (\$11,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸¹

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, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸²

No later than fourteen (14) calendar days after the Court enters an order granting preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with a list of Class Members that Defendant will compile from its records, which will include the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; (4) start and end dates of employment as a hourly-paid or non-

⁷⁹ Settlement Agreement, § IV.D.3.a, IV.D.3.b, and IV.D.3.c.

⁸⁰ *Id.*, § IV.B.4.; Matavosian Decl., ¶ 15.

⁸¹ Settlement Agreement, § IV.B.4.

⁸² *Id.*, § IV.D.2.b.

1 exempt employee for Defendant in California during the Class Period and, if applicable, during
2 the PAGA Period; and (5) such other information and data as necessary for the Settlement
3 Administrator to independently calculate the Workweeks (“Class Data”).⁸³

4 Within fourteen (14) calendar days of receipt of the Class Data, the Settlement
5 Administrator will search the U.S. Postal Service’s National Change of Address database to
6 attempt to locate updated mailing addresses for Class Member (and use the updated mailing
7 addresses that are located, in lieu of the mailing address information provided by Defendant in
8 the Class Data) and mail the Class Notice in English and Spanish to the Class Members via
9 First-Class U.S. Mail.⁸⁴ If a Class Notice is returned to the Settlement Administrator as
10 undeliverable, and without a forwarding address, on or before the Response Deadline, the
11 Settlement Administrator will promptly, within five (5) calendar days of receipt, search for a
12 more current address by way of skip trace and re-mail the Class Notice to the alternate address.⁸⁵
13 If a Class Notice is returned as undeliverable, and with a forwarding address, on or before the
14 Response Deadline, the Settlement Administrator will promptly, within five (5) calendar days
15 of receipt, re-mail the Class Notice to the forwarding address.⁸⁶ Class Members will have until
16 the applicable Response Deadline to submit a Request for Exclusion, Workweeks Dispute,
17 and/or objection to the Class Settlement.⁸⁷ In the event that a Class Notice is re-mailed to a
18 Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15)
19 calendar days from the original deadline.⁸⁸

20 Defendant shall fund the Gross Settlement Amount and the amounts necessary to pay its
21 Employer Taxes via two (2) installment payments, each of which shall be in the amount of one-
22 half of the total Gross Settlement Amount (i.e., each payment shall be \$150,000.00) plus
23 Employer Taxes which must be paid at the time of the first installment.⁸⁹ Within thirty (30)
24 calendar days of the Effective Date, Defendant shall provide the Settlement Administrator with

25 ⁸³ Settlement Agreement, §§ I.F. and IV.D.2.b.

26 ⁸⁴ *Id.*, § IV.D.2.b.

27 ⁸⁵ *Id.*, § IV.D.2.c.

28 ⁸⁶ *Ibid.*

⁸⁷ *Id.*, §§ IV.D.3.a, IV.D.3.b, and IV.D.3.c.

⁸⁸ *Id.*, § IV.D.3.d.

⁸⁹ *Id.*, § IV.D.9.a.

the first installment payment of one-half of the Gross Settlement Amount (i.e., \$150,000.00) (“First Installment”).⁹⁰ No later than twelve (12) months after the Effective Date, Defendant shall provide the Settlement Administrator with the second installment payment of the remaining one-half of the Gross Settlement Amount (i.e., \$150,000.00) (“Second Installment”).⁹¹ Within seven (7) calendar days of the funding of the First Installment and Employer Taxes, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Participating Class Members; (2) the Court-approved Service Payment to Plaintiff; (3) the Individual PAGA Payments to PAGA Group Members; and (4) to the extent funds remain, the LWDA Payment to the LWDA.⁹² Within seven (7) calendar days of the funding of the Second Installment, the Settlement Administrator will distribute: (1) any remaining portion of the LWDA payment to the LWDA to the extent the payment was not fully made from the First Installment; (2) Settlement Administration Expenses to the Settlement Administrator; and (3) Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel.⁹³

The Individual Settlement Payment and Individual PAGA Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance, and thereafter, shall be canceled.⁹⁴ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the Children’s Advocacy Institute, in accordance with California Code of Civil Procedure section 384.⁹⁵

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⁹⁰ Settlement Agreement, § IV.D.9.b.

⁹¹ *Ibid.*

⁹² *Id.*, § IV.D.10.a.i.

⁹³ *Id.*, § IV.D.10.a.ii.

⁹⁴ *Id.*, § IV.D.11.

⁹⁵ *Ibid.*

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR SERVICE PAYMENT

Plaintiff Juan Juarez Perez respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Service Payment in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Juan Juarez Perez.⁹⁶ 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.⁹⁷ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁸ Accordingly, it is appropriate and just for Plaintiff to receive a Service Payment, in addition to his Individual Settlement Payment and Individual PAGA Payment, for his services on behalf of the Class and the State of California.

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 Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Selena Matavosian of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Juan

⁹⁶ Settlement Agreement, § IV.B.1.

⁹⁷ Matavosian Decl., ¶ 20; Declaration of Juan Juarez Perez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Perez Decl."), ¶¶ 3-4.

⁹⁸ Matavosian Decl., ¶ 20; Perez Decl., ¶¶ 3-6.

Juarez Perez as the Class Representative; appoint Phoenix Settlement Administrators as the Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Litigation Expenses Payment, Service Payment, PAGA Payment, and Settlement Administration Expenses; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: April 10, 2023

LAWYERS for JUSTICE, PC

By:



Selena Matavosian
Attorneys for Plaintiff