Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Vartan Madoyan (SBN 279015)
LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CHRISTINA COCOTIS-ANDRADE, 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; NYCOLE TORRES, individually, and on behalf of members of the general public similarly situated; Plaintiffs, v. CARL ZEISS MEDITEC, INC., an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No.: RG18927500 Honorable Tara Desautels Department 23 **CLASS ACTION** **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [Declaration of Class Counsel (Vartan Madoyan); Declarations of Proposed Class Representatives (Christina Cocotis-Andrade and Nycole Torres); and [Proposed] Order filed concurrently herewith] Hearing Date: August 1, 2024 Time: 10:00 a.m. Department: 23 Reservation ID no: A-18927500-004 Complaint Filed: November 5, 2018 Trial Date: None Set

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale. California 91203

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

PLEASE TAKE NOTICE that on August 1, 2024 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Tara Desautels in Department 23 of the Superior Court of California for the County of Alameda, located at Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, California 94612, Plaintiffs Christina Cocotis-Andrade and Nycole Torres ("Plaintiffs" or "Class Representatives") will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Vartan Madoyan, 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 Attorney Fees and Expenses, Incentive Awards to Plaintiffs, and Administrative Expenses to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Christina Cocotis-Andrade and Nycole Torres as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Proposed Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action 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

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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 Attorney Fees and Expenses, Incentive Awards to Plaintiffs, and Administrative Expenses to Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement of Release, proposed Class Notice, the Declarations of Proposed Class Counsel (Vartan Madoyan) and Proposed Class Representatives (Christina Cocotis-Andrade and Nycole Torres) 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: July 10, 2024

LAWYERS *for* JUSTICE, PC

By: Vartan S. Madoyan
Vartan Madoyan
Attorneys for Plaintiffs

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale. California 91203

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Christina Cocotis-Andrade and Nycole Torres ("Plaintiffs" or "Class Representatives") seek preliminary approval of the Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of the Class Members and the State of California with respect to the PAGA Group, on the one hand, and Defendant Carl Zeiss Meditec, Inc., ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the "Parties") have agreed to settle this lawsuit for a gross settlement amount of One Million Seven Hundred Ten Thousand Dollars ($1,710,000) ("Gross Settlement Amount").[1] The Gross Settlement Amount includes the following: (1) Individual Settlement Amounts to Qualified Class Members which will be distributed from the Net Settlement Amount;[2] (2) the Incentive Awards of Ten Thousand Dollars ($10,0000) each to Plaintiffs Christina Cocotis-Andrade and Nycole Torres;[3] (3) the Class Counsel Attorney Fees and Expenses, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or $598,500, and reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars ($35,000);[4] (4) the Administrative Expenses to the Settlement Administrator in the amount currently estimated not to exceed Ten Thousand Dollars ($10,000);[5] (5) PAGA Payment of One Hundred Fifty Thousand Dollars ($150,000) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $112,500) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $37,500) will be distributed to all current and former hourly-paid or non-exempt employees employed by Defendant or its wholly-owned subsidiary Carl Zeiss Meditec USA, Inc., within

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Vartan Madoyan ("Madoyan Decl."), ¶¶ I.18.
[2] *Id.*, ¶ I.21.
[3] *Id.*, ¶ I.20.
[4] *Id.*, ¶ I.4.
[5] *Id.*, ¶ I.2.

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the State of California at any time during the PAGA Period ("PAGA Group") on a *pro rata* basis, based on their pay periods or workweeks during the PAGA Period.[6]

Plaintiffs also seek to provisionally certify the following Class for settlement purposes, which Defendant does not oppose: "All current and former hourly-paid or non-exempt employees of Defendant or its wholly-own subsidiary Carl Zeiss Meditec USA, Inc., in California employed during the Class Period ("Settlement Class")."[7]

Based on information provided by Defendant, the Class is estimated to consist of approximately 492 individuals who worked a total of 84,341 workweeks during the Class Period, and the PAGA Group worked a total of 29,687 workweeks and 14,928 pay periods during the PAGA Period.[8]

Class Members who do not timely request exclusion from the Class Settlement ("Qualified Class Member") will receive a share of the Net Settlement Amount ("Individual Settlement Amount") on a *pro rata* basis based upon based on the proportional number of weeks worked by each Class Member during the Class Period.[9]

Each member of the PAGA Group will receive a share of the 25% of the PAGA Payment on a *pro rata* basis based the number of pay periods worked by each member of PAGA Group during the PAGA Period.[10]

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[6] Settlement Agreement, ¶¶ I.26, I.27, & III.4. "PAGA Period" is defined as the period from December 21, 2019, through Preliminary Approval, unless shortened if the Escalator Provision is triggered. *See id*., ¶ I.22. Pursuant to meet and confer discussions between Class Counsel and Defense Counsel, Defendant represents that the PAGA Period ends on July 21, 2023 pursuant to operation of the Escalator Provision.

[7] *Id*., ¶ I.37. "Class Period" is defined as period from November 5, 2014, through the date of Preliminary Approval, unless shortened if the Escalator Provision is triggered. See i*d*., ¶ I.7. "Class Member" or "Class Members" shall mean any person who is prospective member of the Settlement Class. See *id*., ¶ I.5. Pursuant to meet and confer discussions between Class Counsel and Defense Counsel, Defendant represents that the Class Period ends on July 21, 2023 pursuant to operation of the Escalator Provision

[8] Madoyan Decl., ¶ 9.

[9] Settlement Agreement, ¶ III.D.2.

[10] *Id*., ¶¶ III.D.3.

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The Settlement resolves the Released Claims of Plaintiffs and Qualified Class Members, and the PAGA claims included within the definition of Released Claims of Plaintiffs, the State of California and the PAGA Group, against the Released Parties.[11]

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiffs also move 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.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant was founded in 1995 and is headquartered Jena, Germany. Defendant is a subsidiary of Carl Zeiss AG. It engages in the development, manufacturing, and marketing of medical devices including tools for eye examinations and medical lasers. Additionally, Defendant offers solutions for neurosurgery, dentistry, gynecology, and oncology. Defendant's products are commonly used by ophthalmologists and optometrists. Within California, Defendant operates two facilities in Dublin, which is the company's largest medical technology site outside of Germany. Plaintiffs are former employees of Defendant.

On November 5, 2018, the putative class action entitled *Lori Coleman, et al. v. Carl Zeiss Meditec, Inc.*, Superior Court of the State of California, County of Alameda, Case No. RG18972500 ("Coleman Class Case") was filed by former employee Lori Coleman, alleging that Defendant violated the Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and California Business & Professions Code section 17200, *et seq.* On December 27, 2018, Lori Coleman filed a First Amended Complaint. On December 22, 2021, Lori Coleman filed a Second Amended Complaint, adding Christina Cocotis-Andrade as a named plaintiff in the Coleman Class Case.

On December 21, 2020, Plaintiff Cocotis-Andrade provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the

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[11] See *id.* at ¶ I.32 for the full scope of the "Released Claims," and *id.* at ¶ I.33, for the definition of the "Released Parties."

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California Labor Code that were alleged to be violated (the "LWDA Notice"), thereby initiating LWDA Case No. LWDA-CM-816131-20.

On February 25, 2021, Plaintiff Cocotis-Andrade filed the case entitled *Christina Cocotis-Andrade v. Carl Zeiss Meditec, Inc.*, Superior Court of the State of California, County of Alameda, Case No. RG21089921 ("Cocotis-Andrade PAGA Case"), alleging claims under PAGA.

On December 6, 2022, Plaintiff Nycole Torres filed the case entitled *Nycole Torres v. Carl Zeiss Meditec, Inc.*, Superior Court of the State of California, County of Alameda, Case No. 22CV023237 ("Torres Declaratory Relief Action"), alleging that after the Coleman Class Case was filed with the Court, Defendant solicited and presented its current and former employees with uniform, boilerplate settlement and release agreements.

Since filing the Coleman Class Case, Lori Coleman was dismissed as a Plaintiff in the Coleman Class Case. The operative Third Amended Complaint was filed in the Coleman Class Case on May 3, 2024 by Plaintiffs, and Plaintiffs have dismissed without prejudice their separately filed cases, i.e. the Cocotis-Andrade PAGA Case and the Torres Declaratory Relief Action.

A Motion for Class Certification was filed on January 14, 2022. On March 9, 2022, the hearing for the Motion for Class Certification was continued from March 11, 2022, to May 24, 2022. On May 2, 2022, the Court granted a stipulation staying all proceedings and discovery in the matter and vacating all pending deadlines related to Motion for Class Certification due to the December 19, 2022 scheduled mediation.

Plaintiffs' core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and the PAGA Group of, *inter alia*, failing to pay all overtime, minimum, and regular wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages upon termination of employment, failing to pay wages due as agreed upon under statute or contract, failing to provide compliant wage statements, and failing to reimburse necessary

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business-related expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq*.). Plaintiffs contend that they, the Class Members, and the PAGA Group are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On August 7, 2019, Lori Coleman propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Sets One and Two); and Form Interrogatories, (Set One), on Defendant. Lori Coleman also noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant and accompany request for product of documents. Thereafter, on September 24, 2020, Defendant responded to Lori Coleman's discovery requests and supplemented those requests on December 14, 2020. Defendant further supplemented those responses on April 6, 2021, May 12, 2021, and June 14, 2021.

On July 13, 2021, Lori Coleman propounded additional sets of discovery including Requests for Production of Documents, (Set Two); Requests for Admission, (Set One); Special Interrogatories, (Set Three); and Form Interrogatories, (Set Two), on Defendant. Thereafter, on September 13, 2021, Defendant responded to Lori Coleman's discovery requests and supplemented those requests on December 23, 2021.

On June 16, 2021, Defendant propounded multiple sets of discovery, including Requests for Production of Documents (Set One) and Special Interrogatories (Set One), on Lori Coleman and noticed the deposition of Lori Coleman and accompanying the request for the product of documents.

Thereafter, on August 13, 2021, Lori Coleman responded to Defendant's discovery requests and supplemented those responses on October 1, 2021.

On December 29, 2021, Defendant propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Requests for Admissions, (Set One); Special

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Interrogatories, (Set One) and Form Interrogatories, (Set One) on Plaintiff Cocotis-Andrade and noticed the deposition of Plaintiff Cocotis-Andrade. Thereafter, on February 1, 2022, Plaintiff Cocotis-Andrade responded to Defendant's discovery requests.

Further, Defendant subpoenaed and took the deposition of a number of Plaintiff's declarants, and Defendant took the deposition of Plaintiff Cocotis-Andrade. Plaintiff also took the deposition of Defendant's designated person most knowledgeable.

The Parties have actively litigated the Coleman Class Case, Cocotis-Andrade PAGA Case, and Torres Declaratory Relief Action (collectively, the "Action") since they were commenced. The Parties participated in a formal, full-day mediation conducted by Gig Kyriacou, Esq, a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a gross settlement amount of One Million Seven Hundred Ten Thousand Dollars ($1,710,000) (i.e., the Gross Settlement Amount) to resolve the Released Claims of Plaintiffs and the Class Members who do not submit a timely request for exclusion from the Class Settlement (i.e., Qualified Class Members) with respect to the Released Parties, and to resolve the PAGA claims included within the definition of Released Claims of Plaintiffs, the State of California, and the PAGA Group 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 Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed Five Hundred Ninety-Eight Thousand Five Hundred Dollars ($598,500.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars ($35,000) to Class Counsel (collectively referred to as the "Class Counsel Attorney Fees and Expenses"); (2) Administrative Expenses, which are currently estimated not to exceed Ten Thousand Dollars ($10,000) to the

[12] Settlement Agreement, ¶¶ I.32 & III.G.1.

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Settlement Administrator ("Administrative Expenses"); (3) PAGA Payment of One Hundred Fifty Thousand Dollars ($150,000), of which seventy-five percent (75%) (i.e., $112,500) will be distributed to the LWDA and twenty-five percent (25%) (i.e., $37,500) will be distributed to the PAGA Group on a *pro rata* basis; and (4) payment in the amount of up to Ten Thousand Dollars ($10,000.00) each to Plaintiffs Christina Cocotis-Andrade and Nycole Torres ("Incentive Awards").[13] The Parties have agreed to retain Phoenix Settlement Administrators ("Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Qualified Class Member's share of the available Net Settlement Amount (i.e., Individual Settlement Amount).[14] The portion of the Net Settlement Amount shall be distributed pro rata based on the proportional number of weeks worked by each Class Member during the Class Period.

The Settlement Administrator will determine each member of the PAGA Group's share of twenty-five (25%) of the PAGA Payment.[15] The portion of the PAGA payment allocated to the PAGA Group shall be distributed to the PAGA Group based on the pro rata number of pay periods worked by each member of PAGA Group during the PAGA Period.[16]

Each Individual Settlement Amount will be allocated as thirty-three percent (33%) wages, which will be reported on an IRS Form W-2; and the remaining sixty-seven percent (67%) penalties and interest, which will be reported on an IRS Form 1099.[17] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Amounts, and issue checks to Qualified Class Members for their Individual Settlement Amounts, net of these taxes and withholdings).[18] Defendant will separately pay the employer's share of payroll taxes (e.g., Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is owed on the

[13] *Id.*, ¶ I.23.; see also *id.,* ¶¶ I.2, I.4, I.20, & I.27.
[14] *Id.*, ¶ III.D.2.
[15] *Id.*, ¶ III.D.3.
[16] Ibid.
[17] Settlement Agreement, ¶ III.A.5.
[18] Ibid.

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portion of any Qualified Class Member's Individual Settlement Amount that constitutes wages ("Employer Taxes") separately and in addition to the Gross Settlement Amount .[19]

Each individual settlement payment check issued to Qualified Class Members and PAGA Group members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.[20] Any funds associated with checks that have not been cashed within the 180-day period will be cancelled.[21] 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 to the State of California State Controller's Office Unclaimed Property Fund, pursuant to Code of Civil Procedure section 384, in the Qualified Class Members' and/or PAGA Group members' name to be held as unclaimed property for that individual.[22]

Class Members who wish to be excluded from the Class Settlement (i.e., Opt Out) must submit a letter or postcard to the Settlement Administrator, indicating that they want to exclude themselves ("Opt Out request").[23] To be timely, the Class Member must submit a written Opt Out request 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 ("Response Deadline").[24] If a Class Notice is returned as undeliverable, the Response Deadline will be extended by fifteen (15) days following the date on which the Class Notice is re-mailed to the Class Members, if the Response Deadline would have otherwise passed prior to fifteen (15) days from the date of the mailing of the second Class Notice.[25]

An Opt Out request must state the Class Member's name, address, telephone number, signature, and should state something to the effect of "I wish to be excluded from the settlement class in *Lori Coleman, et al. v. Carl Zeiss Meditec, Inc.*, lawsuit. I understand that if I ask to be

[19] *Id.*, ¶ I.16.
[20] *Id.*, ¶ III.D.8.
[21] Ibid.
[22] *Id.*, ¶ III.D.8.
[23] *Id.*, ¶ III.C.3.
[24] *Id.*, ¶ I.35.
[25] Settlement Agreement, ¶ I.35.

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excluded from the settlement class, I will not receive any money from the class settlement of this lawsuit and will not be releasing any claims I might have."[26]

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.[27] All members of the PAGA Group will be bound by the release of the PAGA claims included within the definition of Released Claims and will be issued their share of the PAGA Payment, irrespective of whether they submit an Opt Out Request.[28]

Only Class Members who do not exclude themselves from the Settlement (i.e., Qualified Class Members) have standing to object to the Class Settlement.[29] Qualified Class Members who wish to object to the Class Settlement may submit a written objection to the Settlement Administrator no later than the Response Deadline, or may appear at the Final Approval and Fairness Hearing, in person or through an attorney, regardless of whether they submitted an objection to the Settlement Administrator.[30] The written objection should include the case name and number and may set forth, in clear and concise terms, a statement of the reasons why the objector believes that the Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why the Class Settlement should not be approved, including the legal and factual arguments supporting the objection.[31]

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing, faxing, or emailing the Settlement Administrator on or before the Response Deadline.[32] To overcome that presumption Defendant's employment and payroll records are deemed to be full, complete, and accurate, any Class Member objecting to the accuracy of the number of Workweeks or amount of the Individual Settlement Amount must

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[26] *Id.*, ¶ III.C.3.
[27] Ibid.
[28] Ibid.
[29] *Id.*, ¶ III.C.4.
[30] Ibid.
[31] Ibid.
[32] Settlement Agreement, ¶ D.9.

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submit documentary evidence, such as pay stubs or other written employment records, to the Settlement Administrator ("Workweeks Dispute").[33]

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

[33] Ibid.

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and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

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

V. <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 plaintiffs' 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 of showing 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

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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 have actively litigated the claims since litigation was commenced. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.[34]

Prior to reaching the Settlement, 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 thousands of pages of documents and data produced by Defendant.[35] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiffs, a detailed sampling of Class Members' time and pay data, job descriptions, internal memorandum, multiple iterations of Defendant's Employee Handbook, training materials, Settlement Agreement and Releases presented by Defendant to Defendant's current employees, company policy acknowledgements (including, but not limited to, Employee Handbook Acknowledgment, Sexual Harassment Prevention Policy Acknowledgment, Acknowledgment of Compliance), operations and employment practices, forms (including, but not limited to, Meal Period Form), procedures, and procedure documents, policies (including, but not limited to, Wage and Hour Policy, s, Variable Compensation System, Time and Pay Policies), among other information and documents.[36] Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.[37] Class Counsel propounded multiple sets of formal written discovery requests on Defendant, noticed and took the deposition of Defendant's Person Most

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[34] Madoyan Decl., ¶¶ 11-13.
[35] *Id.*, ¶ 12.
[36] Ibid.
[37] Ibid.

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Knowledgeable designees regarding organizational structure and job duties.[38] Class Counsel responded to Defendant's formal written discovery requests and attended and defended multiple depositions, including that of Plaintiff Cocotis-Andrade. Class Counsel also filed a motion for class certification. 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.[39] Class Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[40]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Gig Kyriacou, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[41] In the course of litigation and in connection with mediation and settlement discussions, the Parties exchanged class and aggrieved employee 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.[42] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[43] 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 Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[44] After conducting investigations, 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-

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[38] Madoyan Decl., ¶ 12.
[39] Ibid.
[40] Ibid.
[41] *Id.*, ¶ 11.
[42] Ibid.
[43] Ibid.
[44] Ibid.

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suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.[45]

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.[46] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[47] Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' 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, Plaintiffs' claims, and damages, and Defendant's defenses thereto, as well as facts discovered.[48] 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.[49]

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

The Settlement, which provides for a Gross Settlement Amount of One Million Seven Hundred Ten Thousand Dollars ($1,710,000), represents a fair, adequate, and reasonable resolution of the matter.[50] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[51] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[52] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, PAGA Group, and the State of California.[53]

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[45] Madoyan Decl., ¶ 11.
[46] *Id.*, ¶ 17-18.
[47] *Id.*, ¶ 12.
[48] *Id.*, ¶¶ 11-13 & 16-18.
[49] *Id.*, ¶¶ 2-7.
[50] *Id.*, ¶¶ 11, 13, 14, & 21.
[51] *Id.*, ¶¶ 11-13.
[52] *Id.*, ¶¶ 16-18.
[53] *Id.*, ¶¶ 11, 13, & 21.

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Assuming that the Class Counsel Attorney Fees and Expenses, Incentive Award, PAGA Payment, and Administrative 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 to Class Members that is currently estimated to be Eight Hundred Ninety-Six Thousand Five Hundred Dollars ($896,500).[54] Additionally, as to PAGA, 75% of the PAGA Payment, (i.e., $112,500), will be distributed to the LWDA, and 25% of the PAGA Payment, (i.e., $37,500), will be distributed to the PAGA Group. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Qualified Class Members, and the PAGA Payment will be fully paid out to the LWDA and the PAGA Group, in accordance with the Settlement Agreement. The amount of each Qualified Class Member's Individuals Settlement Amount will be calculated based on his or her weeks worked for Defendants during the Class Period and each PAGA Group Member's portion of 25% of the PAGA Payment will be calculated based on his or her pay periods worked for Defendants during the PAGA Period.[55] 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.[56] 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.

[54] Settlement Agreement, ¶ 14.
[55] *Id.*, ¶¶ III.A.3 & III.A.4.
[56] Madoyan Decl., ¶¶ 11, 13, & 21.

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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.[57] 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.[58] As outlined in the Declaration of Vartan Madoyan, Class Counsel performed an extensive analysis of the claims pursuant to *Kullar* prior to entering into the Settlement.[59]

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.[60] 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 so 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, Plaintiffs' 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

[57] Madoyan Decl., ¶¶ 11-13 & 18.
[58] *Id.*, ¶ 18.
[59] *Id.*, ¶¶ 11-13 & 16-18.
[60] Settlement Agreement, ¶ II.

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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.

Based on information provided by Defendant, the Class is estimated to consist of approximately 492 individuals.[61] This class is therefore 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 of hourly-paid and non-exempt employees employed 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

[61] Madoyan Decl., ¶ 9.

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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, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[62] Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all overtime, minimum, and regular wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages upon termination of employment, failing to pay wages due as agreed upon under statute or contract, failing to provide compliant wage statements, and failing to reimburse necessary business-related expenses.[63]

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.[64] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.[65]

Plaintiffs maintain that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied

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[62] Madoyan Decl., ¶ 16.
[63] Ibid.
[64] Ibid.
[65] Ibid.

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across their hourly-paid and non-exempt employees in California employed during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL ATTORNEY FEES AND EXPENSES

Class Counsel has actively litigated the settled matters since they were commenced and was actively preparing the matter for class certification and trial.[66] 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.[67] Class Counsel noticed and took the deposition of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties. Class Counsel responded to Defendant's formal written discovery requests and attended and defended multiple depositions, including that of Plaintiff Cocotis-Andrade. Class Counsel also filed a motion for class certification. Class Counsel reviewed a large volume of documents and data[68] and also interviewed and obtained information from Plaintiffs, 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.[69] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[70]

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[71]

The Settlement establishes a Gross Settlement Amount One Million Seven Hundred Ten Thousand Dollars ($1,710,000), and provides for Class Counsel to apply to the Court for Class Counsel Attorney Fees and Expenses, consisting of attorneys' fees in an amount not to exceed

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[66] Madoyan Decl., ¶¶ 11-13.
[67] *Id.*, ¶ 12.
[68] Ibid.
[69] Ibid.
[70] *Id.*, ¶ 11.
[71] *Id.*, ¶¶ 6-7.

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thirty-five percent (35%) of the Gross Settlement Amount (i.e., $598,500) and an amount not to exceed Thirty-Five Thousand Dollars ($35,000.00) for costs and expenses.[72] 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 Class Counsel Attorney Fees and Expenses, and that an award of the Class Counsel Attorney Fees and Expenses will be sought, as provided for by the Settlement.[73]

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.

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[72] Settlement Agreement, ¶ I.4.
[73] Attached as **"EXHIBIT A"** to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement Agreement; also included as "Attachment 1" of **EXHIBIT 1** – Settlement Agreement and Release;

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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.[74]

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

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[74] Madoyan Decl., ¶ 19.

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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[75] describes the Settlement, the deadlines and procedures to submit a written objection to the Class Settlement or present the objection orally, at the Final Approval Hearing, and submit an Opt Out request from the Class Settlement, and/or submit a Workweeks Dispute, and the date and time set for the Final Approval Hearing.[76]

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.[77] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[78] The proposed Class Notice also apprises the Class Members and the PAGA Group of, *inter alia*, how their Individual Settlement Amount and their share of the PAGA Payment are calculated and the number of weeks worked and/or pay periods credited to them.[79]

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

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[75] Attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement Agreement; also included as "Attachment 1" of **EXHIBIT 1** – Settlement Agreement and Release.
[76] Ibid.
[77] Ibid.
[78] Ibid.
[79] Ibid.

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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 Settlement Administrators ("Settlement Administrator") to administer the Settlement. The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. Mail.[80] The Settlement Administrator will receive and process Opt Out requests, written objections, and any Workweeks Disputes.[81]

The Settlement Administrator will mail the Class Notice to Class Members; post notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; handle inquiries from Class Members concerning the Class Notice; determine Individual Settlement Amounts; determine individual payment to members of the PAGA Group; maintain the Settlement funds in an appropriate interest-bearing account; prepare, administer, and distribute individual payments to members of PAGA Group; distribute the portion of the PAGA Payment payable to the LWDA, issue a final report, and perform such other duties as the Parties may direct.[82] The Administrative Expenses are currently estimated to be no more than Ten Thousand Dollars ($10,000) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[83]

Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Settlement Administrators 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.

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[80] Settlement Agreement., ¶ III.C.2.
[81] *Id.*, ¶ III.C.1.
[82] *Id.*, ¶ III.C.1; Madoyan Decl., ¶ 15.
[83] *Id.*, ¶ III.C.1.; Madoyan Dec., ¶ 15.

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410 West Arden Avenue, Suite 203
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410 West Arden Avenue, Suite 203
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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.[84]

Within thirty (30) days of Preliminary Approval, Defendant will provide the Settlement Administrator with the following information: (1) the full name, and last known address and full social security number of all Class Members; and (2) the information necessary to determine the estimated settlement allocation of each Class Member and PAGA Group member, including without limitation, the total number of workweeks worked by each Class Member during the Class Period and the total number of pay periods worked by each member of PAGA Group during the PAGA Period (the "Database").[85] The Parties agree that the workweeks allocated to each Class Member, and pay periods allocated to each PAGA Group member, may be determined using the best information reasonably available, including timekeeping and/or payroll records, as well as reasonable extrapolation from available information, including dates of employment, and by calculating the number of pay periods by dividing the number of workweeks by two and rounding up to the nearest whole pay period.[86]

Within forty-five (45) days of Preliminary Approval, the Settlement Administrator will send the Court approved Class Notice to the Class Members and PAGA Group via First-Class U.S. Mail at their last known addresses.[87] In the event that, prior to the Response Deadline, any Class Notice mailed to a Class Member is returned as having been undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Members, and a second Class Notice will be sent to any new or different address obtained.[88] Class Members will have until the applicable Response

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[84] *Id.*, ¶¶ III.C.1 & III.C.2.
[85] Settlement Agreement, ¶ III.C.2.
[86] Ibid.
[87] *Id.*, ¶ III.C.2.
[88] Id., ¶ III.C.3.

Deadline to submit a requests for exclusion, objection, or Workweeks Dispute.[89] If a Class Notice is returned as undeliverable, the Response Deadline (and, accordingly, the deadline to submit a request for exclusion or objection to Class Settlement) will be extended by fifteen (15) days following the date on which the Class Notice is re-mailed to the Class Members, if the Response Deadline would have otherwise passed prior to fifteen (15) days from the date of the mailing of the second Class Notice.[90]

Within fourteen (14) days after the Effective Date,[91] Defendant shall transfer to the Settlement Administrator an amount equal to the Gross Settlement Amount and the Employer Taxes.[92]

Within twenty-one (21) days of the funding of the Effective Date, the Settlement Administrator will issue payments due under the Settlement and approved by the court as follows: (1) the Individual Settlement Amounts to Qualified Class Members; (2) the Court-approved Incentive Awards to Plaintiffs; (3) the Court-approved Class Counsel Attorney Fees and Expenses to Class Counsel; (4) the LWDA portion of the PAGA Payment to the LWDA; (5) each PAGA Group member's portion of the PAGA Payment to PAGA Group; and (6) the Court-approved Administrative Expenses to itself.[93]

If a distributed check is returned to the Settlement Administrator as undelivered, it shall be re-mailed to the forwarding address affixed thereto.[94] If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a skip trace, to obtain an updated mailing address within five (5) business days of receiving the returned check.[95] If an updated mailing address is identified, the Settlement Administrator shall resend the check to the Qualified Class Member and/or PAGA Group member within three (3) business days of obtaining the updated address.[96] If any Qualified Class Member's or PAGA Group

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[89] *Id.*, ¶¶ I.35 & III.D.9.
[90] Ibid.
[91] *Id.,* ¶ 14.
[92] *Id.*, ¶ III.B.2.
[93] *Id.*, ¶¶ III.D.4 – III.D.7.
[94] *Id.*, III.D.7.
[95] Ibid.
[96] Ibid.

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member's individual payment check is not cashed within one hundred twenty (120) calendar days of its initial issuance to the Qualified Class Member or PAGA Group member, the Settlement Administrator will send the Qualified Class Member or PAGA Group member a postcard, dated one hundred twenty (120) days from the initial mailing, informing them that, unless the check is cashed within sixty (60) days of the date of this postcard, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.[97]

The Individual Settlement Amount checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.[98] Checks that are not negotiated within the 180-day period will be cancelled.[99] The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to State of California State Controller's Office Unclaimed Property Fund, pursuant to Code of Civil Procedure section 384, in the Qualified Class Members' and/or PAGA Group members' name to be held as unclaimed property for that individual.[100]

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR INCENTIVE AWARDS

Plaintiffs Christina Cocotis-Andrade and Nycole Torres respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Incentive Awards in an amount up to Ten Thousand Dollars ($10,000) each to Plaintiffs.[101] 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

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[97] Ibid.
[98] Settlement Agreement, ¶ III.D.8.
[99] Ibid.
[100] Ibid.
[101] *Id.*, ¶ I.20.

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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 Incentive Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[102] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[103] For example, Plaintiff Cocotis-Andrade reviewed and responded to requests for production of documents, prepared for and attended a full-day of deposition, and reviewed her transcript thereafter.[104] Accordingly, it is appropriate and just for Plaintiffs to receive Incentive Awards for their services on behalf of the Class, PAGA Group, and the State of California, in addition to their individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Christina Cocotis-Andrade and Nycole Torres as Class Representatives; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Class Counsel Attorney Fees and Expenses, Incentive Awards, PAGA Payment, and Administrative 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

[102] Madoyan Decl., ¶ 20; Declaration of Christina Cocotis-Andrade in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Cocotis-Andrade Decl."), ¶ 4; and Declaration of Nycole Torres in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Torres Decl."), ¶ 4.
[103] Madoyan Decl., ¶ 20; Cocotis-Andrade Decl., ¶¶ 3-7; Torres Decl., ¶¶ 3-6.
[104] Madoyan Decl., ¶ 20; Cocotis-Andrade Decl., ¶¶ 4-5.

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a Final Approval Hearing to take place in approximately five (5) months; and permit the filing of a memorandum that exceeds the page limit.

Respectfully Submitted,

Dated: July 10, 2024

LAWYERS *for* JUSTICE, PC

By: /s/ Vartan S. Madoyan

Vartan Madoyan
Attorneys for Plaintiffs

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale. California 91203