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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANGELICA VELASQUEZ, 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, v. GENTEX CORPORATION, an unknown business entity; KIMCO STAFFING SERVICES, INC., an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No.: CIVSB2106108 Honorable Joseph T. Ortiz Department S17 **<u>CLASS ACTION</u>** **PLAINTIFF'S FIRST AMENDED NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [[Revised Proposed] Order filed concurrently herewith] Date: October 10, 2025 Time: 1:30 p.m. Department: S17 Complaint Filed: February 18, 2021 FAC Filed: June 27, 2025 Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 10, 2025 at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Joseph T. Ortiz in Department S17 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Angelica Velasquez ("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 First Amended Class and PAGA Action Settlement and Release Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 2**" to the Supplemental Declaration of Helene Mayer filed on August 12, 2025, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Individual General Release Payment to Plaintiff, and Settlement Administration Expenses to the Settlement Administrator;
- Conditionally certifying the class of Class Members and Class Claims for settlement purposes;
- Preliminarily appointing Plaintiff Angelica Velasquez as Class Representative;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, Vartan Madoyan, and Helene Mayer of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Settlement of Class and Representative Action ("Class Notice"), attached as "**EXHIBIT A**" to the [Revised Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members and PAGA Employees;
- Approving the proposed deadlines for the Notice and settlement administration process;

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- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Individual General Release Payment for Plaintiff, and Settlement Administration Expenses to the Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Helene Mayer) filed on February 28, 2025, Supplemental Declaration of Proposed Class Counsel (Helene Mayer) filed on August 12, 2025, and Proposed Class Representative (Angelica Velasquez) filed on February 28, 2025 in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: September 26, 2025 **LAWYERS *for* JUSTICE, PC**

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Angelica Velasquez ("Plaintiff" or "Class Representative") seeks preliminary approval of the First Amended Class and PAGA Action Settlement and Release 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 Defendants, Gentex Corporation ("Gentex") and Kimco Staffing Services, Inc., ("Kimco") (collectively "Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of Eight Hundred Fifty Thousand Dollars ($850,000.00).[1] The Gross Settlement Amount includes the following: (1) Class Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount[2]; (2) Plaintiff's Service Award and Individual General Release Payment of Seven Thousand Five Hundred Dollars ($7,500.00) to Plaintiff[3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or $297,500.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars ($30,000.00)[4]; (4) the Settlement Administration Expenses to the Settlement Administrator in the amount not to exceed Ten Thousand Dollars ($10,000.00);[5] and (5) the amount of Two Hundred Thousand Dollars ($200,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $150,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") ("LWDA PAGA Penalty Amount") and 25% (i.e., $50,000.00) ("PAGA Employee Payment") will be distributed to all

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[1] First Amended Class and PAGA Action Settlement and Release Agreement ("Settlement Agreement"), attached as "**EXHIBIT 2**" to Supplemental Declaration of Helene Mayer filed on August 12, 2025 ("Suppl. Mayer Decl."), ¶ I.18. The Gross Settlement Amount is subject to increase on a pro rata percentage basis to the extent that the Workweeks during the timeframe February 18, 2017 through May 31, 2022 for Class Members exceed 18,678. Gentex shall separately pay the employers' share of applicable payroll tax obligations on the wage portion of the Class Settlement Payments in addition to the Gross Settlement Amount. See *ibid.*

[2] *Id.*, ¶ I.10.

[3] *Id.*, ¶ I.37.

[4] *Id.*, ¶ I.2.

[5] *Id.*, ¶ I.45.

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current and former non-exempt direct employees of Gentex who were employed in California and all current and former non-exempt employees of Kimco who were assigned to work and who worked for Gentex in California, at any time during the PAGA Period ("PAGA Employees").[6]

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

> All current and former non-exempt direct employees of Gentex Corporation who were employed in California at any time during the Class Period ("Class" or "Class Members").[7]

Based on information provided by Defendant Gentex, the Class is estimated to consist of approximately one hundred and thirty-six (136) individuals, who worked approximately 19,348 workweeks.[8]

Class Members who do not opt out of the Class Settlement by submitting a timely and valid Request for Exclusion ("Participating Class Members") will receive a share of the Net Settlement Amount ("Class Settlement Payment") on a *pro rata* basis based upon the number of Workweeks Class Members were employed during the Class Period, which Gentex will calculate in a manner that credits one full Workweek for any week in which the Class Member was employed at least one day during the Class Period.[9]

All PAGA Employees will receive a *pro rata* share of the 25% portion of the PAGA Payment ("PAGA Employee Payment") based on their number of Pay Periods as follows: in the case of PAGA Employees who are or were direct employees of Gentex who were employed in California at any time during the PAGA Period, pay periods that said PAGA Employees were employed by Gentex during the PAGA Period; and in the case of PAGA Employees who are or were employees of Kimco who were assigned to work and who worked for Gentex in California at any time during the PAGA Period, pay periods that said PAGA Employees were assigned to

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[6] Settlement Agreement, ¶¶ I.28, I.30 & II.58(d). "PAGA Period" is defined as the period from December 14, 2019 to August 29, 2022. *See id.*, ¶ I.31.

[7] *Id.*, ¶ I.6. "Class Period" is defined as the period from February 18, 2017 and ending August 29, 2022. *See id.*, ¶ I.8.

[8] Declaration of Helene Mayer filed on February 28, 2025 ("Mayer Decl."), ¶ 9.

[9] Settlement Agreement, ¶¶ I.10, I.32, and I.49.

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work and did work for Gentex during the PAGA Period. PAGA Employees' Pay Periods were weekly during the PAGA Period ("Pay Periods").[10]

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiff and Participating Class Member and the Released PAGA Claims of Plaintiff, the State of California and PAGA Employees, 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, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Gentex Corporation develops and manufactures products for global defense forces, emergency responders and industrial personnel operating in high performance environments. Gentex's portfolio of products includes helmet systems, hearing protection, communications products, respiratory systems, eye and face protection, among others. Defendant Kimco Staffing Services is one of the United States' largest independent staffing firms and supplies candidates to work in office settings, technical staffing, accounting operations, industrial staffing and call centers. Plaintiff was assigned as a temporary employee by Kimco to Gentex's Rancho Cucamonga facility as a Customer Service Specialist.

On December 14, 2020, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code that were alleged to be violated ("LWDA Notice").

On February 18, 2021, Plaintiff filed a Class Action Complaint for Damages in San Bernardino County Superior Court against Defendant Gentex Corporation, Case No. CIVSB2106108, alleging various wage-and-hour violations in the matter, thereby commencing the above-captioned action (the "Action").

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[10] Settlement Agreement, ¶¶ I.29 and I.35.

[11] *Id.*, at ¶ VI. See *id.* at ¶ I.39 for the full scope of the "Released Class Claims," *id.* at ¶ I.40 for the full scope of the "Released PAGA Claims," and *id.* at ¶ I.41 for the definition of the "Released Parties."

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On February 18, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in San Bernardino County Superior Court against Defendants, Case No. CIVSB2106091 (the "PAGA Action").

On May 17, 2021, Defendant Gentex filed an Answer to the Action. On August 13, 2021, Defendant Gentex filed an Answer to the PAGA Action, and on October 28, 2021, Defendant Kimco filed an Answer to the PAGA Action.

Plaintiff's core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Participating Settlement Employees, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct giving rise to penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff contends that she, and the Participating Settlement Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

On September 3, 2021, Plaintiff propounded multiple sets of discovery on Defendant Gentex Corporation (specifically, Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form Interrogatories – General (Set One)) and noticed the depositions of Defendant Gentex Corporation's Persons Most Knowledgeable designees, along with accompanying requests for production of documents.

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The Parties have actively litigated the Action and PAGA Action since they commenced on February 18, 2021. On May 31, 2022, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., (the "Mediator"), a well-regarded mediator experienced in mediating complex labor and employment matters. Thereafter, the Parties engaged in extensive negotiations and ultimately reached an agreement of all material terms contained in the long-form Settlement Agreement, executed on February 26, 2025.

On February 28, 2025, Plaintiff filed her Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion for Preliminary Approval"), along with supporting documents, seeking preliminary approval of the settlement reached by the Parties.[12] The hearing on Plaintiff's Motion for Preliminary Approval was set for May 20, 2025, at 1:30 p.m. in Department S17 of the above-captioned Court.[13]

At the May 20, 2025 Motion for Preliminary Approval hearing, the Court, among other things, granted Plaintiff leave to file a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698 Et Seq. ("First Amended Complaint" or "Consolidated Complaint") and continued the Motion for Preliminary Approval hearing to July 7, 2025, at 1:30 p.m. in Department S17 of the above-captioned Court.[14]

On June 26, 2025, Plaintiff filed her Consolidated Complaint.[15]

At the July 7, 2025 Motion for Preliminary Approval hearing, the Parties informed the Court that they negotiated the Settlement Agreement, which revised the release of claims to be consistent with the Consolidated Complaint.[16] The Court then continued the Motion for Preliminary Approval hearing to October 10, 2025, at 1:30 p.m. in Department S17 of the above-captioned Court to allow time for Plaintiff to file this First Amended Motion for Preliminary Approval of Class Action and PAGA Settlement.

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[12] Suppl. Mayer Decl., ¶ 2.
[13] *Id.*, ¶ 3.
[14] Ibid.
[15] *Id.*, ¶ 4.
[16] *Id.*, ¶ 5.

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III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Participating Class Members who do not opt out of the Class Settlement by submitting a timely and valid Request for Exclusion (i.e., Participating Class Members) and the Released PAGA Claims of the State of California and the PAGA Employees with respect to the Released Parties.[17] 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 35% of the Gross Settlement Amount (i.e., $297,500.00) and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars ($30,000.00) to Class Counsel ("Attorneys' Fees and Costs"); (2) settlement administration expenses, which are currently estimated not to exceed Ten Thousand Dollars ($10,000.00) to the Settlement Administrator ("Settlement Administration Expenses"); (3) Two Hundred Thousand Dollars ($200,000.00) allocated to penalties under PAGA ("PAGA Payment"); and (4) payments in the amount of up to Seven Thousand Five Hundred Dollars ($7,500.00) to Plaintiff ("Plaintiff's Service Award and Individual General Release Payment").[18] The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's *pro rata* share of the available Net Settlement Amount ("Class Settlement Payment"), which shall be calculated and apportioned on a *pro rata* basis based on each Participating Class Member's relative percentage of Workweeks during the Class Period as reflected in Gentex's internal records. In order to determine each Participating Class Member's relative percentage of Workweeks, the Settlement Administrator will divide the individual Participating Class Member's Workweeks by the total of all Workweeks for all Participating Class Members during the Class Period. The Settlement Administrator will then

[17] Settlement Agreement, ¶ VI.
[18] *Id.*, ¶¶ I.2 and II.58(a)-(e).

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multiply the resulting fraction by the Net Settlement Amount to arrive at the individual Participating Class Member's Class Settlement Payment.[19]

The Parties have agreed that the Settlement Administrator will determine the *pro rata* share of the PAGA Employee Payment to the PAGA Employees, by dividing the individual PAGA Employee's Pay Periods by the total of all Pay Periods for all PAGA Employees during the PAGA Period. The Settlement Administrator will then multiply the resulting fraction by the PAGA Employee Amount to arrive at the individual PAGA Employee's PAGA Employee Payment.[20]

All Class Settlement Payments to Participating Class Members shall be allocated as follows: (a) one third as wages, (b) one third as penalties, and (c) one third as interest.[21] Participating Class Members must pay their own portion of employee-side payroll taxes and all applicable income taxes on the one-third of their Class Settlement Payment that is unpaid wages, and such amounts will be withheld from Class Settlement Payments by the Settlement Administrator.[22] Gentex is responsible for funding the payment of the employer taxes and contributions with respect to the Class Settlement Payments ("Employer Taxes") as required by law, separately and in addition to the Gross Settlement Amount.[23] All PAGA Employee Payments will be allocated entirely to penalties.[24]

Participating Settlement Employees shall have 180 calendar days after mailing by the Settlement Administrator to cash, deposit, or otherwise negotiate their settlement checks.[25] If any Participating Settlement Employee's check is not cashed, deposited, or otherwise negotiated within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall transmit the unclaimed funds from the voided settlement payment to the California State Controller's Office in the name of the Participating Settlement Employee.[26]

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[19] Settlement Agreement, ¶ IV.76.
[20] Ibid.
[21] *Id.*, ¶ IV.77.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] *Id.*, ¶ IV.80.
[26] Ibid.

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Any Class Member other than Plaintiff may request to be excluded from the Class Settlement by submitting a written request to opt out of the Class Settlement by Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the date the Class Notice is mailed to the Class Members and PAGA Employees ("Response Deadline").[27] To be valid, any Request for Exclusion must include the case name and number of the Class Action as well as the full name, address, telephone number, last four digits of the Social Security number or date of birth, and signature of the Class Member requesting exclusion.[28] Any Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Settlement Agreement with respect to the Class Settlement, including the right to object, appeal, or comment on the Class Settlement; (ii) will not be entitled to receive a Class Settlement Payment; and (iii) will not be bound by this Settlement Agreement, or the Judgment, with respect to the Class Settlement.[29] Any PAGA Employee who submits a timely and valid Request for Exclusion will still be subject to the settlement and release of PAGA Released Claims to the fullest extent permitted by law and shall be sent his or her share of the PAGA Employee Payment.[30]

Any Class Member, other than Plaintiff, may object to the terms of the Class Settlement, by submitting a written "Objection" to the Settlement Administrator at the address provided in the Class Notice, postmarked on or before the Response Deadline, or by appearing at the Final Approval Hearing to object.[31] To be complete, an Objection must include the objecting Class Member's full name, address, telephone number, last four digits of his or her Social Security number or his or her date of birth, and signature.[32] The Objection must also include the objecting Class Member's dates of employment with Gentex, the case name and number of the Class Action, the basis for the objection, including any legal support and each specific reason in

[27] Settlement Agreement, ¶¶ I.42, I.43, and IV.70.
[28] *Id.*, ¶ IV.70.
[29] Ibid.
[30] Ibid.
[31] *Id.*, ¶ IV.69.
[32] Ibid.

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support of the objection, any documentation or evidence in support thereof, and identify any counsel who represents the objecting Class Member with respect to the Objection.[33]

Any Class Member or PAGA Employee who disagrees with the Settlement Administrator's estimated calculation of his or her Workweeks and/or Pay Periods provided in the Class Notice may submit a written dispute regarding Workweeks and/or Pay Periods to the Settlement Administrator.[34] In order to be deemed complete, the dispute regarding Workweeks and/or Pay Periods must be in writing and contain the case name and number of the Class Action as well as Class Member's and/or PAGA Employee's full name, address, telephone number, last four digits of his or her Social Security number or his or her date of birth, and signature. In order to be deemed timely, the dispute regarding Workweeks and/or Pay Periods must be mailed to the Settlement Administrator, at the address provided in the Class Notice, postmarked on or before the Response Deadline[35]

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.

[33] Settlement Agreement, ¶ IV.69.
[34] *Id.*, ¶ IV.68.
[35] Ibid.

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

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including "the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the

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proposed settlement." *Dunk*, *supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba*, *supra*, 91 Cal.App.4th at 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon*, *supra*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties have actively litigated the Action and PAGA Action since they commenced on February 18, 2021. 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 matter for class certification and trial.[36]

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of documents and data obtained from Defendants, Plaintiff, and other sources.[37] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, earning statements, a detailed sampling of Plaintiff's and other Class Members' time data and pay records, job description, company policy acknowledgments (including but not limited to, Assistance Acknowledgement, Applicant's Statement and Agreement, Acknowledgement and

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[36] Mayer Decl., ¶¶ 12-14.
[37] *Id.*, ¶ 13.

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Agreement Regarding Company Documents), forms (including but not limited to, Locker/Lock Agreement, Temporary/Contractor Badge Agreement, Contractor/Temporary Staff Agreement for the Protection of Proprietary Information, Employment At-Will and Arbitration Agreement, Disclosure and Authorization Regarding Background Authorization, Employee Confidentiality, Non-Disclosure, Agreement, Payroll Election and Authorization Form, Employee Self-Identification Form, Enrollment Form), procedures, and policies (Gentex Corporation Quality Policy, Meal Period Waiver, Alternative Schedule Notification-Temporary Associates, Pedestrian Safety in the Workplace), among other information and documents.[38] Class Counsel had the opportunity to conduct interviews to gather information regarding the facts and circumstances surrounding Plaintiff's and putative class members' employment and to identify potential witnesses.[39] Class Counsel propounded multiple sets of formal written discovery requests on Defendant Gentex Corporation and noticed the depositions of Defendants' Persons Most Knowledgeable designees regarding organizational structure and job duties.[40] Counsel for the Parties 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.[41] Class Counsel drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[42]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[43] Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in intensive discussion regarding their evaluations of the cases and various aspects of the cases, 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

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[38] Mayer Decl., ¶ 13.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] *Id.*, ¶ 12.

theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[44] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[45] Arriving at a settlement that was acceptable to all Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[46] After conducting investigations, formal and informal discovery, exchange of information, and settlement negotiations, and with the aid of the Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[47]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at class certification and trial.[48] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[49] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.[50] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[51]

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[44] Mayer Decl., ¶ 12.
[45] Ibid.
[46] *Id.*, ¶¶ 12, 17-19.
[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] *Id.*, ¶¶ 12-14 & 17-19.
[51] *Id.*, ¶¶ 2-7.

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

The Settlement, which provides for a Gross Settlement Amount of Eight Hundred Fifty Thousand Dollars ($850,000.00), represents a fair, adequate, and reasonable resolution of the matter.[52] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[53] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[54] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the class.[55]

Assuming that the Attorneys' Fees and Costs, Plaintiff's Service Award and Individual General Release 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 Three Hundred Five Thousand Dollars ($305,000.00).[56] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Class Settlement Payment will be calculated based on his or her number of Workweeks, and the amount of each PAGA Employee's portion of the PAGA Employee Payment will be calculated based on his or her Pay Periods.[57] 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.

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[52] Mayer Decl., ¶¶ 12, 14, 15 & 23.
[53] *Id.*, ¶¶ 12-14.
[54] *Id.*, ¶¶ 17-19.
[55] *Id.*, ¶¶ 12, 14, & 23.
[56] *Id.*, ¶ 15.
[57] Settlement Agreement, ¶¶ IV.76.

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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 Participating Settlement Employees.[58] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg,* §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. <u>The Settlement Is of Significant Value.</u>

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.[59] The discovery and information that Class Counsel obtained from Defendants 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 Defendants' defenses thereto.[60] As outlined in the Declaration of Helene Mayer, Class Counsel performed an extensive analysis of each claim pursuant to *Kullar* prior to entering into the Settlement.[61]

VI. <u>CERTIFICATION OF THE CLASS IS APPROPRIATE</u>

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.[62] 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.*

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[58] Mayer Decl., ¶¶ 12, 14, & 23.
[59] *Id.*, ¶¶ 12-14 & 19.
[60] *Id.*, ¶ 19.
[61] *Id.*, ¶¶ 12-14 & 17-19.
[62] Settlement Agreement, ¶ III.57(c).

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

A. <u>The Class Is Ascertainable and Sufficiently Numerous.</u>

"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 matter involves a class of approximately one hundred and thirty-six (136) individuals.[63] This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding hourly-paid or non-exempt employees of Gentex Corporation, during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. <u>The Class Members Share a Well-Defined Community of Interest.</u>

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

[63] Mayer Decl., ¶ 9.

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Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." *Capitol People First v. Dep't of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the Defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiff renders class certification appropriate." *Id.* (citing *Sav-On*, *supra*, 34 Cal.4th at 333).

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Consolidated Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in the cases, 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.[64] Plaintiff's claims arise from Defendant Gentex'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 compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[65]

Plaintiff also contends that Defendant Gentex's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.[66] As a result, Plaintiff claims that all of the Class Members were uniformly not paid

[64] Mayer Decl., ¶ 17.
[65] Ibid.
[66] Ibid.

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all compensation due to them from Defendant Gentex during the time period at issue.[67]

Plaintiff maintains that the outcome of this litigation would be determined by Defendant Gentex's alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees, during the Class Period. Accordingly, the Court should certify the class for settlement purposes only.

VII. <u>APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS</u>

Class Counsel has litigated the matter for years and were actively preparing the matter for class certification and trial.[68] 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 Defendants. Class Counsel also noticed the depositions of Defendants' Persons Most Knowledgeable designees. Class Counsel reviewed a large volume of documents and data[69] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[70] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[71]

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the class.[72]

The Settlement establishes a Gross Settlement Amount of Eight Hundred Fifty Thousand Dollars ($850,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of

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[67] Mayer Decl., ¶ 17.
[68] *Id.*, ¶¶ 12-14.
[69] *Id.*, ¶ 13.
[70] Ibid.
[71] *Id.*, ¶ 12.
[72] *Id.*, ¶¶ 2-7.

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the Gross Settlement Amount (i.e., $297,500.00) and an amount not to exceed Thirty Thousand Dollars ($30,000.00) for litigation costs and expenses.[73] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (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 Settlement Employees 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 Settlement Employees with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[74]

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

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[73] Settlement Agreement, ¶ I.2.
[74] *Id.*, Exh. A.

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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.[75]

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

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

[75] Mayer Decl., ¶ 20.

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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[76] describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or submit a dispute regarding Workweeks and/or Pay Periods, and the date and time set for the Final Approval Hearing.[77]

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.[78] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[79] The proposed Class Notice also apprises the Class Members and PAGA Employees of, *inter alia*, how their Class Settlement Payment and, if applicable, portion of the PAGA Employee Payment is calculated and the number of Workweeks and/or Pay Periods credited to them.[80]

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.

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[76] Settlement Agreement, Exh. A.
[77] Ibid.
[78] Ibid.
[79] Ibid.
[80] Ibid.

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IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

Within fourteen (14) calendar days after receiving the Settlement Employee Data from Defendants, the Settlement Administrator will mail a Class Notice to all Class Members and PAGA Employees via regular First-Class U.S. Mail..[81] Prior to mailing the Class Notices, the Settlement Administrator will update the Settlement Employee Data using the National Change of Address database or, if that is unavailable, other available resources deemed suitable by the Settlement Administrator.[82] Any returned Class Notices from the initial mailing with forwarding addresses will be used by the Settlement Administrator to locate Class Members and undertake a single re-mailing of the Class Notice to the correct or updated address.[83] For any returned Class Notices from the initial mailing without forwarding addresses, the Settlement Administrator will use all appropriate tracing methods, including skip-tracing, to locate a correct or updated address and undertake a single re-mailing of the Class Notice to any correct or updated address that is located.[84] The Settlement Administrator will receive and process Requests for Exclusions, Objections, and any disputes to Workweeks and/or Pay Periods.[85]

The Settlement Administrator will be responsible for (a) estimating each Class Member's recovery from the Net Settlement Amount and each PAGA Employee's recovery from the PAGA Employee Payment; (b) preparing and mailing Class Notices with estimated settlement payment amounts to all Class Members and PAGA Employees, including taking appropriate steps to skip trace, update and locate any individual Settlement Employee whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated, as provided herein; (c) receiving and serving on Class Counsel, Defendants' Counsel, and the Court, any Requests for Exclusion, and copies of written objections and any withdrawal and recission statements from Class Members; (d) providing to Class Counsel and Defendants'

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[81] Settlement Agreement, ¶ IX.96.
[82] *Id.*, ¶ V.84.
[83] Ibid.
[84] Ibid.
[85] *Id.*, ¶¶ IV,68, IV.69 and IV.70.

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Counsel a weekly report of activity; (e) establishing a toll-free telephone line and responding to inquiries and requests for information or assistance from Settlement Employees; (f) maintaining the Gross Settlement Amount account at a federally insured banking institution; (g) determining and paying the final amounts due to be paid to Settlement Employees after adjustment for funds due to Class Members who opt out of the Class Settlement; (h) preparing and delivering to Settlement Employees necessary tax reporting documents, including Forms W2 and 1099 where applicable, (i) reporting to Class Counsel, Defendants' Counsel, and the Court regarding the completion of the tasks identified in this paragraph; and (j) carrying out other related tasks in accordance with the terms of this Settlement Agreement.[86] The Settlement Administration Expenses are currently estimated to be Ten Thousand Dollars ($10,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[87]

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 and PAGA Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members and PAGA Employees based on Defendants' records.[88]

Within thirty (30) calendar days after the Date of Preliminary Approval by the Court, Defendants shall provide to the Settlement Administrator information that identifies or can be used to identify Settlement Employees, including, without limitation, their last-known full names, mailing addresses, phone numbers, e-mail addresses (if known), employee numbers, Social Security numbers, and the respective number of Workweeks each Class Member was employed during the Class Period, Pay Periods each PAGA Employee was employed during the

[86] Settlement Agreement, ¶ IV.65; Mayer Decl., ¶ 16.
[87] Settlement Agreement, ¶ III.58(b).
[88] *Id.*, ¶ V.84.

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PAGA Period, and the Workweeks of each Class Member during the period February 18, 2017 through May 31, 2022 (collectively referred to as the "Settlement Employee Data").[89]

No later than fourteen (14) calendar days after receiving the Settlement Employee Data, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.[90] Prior to mailing the Class Notices, the Settlement Administrator will update the Settlement Employee Data using the National Change of Address database or, if that is unavailable, other available resources deemed suitable by the Settlement Administrator.[91] Any returned Class Notices from the initial mailing with forwarding addresses will be used by the Settlement Administrator to locate Class Members and undertake a single re-mailing of the Class Notice to the correct or updated address.[92] For any returned Class Notices from the initial mailing without forwarding addresses, the Settlement Administrator will use all appropriate tracing methods, including skip-tracing, to locate a correct or updated address and undertake a single re-mailing of the Class Notice to any correct or updated address that is located.[93] Class Members will have until the applicable Response Deadline to submit a Request for Exclusion from the Class Settlement, dispute to Workweeks and/or Pay Periods, and/or Objection to the Class Settlement.[94] In the case of re-mailed Class Notice, Class Members and PAGA Employees will have sixty (60) days from the date the original Class Notice is mailed to the Class Members to submit a Request for Exclusion, Objection, and/or Workweeks and/or Pay Periods.[95]

Defendants shall provide payment of the Gross Settlement Amount plus Employer Taxes to the Settlement Administrator within fifteen (15) court days after the Effective Date.[96] The Settlement Administrator shall create a Qualified Settlement Fund ("QSF"), to be funded by Defendants and administered by the Settlement Administrator. Within seven (7) court days after

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[89] Settlement Agreement, ¶¶ I.48 & V.82.
[90] *Id.*, ¶ IX.96.
[91] *Id.*, ¶ V.84.
[92] Ibid.
[93] Ibid.
[94] *Id.*, ¶ IV.68, 69 and 70.
[95] *Id.*, ¶ I.42.
[96] *Id.*, ¶ IV.78.

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Defendants fund the Settlement as set forth herein, the Settlement Administrator shall distribute checks to all Participating Class Members, issue a check to the LWDA for the LWDA PAGA Penalty Amount, issue a check to Plaintiff for her Plaintiff's Service Award and Individual General Release Payment, pay itself for the Settlement Administration Expenses, and pay Attorney Fees' and Costs, in the Court-approved amounts.[97]

Participating Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash, deposit, or otherwise negotiate their settlement checks.[98] If any Participating Class Members's check is not cashed, deposited, or otherwise negotiated within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall transmit the unclaimed funds from the voided settlement payment to the California State Controller's Office in the name of the Participating Class Member.[99]

XI. <u>APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR PLAINTIFF'S SERVICE AWARD AND INDIVIDUAL GENERAL RELEASE PAYMENT</u>

Plaintiff Angelica Velasquez respectfully requests that the Court appoint her as the Class Representative and preliminarily approve Plaintiff's Service Award and Individual General Release Payment in an amount up to Seven Thousand Five Hundred Dollars ($7,500.00) to Plaintiff.[100] 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.*

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[97] Settlement Agreement, ¶ IV.79.
[98] *Id.*, ¶ IV.80.
[99] Ibid.
[100] *Id.*, ¶ I.37.

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Plaintiff's Service Award and Individual General Release 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.[101] Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[102] Accordingly, it is appropriate and just for Plaintiff to receive Seven Thousand Five Hundred Dollars ($7,500.00) as Plaintiff's Service Award and Individual General Release Payment for her services on behalf of the Class and the State of California, in addition to her Class Settlement Payment and/or portion of PAGA Employee Payment.

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 Arby Aiwazian, Joanna Ghosh, and Helene Mayer of Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Angelica Velasquez as Class Representative; appoint Phoenix as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Plaintiff's Service Award and Individual General Release 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 months; and permit the filing of a memorandum that exceeds the page limit.

Dated: September 26, 2025 **LAWYERS *for* JUSTICE, PC**

By: Helene Mayer

Helene Mayer
Attorneys for Plaintiff

[101] Mayer Decl., ¶ 22; Declaration of Angelica Velasquez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Velasquez Decl."), ¶ 4.
[102] Mayer Decl., ¶ 22; Velasquez Decl., ¶¶ 3-6.

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