

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
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 LOS ANGELES**

RAMIRO PEREZ, individually, and on
behalf of other members of the general public
similarly situated; KIM BALLING,
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;

Plaintiffs,

vs.

KAISER ALUMINUM CORPORATION, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 18STCV06639

Honorable Carolyn B. Kuhl
Department 12

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of
Proposed Class Representatives (Ramiro
Perez and Kim Baling); and [Proposed]
Order filed concurrently herewith]

Date: August 25, 2021
Time: 10:30 a.m.
Department: 12

Complaint Filed: November 29, 2018
FAC Filed: April 16, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on August 25, 2021 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Carolyn B. Kuhl in Department 12 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Ramiro Perez and Kim Balling (“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 Stipulation and Agreement for Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, 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, Incentive Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Ramiro Perez and Kim Balling as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Incentive Awards for Plaintiffs, and Settlement Administration Costs to Settlement Administrator.

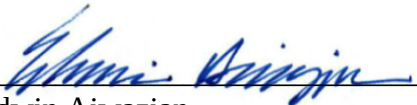
This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and Proposed Class Representatives (Ramiro Perez and Kim Balling) 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: August 3, 2021

LAWYERS for JUSTICE, PC

By:


Edwin Aiwazian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Ramiro Perez and Kim Balling (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Stipulation and Agreement for Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff Ramiro Perez, individually and on behalf of all others similarly situated, and Plaintiff Kim Balling, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Kaiser Aluminum Corporation (“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 seven hundred thirty-five thousand dollars and no cents (\$735,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Incentive Awards of seven thousand five hundred dollars and no cents (\$7,500.00) to plaintiff Ramiro Perez and five thousand dollars and no cents (\$5,000.00) to Plaintiff Kim Balling (\$12,500.00 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of twenty-seven and one-half percent (27.50%) of the Gross Settlement Amount, or \$202,125.00, and reimbursement of litigation costs and expenses not to exceed seventy-five thousand dollars and no cents (\$75,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed eight thousand dollars and no cents (\$8,000.00);⁵ (5) the amount of twenty thousand dollars and no cents (\$20,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$15,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$5,000.00) will be distributed to Participating Class Members as a part of the Net Settlement

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 11.

² *Id.*, § 37(e).

³ *Id.*, § 37(c).

⁴ *Id.*, § 37(a).

⁵ *Id.*, § 37(b).

Amount;⁶ and (6) the total of all payments previously made by Defendant to Class Members in the amount of three hundred forty thousand three hundred eighty-one dollars and no cents (\$340,381.00) (“Prior Settlement Payment Credit”).⁷

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

All current and former non-exempt employees who worked for Defendant within the State of California at any time during November 29, 2014 through March 25, 2021 (“Class” or “Class Members”).⁸

The Class is estimated to consist of approximately two hundred twenty-nine (229) individuals.⁹

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Participating Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment”) based upon the number of weeks each Participating Class Member was employed during the Class Period (“Workweeks”) and the amount, if any, of the Participating Class Member’s payment previously paid by Defendant in connection with the Participating Class Member’s agreement to release the Released Claims against Defendant (“Prior Settlement Payment”).¹⁰

The Settlement resolves the Released Claims of Plaintiffs and Participating Class Members, against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant manufactures and produces semi-fabricated aluminum products through its twelve (12) production facilities based in North America. Plaintiffs are former employees of Defendant.

⁶ Settlement Agreement, § 37(d).

⁷ *Id.*, §§ 22 & 37.

⁸ Settlement Agreement, § 3. “Class Period” is defined as the period of time from November 29, 2014 through March 25, 2021. *See id.*, § 5.

⁹ Aiwazian Decl., ¶ 9.

¹⁰ Settlement Agreement, §§ 21, 27, & 37(e).

¹¹ *See id.* at § 23, for the full scope of the “Released Claims,” and *id.* at § 24 for the definition of the “Released Parties.”

1 On November 29, 2018, Plaintiff Ramiro Perez filed a Class Action Complaint for
2 Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-
3 captioned lawsuit (“Action”).

4 On August 8, 2019, Defendant filed an Answer to Plaintiff Ramiro Perez’s Unverified
5 Class Action Complaint for Damages, and thereafter, on August 20, 2019, Defendant filed an
6 Amended Answer to Plaintiff Ramiro Perez’s Unverified Class Action Complaint for Damages.

7 On April 16, 2021, Plaintiffs filed a First Amended Class Action Complaint for Damages
8 and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.*
9 (“Operative Complaint”), which added Plaintiff Balling and a cause of action under PAGA,
10 among other changes.

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

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

25 On August 27, 2019, Plaintiff Ramiro Perez propounded multiple sets of discovery
26 including Requests for Production of Documents, (Set One & Two); Special Interrogatories,
27 (Set One, Two, & Three); and Form Interrogatories, (Set One); and noticed the depositions of
28 Defendant’s Person Most Knowledgeable designees on Defendant. Thereafter, on November

1 15, 2019, Defendant responded to Plaintiff Ramiro Perez's discovery requests. On August 13,
2 2019, Defendant propounded a Request for Production of Documents, (Set One), on Plaintiff
3 Ramiro Perez. On October 24, 2019, Plaintiff Ramiro Perez re-noticed the depositions on
4 Defendant's Person Most Knowledgeable designees, together with Requests for Productions of
5 Documents. On November 14, 2019, Plaintiff Ramiro Perez responded to Defendant's
6 discovery requests. On December 3, 2019, Defendant objected to Plaintiff Ramiro Perez's re-
7 notices of depositions and Requests for Production of Documents and on that same day Plaintiff
8 Ramiro Perez again re-noticed the deposition of Defendant's Person Most Knowledgeable
9 designee, together with Requests for Production of Documents. On January 30, 2020, Plaintiff
10 Ramiro Perez propounded amended notices of depositions of Defendant's Person Most
11 Knowledgeable designees and Requests for Production of Documents. Thereafter, on February
12 4, 2020, Defendant objected to Plaintiff Ramiro Perez's amended notices and Requests for
13 Productions of Documents. On May 7, 2020, Plaintiff Ramiro Perez propounded second notices
14 of depositions of Defendant's Person Most Knowledgeable designees and Requests for
15 Production of Documents. Thereafter, on May 15, 2020, Defendant propounded objections to
16 Plaintiff Ramiro Perez's first and second amended notices of depositions of Defendant's Person
17 Most Knowledgeable designees and Requests for Production of Documents. On June 11, 2020,
18 Defendant propounded objections to Plaintiff Ramiro Perez's third amended notice of
19 deposition of Defendant's Person Most Knowledgeable designee and Requests for Production
20 of Documents as well as Plaintiff Ramiro Perez's notice of Defendant's Person Most
21 Knowledgeable designee regarding settlement agreement and Requests for Production of
22 Documents. On July 31, 2020, Defendant provided responses to Plaintiff Ramiro Perez's
23 Special Interrogatories (Set Four).

24 The Parties have actively litigated the Action since it was commenced on November 29,
25 2018. Class Counsel prepared for and took multiple depositions of Defendant's Person Most
26 Knowledgeable designees on May 19, 2020, May 20, 2020, June 16, 2020, June 17, 2020, and
27 May 21, 2020. On May 24, 2019 and September 28, 2020, the Parties participated in two formal,
28 full-day mediations conducted by Deborah Crandall Saxe, 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 to resolve the Released Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Participating Class Members) with respect to the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed two hundred two thousand one hundred twenty-five dollars and no cents (\$202,125.00) (i.e., up to 27.50% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed seventy-five thousand dollars and no cents (\$75,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed eight thousand dollars and no cents (\$8,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Amount (i.e., \$15,000.00 out of \$20,000.00) ("LWDA Payment"); (4) payments in the amount of up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Ramiro Perez and five thousand dollars and no cents (\$5,000.00) to Plaintiff Kim Balling (for a combined total of \$12,500.00) ("Incentive Awards"); and (5) Prior Settlement Payment Credit of three hundred forty thousand three hundred eighty-one dollars and no cents (\$340,381.00).¹³ The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Payment"), in accordance with the Settlement Agreement and as follows:

¹² Settlement Agreement, § II.15.

¹³ *Id.*, §§ 37, 37(a), 37(b), 37(c), & 37(d).

- a. The Settlement Administrator will divide the Net Settlement Amount by the total Workweeks during the Class Period of all Participating Class Members (“Total Workweeks”), and the resulting figure will be multiplied by the number of each Participating Class Member’s individual Workweeks during the Class Period to yield his or her “Initial Share”.¹⁴
- b. The Initial Share of any Participating Class Member who received a Prior Settlement Payment (“Previously Paid Participating Class Member”) will be reduced by the amount of his or her Prior Settlement Payment, and if the Prior Settlement Payment exceeds the Initial Share, his or her Initial Share will be reduced to zero. In no case will the amount subtracted for a Prior Settlement Payment exceed the individual Participating Class Member’s Initial Share.¹⁵
- c. The total amount by which the Initial Share of all Previously Paid Participating Class Members are reduced by Prior Settlement Payments will be redistributed to all Participating Class Members on a *pro rata* basis (“Share Redistribution”). Each Participating Class Member’s portion of the Share Redistribution will be added to his or her respective Initial Share, after reduction for any Prior Settlement Payment to yield his or her Individual Settlement Payment.¹⁶

Each Participating Class Member’s Individual Settlement Payment will be allocated as follows: one-third (1/3) as wages, which will be reported on an IRS Form W-2; and the remaining two-thirds (2/3) as penalties and interest, which will be reported on an IRS Form 1099.¹⁷ Participating Class Members will be issued payment of their Individual Settlement Payments subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.¹⁸ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Payments not already paid, which is included in the Gross Settlement Amount.¹⁹

The Individual Settlement Payment checks issued to Participating Class Members will be void and no longer available if not cashed or negotiated within one hundred eighty (180) calendar days after the initial mailing.²⁰ The funds associated with Individual Settlement Payment checks that remain uncashed after the 180-day period will be transmitted by the Settlement Administrator to the Unclaimed Property Division maintained by the State Controller’s Office in the name of the Participating Class Member.²¹

¹⁴ Settlement Agreement, § 37(e)(ii).

¹⁵ *Id.*, § 37(e)(iii).

¹⁶ *Id.*, § 37(e)(iv).

¹⁷ *Id.*, § 39(a).

¹⁸ *Id.*, § 39(b).

¹⁹ *Id.*, § 37.

²⁰ *Id.*, § 44(c).

²¹ *Ibid.*

Class Members who wishes to be excluded from the Settlement (i.e., opt out) must submit a written request to be excluded to the Settlement Administrator (“Request for Exclusion”), postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice (“Notice Period”).²² A Request for Exclusion must contain: (a) the case name and number of the Action ; (b) the Class Member’s full name, address, telephone number, and last four (4) digits of the Class Member’s Social Security number; (c); a clear indication of the Class Member’s desire to be excluded (or opt out) of the Settlement; and (d) the signature of the Class Member.²³ Class Members who submit a valid and timely Request for Exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.²⁴

Any Class Member who has not opted out of the Settlement (i.e., Participating Class Members) may object to the Settlement.²⁵ A written objection must be mailed to the Settlement Administrator, postmarked by the close of the Notice Period.²⁶ Class Members may also appear at the Final Approval Hearing to object to the Settlement, whether or not they have objected in writing or notified the Parties that they intend to appear.²⁷ The objection must contain: (i) the case name and number of the Action; (ii) the objecting Participating Class Member’s full name (including the Participating Class Member’s name at the time of employment with Defendant), current address and signature; and (ii) a statement of the specific reasons why the objector believes the Settlement is unfair or objects to the Settlement.²⁸

Class Members who wish to dispute the number of Workweeks allocated to them in their Class Notice may do so by submitting a written dispute via U.S. Mail to the Settlement Administrator, postmarked no later than the expiration of the Notice Period.²⁹ The dispute must contain: (i) the case name and number of the Action; (ii) the disputing Class Member’s full

²² Settlement Agreement, § 42.

²³ *Ibid.*

²⁴ *Id.*, § 42(b).

²⁵ *Id.*, § 43.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Id.*, § 41.

1 name, address, telephone number, and last four (4) digits of the Class Member's Social Security
2 number; (iii) an explanation to support the Class Member's dispute; and (iv) also any
3 documentary evidence sufficient to prove that Defendant's calculation of the Workweeks for
4 the Class Member is incorrect.³⁰

5 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
6 **SETTLEMENTS**

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

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

25 Preliminary approval of a settlement does not require a court to make a final
26 determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made
27 only at the final approval stage, after notice of the settlement has been given to the class members
28

³⁰ Settlement Agreement, § 43.

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

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

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

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

24 The proponent of the settlement has the burden to show that it is fair and reasonable.
25 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
26 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
27 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
28 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at

1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

The Parties actively litigated the Action since it was commenced on November 29, 2018. 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.³¹

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.³² The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs' employment records, a detailed sampling of Class Members' time and pay data, Defendant's collective bargaining agreement with Teamsters 986, Acknowledgement of Voluntary Meeting To Discuss A Pending Class Action Lawsuit, Confidential Settlement Agreement and Release, and Notice of Rights Regarding Kaiser Aluminum Fabricated Products, LLC's (Kaiser) Early Voluntary Individual Settlement Option, Defendant's Production Employee Handbook, company policies and policy acknowledgements (including but not limited to Defendant's Acknowledgement of Receipt, Employee Travel and Expense Reimbursement Policy, Corporate Purchasing Card Policy and Agreement, Foothill Ranch Breaks & Meal Period Policy and Acknowledgment, Breaks & Meal Periods Policy and Acknowledgement), internal memoranda, job descriptions, new hire orientation checklists, Defendant's operations and employment practices, forms (including but not limited to Defendant's Voluntary Waiver of Meal Period Less Than Six (6) Hours Worked FHR, Voluntary Waiver of Second Meal Period Less Than Twelve (12) Hours Worked FHR, and Voluntary Waiver of Second Meal Period), among other information and documents.³³ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential

³¹ Aiwazian Decl., ¶¶ 11-13.

³² Aiwazian Decl., ¶ 12.

³³ *Ibid.*

witnesses.³⁴ Class Counsel propounded multiple sets of formal written discovery requests onto Defendant, reviewed Defendant's responses and objections thereto, prepared for and took the depositions of Defendant's Person Most Knowledgeable designees, and provided responses to the request for production of documents propounded by Defendant.³⁵ 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.³⁶ Class Counsel also drafted Plaintiffs' mediation briefs and prepared for and attended court proceedings, settlement negotiations, and the two mediation sessions, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in two formal, full-day mediation sessions conducted by Deborah Crandall Saxe, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁸ Prior to and during the mediations and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ 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.⁴¹ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and

³⁴ Aiwazian Decl., ¶ 12.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.*, ¶ 11.

³⁹ Aiwazian Decl., ¶ 11.

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11, 16-18.

1 with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited
2 for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs
3 and risks to both sides that would attend further litigation.⁴²

4 The Settlement takes into account the strengths and weaknesses of each side's position
5 and the uncertainty of how the case might have concluded at certification and trial.⁴³ The Parties
6 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴
7 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and
8 the Class Members' employment with Defendant and performed significant research into the
9 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
10 rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto,
11 as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume
12 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
13 employment class actions, including significant experience in California wage-and-hour
14 litigation.⁴⁶

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

16 The Settlement, which provides for a Gross Settlement Amount of seven hundred thirty-
17 five thousand dollars (\$735,000.00), represents a fair, adequate, and reasonable resolution of the
18 matter.⁴⁷ The Settlement was calculated using the information and data uncovered during
19 litigation, case investigation, as well as the formal and informal exchange of information.⁴⁸ The
20 Settlement takes into account the potential risks and rewards inherent in any case and, in
21 particular, in the case at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the
22 lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

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24

⁴² Aiwasian Decl., ¶¶ 11, 16-18.

25 ⁴³ *Ibid.*

26 ⁴⁴ *Ibid.*

27 ⁴⁵ *Id.*, ¶¶ 11-13 & 16-18.

28 ⁴⁶ *Id.*, ¶¶ 6-7.

⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 21.

Assuming that the Attorneys' Fees and Costs, Incentive Awards, LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, and subtracting the Prior Settlement Payment Credit from the Gross Settlement Amount, the Settlement provides for a Net Settlement Amount that is currently estimated to be eighty-one thousand nine hundred ninety-four dollars and no cents (\$81,994.00).⁵¹ 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 Individual Settlement Payment will be calculated based on his or her Workweeks and Prior Settlement Payment.⁵² 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.⁵³ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁴ The discovery and information that Class

⁵¹ Aiwasian Decl., ¶ 14.

⁵² Settlement Agreement, §§ 21 & 27.

⁵³ Aiwasian Decl., ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶¶ 11-13 & 18.

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.⁵⁵ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

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.⁵⁷ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, 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 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

⁵⁵ Aiwazian Decl., ¶ 18.

⁵⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, § 33.

by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This action involves a class of approximately two hundred twenty-nine (229) individuals.⁵⁸ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

⁵⁸ Aiwazian Decl., ¶ 9.

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.⁵⁹ 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 properly pay overtime and minimum wages and associated premium pay, failing to provide compliant meal and rest periods and to pay 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 and conduct giving rise to penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*).⁶⁰

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.⁶¹ 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.⁶²

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

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

Class Counsel has litigated the matter for over two years, and was actively preparing the matter for class certification and trial.⁶³ The ongoing work has been extensive, demanding, and

⁵⁹ Aiwazian Decl., ¶ 16.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Id.*, ¶¶ 11-13.

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 sets of formal written discovery requests onto Defendant, reviewed Defendant's responses and objections thereto, prepared for and took the depositions of Defendant's Person Most Knowledgeable designees, and provided responses to the request for production of documents propounded by Defendant. Class Counsel reviewed thousands of pages of documents and data⁶⁴ and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement discussions, which included participating in two formal, full-day mediations.⁶⁶

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁷

The Settlement establishes a Gross Settlement Amount of seven hundred thirty-five thousand dollars and no cents (\$735,000.00), 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 twenty-seven and one-half percent (27.50%) of the Gross Settlement Amount (i.e., \$202,125.00) and an amount not to exceed seventy-five thousand dollars and no cents (\$75,000.00) for costs and expenses.⁶⁸ 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

⁶⁴ Aiwasian Decl., ¶ 12.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 6-7.

⁶⁸ Settlement Agreement, §§ 11.

1 matter. The proposed Class Notice provides Class Members with information about the amount
2 allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and
3 Costs will be sought, as provided for by the Settlement.⁶⁹

4 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
5 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
6 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
7 "experienced trial judge is the best judge of the value of professional services rendered in his
8 court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
9 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
10 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
11 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
12 a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
13 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
14 in comparable litigation." *Id.* at 50. In cases where class members present claims against a
15 settlement fund and the settlement agreement provides that the defendant agrees to paying the
16 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

17 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
18 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
19 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
20 Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar
21 cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check
22 and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he
23 percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

24 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
25 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
26 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45%
27 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*

28 ⁶⁹Settlement Agreement, Exh. A.

(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.⁷⁰

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 Attorneys’ Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys’ fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Class Notice⁷¹ describes the Settlement, the deadlines and procedures to submit an objection to the Settlement, a Request for Exclusion, and/or a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷²

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*

⁷⁰ Aiwazian Decl., ¶ 19.

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

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.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment is calculated and the number of Workweeks credited to them.⁷⁵

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

IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will send the Class Notice, in English and Spanish, to each Class Member by First-Class U.S. mail.⁷⁶ The Settlement Administrator will re-mail any Class Notice returned by the United States Postal Service with a forwarding address on or before the expiration of the Notice Period.⁷⁷ The Settlement Administrator will use the appropriate skip tracing and National Change of Address searches to increase the likelihood of delivery of the Class Notice to Class Members, and to re-mail the Class Notices returned by the post office as undeliverable without a forwarding address upon locating new or alternative addresses after a reasonable search.⁷⁸ Class Members who receive a re-mailed Class Notice shall have their

⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Settlement Agreement, § 40(a).

⁷⁷ *Id.*, § 40(b).

⁷⁸ *Id.*, § 40(c).

1 Notice Period extended fifteen (15) calendar days.⁷⁹ The Settlement Administrator will receive
2 and process Requests for Exclusion, objections, and any disputes regarding Workweeks.⁸⁰

3 The Settlement Administrator will calculate the amounts of the Individual Settlement
4 Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage
5 portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to
6 Participating Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys'
7 Fees and Costs, Incentive Awards, and LWDA Payment; and perform such other tasks necessary
8 to effectuate the terms of the Settlement Agreement.⁸¹ The Settlement Administration Costs are
9 currently estimated to be eight thousand dollars and no cents (\$8,000.00) and will be paid out
10 of the Gross Settlement Amount, subject to approval by the Court.⁸²

11 Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Settlement
12 Administrators as the Settlement Administrator and direct the mailing of the Class Notice to the
13 Class Members in the manner outlined and based on the proposed deadlines as described herein
14 and set forth in the Settlement Agreement.

15 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

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

20 Within fifteen (15) calendar days after entry of the Court's order preliminary approving
21 the Settlement, Defendant will provide the Settlement Administrator a list with the following
22 information for each Class Member: full name, Social Security number, last known address, and
23 the dates of employment and number of Workweeks during the Class Period; and (5) the amount,
24 if applicable, of any Prior Settlement Payment to the Class Member (for purposes of determining

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26 ⁷⁹ Settlement Agreement, § 40(c).

27 ⁸⁰ *Id.*, §§ 41, 42 & 43.

28 ⁸¹ *Ibid.*; Aiwazian Decl., ¶ 15.

⁸² Settlement Agreement, § 37(b).

⁸³ *Id.*, § 40.

the Individual Settlement Payment) (collectively, “Class List”).⁸⁴

Upon receipt of the Class List, the Settlement Administrator shall perform a search based upon the National Change of Address Database to update and correct any known or identifiable address changes.⁸⁵ Within fifteen (15) calendar days after receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice, in English and Spanish, to each Class Member via First-Class U.S. Mail.⁸⁶ It will be presumed that each and every Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days after the initial mailing received the Class Notice.⁸⁷ The Settlement Administrator will re-mail any Class Notice returned by the United States Postal Service with a forwarding address on or before the expiration of the Notice Period.⁸⁸ It will be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within thirty (30) calendar days after re-mailing, received the Class Notice.⁸⁹ The Settlement Administrator will use the appropriate skip tracing and National Change of Address searches to increase the likelihood of delivery of the Class Notice to Class Members, and to re-mail the Class Notices returned by the post office as undeliverable without a forwarding address upon locating new or alternative addresses after a reasonable search.⁹⁰ Class Members who receive a re-mailed Class Notice shall have their Notice Period extended fifteen (15) calendar days.⁹¹ The Settlement Administrator will receive and process Requests for Exclusion, objections, and any disputes regarding Workweeks.⁹²

Within ten (10) business days after the Effective Date, Defendant shall remit to the Settlement Administrator the Gross Settlement Amount of seven hundred thirty-five thousand dollars and no cents (\$735,000.00) less the Prior Settlement Payment Credit amount of three hundred forty thousand three hundred eighty-one dollars and no cents (\$340,381.00), or three

⁸⁴ Settlement Agreement., § 40.

⁸⁵ *Id.*, § 40(a).

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Id.*, § 40(b).

⁸⁹ *Ibid.*

⁹⁰ *Id.*, § 40(c).

⁹¹ *Ibid.*

⁹² *Id.*, §§ 41, 42 & 43.

hundred ninety-four thousand dollars one hundred sixty-nine dollars and no cents (\$394,169.00) (the “Settlement Fund”).⁹³ The distribution of Individual Settlement Payments to Participating Class Members, LWDA Payment, Attorneys’ Fees and Costs, Incentive Awards, and Settlement Administration Costs will occur no later than fifteen (15) calendar days after the Settlement Administrator receives the Settlement Fund.⁹⁴

The Individual Settlement Payment checks issued to Participating Class Members will be void and no longer available if not cashed or negotiated within one hundred eighty (180) calendar days after the initial mailing.⁹⁵ The funds associated with Individual Settlement Payment checks that remain uncashed after the 180-day period will be transmitted by the Settlement Administrator to the Unclaimed Property Division maintained by the State Controller’s Office in the name of the Participating Class Member.⁹⁶

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR INCENTIVE AWARDS

Plaintiffs respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Incentive Awards in an amount up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Ramiro Perez and an amount up to five thousand dollars and no cents (\$5,000.00) to Plaintiff Kim Balling (for a combined total of \$12,500).⁹⁷ It is within the Court’s discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

⁹³ Settlement Agreement, § 41.

⁹⁴ *Id.*, §§ 44(a) & 44(b).

⁹⁵ *Id.*, § 44(c).

⁹⁶ *Ibid.*

⁹⁷ *Id.*, § 37(c).

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, including Plaintiff Ramiro Perez's responses to Defendant's request for production of documents.⁹⁸ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁹ Accordingly, it is appropriate and just for Plaintiffs to each receive an Incentive Award for their services on behalf of the Class, in addition to their Individual Settlement Payment.

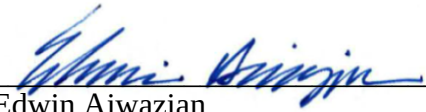
XII. CONCLUSION

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 Ramiro Perez and Kim Balling as Class Representatives; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Incentive Awards, PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: August 3, 2021

LAWYERS for JUSTICE, PC

By:


Edwin Aiwazian
Attorneys for Plaintiffs

⁹⁸ Aiwazian Decl., ¶ 20; Declaration of Ramiro Perez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Perez Decl."), ¶ 4; Declaration of Kim Balling in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Balling Decl."), ¶ 4.

⁹⁹ Aiwazian Decl., ¶ 20; Perez Decl., ¶¶ 3-6; Balling Decl., ¶¶ 3-6