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

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

Plaintiff,

vs.

SHERWOOD COUNTRY CLUB, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 56-2021-00551869-CU-OE-VTA

Honorable Mark S. Borrell
Department 40

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Annabel Blanchard); Declaration of Proposed
Class Representative (Rey Parra); and
[Proposed] Order filed concurrently herewith]

Date: April 19, 2023
Time: 8:30 a.m.
Department: 40
Reservation No. 2718068

Complaint Filed: March 11, 2021
FAC Filed: May 25, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 19, 2023 at 8:30 a.m./p.m. or
as soon thereafter as the matter may be heard before the Honorable Mark S. Borrell in
Department 40 of the Superior Court of California for the County of Ventura, located at Ventura
Hall of Justice, 800 South Victoria Avenue, Ventura, California 93009, Plaintiff Rey Parra
("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 Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Annabel Blanchard, including, but not limited to, the means of allocation and distribution of funds, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Rey Parra as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Annabel Blanchard of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT 1**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- 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

1 for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to
2 Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

3 This Motion is made pursuant to Rule 3.764, Rule 3.769, and Rule 3.1113(e) of the
4 California Rules of Court, which require approval by the Court of a class action settlement and
5 permit the Court to extend the page limit for memoranda.

6 This motion is based upon the following memorandum of points and authorities, the
7 Settlement Agreement, the Declarations of Proposed Class Counsel (Annabel Blanchard) and
8 Proposed Class Representative (Rey Parra) in support thereof, the pleadings and other records
9 on file with the Court in this matter, and such evidence and oral argument as may be presented
10 at the hearing on this motion.

11 Dated: March 10, 2023

LAWYERS for JUSTICE, PC

12
13 By: 
14 Annabel Blanchard
15 Attorneys for Plaintiff
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TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	3
III.	SUMMARY OF THE SETTLEMENT TERMS	4
IV.	LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS.....	8
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT	10
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.	10
B.	The Settlement Is Fair, Reasonable, and Adequate.....	13
C.	The Settlement Is of Significant Value.....	14
VI.	CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE..	15
A.	The Class Is Ascertainable and Sufficiently Numerous.	15
B.	The Class Members Share a Well-Defined Community of Interest....	16
VII.	APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND COSTS	17
VIII.	THE PROPOSED CLASS NOTICE IS ADEQUATE	20
IX.	APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR.....	21
X.	PROPOSED DEADLINES FOR THE NOTICE PROCESS	22
XI.	APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT	24
XII.	CONCLUSION	25

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	10
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	15
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	19
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 .	16
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	20, 21
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	19
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	9
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	9
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 10
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	19
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	9, 10
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	15
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	14
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	19
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	18
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	14
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	19
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	18, 19
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	15
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	20
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	19
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	9
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	16
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	15, 16

1	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	8
2	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	24
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	8, 10
4	Statutes	
5	Cal. Code Civ. Proc. § 1781.....	20
6	Cal. Code Civ. Proc. § 1781(f).....	8
7	Other Authorities	
8	Conte & Newberg, <i>Newberg on Class Actions</i> § 11.25 (4th Ed.)	9
9	Conte & Newberg, <i>Newberg on Class Actions</i> § 11.26 (4th Ed.)	22
10	Conte & Newberg, <i>Newberg on Class Actions</i> § 11.47 (4th Ed.)	14
11	Conte & Newberg, <i>Newberg on Class Actions</i> § 14.03 (4th Ed.)	19
12	Conte & Newberg, <i>Newberg on Class Actions</i> § 8.21 (4th Ed.)	21
13	Conte & Newberg, <i>Newberg on Class Actions</i> § 8.29 (4th Ed.)	21
14	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	20
15	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	21
16	Rules	
17	Fed. R. Civ. P. 23(c)(2)	21
18	Fed. R. Civ. P. 23(e).....	18
19		
20		
21		
22		
23		
24		
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Rey Parra (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Sherwood Country Club (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of one million two hundred thousand dollars and no cents (\$1,200,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of ten thousand dollars and no cents (\$10,000.00) to Plaintiff³; (3) Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, (i.e., \$420,000.00), and reimbursement of litigation costs and expenses not to exceed thirty thousand dollars and no cents (\$30,000.00)⁴; (4) Settlement Administration Costs to the Settlement Administrator in an amount not to exceed fourteen thousand dollars and no cents (\$14,000.00);⁵ and (5) the amount of two hundred thousand dollars and no cents (\$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 California Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$50,000.00) will be distributed to all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from September 22, 2019 through June 23, 2022, whether directly employed

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Annabel Blanchard (“Blanchard Decl.”), ¶ 6.u.

² *Id.*, ¶ 6.s.

³ *Id.*, ¶ 11.

⁴ *Id.*, ¶ 10.

⁵ *Id.*, ¶ 12.

by Defendant or employed through a Staffing Agency (“PAGA Members”) on a *pro rata* basis.⁶

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

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from March 11, 2017 through and including June 23, 2022, whether directly employed by Defendant or employed by a Staffing Agency (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately six hundred sixty (660) individuals and the PAGA Members are estimated to consist of approximately three hundred eighty-five (385) individuals.⁸

Class Members who do not submit a timely and complete Request for Exclusion (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Class Member was directly employed by Defendant as well as the number of weeks each Class Member performed work for Defendant through a Staffing Agency, as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”).⁹

Defendant has represented that for the period of March 11, 2017 to March 17, 2022, there were approximately 34,592 total workweek equivalents, which was based on approximately 172,961 shifts during this period.¹⁰ If it is determined by the Settlement Administrator that the total number of workweek equivalents, which are to be determined from the total number of shifts contained in the Class Data and List and dividing the shifts by five (5), during the period referenced actually exceed 34,592 by more than ten percent (10%), then the Maximum Settlement Amount will increase on a proportional basis to the extent the ten percent (10%) threshold is exceeded.¹¹

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⁶ Settlement Agreement, ¶¶ 6.x, 6.y, & 13. “PAGA Period” is defined as the period from September 22, 2019, through June 23, 2022. *See id.*, ¶ 6.aa.

⁷ *Id.*, ¶ 6.d. “Staffing Agency” is individually referred to as one of the three (3) staffing agencies or labor placement services used by Defendant during the Class Period, to employ Class Members. *See id.*, ¶ 6.mm. “Class Period” is defined as the period from March 11, 2017, through June 23, 2022. *See id.*, ¶ 6.f.

⁸ Blanchard Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 6.s, 6.ll, & 6.nn.

¹⁰ *Id.*, ¶ 37.

¹¹ *Ibid.*

1 The Settlement resolves the Released Class Claims of Plaintiff and the Settlement Class
2 Members, and the Released PAGA Claims of the PAGA Members and the State of California,
3 against the Released Parties.¹²

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

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

9 Defendant is a golf, tennis, and country club located in Thousand Oaks, California.
10 Plaintiff Rey Parra is a former employee of Defendant.

11 On March 11, 2021, Plaintiff filed a Class Action Complaint for Damages in the Ventura
12 County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

13 On March 18, 2021, Plaintiff provided written notice by online submission to the LWDA
14 and by certified mail to Defendant of the specific provisions of the California Labor Code and
15 Industrial Welfare Commission Wage Orders that were violated.

16 On May 25, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages
17 & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*
18 (“Operative Complaint”).

19 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
20 engaging in a uniform practice and procedure, with respect to Plaintiff, the Class Members, and
21 the PAGA Members of, *inter alia*, failing to pay all overtime and minimum wages, failing to
22 provide compliant meal and rest periods and associated premium pay, failing to timely pay
23 wages during employment and upon termination of employment, failing to provide compliant
24 wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary
25 business expenses, and thereby engaged in unfair business practices in violation of California
26 Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties
27

28 ¹² Settlement Agreement, ¶¶ 30 & 31. See *id.* at ¶ 6.ee, for the full scope of the “Released Class Claims,” *id.* at ¶ 6.ff for the full scope of the “Released PAGA Claims,” and *id.* at ¶ 6.gg for the definition of the “Released Parties.”

pursuant to PAGA. Plaintiff contends that he, and the Class Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On July 15, 2021, Defendant filed an Answer to the Operative Complaint.

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

On May 12, 2021, Defendant served a notice of the deposition of Plaintiff Rey Parra.

On July 20, 2021, Plaintiff propounded multiple sets of formal written discovery requests on Defendant including, Requests for Production of Documents (Set One), Special Interrogatories (Sets One & Two), and Form Interrogatories – General (Set One), and noticed the depositions of persons most knowledgeable at Defendant regarding organizational structure and wage-and-hour practices, along with accompanying requests for production of documents.

The Parties have actively litigated the Action since it was commenced on March 11, 2021. On March 17, 2022, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, a well-regarded mediator experienced in mediating complex labor and employment matters (the "Mediator"). 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 Maximum Settlement Amount to resolve the Released Class Claims of Plaintiff and the Settlement Class Members who do not submit a timely and complete Request for Exclusion (i.e., Settlement Class Members) and the Released PAGA Claims of the PAGA Group Members and the State of California with respect to the Released Parties.¹³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in an amount equal to thirty-five percent (35%) of the Maximum Settlement

¹³ Settlement Agreement, ¶ 6.u.

Amount (\$420,000.00) and reimbursement of costs and expenses in an amount not to exceed thirty thousand dollars and no cents (\$30,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are currently estimated not to exceed fourteen thousand dollars and no cents (\$14,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) PAGA Allocation of two hundred thousand dollars and no cents (\$200,000.00), of which seventy five percent (75%) (i.e., \$150,000.00 out of \$200,000.00) will be paid to the LWDA (“LWDA Payment”), and twenty five percent (25%) (i.e. \$50,000.00 out of \$200,000.00) will be distributed to the PAGA Members on a *pro rata* basis (“PAGA Member Amount”); and (4) payment in the amount of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Rey Parra (“Enhancement Payment”).¹⁴ The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.

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

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will determine the Workweeks of each Class Member, divide the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹⁵
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁶

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¹⁴ Settlement Agreement, ¶¶ 6.v. 10, 11, 12, & 13.

¹⁵ *Id.*, ¶ 14.a. “Preliminary Approval” is defined as entry of the Court order granting preliminary approval of the Settlement Agreement. *See id.*, ¶ 6.dd. “Class Settlement” is defined as the settlement and resolution of all Released Class Claims. *See id.*, ¶ 6.h.

¹⁶ *Id.*, ¶ 14.b. “Final Approval” is defined as the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon. *See id.*, ¶ 6.o.

1 The Settlement Administrator will determine each PAGA Member's pro rata share of
2 the PAGA Member Amount that a PAGA Member is eligible to receive for the PAGA
3 Settlement ("Individual PAGA Payment"), in accordance with the Settlement Agreement and
4 as follows: The Settlement Administrator will divide the PAGA Member Amount by the
5 Workweeks of all PAGA Members during the PAGA Period to yield the "PAGA Workweek
6 Value," and multiply each PAGA Member's individual Workweeks during the PAGA Period
7 by the PAGA Workweek Value to yield his or her estimated Individual PAGA Payment that he
8 or she may be eligible to receive under the PAGA Settlement.¹⁷

9 Each Individual Settlement Share will be allocated as follows: twenty-five percent (25%)
10 as wages, which will be reported on an IRS Form W-2; and the remaining seventy-five percent
11 (75%) as penalties, interest, and other non-wage damages, which will be reported on an IRS
12 Form 1099 (if applicable).¹⁸ Settlement Class Members will be issued payment of their
13 Individual Settlement Share subject to reduction for the employee's share of taxes and
14 withholdings with respect to the wage portion of each Individual Settlement Share (the net
15 payment is referred to as "Individual Settlement Payment").¹⁹ Defendant will pay the
16 employer's share of payroll taxes and contributions with respect to the wage portion of
17 Individual Settlement Shares ("Employer Taxes") in addition to the Maximum Settlement
18 Amount.²⁰ Each Individual PAGA Payment will be allocated as one hundred percent (100%)
19 penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement
20 Administrator.²¹

21 Each Individual Settlement Payment and Individual PAGA Payment check will be valid
22 and negotiable for one hundred eighty (180) calendar days from the date of issuance, and
23 thereafter, will be canceled.²² The funds associated with such cancelled checks will be
24 transmitted by the Settlement Administrator to the Boys and Girls Club of Oxnard, Port

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26 ¹⁷ Settlement Agreement, ¶¶ 6.q & 15. "PAGA Settlement" is defined as the settlement and resolution of
Released PAGA Claims. *See id.*, ¶ 6.bb.

27 ¹⁸ *Id.*, ¶ 25.

¹⁹ *Id.*, ¶¶ 6.r & 25.

28 ²⁰ *Id.*, ¶ 6.m.

²¹ *Id.*, ¶ 25.

²² *Id.*, ¶ 20.

Hueneme, and Camarillo.²³ The Parties and their counsel have represented that they do not have any significant affiliation or involvement with the proposed *cy pres* recipient.²⁴

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must notify the Settlement Administrator in writing by submitting a timely and complete letter indicating a request to be excluded from the Class Settlement (“Request for Exclusion”), postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice (“Response Deadline”).²⁵ A Request for Exclusion must: (1) contain the case name and number of the Action; (2) be signed by the Class Member; (3) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion from the Class Settlement; (4) clearly state that the Class Member does not wish to be included in the Class Settlement; and (5) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁶ Class Members who submit a valid and complete Request for Exclusion will not be bound by the terms of the Class Settlement and Final Approval Order and Judgment as it pertains to the Class Settlement.²⁷ However, if a Class Member is a PAGA Member, they will be bound to the PAGA Settlement and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.²⁸

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement.²⁹ Class Members who wish to object to the Class Settlement must submit a written objection (“Notice of Objection”), which must: (1) include the case name and number of the Action; (2) the objector’s full name, signature, address, telephone number, and last four digits of his or her Social Security number; (3) include a written statement of all grounds for the objection to the Class Settlement accompanied by any legal support for such objection; (4) include copies of any papers, briefs,

²³ Settlement Agreement, ¶ 20.

²⁴ *Ibid.*

²⁵ *Id.*, ¶ 6.hh, 6.ii, & 21.

²⁶ *Id.*, ¶ 6.hh.

²⁷ *Id.*, ¶ 21

²⁸ *Ibid.*

²⁹ *Id.*, ¶ 6.w.

or other documents upon which the objection to the Class Settlement is based; (5) include the name and contact information of any attorney representing the objector with respect to his or her objection to the Class Settlement; and (6) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³⁰ Settlement Class Members may also present their objection orally at the Final Approval Hearing.³¹

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.³² The letter must: (a) contain the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security number of the disputing Class Member; (d) clearly state the Class Member disputes the number of Workweeks credited to them and what they contend is the correct number to be credited to them; (e) include information and/or attach documentation demonstrating that the number of Workweeks they contend should be credited to them are correct; and (f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³³

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award

³⁰ Settlement Agreement., ¶¶ 6.w & 22.

³¹ *Id.*, ¶ 22.

³² *Id.*, ¶ 19.

³³ *Ibid.*

1 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
2 decision to approve a class action settlement may be reversed only upon a strong showing of
3 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
4 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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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 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. **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 March 11, 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 case for class certification and trial.³⁴

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³⁴ Blanchard Decl., ¶¶ 11-13.

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.³⁵ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to employment records of Plaintiff, a detailed sampling of Class Members' time data and pay data, payroll records, Defendant's Employee Handbook, company policy acknowledgments and forms (including, but not limited to, Handbook Receipt and Acknowledgment, Meal & Rest Period Acknowledgement, Agreement to Waive Meal Break, Revocation to Waive Meal Break, Warning Notice Regarding Meal Breaks, and Time Clock Punching Errors) and Defendant's employment policies, practices, and procedures (including policies and procedures in regards to: attendance standards, cell phone use, time schedules and hours of work, lingering after hours, time-keeping systems, overtime pay, dress code, pay days, payroll deductions, meal and rest breaks, vacations, sick leave, paid time off and employee discipline), among other information and documents.³⁶ Class Counsel interviewed Plaintiff and conducted investigations to gather facts and to identify potential witnesses.³⁷ Class Counsel propounded multiple sets of formal written discovery requests onto Defendant (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's Person Most Knowledgeable designees regarding organizational structure and wage-and-hour practices, along with accompanying requests for production of documents.³⁸ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁹ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴⁰

³⁵ Blanchard Decl., ¶ 12.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, a well-respected mediator experienced in mediating complex labor and employment matters.⁴¹ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴³ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and avoid certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁴ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁵

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁶ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁷ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and

⁴¹ Blanchard Decl., ¶ 11.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 11, 16-18.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶ 12.

rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁸ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁹

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

The Settlement, which provides for a Maximum Settlement Amount of one million two hundred thousand dollars and no cents (\$1,200,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵⁰ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁵¹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵² Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, the PAGA Members and the State of California.⁵³

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Allocation, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be five hundred twenty-six thousand dollars and no cents (\$526,000.00).⁵⁴ Additionally, 75% of the PAGA Allocation, which is \$150,000.00 out of \$200,000.00, will be distributed to the LWDA and 25% of the PAGA Allocation, which is \$50,000.00 out of \$200,000.00, will be distributed to the PAGA Members.⁵⁵ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members and the PAGA Allocation will be fully paid out to the LWDA and PAGA Members,

⁴⁸ Blanchard Decl., ¶¶ 11-13 & 16-18.

⁴⁹ *Id.*, ¶¶ 2-7.

⁵⁰ *Id.*, ¶¶ 13, 14, & 21.

⁵¹ *Id.*, ¶¶ 11-13.

⁵² *Id.*, ¶¶ 16-18.

⁵³ *Id.*, ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶ 14.

⁵⁵ *Ibid.*

in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on their Workweeks during the Class Period and the amount of each PAGA Member's Individual PAGA Payment will be calculated based on their Workweeks during the PAGA Period.⁵⁶ 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 the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, the PAGA Members and the State of California.⁵⁷ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁸ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁹ As outlined in the Declaration of Annabel Blanchard, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶⁰

⁵⁶ Settlement Agreement, ¶¶ 14 & 15.

⁵⁷ Blanchard Decl., ¶¶ 11, 13, & 21.

⁵⁸ *Id.*, ¶¶ 11-13 & 18.

⁵⁹ *Id.*, ¶ 18.

⁶⁰ *Id.*, ¶¶ 11-13 & 16-18.

VI. **CERTIFICATION OF THE SETTLEMENT 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.⁶¹ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

A. **The Class Is Ascertainable and Sufficiently Numerous.**

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

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⁶¹ Settlement Agreement, ¶ 33.a.

1 This action involves a class of approximately six hundred sixty (660) individuals.⁶² This
2 class is sufficiently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-
3 35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder
4 is not practical at that point). Further, all Class Members can and will be identified by Defendant
5 to the Settlement Administrator through a review of Defendant’s employment records regarding
6 hourly-paid and non-exempt employees in California during the Class Period. As such, the
7 Class is ascertainable and sufficiently numerous.

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

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

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

23 Here, common issues of fact and law predominate as to each of the claims alleged and
24 asserted in the Operative Complaint. Based on the documents and information obtained through
25 formal and informal discovery and exchange of information in this case, Plaintiff contends that
26 Class Members were subject to the same or similar job duties and uniform operations and
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⁶² Blanchard Decl., ¶ 9.

1 employment practices, policies, and procedures during the time period at issue.⁶³ Plaintiff's
2 claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to
3 Plaintiff, the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages
4 for all hours worked, failing to provide compliant meal and rest periods and associated premium
5 pay, failing to timely pay wages during employment and upon termination of employment,
6 failing to provide complaint wage statements, failing to keep requisite payroll records, and
7 failing to reimburse necessary business-related expenses.⁶⁴

8 Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect
9 to Plaintiff, the Class Members were substantially the same during the period at issue.⁶⁵ As a
10 result, Plaintiff claims all of the Class Members were uniformly not paid all compensation due
11 to them from Defendant during the time period at issue.⁶⁶

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

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

18 Class Counsel has litigated the matter for over two (2) years and was actively preparing
19 the matter for class certification and trial.⁶⁷ The ongoing work has been extensive, demanding,
20 and ultimately successful in achieving a substantial settlement resolution. Class Counsel
21 conducted extensive investigations into the facts of the case and formal and informal discovery.
22 Class Counsel reviewed a large volume of documents and data⁶⁸, researched applicable law,
23 undertook damages/valuation calculations, and met and conferred with Defendant's counsel
24 regarding the pleadings, discovery, and the production of documents and data prior to mediation
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26 ⁶³ Blanchard Decl., ¶ 16.

27 ⁶⁴ *Ibid.*

28 ⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶¶ 11-13.

⁶⁸ *Id.*, ¶ 12.

1 and throughout settlement negotiations.⁶⁹ Counsel for the Parties also undertook extensive
2 settlement discussions, which included participating in a formal, full-day mediation.⁷⁰

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

5 The Settlement establishes a Maximum Settlement Amount of one million two hundred
6 thousand dollars and no cents (\$1,200,000.00), and provides for Class Counsel to apply to the
7 Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed
8 thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$420,000.00) and an
9 amount not to exceed thirty thousand dollars and no cents (\$30,000.00) for reimbursement of
10 litigation costs and expenses.⁷² The attorneys' fees provided for by the Settlement are
11 commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2)
12 the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and
13 determination that Class Counsel has shown, (4) the results that Class Counsel has achieved
14 throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the
15 Class Members, the PAGA Members, and the State of California, and (6) the other cases that
16 Class Counsel had to turn down in order to devote its time and efforts to this matter. The
17 proposed Class Notice provides Class Members with information about the amount allocated
18 toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will
19 be sought, as provided for by the Settlement.⁷³

20 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
21 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
22 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
23 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
24 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should
25 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk

26 ⁶⁹ Blanchard Decl., ¶ 12.

27 ⁷⁰ *Id.*, ¶ 11.

28 ⁷¹ *Id.*, ¶¶ 2-7.

⁷² Settlement Agreement, ¶ 10.

⁷³ *Id.*, Exh. A.

1 incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82
2 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can
3 be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee
4 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
5 litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund
6 and the settlement agreement provides that the defendant agrees to paying the attorneys a
7 percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

15 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
16 depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin*
17 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
18 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
19 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
20 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
21 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
22 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
23 actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
24 No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior
25 Court Case No. BC263646 (Sept. 2006) (wage and hour).

26 Class Counsel has borne all of the risks and costs of litigation and will not receive any
27 compensation until recovery is obtained.⁷⁴

28 ⁷⁴ Blanchard Decl., ¶ 19.

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice⁷⁵ describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁶

The proposed Class Notice fulfills the requirement of neutrality in a notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁷ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁸ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payment are calculated, and the number of Workweeks credited to them.⁷⁹

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⁷⁵ Settlement Agreement, Exh. A.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

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

IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. mail.⁸⁰ With respect to any Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator search for an alternative address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.⁸¹ The Response Deadline to submit a Request for Exclusion, Notice of Objection, or dispute regarding Workweeks for Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be extended fifteen (15) calendar days.⁸² The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.⁸³

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and the Individual PAGA Payment checks to the PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁴ The Settlement Administration

⁸⁰ Settlement Agreement, ¶ 18.a.

⁸¹ *Id.*, ¶ 18.b.

⁸² *Id.*, ¶ 6.ii.

⁸³ *Id.*, ¶¶ 19, 21, & 22.

⁸⁴ *Id.*, ¶ 12; Blanchard Decl., ¶ 15.

Costs are currently estimated not to exceed fourteen thousand dollars and no cents (\$14,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁸⁵

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁶

Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Settlement Administrator with a list of Class Members that Defendant will compile from its records ("Class Data and List"), which will include each Class Member's full name; last known mailing address; last known telephone number; Social Security number; start and end dates of employment by Defendant in California as an hourly-paid or non-exempt employee during the Class Period and PAGA Period; start and end dates worked for Defendant in California as an hourly-paid or non-exempt employee of a Staffing Agency during the Class Period and PAGA Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks.⁸⁷ The Class Data and List will also include a summary of the total number of shifts of all of the Class Members employed by Defendant in California as an hourly-paid or non-exempt employee from March 11, 2017, to March 17, 2022, and a summary of the total number of shifts all of the Class Members worked for Defendant in California as an hourly-paid or non-exempt employee of a Staffing Agency from March 11, 2017, to March 17, 2022, and such other information as is necessary for the Settlement Administrator to calculate workweek

⁸⁵ Settlement Agreement, ¶ 12.

⁸⁶ *Id.*, ¶ 18.a

⁸⁷ *Id.*, ¶ 6.c.

1 equivalents.⁸⁸

2 Within ten (10) business days of receipt of the Class Data and List, the Settlement
3 Administrator will mail the Class Notice in English and Spanish to the Class Members via First-
4 Class U.S. Mail.⁸⁹ With respect to Class Notices that are returned as undeliverable on or before
5 the Response Deadline, the Settlement Administrator will search for an alternate address by way
6 of skip-trace and re-mail the Class Notice within five (5) calendar days.⁹⁰ Class Members will
7 have until the applicable Response Deadline to submit a Request for Exclusion, dispute
8 regarding Workweeks, and/or Notice of Objection.⁹¹

9 Within fourteen (14) calendar days of the Effective Date, Defendant will make a deposit
10 of the Maximum Settlement Amount, plus an amount sufficient to pay Employer Taxes, into a
11 qualified settlement account to be established by the Settlement Administrator.⁹² Within seven
12 (7) calendar days of full funding of the Maximum Settlement Amount and Employer Taxes, the
13 Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement
14 Class Members; (2) the Individual PAGA Payments to PAGA Members; (3) the Court-approved
15 Enhancement Payment to Plaintiff; (4) the Court-approved Attorneys' Fees and Costs to Class
16 Counsel; (5) the LWDA Payment to the LWDA; and (6) the Court-approved Settlement
17 Administration Costs to itself.⁹³

18 The Individual Settlement Payment and Individual PAGA Payment checks will remain
19 valid and negotiable for one hundred and eighty (180) calendar days from the date of their
20 issuance, and thereafter, will be canceled.⁹⁴ The funds associated with such cancelled checks
21 will be transmitted by the Settlement Administrator to the Boys and Girls Club of Oxnard, Port
22 Hueneme, and Camarillo.⁹⁵

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25 ⁸⁸ Settlement Agreement, ¶ 6.c.

26 ⁸⁹ *Id.*, ¶ 18.a.

27 ⁹⁰ *Id.*, ¶ 18.b.

28 ⁹¹ *Id.*, ¶¶ 6.ii, 19, 21, & 22.

⁹² *Id.*, ¶ 9.b.

⁹³ *Id.*, ¶ 9.c.

⁹⁴ *Id.*, ¶ 20.

⁹⁵ *Ibid.*

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR
ENHANCEMENT PAYMENT**

Plaintiff Rey Parra respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to ten thousand dollars and no cents (\$10,000.00).⁹⁶ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁷ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁸ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment, in addition to his Individual Settlement Payment and Individual PAGA Payment, for his services on behalf of the Class and State of California.

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⁹⁶ Settlement Agreement, ¶ 11.

⁹⁷ Blanchard Decl., ¶ 20; Declaration of Rey Parra in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Parra Decl."), ¶¶ 3-4.

⁹⁸ Blanchard Decl., ¶ 20; Parra Decl., ¶¶ 3-5.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwasian, Arby Aiwasian, Joanna Ghosh, and Annabel Blanchard of Lawyers *for* Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Rey Parra as Class Representative; appoint Phoenix as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Allocation, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: March 10, 2023

LAWYERS *for* JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiff