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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

EDUARDO CHINA, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

SOUTHWESTERN INDUSTRIES, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendant.

Lead Case No.: 21STCV11874
Consolidated Case No. 21CMCV00123

Honorable William F. Highberger
Department SSC10

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
(Brian J. St. John); Declaration of
Proposed Class Representative (Eduardo
China); and [Proposed] Order filed
concurrently herewith]

Date: December 19, 2023
Time: 2:00 p.m.
Department: 10

Complaint Filed: March 26, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on December 19, 2023, at 2:00 p.m. or as soon thereafter as the matter may be heard before the Honorable William F. Highberger in Department 10 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Eduardo China (“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 Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Brian J. St. John, 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, Class Representative Enhancement to Plaintiff, and Settlement Administration Expenses to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Eduardo China as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Joint Stipulation of Settlement and Release;
- 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, Class Representative Enhancement for Plaintiff, and Settlement Administration Expenses to Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Brian J. St. John) and Proposed Class Representative (Eduardo China) 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: October 30, 2023

LAWYERS for JUSTICE, PC

By: _____



Brian J. St. John
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Eduardo China (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of 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 Southwestern Industries, Inc., (“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 Total Settlement Amount of One-Million and Nine-Hundred Thousand Dollars and no cents (\$1,900,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Enhancement of Ten Thousand Dollars and no cents (\$10,000.00) to Plaintiff; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of one-third (1/3) of the Total Settlement Amount, or (\$633,333.33), and reimbursement of litigation costs and expenses not to exceed Twenty Thousand Dollars and no cents (\$20,000.00)³; (4) the Settlement Administration Expenses to the Settlement Administrator in the amount currently estimated not to exceed Nine Thousand Dollars and no cents (\$9,000.00);⁴ (5) PAGA Penalty Amount of Three Hundred Thousand Dollars and no cents (\$300,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$225,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$75,000.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the PAGA Period (“Aggrieved Employees”) on a *pro rata* basis, based on Workweeks during the PAGA Period.⁵

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Brian J. St. John (“St. John Decl.”), ¶¶ 40.

² *Id.*, ¶¶ 19 & 40.

³ *Id.* ¶ 54; although the Settlement Agreement provides for Attorneys’ Fees up to 35% of the Total Settlement Amount, Class Counsel only seeks fees equal to one-third of the Total Settlement Amount.

⁴ *Id.*, ¶ 55.

⁵ Settlement Agreement, ¶¶ 52, “PAGA Period” is defined as the period of time from March 16, 2020 through October 31, 2022, *See id.* ¶ 30.

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

All current and former hourly-paid or non-exempt employees of Defendant in the State of California employed at any time during the period from March 26, 2017 through October 31, 2022 (Class” or “Class Members”).⁶

The Class is estimated to consist of approximately 192 individuals.⁷

Class Members who do not submit a timely and valid Request for Exclusion (“Participating Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Participating Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”).⁸

Aggrieved Employees will receive a share of the 25% of the PAGA Penalty Amount on a *pro rata* basis (“Individual PAGA Payment”).⁹

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

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant manufactures machine tools. Their engineering, manufacturing and corporate headquarters are housed in 130,000 sq. ft. facilities in southern California. Defendant employs a large field organization of factory-direct sales, service and management personnel throughout North America. Plaintiff Eduardo China is a former employee of Defendant.

⁶ Settlement Agreement, ¶ 6. “Class Period” is defined as the period of time from March 26, 2017 through October 31, 2022. *See id.*, ¶ 8.

⁷ St. John Decl., ¶ 9.

⁸ Settlement Agreement, ¶ 20, 56(a).

⁹ *Id.*, ¶¶ 18, 52, 56(b).

¹⁰ *See id.* at ¶ 33 & 34, for the full scope of the “Released Class Claims” and “Released PAGA Claims,” and *Id.* at ¶ 35 for the definition of the “Released Parties.”

On March 16, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated (“LWDA Notice.”)

On March 26, 2021, Plaintiff filed a Class Action Complaint for Damages (“Operative Complaint”) in the Los Angeles County Superior Court (“Court”), Case No. 21STCV11874, thereby commencing the above-captioned lawsuit (“Action”).

On May 21, 2021, Plaintiff filed a complaint for civil penalties and Enforcement under the Private Attorneys General Act, California Labor Code §2698, *Et Seq.* (“PAGA Complaint”) in the Superior Court of California for the County of Los Angeles Case No. 21CMCV00123 (the “PAGA Action”).

On July 9, 2021, Plaintiff filed an Amendment to Complaint, modifying the Operative Complaint to correct the name of the Defendant to Southwestern Industries, Inc.

On August 2, 2021, Defendant filed Answers to the PAGA Complaint.

On September 2, 2021, Plaintiff filed an Amendment to Complaint, modifying the PAGA Complaint to correct the name of the Defendant to Southwestern Industries, Inc.

On December 16, 2022, the Action (Case No. 21STCV11874) and the PAGA Action (Case No. 21CMCV00123) were consolidated, and Case No. 21STCV11874 became the lead case.

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

Employees are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

Defendant heavily disputed Plaintiff's allegations of unlawful conduct, and 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 only.

Prior to reaching Settlement, Class Counsel conducted significant investigation into the facts of the case and engaged in informal discovery and review and analysis of thousands of pages of documents and data produced by Defendants.

The Parties have actively litigated the Action since it was commenced on March 26, 2021. On June 30, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey A. Ross, 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 Total Settlement Amount (\$1,900,000.00) to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid Request for Exclusion (i.e., Participating Class Members) with respect to the Released Parties, and the Released PAGA Claims of Plaintiff, the State of California, and the Aggrieved Employees with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Settlement Amount: (1) Attorneys' Fees in an amount not to exceed Six Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three cents (\$633,333.33) (i.e., up to 1/3 of the Total Settlement Amount) and reimbursement of Litigation Costs in an amount not to exceed Twenty Thousand Dollars and no cents (\$20,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) Settlement Administration Expenses, which are currently estimated not to exceed Nine Thousand Dollars

¹¹ Settlement Agreement, ¶¶ 31, 40. & 71(a).

and no cents (\$9,000.00) to the Settlement Administrator (“Settlement Administration Expenses”); (3) PAGA Penalty Amount of Three Hundred Thousand Dollars and zero cents (\$300,000.00), of which seventy-five percent (75%) (i.e., \$225,000.00) (“LWDA Payment”) and twenty-five percent (25%) (i.e., \$75,000.00) (“Individual PAGA Payment”) will be distributed to the Aggrieved Employees on a *pro rata* basis; and (4) payment in the amount of up to Ten Thousand Dollars and no cents (\$10,000.00) to Plaintiff Eduardo China (“Class Representative Enhancement”).¹² 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 Settlement Class Member’s share of the available Net Settlement Amount (i.e., Individual Settlement Share), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will calculate each Participating Class Member’s number of Workweeks and the total aggregate number of Workweeks of all Participating Class Members by utilizing the start and end dates worked as an hourly paid or non-exempt employee for Defendant in California.¹³
- b. The Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the “Final Workweek Value,” and multiply each Participating Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

The Settlement Administrator will determine each PAGA Member’s share of the PAGA Penalty Amount (i.e., Individual PAGA Amount), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the PAGA Member Amount, i.e., 25% of the PAGA Penalty Amount, by the total number of Workweeks during the PAGA Period for all Aggrieved Employees to yield the “PAGA Workweek Value,” and multiply each Aggrieved Employee’s individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.¹⁵

Each Individual Settlement Share will be allocated as twenty percent (20%) wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) penalties, interest, and other non-wage damages, which will be reported on an IRS Form

¹² Settlement Agreement, ¶ 22; see also, *id.*, ¶¶ 52-55.

¹³ *Id.*, ¶ 56 (a) i.

¹⁴ *Id.*, ¶ 56(a)ii.

¹⁵ *Id.*, ¶ 56(b).

1099.¹⁶ The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).¹⁷ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares ("Employer Taxes") in addition to the Settlement Amount.¹⁸

Each Individual Settlement Payment check issued to Participating Class Members and the Individual PAGA Payment check issued to the Aggrieved Employees will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁹ Individual Settlement Payment checks and Individual PAGA Payment checks that are not negotiated within the 180-day period will be void and stop payment will be issued.²⁰ The funds from associated with such voided checks will be transmitted by the Settlement Administrator within (10) calendar days after the expiration of the 180-day period, and sent to the State Controller's Office, Unclaimed Property Division, in the name of the Participating Class Member and/or Aggrieved Employee who failed to cash his/her check and in the respective amount of the voided check.²¹

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a written Request for Exclusion to the Settlement Administrator, by mail, indicating that they want to exclude themselves.²² To be timely, the Class Member must mail a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice to Class Members and Aggrieved Employees ("Response Deadline") unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.²³ In the event that a

¹⁶ Settlement Agreement, ¶ 57.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ *Id.*, ¶ 77.

²⁰ Ibid.

²¹ Ibid.

²² *Id.*, ¶ 37.

²³ Ibid.

Class Notice is re-mailed to the Class Member, the Response Deadline for that Class member shall be extended by fifteen calendar days from the original deadline.²⁴

A Request for Exclusion must: (a) contain the case name and number of the Action, (b) contain the full name, address, telephone number, and the last four (4) digits of the Social Security Number of the Class Member requesting exclusion, (c) clearly state that the Class Member does not wish to be included in the Class Settlement, and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁵ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Class Settlement and Final Approval Order and Judgment.²⁶ All Aggrieved Employees will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.²⁷

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) have standing to object to the Class Settlement.²⁸ Participating Class Members who wish to object to the Class Settlement can either serve the Settlement Administrator with a Notice of Objection on or before the Response Deadline²⁹ or present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection. The Notice of objection must contain: (a) the Settlement Class Member's full name, signature, address, telephone number and the last four (4) digits of his or her Social Security number; (b) the case name and number of the Action; (c) a statement clearly indicating that he or she objects and providing the reasons why he or she objects; and (d) include copies of any papers, briefs, or other documents upon which the objection is based, and be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³⁰

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²⁴ Settlement Agreement, ¶ 37.

²⁵ *Id.*, ¶ 36, 37, & 71(a).

²⁶ *Id.* ¶ 71(a) & 74.

²⁷ *Ibid.*

²⁸ *Id.*, ¶ 71(c) & 74.

²⁹ *Id.*, ¶ 71(c).

³⁰ *Id.*, ¶ 24 & 71(c).

Class Members and Aggrieved Employees 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.³¹ In order to dispute workweeks, Class Members must submit a written letter to the Settlement Administrator that must: (a) contain the case name and number of the Action, (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the disputing Class Member, (c) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her, (d) include information and/or attach documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct, and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³²

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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³¹ Settlement Agreement, ¶ 74.

³² *Ibid.*

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

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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 26, 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.³³

Prior to engaging in mediation, Class Counsel conducted significant investigation 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.³⁴ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s Employee Handbook, company policy acknowledgements, internal memoranda, job descriptions, new hire orientation checklists, operations and employment practices, forms, procedures, and policies (including but not limited to Work Hours and Break Time policy, Attendance policy, Personal Conduct policy,

³³ St. John Decl., ¶¶ 11-13.

³⁴ *Id.*, ¶ 12.

Cell Phone Policy, and Use of Computer Software Policy), among other information and documents.³⁵ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁶ 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.³⁷ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁸

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey A. Ross, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁹ In the course of litigation and in connection with 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 enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴¹ 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 Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴² After conducting investigations, significant 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

³⁵ St. John Decl., ¶ 12.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ *Id.*, ¶ 11.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² *Id.*, ¶¶ 11 & 16-18.

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

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

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

15 The Settlement, which provides for a Total Settlement Amount of One Million Nine
16 Hundred Thousand Dollars and no cents (\$1,900,000.00) represents a fair, adequate, and
17 reasonable resolution of the matter.⁴⁸ The Settlement was calculated using the information and
18 data uncovered during litigation, case investigation, as well as the informal exchange of
19 information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any
20 case and, in particular, in the case at issue.⁵⁰ Moreover, considering all of the facts and
21 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
22 for the Class, PAGA Members, and the State of California.⁵¹

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24

⁴³ St. John Decl., ¶¶ 11 & 16-18.

25 ⁴⁴ Ibid.

26 ⁴⁵ Ibid.

27 ⁴⁶ *Id.*, ¶¶ 11-13 & 16-18.

28 ⁴⁷ *Id.*, ¶¶ 6-7.

⁴⁸ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁹ *Id.*, ¶¶ 11-13.

⁵⁰ *Id.*, ¶¶ 16-18.

⁵¹ *Id.*, ¶¶ 11, 13, & 21.

Assuming that the Attorneys' Fees and Costs, Class Representative Enhancement PAGA Penalty Payment, and Settlement Administration Expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Nine Hundred Twenty-Seven Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$927,666.67).⁵² Additionally, 75% of the PAGA Penalty Amount, i.e., \$300,000.00, will be distributed to the LWDA, and 25% of the PAGA Penalty Amount, i.e., \$75,000.00, will be distributed to Aggrieved Employees. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, and the PAGA Penalty Amount will be fully paid out to the LWDA and Aggrieved Employees, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Settlement Share will be calculated based on his or her Workweeks and each Aggrieved Employee's Individual PAGA Payment will be calculated based on his or her Workweeks.⁵³ 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.⁵⁴ 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.

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⁵²St. John Decl., ¶ 14.

⁵³ Settlement Agreement, ¶¶ 56(a) & 56(b).

⁵⁴ St. John Decl., ¶¶ 11, 13, & 21.

1 **C. The Settlement Is of Significant Value.**

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted significant formal and informal discovery and exchanged thousands of pages of
4 documents, data, and information in the course of litigation and in connection with mediation
5 and settlement negotiations.⁵⁵ The discovery and information that Class Counsel obtained from
6 Defendant and through other sources allowed Class Counsel to develop valuation models in
7 order to evaluate the potential value and merit of the claims, and perform a complete evaluation
8 of Defendant’s defenses thereto.⁵⁶ As outlined in the Declaration of Brian J. St. John, Class
9 Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to
10 entering into the Settlement.⁵⁷

11 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE**

12 For settlement purposes, the requisites for establishing class certification are met, and
13 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁸
14 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
15 one of a common or general interest, of many persons, or when the Parties are numerous, and it
16 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
17 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
18 “both [1] an ascertainable class and [2] a well-defined community of interest among class
19 members.” *Id.*

20 The Class is ascertainable and numerous as to make it impracticable to join all Class
21 Members, and there are common questions of law and fact that predominate over any questions
22 affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of
23 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
24 Class. Finally, prosecution of separate actions by individual Class Members would create the
25 risk of inconsistent or varying adjudications, and a class action is superior to other available

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27 ⁵⁵ St. John Decl., ¶¶ 11-13 & 18.

28 ⁵⁶ *Id.*, ¶ 18.

⁵⁷ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁸ Settlement Agreement, ¶ 59.

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 Plaintiff 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 one hundred ninety-two (192) individuals.⁵⁹ 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).

⁵⁹ St. John Decl., ¶ 9.

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶¹

Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶² As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶³

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

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⁶⁰ St. John Decl., ¶ 16.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

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.⁶⁴ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery.⁶⁵ Class Counsel reviewed thousands of pages of documents and data⁶⁶ and also interviewed and obtained information from Plaintiff, Defendant, and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁷ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁸

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

The Settlement establishes a Total Settlement Amount of One Million Nine Hundred Thousand Dollars and no cents (\$1,900,000.00), 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 one third (1/3) of the Total Settlement Amount (i.e., \$633,333.33) and an amount not to exceed Twenty Thousand Dollars and no cents (\$20,000.00) for costs and expenses.⁷⁰ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and 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

⁶⁴ St. John Decl., ¶¶ 11-13.

⁶⁵ *Id.*, ¶ 12.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 11.

⁶⁹ *Id.*, ¶¶ 6-7.

⁷⁰ Settlement Agreement, ¶ 54.

that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷¹

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

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45%

⁷¹ Settlement Agreement, Exh. A.

of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷²

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff’s motion for final approval of the Settlement and application for the 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 Notice⁷³ describes the Settlement, the deadlines and procedures to mail a written objection to the Class Settlement or present the objection orally, at the Final Approval Hearing, and mail a Request for Exclusion from the Class Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁴

The proposed Class Notice fulfills the requirement of neutrality in notice procedure.

⁷² St. John Decl., ¶ 19.

⁷³ Settlement Agreement, Exh. A.

⁷⁴ Ibid.

1 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
2 members to make an informed decision about their participation.” *Manual for Complex*
3 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
4 proceedings to date and the terms and conditions of the Settlement in an informative and
5 coherent manner.⁷⁵ The proposed Class Notice recognizes that the Court has not yet granted
6 final approval of the settlement.⁷⁶ The proposed Class Notice also apprises the Class Members
7 of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payments are
8 calculated and the number of Workweeks credited to them.⁷⁷

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

16 **IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE**
17 **SETTLEMENT ADMINISTRATOR**

18 The Parties have selected Phoenix Settlement Administrators to administer the
19 Settlement.

20 The Settlement Administrator will mail the Class Notice in English and Spanish to each
21 Class Member by First-Class U.S. mail.⁷⁸ With respect to Class Notices that are returned as
22 undeliverable with a forwarding address on or before the Response Deadline, the Settlement
23 Administrator will re-mail the Class Notice within five (5) calendar days to the forwarding
24 address.⁷⁹ With respect to Class Notices that are returned as undeliverable without a
25 forwarding address on or before the Response Deadline, the Settlement Administrator will

26 ⁷⁵ Settlement Agreement, Exh. A.

27 ⁷⁶ *Ibid*.

28 ⁷⁷ *Ibid*.

⁷⁸ *Id.*, ¶ 69(b).

⁷⁹ *Id.*, ¶ 69(c).

1 search for an alternate address by way of skip-trace and re-mail the Class Notice within five
2 (5) calendar days.⁸⁰ The Response Deadline to submit a request for exclusion, objection, or
3 dispute regarding Workweeks for Class Members to whom a Class Notice is re-sent, after having
4 been returned as undeliverable to the Settlement Administrator, will be extended fifteen (15)
5 calendar days from the original sixty (60) calendar day deadline.⁸¹ The Settlement
6 Administrator will receive and process requests for exclusion, objections, and any disputes
7 regarding Workweeks.⁸²

8 The Settlement Administrator will calculate the amounts of the Individual Settlement
9 Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal
10 taxes in connection with the wage portion of Settlement Shares; mail the Individual Settlement
11 Payment checks to Participating Class Members; issue W-2 and 1099 forms; calculate and
12 disburse the Attorneys' Fees and Costs, Class Representative Enhancement, and LWDA
13 Payment; and perform such other tasks necessary to effectuate the terms of the Settlement
14 Agreement.⁸³ The Settlement Administration Expenses are currently estimated to be no more
15 than Nine Thousand Dollars and no cents (\$9,000.00) and will be paid out of the Total
16 Settlement Amount, subject to approval by the Court.⁸⁴

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

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

22 At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for
23 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
24 entails mailing of the Class Notice, in the form approved by the Court, to all known and
25

26 ⁸⁰ Settlement Agreement, ¶ 69(c).

27 ⁸¹ *Id.*, ¶ 37.

28 ⁸² *Id.*, ¶ 55.

⁸³ *Id.*, ¶ 56; St. John Decl., ¶ 15.

⁸⁴ Settlement Agreement, ¶ 55.

reasonably ascertainable Class Members based on Defendant's records.⁸⁵

Within fifteen (15) calendar days after the date on which the Court grants Preliminary Approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known address; (3) telephone numbers (4) Social Security number; and (5) start and end dates of employment and/or number of Workweeks worked as an hourly and/or non-exempt employee of Defendant in California during the Class Period and during the PAGA Period (collectively, "Class Data").⁸⁶

Within fifteen (15) calendar days of receipt of the Class Data, the Settlement Administrator the Settlement Administrator will perform a search based on the National Change of Address Database, for information to update and correct for any known or identifiable address changes, and will mail the Class Notice, in English and Spanish, to the Class Members via First-Class U.S. Mail.⁸⁷ If a Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁸ If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸⁹ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, mail a dispute regarding Workweeks, and/or to mail a written Notice of Objection.⁹⁰ Defendant will fund the Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Settlement Administrator, within thirty (30) calendar days after the Effective Date.⁹¹ Within seven (7) calendar days of the date on which the Settlement administrator receives the Settlement Amount, the Settlement Administrator will distribute the (1) the Individual Settlement Payments to Participating Class Members; (2) the Court-approved Class Representative Enhancement to Plaintiff; (3) the Court-approved

⁸⁵ Settlement Agreement, ¶ 6.

⁸⁶ Ibid.

⁸⁷ *Id.*, ¶ 69(b).

⁸⁸ *Id.*, ¶ 69(c).

⁸⁹ Ibid.

⁹⁰ *Id.*, ¶ 71(a), 71(c) & 74.

⁹¹ *Id.*, ¶ 51.

Attorneys' Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; (5) the Individual PAGA Payments to Aggrieved Employees; and (6) the Court-approved Settlement Administration Expenses.⁹²

The Individual Settlement Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹³ Checks that are not negotiated within the 180-day period will be void and a stop-payment will be issued.⁹⁴ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the State Controller's Office, Unclaimed Property Division in the name of the Participating Class Member and/or Aggrieved Employee.⁹⁵

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Eduardo China respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Enhancement in an amount up to Ten Thousand Dollars and no cents (\$10,000.00) to Plaintiff Eduardo China.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 Class Representative Enhancement is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment

⁹² Settlement Agreement, ¶ 51.

⁹³ *Id.*, ¶ 77.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Id.*, ¶ 53.

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 class and PAGA claims.⁹⁸ Accordingly, it is appropriate and just for Plaintiff to receive a Representative Class Enhancement for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to his individual settlement payments.

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 Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Eduardo China as Class Representative; appoint Phoenix as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Representative Class Enhancement, PAGA Penalty Payment, and Settlement Administration Expenses; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five (5) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 30, 2023

LAWYERS for JUSTICE, PC

By: 

Brian J. St. John
Attorneys for Plaintiff

⁹⁷ St. John Decl., ¶ 20; Declaration of Eduardo China in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("China Decl."), ¶ 4.

⁹⁸ St. John Decl., ¶ 20; China Decl., ¶¶ 3-6.