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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

FRANK DEGOURVILLE, individually, and on behalf of other members of the general public similarly situated, Plaintiff, v. TPS PARKING MANAGEMENT, INC., an unknown business entity; and DOES 1 through 100, inclusive, Defendant.	Case No.: 21STCV07881 Honorable Yvette M. Palazuelos Department SSC9 **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 (Yasmin Hosseini); Declaration of Proposed Class Representative (Frank Degourville); and [Proposed] Order filed concurrently herewith] Date: February 8, 2024 Time: 10:00 a.m. Department: SSC9 Complaint Filed: March 1, 2021 Trial Date: None Set

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

PLEASE TAKE NOTICE that on February 8, 2024 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Yvette M. Palazuelos in Department SSC9 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Frank Degourville ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting leave to file the [Proposed] First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. ("First Amended Complaint" or "Operative Complaint") which is attached "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Yasmin Hosseini, 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, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Frank Degourville 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 B**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members and PAGA Members;

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- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment for Plaintiff, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which provides for 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 Declarations of Proposed Class Counsel (Yasmin Hosseini) and Proposed Class Representative (Frank Degourville) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: August 25, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________

Yasmin Hosseini
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Frank Degourville ("Plaintiff" or "Class Representative") seeks preliminary approval of the Stipulation of Class Action and PAGA Settlement ("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 TPS Parking Management, LLC[1], ("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 six hundred fifty thousand dollars ($1,650,000.00).[2] The Total Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount[3]; (2) the Enhancement Payment of seventeen thousand five hundred dollars ($17,500.00) to Plaintiff[4]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-eight percent (38%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses not to exceed twenty thousand dollars and no cents ($20,000.00)[5]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed twelve thousand dollars ($12,000.00);[6] and (5) the amount of one hundred ninety thousand dollars ($190,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA") (i.e., PAGA Penalty Amount), of which 75% (i.e., $142,500.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") (i.e., the LWDA Payment) and 25% (i.e., $47,500.00) will be distributed to PAGA Members on

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[1] The Class Complaint filed on March 1, 2021 listed TPS Parking Management, Inc. as the named Defendant and on March 16, 2021, an Amendment to Complaint was filed to identify Defendant's true name as TPS Parking Management, LLC.

[2] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Yasmin Hosseini ("Hosseini Decl."), ¶ 8.ll.

[3] *Id.*, ¶ 8.r.

[4] *Id.*, ¶ 13.

[5] *Id.*, ¶ 12.

[6] *Id.*, ¶ 14.

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a *pro rata* basis, based on Workweeks during the PAGA Period (i.e., Individual PAGA Payment).[7]

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

> All current or former hourly-paid or non-exempt employees of Defendant in California employed during the Class Period ("Class" or "Class Members").[8]

The Class is estimated to consist of approximately five hundred sixty-nine (569) individuals.[9]

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement ("Settlement Class Members") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis, based on the dates of employment and the specific number of workweeks worked where the Class Member worked at least one (1) shift during a calendar week commencing from Sunday through Saturday, during the Class Period ("Workweeks"). All current and former hourly-paid or non-exempt employees of Defendant in California employed between March 12, 2020 through the date of Preliminary Approval ("PAGA Members") will receive a share of the 25% portion of the PAGA Penalty Amount ("Individual PAGA Payment") on a *pro rata* basis based on the dates of employment and the specific number of workweeks worked where the PAGA Member worked at least one (1) shift during a calendar week commencing from Sunday through Saturday, during the PAGA Period.[10]

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of Plaintiff and PAGA Members, against the Released Parties.[11]

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[7] Settlement Agreement, ¶ 15.
[8] *Id.*, ¶ 8.e. "Class Period" is defined as the time period from March 1, 2017 through the date of Preliminary Approval. *See id.*, ¶ 8.g.
[9] Hosseini Decl., ¶ 9.
[10] Settlement Agreement, ¶¶ 8.kk., 8.mm., 8.w. and 8.q.
[11] See *id.* at ¶ 8.dd., for the full scope of the "Released Class Claims," *id.* at ¶ 8.ee. for the full scope of the "Released PAGA Claims" and *id.* at ¶ 8.ff. for the definition of the "Released Parties."

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant conducts business as "The Parking Spot," operating off-site parking lots near major airports nationwide. Plaintiff Frank Degourville is a former employee of Defendant.

On March 1, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Class Action").

On March 12, 2021, Plaintiff provided written notice by online submission to the Labor and Workforce Development Agency and by certified mail to Defendant of the specific provisions of the California Labor Code that Defendant allegedly violated ("LWDA Letter").

On March 16, 2021, Plaintiff filed an Amendment to Complaint (Fictitious/Incorrect Name), amending fictitiously named Defendant DOE 1 with the true name, TPS Parking Management, LLC.

On May 17, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act in the Los Angeles County Superior Court ("PAGA Action").

On June 3, 2021, Defendant filed an Answer and Affirmative Defenses to Plaintiff's Class Action Complaint.

Plaintiff's core allegation is that Defendant have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA Members 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 civil penalties pursuant to PAGA. Plaintiff contends that he, the Class Members, and PAGA Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to penalties pursuant to PAGA), and attorneys' fees.

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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 only.

On January 18, 2022, Plaintiff propounded multiple sets of discovery including Request for Production of Documents, (Set One); Special Interrogatories, (Sets One & Two); and Form Interrogatories, (Set One), on Defendant TPS Parking Management, Inc. On January 18, 2022 Plaintiff also noticed the deposition of Defendant's Person Most Knowledgeable regarding job duties and organizational structure of Defendant.

On October 7, 2022, Plaintiff noticed the deposition of Defendant's Person Most Knowledgeable regarding organizational structure on Defendant.

On November 9, 2022, Defendant filed an Objection to Plaintiff's First Notice of Deposition of Defendant's Person Most Knowledgeable regarding organizational structure.

On December 5, 2022, Plaintiff filed a First Amended Notice of Deposition of Defendant's Person Most Knowledgeable regarding organizational structure.

The Parties have actively litigated the Action since the Class Action was commenced on March 1, 2021. On June 14, 2022, the Parties participated in a formal, full-day mediation conducted by Hon. Michael Latin (Ret.), 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. REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff Frank Degourville to file an amended complaint in the Action to consolidate the Action and the *Degourville* PAGA Action. Further, the Parties agree that all material allegations in the First Amended Complaint shall be deemed denied by Defendant without the necessity of Defendant filing an Answer to the First Amended Complaint or any other pleading in the Action or *Degourville* PAGA Action. As such, Plaintiff respectfully

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requests leave to file the First Amended Complaint, attached "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, so that the terms of the Settlement may be effectuated.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Members) and the Released PAGA Claims of Plaintiff, PAGA Members, and the State of California, with respect to the Released Parties.[12] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Total Settlement Amount, and reimbursement of costs and expenses 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 costs, which are currently estimated not to exceed twelve thousand dollars and no cents ($12,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Penalty Amount (i.e., $142,500.00 out of $190,000.00) ("LWDA Payment"); and (4) payment in the amount of up to seventeen thousand five hundred dollars and no cents ($17,500.00) to Plaintiff Frank Degourville ("Enhancement Payment").[13] The Parties have agreed to retain Phoenix Class Action Administration Solutions ("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 ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows:

a. To determine the Individual Settlement Share for each Settlement Class Member, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members during the Class Period to yield the "Class Workweek Value," and multiply each Settlement Class Member's individual

[12] Settlement Agreement, ¶¶ 32-33.
[13] *Id.*, ¶¶ 12, 14, 15, and 13.

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Workweeks during the Class Period by the Class Workweek Value to yield his or her Individual Settlement Share.[14]

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

a. To determine the Individual PAGA Payment for each PAGA Member, the Settlement Administrator will divide the 25% portion of the PAGA Penalty Amount allocated to PAGA Members, i.e., $47,500.00, by the total number of Workweeks worked by all PAGA Members during the PAGA Period ("Total PAGA Workweeks) resulting in the PAGA Workweek Value and then multiply each PAGA Member's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.[15]

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: fifty percent (50%) as wages, which will be reported on an IRS Form W-2; and the remaining fifty percent (50%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.[16] Any payment for an Individual PAGA Payment will be allocated as penalties, will not be subject to taxes or withholding, and will be reported on an IRS Form-1099, if necessary.[17] Settlement Class Members will be issued payment of their Individual Settlement Shares, subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").[18] Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares in addition to the Total Settlement Amount.[19]

The Individual Settlement Payment and Individual PAGA Payment checks issued to Settlement Class Members and/or PAGA Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.[20] Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.[21] The funds associated with

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[14] Settlement Agreement, ¶ 16.a.
[15] *Ibid.*
[16] *Id.,* ¶ 27.
[17] *Id.*
[18] *Ibid.*
[19] *Id.,* ¶ 27.
[20] *Id.,* ¶ 21.
[21] *Ibid.*

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such cancelled checks will be transmitted by the Settlement Administrator to the California Controller's Unclaimed Property Fund in the name of the Settlement Class Member and/or PAGA Member, in in accordance with California Code of Civil Procedure section 384.[22]

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 letter indicating that they want to exclude themselves.[23] 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 ("Response Deadline").[24] A Request for Exclusion must: (a) contain the case name and number of the Class 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 Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included in the Class Settlement; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[25] A Class Member who timely submits a valid Request for Exclusion will not participate in, or be bound by, the Class Settlement and will not be issued any payment pursuant to the Class Settlement, and will not have any right to object, appeal, or comment thereon. PAGA Members shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement .[26]

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.[27] Settlement Class Members who wish to object to the Class Settlement must submit a Notice of Objection to the Settlement Administrator on or before the Response Deadline.[28] The Notice of Objection must: (a) include the case name and number of the Class Action; (b) include the objector's full name,

[22] *Ibid.*
[23] Settlement Agreement, ¶ 8.gg.
[24] *Id.*, ¶ 8.hh.
[25] *Id.*, ¶ 8.gg.
[26] *Id.*, ¶ 22.
[27] *Id.*, ¶ 24.
[28] *Ibid.*

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signature, address, and telephone number, and the last four digits of his or her Social Security number; (c) include a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) attach copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[29]

Class Members and PAGA 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.[30] The letter must contain: (a) contains the case name and number of the Class Action, (b) is signed by the Class Member and/or PAGA Member, (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member and/or PAGA Member, (d) clearly states that the Class Member and/or PAGA 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, (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct, and (f) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[31]

V. 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

[29] Settlement Agreement, ¶ 8.v.
[30] *Id.*, ¶ 20.
[31] *Ibid*.

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

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

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

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VI. 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 the Class Action was commenced on March 1, 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.[32]

[32] Hosseini 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 a large volume of documents and data produced by Defendant.[33] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records and payroll records, multiple iterations of Defendant's Employment Handbook, forms (including but not limited to TPS Driver Training Outline and Road Test Certification, Direct Deposit Authorization, California Healthy Workplaces, Healthy Families Act Leave Policy Acknowledgment Form, Driver/Valey Additional Employment Acknowledgement, Employee Authorization Agreement for Electronic Pay Stub, and Handbook Acknowledgement Form), procedures, and policies, internal memoranda, job descriptions, Defendant's operations and employment practices and procedures, among other information and documents.[34] Class Counsel interviewed Plaintiff to gather facts and to identify potential witnesses.[35] Class Counsel propounded multiple sets of formal written discovery requests on Defendant and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties (specifically, Requests for Production of Documents, (Set One), Special Interrogatories (Set One & Two), and Form Interrogatories (Set One) and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and wage-and-hour practices, along with accompanying request for production of documents.[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]

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[33] Hosseini Decl., ¶ 12.
[34] *Ibid*.
[35] *Id*., ¶ 12
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid*.

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The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Hon. Michael Latin (Ret.), 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 it's 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 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.[43]

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.[44] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[45] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's, Class Members' employment with Defendant and performed significant research into the law

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[39] Hosseini Decl., ¶ 11.
[40] *Id.*, ¶ 11.
[41] *Ibid.*
[42] *Id.*, ¶¶ 11, 16-18.
[43] *Id.*, ¶ ¶ 11, 16-18.
[44] *Ibid.*
[45] *Ibid*.

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concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.[46] 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.[47]

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

The Settlement, which provides for a Total Settlement Amount of one million six hundred and fifty thousand dollars and no cents ($1,650,000.00), represents a fair, adequate, and reasonable resolution of the matter.[48] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[49] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[50] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[51]

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Penalty Amount, 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 seven hundred eighty-three thousand five hundred dollars and no cents ($783,500.00).[52] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Payment and, if applicable, each PAGA Member's Individual PAGA Payment, will be calculated based

[46] Hosseini Decl., ¶¶ 11-13 & 16-18.
[47] *Id.*, ¶¶ 6-7.
[48] *Id.*, ¶¶ 11, 13, 14 & 21.
[49] *Id.*, ¶¶ 11-13.
[50] *Id.*, ¶¶ 16-18.
[51] *Id.*, ¶¶ 11, 13, & 21.
[52] *Id.*, ¶ 14.

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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 investigations have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[55] 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.[56] As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[57]

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[53] Settlement Agreement, ¶ 16.a.-16.b.
[54] Hosseini Decl., ¶¶ 11, 13, & 21.
[55] *Id.*, ¶¶ 11-13 & 18.
[56] *Id.*, ¶ 18.
[57] *Id.*, ¶¶ 11-13 & 16-18.

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VII. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[58] 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.

[58] Settlement Agreement, ¶ 35.a.

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This action involves a putative class of approximately five hundred forty-six (546) 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 hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class." *Sav-On*, *supra*, 34 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 Defendants' internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiff renders class certification appropriate." *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." *Capitol People, supra*, 155 Cal.App.4th at 690 (emphasis added) (citing *Sav-On*, *supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the "reasonableness" of the Defendants' 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 Actions. Based on the documents and information obtained through formal and 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

[59] Hosseini Decl., ¶ 9.

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 compliant 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 its 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.

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

Class Counsel has litigated the matter for over two (2) 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 formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most

[60] Hosseini Decl., ¶ 16.
[61] *Ibid.*
[62] *Ibid.*
[63] *Ibid.*
[64] *Id.*, ¶¶ 11-13.

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Knowledgeable designees.[65] Class Counsel reviewed a large volume of documents and data[66] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[67] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[68]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[69]

The Settlement establishes a Total Settlement Amount of one million six hundred fifty thousand dollars and no cents ($1,650,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Total Settlement Amount, 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 cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[71]

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[65] Hosseini Decl., ¶ 12.
[66] *Ibid.*
[67] *Ibid.*
[68] *Id.*, ¶ 11.
[69] *Id.*, ¶¶ 6-7.
[70] Settlement Agreement, ¶¶ 6.hh. and 10.
[71] *Id.*, Exh. A.

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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% 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

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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.

IX. THE PROPOSED CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice[73] describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, 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. *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

[72] Hosseini Decl., ¶ 19.
[73] Settlement Agreement, Exh. A.
[74] *Ibid.*

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proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[75] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[76] The proposed Class Notice also apprises the Class Members and PAGA Members of, *inter alia*, how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks credited to them.[77]

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.

X. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Class Action Administration Solutions to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member and PAGA Member by First-Class U.S. Mail.[78] Any undeliverable Class Notice that is returned to the Settlement Administrator on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail to the forwarding address within five (5) calendar days to an alternate address, if one is located.[79] The Response Deadline to submit a request for exclusion, 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 from the original sixty (60) calendar

[75] Settlement Agreement, Exh. A
[76] *Ibid.*
[77] *Ibid.*
[78] *Id.*, ¶ 19.a.
[79] *Id.*, ¶ 19.b.

day deadline.[80] The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.[81]

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and, if applicable, 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 and, if applicable, Individual PAGA Payment checks to 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.[82] The Settlement Administration Costs are currently estimated to be twelve thousand dollars ($12,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.[83]

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

XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members and PAGA Members based on Defendant's records.[84]

Within twenty-one (21) calendar days after the date of Preliminary Approval, Defendant will provide the Settlement Administrator with the following information for each Class Member and PAGA Member: (1) full name; (2) last known mailing address; (3) Social Security Number; and (4) start and end dates of employment by Defendant during the Class Period and,

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[80] *Ibid.*
[81] Settlement Agreement, ¶¶ 20, 22 and 24.
[82] *Ibid.*; Hosseini Decl., ¶ 15.
[83] Settlement Agreement, ¶ 14.
[84] *Id.*, ¶ 19.

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if applicable, during the PAGA Period, the number of Workweeks worked by each Class Member during the Class Period and each PAGA Member's Workweeks during the PAGA Period (collectively, "Class List").[85]

Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members and PAGA Members via First-Class U.S. Mail.[86] If a Class Notice is returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.[87] Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, dispute regarding Workweeks, and/or to a Notice of Objection.[88]

Defendant will make a one-time deposit of the Total Settlement Amount, together with an amount sufficient to pay employer taxes, into a settlement account to be established by the Settlement Administrator, within thirty (30) calendar days after the Effective Date.[89] Within seven (7) calendar days of the funding of the Total Settlement Amount, the Settlement Administrator will distribute: (1) the Individual Settlement Shares to Settlement Class Members; (2) Individual PAGA Payments to PAGA Members; (3) the Court-approved Enhancement Payment to Plaintiff; (3) the Court-approved Attorneys' Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to the Settlement Administrator.[90]

The Individual Settlement Payment and/or Individual PAGA Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.[91] Checks that are not negotiated within the 180-day period will be cancelled.[92] The funds associated with such cancelled checks will be tendered by the Settlement Administrator

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[85] Settlement Agreement, ¶¶ 8.c. and 18.
[86] *Id*, ¶ 19.a.
[87] *Id.*, ¶ 19.b.
[88] *Id.*, ¶¶ 20, 22, and 24.
[89] *Id.*, ¶ 11.
[90] *Id.*
[91] *Id.*, ¶ 21.
[92] *Ibid.*

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to the California Controller's Unclaimed Property Fund in the name of the Settlement Class Member and/or PAGA Member.[93]

XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Frank Degourville respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to seventeen thousand five hundred dollars and no cents ($17,500.00).[94] 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.[95] 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.[96] Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, PAGA Members, and the State of California, in addition to his individual settlement payments.

XIII. CONCLUSION

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[93] *Ibid.*
[94] Settlement Agreement, ¶ 13.
[95] Hosseini Decl., ¶ 20; Declaration of Frank Degourville in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Degourville Decl."), ¶ 4.
[96] Hosseini Decl., ¶ 20; Degourville Decl., ¶¶ 3-6.

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For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Frank Degourville as Class Representative; appoint Phoenix Class Action Administration Solutions as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Penalty Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: August 25, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________________
Yasmin Hosseini
Attorneys for Plaintiff

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