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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CHRIS WARD, \ individually, and on behalf
of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiffs,

v.

RELISH LABS LLC, D/B/A HOME CHEF,
an unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: CIVSB2113821

Honorable David Cohn
Department S26

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Annabel Blanchard); Declarations of
Proposed Class Representatives (Chris
Ward, Jose Pereda, and Tawny Milligan);
and [Proposed] Order filed concurrently
herewith]

Date: December 23, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: May 13, 2021
FAC Filed: August 26, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on December 23, 2022, at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David Cohn in Department S26 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, California 92415, Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Annabel Blanchard, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Fee and Expense Award to Class Counsel, Service Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Provisionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Settlement of Class Action (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice Packet to the Class Members;
- 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 Fee and Expense Award to Class Counsel, Service Payments for Plaintiffs, 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 provide for approval by the Court of a class action settlement and allows the Court to preliminarily certify a class for settlement purposes, 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 (Annabel Blanchard) and Proposed Class Representatives (Chris Ward, Jose Pereda, and Tawny Milligan) 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: December 12, 2022

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class Action and PAGA Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated, other aggrieved employees, and the State of California, on the one hand, and Defendant Relish Labs LLC (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this action for a Gross Settlement Amount of One Million Four Hundred Fifty Thousand Dollars and No Cents (\$1,450,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Class Settlement Awards to Settlement Class Members which will be distributed from the Net Settlement Sum²; (2) the Service Payments of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) each to Plaintiffs (\$22,500.00 total)³; (3) the Fee and Expense Award to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$507,500.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars and No Cents (\$30,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Twenty-Two Thousand Dollars and No Cents (\$22,000.00);⁵ and (5) the amount of One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00) allocated to penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), of which 75% (i.e., \$112,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$37,500.00) will be distributed to all current and former hourly-paid or non-exempt employees who were employed by Defendant in California during the PAGA Period and all salaried exempt production supervisors employed

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Annabel Blanchard (“Blanchard Decl.”), § 2.19.

² *Id.*, at § 4.5.

³ *Id.*, at § 3.7.

⁴ *Id.*, at § 3.5.

⁵ *Id.*, at § 4.2.2.

by Defendant in California during the period from September 17, 2019 to including the Preliminary Approval Date (“PAGA Group Members”).⁶

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

All current and former hourly-paid, non-exempt employees who were employed by Defendant in California at any time during the period from May 13, 2017 to and including the Preliminary Approval Date (“Class” or “Class Members”).⁷

The Class is estimated to presently consist of approximately three thousand five hundred fifty (3,550) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Sum (“Class Settlement Award”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendant for at least one day in California as a non-exempt and/or hourly-paid employee during the Class Period (“Class Work Weeks”).⁹

The Settlement resolves the Released Class Claims of Plaintiffs and Settlement Class Members and Released PAGA Claims of Plaintiffs, PAGA Group Members, and the State of California, 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, Plaintiffs also move 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 Relish Labs LLC does business as Home Chef and prepares and distributes meal kits, containing fresh, pre-portioned ingredients and easy-to-follow recipes, for sale to

⁶ Settlement Agreement, at §§ 2.30 & 2.26. “PAGA Period” is defined as the period of time from September 17, 2019 to and including the Preliminary Approval Date. *See id.*, § 2.27.

⁷ *Id.*, § 2.5. “Class Period” is defined as the period of time from May 13, 2017 to and including the Preliminary Approval Date. *See id.*, § 2.7.

⁸ Blanchard Decl., ¶ 9.

⁹ Settlement Agreement, § 2.10.

¹⁰ *See id.*, at §§ 2.39 & 2.40, for the full scope of the “Released Class Claims” and “Released PAGA Claims,” respectively, and *id.* at § 2.41 for the definition of the “Released Parties.”

home consumers via an online subscription service and in retail stores. Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan are former employees of Defendant.

On November 23, 2020, Plaintiff Pereda filed a Complaint For Enforcement Under The Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the San Bernardino County Superior Court (“Court”), thereby commencing the action entitled Jose Pereda v. Relish Labs LLC, Case No. CIVSB2026010 (the “*Pereda* Action”).

On April 5, 2021, Defendant filed an Answer to Plaintiff Pereda’s Complaint.

On May 13, 2021, Plaintiff Ward filed a Class Action Complaint For Damages & Enforcement Under The Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the San Bernardino Superior Court, thereby commencing the above-captioned action (the “*Ward* Action”).

On June 24, 2021, Plaintiff Milligan filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the San Bernardino Superior Court, thereby commencing the action entitled Tawny Milligan v. Relish Labs LLC, Case No. CIVSB2116459 (the “*Milligan* Action”)

On April 5, 2021, Defendant propounded a Request for Production of Documents on Plaintiff Pereda. Thereafter, on May 10, 2021, Plaintiff Pereda responded to Defendant’s discovery request.

On August 26, 2022, by leave of the Court, Plaintiffs filed the First Amended Class Action Complaint For Damages & Enforcement Under The Private Attorneys General Act, California Labor Code § 2698 Et Seq. in the *Ward* Action (“*Ward* Amended Complaint” or “Operative Complaint”), adding Jose Pereda and Tawny Milligan as named plaintiffs, and alleging fourteen causes of action: (1) unpaid overtime (Lab. Code, §§ 510, 1198), (2) unpaid meal period premiums (Lab. Code, §§ 226.7, 512, subd. (a)), (3) unpaid rest period premiums (Lab. Code, § 226.7), (4) failure to pay wages, including, *inter alia*, minimum wages (Lab. Code, §§ 1194, 1197, 1197.1), (5) final wages not timely paid (Lab. Code, §§ 201, 202), (6) wages not timely paid during employment (Lab. Code, § 204), (7) non-compliant wage

statements (Lab. Code, § 226, subd. (a)), (8) failure to keep requisite payroll records (Lab. Code, § 1174, subd. (d)), (9) unreimbursed business expenses (Lab. Code, §§ 2800, 2802), (10) failure to provide paid sick leave and vacation pay and underpayment of sick time (Lab. Code, §§ 201-203, 227.3, 245 et seq., and 2810.5), (11) failure to pay reporting time pay (Lab. Code, § 1198; IWC Wage Order Nos. 1-2001, 3-2001, 4-2001, 5-2001, 7-2001, 8-2001, subd. 5, (12) failure to provide suitable seating (Lab. Code, § 1198; IWC Wage Order Nos. 1-2001, 3-2001, 4-2001, 5-2001, 7-2001, 8-2001, subds. 14(A) and 14(B), (13) violation of California Business & Professions Code, § 17200, et seq., and (14) violation of California Labor Code § 2698 et seq. (Labor Code Private Attorneys General Act of 2004, “PAGA”). Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

On September 12, 2022, Defendant served an Answer to the *Ward* Amended Complaint generally denying all of the allegations contained in the complaint and asserting a number of affirmative defenses.¹¹ On November 28, 2022, Defendant filed the Answer to the *Ward* Amended Complaint. Defendant has denied, and continues to deny, any liability or wrongdoing of any kind associated with the allegations in any of the Actions, and further denies that the Action (or any of the Actions) is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the Actions since they were commenced. Given the substantial overlap between and among *Pereda* Action, the *Ward* Action, and the *Milligan* Action (collectively, the “Actions”), the Parties ultimately decided to mediate all three Actions concurrently as part of the same mediation. On November 9, 2021, the Parties participated in a formal, full-day mediation and on January 10, 2022, the Parties participated in a supplementary half-day mediation, both conducted by the Honorable Edward A. Infante (Ret.), a well-regarded

¹¹ Defendant attempted to file its answer on September 12, 2022 as well, but the Court clerk returned the filing because the filing of the *Ward* Amended Complaint had not yet been processed. The Parties agreed that Defendant would re-file the answer upon receiving confirmation from Plaintiffs that the *Ward* Amended Complaint filing was accepted and that, under these circumstances, no default, waiver, or other prejudice to Defendant would result if it was unable to file the answer within the timeframe specified under the California Code of Civil Procedure or the stipulation and order entered in the *Ward* Action on August 9, 2022.

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 Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) and the Released PAGA Claims of Plaintiffs, PAGA Group Members, and the State of California, with respect to the Released Parties.¹² Subject to approval by the Court, the Net Settlement Sum will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount up to 35% of the Gross Settlement Amount (i.e., \$507,500 if the Gross Settlement Amount remains \$1,450,000) and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars (\$30,000) to Class Counsel (collectively referred to as the "Fee and Expense Award"); (2) settlement administration costs, which are currently not to exceed Twenty-Two Thousand Dollars (\$22,000), to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Settlement Amount (i.e., \$112,500 out of \$150,000); (4) payments to the PAGA Group Members of their *pro rata* shares of the 25% portion of the PAGA Settlement Amount (i.e., \$37,500 out of \$150,000); and (5) payments in the amount of up to Seven Thousand Five Hundred Dollars (\$7,500) each to Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan (for a combined total of \$22,500) ("Service Payments").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 Sum (i.e., Class Settlement Awards), in accordance with the Settlement Agreement and as follows:

¹² Settlement Agreement, § 2.19.

¹³ *Id.*, § 2.19; see also, *id.*, at §§ 2.45, 3.5, 3.6, and 3.7.

- 1 a. Defendant will provide each Class Member's number of Class Work Weeks and the
2 Settlement Administrator will calculate the total aggregate number of Class Work
3 Weeks of all Settlement Class Member ("Total Class Work Weeks").¹⁴
4 b. The Settlement Administrator will divide the Net Settlement Sum by the number of
5 Total Class Work Weeks, resulting in the "per Class Work Week value." The
6 Settlement Administrator will then multiply each individual Settlement Class
7 Member's number of Class Work Weeks by the per Class Work Week value to yield
8 his or her individual Class Settlement Award.¹⁵

9 The Parties have agreed that the Settlement Administrator will determine each PAGA
10 Group Member's *pro rata* share of the PAGA Fund ("PAGA Settlement Awards"), calculated
11 as follows:

- 12 a. The Settlement Administrator will add together all the weeks during the PAGA Period
13 that PAGA Group Members were employed by Defendant for at least one day in
14 California as either (i) an hourly-paid and/or non-exempt employee or (ii) a salaried
15 exempt production supervisor ("PAGA Work Weeks") provided by Defendant for
16 each PAGA Group Member.¹⁶
17 b. The Settlement Administrator will divide the PAGA Fund (which is 25% of the
18 overall PAGA Settlement Amount) by the total PAGA Group Member Work Weeks,
19 resulting in a per PAGA Work Week value. The Settlement Administrator shall then
20 multiply each PAGA Group Member's individual number of PAGA Work Weeks by
21 the PAGA Work Week value to yield his or her individual PAGA Settlement Award.¹⁷

22 Each Settlement Class Member's Class Settlement Award will be allocated as follows:
23 one-third (1/3) as wages (the "wage portion"), which will be reported on an IRS Form W-2; and
24 the remaining two-thirds (2/3) as penalties, interest, and other non-wage damages, which will
25 be reported on an IRS Form 1099.¹⁸ Settlement Class Members will be issued payment of their
26 Class Settlement Awards subject to withholding for the employee's share of taxes and
27 withholdings with respect to the wage portion of each Class Settlement Award ("Withholdings
28 and Taxes").¹⁹ Defendant will pay the employer's share of Withholdings and Taxes in addition
to the Gross Settlement Amount.²⁰ The entirety of each PAGA Settlement Award shall be
allocated as penalties.²¹

The Class Settlement Award checks issued to Settlement Class Members and PAGA
Settlement Award checks issued to PAGA Group Members will be negotiable for one hundred

¹⁴ Settlement Agreement, at § 4.5.2.

¹⁵ *Ibid.*

¹⁶ *Id.*, § 4.5.4.

¹⁷ *Id.*, § 4.5.4.

¹⁸ *Id.*, § 4.6.1.

¹⁹ *Id.*, § 4.5.5.

²⁰ *Id.*, § 2.5.2.

²¹ *Id.*, § 4.6.1.

eighty (180) calendar days from the date of issuance.²² Class Settlement Award checks and/or PAGA Settlement Award checks that are not negotiated within the 180-day period will be cancelled.²³ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator and sent to the Legal Aid Society of San Bernardino, in the name of the Settlement Class Member and/or PAGA Group Member whose check is cancelled and in the respective amount of the cancelled check.²⁴

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a letter indicating that they want to exclude themselves.²⁵ 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 forty-five (45) calendar days from the initial mailing of the Notice Packet (“Notice Response Deadline”).²⁶ A request for exclusion must contain: (i) a reference to the name and case number of the *Ward* Action (*Chris Ward v. Relish Labs LLC*, San Bernardino Superior Court Case No. CIVSB2113821); (ii) the full name, signature, address, telephone number and the last four digits of the Social Security number of the person requesting to be excluded from the Class Settlement; (iii) the words “Request for Exclusion” at the top of the document; and (iv) the statement: “I wish to be excluded from the Settlement of this case.”²⁷ 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 as it pertains to the Class Settlement.²⁸ A Class Member who is also a PAGA Group Member, and who requests to be excluded from the Class Settlement, will nevertheless be bound by the PAGA Settlement, will still receive a PAGA Settlement Award, and may not request exclusion from the PAGA Settlement.²⁹

²² Settlement Agreement, at § 4.10.3.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, at § 4.3.

²⁶ *Id.*, at § 2.24.

²⁷ *Id.*, at § 4.3.1.

²⁸ *Id.*, at § 4.3.5.

²⁹ *Id.*, at § 4.3.8.

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.³⁰ Settlement Class Members who wish to object to the Class Settlement must submit to the Settlement Administrator a signed, written statement objecting to the Class Settlement (“Objection”) on or before the Notice Response Deadline.³¹ The Objection must contain: (i) a reference to the name and case number of the *Ward* Action (*Chris Ward v. Relish Labs LLC*, San Bernardino Superior Court Case No. CIV SB 2113821); (ii) the full name, signature, address, telephone number, and last four digits of the Social Security number of the objecting Settlement Class member; (iii) a written statement of the grounds for objecting to the Class Settlement; and (iv) a written statement of whether the Class Member intends to appear at the Final Approval Hearing and whether he or she is represented by counsel.³² Settlement Class Members may, but are not required to, appear at the Final Approval Hearing. Settlement Class Members also have the option to orally present their objections to the Class Settlement to the Court at the Final Approval Hearing, irrespective of whether or not they have submitted a written Objection.

Class Members who wish to dispute the number of Class Work Weeks credited to them in their Notice of Eligible Work Weeks may do so by completing and returning the Notice of Eligible Work Weeks form (which will be included with the Class Notice and is attached to the Settlement Agreement as “Exhibit B”) to the Settlement Administrator on or before the Notice Response Deadline.³³ The Class Member may include supporting documents with his or her Notice of Eligible Work Weeks form disputing his or her Class Work Weeks.³⁴

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

³⁰ Settlement Agreement, at § 4.4.

³¹ *Id.*, at § 4.4.1.

³² *Ibid.*

³³ *Id.*, at § 2.10.

³⁴ *Ibid.*

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

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

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

22 In considering a potential class settlement, a court need not reach any ultimate
23 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
24 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495
25 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
26 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required
27 for the trial court to grant provisional class certification and preliminary approval; the court may
28

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 Actions since the first of them was commenced with the *Pereda* Complaint filed on November 23, 2020. Both sides used the pre-mediation time periods to investigate the veracity, strength, and scope of the claims, and Class Counsel was

1 actively preparing the matter for class certification and trial.³⁵

2 Prior to engaging in each of the mediations, Class Counsel conducted significant
3 investigation regarding the facts of the cases, including, but not limited to, the exchange, review,
4 and analysis of a large volume of documents and data produced by Defendant.³⁶ The volume of
5 data and documents that Class Counsel reviewed and analyzed included and was not limited to:
6 employment records of Plaintiffs, company policy acknowledgements (including, but not
7 limited to, receipt of employee handbook, receipt of time hire pamphlet, acknowledgment of
8 receipt of revised time and attendance policy, Labor Code section 2810.5 notice to employee,
9 notice of employment responsibilities, and paid sick leave and worker's compensation
10 acknowledgment of receipt), internal memoranda, forms (including, but not limited to, time off
11 request form, time clock missed punch form, biometric time clock employee consent form,
12 corrective action form, employee payroll change form, financial statement wage garnishment
13 enforcement of judgment form, and early out form), procedures, and policies, among other
14 information and documents.³⁷ Class Counsel interviewed Plaintiffs and other Class Members
15 to gather facts and to identify potential witnesses.³⁸ Counsel for the Parties also met and
16 conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and
17 the production of documents and data prior to the mediation.³⁹ Class Counsel also drafted
18 Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement
19 negotiations, and two mediations, among other tasks.⁴⁰

20 The Parties engaged in extensive settlement negotiations. On November 9, 2021 the
21 Parties participated in a formal, full-day mediation, and on January 10, 2022, the Parties
22 participated in a supplementary half-day mediation, both conducted by the Honorable Edward
23 A. Infante (Ret.), a well-regarded mediator experienced in mediating complex labor and
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25 _____
26 ³⁵ Blanchard Decl., ¶¶ 11-13.

27 ³⁶ *Id.*, ¶ 12.

28 ³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

employment matters.⁴¹ Prior to and during the mediations and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the cases and various aspects of the matter, including but not limited to, arbitration agreements with class and representative action waivers signed by approximately half of the individuals employed by Defendant as non-exempt employees in California during the relevant time period, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and representative PAGA claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴³ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁴ After conducting investigations, 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 Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁵

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

⁴¹ Blanchard Decl., at ¶ 11.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, at ¶¶ 11, 16-18.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

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

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

The Settlement, which provides for a Gross Settlement Amount of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵⁰ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁵¹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁵² Moreover, considering all of the facts and circumstances here, the Settlement represents a fair, reasonable, and adequate recovery for the Class, PAGA Group Members, and the State of California.⁵³

Assuming that the Fee and Expense Award, Service Payments, PAGA Settlement 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 Sum that is currently estimated to be Seven Hundred Eighteen Thousand Dollars (\$718,000.00).⁵⁴ As discussed in Part III, *supra*, the entire Net Settlement Sum will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Class Settlement Award will be calculated based on his or her Class Work Weeks.⁵⁵ The amount of each PAGA Group Member's PAGA Settlement Award will be

⁴⁸ Blanchard Decl., at ¶¶ 11-13 & 16-18.

⁴⁹ *Id.*, ¶¶ 6-7.

⁵⁰ Blanchard Decl., ¶¶ 11, 13, 14 & 21.

⁵¹ *Id.*, ¶¶ 11-13.

⁵² *Id.*, ¶¶ 16-18.

⁵³ *Id.*, ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶ 14.

⁵⁵ Settlement Agreement, § 4.5.2.

1 calculated based on his or her PAGA Work Weeks.⁵⁶ There is no reason to doubt the fairness of
2 the proposed plan of allocation of the settlement funds for purposes of preliminary approval.
3 Even at the final approval stage, “[a]n allocation formula need only have a reasonable, rational
4 basis [to warrant approval], particularly if recommended by experienced and competent class
5 counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
6 127 F.Supp.2d 418, 429-30.

7 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
8 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁷
9 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
10 the recommendations into account, particularly if Class Counsel appears to be competent, and
11 has experience with this type of litigation, and investigation have been completed, as is the case
12 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
13 Settlement.

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

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

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

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25
26 ⁵⁶ Settlement Agreement, at § 4.3.4.

27 ⁵⁷ *Id.*, ¶¶ 11, 13, & 21.

28 ⁵⁸ Blanchard Decl., ¶¶ 11-13 & 18.

⁵⁹ *Id.*, ¶ 18.

⁶⁰ *Id.*, ¶¶ 11-13 & 16-18.

For settlement purposes, Plaintiffs contend that the requisites for establishing class certification are met, and the Parties have stipulated to provisional certification of the Class for settlement purposes only.⁶¹ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

Plaintiffs contend that the Class is ascertainable and numerous as to make it impracticable to join all Class Members, and that there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs contend that their claims are typical of the claims of the Class Members, and that 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 that a class action is superior to other available means for the fair and efficient adjudication of the cases. The Class is amenable to class certification for settlement purposes as discussed below.

A. 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.

⁶¹ Settlement Agreement, § 3.3.

This matter involves approximately three thousand five hundred and fifty (3,550) individuals.⁶² 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 or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, Plaintiffs contend that 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 the cases, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform

⁶² Blanchard Decl., ¶ 9.

operations and employment practices, policies, and procedures during the time period at issue.⁶³ Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages 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, failing to reimburse necessary business-related expenses, failing to provide paid sick leave and vacation pay, failure to pay reporting time pay, failing to provide suitable seating, violating California Business & Professions Code § 17200, et seq., and violating the Labor Code Private Attorneys General Act of 2004.⁶⁴

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁵ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁶

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

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR FEE AND EXPENSE AWARD

Class Counsel has litigated the matter for over two years and was actively preparing the matter for class certification and trial.⁶⁷ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted

⁶³ Blanchard Decl., ¶ 16.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Id.*, at ¶¶ 11-13.

1 extensive investigations into the facts of the cases. Class Counsel reviewed a large volume of
2 documents and data⁶⁸ and also had an opportunity to interview and obtain information from
3 Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation
4 calculations, and met and conferred with Defendant's counsel regarding the pleadings,
5 discovery, and the production of documents and data prior to each of the mediations.⁶⁹ Counsel
6 for the Parties also undertook extensive settlement discussions, which included participating in
7 one formal, full-day mediation and a supplemental formal, half-day mediation.⁷⁰

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

10 The Settlement establishes a Gross Settlement Amount of One Million Four Hundred
11 Fifty Thousand Dollars (\$1,450,000.00), and provides for Class Counsel to apply to the Court
12 for a Fee and Expense Award, consisting of attorneys' fees in an amount up to thirty-five percent
13 (35%) of the Gross Settlement Amount (i.e., \$507,500.00) and an amount not to exceed Thirty
14 Thousand Dollars (\$30,000.00) for costs and expenses.⁷² The attorneys' fees provided for by the
15 Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating
16 the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases,
17 (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel
18 has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has
19 achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in
20 order to devote its time and efforts to this matter. The proposed Class Notice provides Class
21 Members with information about the amount allocated toward the Fee and Expense Award, and
22 that an award of the Fee and Expense Award will be sought, as provided for by the Settlement.⁷³

23 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
24 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*

25 ⁶⁸ Blanchard Decl., ¶ 12.

26 ⁶⁹ *Ibid.*

27 ⁷⁰ *Id.*, ¶ 11.

28 ⁷¹ *Id.*, ¶¶ 6-7.

⁷² Settlement Agreement, § 2.19.

⁷³ *Id.*, Exh. A.

1 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
2 “experienced trial judge is the best judge of the value of professional services rendered in his
3 court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
4 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
5 achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
6 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
7 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
8 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
9 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
10 settlement fund and the settlement agreement provides that the defendant agrees to paying the
11 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

19 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
20 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
21 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
22 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
23 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
24 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
25 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
26 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
27 actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
28

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.⁷⁴

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice⁷⁵ describes the Settlement, the deadlines and procedures to submit an Objection to the Settlement, mail a Request for Exclusion from the Settlement, and/or mail a dispute regarding Class Work Weeks, and the date and time set for the Final Approval Hearing.⁷⁶

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁷ The proposed Class Notice recognizes that the Court has not yet granted

⁷⁴ Blanchard Decl., ¶ 19.

⁷⁵ Settlement Agreement, Exh. A.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

1 final approval of the settlement.⁷⁸ The proposed Class Notice also apprises the Class Members
2 of, *inter alia*, how their Class Settlement Award is calculated, and the number of Class Work
3 Weeks credited to them.⁷⁹

4 The proposed Class Notice satisfies all due process requirements and complies with the
5 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
6 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
7 essentials of due process of law in class suits would appear to be afforded by fair representation
8 in the assertion of claims of class members against the opposing parties in any lawsuit, and
9 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

10 **IX. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION**
11 **SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR**

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

14 The Settlement Administrator will mail the Class Notice to each Class Member by First-
15 Class U.S. mail.⁸⁰ Any undeliverable Class Notice that is returned to the Settlement
16 Administrator with a forwarding address on or before the Notice Response Deadline, will be re-
17 mailed to the forwarding address.⁸¹ With respect to any undeliverable within thirty (30) calendar
18 days of the initial mailing of the Notice Packet without a forwarding address, the Settlement
19 Administrator will make reasonable efforts to obtain an updated mailing address, including but
20 not limited to conducting one skip-trace, and if a new or different address is obtained, re-mail
21 the Class Notice to the Class Member.⁸² The Notice Response Deadline to submit a Request for
22 Exclusion, Objection, or dispute regarding Class Work Weeks for Class Members to whom a
23 Class Notice is re-sent, after having been returned as undeliverable to the Settlement
24 Administrator, will be fifteen (15) calendar days from the date of the original Notice Response

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26 ⁷⁸ Settlement Agreement, Exhibit A.

27 ⁷⁹ *Ibid.*

28 ⁸⁰ *Id.*, § 4.2.3.

⁸¹ *Ibid.*

⁸² *Ibid.*

Deadline.⁸³ The Settlement Administrator will receive and process Requests for Exclusion, Objections, and any disputes regarding Class Work Weeks.⁸⁴

The Settlement Administrator will calculate the amounts of the Class Settlement Awards and PAGA Settlement Awards; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Class Settlement Awards; mail the Class Settlement Award checks to Settlement Class Members and PAGA Settlement Award checks to the PAGA Group Members; issue W-2 and 1099 forms; calculate and disburse the Fee and Expense Award, Service Payments, and payment to the LWDA; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁵ The Settlement Administration Costs are estimated not to exceed Twenty-Two Thousand Dollars (\$22,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁶

Accordingly, Plaintiffs respectfully request 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 in the manner outlined and based on the proposed deadlines as summarized herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁷

Within fifteen (15) business 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: (i) last known full name, (ii) last known mailing address, (iii) last known telephone number, (iv) Social Security number, (v) individual number

⁸³ Settlement Agreement, § 2.24.

⁸⁴ *Id.*, § 4.2.2.

⁸⁵ *Ibid*; Blanchard Decl., ¶ 15.

⁸⁶ Settlement Agreement, § 2.45.

⁸⁷ Settlement Agreement, § 4.2.2.

of Class Work Weeks during the Class Period (vi) individual number of Class Work Weeks during the period of time beginning May 13, 2017 through November 9, 2021, and (vii) individual number of PAGA Work Weeks during the PAGA Period (if applicable) (collectively, “Class Information List”).⁸⁸

Within ten (10) business days of receipt of the Class Information List, the Settlement Administrator will mail the Notice Packet to the Class Members via First-Class U.S. Mail.⁸⁹ If a Notice Packet is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Notice Packet to the forwarding address.⁹⁰ 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 Notice Packet to the Class Member.⁹¹ Class Members will have until the applicable Notice Response Deadline to mail a Request for Exclusion, mail a dispute regarding Class Work Weeks, and/or to submit an Objection.⁹²

Following the Court’s entry of an order granting final approval, Defendant will make a one-time deposit of the Gross Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Settlement Administrator, within fifteen (15) business days after the Effective Date, as defined in the Agreement.⁹³ Within ten (10) business days of Defendant’s remittance to the Settlement Administrator of the Settlement Fund Amount, the Settlement Administrator will distribute: (a) the Class Settlement Award checks to Settlement Class Members and the PAGA Settlement Award checks to PAGA Group Members, (b) the portion of the PAGA Settlement Amount payable to the LWDA to the LWDA, (c) the Service Payments to Plaintiffs, (d) the Withholdings and Taxes arising from the Class Settlement Awards to the appropriate government entities, (d) the Fee and Expense Award to Class Counsel, and (e) the Settlement Administration Costs to

⁸⁸ Settlement Agreement, § 4.2.1.

⁸⁹ *Id.*, § 4.2.3.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Id.*, § 2.24.

⁹³ *Id.*, § 4.10.1.

1 itself.⁹⁴

2 The Class Settlement Award checks and PAGA Settlement Award checks will remain
3 negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁵
4 Checks that are not negotiated within the 180-day period will be cancelled.⁹⁶ The funds
5 associated with such cancelled checks will be tendered by the Settlement Administrator to the
6 Legal Aid Society of San Bernardino.⁹⁷

7 **XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
8 **SERVICE PAYMENTS**

9 Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan respectfully request that the
10 Court appoint them as the Class Representatives and preliminarily approve the Service
11 Payments in an amount up to Seven Thousand Five Hundred Dollars (\$7,500) each to Plaintiffs
12 Chris Ward, Jose Pereda, and Tawny Milligan (for a combined total of \$22,500).⁹⁸ It is within
13 the Court's discretion to award payment to a class representative for their efforts and work.
14 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000
15 participation award to a single class representative). The factors that courts may consider in
16 determining whether to make an enhancement payment include: (1) the risk to the class
17 representative in commencing suit, both financial and otherwise; (2) the notoriety and personal
18 difficulties encountered by the class representative; (3) the amount of time and effort spent by
19 the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack
20 thereof) enjoyed by the class representative as a result of the litigation. *Id.*

21 The Service Payments are fair and appropriate. Plaintiffs spent a substantial amount of
22 time and effort in producing relevant documents and past employment records providing the
23 facts and evidence necessary to attempt to prove the allegations, and responding to Defendant's
24

25
26 ⁹⁴ Settlement Agreement, § 4.10.2.

27 ⁹⁵ *Id.*, § 4.10.3.

28 ⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Id.*, § 3.7.

discovery requests.⁹⁹ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the of the class and PAGA claims.¹⁰⁰ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents. Accordingly, it is appropriate and just for Plaintiffs to each receive a Service Payment for their services on behalf of the Class, in addition to their Class Settlement Awards and PAGA Settlement Awards.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; provisionally certify the Class for settlement purposes; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan as Class Representatives; appoint Phoenix Class Action Administration Solutions as Settlement Administrator; preliminarily approve the allocations for Fee and Expense Award, Service Payments, PAGA Settlement 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; schedule a Final Approval Hearing to take place in approximately six months; and permit the filing of a memorandum that exceeds the page limit.

Dated: December 12, 2022

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiffs

⁹⁹ Blanchard Decl., ¶ 20; Declaration of Chris Ward in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Ward Decl."), ¶ 4; Declaration of Jose Pereda in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Pereda Decl."), ¶ 4; Declaration of Tawny Milligan in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Milligan Decl."), ¶ 4.

¹⁰⁰ Blanchard Decl., ¶ 20; Ward Decl., ¶¶ 3-6; Pereda Decl., ¶¶ 3-6; Milligan Decl., ¶¶ 3-6;