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

CELINA ACUNA, 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;
IAN PFEIFLE, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiffs,

vs.

BASS PRO OUTDOOR WORLD, LLC, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: CIVDS1811384

Honorable David S. 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
(Edwin Aiwarzian); Declarations of
Proposed Class Representatives (Celina
Acuna and Ian Pfeifle); and [Proposed]
Order filed concurrently herewith]

Date: November 5, 2021
Time: 10:00 a.m.
Department: S26

Complaint Filed: May 9, 2018
FAC Filed: June 3, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 5, 2021, at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David S. Cohn in Department S26 of the Superior Court of California for the County of San Bernardino, located at the San Bernardino Justice Center, 247 West 3rd Street, San Bernardino, California 92415, Plaintiffs Celina Acuna and Ian Pfeifle (“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 Joint Stipulation of Class Action Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Incentive Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Celina Acuna and Ian Pfeifle as Class Representatives;
- Preliminarily appointing Edwin Aiwarzian, Arby Aiwarzian, and Joanna Ghosh of *Lawyers for Justice, PC* as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Incentive 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 require approval by the Court of a class action settlement, allow 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 (Edwin Aiwarzian) and Proposed Class Representatives (Celina Acuna and Ian Pfeifle) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: October 28, 2021

LAWYERS for JUSTICE, PC

By:

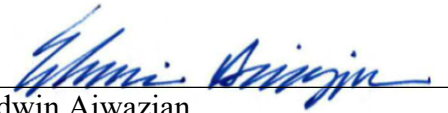

Edwin Aiwarzian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Celina Acuna and Ian Pfeifle (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation of Class Action Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Bass Pro Outdoor World, LLC (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of five million dollars (\$5,000,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Incentive Payments of ten thousand dollars (\$10,000.00) each to Plaintiffs (\$20,000.000 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$1,750,000.00, and reimbursement of litigation costs and expenses not to exceed sixty thousand dollars (\$60,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed twenty-five thousand dollars (\$25,000.00);⁵ and (5) the amount of three hundred fifty thousand dollars (\$350,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$262,500.00) will be distributed to the California Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$87,500.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

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¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwarzian (“Aiwarzian Decl.”), § V.A.

² *Id.*, § V.C.6, V.D.2-6.

³ *Id.*, § V.C.3.

⁴ *Id.*, § V.C.1-2.

⁵ *Id.*, § V.C.5.

⁶ *Id.*, § V.C.4.

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

3 All hourly-paid or non-exempt employees who worked for Defendant in the State
4 of California during the Class Period, or each of them (“Class” or “Class
5 Members”).⁷

6 The Class is estimated to consist of approximately four thousand four hundred thirty
7 (4,430) individuals.⁸

8 Class Members who do not submit a timely and valid request to be excluded from the
9 Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount
10 (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each
11 Settlement Class Member was employed by Defendant in California in a non-exempt or hourly-
12 paid position during the period from May 9, 2014 through Preliminary Approval
13 (“Workweeks”).⁹

14 PAGA Group Members will receive a share of twenty-five percent (25%) of the PAGA
15 Settlement Amount (“Individual PAGA Share”) on a *pro rata* basis based upon the number of
16 weeks each Class Member was employed by Defendant in California in a non-exempt or hourly-
17 paid position during the period from May 9, 2017 through Preliminary Approval (“PAGA
18 Period”).¹⁰

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

21 In order to efficiently present the Court with adequate information to determine whether
22 to grant preliminary approval of the Settlement and provisional certification of the Class for
23 settlement purposes, Plaintiffs also move for an order permitting the filing of this memorandum,
24 although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

25 _____
26 ⁷ Settlement Agreement, § II.B. “Class Period” is defined as the period of time from May 9, 2014 through
27 Preliminary Approval. See *id.*, § II.E.

28 ⁸ Aiwasian Decl., § 9.

⁹ Settlement Agreement, § V.D.3.

¹⁰ *Id.*, § V.D.4.

¹¹ *Id.*, § V.J.1-2. See *id.* at § V.DD, for the full scope of the “Released Claims,” and *id.* at § V.EE, for the definition of the “Released Parties.”

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a retailer of hunting, fishing, camping, and other related outdoor recreation merchandise founded in 1971. Although Defendant originally started as a direct mail order service, it opened its first brick and mortar store in 1972. In September 2017, Defendant acquired Cabela's, a rival outdoor retailer, for approximately \$5 billion. Defendant operates 177 locations within the United States and Canada, with four California locations in Manteca, Rocklin, Rancho Cucamonga, and San Jose. Plaintiff Celina Acuna ("Plaintiff Acuna") is a former employee of Defendant and Ian Pfeifle ("Plaintiff Pfeifle") is a current employee of Defendant.

On May 9, 2018, Plaintiff Acuna filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 1698 Et Seq. in the San Bernardino County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On June 11, 2018, Defendant filed an Answer to Plaintiff Acuna's Class Action Complaint, and thereafter, on July 3, 2018, Defendant filed an Amended Answer to Plaintiff Acuna's Class Action Complaint.

On March 1, 2021, Plaintiff Acuna provided written notice by certified mail to the LWDA of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. The LWDA did not respond.

On June 3, 2021, Plaintiffs filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* ("First Amended Complaint" or "Operative Complaint") adding a cause of action under PAGA and Plaintiff Pfeifle as a named plaintiff to the Action.

Plaintiffs' core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class 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 penalties pursuant to 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.

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 July 18, 2018, Plaintiff Acuna propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One) on Defendant, and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. On August 2, 2018, Plaintiff Acuna propounded additional sets of Requests for Production of Documents, (Set Two); and Special Interrogatories, (Set Three) on Defendant, and noticed the deposition of Defendant's person most knowledgeable regarding Defendant's affirmative defenses. Thereafter, on August 21, 2018, September 5, 2018, and November 2, 2018, Defendant responded to Plaintiff Acuna's discovery requests. On September 12, 2019, Defendant propounded Plaintiff Acuna with Requests for Production of Documents, (Set One) and Form Interrogatory, (Set One) to which Plaintiff Acuna served responses on October 31, 2018. On March 15, 2019, Plaintiff Acuna propounded Requests for Production of Documents, (Set Three); Form Interrogatories, (Set Two); and Requests for Admission, (Set One) and noticed the second and third deposition of Defendant's person most knowledgeable regarding organizational structure of Defendant. Thereafter, on May 8, 2019, Defendant responded to Plaintiff Acuna's discovery requests. On November 10, 2020, Plaintiff Acuna propounded additional sets of Requests for Production of Documents, (Set Three); and Special Interrogatories, (Set Four) on Defendant.

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The Parties have actively litigated the Action since it was commenced on May 9, 2018. On October 13, 2020, the Parties participated in a formal, full-day mediation conducted by David A. Rotman, a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Member) with respect to the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed one million seven hundred fifty thousand dollars (\$1,750,000.00) (i.e., up to 35% of the Gross Settlement Amount), \$10,000 of which will be shared with the Melmed Law Group P.C., and reimbursement of costs and expenses in an amount not to exceed sixty thousand dollars (\$60,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed twenty-five thousand dollars (\$25,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment in the amount of three hundred fifty thousand dollars (\$350,000.00) allocated toward penalties under PAGA ("PAGA Settlement Amount"), of which 75% (i.e., \$262,500.00), will be paid to the LWDA ("LWDA Payment") and the remaining 25% (i.e., \$87,500.00), will be distributed to PAGA Group Members; and (4) payments in the amount of up to ten thousand dollars (\$10,000.00) each to Plaintiffs Celina Acuna and Ian Pfeifle (for a combined total of \$20,000.00) ("Incentive Payments").¹³ The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.

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¹² Settlement Agreement, § V.A.

¹³ *Id.*, §§ V.C. 1-5.

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. The Settlement Administrator will calculate each Settlement Class Member's gross share of the Net Settlement Amount by dividing the total number of Workweeks worked by all Settlement Class Members during the Class Period to yield a "Class Weekly Rate." Each Settlement Class Member's respective number of Workweeks during the Class Period will be multiplied by the Class Weekly Rate, to yield his or her respective Individual Settlement Share.¹⁴
- b. The Settlement Administrator will calculate each PAGA Group Members Individual PAGA Share by dividing the total number of Workweeks worked by all of the PAGA Group Members during the PAGA Period to yield a "PAGA Weekly Rate." Each PAGA Group Member's respective number of Workweeks during the PAGA Period will be multiplied by the PAGA Weekly Rate, to yield his or her respective Individual PAGA Share.¹⁵

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: twenty percent (30%) as wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining eighty percent (70%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁶ Each PAGA Group Member's Individual PAGA Payments will be allocated as one hundred percent (100%) penalties (to be reported on IRS Form 1099).¹⁷

Settlement Class Members will be issued payment of their Individual Settlement Share 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, including Individual Settlement Share and, if applicable, Individual PAGA Share 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 ("Employer Taxes") in addition to the Gross Settlement Amount.¹⁹

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¹⁴ Settlement Agreement, § V.D.3.

¹⁵ *Id.*, § V.D.4.

¹⁶ *Id.*, § V.D.3 & 4.

¹⁷ *Id.*, § V.D.4.

¹⁸ *Id.*, § V.D.6.

¹⁹ *Id.*, § V.A.

The Individual Settlement Payment checks issued to Settlement Class Members will be 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 from associated with such cancelled checks will be transmitted by the Settlement Administrator after the expiration of the 180-day period and sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq., in the name of the Participating Class Member whose check is cancelled and in the respective amount of the cancelled check.²²

Class Members who wish to be excluded from the Settlement (i.e., opt out) must submit a timely and valid Opt Out Request to the Settlement Administrator, as directed by the Class Notice.²³ To be timely, the Class Member must mail the Opt Out Request for to the Settlement Administrator, postmarked no later than the date that is forty-five (45) calendar days from the initial mailing of the Class Notice (“Response Deadline”).²⁴ The date of the postmark on the Opt Out Request to the Settlement Administrator shall be the exclusive means used to determine whether a Class Member has timely submitted his or her Opt Out Request to the Settlement Administrator.²⁵ A request for exclusion must contain: (a) the full name, address, telephone number, last four (4) digits of the Social Security Number, and signature of the Class Member requesting exclusion; and (b) contain a clear statement indicating that the Class Member wishes to exclude himself or herself from the Class Settlement which references the Action by name and/or case number.²⁶ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.²⁷ However, if the Class Member worked during the PAGA Period, he or she will remain a PAGA

²⁰ Settlement Agreement, § V.D.6.

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, § IV.D.1.

²⁴ *Ibid.* See *id.* § II.FF. for definition of “Response Deadline.”

²⁵ *Id.*, § IV.D.1.

²⁶ *Ibid.*

²⁷ *Ibid.*

Group Member, will receive an Individual PAGA Payment, and will be bound by the PAGA Settlement.²⁸

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.²⁹ Class Members shall not be permitted to object to the PAGA Settlement.³⁰ Settlement Class Members who wish to object to the Settlement must mail a timely and valid Objection to the Settlement Administrator postmarked no later than the Response Deadline.³¹ The objection must contain: (a) the objecting Settlement Class Member's full name, address, telephone number, last four digits of his or her Social Security number, and signature; (b) contain the words "Notice of Objection" or "Formal Objection"; (c) contain the case name and number of the Action; (d) contain a clear and concise statement, including factual and legal arguments, explaining his or her objection(s) to the Class Settlement; (e) contain a statement indicating whether or not the Settlement Class Member is represented by counsel and identifying any such legal counsel; (f) contain a statement indicating whether the Settlement Class Member intends to appear at the Final Approval Hearing to present his or her objection(s); and (g) list any witnesses the objecting Settlement Class Member may call to testify at the Final Approval Hearing.³²

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing a timely and valid Workweeks Dispute to the Settlement Administrator postmarked on or before the Response Deadline.³³ The letter must contain: (a) the Class Member's full name, address, telephone number, last four digits of his or her Social Security number, and signature; (b) the case name and number of the Action; (c) a clear statement explaining that he or she disputes the number of Workweeks credited to him or her and what he or she contends is the correct number of Workweeks that should be credited to him or her; and (d) include any documentation that he or she has to support the dispute.³⁴

²⁸ Settlement Agreement, § IV.D.2.

²⁹ *Ibid.*

³⁰ *Id.*, § IV.E.1.

³¹ *Ibid.*

³² *Ibid.*

³³ *Id.*, § IV.F.

³⁴ *Ibid.*

1 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
2 **SETTLEMENTS**

3 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
4 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
5 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
6 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
7 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
8 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
9 and reasonable, whether certification of the class was proper, and whether the attorney fee award
10 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
11 decision to approve a class action settlement may be reversed only upon a strong showing of
12 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
13 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

26 In considering a potential class settlement, a court need not reach any ultimate
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
28 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495

F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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1 A. **The Settlement Resulted from Arm’s-Length Negotiations Based Upon**
2 **Extensive Investigation and Discovery.**

3 The Parties actively litigated the Action since it was commenced on May 9, 2018. Both
4 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
5 claims, and Class Counsel was actively preparing the case for class certification and trial.³⁵

6 Prior to engaging in mediation, Class Counsel conducted significant investigation and
7 formal and informal discovery regarding the facts of the case, including and not limited to, the
8 exchange, review, and analysis of thousands of pages of documents and data produced by
9 Defendant.³⁶ The volume of data and documents that Class Counsel reviewed and analyzed
10 included and was not limited to: Plaintiffs and other Class Members’ employment records, a
11 detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s
12 Associate Handbook and California Handbook Supplement, company policy
13 acknowledgements (including but not limited to Receipt of Substance Abuse Policy for
14 Employees and Voluntary Waiver of Meal Period), emails, new hire orientation checklists
15 (including but not limited to New Hire Checklist – Retail Locations, New Hire Data Sheet, and
16 Employment Interview Form), Defendant’s operations and employment practices, forms
17 (including but not limited to Associate Coaching/Counseling Report, Bass Pro Shops – Retail
18 Performance Appraisal, Bass Pro Group Separation Notice, and Exit Interview Form),
19 procedures (including but not limited to Security and Inspections, Breaks and Meal Periods, and
20 Searches of Company and Associate Property), and policies (including but not limited to
21 Overtime, Time Keeping, Appearance Standards, Code of Ethics, and Conflicts of Interest),
22 among other information and documents.³⁷ Class Counsel interviewed Plaintiffs and other Class
23 Members to gather facts and to identify potential witnesses.³⁸ Class Counsel propounded
24 multiple sets of formal written discovery requests on Defendant, reviewed Defendant’s
25 responses and supplemental responses thereto, noticed the depositions of Defendant’s Person
26

27 ³⁵ Aiwazian Decl., §§ 11-13.

28 ³⁶ *Id.*, § 12.

³⁷ *Ibid.*

³⁸ *Ibid.*

1 Most Knowledgeable designees regarding organizational structure and job duties, and worked
2 with Plaintiffs to provide responses to discovery requests that were propounded by Defendant.³⁹
3 Class Counsel prepared for and took two depositions of Defendant's Person Most
4 Knowledgeable witnesses.⁴⁰ Counsel for the Parties also met and conferred on numerous
5 occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of
6 documents and data prior to the mediation.⁴¹ Class Counsel also drafted Plaintiffs' mediation
7 brief and prepared for and attended court proceedings, settlement negotiations, and the
8 mediation, among other tasks.⁴²

9 The Parties engaged in extensive settlement negotiations and participated in a formal,
10 full-day mediation conducted by David A. Rotman, a well-respected mediator experienced in
11 mediating complex labor and employment matters.⁴³ Prior to and during the mediation and
12 settlement discussions, the Parties exchanged class information and engaged in an intensive
13 discussion regarding their evaluations of the case and various aspects of the case, including but
14 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
15 with class certification and/or representative adjudication, the law relating to off-the-clock
16 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
17 well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁴
18 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
19 adversarial position.⁴⁵ Arriving at a settlement that was acceptable to both Parties was not easy.
20 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
21 certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class
22 certification and prevail at trial.⁴⁶ After conducting investigations, significant formal and
23 informal discovery, extensive settlement negotiations, and with the aid of the mediator's
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25 ³⁹ *Ibid.*

26 ⁴⁰ *Ibid.*

27 ⁴¹ *Ibid.*

28 ⁴² *Ibid.*

⁴³ Aiwazian Decl., § 11.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.*, §§ 11, 16-18.

1 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
2 issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that
3 would attend further litigation.⁴⁷

4 The Settlement takes into account the strengths and weaknesses of each side's position
5 and the uncertainty of how the case might have concluded at certification and trial.⁴⁸ The Parties
6 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁹
7 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and
8 the Class Members' employment with Defendant and performed significant research into the
9 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
10 rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto,
11 as well as facts discovered.⁵⁰ The Parties have reached the Settlement based on this large volume
12 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
13 employment class actions, including significant experience in California wage-and-hour
14 litigation.⁵¹

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

16 The Settlement, which provides for a Gross Settlement Amount of five million dollars
17 (\$5,000,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵² The
18 Settlement was calculated using the information and data uncovered during litigation, case
19 investigation, as well as the formal and informal exchange of information.⁵³ The Settlement
20 takes into account the potential risks and rewards inherent in any case and, in particular, in the
21 case at issue.⁵⁴ Moreover, considering all of the facts and circumstances of the lawsuit, the
22 Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁵

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24 _____
25 ⁴⁷ *Ibid.*

26 ⁴⁸ *Ibid.*

27 ⁴⁹ *Ibid.*

28 ⁵⁰ Aiwazian Decl., §§ 11-13 & 16-18.

⁵¹ *Id.*, §§ 6-7.

⁵² *Id.*, §§ 11, 13, 14 & 21.

⁵³ *Id.*, §§ 11-13.

⁵⁴ *Id.*, §§ 16-18.

⁵⁵ *Id.*, §§ 11, 13, & 21.

Assuming that the Attorneys' Fees and Costs, Incentive Payments, LWDA Payment, 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 two million seven hundred ninety-five thousand dollars (\$2,795,000.00).⁵⁶ 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 Share will be calculated based on his or her Workweeks.⁵⁷ 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.⁵⁸ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation has been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁹ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop

⁵⁶ Aiwazian Decl., § 14.

⁵⁷ Settlement Agreement, § V.D.3.

⁵⁸ Aiwazian Decl., §§ 11, 13, & 21.

⁵⁹ *Id.*, §§ 11-13 & 18.

valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁶⁰ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶¹

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶² California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to

⁶⁰ Aiwazian Decl., § 18.

⁶¹ *Id.*, §§ 11-13 & 16-18.

⁶² Settlement Agreement, § VIII.B.2.

1 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
2 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
3 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

4 This action involves a class of approximately four thousand four hundred thirty (4,430)
5 individuals.⁶³ This class is sufficiently numerous. See *Rose v. City of Hayward* (1981) 126
6 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
7 requirement as joinder is not practical at that point). Further, all Class Members can and will
8 be identified by Defendant to the Settlement Administrator through a review of Defendant’s
9 employment records regarding non-exempt employees in California during the Class Period. As
10 such, the Class is ascertainable and sufficiently numerous.

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

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

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

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28 _____
⁶³ Aiwazian Decl., § 9.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶⁴ 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 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁵

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.⁶⁶ 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.⁶⁷

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, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over three years, and was actively preparing the matter for class certification and trial.⁶⁸ 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,

⁶⁴ Aiwazian Decl., § 16.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Id.*, §§ 11-13.

including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees and took two depositions from Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷⁰

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

The Settlement establishes a Gross Settlement Amount of five million dollars (\$5,000,000.00), 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-five percent (35%) of the Gross Settlement Amount (i.e., \$1,750,000.00) and an amount not to exceed sixty thousand dollars (\$60,000.00) for costs and expenses.⁷² The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this 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.⁷³

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⁶⁹ Aiwazian Decl., § 12.

⁷⁰ *Id.*, § 11.

⁷¹ *Id.*, §§ 6-7.

⁷² Settlement Agreement, §§ V.A. and V.C.1-2.

⁷³ *Id.*, Exh. A.

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

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

21 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
22 depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin*
23 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
24 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
25 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
26 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
27 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
28 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.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 Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice describes the Settlement, the deadlines and procedures to mail an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁵

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.⁷⁶ The proposed Class Notice recognizes that the Court has not yet granted

⁷⁴ Aiwazian Decl., § 19.

⁷⁵ Settlement Agreement, Exh. A.

⁷⁶ *Ibid.*

1 final approval of the settlement.⁷⁷ The proposed Class Notice also apprises the Class Members
2 of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks
3 credited to them.⁷⁸

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 SETTLEMENT ADMINISTRATORS AS THE**
11 **SETTLEMENT ADMINISTRATOR**

12 The Parties have selected Phoenix to administer the Settlement.

13 The Settlement Administrator will mail the Class Notice to each Class Member by First-
14 Class U.S. mail.⁷⁹ Any undeliverable Class Notice that is returned to the Settlement
15 Administrator with a forwarding address on or before the Response Deadline, will be re-mailed
16 to the forwarding address.⁸⁰ With respect to any undeliverable Class Notice returned on or
17 before the Response Deadline without a forwarding address, the Settlement Administrator will
18 make reasonable efforts to obtain an updated mailing address, including but not limited to
19 conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸¹ The Settlement
20 Administrator will receive and process requests for exclusion, objections, and any disputes
21 regarding Workweeks.⁸²

22 The Settlement Administrator will calculate the amounts of the Individual Settlement
23 Shares and/or Individual PAGA Shares; deduct and transmit applicable state and/or federal taxes
24 in connection with the wage portion of Individual Settlement Shares; mail the Individual
25

26 ⁷⁷ *Ibid.*

27 ⁷⁸ *Ibid.*

28 ⁷⁹ Settlement Agreement, § IV.C.2.

⁸⁰ *Id.*, § IV.C.4.

⁸¹ *Id.*, § IV.C.4.

⁸² *Id.*, §§ IV.D.1, IV.E.1 and IV.F.

1 Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate
2 and disburse the Attorneys' Fees and Costs, Incentive Payments, and LWDA Payment; and
3 perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸³ The
4 Settlement Administration Costs are currently estimated not to exceed twenty-five thousand
5 dollars (\$25,000.00) and will be paid out of the Gross Settlement Amount, subject to approval
6 by the Court.⁸⁴

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

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

12 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
13 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
14 entails mailing of the Class Notice, in the form approved by the Court, to all known and
15 reasonably ascertainable Class Members based on Defendant's records.⁸⁵

16 Within twenty-one (21) calendar days of Preliminary Approval of the Settlement,
17 Defendant will provide the Settlement Administrator with the following information for each
18 Class Member: (1) full name; (2) last known mailing address and telephone number; (3) full
19 Social Security number; and (4) start and end dates of employment during the Class Period
20 (collectively, "Class List").⁸⁶

21 Within twenty-one (21) calendar days of receipt of the Class List, the Settlement
22 Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁷ If a
23 Class Notice is returned to the Settlement Administrator with a forwarding address, the
24 Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁸ If no
25

26 ⁸³ Settlement Agreement, §§ V.D.3, V.D.4, V.D.6, V.E, V.F, and V.G.; Aiwazian Decl., § 15.

27 ⁸⁴ *Id.*, § V.H.

28 ⁸⁵ *Id.*, § IV.C.3.

⁸⁶ *Id.*, § IV.C.1.

⁸⁷ *Id.*, § IV.C.2.

⁸⁸ *Id.*, § IV.C.4.

forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸⁹ Class Members will have until the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding Workweeks, and/or to file and serve an objection.⁹⁰

Defendant will make a one-time deposit of the Gross Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a Settlement Fund Account to be established by the Settlement Administrator, within thirty (30) calendar days after the Effective Date.⁹¹ Within forty-five (45) calendar days of the Effective Date, the Settlement Administrator will distribute: (1) the Individual Settlement Shares to Settlement Class Members; (2) the Court-approved Incentive Payments to Plaintiffs; (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 itself.⁹²

The Individual Settlement Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹³ Checks that are not negotiated within the 180-day period will be cancelled.⁹⁴ The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq.⁹⁵

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR INCENTIVE PAYMENTS

Plaintiffs Celina Acuna and Ian Pfeifle respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Incentive Payments in an amount up to ten thousand dollars (\$10,000.00) each to Plaintiffs Celina Acuna and Ian Pfeifle (for a

⁸⁹ *Ibid.*

⁹⁰ Settlement Agreement, §§ IV.C.5, IV.E.1, and IV.F.

⁹¹ *Id.*, §§ V.A. and V.B.

⁹² *Id.*, § V.D.2.

⁹³ *Id.*, § V.D.6.

⁹⁴ *Ibid.*

⁹⁵ *Id.*, § V.D.6.

combined total of \$20,000).⁹⁶ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an incentive 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 Incentive Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁷ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁸ Accordingly, it is appropriate and just for Plaintiffs to each receive an Incentive Payment for their services on behalf of the Class, in addition to their Individual Settlement Payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Celina Acuna and Ian Pfeifle as Class Representatives; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Incentive Payments, LWDA Payment, and Settlement Administration Costs; approve the proposed Class

⁹⁶ Settlement Agreement, § V.C.3.

⁹⁷ Aiwazian Decl., § 20; Declaration of Celina Acuna in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Acuna Decl."), § 4; Declaration of Ian Pfeifle in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Pfeifle Decl."), § 4.

⁹⁸ Aiwazian Decl., § 20; Acuna Decl., §§ 3-6; Declaration of Ian Pfeifle in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Pfeifle Decl."), §§ 3-6.

1 Notice; direct the Settlement Administrator to undertake the notice and settlement
2 administration process in conformity with the deadlines and procedures provided by the
3 Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six
4 (6) months; and permit the filing of a memorandum that exceeds the page limit.

5 Dated: October 28, 2021

LAWYERS for JUSTICE, PC

6
7 By:


Edwin Aiwarzian
Attorneys for Plaintiffs