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

JUSTIN CANELIAS, individually, and on  
behalf of other members of the general  
public similarly situated;

Plaintiff,

vs.

GLOBAL SYN-TURF, INC., an unknown  
business entity; and DOES 1 through 100,  
inclusive,

Defendant.

Case No.: RG21090397  
[Consolidated with Case No. RG21104966]

Honorable Michael Markman  
Department 23

**CLASS ACTION**

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

[Declaration of Class Counsel (Helene  
Mayer); Declaration of Proposed Class  
Representative (Justin Canelias); and  
[Proposed] Order filed concurrently herewith]

Date: August 8, 2024  
Time: 10:00 a.m.  
Department: 23

Class Action Filed: February 23, 2021  
PAGA Action Filed: June 17, 2021  
Trial Date: None Set

JUSTIN CANELIAS, individually, and on  
behalf of aggrieved employees pursuant to  
the California Private Attorney General Act;

Plaintiff,

vs.

GLOBAL SYN-TURF, INC., an unknown  
business entity; and DOES 1 through 100,  
inclusive,

Defendant.

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

**PLEASE TAKE NOTICE** that on August 8, 2024 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Michael Markman in Department 23 of the Superior Court of California for the County of Alameda, located at Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, California 94612, Plaintiff Justin Canelias (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Helene Mayer, 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 Award to Plaintiff, and Settlement Administration Fees to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Justin Canelias as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class and Representative Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement Agreement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

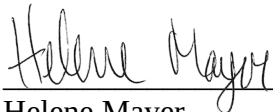
1 for the Attorneys' Fees and Costs to Class Counsel, Incentive Award for Plaintiff, and  
2 Settlement Administration Fees to Settlement Administrator.

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

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

11  
12 Dated: July 1, 2024

**LAWYERS for JUSTICE, PC**

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14 By:   
15 Helene Mayer  
16 Attorneys for Plaintiff  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Justin Canelias (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually, and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Global Syn-Turf, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00) (“Gross Settlement Amount”).<sup>1</sup> The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount<sup>2</sup>; (2) the Incentive Award of Ten Thousand Dollars and No Cents (\$10,000.00) to Plaintiff Justin Canelias<sup>3</sup>; (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 \$87,500.00, and reimbursement of actual costs and expenses associated with Class Counsel’s litigation and settlement of the Actions<sup>4</sup>; (4) the Settlement Administration Fees to the Settlement Administrator in the amount currently estimated not to exceed Fifteen Thousand Dollars and No Cents (\$15,000.00);<sup>5</sup> (5) PAGA Allocation of Twenty-Five Thousand Dollars and No Cents (\$25,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$18,750.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$6,250.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant who worked in California during the PAGA Period (“PAGA Members”) on a *pro rata* basis, based on their PAGA Workweeks during the PAGA Period.<sup>6</sup>

<sup>1</sup> Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Helene Mayer (“Mayer Decl.”), ¶ 9(t).

<sup>2</sup> *Id.*, ¶¶ 9(w) & 9(bb).

<sup>3</sup> *Id.*, ¶ 9(u).

<sup>4</sup> *Id.*, ¶¶ 9(c) & 13.

<sup>5</sup> *Id.*, ¶¶ 9(tt) & 15.

<sup>6</sup> *Id.*, ¶¶ 9(ff) & 9(gg). “PAGA Period” is defined as the period of time from April 13, 2020 through July 15, 2023. *See id.*, ¶ 9(ii).

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

All current and former non-exempt employees of Defendant, who worked in California during the Class Period (Class” or “Class Members”).<sup>7</sup>

Based on information provided by Defendant, the Class is estimated to consist of approximately two hundred and twenty (220) individuals.<sup>8</sup>

Class Members who do not submit a timely and valid Opt Out (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks during the Class Period in which Class Members worked for by Defendant in California as an hourly or non-exempt employee and will include any week in which a Class Member had worked one day in Defendant’s timekeeping system (“Workweeks”).<sup>9</sup>

PAGA Members will receive a share of the 25% of the PAGA Allocation on a *pro rata* basis (“Individual PAGA Payment”).<sup>10</sup>

The Settlement resolves the Released Claims of Plaintiff and Settlement Class Members, and the PAGA Released Claims of Plaintiff, the State of California, and PAGA Members against the Released Parties.<sup>11</sup>

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

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

Defendant manufactures and distributes artificial grass. Defendant is headquartered in Pleasanton, California with twenty-one warehouse locations across the United States, including

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<sup>7</sup> Settlement Agreement, ¶ 9(g). “Class Period” is defined as the period of time from February 23, 2017 to July 15, 2023, See *Id.*, ¶ 9(i).

<sup>8</sup> Mayer Decl., ¶ 9.

<sup>9</sup> Settlement Agreement, ¶¶ 9(x), 9(uu), & 9(vv).

<sup>10</sup> *Id.*, ¶¶ 9(v).

<sup>11</sup> See *id.*, ¶¶ 9(oo) & 9(jj) for the full scope of the “Released Claims” and “PAGA Released Claims,” and *id.*, ¶ 9(pp) for the definition of the “Released Parties.”

1 six locations in Hayward, Los Angeles, San Diego, Anaheim, and Rancho Cordova, California.  
2 Plaintiff is a former employee of Defendant.

3 On February 23, 2021, Plaintiff commenced the Action by filing a Class Action  
4 Complaint for Damages, thereby commencing a putative class action entitled *Justin Canelias v.*  
5 *Global Syn-Turf, Inc.*, Alameda County Superior Court, Case No. RG21090397 (“Class  
6 Action”), which alleged Defendant’s: (1) failure to pay overtime pursuant to Labor Code  
7 sections 510 and 1198; (2) failure to provide meal period premiums in violation of sections  
8 226.7 and 512(a); (3) failure to provide rest period premiums in violation of section 226.7; (4)  
9 failure to pay minimum wages pursuant to sections 1194, 1197, and 1197.1; (5) failure to timely  
10 pay wages upon termination in violation of sections 201 and 202; (6) failure to timely pay wages  
11 during employment in violation of section 204; (7) failure to provide accurate and itemized wage  
12 statements in violation of section 226(a); (8) failure to keep requisite payroll records in violation  
13 of section 1174(d); (9) failure to reimburse business expenses in violation of sections 2800 and  
14 2802; and, (10) for violations of California Business and Professions Code §§ 17200, et seq.  
15 based on the aforementioned California Labor Code violations.

16 On April 13, 2021, Plaintiff provided written notice by online submission to the LWDA  
17 and by certified mail to Defendant of the specific provisions of the California Labor Code that  
18 were alleged to be violated (the “LWDA Notice”), thereby initiating LWDA Case No. LWDA-  
19 CM-829175-21.

20 On June 17, 2021, Plaintiff filed a Complaint for Enforcement Under the Private  
21 Attorneys General Act, California Labor Code 2698, Et Seq., thereby commencing the action  
22 entitled *Justin Canelias v. Global Syn-Turf, Inc.*, Alameda County Superior Court, Case No.  
23 RG21104966 (“PAGA Action”) (together, the Class Action and PAGA Action are referred to  
24 as the “Actions”) for civil penalties pursuant to the Private Attorneys General Act (“PAGA”).

25 On April 15, 2024, by Stipulation of the Parties, the Court ordered that the Class Action  
26 and PAGA Action be consolidated for purposed of settlement approval and entry of judgment,  
27 and the Class Action (Case No. RG21090397) will be the lead case for case administration and  
28 filing purposes.

On June 16, 2021, Defendant filed its Answer to the Class Action Complaint and on December 21, 2021, Defendant filed its Answer to the PAGA Action Complaint, which included general denial and affirmative defenses. 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.

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, the Class Members, and PAGA Members of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business-related expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*). Plaintiff contends that he, the Class Members, and PAGA Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On March 3, 2022, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Sets One, Two, and Three); and Form Interrogatories, (Set One), on Defendant. Plaintiff also noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on April 15, 2022 and May 2, 2022, Defendant responded to Plaintiff's discovery requests. Defendant also noticed the deposition of Plaintiff, to which Plaintiff objected. Plaintiff was thereafter deposed on January 19, 2022 and July 18, 2022.

The Parties have actively litigated the Actions since they were commenced over three (3) years ago. The Parties participated in a formal, full-day mediation conducted by Deborah Crandall Saxe, Esq., a well-regarded mediator experienced in mediating complex labor and

employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

### III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a gross settlement amount of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00) (i.e., the Gross Settlement Amount) to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid Opt Out (i.e., Settlement Class Members) with respect to the Released Parties, and to resolve the PAGA Released Claims of Plaintiff, the State of California, and the PAGA Members with respect to the Released Parties.<sup>12</sup> 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 Eighty-Seven Thousand Five Hundred Dollars and No Cents (\$87,500.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) Settlement Administration Fees, which are currently estimated not to exceed Fifteen Thousand Dollars and No Cents (\$15,000.00) to the Settlement Administrator ("Settlement Administration Fees"); (3) PAGA Allocation of Twenty-Five Thousand Dollars and No Cents (\$25,000.00), of which seventy-five percent (75%) (i.e., \$18,750.00) ("LWDA Payment") will be distributed to the LWDA and twenty-five percent (25%) (i.e., \$6,250.00) ("PAGA Member Amount") will be distributed to the PAGA Members on a *pro rata* basis; and (4) payment in the amount of up to Ten Thousand Dollars and No Cents (\$10,000.00) to Plaintiff Justin Canelias ("Incentive Award").<sup>13</sup> The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.<sup>14</sup>

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<sup>12</sup> Settlement Agreement, ¶¶ 33(a)-(b).

<sup>13</sup> *Id.*, ¶ 9(bb).; see also *id.*, ¶¶ 13, 14, 15, 16.

<sup>14</sup> *Id.*, ¶ 9(ss).

The Parties have agreed that the Settlement Administrator will determine each Class Member's share of the available Net Settlement Amount (i.e., Individual Settlement Share), in accordance with the Settlement Agreement and as follows:

The Settlement Administrator will calculate the total number of Compensable Workweeks worked by all Class Members during the Class Period ("Total Workweeks"). Each Class Member's individual number of Workweeks worked during the Class Period will be divided by the Total Compensable Workweeks to yield his or her "Individual Compensable Workweek Value," and the Settlement Administrator will multiply each Class Member's Individual Workweek Value by the Net Settlement Amount to yield his or her gross Individual Settlement Payment.<sup>15</sup>

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

The Settlement Administrator will calculate the total number of PAGA Workweeks worked by all PAGA Group Members during the PAGA Period ("Total PAGA Workweeks"). The PAGA Member Amount will be divided by the total number of Workweeks worked by all PAGA Members during the PAGA Period to produce a "Individual PAGA Workweek Value." The Individual PAGA Workweek Value will be multiplied by the number of Workweeks attributable to the individual PAGA Member to yield his or her Individual PAGA Payment.<sup>16</sup>

Each Individual Settlement Share will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) will be allocated as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.<sup>17</sup> The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).<sup>18</sup> Defendant will separately 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.<sup>19</sup>

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<sup>15</sup> Settlement Agreement, ¶ 17.

<sup>16</sup> *Id.*, ¶ 18.

<sup>17</sup> *Id.*, ¶ 28.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.*, ¶ 9(q).

Each Individual Settlement Payment check issued to Settlement Class Members and Individual PAGA Payment check issued to the PAGA Members will be valid and negotiable for ninety (90) calendar days from the date of issuance.<sup>20</sup> Individual Settlement Payment checks and Individual PAGA Payment checks that are not negotiated within the 90-day period will be cancelled.<sup>21</sup> The funds from associated with such cancelled checks will be transmitted by the Settlement Administrator after the expiration of the 90-day period, and sent to the California State Controller's Office Unclaimed Property Fund in the name of the individual.<sup>22</sup>

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a written Opt Out to the Settlement Administrator, by mail, indicating that they want to exclude themselves.<sup>23</sup> To be timely, the Class Member must mail a written Opt Out to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice to Class Members and PAGA Members ("Response Deadline").<sup>24</sup>

A Opt Out must: (i) contain the case name and number of the Class Action; (ii) contain the full name, signature, and the last four digits of the Social Security Number of the Class Member requesting exclusion; (iii) clearly state that the Class Member does not wish to be included in the Class Settlement; and (iv) be submitted by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed on or before the Response Deadline.<sup>25</sup> Class Members who submit a valid and timely Opt Out will not be bound by the terms of the Class Settlement, shall be barred from objecting to the Class Settlement, and shall receive no benefit from the Class Settlement.<sup>26</sup> All PAGA Members will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Opt Out.<sup>27</sup>

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<sup>20</sup> Settlement Agreement, ¶ 23.

<sup>21</sup> Ibid.

<sup>22</sup> *Id.*, ¶ 23.

<sup>23</sup> *Id.*, ¶¶ 9(dd) & 24.

<sup>24</sup> *Id.*, ¶¶ 9(qq).

<sup>25</sup> *Id.*, ¶ 9(dd).

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement.<sup>28</sup> Settlement Class Members who wish to object to the Class Settlement can either serve the Settlement Administrator with a written Notice of Objection on or before the Response Deadline, or present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a written Notice of Objection.<sup>29</sup> The written Notice of Objection must include: (i) the case name and number of the Class Action; (ii) the objector's full name, signature, address, telephone number, and last four digits of his or her Social Security Number; (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based; and (v) be submitted by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed on or before the Response Deadline.<sup>30</sup>

Class Members and PAGA Members who wish to dispute the number of Workweeks and/or PAGA Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.<sup>31</sup> In order to dispute Workweeks and/or PAGA Workweeks, Class Members and PAGA Members must submit a written letter to the Settlement Administrator that: (i) contains the case name and number of the Action; (ii) contains the full name, signature, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member; (iii) clearly states that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (iv) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct; and (v) is returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or fax-stamped on or before the Response Deadline.<sup>32</sup>

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<sup>28</sup> *Id.*, ¶ 25.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Id.*, ¶ 9(cc).

<sup>31</sup> *Id.*, ¶ 22.

<sup>32</sup> Settlement Agreement, ¶ 22.

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.4<sup>th</sup> 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.4<sup>th</sup> 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.4<sup>th</sup> 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.* (9<sup>th</sup> Cir. 1998) 150 F.3d 1011, 1026; *Class*  
13 *Plaintiff v. City of Seattle* (9<sup>th</sup> 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 (4<sup>th</sup> 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* (9<sup>th</sup> 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.4<sup>th</sup> 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiffs’ 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.4<sup>th</sup> 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.4<sup>th</sup> 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 of showing that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4<sup>th</sup> 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.4<sup>th</sup> at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4<sup>th</sup> 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 February 23, 2021.  
4           Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of  
5           the claims, and Class Counsel was actively preparing the case for class certification and trial.<sup>33</sup>

6           Prior to reaching the Settlement, 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 a large volume of documents and data produced by  
9           Defendant.<sup>34</sup> The volume of data and documents that Class Counsel reviewed and analyzed  
10          included and was not limited to: employment records of Plaintiff and other Class Members, a  
11          detailed sampling of Class Members’ time and pay data, including Timecards, Payroll Records,  
12          Earning Statements, multiple iterations of Defendant’s Employee Handbook and updates  
13          thereto, job descriptions, internal memoranda, new hire checklists, termination checklists,  
14          organizational charts, company policy acknowledgements (including, but not limited to, General  
15          Handbook Acknowledgment, Acknowledgement and Receipt Of California Discrimination,  
16          Harassment and Retaliation Prevention Policy, Statement of Understanding, Clock In & Clock  
17          Out Policy Acknowledgement), operations and employment practices, forms (including, but not  
18          limited to, Performance Appraisal Form), procedures, and policies (including, but not limited  
19          to, Employee Purchases Policy, Forklift Safety Instructions, Meal Break Policy, Rest Break  
20          Policy, Warehouse Transactions Policy), among other information and documents.<sup>35</sup> Class  
21          Counsel conducted interviews to gather facts and to identify potential witnesses.<sup>36</sup> Class  
22          Counsel propounded multiple sets of formal written discovery requests on Defendant, noticed  
23          the depositions of Defendant’s Person Most Knowledgeable designees regarding organizational  
24          structure and job duties.<sup>37</sup> Class Counsel also attended and defended the deposition of Plaintiff  
25          on two separate dates. Counsel for the Parties also met and conferred on numerous occasions,

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<sup>33</sup> Mayer Decl., ¶¶ 11-13.

27                       <sup>34</sup> *Id.*, ¶ 12.

28                       <sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.<sup>38</sup> Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.<sup>39</sup>

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Deborah Crandell Saxe, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.<sup>40</sup> In the course of litigation and in connection with mediation and settlement discussions, the Parties exchanged class and aggrieved employee information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>41</sup> During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.<sup>42</sup> Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.<sup>43</sup> After conducting investigations, formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.<sup>44</sup>

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<sup>38</sup> Mayer Decl. ¶ 12.

<sup>39</sup> Ibid.

<sup>40</sup> *Id.*, ¶ 11.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.<sup>45</sup> The Parties have had the opportunity to interview and obtain information from their respective witnesses.<sup>46</sup> Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the applicable law, concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and damages, and Defendant's defenses thereto, as well as facts discovered.<sup>47</sup> 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.<sup>48</sup>

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

The Settlement, which provides for a Gross Settlement Amount of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), represents a fair, adequate, and reasonable resolution of the matter.<sup>49</sup> The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.<sup>50</sup> The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.<sup>51</sup> Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, PAGA Members, and the State of California.<sup>52</sup>

Assuming that the Attorneys' Fees and Costs, Incentive Award, PAGA Allocation, and Settlement Administration Fees are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount to Class Members

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<sup>45</sup> Mayer Decl., ¶ 17-18.

<sup>46</sup> *Id.*, ¶ 12.

<sup>47</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>48</sup> *Id.*, ¶¶ 2-7.

<sup>49</sup> *Id.*, ¶¶ 11, 13, 14, & 21.

<sup>50</sup> *Id.*, ¶¶ 11-13.

<sup>51</sup> *Id.*, ¶¶ 16-18.

<sup>52</sup> *Id.*, ¶¶ 11, 13, & 21.

that is currently estimated to be Ninety-Two Thousand Five Hundred Dollars and No Cents (\$92,500.00).<sup>53</sup> Additionally, as to PAGA, 75% of the PAGA Allocation, (i.e., \$18,750.00), will be distributed to the LWDA (i.e., LWDA Payment), and 25% of the PAGA Allocation, (i.e., \$6,250.00), will be distributed to the PAGA Members (i.e., PAGA Member Amount). As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, and the PAGA Allocation will be fully paid out to the LWDA and the PAGA Members, in accordance with the Settlement Agreement. The amount of each Class Member's Individuals Settlement Share will be calculated based on his or her Workweeks and each PAGA Member's Individual PAGA Payment will be calculated based on his or her PAGA Workweeks.<sup>54</sup> 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.<sup>55</sup> Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information in the course of litigation and in connection with mediation

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<sup>53</sup> Mayer Decl., ¶ 14.

<sup>54</sup> Settlement Agreement, ¶¶ 17-18.

<sup>55</sup> Mayer Decl., ¶¶ 11, 13, & 21.

1 and settlement negotiations.<sup>56</sup> The discovery and information that Class Counsel obtained from  
2 Defendant and through other sources allowed Class Counsel to develop valuation models in  
3 order to evaluate the potential value and merit of the claims, and perform a complete evaluation  
4 of Defendant's defenses thereto.<sup>57</sup> As outlined in the Declaration of Helene Mayer, Class  
5 Counsel performed an extensive analysis of the claims pursuant to *Kullar* prior to entering into  
6 the Settlement.<sup>58</sup>

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

8 For settlement purposes, the requisites for establishing class certification are met, and  
9 the Parties have stipulated to conditional certification of the Class for settlement purposes only.<sup>59</sup>  
10 California Code of Civil Procedure Section 382 "authorizes class actions when the question is  
11 one of a common or general interest, of many persons, or when the Parties are numerous, and it  
12 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*  
13 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies  
14 "both [1] an ascertainable class and [2] a well-defined community of interest among class  
15 members." *Id.*

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

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27 <sup>56</sup> Mayer Decl., ¶¶ 11-13 & 18.

<sup>57</sup> *Id.*, ¶ 18.

28 <sup>58</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>59</sup> Settlement Agreement, ¶ 10.

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

2           “Ascertainability is required in order to give notice to putative class members as to whom  
3 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)  
4 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed Plaintiff  
5 by describing a set of common characteristics sufficient to allow a member of that group to  
6 identify himself or herself as having a right to recover based on the description.” *Bartold v.*  
7 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be  
8 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

9           Based on information provided by Defendant, the Class is estimated to consist of  
10 approximately two hundred and twenty (220) individuals.<sup>60</sup> This class is therefore sufficiently  
11 numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a  
12 class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at  
13 that point). Further, all Class Members can and will be identified by Defendant to the Settlement  
14 Administrator through a review of Defendant’s employment records regarding Class Members  
15 and PAGA Members. As such, the Class is ascertainable and sufficiently numerous.

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

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

26           The “common issues” requirement “involves analysis of whether the proponent’s ‘theory  
27 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155  
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<sup>60</sup> Mayer Decl., ¶ 9.

Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the operative complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.<sup>61</sup> Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.<sup>62</sup>

Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.<sup>63</sup> As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.<sup>64</sup>

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

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<sup>61</sup> Mayer Decl., ¶ 16.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

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

Class Counsel has litigated the matter for over three (3) years and was actively preparing the matter for class certification and trial.<sup>65</sup> The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant.<sup>66</sup> Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel also attended and defended the deposition of Plaintiff on two separate dates. Class Counsel reviewed a large volume of documents and data<sup>67</sup> and also interviewed and obtained information from Plaintiff, Defendant, and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.<sup>68</sup> Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.<sup>69</sup>

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.<sup>70</sup>

The Settlement establishes a Gross Settlement Amount of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), 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., \$87,500.00) and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action.<sup>71</sup> 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

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<sup>65</sup> Mayer Decl., ¶¶ 11-13.

<sup>66</sup> *Id.*, ¶ 12.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Id.*, ¶ 11.

<sup>70</sup> *Id.*, ¶¶ 6-7.

<sup>71</sup> Settlement Agreement, ¶ 13.

1 Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has  
2 shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of  
3 the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases  
4 that Class Counsel had to turn down in order to devote its time and efforts to this matter. The  
5 proposed Class Notice provides Class Members with information about the amount allocated  
6 toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will  
7 be sought, as provided for by the Settlement.<sup>72</sup>

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

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

28 <sup>72</sup> Settlement Agreement, Exh. A.

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.<sup>73</sup>

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

#### **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

The proposed Class Notice<sup>74</sup> describes the Settlement, the deadlines and procedures to mail a written Notice of Objection to the Class Settlement or present the objection orally at the

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<sup>73</sup> Mayer Decl., ¶ 19.

<sup>74</sup> Settlement Agreement, Exh. A.

Final Approval Hearing, mail a Opt Out from the Class Settlement, and/or mail a dispute regarding the number of Workweeks and/or PAGA Workweeks, and the date and time set for the Final Approval Hearing.<sup>75</sup>

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 (4<sup>th</sup> 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.<sup>76</sup> The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.<sup>77</sup> The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payments are calculated and the number of Workweeks and/or PAGA Workweeks credited to them.<sup>78</sup>

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

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

The Parties have selected Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”) to administer the Settlement. The Settlement Administrator will perform a search based on the National Change of Address Database, or any other similar services available, for information to update and correct for any known or identifiable address changes,

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<sup>75</sup> Settlement Agreement, Exh. A.

<sup>76</sup> *Ibid*.

<sup>77</sup> *Ibid*.

<sup>78</sup> *Ibid*.

1 and will mail the Class Notice to each Class Member by First-Class U.S. mail.<sup>79</sup> With respect  
2 to Class Notices that are returned as undeliverable without a forwarding address on or before  
3 the Response Deadline, the Settlement Administrator shall search for an alternate address by  
4 way of skip-trace and shall resend the Class Notice within five (5) calendar days.<sup>80</sup> The  
5 Settlement Administrator will receive and process Opt Outs, written Notices of Objections, and  
6 any disputes regarding Workweeks and/or PAGA Workweeks.<sup>81</sup>

7 The Settlement Administrator will calculate the amounts of the Individual Settlement  
8 Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal  
9 taxes in connection with the wage portion of the Individual Settlement Shares; mail the  
10 Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms;  
11 calculate and disburse the Attorneys' Fees and Costs, Incentive Award, and LWDA Payment;  
12 and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.<sup>82</sup>  
13 The Settlement Administration Fees are currently estimated to be no more than Fifteen  
14 Thousand Dollars and No Cents (\$15,000.00) and will be paid out of the Gross Settlement  
15 Amount, subject to approval by the Court.<sup>83</sup>

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

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

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

25  
26 <sup>79</sup> Settlement Agreement, ¶ 21(a).

27 <sup>80</sup> *Id.*, ¶ 21(b).

28 <sup>81</sup> *Id.*, ¶ 15.

<sup>82</sup> *Id.*, ¶ 15; Mayer Decl., ¶ 15.

<sup>83</sup> Settlement Agreement, ¶ 15; Mayer Dec., ¶ 15.

<sup>84</sup> Settlement Agreement, ¶ 21.

Within ten (10) business days of receipt of the Class List, the Settlement Administrator will perform a search based on the National Change of Address Database, or any other similar services available, for information to update and correct for any known or identifiable address changes, will send the Court approved Class Notice to the Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.<sup>86</sup> With respect to each Class member whose Class Notice is returned to the Settlement Administrator as undeliverable without a forwarding address, on or before the Response deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice to the any updated address within five (5) calendar days.<sup>87</sup> Class Members will have until the applicable Response Deadline to mail Opt Outs, Notices of Objections, and/or to dispute the number of Workweeks and/or PAGA Workweeks credited to them.<sup>88</sup>

Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement Agreement.<sup>89</sup> Within thirty (30) calendar days of the Effective Date, Defendant will make a one-time deposit of the Gross Settlement Amount, plus an amount sufficient for Employer Taxes, into a settlement account to be established by the Settlement

<sup>89</sup> *Id.*, ¶¶ 9(p) & 12.

Administrator, to be held in a Qualified Settlement Fund.<sup>90</sup>

Within seven (7) calendar days of the funding of the Gross Settlement Amount, the Settlement Administrator will issue payments due under the Settlement and approved by the court as follows: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Court-approved Incentive Award to Plaintiff; (3) the Court-approved Attorneys' Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; (5) the Individual PAGA Payments to PAGA Members; and (6) the Court-approved Settlement Administration Fees to itself.<sup>91</sup>

The Individual Settlement Payment checks will remain negotiable for ninety (90) calendar days from the date of their issuance.<sup>92</sup> Checks that are not negotiated within the 90-day period will be cancelled.<sup>93</sup> The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the California State Controller's Office Unclaimed Property Fund in the name of the individual.<sup>94</sup>

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR INCENTIVE AWARD**

Plaintiff Justin Canelias respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Incentive Award in an amount up to Ten Thousand Dollars and No Cents (\$10,00.00) to Plaintiff.<sup>95</sup> It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the

<sup>90</sup> Settlement Agreement, ¶¶ 9(p) & 12.

<sup>91</sup> *Id.*, ¶ 12.

<sup>92</sup> *Id.*, ¶ 23.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> *Id.*, ¶ 14.

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 Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.<sup>96</sup> Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.<sup>97</sup> Plaintiff was also deposed on two separate occasions.<sup>98</sup> Accordingly, it is appropriate and just for Plaintiff to receive Incentive Award for his services on behalf of the Class, PAGA Members, and the State of California, in addition to his Individual Settlement Payment and Individual PAGA Payment.

## **XII. CONCLUSION**

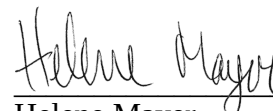
For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Justin Canelias as Class Representative; appoint Phoenix as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Incentive Award, PAGA Allocation, and Settlement Administration Fees; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five (5) months; and permit the filing of a memorandum that exceeds the page limit.

Respectfully Submitted,

Dated: July 1, 2024

**LAWYERS for JUSTICE, PC**

By:



Helene Mayer  
Attorneys for Plaintiff

<sup>96</sup> Mayer Decl., ¶ 20; Declaration of Justin Canelias in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Canelias Decl."), ¶ 4.

<sup>97</sup> Mayer Decl., ¶ 20; Canelias Decl., ¶¶ 3-6.

<sup>98</sup> Mayer Decl., ¶ 20; Canelias Decl., ¶ 5.