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

KENNETH MURRAY, 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;

Plaintiff,

v.

NEW WORLD VAN LINES OF SAN
FRANCISCO, a California corporation;
NEW WORLD VAN LINES, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: RG21095207

Honorable Honorable Brad Seligman
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 Proposed Class Counsel
(Annabel Blanchard); Declaration of
Proposed Class Representative (Kenneth
Murray); and [Proposed] Order filed
concurrently herewith]

Date: August 23, 2022
Time: 3:00 p.m.
Department: 23

Reservation No. A-21095207-001

Complaint Filed: April 6, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on August 23, 2022 at 3:00 p.m. or as soon thereafter as the matter may be heard before the Honorable Brad Seligman in Department 23 of the Superior Court of California for the County of Alameda, located at 1225 Fallon Street Oakland, California 94612, Plaintiff Kenneth Murray (“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 Private Attorneys General Act Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Annabel Blanchard, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Award to Class Counsel, Class Representative Service Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Kenneth Murray as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of 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

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Award to Class Counsel, Class Representative Service Award for Plaintiff, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes and Rule 3.1113 (e) of the California Rules of Court, which permits the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Annabel Blanchard) and Proposed Class Representative (Kenneth Murray) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: August 1, 2022

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiff

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TABLE OF CONTENTS

I. SUMMARY OF MOTION.....1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....2

III. SUMMARY OF THE SETTLEMENT TERMS4

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS.....8

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT9

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.10

B. The Settlement Is Fair, Reasonable, and Adequate.....12

C. The Settlement Is of Significant Value.....13

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.14

A. The Class Is Ascertainable and Sufficiently Numerous.14

B. The Class Members Share a Well-Defined Community of Interest....15

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL AWARD.....16

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.19

IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR.....20

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS21

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE AWARD23

XII. CONCLUSION24

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	10
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	18
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 .	15
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	19, 20
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	18
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	9
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 9, 10
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	18
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	8, 9
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	14
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	13
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	18
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	13
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	18
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	17, 18
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	14
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	19
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	18
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	9
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	15

1	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	14, 15
2	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	8
3	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	23
4	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	8, 9
5	Statutes	
6	Cal. Code Civ. Proc. § 1781.....	19
7	Cal. Code Civ. Proc. § 1781(f).....	8
8	Other Authorities	
9	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	9
10	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	21
11	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	13
12	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	18
13	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	20
14	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	20
15	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	19
16	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	20
17	Rules	
18	Fed. R. Civ. P. 23(c)(2)	20
19	Fed. R. Civ. P. 23(e).....	19

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Kenneth Murray (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and Private Attorneys General Act Settlement Agreement (“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 New World Van Lines of San Francisco Inc. and New World Van Lines Inc. (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Three Hundred Fifty Thousand Dollars (\$350,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members²; (2) the Class Representative Service Award of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff³; (3) the Class Counsel Award to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, (or \$122,500.00), and reimbursement of litigation costs and expenses not to exceed Twenty Thousand Dollars (\$20,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);⁵ and (5) the amount of Twenty Five Thousand Dollars (\$25,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which seventy-five percent (75%), or Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%), or Six Thousand Two Hundred Fifty Dollars (\$6,250.00) will be distributed to the PAGA Group Members.⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Annabel Blanchard (“Blanchard Decl.”), ¶ 21.

² Id., ¶ 22.

³ Id., ¶¶ 9 & 72.

⁴ Id., ¶¶ 4 & 73.

⁵ Id., ¶¶ 44 & 75.

⁶ Id., ¶¶ 31 & 7.

All current and former hourly-paid or non-exempt employees who were employed with any of the Defendants within the State of California at any time during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately fifty-nine (59) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of workweeks during the Class Period in which Class Members worked for any of the Defendants in California as an hourly-paid or non-exempt employee during the Class Period, which will be calculated by the Settlement Administrator by using the Class Information furnished by the Defendants (“Compensable Workweeks”).⁹ All current and former hourly-paid or non-exempt employees of Defendants who were employed within the State of California during April 5, 2020 through August 23, 2022 (“PAGA Group,” PAGA Group Member,” or “PAGA Group Members”) will receive a share of the 25% portion of the PAGA Amount (“PAGA Payment Share”) on a *pro rata basis* based on the number Compensable Workweeks he or she worked during the PAGA Period (“PAGA Workweeks”).¹⁰

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are an international moving company that operated sixteen service centers throughout the United States, including California. Plaintiff Kenneth Murray is a former

⁷ Settlement Agreement, ¶ 6. “Class Period” is defined as the period of time from April 6, 2017 through August 23, 2022. *See id.*, ¶ 8.

⁸ Blanchard Decl., ¶ 9.

⁹ *Id.*, ¶ 11.

¹⁰ Settlement Agreement, ¶¶ 30, 32, and 34. “PAGA Period” is defined as the period of time from April 5, 2020 through August 23, 2022. *See id.*, ¶ 33.

¹¹ *See id.* at ¶ 80., for the full scope of the “Released Class Claims,” and ¶ 81, for the full scope of the “Released PAGA Claims,” and *id.* at ¶ 41, for the definition of the “Released Parties.”

1 employee of New World Van Lines of San Francisco, Inc. and alleges that he is a former
2 employee of New World Van Lines, Inc.

3 On April 5, 2021, Plaintiff provided written notice to the Labor and Workforce
4 Development Agency by electronic submission and to Defendants by certified mail, of the
5 specific provisions of the California Labor Code that Plaintiff alleges were violated (“LWDA
6 Notice”).

7 On April 6, 2021, Plaintiff filed a Class Action Complaint for Damages (“Murray Class
8 Complaint”), against New World Van Lines of San Francisco, Inc. and New World Van Lines,
9 Inc., thereby commencing the above-captioned lawsuit (“Murray Class Action”). On May 3,
10 2021, Defendants filed an Answer to the Murray Class Complaint.

11 On June 9, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
12 Attorneys General Act, California Labor Code § 2698, Et Seq. against New World Van Lines
13 of San Francisco, Inc. and New World Van Lines of California Inc., thereby commencing a
14 PAGA representative action (“Murray PAGA Action”). On September 27, 2021, the Court
15 ordered the Murray Class Action and Murray PAGA Action related, and reassigned both matters
16 to The Honorable Brad Seligman.

17 On October 15, 2021, Plaintiff filed a First Amended Complaint for Enforcement Under
18 the Private Attorneys General Act, California Labor Code § 2698, Et Seq., naming both
19 Defendants New World Van Lines of San Francisco, Inc. and New World Van Lines, Inc.
20 (“Murray PAGA Complaint”). On October 18, 2021, Plaintiff filed a Request for Dismissal of
21 New World Van Lines of California, Inc. without prejudice to the Class Complaint in the Murray
22 PAGA Action. The Murray Class Complaint and the Murray PAGA Complaint are collectively
23 referred to as the “Operative Complaints.”

24 Plaintiff's core allegation is that Defendants have violated the California Labor Code by
25 engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and
26 PAGA Group Members of, *inter alia*, failing to pay all overtime and minimum wages, failing
27 to provide compliant meal and rest periods and associated premium pay, failing to timely pay
28

wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he, and the Class Members and PAGA Group Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Operative Complaints, and further deny that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the Action since it was commenced on April 6, 2021. On January 27, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, 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, Defendants will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) and Released PAGA Claims of Plaintiff and PAGA Group Members 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) Class Counsel Award, which consists of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$122,500.00 if the Gross Settlement Amount remains \$350,000.00), and reimbursement of costs and expenses in an amount not to exceed

¹² Settlement Agreement, ¶ 55.

Twenty Thousand Dollars (\$20,000.00) to Class Counsel (collectively referred to as the “Class Counsel Award”); (2) Settlement Administration Costs, which are currently estimated not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) PAGA Payment in the amount of Twenty Five Thousand Dollars (\$25,000.00), of which seventy-five percent (75%), or \$18,750.00, will be paid to the LWDA (“LWDA Payment) and twenty-five percent (25%), or \$6,250.00, will be distributed to the PAGA Group Members on a *pro rata* basis; and (4) payment in the amount of Seven Thousand Five Hundred (\$7,500.00) to Plaintiff Kenneth Murray (“Class Representative Service Award”).¹³ The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s share of the available Net Settlement Amount (“Individual Settlement Payment”), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will calculate the total number of Compensable Workweeks worked by all Settlement Class Members during the Class Period (“Total Compensable Workweeks”). Each Class Member’s individual number of Compensable 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 Compensable Workweek Value by the Net Settlement Amount to yield his or her gross Individual Settlement Payment.¹⁴

The Parties have agreed that the Settlement Administrator will determine each PAGA Group Member’s share of the Employee PAGA Amount (“PAGA Payment Share”), in accordance with the Settlement Agreement and as follows:

- b. The Settlement Administrator will calculate the total number of PAGA Workweeks worked by all PAGA Group Members during the PAGA Period (“Total PAGA Workweeks”). Each PAGA Group Member’s individual number of PAGA Workweeks worked during the PAGA Period will be divided by the Total PAGA Workweeks to yield his or her “Individual PAGA Workweek Value”; and the Settlement Administrator will multiply each PAGA Group Member’s Individual PAGA Workweek Value by the Employee PAGA Amount to yield his or her PAGA Payment Share.¹⁵

¹³ *Id.*, ¶¶ 4, 9, 31, 44.

¹⁴ Settlement Agreement, ¶ 67.

¹⁵ *Id.*, ¶ 69.

Each gross Individual Settlement Payment will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2 by the Settlement Administrator, and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 by the Settlement Administrator.¹⁶ The Settlement Administrator will withhold (and remit to the appropriate taxing authorities) the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payments.¹⁷ The Parties further agree that one hundred percent (100%) of the PAGA Payment Shares will be allocated as penalties and will be reported on IRS form 1099 (if applicable) by the Settlement Administrator.¹⁸ Defendant will pay the employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Payments ("Employer Taxes") in addition to the Gross Settlement Amount.¹⁹

Any checks issued to Settlement Class Members and/or PAGA Group Members shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance, and thereafter, shall be cancelled.²⁰ Pursuant to California Code of Civil Procedure Section 384, the funds from associated with such cancelled checks will be transmitted to the Legal Aid Society of San Mateo County.²¹ Settlement Class Members whose Individual Settlement Payment checks are cancelled shall, nevertheless, be bound by the Class Settlement.²² PAGA Group Members whose PAGA Payment Share checks are cancelled, shall, nevertheless, be bound by the PAGA Settlement.²³

Any Class Member seeking to be excluded from the Class Settlement must submit a written letter indicating a request to be excluded ("Opt Out") to the Settlement Administrator by mail.²⁴ To be timely, the Class members must mail the Opt Out to the Settlement

¹⁶ *Id.*, ¶ 68.

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶ 70.

¹⁹ Settlement Agreement, ¶ 16.

²⁰ *Id.*, ¶ 71.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Id.*, ¶¶ 28 & 65.g.

Administrator, postmarked on or before the date that is forty-five (45) calendar days after the date the Settlement Administrator mails the Class Notice to Class Members (“Response Deadline”).²⁵ The Opt Out must: (1) include the case name and number of the Murray Class Action; (2) include the Class Member’s full name, signature, address, and the last four digits of his or her Social Security Number; and (3) clearly state that the Class Member requests to exclude himself or herself from the Class Settlement.²⁶ Any Class Member, who submits a completed, signed and timely written Opt Out shall no longer be a member of the Class, shall be barred from participating in or commenting on the Class Settlement at Final Approval, by appeal, or otherwise, shall be barred from objecting to the Class Settlement, and shall receive no benefit from the Class Settlement, except that Class Members who are in the PAGA Group will still be bound to the PAGA Settlement and issued his or her PAGA Payment Share.²⁷

Any Settlement Class Member wishing to object to the Class Settlement may submit a written objection (“Objection”) to the Settlement Administrator by mail.²⁸ An Objection must: (1) include the case name and number of the Murray Class Action; (2) include the Class Member’s full name, signature, address, and the last four digits of his or her Social Security Number; (3) state the grounds for the objection; and (4) be submitted to the Settlement Administrator by mail at the specified address, postmarked on or before the Response Deadline.²⁹ Settlement Class Members may also appear at the Final Approval Hearing to present any objections to the Class Settlement.³⁰

Class Members (or PAGA Group Members) will have the opportunity, should they disagree with Defendant’s records regarding their estimated number of Compensable Workweeks and/or PAGA Workweeks, to submit a written letter (“Workweeks Dispute”).³¹ The Workweeks Dispute must: (1) contain the case name and number; (2) include the Class

²⁵ *Id.*, ¶ 42.

²⁶ *Id.*, ¶ 28.

²⁷ Settlement Agreement, ¶ 65.g.

²⁸ *Id.*, ¶ 65.f.

²⁹ *Id.*, ¶ 27.

³⁰ *Id.*, ¶ 65.f.

³¹ *Id.*, ¶¶ 46 & 65.e.

Member's full name, signature, address, and the last four digits of his or her Social Security Number; (3) clearly state that the Class Member disputes the number of Compensable Workweeks and/or PAGA Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (4) include information and/or attach documentation demonstrating that the number of Compensable Workweeks and/or PAGA Workweeks that he or she contends should be credited to him or her are correct; and (5) be submitted to the Settlement Administrator by mail at the specified address, postmarked on or before the Response Deadline.³²

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

³² *Id.*, ¶ 46.

1 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement
2 class.

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

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

16 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

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

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

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

The Parties actively litigated the Action since it was commenced on April 6, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³³

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendants.³⁴ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members’ time and pay data, Defendants’ Employee Handbook, Driver Worksheets, Helper Worksheets, procedures (including but not limited to California Meal Period Policy, California Rest Break Policy, New Hire Personnel Activity Forms, and Orientation Forms), and policies (including but not limited to New World Pay Plan), among other information and documents.³⁵ Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁶ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, and the

³³ Blanchard Decl., ¶¶ 11-13.

³⁴ Blanchard Decl., ¶ 12.

³⁵ *Ibid.*

³⁶ *Ibid.*

1 production of documents and data prior to the mediation.³⁷ Class Counsel also drafted Plaintiff's
2 mediation brief and prepared for and attended court proceedings, settlement negotiations, and
3 the mediation, among other tasks.³⁸

4 The Parties engaged in extensive settlement negotiations and participated in a formal,
5 full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in
6 mediating complex labor and employment matters.³⁹ Prior to and during the mediation and
7 settlement discussions, the Parties exchanged class information and engaged in an intensive
8 discussion regarding their evaluations of the case and various aspects of the case, including but
9 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
10 with class certification and/or representative adjudication, the law relating to off-the-clock
11 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
12 well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁰
13 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
14 adversarial position.⁴¹ Arriving at a settlement that was acceptable to both Parties was not easy.
15 Defendants and their counsel felt strongly about their ability to prevail on the merits and at
16 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
17 certification and prevail at trial.⁴² After conducting investigations, significant informal
18 discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the
19 Parties have agreed that the matter is well-suited for settlement given the legal issues relating to
20 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further
21 litigation.⁴³

22 The Settlement takes into account the strengths and weaknesses of each side's position
23 and the uncertainty of how the case might have concluded at certification and trial.⁴⁴ The Parties

24 ³⁷ *Ibid.*

25 ³⁸ *Ibid.*

26 ³⁹ *Id.*, ¶ 11.

27 ⁴⁰ Blanchard Decl., ¶ 11.

28 ⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 18 & 23-26.

1 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁵
2 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
3 the Class Members' employment with Defendants and performed significant research into the
4 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
5 rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto,
6 as well as facts discovered.⁴⁶ The Parties have reached the Settlement based on this large volume
7 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
8 employment class actions, including significant experience in California wage-and-hour
9 litigation.⁴⁷

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

11 The Settlement, which provides for a Gross Settlement Amount of Three Hundred Fifty
12 Thousand Dollars (\$350,000.00), represents a fair, adequate, and reasonable resolution of the
13 matter.⁴⁸ The Settlement was calculated using the information and data uncovered during
14 litigation, case investigation, as well as the informal exchange of information.⁴⁹ The Settlement
15 takes into account the potential risks and rewards inherent in any case and, in particular, in the
16 case at issue.⁵⁰ Moreover, considering all of the facts and circumstances of the lawsuit, the
17 Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵¹

18 Assuming that the Class Counsel Award, Class Representative Service Award, PAGA
19 Payment, and Settlement Administration Costs are approved by the Court and paid in the full
20 amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount
21 that is currently estimated to be One Hundred Sixty Thousand Five Hundred Dollars
22 (\$167,500.00), to Settlement Class Members.⁵² Additionally, 25% of the PAGA Payment, which
23 is \$6,250 out of \$25,000, which will be distributed to PAGA Group Members. As discussed in

24 ⁴⁵ *Ibid.*

25 ⁴⁶ *Id.*, ¶¶ 11-13.

26 ⁴⁷ Blanchard Decl., ¶¶ 6-7.

27 ⁴⁸ Blanchard Decl., ¶ 14.

28 ⁴⁹ *Id.*, ¶¶ 11-13.

⁵⁰ *Id.*, ¶¶ 16-18 & 23-26.

⁵¹ *Id.*, ¶¶ 11, 13, & 27.

⁵² Settlement Agreement, ¶ 26.

Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Payment and each PAGA Group Member's PAGA Payment Share will be calculated based on their Compensable Workweeks and PAGA Workweeks.⁵³ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA Group Members, and the State of California.⁵⁴ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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 informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁵ The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.⁵⁶ As outlined in the Declaration of Annabel

⁵³ *Id.*, ¶¶ 17, 67, 69.

⁵⁴ Blanchard Decl., ¶¶ 11, 12, & 27.

⁵⁵ *Id.*, ¶¶ 11-13 & 18.

⁵⁶ *Id.*, ¶ 18 & 23-26.

Blanchard, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

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.⁵⁸ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

⁵⁷ *Id.*, ¶¶ 11-13, 16-18, & 23-26.

⁵⁸ Settlement Agreement, ¶ 83.

1 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
2 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 This action involves a class of approximately seventy (70) individuals.⁵⁹ This class is
4 sufficiently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35
5 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is
6 not practical at that point). Further, all Class Members can and will be identified by Defendants
7 to the Settlement Administrator through a review of Defendants' employment records regarding
8 non-exempt employees in California during the Class Period. As such, the Class is ascertainable
9 and sufficiently numerous.

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

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

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

25 Here, common issues of fact and law predominate as to each of the claims alleged and
26 asserted in the Operative Complaints. Based on the documents and information obtained
27

28 ⁵⁹ Blanchard Decl., ¶ 9.

1 through informal discovery and exchange of information in this case, Plaintiff contends that
2 Class Members were subject to the same or similar job duties and uniform operations and
3 employment practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiff's
4 claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to
5 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
6 wages for all hours worked, failing to provide compliant meal and rest periods and associated
7 premium pay, failing to timely pay wages during employment and upon termination of
8 employment, failing to provide compliant wage statements, failing to keep requisite payroll
9 records, and failing to reimburse necessary business-related expenses.⁶¹

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

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

18 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS**
19 **COUNSEL AWARD**

20 Class Counsel has litigated the matter for over a year, and was actively preparing the
21 matter for class certification and trial.⁶⁴ The ongoing work has been extensive, demanding, and
22 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
23 extensive investigations into the facts of the case and informal discovery. Class Counsel
24 reviewed a large volume of documents and data⁶⁵ and also had the opportunity to interview and

25 ⁶⁰ Blanchard Decl., ¶ 16.

26 ⁶¹ *Ibid.*

27 ⁶² *Ibid.*

28 ⁶³ *Ibid.*

⁶⁴ Blanchard Decl., ¶¶ 11-13.

⁶⁵ *Id.*, ¶ 12.

1 obtain information from Plaintiff and other Class Members, researched applicable law,
2 undertook damages/valuation calculations, and met and conferred with Defendants' counsel
3 regarding the pleadings, and the production of documents and data prior to mediation.⁶⁶ Counsel
4 for the Parties also undertook extensive settlement discussions, which included participating in
5 a formal, full-day mediation.⁶⁷

6 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
7 experience to obtain a great result for the Class.⁶⁸

8 The Settlement establishes a Gross Settlement Amount of Three Hundred Fifty Thousand
9 Dollars (\$350,000.00), and provides for Class Counsel to apply to the Court for a Class Counsel
10 Award, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the
11 Gross Settlement Amount (i.e., \$122,500.00) and an amount not to exceed Twenty Thousand
12 Dollars (\$20,000.00) for reimbursement of actual litigation costs and expenses.⁶⁹ The attorneys'
13 fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took
14 in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel
15 dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the
16 results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement
17 that Class Counsel has achieved for the Class Members, PAGA Group Members, and the State
18 of California, and (6) the other cases that Class Counsel had to turn down in order to devote its
19 time and efforts to this matter. The proposed Class Notice provides Class Members with
20 information about the amount allocated toward the Class Counsel Award, and that an award of
21 the Class Counsel Award will be sought, as provided for by the Settlement.⁷⁰

22 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
23 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
24 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
25

26 ⁶⁶ *Ibid.*

27 ⁶⁷ *Id.*, ¶ 11.

28 ⁶⁸ *Id.*, ¶¶ 6-7.

⁶⁹ Settlement Agreement, ¶¶ 4 & 73.

⁷⁰ Settlement Agreement, Exh. A.

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

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower 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 in the Action.⁷¹

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 Class Counsel Award and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to submit an Objection to the Class Settlement, Opt Out from the Class Settlement, or Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁷³

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.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted

⁷¹ Blanchard Decl., ¶ 19.

⁷² Settlement Agreement, Exh. A.

⁷³ *Ibid.*

⁷⁴ Settlement Agreement, Exh. A.

1 final approval of the settlement.⁷⁵ The proposed Class Notice also apprises the Class Members
2 of, *inter alia*, how their Individual Settlement Payment and, if applicable, their PAGA Payment
3 Share are calculated and the number of Compensable Workweeks and PAGA Workweeks
4 credited to them.⁷⁶

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

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

13 The Parties have selected Phoenix Settlement Administrators to administer the
14 Settlement.

15 The Settlement Administrator will mail the Class Notice to each Class Member by First-
16 Class U.S. mail.⁷⁷ Any Class Notices returned to the Settlement Administrator as non-delivered
17 on or before the Response Deadline shall be re-mailed to the forwarding address affixed
18 thereto.⁷⁸ If no forwarding address is provided, the Settlement Administrator shall promptly
19 attempt to determine a correct address by use of skip-tracing, or other search using the name,
20 address and/or Social Security number of the Class Member involved, and shall then perform
21 re-mailing, if another mailing address is identified by the Settlement Administrator.⁷⁹ Class
22 Members who are sent a re-mailed Class Notice shall have their Response Deadline extended
23
24
25

26 ⁷⁵ *Ibid.*

27 ⁷⁶ *Ibid.*

28 ⁷⁷ *Id.*, ¶ 65.a.

⁷⁸ *Id.*, ¶ 65.c.

⁷⁹ Settlement Agreement, ¶ 65.c.

ten (10) calendar days from the original Response Deadline.⁸⁰ The Settlement Administrator will receive and process Opt Outs, Objections, and any Workweek Disputes.⁸¹

The Settlement Administrator shall be responsible for: processing and mailing payments to Plaintiff, Class Counsel, the LWDA, Settlement Class Members, and PAGA Group members; printing and mailing the Class Notice as directed by the Court; calculating the Compensable Workweeks and PAGA Workweeks; receiving and reporting the Opt Outs, Objections, and Workweeks Disputes submitted by Class Members; deducting taxes from Individual Settlement Payments and distributing tax forms; calculating the Employer Taxes; processing and mailing tax payments to the appropriate state and federal taxing authorities; providing declaration(s) as necessary in support of preliminary and/or final approval of the Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.⁸² The Settlement Administration Costs are currently estimated to be Seven Thousand Five Hundred Dollars (\$7,500.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸³

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

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

Within fourteen (14) calendar days after the Court enters the Preliminary Approval

⁸⁰ *Ibid.*

⁸¹ *Id.*, ¶ 77.

⁸² *Ibid.*; Blanchard Decl., ¶ 15.

⁸³ Settlement Agreement, ¶¶ 44 & 75.

⁸⁴ Settlement Agreement, ¶ 65.a.

Order, Defendants shall provide the Settlement Administrator with each Class Member's: (a) full name; (b) last known mailing address; (c) last known home and/or mobile telephone numbers; (d) last known email addresses if such information is known; (e) Social Security number; (f) date of hiring, and date of termination of employment, if any; (g) such other information required for the Settlement Administrator to calculate Compensable Workweeks and PAGA Workweeks ("Class Information" or "Class List").⁸⁵

Within fourteen (14) calendar days of receiving the Class Information from Defendants, the Settlement Administrator shall mail by First-Class United States mail, and email, to the extent email addresses are available, the Class Notice to each Class Member using the most recent address available to the Settlement Administrator for mail and email delivery.⁸⁶ Any Class Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto.⁸⁷ If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform re-mailing, if another mailing address is identified by the Settlement Administrator.⁸⁸ Class Members will have until the Response Deadline, or extended Response Deadline (if applicable), to mail Opt Outs, Workweek Disputes, and/or Objections.⁸⁹

Within thirty (30) calendar days of the Effective Date, Defendants will pay the Gross Settlement Amount plus an amount sufficient for Employer Taxes to the Settlement Administrator, to be held in a Qualified Settlement Fund.⁹⁰ Within seven (7) calendar days of the funding of the Gross Settlement Amount and an amount sufficient for Employer Taxes, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) PAGA

⁸⁵ Settlement Agreement, ¶¶ 5 & 65.

⁸⁶ *Id.*, ¶ 65.e.

⁸⁷ *Id.*, ¶ 65.c.

⁸⁸ *Ibid.*

⁸⁹ *Id.*, ¶¶ 42 & 65.c.

⁹⁰ *Id.*, ¶ 15, 66.

1 Payment Shares to PAGA Group Members; (c) LWDA Payment to the LWDA; (d) Class
2 Representative Service Award to Plaintiff; (e) Class Counsel Award to Class Counsel; and (f)
3 Settlement Administration Costs to itself (the Settlement Administrator).⁹¹

4 The Individual Settlement Payment and the PAGA Payment Shares shall remain valid
5 and negotiable for one hundred and eighty (180) calendar days from the date of their issuance
6 and thereafter, shall be cancelled.⁹² Pursuant to California Code of Civil Procedure Section 384,
7 all funds associated with such cancelled checks will be transmitted to Legal Aid Society of San
8 Mateo County.⁹³

9 **XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR**
10 **CLASS REPRESENTATIVE SERVICE AWARD**

11 Plaintiff Kenneth Murray respectfully requests that the Court appoint him as the Class
12 Representative and preliminarily approve the Class Representative Service Award in an amount
13 up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Kenneth Murray.⁹⁴ It is
14 within the Court's discretion to award payment to a class representative for their efforts and
15 work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving
16 \$50,000 participation award to a single class representative). The factors that courts may
17 consider in determining whether to make an enhancement payment include: (1) the risk to the
18 class representative in commencing suit, both financial and otherwise; (2) the notoriety and
19 personal difficulties encountered by the class representative; (3) the amount of time and effort
20 spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit
21 (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

22 The Class Representative Service Award is fair and appropriate. Plaintiff spent a
23 substantial amount of time and effort in producing relevant documents and past employment
24 records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵

25 _____
26 ⁹¹ Settlement Agreement, ¶ 66.

27 ⁹² *Id.*, ¶ 71.

28 ⁹³ *Ibid.*

⁹⁴ *Id.*, ¶¶ 9 & 72.

⁹⁵ Blanchard Decl., ¶ 20; Declaration of Kenneth Murray in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Murray Decl."), ¶ 3-4.

Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA Claims.⁹⁶ Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service Award for his services on behalf of the Class, in addition to his Individual Settlement Payment and PAGA Payment Share.

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; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Kenneth Murray as Class Representative; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Class Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: August 1, 2022

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiff

⁹⁶ Blanchard Decl., ¶ 20; Murray Decl., ¶¶ 3, 4 & 6.