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

TERESA BOND, JESSE ZAMARRIPA,
individually, and on behalf of other members
of the general public similarly situated;
REYNEIRO LARIOS, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act,

Plaintiffs,

vs.

HANGER, INC., an unknown business
entity; HANGER ORTHOPEDIC GROUP,
INC., an unknown business entity; HANGER
PROSTHETICS & ORTHOTICS, INC., a
Delaware corporation; HANGER
PROSTHETICS & ORTHOTICS WEST,
INC., a California corporation; HANGER
FABRICATION NETWORK, LLC, an
unknown business entity; and DOES 2
through 100, inclusive,

Defendants.

Case No.: 34-2021-00303204-CU-OE-GDS

Honorable Lauri A. Damrell
Department 28

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Selena Matavosian); Declarations of
Proposed Class Representatives (Teresa
Bond, Reyneiro Larios, and Jesse
Zamarripa); and [Proposed] Order filed
concurrently herewith]

Reservation ID: A-303204-001
Date: August 4, 2023
Time: 9:00 a.m.
Department: 28

Complaint Filed: June 23, 2020
FAC Filed: December 27, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on August 4, 2023 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Lauri A. Damrell in Department 28 of the Superior Court of California for the County of Sacramento, located at 720 Ninth Street, Sacramento, California 95814, Plaintiffs Teresa Bond, Reyneiro Larios, and Jesse Zamarripa (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Selena Matavosian, 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 Awards to Plaintiffs, and Administration Fees to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Teresa Bond, Reyneiro Larios, and Jesse Zamarripa as Class Representatives;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Selena Matavosian of 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 Simpluris, Inc. 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 Attorneys' Fees and Costs to Class Counsel, Incentive Awards for Plaintiffs, and Administration Fees to Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Selena Matavosian) and Proposed Class Representatives (Teresa Bond, Reyneiro Larios, and Jesse Zamarripa) 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: June 2, 2023

LAWYERS for JUSTICE, PC

By:



Selena Matavosian
Attorneys for Plaintiffs

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TABLE OF CONTENTS

I. SUMMARY OF MOTION.....1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....3

III. SUMMARY OF THE SETTLEMENT TERMS5

**IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENTS.....9**

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE
SETTLEMENT10**

**A. The Settlement Resulted from Arm’s-Length Negotiations Based
Upon Extensive Investigation and Discovery.11**

B. The Settlement Is Fair, Reasonable, and Adequate.....13

C. The Settlement Is of Significant Value.....15

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE15

A. The Class Is Ascertainable and Sufficiently Numerous.16

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

**VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR
ATTORNEYS’ FEES AND COSTS18**

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE20

**IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT
ADMINISTRATOR.....21**

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS22

**XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION
FOR INCENTIVE AWARDS.....24**

XII. CONCLUSION25

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	10
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	10
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	9
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	9, 10
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	9, 10
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	14
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	10
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	9
<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	24
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	9, 10

Statutes

Cal. Code Civ. Proc. § 1781(f).....	9
-------------------------------------	---

Other Authorities

Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	10
Conte & Newberg, Newberg on Class Actions § 8.21 (4 th Ed.)	21
Conte & Newberg, Newberg on Class Actions § 8.29 (4 th Ed.)	21
<i>Manual for Complex Litigation</i> § 21.312 (4 th ed. 2007)	21

Rules

Fed. R. Civ. P. 23©(2)	21
Fed. R. Civ. P. 23(e).....	21

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Teresa Bond, Reyneiro Larios, and Jesse Zamarripa (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Hanger Inc., Hanger Orthopedic Group, Inc., Hanger Prosthetics & Orthotics, Inc., Hanger Prosthetics and Orthotics West, Inc., and Hanger Fabrication Network, LLC (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of Two Million Two Hundred Fifty Thousand Dollars and Zero Cents (\$2,250,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Incentive Awards of Ten Thousand Dollars and Zero Cents (\$10,000.00) each to Plaintiffs (\$30,000 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$787,500.00, and reimbursement of litigation costs and expenses not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00)⁴; (4) the Administration Fees to the Settlement Administrator in the amount not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00);⁵ and (5) the PAGA Allocation of Four Hundred Fifty Thousand Dollars and

¹ Settlement Agreement, attached as “EXHIBIT 1” to Declaration of Selena Matavosian (“Matavosian Decl.”), ¶ 7.q. Defendants have represented that Class Members worked approximately 99,020 Workweeks during the period June 23, 2016 through April 21, 2022. If it is determined that the total number of Workweeks during the period June 23, 2016 through September 8, 2022 actually exceeds 108,922 (“Workweek Threshold”), then the Gross Settlement Amount will increase on a proportional basis to the extent the Workweeks Threshold is exceeded (e.g., if the number of the Workweeks during the period June 23, 2016 through September 8, 2022 are actually 109,912, representing a one percent (1% increase above the Workweeks Threshold), then the Gross Settlement Amount will increase by one percent (1%)). In the alternative, if the Workweeks Threshold is exceeded, in its sole discretion, Defendants may elect to end the Class Period on the earlier of September 8, 2022 or the date that the Workweeks Threshold is exceeded. *See id.*, ¶ 38.

² *Id.*, ¶ 7.t.

³ *Id.*, ¶¶ 7.r. and 13.

⁴ *Id.*, ¶¶ 7.b. and 12.

⁵ *Id.*, ¶¶ 7.a. and 14.

Zero Cents (\$450,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$337,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$112,500.00) will be distributed to all current and former hourly, non-exempt employees of Defendants in California at any time during the PAGA Period (“PAGA Group Members”).⁶

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

All current and former hourly, non-exempt employees of Defendants in California at any time during the Class Period. (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately six hundred ninety-eight (698) individuals and the PAGA Group Members are estimated to consist of approximately five hundred and seven (507) individuals.⁸

Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Class Member was employed by Defendants as an hourly, non-exempt employee in California during the Class Period (“Workweeks”) and PAGA Group Members will receive a share (“Individual PAGA Payment”) of the twenty-five percent (25%) portion of the PAGA Allocation allocated to PAGA Group Members (“PAGA Group Member Amount”) on a *pro rata* basis based upon the number of Workweeks he or she was employed by Defendants during the PAGA Period.⁹

The Settlement resolves the Released Class Claims of Plaintiffs and the Settlement Class Members, and the Released PAGA Claims of Plaintiffs, the PAGA Group Members, and the State of California (with respect to PAGA Group Members), against the Released Parties.¹⁰

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⁶ Settlement Agreement, ¶ 7.y and z. “PAGA Period” is defined as the period from April 5, 2020 through September 8, 2022, subject to Paragraph 38 of the Settlement Agreement. *See id.*, ¶ 7.bb.

⁷ *Id.*, ¶ 7.f. “Class Period” is defined as the period of time from June 23, 2016 through September 8, 2022, subject to Paragraph 38 of the Settlement Agreement. *See id.*, ¶ 7.h.

⁸ Matavosian Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 7.s, u, mm, and nn.

¹⁰ *Id.*, ¶ 32.a and 32.b. *See id.* at ¶ 7.hh. for the full scope of the “Released Class Claims,” *id.* at ¶ 7.ii. for the full scope of the “Released PAGA Claims,” and *id.* at ¶ 7.jj. for the definition of the “Released Parties.”

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

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

6 Defendants create prostheses, braces, supports, cranial helmets and other medical
7 devices. Plaintiffs Teresa Bond, Reyneiro Larios, and Jesse Zamarripa are former employees of
8 Defendants.

9 On June 23, 2020, Plaintiff Teresa Bond filed a Class Action Complaint for Damages in
10 the Riverside County Superior Court, thereby commencing a putative class action entitled
11 *Teresa Bond v. Hanger Prosthetics & Orthotics, Inc., et al.*, Case No. RIC2002278 (the “*Bond*
12 *Action*”).

13 On August 20, 2020, Defendants Hanger Prosthetics & Orthotics, Inc. and Hanger P&O
14 West filed an Answer to Plaintiff Teresa Bond’s Complaint for Damages in the *Bond Action*.

15 On September 9, 2020, Plaintiff Teresa Bond propounded multiple sets of discovery
16 including Special Interrogatories (Set One) on Defendant Hanger Prosthetics & Orthotics, Inc.
17 and Special Interrogatories (Set One) on Defendant Hanger P&O West. Thereafter, on October
18 14, 2020, Defendants Hanger Prosthetics & Orthotics, Inc. and Hanger P&O West responded to
19 Plaintiff’s discovery requests. Class Counsel also prepared a *Belair-West* notice.

20 On April 5, 2021, Plaintiff Reyneiro Larios provided written notice by online submission
21 to the LWDA and by certified mail to Defendants of the specific provisions of the California
22 Labor Code that were alleged to be violated (the “LWDA Notice”).

23 On June 25, 2021, Plaintiff Reyneiro Larios filed his Complaint for Enforcement Under
24 the Private Attorneys General Act, Cal. Labor Code § 2698 Et Seq. (“PAGA”), thereby
25 commencing the above-captioned action entitled *Reyneiro Larios v. Hanger Inc., et al.*, Superior
26 Court of California for the County of Sacramento (“Court”), Case No. 34-2021-00303203-CU-
27 OE-GDS (the “*Larios Action*,” collectively with the *Bond Action*, the “*Actions*”).

28 ///

1 On October 8, 2021, Defendants filed an Answer to Plaintiff Reyneiro Lario's Complaint
2 in the *Larios* Action.

3 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind
4 associated with any of the allegations in the Actions, and further deny that the Actions are
5 appropriate for class treatment or representative adjudication for any purpose other than for
6 settlement purposes only.

7 On December 27, 2022, Plaintiff Reyneiro Larios filed a First Amended Class Action
8 Complaint for Damages and Enforcement Under the Private Attorneys General Act, California
9 Labor Code § 2698, *Et Seq.*, adding Teresa Bond and Jesse Zamarripa as named plaintiffs,
10 adding class causes of action, and adding Hanger Fabrication Network, LLC as an additional
11 defendant in the *Larios* Action ("Operative Complaint").

12 Plaintiffs' core allegation is that Defendants have violated the California Labor Code by
13 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
14 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
15 and rest periods and associated premium pay, failing to timely pay wages during employment
16 and upon termination of employment, failing to provide compliant wage statements, failing to
17 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
18 thereby engaged in unfair business practices in violation of California Business and Professions
19 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs
20 contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
21 (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

22 The Parties have actively litigated the Actions since the *Bond* Action was commenced
23 on June 23, 2020 and the *Larios* Action was commenced on June 25, 2021. On May 4, 2022,
24 the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a
25 well-regarded mediator experienced in mediating complex labor and employment matters (the
26 "Mediator"). With the aid of the Mediator's evaluation, the Parties ultimately reached the
27 Settlement described herein to resolve the Actions in their entirety.

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1 **III. SUMMARY OF THE SETTLEMENT TERMS**

2 Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount to
3 resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a
4 timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class
5 Members) and the Released PAGA Claims of Plaintiffs, the PAGA Group Members, and the
6 State of California, with respect to the Released Parties.¹¹ Subject to approval by the Court, the
7 Net Settlement Amount will be calculated by deducting the following amounts from the Gross
8 Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of
9 the Gross Settlement Amount (which is presently \$787,500.00) and reimbursement of costs and
10 expenses in an amount not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) to
11 Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement
12 administration costs, which are currently estimated not to exceed Twelve Thousand Dollars and
13 Zero Cents (\$12,000.00) to the Settlement Administrator ("Administration Fees"); (3) PAGA
14 Allocation of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00), of which
15 seventy-five percent (75%) (i.e., \$337,500 out of \$450,000) will be paid to the LWDA ("LWDA
16 Payment"), and twenty-five percent (25%) (i.e., \$112,500 out of \$450,000) will be distributed
17 to the PAGA Group Members on a *pro rata* basis (i.e., the PAGA Group Member Amount); and
18 (4) payments in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) each
19 to Plaintiffs Teresa Bond, Reyneiro Larios, and Jesse Zamarripa (for a combined total of
20 \$30,000) ("Incentive Awards").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris"
21 or "Settlement Administrator") to handle the notice and settlement administration process.

22 The Settlement Administrator will determine each Individual Settlement Share, in
23 accordance with the Settlement Agreement and as follows:

- 24 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
25 determine the Workweeks of each Class Member, divide the Net Settlement Amount
26 by the Workweeks of all Class Members to yield the "Estimated Workweek Value,"
27 and multiply each Class Member's individual Workweeks by the Estimated

28 ¹¹ Settlement Agreement, ¶ 7.q.

¹² *Id.*, ¶¶ 7.q, 7.w, and 12-15.

Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹³

- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

The Settlement Administrator will determine each Individual PAGA Payment, in accordance with the Settlement Agreement and as follows: the Settlement Administrator will divide the PAGA Group Member Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the “PAGA Workweek Value,” and multiply each PAGA Group Member’s individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment that he or she may be eligible to receive under the PAGA Settlement.¹⁵

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁶ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).¹⁷ Defendant will pay the employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares (“Employer Taxes”) in addition to the Gross Settlement Amount.¹⁸ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.¹⁹

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¹³ Settlement Agreement, ¶ 16.a. “Class Settlement” is defined as the settlement and resolution of all Released Class Claims. *See id.*, ¶ 7.i.

¹⁴ *Id.*, ¶ 16.b.

¹⁵ *Id.*, ¶ 17. “PAGA Settlement” is defined as the settlement and resolution of Released PAGA Claims. *See id.*, ¶ 7.cc.

¹⁶ *Id.*, ¶ 27.

¹⁷ *Id.*, ¶¶ 7.t and 27.

¹⁸ *Id.*, ¶¶ 7.n and 27.

¹⁹ *Id.*, ¶ 27.

1 The Individual Settlement Payment checks issued to Settlement Class Members and the
2 Individual PAGA Payment checks issued to PAGA Group Members will be negotiable for one-
3 hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be
4 canceled.²⁰ The funds from associated with such cancelled checks will be transmitted by the
5 Settlement Administrator to the *cy pres*, Saint John's Program for Real Change, in accordance
6 with California Code of Civil Procedure section 384.²¹ The Parties and their counsel each
7 represent that they do not have any financial interest in the *cy pres* recipient or otherwise have
8 a relationship with the *cy pres* recipient that could create a conflict of interest.²²

9 Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must
10 submit a written request ("Request for Exclusion") to the Settlement Administrator, by mail,
11 postmarked no later than sixty (60) calendar days from the initial mailing of the Class Notice by
12 the Settlement Administrator ("Response Deadline").²³ A Request for Exclusion must: (a)
13 contain the case name and number of the Action; (b) contain the full name, signature, address,
14 telephone number, and last four (4) digits of the Social Security Number of the Class Member
15 requesting exclusion from the Class Settlement; (c) clearly state that the Class Member does not
16 wish to be included in the Class Settlement; and (d) be submitted by mail to the Settlement
17 Administrator at the specified address, postmarked on or before the Response Deadline.²⁴ Class
18 Members who submit a timely and valid Request for Exclusion will not be bound by the Class
19 Settlement and will not be issued an Individual Settlement Payment.²⁵ However, if a Class
20 Member is a PAGA Group Member, he or she will be bound to the PAGA Settlement and will
21 still be issued an Individual PAGA Payment, irrespective of whether he or she submits a Request
22 for Exclusion.²⁶

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25 ²⁰ Settlement Agreement, ¶ 22.

26 ²¹ Ibid.

27 ²² Ibid.

28 ²³ *Id.*, ¶¶ 7.kk & 23.

²⁴ *Id.*, ¶ 7.kk.

²⁵ *Id.*, ¶ 23.

²⁶ Ibid.

1 Only Class Members who do not exclude themselves from the Settlement (i.e.,
2 Settlement Class Members) have standing to object to the Class Settlement.²⁷ To object to the
3 Class Settlement, Settlement Class Members must submit a timely and complete written
4 objection (“Notice of Objection”) to the Settlement Administrator, by mail, on or before the
5 Response Deadline.²⁸ The Notice of Objection must include: (a) the case name and number of
6 the Action; (b) the objector’s full name, signature, address, telephone number, and last four (4)
7 digits of his or her Social Security number; (c) a written statement of all grounds for the
8 objection accompanied by any legal support for such objection; (d) copies of any papers, briefs,
9 or other documents upon which the objection is based; and (e) be submitted by mail to the
10 Settlement Administrator at the specified address, postmarked on or before the Response
11 Deadline.²⁹ Settlement Class Members may, alternatively or in addition to submitting a Notice
12 of Objection, present their objection orally at the Final Approval Hearing.³⁰

13 Class Members and PAGA Group Members may dispute the number of Workweeks
14 credited to each of them for the Class Period and/or PAGA Period (if applicable), as reflected
15 in their respective Class Notices.³¹ In order to dispute Workweeks, Class Members and PAGA
16 Group Members must submit a written letter to the Settlement Administrator that: (a) contains
17 the case name and number of the Action; (b) contains the full name, signature, address,
18 telephone number, and last four (4) digits of the Social Security Number of disputing individual;
19 (c) clearly states that the dispute Class Member and/or PAGA Group Member disputes the
20 number of Workweeks credited to him or her during the Class Period and/or PAGA Period and
21 states what number(s) of Workweeks he or she contends should be credited to him or her for the
22 Class and/or PAGA Period; (d) includes information and/or attaches documentation
23 demonstrating that the number of Workweeks that he or she contends should be credited to him
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²⁷ Settlement Agreement, ¶ 23.

27 ²⁸ *Id.*, ¶¶ 7.x & 24.

28 ²⁹ *Id.*, ¶ 7.x.

³⁰ *Id.*, ¶ 24.

³¹ *Id.*, ¶ 21.

or her for the Class Period and/or PAGA Period; and (e) is returned by mail to the Settlement Administrator 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 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

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

³² Settlement Agreement, ¶ 21.

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

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

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

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

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

3 The Parties actively litigated the Actions since the *Bond* Action was commenced on June
4 23, 2020 and the *Larios* Action was commenced on June 25, 2021. Both sides used the pre-
5 mediation time period to investigate the veracity, strength, and scope of the claims, and Class
6 Counsel was actively preparing the matter for class certification and trial.³³

7 Prior to engaging in mediation, Class Counsel conducted significant investigation and
8 formal and informal discovery regarding the facts of the cases, including and not limited to, the
9 exchange, review, and analysis of a large volume of documents and data produced by
10 Defendants.³⁴ The volume of data and documents that Class Counsel reviewed and analyzed
11 included and was not limited to: employment records of Plaintiffs Teresa Bond and Reyneiro
12 Larios, a detailed sampling of Class Members’ time and pay data, multiple iterations of
13 Defendant’s Employee Handbook, company policy acknowledgements and forms (including,
14 but not limited to, Employee Change Request, Drug Consent Form, Benefits Acknowledgment,
15 Acknowledgment of Employment Policies, Harassment Policy Acknowledgment, Employee
16 Confidentiality Acknowledgment/Training Attestation, and Compliance Information
17 Acknowledgment), employment policies, practices, and procedures (including, but not limited
18 to, Defendant’s Compensation Policy, Payment Card and Employee Expenses Reporting,
19 Timekeeping, Mission Statement, Employment Practices, Compensation and Payroll, Work
20 Hours, Employee Programs and Benefits, Time Away From Work, Ethical Conduct, Health and
21 Safety, Corporate Information Protection, Employee Guidelines, Notice to California
22 Employees, and Non-Solicitation and Confidentiality Agreement), among other information and
23 documents.³⁵ Class Counsel interviewed Plaintiffs and conducted investigations to gather facts
24 and to identify potential witnesses.³⁶ Class Counsel propounded multiple sets of formal written
25 discovery requests on Defendants (specifically, Special Interrogatories (Set One) on Defendant
26

27 ³³ Matavosian Decl., ¶¶ 11-13.

28 ³⁴ *Id.*, ¶ 12.

³⁵ *Ibid.*

³⁶ *Ibid.*

1 Hanger Prosthetics & Orthotics, Inc. and Special Interrogatories (Set One) on Defendant Hanger
2 P&O West) and reviewed Defendants' responses thereto.³⁷ Counsel for the Parties also met and
3 conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and
4 the production of documents and data prior to the mediation.³⁸ Class Counsel also drafted
5 Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement
6 negotiations, and the mediation, among other tasks.³⁹

7 The Parties engaged in extensive settlement negotiations and participated in a formal,
8 full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in
9 mediating complex labor and employment matters.⁴⁰ In the course of litigation and in
10 connection with the mediation and settlement discussions, the Parties exchanged class
11 information and engaged in an intensive discussion regarding their evaluations of the cases and
12 various aspects of the matter, including but not limited to, the risks and delays of further
13 litigation, the risks to the Parties of proceeding with class certification and/or representative
14 adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law
15 and enforcement, and PAGA representative claims, as well as the evidence produced and
16 analyzed, and the possibility of appeals, among other things.⁴¹ During all settlement discussions,
17 the Parties conducted their negotiations at arm's length in an adversarial position.⁴² Arriving at
18 a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt
19 strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class
20 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴³ After
21 conducting investigations, significant formal and informal discovery, extensive settlement
22 negotiations, and with the aid of the Mediator's evaluation, the Parties have agreed that the
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25 ³⁷ Matavosian Decl., ¶ 12.

26 ³⁸ Ibid.

27 ³⁹ Ibid.

28 ⁴⁰ *Id.*, ¶ 11.

⁴¹ Ibid.

⁴² Ibid.

⁴³ *Id.*, ¶¶ 11, 16-18.

1 matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims,
2 as well as the costs and risks to both sides that would attend further litigation.⁴⁴

3 The Settlement takes into account the strengths and weaknesses of each side's position
4 and the uncertainty of how the cases might have concluded at certification and trial.⁴⁵ The
5 Parties have had the opportunity to interview and obtain information from their respective
6 witnesses.⁴⁶ Counsel for the Parties have also reviewed documents and information relating to
7 Plaintiffs' and the Class Members' employment with Defendants and performed significant
8 research into the applicable law, which is constantly evolving as it relates to class certification,
9 PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour
10 enforcement, Plaintiffs' claims and damages, and Defendants' defenses thereto, as well as facts
11 discovered.⁴⁷ The Parties have reached the Settlement based on this large volume of facts,
12 evidence, and investigation. In addition, Class Counsel has extensive experience in employment
13 class actions, including significant experience in California wage-and-hour litigation.⁴⁸

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

15 The Settlement, which provides for a Gross Settlement Amount of Two Million Two
16 Hundred Fifty Thousand Dollars and Zero Cents (\$2,250,000.00), represents a fair, adequate,
17 and reasonable resolution of the matter.⁴⁹ The Settlement was calculated using the information
18 and data uncovered during litigation, case investigation, as well as the formal and informal
19 exchange of information.⁵⁰ The Settlement takes into account the potential risks and rewards
20 inherent in any case and, in particular, in the matter at issue.⁵¹ Moreover, considering all of the
21 facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and
22 adequate recovery for the Class, the PAGA Group Members, and the State of California.⁵²

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24 ⁴⁴ Matavosian Decl., ¶¶ 11, 16-18.

25 ⁴⁵ Ibid.

26 ⁴⁶ *Id.*, ¶ 12.

27 ⁴⁷ *Id.*, ¶¶ 11-13 & 16-18.

28 ⁴⁸ *Id.*, ¶¶ 2-7.

⁴⁹ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵⁰ *Id.*, ¶¶ 11-13.

⁵¹ *Id.*, ¶¶ 16-18.

⁵² *Id.*, ¶¶ 11, 13, & 21.

Assuming that the Attorneys' Fees and Costs, Incentive Awards, PAGA Allocation, and 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 that is currently estimated to be Nine Hundred Thirty Thousand Five Hundred Dollars and Zero Cents (\$930,500.00).⁵³ Additionally, 75% of the PAGA Allocation, which is \$337,500 out of \$450,000, will be distributed to the LWDA (i.e., LWDA Payment) and 25% of the PAGA Allocation, which is \$112,500 out of \$450,000, will be distributed to PAGA Group Members (i.e., PAGA Group Member Amount).⁵⁴ 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 PAGA Group Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Payment will be calculated based on his or her Workweeks during the Class Period and the amount of each PAGA Group Member's Individual PAGA Payment will be calculated based on his or her Workweeks during the PAGA Period.⁵⁵ 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, the PAGA Group Members, and the State of California.⁵⁶ 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

⁵³ Matavosian Decl., ¶ 14.

⁵⁴ *Ibid.*

⁵⁵ Settlement Agreement, ¶¶ 16.a, 16.b, & 17.

⁵⁶ Matavosian Decl., ¶¶ 11, 13, & 21.

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 the mediation and settlement negotiations.⁵⁷ The discovery and information that Class Counsel obtained from Defendants, Plaintiffs, and 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.⁵⁸ As outlined in the Declaration of Selena Matavosian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁹

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.⁶⁰ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs' claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the

⁵⁷ Matavosian Decl., ¶ 11-13 & 18.

⁵⁸ *Id.*, ¶ 18.

⁵⁹ *Id.*, ¶¶ 11-13 & 16-18.

⁶⁰ Settlement Agreement, ¶ 9.

Class Members. 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 cases. The Class Members is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This matter involves a class of approximately six hundred ninety-eight (698) individuals.⁶¹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants’ employment records regarding hourly and non-exempt employees in California during the Class Period. As such, the Class Members is ascertainable and sufficiently numerous.

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

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

⁶¹ Matavosian Decl., ¶ 9.

1 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
2 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

8 Here, common issues of fact and law predominate as to each of the claims alleged and
9 asserted in the Operative Complaint. Based on the documents and information obtained through
10 formal and informal discovery and exchange of information in the cases, Plaintiffs contend that
11 Class Members were subject to the same or similar job duties and uniform operations and
12 employment practices, policies, and procedures during the time period at issue.⁶² Plaintiffs’
13 claims arise from Defendants’ alleged uniform policy and systematic scheme, with respect to
14 Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
15 wages for all hours worked, failing to provide compliant meal and rest periods and associated
16 premium pay, failing to timely pay wages during employment and upon termination of
17 employment, failing to provide complaint wage statements, failing to keep requisite payroll
18 records, and failing to reimburse necessary business-related expenses.⁶³

19 Plaintiffs also contend that Defendants’ payroll and recordkeeping practices with respect
20 to Plaintiffs and Class Members were substantially the same during the time period at issue.⁶⁴
21 As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all
22 compensation due to them from Defendants during the time period at issue.⁶⁵

23 Plaintiffs maintain that the outcome of this litigation would be determined by
24 Defendants’ alleged uniform operations and employment policies and procedures that applied
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27 ⁶² Matavosian Decl., ¶ 16.

28 ⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

across their hourly-paid or non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over two (2) years, and was actively preparing the matter for class certification and trial.⁶⁶ 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 cases and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendants. Class Counsel reviewed a large volume of documents and data⁶⁷ and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages and penalties valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁸ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁹

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

The Settlement establishes a Gross Settlement Amount of Two Million Two Hundred Fifty Thousand Dollars and Zero Cents (\$2,250,000.00), 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., \$787,500.00) and an amount not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) for costs and expenses.⁷¹ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort

⁶⁶ Matavosian Decl., ¶¶ 11-13.

⁶⁷ *Id.*, ¶ 12.

⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶ 11.

⁷⁰ *Id.*, ¶¶ 2-7.

⁷¹ Settlement Agreement, ¶¶ 7.b & 12.

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

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

22 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
23 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
24 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
25 Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar
26 cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check
27 and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he
28

⁷² Settlement Agreement, Exh. A.

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 “average[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.⁷³

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

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⁷³ Matavosian Decl., ¶ 19.

The proposed Class Notice⁷⁴ describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, and/or a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁵

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁶ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁷ The proposed Class Notice also apprises the Class Members of, *inter alia*, how Individual Settlement Shares and Individual PAGA Payments are calculated and the number of Workweeks credited to them.⁷⁸

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23€(2) and 23€; *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 SIMPLURIS, INC. AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris, Inc. to administer the Settlement.

The Settlement Administrator will mail the Class Notice in English and Spanish to all Class Members via First-Class U.S. mail.⁷⁹ The Settlement Administrator will receive and

⁷⁴ Settlement Agreement, Exh. A.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Id.*, ¶ 20.a.

process Requests for Exclusions, Notices of Objections, and any disputes regarding Workweeks.⁸⁰

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and the Individual PAGA Payment checks to the PAGA Group Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Incentive Awards, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸¹ The Administration Fees are currently estimate not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00) and will be paid out of the Gross Settlement Amount.⁸²

Accordingly, Plaintiffs respectfully request that the Court appoint Simpluris 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.⁸³

Within twenty-one (21) calendar days of Preliminary Approval, Defendants will provide the Settlement Administrator with the following information for each Class Member: (1) last-known full name, (2) mailing address, (3) telephone number, (4) Social Security Number, (5) dates worked as an hourly, non-exempt employee of Defendants in California during the Class Period and PAGA Period (if applicable), and (6) such other information as is necessary for the

⁸⁰ Settlement Agreement, ¶¶ 21, 23, & 24.

⁸¹ *Id.*, ¶ 14; Matavosian Decl., ¶ 15.

⁸² Settlement Agreement, ¶ 14.

⁸³ *Id.*, ¶ 20.a.

Settlement Administrator to calculate Workweeks during the Class Period and PAGA Period (“Class Data and List”).⁸⁴

Within ten (10) business days after receiving the Class Data and List from Defendants, 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, and will mail a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.⁸⁵ With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.⁸⁶

Within thirty (30) calendar days of the Effective Date, Defendants will deposit the Gross Settlement Amount and Employer Taxes into a settlement account to be established by the Settlement Administrator.⁸⁷ Within seven (7) calendar days of the funding of Total Settlement Amount, 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) Individual PAGA Payments to PAGA Group Members; (c) LWDA Payment to the LWDA; (d) Incentive Awards to Plaintiffs; and (e) Attorneys’ Fees and Costs to Class Counsel.⁸⁸ The Settlement Administrator will also issue a payment to itself for Settlement Administration Costs and undertake filings and remittances in connection with the employee’s share of taxes on the wages portion of Individual Settlement Payments and the Employer Taxes, that are necessary for administration of the Settlement.⁸⁹

Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Group Members will be negotiable for one-hundred eighty (180) calendar days from the

⁸⁴ Settlement Agreement, ¶¶ 7.e and 19.

⁸⁵ *Id.*, ¶ 20.a.

⁸⁶ *Id.*, ¶ 20.b.

⁸⁷ *Id.*, ¶ 11.a.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

1 date the checks are issued, and thereafter, shall be canceled.⁹⁰ All funds associated with such
2 canceled checks will be transmitted to the *cy pres*, Saint John's Program for Real Change, in
3 accordance with California Code of Civil Procedure section 384.⁹¹ The Parties and their counsel
4 each represent that they do not have any financial interest in the *cy pres* recipient or otherwise
5 have a relationship with the *cy pres* recipient that could create a conflict of interest.⁹²

6 **XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
7 **INCENTIVE AWARDS**

8 Plaintiffs Teresa Bond, Reyneiro Larios, and Jesse Zamarripa respectfully request that
9 the Court appoint them as the Class Representatives and preliminarily approve the Incentive
10 Awards in an amount up to Ten Thousand Dollars and Zero Cents (\$10,000.00) each to Plaintiffs
11 Teresa Bond, Reyneiro Larios, and Jesse Zamarripa (for a combined total of \$30,000).⁹³ It is
12 within the Court's discretion to award payment to a class representative for their efforts and
13 work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving
14 \$50,000 participation award to a single class representative). The factors that courts may
15 consider in determining whether to make an enhancement payment include: (1) the risk to the
16 class representative in commencing suit, both financial and otherwise; (2) the notoriety and
17 personal difficulties encountered by the class representative; (3) the amount of time and effort
18 spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit
19 (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

20 The Incentive Awards are fair and appropriate. Plaintiffs spent a substantial amount of
21 time and effort in producing relevant documents and past employment records and providing
22 the facts and evidence necessary to attempt to prove the allegations.⁹⁴ Plaintiffs were available
23 whenever Class Counsel needed them and actively tried to obtain and provide information that
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25 ⁹⁰ Settlement Agreement, ¶ 22.

26 ⁹¹ *Ibid.*

27 ⁹² *Ibid.*

28 ⁹³ *Id.*, ¶ 13.

⁹⁴ Matavosian Decl., ¶ 20; Declaration of Teresa Bond in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Bond Decl."), ¶ 3-4; Declaration of Reyneiro Larios in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Larios Decl."), ¶ 3-4; and Declaration of Jesse Zamarripa in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Zamarripa Decl."), ¶ 3-4.

would facilitate the pursuit of the class and PAGA claims.⁹⁵ Accordingly, it is appropriate and just for Plaintiffs to each receive an Incentive Awards for their services on behalf of the Class and the State of California, in addition to their Individual Settlement Payments and/or Individual PAGA Payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class Members for settlement purposes; preliminary appoint and designate Edwin Aiwasian, Arby Aiwasian, Joanna Ghosh, and Selena Matavosian of Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Teresa Bond, Reyneiro Larios, and Jesse Zamarripa as Class Representatives; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Incentive Awards, PAGA Allocation, and 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.

Dated: June 2, 2023

LAWYERS *for* JUSTICE, PC

By:



Selena Matavosian
Attorneys for Plaintiffs

⁹⁵ Matavosian Decl., ¶ 20; Bond Decl., ¶¶ 3-6; Larios Decl., ¶¶ 3-6; & Zamarripa Decl., ¶¶ 3-6.