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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RYAN EDWARDS, individually, and
on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

COSTCO WHOLESALE
CORPORATION, an unknown
business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 5:21-cv-00716-MWF-KK

Honorable Michael W. Fitzgerald
Department 5A

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Alexandra Rose); Declaration of Proposed
Class Representative (Ryan Edwards); and
[Proposed] Order filed concurrently
herewith]

Date: March 27, 2023
Time: 10:00 a.m.
Department: 5A

Complaint Filed: February 8, 2021
FAC Filed: June 1, 2021
SAC Filed: August 4, 2021
Trial Date: None Set

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 27, 2023, at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Michael W. Fitzgerald in Courtroom 5A of the United States District Court for the Central District of California, Western Division, located at First Street Courthouse, 350 West First Street, Los Angeles, California 90012, Plaintiff Ryan Edwards (“Plaintiff”) will and hereby does move for an order:

- Granting Plaintiff leave to file the Third Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Third Amended Complaint”) which is attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement (“Proposed Order”), filed concurrently herewith;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the parties’ Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Alexandra Rose in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, including the means of allocation and distribution of the Gross Settlement Amount and the Net Settlement Amount, and the allocations for Class Counsel Award, Service Award, PAGA Allocation, and Administrative Costs;
- Conditionally Certifying the proposed Class for settlement purposes only;
- Appointing Plaintiff Ryan Edwards as Class Representative;
- Appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class and Representative Action Settlement (“Class Notice”), attached as “**EXHIBIT 2**” to the Proposed Order;

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- Appointing Atticus Administration, LLC as the Settlement Administrator to handle the notice and administration process for the Settlement and preliminarily approving Administrative Costs;
- Directing the Settlement Administrator to mail and email the Class Notice to the proposed Class;
- Approving the proposed deadlines for the notice and administration process as reflected herein and in the Settlement Agreement; and
- Scheduling a hearing to consider final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for an award of the Class Counsel Award, Service Award, and Administrative Costs.

This motion is based upon the following memorandum of points and authorities; the Settlement Agreement; the Declaration of Proposed Class Counsel (Alexandra Rose) and Proposed Class Representative (Ryan Edwards) in support thereof; as well as 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: February 24, 2023

LAWYERS for JUSTICE, PC

By: _____

Alexandra Rose
Attorneys for Plaintiff

TABLE OF CONTENTS

1		
2	I.	SUMMARY OF MOTION..... 1
3	II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND..... 2
4	III.	REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT..... 4
5	IV.	SUMMARY OF THE SETTLEMENT TERMS 4
6	A.	The Class for Settlement Purposes..... 4
7	B.	Essential Terms of the Settlement 4
8	C.	Calculation of Individual Settlement Shares 5
9	D.	Calculation of Individual PAGA Payments..... 6
10	E.	Request for Exclusion and Objection Procedures 7
11	F.	Scope of the Release..... 7
12	V.	THE LEGAL STANDARD FOR PRELIMINARY APPROVAL
13		OF THE CLASS ACTION SETTLEMENT 9
14	VI.	THE SETTLEMENT SHOULD BE PRELIMINARILY
15		APPROVED 10
16	A.	The Settlement Resulted from Arm’s Length Negotiations and
17		Extensive Investigation and Discovery 10
18	B.	The Settlement Is Fair, Reasonable, and Adequate 13
19	C.	The Settlement Is of Significant Value and Within the Range
20		of Approval 15
21	1.	<i>The allocation for the Service Award is reasonable..... 15</i>
22	2.	<i>The allocations for the Class Counsel Award are</i>
23		<i>reasonable. 16</i>
24	VII.	CERTIFICATION OF THE PROPOSED CLASS IS
25		APPROPRIATE UNDER RULE 23 18
26	A.	Numerosity 19
27	B.	Commonality 19
28	C.	Typicality 20

1	D. Adequacy of Representation	20
2	1. Appointment of Class Representative.	20
3	2. Appointment of Class Counsel.	21
4	E. Predominance and Superiority	21
5	VIII. ADEQUACY OF THE METHOD OF NOTICE	22
6	IX. APPOINTMENT OF ATTICUS ADMINISTRATION, LLC AS	
7	THE SETTLEMENT ADMINISTRATOR	24
8	XI. CONCLUSION	26
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

LAWYERS for JUSTICE, PC
 410 West Arden Avenue, Suite 203
 Glendale, California 91203

TABLE OF AUTHORITIES

Page(s)

<i>Boeing v. Van Gemert</i> , 444 U.S. 472, 478 (1980)	17
<i>Dukes v. Wal-Mart, Inc.</i> , 564 U.S. 338, 350 & 359 (2011)	19
<i>Elsen v. Carlisle & Jacqueline</i> , 417 U.S. 156, 175-77 (1974)	23
<i>Hensley v. Eckerhart</i> , 461 U.S. 424, 436 (1983)	18
<i>Hoffmann-La Roche Inc. v. Sperling</i> , 493 U.S. 165, 174 (1989)	23
<i>Johnson v. California</i> , 543 U.S. 499, 504–05 (2005)	19
Treatises	
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591, 626 n.20 (1997)	20, 21
<i>Armstrong v. Davis</i> , 275 F.3d 849, 868 (9th Cir. 2001)	19, 20
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245, 267 (N.D. Cal. Mar. 19, 2015)	15
<i>Blackie v. Barrack</i> , 524 F.2d 891, 902 (9th Cir. 1975)	19
<i>Carr v. Tadin, Inc.</i> , 51 F. Supp. 3d 970, 986 (S.D. Cal. 2014)	15
<i>Churchill Vill. LLC v. Gen. Elec.</i> , 361 F.3d 566, 575 (9th Cir. 2004)	22
<i>Clayton v. Knight Transp.</i> , 2013 WL 5877213, at *23 (E.D. Cal. Oct. 30, 2013)	17
<i>Covillo v. Specialty's Café</i> , No. C-11-00594 DMR, 2014 WL 954516, at *7 (N.D. Cal. Mar. 6, 2014)	15
<i>Craft v. Cnty. of San Bernardino</i> , 624 F. Supp. 2d 1123, 1127 (C.D. Cal. 2008)	17
<i>In re Agent Orange Prod. Liabiltiy Litig.</i> , 818 F.2d 226, 232 (2d Cir. 1987)	17
<i>In re Badger Mountain Irr. Dist. Sec. Litig.</i> , 143 F.R.D. 693, 696 (W.D. Wash. 1992)	19
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935, 942 (9th Cir. 2011)	16
<i>In re Hill</i> , 775 F.2d 1037 (9th Cir. 1985)	17
<i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454, 463 (9th Cir. 2000)	15, 20
<i>In re Toyota Motor Corp.</i> , 2013 WL 3224585 (C.D. Cal. June 17, 2013)	18
<i>In re Toys "R" Us-Del., Inc. FACTA Litig.</i> , 295 F.R.D. 438, 470 (C.D. Cal. 2014) ..	15
<i>Knight v. Red Door Salons, Inc.</i> , 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009) ..	17

1	<i>Knisley v. Network Assocs.</i> , 312 F.3d 1123, 1126 (9th Cir. 2002)	17
2	<i>Laffitte v. Robert Half Int’l, Inc.</i> 1 Cal.5th 480, 486 & 506 (2016)	16
3	<i>Maley v. Del Global Techs. Corp.</i> , 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002).....	14
4	<i>Mazza v. Am. Honda Motor Co.</i> , 254 F.R.D. 610, 617 (C.D. Cal. 2008).....	19
5	<i>Mendoza v. United States</i> , 623 F.2d 1338, 1352 (9th Cir. 1980)	22
6	<i>Nguyen v. Radiant Pharm. Corp.</i> , No. 11-cv-00406, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014).....	14
7	<i>Paul, Johnson, Alston & Hunt v. Gaulty</i> , 886 F.2d 268, 272 (9th Cir. 1989)	17
8	<i>Romero v. Producers Dairy Foods, Inc.</i> , 2007 WL 3492841 (E.D. Cal. Nov. 14, 2007)	
9		17
10	<i>Schaefer v. Overland Express Family of Funds</i> , 169 F.R.D. 124, 131 (S.D. Cal. 1996)	
11		22
12	<i>Singer v. Becton Dickinson and Co.</i> , 2010 WL 2196104, *8 (S.D. Cal. June 1, 2010)	
13		17
14	<i>Six (6) Mexican Workers v. Ariz. Citrus Growers</i> , 904 F.2d 1301, 1311 (9th Cir. 1990)	
15		17
16	<i>Staton v. Boeing</i> , 327 F.3d 938, 976-78 (9th Cir. 2003)	15, 17
17	<i>Valentino v. Carter-Wallace, Inc.</i> , 97 F.3d 1227, 1234 (9th Cir. 1996)	18
18	<i>Van Vranken</i> , 901 F.Supp. at 297.....	17
19	<i>Vasquez v. Coast Valley Roofing, Inc.</i> , 266 F.R.D. 482, 491-92 (E.D. Cal. 2010)	17
20	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA (EMC), 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012)	12
21	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002).....	16, 17, 18
22	<i>Welmer v. Syntex</i> , 117 F.R.D. 641, 644 (N.D. Cal. 1987).....	20
23	<i>Williams v. MGM-Pathe Commc’n Co.</i> , 129 F.3d 1026 (9th Cir. 1997).....	17
24	Regulations	
25	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 253 (2001).....	16
26	Rules	
27	Federal Rule of Civil Procedure 23(a).....	18, 19
28	Federal Rule of Civil Procedure 23(a)(1)	18
	Federal Rule of Civil Procedure 23(a)(4)	20

1	Federal Rule of Civil Procedure 23(b).....	18
2	Federal Rule of Civil Procedure 23(b)(3).....	21
3	Federal Rule of Civil Procedure 23(c)(2)	23
4	Federal Rule of Civil Procedure 23(c)(2)(B)	22, 23
5	Federal Rule of Civil Procedure 23(h)	16
6	Other Authorities	
7	<i>Manual for Complex Litig., Fourth</i> § 21.132	20

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9
10
11
12
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Ryan Edwards (“Plaintiff”) respectfully requests that this Court grant Plaintiff leave to file a Third Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Third Amended Complaint”) and grant preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of the proposed Class, and Defendant Costco Wholesale Corporation (“Defendant”). Subject to Court approval, Plaintiff and Defendant have agreed to settle this lawsuit for a Gross Settlement Amount of Eight Million Dollars (\$8,000,000)¹ on a non-reversionary basis.

The parties reached the Settlement after engaging in significant formal and informal discovery, investigations, and arm’s-length negotiations. The Settlement resulted from a formal mediation conducted by Mark S. Rudy, Esq., a well-respected mediator who is experienced in wage-and-hour class actions. The Settlement satisfies the criteria for approval and falls within the range of possible approval under federal and California law. Additionally, the proposed Class Notice² provides the best notice practicable under the circumstances and will allow each Class Member a full and fair opportunity to evaluate the Settlement and decide whether to participate in it. Accordingly, Plaintiff moves the Court to grant preliminary approval of the Settlement and the allocations for Class Counsel Award, Service Award, and

¹ Settlement Agreement, ¶ 1.20. A copy of the fully-executed Settlement Agreement is attached as “**EXHIBIT 1**” to the Declaration of Alexandra Rose in Support of Plaintiff’s Motion For Class Action Settlement (“Rose Decl.”). If it is determined that the total number of Workweeks increased by more than ten percent (10%) of 686,601 during the period February 8, 2017 through September 9, 2022 (i.e., to 755,262 or more Workweeks), then the Gross Settlement Amount will be increased on a proportional basis by the same number of percentage points above ten percent (10%) by which the actual number of Workweeks exceeds 755,262. See *id.*, ¶ 3.2.

² The Notice of Class and Representative Action Settlement (i.e., Class Notice) is attached as “**Exhibit 2**” to the Proposed Order, filed concurrently herewith.

Administrative Costs; conditionally certify the proposed Class for settlement purposes; direct distribution of the Class Notice; and set a Final Approval Hearing.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a membership warehouse club that provides a wide selection of merchandise and has operations throughout California. On February 8, 2021, Plaintiff filed the Class Action Complaint for Damages against Defendant in the Superior Court of California for the County of Riverside, Case No. CVRI2100641. On April 21, 2021, the class action was removed to the United States District Court for the Central District of California (the “Court”).

On May 27, 2021, Plaintiff provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant of Plaintiff’s intent to seek civil penalties for alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders (“LWDA Letter”).

On June 1, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages.

On June 11, 2021, Plaintiff filed a Motion to Remand pursuant to 28 U.S.C. § 1447 (“Motion to Remand”). On June 21, 2021, Defendant filed an opposition to Plaintiff’s Motion to Remand. On June 28, 2021, Plaintiff filed a reply in support of his Motion to Remand. On July 19, 2021, the Court took Plaintiff’s Motion to Remand under submission. On July 23, 2021, the Court denied Plaintiff’s Motion to Remand.

On August 2, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Superior Court of California for the County of Riverside, Case No. CVRI2103530, in the action entitled *Ryan Edwards v. Costco Wholesale Corporation* (“PAGA Action”).

On August 4, 2021, Plaintiff filed a Second Amended Class Action Complaint for Damages (“Second Amended Complaint”).

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1 On August 16, 2021, Defendant filed an Answer to Plaintiff's Second
2 Amended Complaint.

3 Plaintiff's core allegations are that Defendant violated the California Labor
4 Code, California Business and Professions Code, and the Fair Labor Standards Act
5 ("FLSA") by, *inter alia*, failing to properly pay minimum and overtime wages, failing
6 to provide compliant meal and rest periods or pay associated premiums, failing to
7 timely pay wages during employment and upon termination and associated waiting
8 time penalties, failing to provide complaint wage statements, failing to maintain
9 requisite payroll records, and failing to reimburse necessary business-related
10 expenses. Plaintiff contends that Defendant's conduct constitutes unfair business
11 practices and gives rise to penalties under PAGA. Plaintiff further alleges that
12 Defendant's failure to properly pay all compensation due, arises from, *inter alia*,
13 Defendant's practices and policies which required Class Members to work before
14 clocking in for their shifts and after clocking out of their shifts. As a result,
15 Plaintiff contends that he and the Class Members are entitled to, *inter alia*, unpaid
16 wages, penalties (including and not limited to, penalties pursuant to PAGA), and
17 attorneys' fees.

18 Defendant denies any liability of any kind associated with the claims and
19 allegations, and further denies that Plaintiff or the Class Members are entitled to any
20 relief. Defendant also denies that this case is appropriate for class or representative
21 treatment for any purpose other than the Settlement. Defendant maintains, among
22 other things, that it has complied with federal and California laws in all respects.

23 On September 13, 2022, the parties participated in a private mediation before
24 Mark S. Rudy, Esq., a well-respected mediator experienced in handling complex
25 wage-and-hour matters. With the aid of the mediator's evaluations, the parties
26 reached the Settlement to resolve the above-captioned action ("Action"). On
27 September 28, 2022, the parties filed a Joint Notice of Settlement and Stipulation to
28 Vacate Motion for Class Certification Deadlines and Hearing.

III. REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the parties, the parties agree that leave should be granted for Plaintiff to amend the Second Amended Complaint, by filing the proposed Third Amended Complaint. Settlement Agreement, ¶ 2.3. The Third Amended Complaint will add the claims alleged in the PAGA Action and add details to the alleged claims regarding the facts and legal theories. As such, Plaintiff respectfully requests leave to file the Third Amended Complaint so that the operative complaint in the Action formally fleshes out the allegations that have been investigated, litigated, mediated, and ultimately settled by the Parties and so that the terms of the Settlement may be effectuated.

IV. SUMMARY OF THE SETTLEMENT TERMS**A. The Class for Settlement Purposes**

For settlement purposes only, the Parties agree to class action certification of the following Class (individually referred to as “Class Members”) consisting of an estimate of approximately 7,734 individuals:

All current and former non-exempt employees employed by Defendant at the Costco depots in Tracy, California and Mira Loma, California at any time during the Class Period.

The period from February 8, 2017, through December 31, 2022 is the “Class Period.”

As discussed in Section V, *infra*, conditional class certification is appropriate with respect to the Settlement.

B. Essential Terms of the Settlement

Defendant will pay a Gross Settlement Amount of Eight Million Dollars (\$8,000,000) on a non-reversionary basis. Settlement Agreement, ¶ 1.20. The Net Settlement Amount means the amount remaining after deducting the following from the Gross Settlement Amount: (1) attorneys’ fees of up to Two Million Eight Hundred Thousand Dollars (\$2,800,000) and reimbursement of litigation costs and expenses of up to Thirty Thousand Dollars (\$30,000) to Class Counsel (“Class Counsel Award”);

(2) Service Award of up to Fifteen Thousand Dollars (\$15,000) to Plaintiff; (3) Five Hundred Thousand Dollars (\$500,000) allocated for the resolution of the claim for violation of the Private Attorneys General Act of 2004 (“PAGA Allocation”); and (4) Administrative Costs, which are currently estimated not to exceed Fifty Thousand Dollars (\$50,000). *Id.*, ¶¶ 1.2, 1.7, 1.34, 1.47, 6.2, 6.3, 6.4, & 6.5. Assuming the allocations towards these payments are awarded in full, the Net Settlement Amount that will be available to be allocated to Class Members who do not submit valid and timely Requests for Exclusion (“Settlement Class Members”) is currently estimated to be at least Four Million Six Hundred Five Thousand Dollars (\$4,605,000). *Id.*, ¶¶ 1.27 & 1.49. The entire Net Settlement Amount will be distributed to Settlement Class Members based upon their Work Days (defined *infra*) and the entire PAGA Allocation will be distributed to the State of California and Aggrieved Employees, and no portion of the Gross Settlement Amount shall revert to Defendant. *Id.*, ¶¶ 6.6 & 6.7.

C. Calculation of Individual Settlement Shares

The Settlement Administrator shall calculate each Class Member’s estimated Individual Settlement Share³, as follows:

After Preliminary Approval, the Settlement Administrator will divide the Net Settlement Amount by the Work Days of all Class Members to yield the “Estimated Work Day Value,” and multiply each Class Member’s individual Work Days by the Estimated Work Day Value to yield their estimated Individual Settlement Share.⁴ Settlement Agreement, ¶ 6.6.1.

After Final Approval, the Settlement Administrator will divide the final Net Settlement Amount by the Work Days of all Settlement Class Members to yield the “Final Work Day Value,” and multiply each Settlement Class Member’s individual Work Days by the Final Work Day Value to yield their Individual Settlement Share.

³ Individual Settlement Shares are the *pro rata* shares from the Net Settlement Amount that a Class Member may be eligible to receive for the Class Settlement. Settlement Agreement, ¶ 1.22. See *id.*, ¶ 1.12 for the definition of Class Settlement.

⁴ Work Days are defined as the number of days each Class Member worked for Defendant as a non-exempt employee at the Costco depots in Tracy, California or Mira Loma, California during the Class Period. See *id.*, ¶ 1.51.

1 Settlement Agreement, ¶ 6.6.2.

2 Individual Settlement Shares shall be allocated as sixty percent (60%) non-
3 wage penalties and interest, thirty-five percent (35%) wages, and five percent (5%)
4 other non-wage damages. *Id.*, ¶ 6.8.2. The wages portion will be reported on an
5 IRS Form W-2, and the portions allocated as penalties, interest, and other non-
6 wage damages will be reported on an IRS Form-1099 (if applicable). *Ibid.* The
7 Individual Settlement Shares will be reduced by any required deductions for the
8 employee-side deductions for the wages portion. *Id.*, ¶ 6.8.3. The Settlement
9 Administrator will issue checks to Settlement Class Members for their Individual
10 Settlement Payment (i.e., payment of their Individual Settlement Share net of these
11 taxes and withholdings). *Ibid.* Employer payroll taxes and contributions
12 (including but not necessarily limited to FICA, FUTA, etc.) on the wages portion
13 of the Individual Settlement Shares (“Employer Taxes”) shall be paid by
14 Defendant in addition to the Gross Settlement Amount. *Id.*, ¶¶ 1.20 & 6.8.4.

15 **D. Calculation of Individual PAGA Payments**

16 The Settlement Administrator shall calculate each Aggrieved Employee’s
17 estimated Individual PAGA Payment⁵ (if he or she is eligible to receive payment
18 thereof), as follows:

19 The Settlement Administrator will divide the Aggrieved
20 Employees’ Portion by the PAGA Work Days of all Aggrieved
21 Employees to yield the “Estimated PAGA Work Day Value,” and
22 multiply each Aggrieved Employee’s individual PAGA Work
23 Days by the Estimated PAGA Work Day Value to yield their
24 Individual PAGA Payment.⁶ Settlement Agreement, ¶ 6.7.1.

25 ///

25 ⁵ Individual PAGA Payments are the *pro rata* shares of the Aggrieved Employees’
26 Portion of the PAGA Allocation (i.e., payable from 25% of the PAGA Allocation)
27 that an Aggrieved Employee is eligible to receive for the PAGA Settlement.
28 Settlement Agreement, ¶ 1.21. See *id.*, ¶ 1.36 for the definition of PAGA
Settlement.

⁶ PAGA Work Days is defined as the number of days each Aggrieved Employee
worked for Defendant as a non-exempt employee at the Costco depots in Tracy,
California and Mira Loma, California during the PAGA Period. See *id.*, ¶ 1.37.

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E. Request for Exclusion and Objection Procedures

Class Members may opt out of the Class Settlement by submitting a Request for Exclusion to the Settlement Administrator. Settlement Agreement, ¶ 5.2. A Request for Exclusion must: (1) contain the case name and number of the Action; (2) contain the full name, signature, current mailing address, telephone number, and the last four digits of the Social Security number of the Class Member; (3) contain an express statement that the Class Member wishes to be excluded from the Class Settlement; and (4) be submitted to the Settlement Administrator, by mail or email, on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice (“Response Deadline”). *Id.*, ¶¶ 1.45 & 1.46.

Settlement Class Members (i.e., Class Members who have not submitted a valid and timely Request for Exclusion) may submit written Objections and/or appear at the Final Approval Hearing to state any objections to the Class Settlement. *Id.*, ¶¶ 1.29 & 5.3. The Objection must: (1) contain the case name and number of the Action; (2) contain the objector’s full name, signature, current mailing address, telephone number, and last four digits of the objector’s Social Security number; (3) contain the specific reasons(s) for the Objection; (4) contain all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to consider; and (5) be submitted to the Settlement Administrator, by mail or email, on or before the Response Deadline. *Id.*, ¶ 1.29.

F. Scope of the Release

The Released Class Claims that are the subject of the Settlement are:

[A]ll claims premised on the facts and allegations in the Operative Complaint, arising during the Class Period, under any laws, including but not limited to any municipal, state, or federal law, including, without limitation, all claims for violations for California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 227.3, 245-249, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, 2810.5, or Industrial Welfare Commission Wage Orders Nos. 1-2001, 4-2001, 7-2001, 8-2001, and 9-2001, and all claims for alleged failure to pay wages of any form, including all claims for failure to pay minimum wage, overtime, reporting time pay,

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sick pay, or any other wage, claims for failure to provide accurate itemized wage statements, claims for failure to timely pay wages during employment, claims for failure to provide compliant meal or rest periods or pay meal or rest period premiums, claims for failure to timely pay wages due at end of employment, claims for failure to maintain payroll records, claims for failure to pay wages in form negotiable and payable in cash, claims for unfair competition under California Business and Professions Code § 17200 *et seq.* based upon any of the foregoing, and claims for violation of the Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*) based upon any of the foregoing. *Id.*, ¶ 1.42.

The Released PAGA Claims that are the subject of the Settlement are:

[A]ll claims for civil penalties under the Private Attorneys General Act (Cal. Lab. Code § 2698, *et seq.*), premised on the facts and allegations in the Operative Complaint or LWDA Letter, arising during the PAGA Period, for violations for California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 227.3, 245-249, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, or Industrial Welfare Commission Wage Orders Nos. 1-2001, 4-2001, 7-2001, 8-2001, and 9-2001, and all claims for alleged failure to pay wages of any form, including all claims for failure to pay minimum wage, overtime, reporting time pay, sick pay, or any other wage, claims for failure to provide accurate itemized wage statements, claims for failure to timely pay wages during employment, claims for failure to provide compliant meal or rest periods or pay meal or rest period premiums, claims for failure to timely pay wages due at end of employment records, claims for failure to maintain payroll records, and claims for failure to pay wages in form negotiable and payable in cash. *Id.*, ¶ 1.43.

The Released Parties are Defendant and each and all of Defendant's present and former subsidiaries, affiliates, and joint ventures, and all of Defendant's shareholders, officers, directors, management-level employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by through, under, or in concert with any of them. *Id.*, ¶ 1.44.

As of the Effective Date⁷ and full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members, will be deemed to have fully, finally, and forever discharged the Released Parties from the Released Class Claims for the Class Period, and those Individual Settlement Class Members who cash, deposit, or

⁷ See *id.*, ¶ 1.17, for the definition of the "Effective Date."

1 otherwise negotiate their Individual Settlement Payment check will be deemed to
 2 opt-in to the settlement and release of Released Class Claims that arise under the
 3 Fair Labor Standards Act. *Id.*, ¶ 7.1.

4 As of the Effective Date and full funding of the Gross Settlement Amount,
 5 Plaintiff, the State of California with respect to all Aggrieved Employees, and all
 6 Aggrieved Employees will be deemed to have fully, finally, and forever released,
 7 settled, compromised, relinquished, and discharged the Released Parties from the
 8 Released PAGA Claims for the PAGA Period. *Id.*, ¶ 7.2.

9 **V. THE LEGAL STANDARD FOR PRELIMINARY APPROVAL OF THE**
 10 **CLASS ACTION SETTLEMENT**

11 Class action settlements require court approval. Fed. R. Civ. Proc. 23(e).
 12 Although judicial policy favors settlement of class actions, *Class Plaintiffs v. City of*
 13 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992), the decision to approve or reject a
 14 settlement is within the trial court’s discretion, and that decision may be reversed only
 15 upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.*, 150
 16 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs*, 955 F.2d at 1276.

17 A settlement should be approved if it is “fundamentally fair, adequate, and
 18 reasonable.” *Hanlon*, 150 F.3d at 1026; Fed. R. Civ. P. 23(e). In approving a class
 19 action settlement, Courts engage in a two-step process: (1) preliminary approval of the
 20 settlement; and (2) a later detailed review after notice is given to class members, to
 21 determine whether final approval is appropriate. *Nat’l Rural Telecomms. Coop. v.*
 22 *DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). At the preliminary approval
 23 stage, courts must approve a class action settlement “if it appears to be the product of
 24 serious, informed, non-collusive negotiations, has no obvious deficiencies, and does
 25 not improperly grant preferential treatment to class representatives or segments of the
 26 class, and falls within the range of possible approval.” *In re Tableware Antitrust*
 27 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

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1 In evaluating the fairness of the class action settlement, courts should give
2 “proper deference to the private consensual decision of the parties.” *Hanlon*, 150 F.3d
3 at 1027. Courts need only ensure that the settlement is not a product of “fraud or
4 overreaching by, or collusion between, the negotiating parties, and that the settlement,
5 taken as a whole, is fair, reasonable, and adequate to all concerned.” *Id.*

6 **VI. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

7 Preliminary approval is appropriate if the settlement is “potentially fair,”
8 *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007), and has no
9 “glaring deficiencies” that would make it clear that a final approval hearing is not
10 warranted. *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 478 (E.D. Cal. Mar. 4,
11 2010). As discussed below, the Settlement resulted from hard-fought litigation and
12 extensive negotiations, and is fair and reasonable. Therefore, the Settlement should be
13 preliminarily approved.

14 **A. The Settlement Resulted from Arm’s Length Negotiations and** 15 **Extensive Investigation and Discovery**

16 An initial presumption of fairness exists “if the settlement is recommended by
17 class counsel after arm’s-length bargaining.” *Harris v. Vector Mktg. Corp.*, No. 08-
18 cv-5198-EMC, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011) (citation omitted).
19 Courts give great weight to such recommendation as class counsel is most familiar
20 with the issues underlying the case. *Nat’l Rural*, 221 F.R.D. at 528.

21 Here, the parties actively litigated this case since it was commenced on
22 February 8, 2021. Class Counsel conducted a thorough investigation into the facts
23 and circumstances of the case and diligently investigated the allegations in this
24 lawsuit. Declaration of Alexandra Rose in Support of Plaintiff’s Motion for
25 Preliminary Approval of Class Action Settlement (“Rose Decl.”), ¶¶ 11-13. Class
26 Counsel served formal written discovery requests and notices of deposition of Persons
27 Most Knowledgeable designees (with accompanying requests for production of
28 documents) on Defendant, and reviewed Defendant’s responses to Plaintiff’s

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written discovery requests. *Id.*, ¶ 12. Plaintiff and Class Counsel also prepared and provided Initial Disclosures to Defendant, and reviewed Defendant's Initial Disclosures. *Ibid.* Class Counsel also prepared for and defended the deposition of Plaintiff. *Ibid.* Class Counsel reviewed a volume of documents and data obtained from Defendant, Plaintiff, and other sources, including and not limited to, Plaintiff's employment records, Class Members' time data, a detailed sampling of Class Members' payroll data, class datapoints, Defendant's Collective Bargaining Agreements, multiple iterations of Defendant's Employee Agreement, checklists, acknowledgements (including, but not limited to, Acknowledgement of Receipt of Defendant's Employee Agreement), Defendant's operations and employment practices, procedures, and policies (including, but not limited to, Defendant's Employee Status Policy, Scheduling Policy, Travel Policy, Supplemental Pay Policy, Breaks and Meal Periods (Non-Exempt Employees) Policy, Accumulation of Goal Hours Policy, Improper Deductions from Salary Policy, Vacations Policy, Paid Sick/Personal Time and Paid Sick Time Policy, Timekeeping (Non-Exempt Employees), Personal Appearance Policy, and Safe Work Shoe Program Amendment), forms (including, but not limited to, Defendant's Employee Payments & Deductions and Daily Timekeeping Exception Log), and various agreements (including, but not limited to, Defendant's Authorization for Release of Employment Records, Meal Period Waiver Agreement, California Meal Period Waiver, Meal Period Waiver Agreement – During Seasonal Period ONLY, and Second Meal Period Waiver Agreement – during Covid-19) among other information and documents. *Ibid.* The parties exchanged information and documents formally and informally. *Id.*, ¶¶ 11-12. The parties also met and conferred on numerous occasions over issues relating to the pleadings, jurisdiction, motion practice, and discovery. *Id.*, ¶ 12.

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The parties reached the Settlement after reviewing all available evidence, arm's-length bargaining, and participating in mediation conducted by Mark S. Rudy, Esq., a well-respected mediator experienced in handling complex wage-and-hour matters. *Id.*, ¶ 11. During the mediation, the parties exchanged information and discussed various aspects of the case, including and not limited to, Plaintiff's claims, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, the evidence produced and analyzed, and the possibility of appeals, among other things. *Ibid.*

During all settlement discussions, the parties conducted their negotiations at arm's length from an adversarial position. *Ibid.* Arriving at a settlement that was acceptable to both parties was not easy. With the aid of the mediator's evaluations, the parties agreed that this case was well-suited for settlement given the legal issues relating to the claims, as well as the costs and risks to both sides that would attend further litigation. *Id.*, ¶¶ 11 & 18. The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. *Id.*, ¶¶ 10, 12, 18, & 21.

The Settlement is based on this large volume of facts, evidence, and investigation, and the parties' negotiations during the mediation.⁸ While the parties disagree over the merits and certifiability of Plaintiff's claims, Plaintiff and Class Counsel agree that the Settlement is fair, reasonable, adequate, and in the best interest of the Class, State of California, and Aggrieved Employees, in light of all known facts and circumstances. *Id.*, ¶¶ 11, 13, & 21.

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⁸ See *Hanlon*, 150 F.3d at 1027 (affirming approval of settlement after finding "no evidence to suggest that the settlement was negotiated in haste or in the absence of information illuminating the value of plaintiffs' claims"); see also *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA (EMC), 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (stating that participation in private mediation "tends to support the conclusion that the settlement process was not collusive").

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B. The Settlement Is Fair, Reasonable, and Adequate

The Gross Settlement Amount of Eight Million Dollars (\$8,000,000.00) represents a fair, reasonable, and adequate resolution of this lawsuit. Under the Settlement, the entire Net Settlement Amount will be distributed to Settlement Class Members and is currently estimated to be at least Four Million Six Hundred Five Thousand Dollars (\$4,605,000). Also, under the Settlement, the amount of Five Hundred Thousand Dollars (\$500,000) is allocated to resolution of the PAGA claim, of which \$375,000 will be distributed to the State of California's Labor and Workforce Development Agency (the LWDA Payment) and \$125,000 will be distributed to Aggrieved Employees (the Aggrieved Employees' Portion). The amount of the Settlement is reasonable considering the risks relating to certification, liability, and the ability to recover monetary relief on a class-wide or representative basis. *Id.*, ¶¶ 11, 13, 18, & 21. Additionally, the Settlement guarantees a certain monetary recovery to Settlement Class Members in a reasonably short period of time, as opposed to waiting additional years for the same, or possibly, no recovery.

The Settlement was calculated using data and information obtained through case investigation, Defendant's removal papers, and formal and informal exchange of information in advance of and/or in the context of mediation and settlement negotiations. *Id.*, ¶¶ 11 & 12. Prior to the mediation, Class Counsel conducted extensive investigation into the claims. *Id.*, ¶¶ 11, 12, 13, 16, & 18. The data and information obtained enabled Class Counsel to calculate the value of the claims and the monetary recovery that could potentially be obtained, and permitted a complete understanding of Defendant's employment policies, practices, and procedures. *Id.*, ¶¶ 12, 16, & 18. This information proved invaluable in negotiating a settlement amount that provides fair, adequate, and reasonable payment for the resolution of the class and PAGA claims. *Id.*, ¶ 21.

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The parties have also considered the potential risks and rewards inherent in any case and, in particular, with this case. *Id.*, ¶¶ 11, 17, 18, 19, 21. Prior to the mediation, Class Counsel performed extensive damages and valuation analysis based on class data and a sampling of data provided by Defendant. *Id.*, ¶¶ 12 & 18. During the mediation, Defendant contended, among other things, that its policies and practices fully complied with California law. *Id.*, ¶¶ 11 & 18.

Plaintiff faces numerous risks in continued litigation, including and not limited to, the risk of receiving no recovery if a class is not certified and/or no liability is found and the Court determining that adjudication on a representative or class basis is unmanageable and not appropriate. *Id.*, ¶¶ 13, 17, 18, & 21. Plaintiff also faces the real possibility that the amount recovered against Defendant after years of litigation and a lengthy and costly trial is less than the amount negotiated in this Settlement. *Ibid.*

Additionally, the Settlement is fair because it poses no risk of unequal treatment of any Class Member. Individual Settlement Shares will be calculated based upon each Class Member's Work Days. Settlement Agreement, ¶ 6.6. Individual PAGA Payments will be calculated based upon each Aggrieved Employee's PAGA Work Days. Settlement Agreement, ¶ 6.7.

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: "an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Nguyen v. Radiant Pharm. Corp.*, No. 11-cv-00406, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014); *see also Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002). Considering the facts in this case, the amount of the Settlement represents a fair, reasonable, and adequate recovery for the Class, State of California, and Aggrieved Employees. Rose Decl., ¶¶ 11, 13, 18 & 21.

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1 **C. The Settlement Is of Significant Value and Within the Range of**
 2 **Approval**

3 The Gross Settlement Amount of Eight Million Dollars (\$8,000,000) provides
 4 substantial monetary recovery to the Class Members, State of California, and
 5 Aggrieved Employees, and is fair, reasonable, and adequate in light of the value of the
 6 claims and the significant risks of continued litigation. Similarly, all of the other
 7 Settlement terms for which Plaintiff requests approval and/or preliminary approval
 8 fall within the range of reasonableness, as discussed below.

9 1. *The allocation for the Service Award is reasonable.*

10 Subject to Court approval, Plaintiff will receive a Service Award of Fifteen
 11 Thousand Dollars (\$15,000). Settlement Agreement, ¶ 6.4. The Service Award will
 12 be paid in addition to Plaintiff's Individual Settlement Payment and Individual PAGA
 13 Payment. *Ibid.*

14 The trial court has discretion to award incentives to the class representatives.⁹
 15 Courts routinely approve incentive awards to class representatives for their time and
 16 efforts, and the risks they undertake on behalf of the class. *See, e.g., Staton v. Boeing*,
 17 327 F.3d 938, 976-78 (9th Cir. 2003) (discussing cases approving incentive awards in
 18 the range of \$2,000 to \$25,000). "Incentive awards are particularly appropriate in
 19 wage-and-hour actions" because named plaintiffs bear "a significant reputational risk
 20 for bringing suit against their former employers." *Bellinghausen v. Tractor Supply*
 21 *Co.*, 306 F.R.D. 245, 267 (N.D. Cal. Mar. 19, 2015) (quotation marks omitted).

22 _____
 23 ⁹ *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000). In
 24 assessing the reasonableness of an incentive award, several district courts in the Ninth
 25 Circuit have considered the factors set forth in *Van Vranken v. Atl. Richfield Co.*, 901
 26 F. Supp. 294, 299 (N.D. Cal. 1995): (1) the risk to the class representative in
 27 commencing a class action; (2) the notoriety and personal difficulties encountered by
 28 the class representative; (3) the amount of time and effort spent by the class
 representative; (4) the duration of the litigation; and (5) the personal benefit, or lack
 thereof, enjoyed by the class representative as a result of the litigation. *See, e.g., In re*
Toys "R" Us-Del., Inc. FACTA Litig., 295 F.R.D. 438, 470 (C.D. Cal. 2014); *Covillo*
v. Specialty's Café, No. C-11-00594 DMR, 2014 WL 954516, at *7 (N.D. Cal. Mar.
 6, 2014); *Carr v. Tadin, Inc.*, 51 F. Supp. 3d 970, 986 (S.D. Cal. 2014).

Here, the contemplated Service Award is fair and appropriate and is well within the range of incentive payments awarded by district courts. *See id.*; *Angell v. City of Oakland*, 13 cv-00190 NC, 2015 WL 65501, at *8 (N.D. Cal. Jan. 5, 2015) (approving \$9,000 incentive awards); *Covillo*, 2014 WL 954516, at *8 (approving an \$8,000 incentive award).

Plaintiff spent considerable time and effort to produce relevant documents and past employment records and provide the facts and evidence necessary to support the allegations. Rose Decl., ¶ 20; Declaration of Ryan Edwards in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Edwards Decl."), ¶¶ 3-5. Plaintiff was available whenever his counsel needed him and tried to obtain and provide documents and information that would facilitate the pursuit of the class and PAGA claims. Edwards Decl., ¶¶ 3-5. For example, Plaintiff prepared for and attended his deposition, and spent numerous hours speaking with Plaintiff's Counsel about his claims, describing his work experiences with Defendant, and gathering, reviewing, and providing documents. Rose Decl., ¶ 20. Accordingly, it is appropriate and just for Plaintiff to receive a reasonable service award for his services on behalf of the Class, State of California, and Aggrieved Employees.

2. *The allocations for the Class Counsel Award are reasonable.*

The Settlement establishes a Gross Settlement Amount of Eight Million Dollars (\$8,000,000) and provides for Class Counsel to apply for attorneys' fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Amount. Settlement Agreement, ¶ 6.3. Class Counsel will bring an appropriate motion in advance of the Final Approval Hearing pursuant to Rule 23(h), and submit supporting evidence and documents.

Under California and Ninth Circuit precedent, a court has discretion to determine attorneys' fees using either the lodestar method or the percentage-of-the-fund method.¹⁰ District courts may adjust the twenty-five percent (25%) benchmark

¹⁰ It is appropriate to calculate and award attorneys' fees as a percentage of a

(Footnote continued)

(observed by the Ninth Circuit) upward or downward if “the percentage recovery would be either too small or large in light of the hours devoted to the case or other relevant factors.” *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Staton*, 327 F.3d at 968; *Vizcaino*, 290 F.3d at 1048. If a proposed class action settlement includes an award of attorneys’ fees, courts must evaluate that fee award on a case-by-case basis in the overall context of the settlement, and an award above the twenty-five percent (25%) benchmark may be warranted.¹¹ In California, attorneys’ fees tend to be awarded above the twenty-five percent (25%) federal benchmark. See *Van Vranken*, 901 F.Supp. at 297 (holding that fee awards of 30-50% are more typical where the fund is less than \$10 million); *Craft v. City of San Bernardino*, 624 F.Supp.2d 1123, 1127 (C.D. Cal. 2008) (holding that attorneys’ fees in cases where the fund is below \$10 million are often more than 25%). Moreover, “awards in the Central District are in the 20% to 50% range.” *Clayton v. Knight Transp.*, 2013 WL 5877213, at *23 (E.D. Cal. Oct. 30, 2013).¹²

monetary funds that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte v. Robert Half Int’l, Inc.* 1 Cal.5th 480, 486 & 506 (2016); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 253 (2001); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The percentage method is based on the amount of total recovery, as opposed to the total amount of claims made, and is well established in federal courts and the Ninth Circuit. *Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980); *In re Hill*, 775 F.2d 1037 (9th Cir. 1985); *Williams v. MGM-Pathe Comm’n Co.*, 129 F.3d 1026 (9th Cir. 1997); *In re Agent Orange Prod. Liability Litig.*, 818 F.2d 226, 232 (2d Cir. 1987).

¹¹ *Knisley v. Network Assocs.*, 312 F.3d 1123, 1126 (9th Cir. 2002); *Vizcaino*, 290 F.3d at 1048; *Knight v. Red Door Salons, Inc.*, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009).

¹² Other districts usually award attorneys’ fees in the 30-40% range in wage-and-hour class actions that result in recovery of a common fund under \$10 million. See *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing recent wage-and-hour class actions where district courts approved attorneys’ fee awards ranging from 30-33%); *Singer v. Becton Dickinson and Co.*, 2010 WL 2196104, *8 (S.D. Cal. June 1, 2010) (approving attorneys’ fees of one-third of the common fund and holding that the award was similar to awards in other wage-and-hour class actions where fees ranged from 30.3-40%); *Romero v. Producers Dairy Foods, Inc.*, 2007 WL 3492841 (E.D. Cal. Nov. 14, 2007) (recognizing that “fee awards in class actions average around one-third” of the settlement).

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Glendale, California 91203

The goal is to award “reasonable compensation for creating a common fund.” *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989). In reviewing a fee award request, courts consider the following factors: (1) the results achieved; (2) whether there are benefits to the class beyond the immediate generation of a cash fund; (3) the risks of litigation; (4) the skill required of counsel and quality of the work performed; (5) the contingent nature of the fee and the foregoing by counsel of other work; and (6) the reactions of the class. *Vizcaino*, 290 F.3d at 1048-50; *In re Toyota Motor Corp.*, 2013 WL 3224585 (C.D. Cal. June 17, 2013). Of these factors, the most significant factor is the “degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

Here, the attorneys’ fee award provided for by the Settlement is reasonable, particularly in light of the time and effort expended by Class Counsel. Class Counsel litigated this case for two (2) years, with the possibility of an unsuccessful outcome and no fee recovery of any kind. Rose Decl., ¶ 11. The ongoing work has been demanding and ultimately successful in achieving a substantial settlement. Given the strengths and weaknesses of the claims and the risk and expense of further litigation, Class Counsel has achieved an excellent result in this lawsuit. Considering the amount of the fees to be requested, the work performed, and the risks incurred, the allocations for Class Counsel Award provided for by the Settlement are reasonable and should be awarded. *See Vizcaino*, 290 F.3d at 1051.

VII. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE UNDER RULE 23

Class certification under Rule 23(a) is appropriate where the plaintiff demonstrates the four requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy of representation), and one of the three requirements of Rule 23(b). *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). The proposed Class meets all of these requirements.

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A. Numerosity

A class is sufficiently numerous if it is “so large that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). A reasonable estimate of the number of purported class members is sufficient to meet the numerosity requirement.” *In re Badger Mountain Irr. Dist. Sec. Litig.*, 143 F.R.D. 693, 696 (W.D. Wash. 1992).

The proposed Class consists of approximately 7,734 individuals. Rose Decl., ¶ 9. The proposed Class is sufficiently numerous, and joinder of all Class Members would be impractical. *See Mazza v. Am. Honda Motor Co.*, 254 F.R.D. 610, 617 (C.D. Cal. 2008), *rev’d on other grounds*, 666 F.581, 593 (9th Cir. 2012) (“As a general rule, classes of forty or more are considered sufficiently numerous.”).

B. Commonality

A settlement class has sufficient commonality “if there are questions of fact and law which are common to the class.” Fed. R. Civ. P. 23(a)(2). An affirmative showing of at least one common question of law or fact satisfies this requirement.¹³ Commonality has been found to exist when there is a common legal issue stemming from divergent factual predicates or a common nucleus of facts leading to different legal remedies. *Hanlon*, 150 F.3d at 1019.

Courts generally find commonality where “the lawsuit challenges a system-wide practice or policy that affects all of the putative class members[]” and divergent ways in which these practices affect individual Class Members, if any, do not undermine the finding of commonality.¹⁴ Here, the Class Members seek remedies under California’s wage-and-hour laws for violations arising from common, uniform, and systematic practices which applied to all Class Members during the Settlement Class Period. *See e.g.*, Rose Decl., ¶¶ 16 & 18. Accordingly, the commonality requirement is satisfied for settlement purposes.

¹³ *Dukes v. Wal-Mart, Inc.*, 564 U.S. 338, 350 & 359 (2011); *see also Hanlon*, 150 F.3d at 1019 (“All questions of fact and law need not be common to satisfy the rule.”).

¹⁴ *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504-05 (2005); *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975), *cert denied*, 429 U.S. 816 (1976).

C. Typicality

The typicality requirement is satisfied where “the cause of the injury is the same,” as here, and the injury claimed by the named plaintiffs are “similar” to that of unnamed class members. *Armstrong*, 275 F.3d at 868-69. They need not be “identical.” *Id.* at 869. Here, Plaintiff’s claims are typical of those of the Class Members, though some factual differences may exist among them, as the claims arise from the same events or course of conduct and are based upon the same legal theories. Given the structure of the Settlement, the proposed Class satisfies the typicality requirement for settlement purposes as Plaintiff’s claims arise from the same factual basis and are based on the same legal theories as those applicable to all other Class Members. *Welmer v. Syntex*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

D. Adequacy of Representation

Rule 23(a)(4) requires that: (1) Class Representatives fairly and adequately protect the interests of the class, and (2) Class Counsel be qualified and competent to conduct the litigation. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000). The requirement “tends to merge with the commonality and typicality criteria of Rule 23(a).”¹⁵ The inquiry turns on whether “the named plaintiffs and their counsel have any conflicts of interest with other class members” and “whether the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf of the class.” *Hanlon*, 150 F.3d at 1020.

1. *Appointment of Class Representative.*

Plaintiff meets the requirements under Federal Rule of Civil Procedure 23(a)(4), for appointment to represent the Class. Plaintiff’s claims are typical of and align with those of Class Members, which are confined to a limited group of similarly-situated employees who worked for Defendant at the Costco depots in Tracy, California and Mira Loma, California during the Class Period. Also, Plaintiff

¹⁵ *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997); see also *Manual for Complex Litig.*, Fourth Ed. § 21.132 (“a settlement class must be cohesive”).

1 spent considerable time and effort to produce relevant documents and past
2 employment records and provide the facts and evidence necessary to support the
3 allegations. Rose Decl., ¶ 12; Edwards Decl., ¶¶ 3-5. Plaintiff was available
4 whenever his counsel needed him and tried to obtain and provide documents and
5 information that would facilitate the pursuit of the class and PAGA claims. Edwards
6 Decl., ¶¶ 3-5. As such, Plaintiff has demonstrated that he has and will continue to
7 fairly and adequately represent the Class, and appointment of Plaintiff as Class
8 Representative is appropriate.

9 2. *Appointment of Class Counsel.*

10 Class Counsel meet the requirements under Federal Rule of Civil Procedure
11 23(g), for appointment to represent the Class. Class Counsel are highly experienced
12 in employment class action and complex wage-and-hour litigation, having handled
13 many cases before and having been appointed class counsel in many other cases.
14 Rose Decl., ¶¶ 2-7. Class Counsel's experience in litigating similar matters was
15 integral to obtaining the Settlement. Class Counsel conducted extensive research,
16 investigation, and analysis of the potential value of the claims. Rose Decl., ¶¶ 11 &
17 18. Class Counsel have committed and continue to commit significant financial and
18 staffing resources to the pursuit of the Action. As such, appointment of Lawyers for
19 Justice, PC as Class Counsel is appropriate.

20 **E. Predominance and Superiority**

21 The proposed Class meets the requirements of Rule 23(b)(3) for settlement
22 purposes because: (1) common questions predominate over questions that affect
23 individual members and (2) class resolution is superior to other available means of
24 adjudication. When assessing predominance and superiority, a court may consider
25 that the proposed class will be certified for settlement purposes only. *See Amchem*
26 *Prods.*, 521 U.S. at 618-20. Where the matter is being settled, a showing of
27 manageability at trial is unnecessary. *Id.* at 620. At this stage, the relevant inquiry is
28 "whether the proposed classes are sufficiently cohesive to warrant adjudication by

representation.” *Id.* at 618-20, 623; *see also Hanlon*, 150 F.3d at 1022.

Here, the proposed Class is sufficiently cohesive to warrant certification. For settlement purposes, common questions of fact and law affecting Class Members predominate over any questions that may affect only individual members. For example, Defendant’s alleged failure to properly pay their employees for all hours worked and provide compliant meal and rest periods are alleged to arise from Defendant’s uniform policies, practices, and procedures. As such, the questions of fact and law relating to these issues predominate.

Moreover, a class resolution is superior to other available means for the fair and efficient adjudication of the controversy. *See Hanlon*, 150 F.3d at 1023. The superiority requirement involves a “comparative evaluation of alternative mechanism of dispute resolution.” *Id.* Here, the alternative method of resolution is individual claims, subject to proof, for relatively small amounts of damages, which would be uneconomical for potential plaintiffs. Therefore, a class resolution is superior to any other available methods.

VIII. ADEQUACY OF THE METHOD OF NOTICE

“Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025. A class notice must be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). A class notice is adequate if it “generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). The notice must also be “neutral and objective in tone and should neither promote nor discourage the assertion of claims.” *Schaefer v. Overland Express Family of Funds*, 169 F.R.D. 124, 131 (S.D. Cal. 1996).

Here, the proposed Class Notice provides the best notice practicable and is adequate. It provides information on, *inter alia*, the nature of the Action, the

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Glendale, California 91203

definition of the Class, the terms of the Settlement, the scope of the Released Class Claims and Released PAGA Claims, the binding effect of the Settlement, and the allocations for the Class Counsel Award, Service Award, PAGA Allocation, and Administrative Costs. Each Class Member's Class Notice will state his or her number of Work Days, number of PAGA Work Days, estimated Individual Settlement Share, and estimated Individual PAGA Payment (if applicable). The Class Notice summarizes the proceedings and provides the date, time, and place of the Final Approval Hearing, and all of this information is "clearly and concisely state[d] in plain, easily understood language." Fed. R. Civ. P. 23(c)(2)(B).

All Class Members can and will be identified by Defendant through a review of its records. After receiving the Class Data from Defendant, the Settlement Administrator will update the addresses using the U.S. Postal Service's National Change of Address Database and mail and email a Class Notice to each Class Member. Settlement Agreement, ¶ 4.4.1.¹⁶ Accordingly, the proposed Class Notice is adequate and is the best notice practicable under Rule 23(c)(2)(B).

The Class Notice also fulfills the requirement of neutrality in class notices. The Class Notice provides a brief, neutral explanation of the case from the perspective of both parties and recognizes that the Court has not yet granted final approval of the Settlement.¹⁷ The Class Notice sets forth in an accurate and informative manner the procedures and deadlines governing the submission of Requests for Exclusion, Objections, and Disputes. The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Accordingly, the Court should approve the proposed Class Notice.

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¹⁶ See *Elsen v. Carlisle & Jacqueline*, 417 U.S. 156, 175-77 (1974) (Individual notice by mail "is clearly the 'best notice practicable' within the meaning of Rule 23(c)(2)" where "all class members [] can be identified with reasonable effort").

¹⁷ See *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 174 (1989) ("[C]ourts must be scrupulous to respect judicial neutrality" in overseeing the class action notice process and "avoid even the appearance of judicial endorsement of the merits of the action[.]").

IX. APPOINTMENT OF ATTICUS ADMINISTRATION, LLC AS THE SETTLEMENT ADMINISTRATOR

The parties have selected Atticus Administration, LLC (“Atticus”) as the Settlement Administrator to handle the notice and administration of the Settlement. Atticus will mail and email a Class Notice to each Class Member; receive, review, and process Requests for Exclusion, Objections, and Disputes; calculate estimated Individual Settlement Shares, Individual Settlement Payment, and Individual PAGA Payments; withhold applicable taxes and withholdings; prepare and transmit necessary tax documentation and filings; and transmit all required payments. Settlement Agreement, ¶ 6.2. Atticus will also handle inquiries from Class Members regarding the Settlement and perform any other usual and customary duties for administering a class action settlement.

Administrative Costs are currently estimated not to exceed Fifty Thousand Dollars (\$50,000) and will be paid out of the Gross Settlement Amount subject to approval by the Court. Plaintiff respectfully requests that the Court appoint Atticus as the Settlement Administrator and direct distribution of the Class Notice in the manner and in accordance with the proposed schedule, set forth in the Settlement Agreement and discussed in Section VIII, *infra*.

X. DEADLINES FOR NOTICE AND ADMINISTRATION

The Court is respectfully requested to approve the proposed deadlines for the notice and settlement administration process. Within seven (7) calendar days following preliminary approval of the Settlement, Defendant will provide Atticus a list of the following information for each Class Member: each Class Member’s full name; employee ID number; last known email address; last known mailing address; last known home telephone number; Social Security number; number of Work Days; number of PAGA Work Days (if applicable); and number of Workweeks during the period February 8, 2017 through September 9, 2022 (collectively, “Class Data”). Settlement Agreement, ¶¶ 1.11 & 4.3. Within thirty (30) calendar days of preliminary

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approval of the Settlement, Atticus will send a Class Notice to each Class Member. *Id.*, ¶ 4.4.1. Prior to mailing and emailing the Class Notices, Atticus will perform a search based on the U.S. Postal Service’s National Change of Address Database to update and correct any known or identifiable address changes for Class Members. *Ibid.* Any Class Notice returned as undeliverable within ten (10) calendar days of the original mailing or e-mailing thereof, shall be re-sent within five (5) calendar days via First Class U.S. Mail and email to any available forwarding address. *Id.*, ¶ 4.4.2. If no forwarding address is available, then the Settlement Administrator shall attempt to determine the correct address by using a computer-based skip-trace search, and shall then perform, if feasible, a re-mailing via First Class U.S. Mail and re-emailing within five (5) calendar days. *Id.*, ¶ 4.4.2.

Requests for Exclusion, Objections, and Disputes must be mailed to Atticus, postmarked or emailed by the applicable Response Deadline. *Id.*, ¶¶ 1.16, 1.29, 1.46, 5.2, & 5.3.

All Individual Settlement Payment and Individual PAGA Payment checks will remain valid and negotiable for one hundred eighty (180) calendar days from the date of their original mailing (“Expiration Date”). *Id.*, ¶ 6.9. Approximately thirty (30) calendar days before the end of the Expiration Date, the Settlement Administrator will send a postcard or email notification to the Settlement Class Members and/or Aggrieved Employees who have not cashed, deposited, or otherwise negotiated their checks to remind them of the deadline. *Ibid.* After the Expiration Date, the checks shall be cancelled and funds from all cancelled checks shall be transmitted by the Settlement Administrator to the California State Controller’s Unclaimed Property Division in the name of the Settlement Class Member and/or Aggrieved Employee and in the amount of their respective Individual Settlement Payment and/or Individual PAGA Payment. *Ibid.*

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XI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to file the Third Amended Complaint; grant preliminary approval of the Settlement; certify the proposed Class for settlement purposes; appoint Lawyers *for* Justice, PC as Class Counsel; preliminarily approve the allocations for the Class Counsel Award, Service Award, PAGA Allocation, and Administrative Costs; appoint Plaintiff as the Class Representative; appoint Atticus Administration, LLC as the Settlement Administrator; approve and direct the mailing and emailing of the Class Notice to the Class; and schedule a Final Approval Hearing in approximately 160 days.

Dated: February 24, 2023

LAWYERS *for* JUSTICE, PC

By: _____

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