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

BRIANNA FLORES, TANIA ESTREMER
individually, and on behalf of other members
of the general public similarly situated;
DEXTER NORMAN HANSEN,
individually and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

v.

BISCOMERICA CORP., a California
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CIVDS1930814

Honorable David S. Cohn
Department S-26

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declarations of
Plaintiffs (Brianna Flores, Tania
Estremera, and Dexter Norman Hansen);
and [Proposed] Order filed concurrently
herewith]

Date: April 29, 2022
Time: 10:00 a.m.
Department: S-26

Complaint Filed: October 15, 2019
FAC Filed: July 28, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 29, 2022 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David S. Cohn in Department S-26 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, California 92415, Plaintiffs Brianna Flores, Tania Estremera, and Dexter Norman Hansen (“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 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, 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, Enhancement Awards to Plaintiffs, and Settlement Administration Fees to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Brianna Flores and Tania Estremera as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and

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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, Enhancement Awards for Plaintiffs, and Settlement 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 provide 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 (Edwin Aiwanian) and Plaintiffs (Brianna Flores, Tania Estremera, and Dexter Norman Hansen) 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: April 21, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Brianna Flores, Tania Estremera, and Dexter Norman Hansen (“Plaintiffs”) seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Biscomerica Corp. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of one million two hundred thousand dollars and no cents (\$1,200,000.00).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 Enhancement Awards of six thousand five hundred dollars and no cents (\$6,500.00) each to Plaintiffs (\$19,500 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of one-third (1/3) of the Gross Settlement Amount, or \$400,000.00, and reimbursement of litigation costs and expenses not to exceed twenty five thousand dollars and no cents (\$25,000.00)⁴; (4) the Settlement Administration Fees to the Settlement Administrator in the amount not to exceed thirteen thousand dollars and no cents (\$13,000.00);⁵ and (5) the amount of one hundred fifty thousand dollars and no cents (\$150,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$112,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$37,500.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

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

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

² *Id.*, §§ I.U & I.EE.

³ *Id.*, §§ V.B & X.

⁴ *Id.*, §§ V.B & IX.

⁵ *Id.*, § V.C.

⁶ *Id.*, § I.Q.

All current and former hourly-paid and/or non-exempt employees of Defendant within the State of California at any time during the period from October 15, 2015 through June 10, 2021 (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately seven hundred and fifty (750) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendant in California in a non-exempt or hourly-paid position during the period from October 15, 2015 through June 10, 2021 (“Covered Workweeks”).⁹ All Class Members who worked for Defendant within the State of California at any time during the period from October 15, 2018 through June 10, 2021 (“PAGA Members”) will receive a *pro rata* share of 25% portion of the PAGA Payment attributed to PAGA Members, based on the number of Covered Workweeks the PAGA Member worked during the period from October 15, 2018 to June 10, 2021 (“Individual PAGA Payment”), irrespective of whether the PAGA Member submitted a request to be excluded from the Settlement.¹⁰

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a baking company that manufactures cookies and candy for wholesale distributors. Plaintiffs Brianna Flores and Tania Estremera are former employees of Defendant. Plaintiff Dexter Norman Hansen is a current employee of Defendant.

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⁷ Settlement Agreement, § I.C. “Class Period” is defined as the time period from October 15, 2015 through June 10, 2021. *See id.*, § I.F.

⁸ Aiwasian Decl., ¶ 9.

⁹ Settlement Agreement, §§ I.DD, I.EE, & VIII.A.

¹⁰ *Id.*, §§ I.P, I.R, I.FF, II.RR, & VIII.B.

¹¹ *See id.* at §§ I.Y & XI, for the full scope of the “Released Claims,” and *id.* at § I.Z for the definition of the “Released Parties.”

1 On October 15, 2019, Plaintiff Brianna Flores filed a Class Action Complaint for
2 Damages in the San Bernardino County Superior Court (“Court”), thereby commencing the
3 above-captioned lawsuit (Case No. CIVDS1930814) (“Action” or “*Flores Action*”).

4 On February 11, 2020, Plaintiff Tania Estremera filed a Class Action Complaint for
5 Damages in the San Bernardino County Superior Court (Case No. CIVDS2004539).

6 On July 28, 2021, Plaintiffs Brianna Flores, Tania Estremera and Dexter Norman Hansen
7 filed a First Amended Consolidated Class Action Complaint for Damages & Enforcement Under
8 the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative
9 Complaint”), consolidating Plaintiffs Brianna Flores and Tania Estremera’s claims into the first
10 filed *Flores Action*, as well as adding Plaintiff Dexter Norman Hansen and cause of action under
11 PAGA.

12 Plaintiffs’ core allegation is that Defendant has 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 On September 3, 2021, Defendant filed an Answer to Plaintiffs’ First Amended
23 Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys
24 General Act, California Labor Code § 2698, *Et Seq.*

25 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
26 associated with any of the allegations in the Action, and further denies that the Action is
27 appropriate for class treatment or representative adjudication for any purpose other than for
28 settlement purposes only.

The Parties have actively litigated the Action since it was commenced on October 15, 2019. On September 4, 2020, the Parties participated in a formal, full-day mediation conducted by the Honorable Peter D. Lichtman (Retired), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) with respect to the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed four hundred thousand dollars and no cents (\$400,000.00) (i.e., up to 1/3 of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed twenty five thousand dollars and no cents (\$25,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed thirteen thousand dollars and no cents (\$13,000.00) to the Settlement Administrator ("Settlement Administration Fees"); (3) payment to the LWDA of its 75% share of the PAGA Payment (i.e., \$112,500.00 out of \$150,000.00) ("LWDA Payment"); (4) payments to PAGA Members from the 25% share of the PAGA Payment designated for payments to Aggrieved Employees (i.e., \$37,500.00 out of \$150,000.00); and (5) payments in the amount of up to six thousand five hundred dollars and no cents (\$6,500.00) each to Plaintiffs Brianna Flores, Tania Estremera, and Dexter Norman Hansen (for a combined total of \$19,500) ("Enhancement Awards").¹³ The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.

¹² Settlement Agreement, §§ V.A & XI,

¹³ *Id.*, § V.B.

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

- a. The Settlement Administrator will calculate each Settlement Class Member's number of Covered Workweeks and the total aggregate number of Covered Workweeks of all Settlement Class Member ("Total Class Covered Workweeks").¹⁴
- b. Each Class Member's Covered Workweeks will be divided by the Total Class Covered Workweeks to yield his or her "Individual Class Percentage Allocation."
- c. The Settlement Administrator will multiply each Class Member's Individual Class Percentage Allocation by the Net Settlement Amount to yield his or her Individual Settlement Share.¹⁵

The Parties have agreed that the Settlement Administrator will determine each PAGA Member's Individual PAGA Payment, in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will calculate each PAGA Member's number of Covered Workweeks and the total aggregate number of Covered Workweeks of all PAGA Members worked during the PAGA Period ("Total PAGA Covered Workweeks").¹⁶
- b. Each PAGA Member's Covered Workweeks worked during the PAGA Period will be divided by the Total PAGA Covered Workweeks to yield his or her "Individual PAGA Percentage Allocation."
- c. The Settlement Administrator will multiply each PAGA Member's Individual PAGA Percentage Allocation by the 25% portion of the PAGA Payment to yield his or her Individual PAGA Payment.¹⁷

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁸ 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").¹⁹ Defendant will

¹⁴ Settlement Agreement, § VIII.A.1.

¹⁵ *Id.*, § VIII.A.2-3.

¹⁶ *Id.*, § VIII.B.1.

¹⁷ *Id.*, § VIII.B.2-3.

¹⁸ *Id.*, § VIII.C

¹⁹ *Ibid.*

1 pay the employer's share of payroll taxes and contributions with respect to the wage portion of
2 Individual Settlement Shares ("Employer Taxes") in addition to the Gross Settlement Amount.²⁰
3 One hundred percent (100%) of the Individual PAGA Payments to the PAGA Members are
4 allocated as penalties, which will be reported on an IRS Form 1099.²¹

5 The Individual Settlement Payment checks issued to Settlement Class Members and
6 Individual PAGA Payment checks PAGA Members will be negotiable for one hundred eighty
7 (180) calendar days from the date of issuance.²² Individual Settlement Payment and Individual
8 PAGA Payment checks that are not negotiated within the 180-day period will be cancelled.²³
9 The funds from associated with such cancelled checks will be distributed by the Settlement
10 Administrator to the Children's Advocacy Institute, in the name of the Participating Class
11 Member whose check is cancelled and in the respective amount of the cancelled check.²⁴ The
12 Settlement Administrator will have the option to pay the Individual Settlement Payment and
13 Individual PAGA Payment by way of a single check, if applicable.²⁵

14 Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must
15 notify the Settlement Administrator in writing by sending a letter indicating that they want to
16 exclude themselves.²⁶ To be timely, the Class Member must mail a written request for exclusion
17 to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar
18 days from the initial mailing of the Class Notice ("Response Deadline").²⁷ A request for
19 exclusion must contain: (a) the Class Member's full name, current mailing address, current
20 telephone number, signature, and the last four (4) digits of his or her Social Security number or
21 employee ID number; (b) the case name and number of the *Flores* Action; and (c) a statement
22 clearly indicating that he or she wishes to opt out of the Settlement.²⁸ Class Members who
23 submit a valid and timely request for exclusion will not be bound by the terms of the Class

24 ²⁰ Settlement Agreement, § VIII.D.

25 ²¹ *Id.*, § VIII.C.

26 ²² *Id.*, § VIII.H.

27 ²³ *Ibid.*

28 ²⁴ *Ibid.*

²⁵ *Id.*, § VIII.E.

²⁶ *Id.*, § V.F.

²⁷ *Id.*, § I.AA.

²⁸ *Id.*, § V.F.

Settlement and the Final Approval Order and Judgment as it relates to the Class Settlement.²⁹ However, if the Class Member worked during the PAGA Period, he or she shall remain a PAGA member, will receive an Individual PAGA Payment, and will be bound by the PAGA Settlement.

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement.³⁰ Settlement Class Members who wish to object to the Class Settlement must serve the Settlement Administrator with a notice of objection on or before the Response Deadline.³¹ The objection must contain: (a) the Settlement Class Member's full name, current address, current telephone number, signature, and the last four (4) digits of his or her Social Security number or employee ID number; (b) the case name and number of the *Flores* Action; (c) a statement clearly indicating that he or she objects and providing the reasons why he or she objects; and (d) a statement indicating whether or not he or she is represented by counsel and identifying any such legal counsel and indicated whether the Settlement Class Member wishes to be heard at the Final Approval Hearing.³²

Class Members who wish to dispute the number of Covered Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.³³ The letter must contain: (a) the Class Member's full name, current mailing address, current telephone number, signature, and the last four (4) digits of his or her Social Security number or employee ID number; (b) the case name and number of the *Flores* Action; (c) a statement clearly indicating that he or she wishes to dispute the number of Covered Workweeks credited to him or her and the basis therefor; and (d) any and all supporting documents.³⁴

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²⁹ Settlement Agreement, § V.F.

³⁰ *Id.*, §§ V.F-G.

³¹ *Id.*, § V.G.

³² *Ibid.*

³³ *Id.*, § V.E.

³⁴ *Ibid.*

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

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

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

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

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

The Parties actively litigated the cases since the *Flores* Action was commenced on

October 15, 2019. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.³⁵

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.³⁶ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs' and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, multiple iterations of Defendant's Employee Handbook, Defendant's operations and employment practices (including but not limited to Defendant's drug testing policy and problem resolution procedure), procedures (including but not limited to Defendant's Administrative Pay Corrections procedure, progressive discipline process, and security inspections), and policies (including but not limited to Defendant's rest period policy, overtime policy, and rules about employee conduct), among other information and documents.³⁷ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.³⁸ Counsel for the Parties met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁹ Class Counsel also drafted pleadings and Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴⁰

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on September 4, 2020, conducted by the Honorable Peter D. Lichtman (Retired), a well-respected mediator experienced in mediating complex labor and employment matters.⁴¹ Prior to and during the mediation and settlement discussions, the Parties exchanged

³⁵ Aiwazian Decl., ¶¶ 11-13.

³⁶ *Id.*, ¶ 12.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶ 11.

1 class information and engaged in an intensive discussion regarding their evaluations of the cases
2 and various aspects of the matter, including but not limited to, the risks and delays of further
3 litigation, the risks to the Parties of proceeding with class certification and/or representative
4 adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law
5 and enforcement, and PAGA representative claims, as well as the evidence produced and
6 analyzed, and the possibility of appeals, among other things.⁴² During all settlement discussions,
7 the Parties conducted their negotiations at arm's length in an adversarial position.⁴³ Arriving at
8 a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt
9 strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class
10 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁴ After
11 conducting investigations, significant informal discovery and exchange of information,
12 extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have
13 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs'
14 principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁵

15 The Settlement takes into account the strengths and weaknesses of each side's position
16 and the uncertainty of how the cases might have concluded at certification and trial.⁴⁶ The
17 Parties have had the opportunity to interview and obtain information from their respective
18 witnesses.⁴⁷ Counsel for the Parties have also reviewed documents and information relating to
19 Plaintiffs' and the Class Members' employment with Defendant and performed significant
20 research into the law concerning class certification, PAGA representative actions, off-the-clock
21 theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiffs' claims, and
22 Defendant's defenses thereto, as well as facts discovered.⁴⁸ The Parties have reached the
23 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class
24

25 ⁴² Aiwazian Decl., ¶ 11.

26 ⁴³ *Ibid.*

27 ⁴⁴ *Id.*, ¶¶ 11, 16-18.

28 ⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶¶ 11-13 & 16-18.

Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁹

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

The Settlement, which provides for a Gross Settlement Amount of one million two hundred thousand dollars and no cents (\$1,200,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵⁰ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁵¹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁵² Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵³

Assuming that the Attorneys' Fees and Costs, Enhancement Awards, PAGA Payment, and Settlement Administration Fees are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be six hundred twelve thousand dollars and no cents (\$612,000.00).⁵⁴ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Covered Workweeks.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.

⁴⁹ Aiwazian Decl., ¶¶ 6-7.

⁵⁰ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵¹ *Id.*, ¶¶ 11-13.

⁵² *Id.*, ¶¶ 16-18.

⁵³ *Id.*, ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶ 14.

⁵⁵ Settlement Agreement, § VIII.

1 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
2 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁶
3 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
4 the recommendations into account, particularly if Class Counsel appears to be competent, and
5 has experience with this type of litigation, and investigation have been completed, as is the case
6 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
7 Settlement.

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

9 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
10 conducted significant informal discovery and exchanged thousands of pages of documents, data,
11 and information prior to mediation.⁵⁷ The discovery and information that Class Counsel
12 obtained from Defendant, Plaintiffs, and other sources allowed Class Counsel to develop
13 valuation models in order to evaluate the potential value and merit of the claims, and perform a
14 complete evaluation of Defendant's defenses thereto.⁵⁸ As outlined in the Declaration of Edwin
15 Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to
16 *Kullar* prior to entering into the Settlement.⁵⁹

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

18 For settlement purposes, the requisites for establishing class certification are met, and
19 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶⁰
20 California Code of Civil Procedure Section 382 "authorizes class actions when the question is
21 one of a common or general interest, of many persons, or when the Parties are numerous, and it
22 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*
23 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
24 "both [1] an ascertainable class and [2] a well-defined community of interest among class
25 members." *Id.*

26 ⁵⁶ Aiwazian Decl., ¶¶ 11, 13, & 21.

27 ⁵⁷ *Id.*, ¶¶ 11-13 & 18.

28 ⁵⁸ *Id.*, ¶ 18.

⁵⁹ *Id.*, ¶¶ 11-13 & 16-18.

⁶⁰ Settlement Agreement, § IV.

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

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. 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 seven hundred and fifty (750) 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 Defendant to the Settlement Administrator through a review of Defendant's employment records regarding non-exempt employees in California during the Class Period. As such, the Class 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

⁶¹ Aiwazian Decl., ¶ 9.

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

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

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

Plaintiffs also contend that Defendant’s payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁴ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all

⁶² Aiwazian Decl., ¶ 16.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

1 compensation due to them from Defendant during the time period at issue.⁶⁵

2 Plaintiffs maintain that the outcome of this litigation would be determined by
3 Defendant's alleged uniform operations and employment policies and procedures that applied
4 across its hourly-paid and/or non-exempt employees who worked in California during the Class
5 Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

8 Class Counsel has litigated the matter for over two years, and was actively preparing the
9 matter for class certification and trial.⁶⁶ The ongoing work has been extensive, demanding, and
10 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
11 extensive investigations into the facts of the cases and informal discovery. Class Counsel
12 reviewed thousands of pages of documents and data⁶⁷ and also interviewed and obtained
13 information from Plaintiffs and other Class Members, researched applicable law, undertook
14 damages/valuation calculations, and met and conferred with Defendant's counsel regarding the
15 pleadings, discovery, and the production of documents and data prior to mediation.⁶⁸ Counsel
16 for the Parties also undertook extensive settlement discussions, which included participating in
17 a formal, full-day mediation.⁶⁹

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

20 The Settlement establishes a Gross Settlement Amount of one million two hundred
21 thousand dollars and no cents (\$1,200,000.00), and provides for Class Counsel to apply to the
22 Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed
23 one-third (1/3) of the Gross Settlement Amount (i.e., \$400,000.00) and an amount not to exceed
24 twenty five thousand dollars and no cents (\$25,000.00) for costs and expenses.⁷¹ The attorneys'

25 _____
26 ⁶⁵ Aiwazian Decl., ¶ 16.

27 ⁶⁶ *Id.*, ¶¶ 11-13.

28 ⁶⁷ *Id.*, ¶ 12.

⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶ 11.

⁷⁰ *Id.*, ¶¶ 6-7.

⁷¹ Settlement Agreement, § IX.

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

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

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

⁷² Settlement Agreement, Exhibit A.

1 and use other means to evaluate the reasonableness of a requested percentage fee[.]” and “[t]he
2 percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

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

14 Class Counsel has borne all of the risks and costs of litigation and will not receive any
15 compensation until recovery is obtained.⁷³

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

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

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

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28

⁷³ Aiwazian Decl., ¶ 19.

The proposed Class Notice⁷⁴ describes the Settlement, the deadlines and procedures to mail an objection to the Settlement, mail a request for exclusion from the Class Settlement, and/or mail a dispute regarding Covered 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 their Individual Settlement Share and Individual PAGA Payment (if applicable) is calculated and the number of Covered 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(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁷⁹ Any undeliverable Class Notice that is returned to the Settlement

⁷⁴ Settlement Agreement, Exh. A.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Settlement Agreement, § V.D.1.

Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.⁸⁰ With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸¹ The Response Deadline to submit a request for exclusion, objection, or dispute regarding Covered Workweeks for Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be fifteen (15) calendar days from the date of the re-mailing or the original sixty (60) calendar day deadline, whichever is later.⁸² The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Covered Workweeks.⁸³

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares; 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; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Awards, and LWDA Payment and Individual PAGA Payment checks; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁴ The Settlement Administration Fees are currently estimated to be thirteen thousand dollars and no cents (\$13,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁵

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

⁸⁰ Settlement Agreement, § V.D.5.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Id.*, §§V.E-G & V.I.

⁸⁴ *Ibid.*; Aiwazian Decl., ¶ 15.

⁸⁵ Settlement Agreement, § V.C

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 Defendant's records.⁸⁶

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known address; (3) last known telephone number; (4) Social Security number and employee ID number; (5) start and end dates of employment as an hourly and/or non-exempt employee of Defendant in California during the Class Period; and (6) Covered Workweeks, (collectively, "Class Data").⁸⁷

Within fifteen (15) calendar days of receipt of the Class Data, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁸ If a Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁹ If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁹⁰ Class Members will have until the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding Covered Workweeks, and/or to file and serve an objection.⁹¹

Defendant will make a one-time deposit of the Gross Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Settlement Administrator, within thirty (30) calendar days after the Effective Date.⁹² Within forty (40) calendar days of the Effective Date, the Settlement Administrator will

⁸⁶ Settlement Agreement, §§ I.C-E.

⁸⁷ *Id.*, § V.D.2.

⁸⁸ *Id.*, § V.D.4.

⁸⁹ *Id.*, § V.D.5.

⁹⁰ *Ibid.*

⁹¹ *Id.*, §§ V.E-G.

⁹² *Id.*, § VII.A.

1 distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) the
2 Individual PAGA Payments to PAGA Members; (3) the Court-approved Enhancement Awards
3 to Plaintiffs; (4) the Court-approved Attorneys' Fees and Costs to Class Counsel; (5) the LWDA
4 Payment to the LWDA; and (6) the Court-approved Settlement Administration Fees to itself.⁹³

5 The Individual Settlement Payment checks will remain negotiable for one hundred and
6 eighty (180) calendar days from the date of their issuance.⁹⁴ Checks that are not negotiated
7 within the 180-day period will be cancelled.⁹⁵ The funds associated with such cancelled checks
8 will be tendered by the Settlement Administrator to the Children's Advocacy Institute.⁹⁶

9 **XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
10 **ENHANCEMENT AWARDS**

11 Plaintiffs respectfully request that the Court appoint Plaintiffs Brianna Flores and Tania
12 Estremera as Class Representatives and preliminarily approve the Enhancement Awards in an
13 amount up to six thousand five hundred dollars and no cents (\$6,500.00) each to Plaintiffs
14 Brianna Flores, Tania Estremera, and Dexter Norman Hansen (for a combined total of
15 \$19,500).⁹⁷ It is within the Court's discretion to award payment to a class representative for
16 their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299
17 (approving \$50,000 participation award to a single class representative). The factors that courts
18 may consider in determining whether to make an enhancement payment include: (1) the risk to
19 the class representative in commencing suit, both financial and otherwise; (2) the notoriety and
20 personal difficulties encountered by the class representative; (3) the amount of time and effort
21 spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit
22 (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.* An
23 enhancement award may also be awarded in a PAGA representative action, so as to incentivize
24 aggrieved employees to step into the shoes of the state labor agency and undertake the
25 responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See*

26 ⁹³ Settlement Agreement, § VII. B.

27 ⁹⁴ *Id.*, § VIII.H.

28 ⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Id.*, § X.

Bell v. Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); *see also, e.g., Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

The Enhancement Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁸ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class and PAGA Members.⁹⁹ Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Award for their services on behalf of the Class and PAGA Members, in addition to their Individual Settlement Payments and 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 for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Brianna Flores and Tania Estremera as Class Representatives; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys’ Fees and Costs, Enhancement Awards, PAGA Payment, and Settlement Administration Fees; approve the proposed Class Notice; direct the Settlement

⁹⁸ Aiwazian Decl., ¶ 20; Declaration of Brianna Flores in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Flores Decl.”), ¶¶ 2-6; Declaration of Tania Estremera in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Estremera Decl.”), ¶¶ 2-6; Declaration of Dexter Norman Hansen in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Hansen Decl.”), ¶¶ 2-6.

⁹⁹ Aiwazian Decl., ¶ 20; Flores Decl., ¶¶ 3-6; Estremera Decl., ¶¶ 3-6; Hansen Decl., ¶¶ 3-6.

1 Administrator to undertake the notice and settlement administration process in conformity with
2 the deadlines and procedures provided by the Settlement Agreement; and schedule a Final
3 Approval Hearing to take place in approximately six (6) months.

4 Dated: April 21, 2022

LAWYERS for JUSTICE, PC

5
6 By:



Edwin Aiwanian
Attorneys for Plaintiffs