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

MIGUEL MONTOYA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiffs,

v.

AMERON INTERNATIONAL
CORPORATION, an unknown business
entity; AMERON WATER
TRANSMISSION GROUP, LLC, an
unknown limited liability company; and
DOES 2 through 100, inclusive,

Defendants.

Case No.: CIVDS1718377

Honorable David S. Cohn
Department S26

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Joanna Ghosh); Declarations of Proposed
Class Representatives (Miguel Montoya,
Nicholas Lane, LeCostel Williams, and
Jose Rosendo Camarillo); and [Proposed]
Order filed concurrently herewith]

Date: July 1, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: September 20, 2017
Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 1, 2022 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David S. Cohn in Department S26 of the Superior Court of California for the County of San Bernardino, located at Superior Court of California County of San Bernardino, 247 West Third Street, San Bernardino, California 92415, Plaintiff Miguel Montoya and Proposed Plaintiffs Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo (collectively, “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“Consolidated First Amended Complaint”) which is attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Joanna Ghosh, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Incentive Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Miguel Montoya and Proposed Plaintiffs Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo as Class Representatives;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC, and V. Andre Sherman of Sherman & Sherman, APC as Class Counsel;

- Approving the proposed Notice of Class Action (“Class Notice”), attached as “**EXHIBIT B**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members and Aggrieved Employees;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of and award Attorneys’ Fees and Costs to Class Counsel, Incentive Awards to Plaintiffs, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement 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 Declaration of Proposed Class Counsel (Joanna Ghosh) and Proposed Class Representatives (Miguel Montoya, Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: June 2, 2022

LAWYERS for JUSTICE, PC

By:



Joanna Ghosh
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Miguel Montoya and Proposed Plaintiffs Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo (collectively, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, on the one hand, and Defendants Ameron International Corporation, Ameron Water Transmission Group, LLC, Ameron Pole Products LLC, NOV Process & Flow Technologies US, Inc., Containment Solutions, Inc., Containment Solutions Services, Inc., National Oilwell Varco, L.P., NOV, Inc., and NOW Oilfield Services, LLC (collectively, “Defendants”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Incentive Awards of Ten Thousand Dollars (\$10,000.00) each to Plaintiffs (\$40,000 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$647,500.00, and reimbursement of litigation costs and expenses not to exceed One hundred Fifty Thousand Dollars (\$150,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Ten Thousand Dollars (\$10,000);⁵ and (5) the amount of Two Hundred Eighty Thousand Dollars (\$280,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$210,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$70,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis.⁶

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Joanna Ghosh (“Ghosh Decl.”), ¶ 17.

² Settlement Agreement, ¶ 68.

³ *Id.*, ¶ 69.

⁴ *Id.*, ¶ 68.

⁵ *Id.*, ¶ 67.

⁶ *Id.*, ¶ 26.

Plaintiffs also seek to provisionally certify a class for settlement purposes, which consists of the following five (5) subclasses (“Subclass(es)”), which Defendants do not oppose (individuals who are members of the Subclasses are collectively referred to as the “Class” or “Class Members”)⁷:

“**Ameron International Corporation and Ameron Water Transmission Group, LLC Subclass**” – All current and former hourly-paid or non-exempt employees who were employed by and performed work for Defendants Ameron International Corporation and/or Ameron Water Transmission Group, LLC within the State of California at any time during the period from September 20, 2013 to the date of preliminary approval of the Settlement, who did not sign an individual settlement agreement releasing their claims.

“**Ameron Pole Products LLC Subclass**” – All current and former hourly paid or non-exempt employees who were employed by and performed work for Defendant Ameron Pole Products LLC within the State of California at any time during the period from August 4, 2014, to the date of preliminary approval of the Settlement, who are not covered by the May 1, 2019 to April 30, 2022, collective bargaining agreement.

“**NOV Process & Flow Technologies US, Inc. Subclass**” – All current and former hourly paid or non-exempt employees who were employed by and performed work for Defendant NOV Process & Flow Technologies US, Inc. within the State of California at any time during the period between October 13, 2016 to the date of preliminary approval of the Settlement.

“**Containment Solutions, Inc. and Containment Solutions Services, Inc. Subclass**” – All current and former hourly paid or non-exempt employees who were employed by and performed work for Defendants Containment Solutions, Inc. and/or Containment Solutions Services, Inc. within the State of California at any time during the period from July 9, 2019 to the date of preliminary approval of the Settlement.

“**National Oilwell Varco, L.P. Subclass**” – All current and former hourly paid or non-exempt employees who were employed by and performed work for Defendant National Oilwell Varco, L.P. within the State of California at any time during the period from September 1, 2017 to the date of preliminary approval of the Settlement, who did not sign an arbitration agreement with a class action waiver or a severance agreement.

The Class is estimated to consist of approximately five hundred twenty-three (523) individuals.⁸

⁷ Settlement Agreement, ¶ 5.

⁸ Ghosh Decl., ¶ 17.

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendants, as a member of the relevant Subclasses, in California in a non-exempt or hourly-paid position during the relevant time periods.⁹

The Settlement resolves the Released Class Claims of Plaintiffs and Settlement Class Members, and the Released PAGA Claims of Plaintiffs and Aggrieved Employees, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants manufacture and sell engineered products for the chemical, industrial, energy, and transportation industries, and manufacture equipment such as pipes, drilling equipment, and drill bits for the oil and gas industry. Plaintiff Miguel Montoya and Proposed Plaintiffs Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo are former employees of Defendants. During the course of litigating this matter for several years, the Parties have engaged in extensive motion practice, including and not limited to, fully briefing a contested motion for class certification; to conserve the Court’s resources, some (but not all) of the procedural history and motion practice is outlined herein.¹¹

On September 20, 2017, Plaintiff Miguel Montoya filed a Class Action Complaint for Damages in the San Bernardino County Superior Court (“Court”), thereby commencing the above-captioned action entitled *Miguel Montoya v. Ameron International Corporation, et al.*, Case No. CIVDS1718377 (“*Montoya* Action” or “Action”).

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⁹ Settlement Agreement, ¶¶ 21 and 62.

¹⁰ See *id.* at ¶¶ 33-34, for the full scope of the “Released Class Claims” and “Released PAGA Claims,” and *id.* at ¶ 35 for the definition of the “Released Parties.”

¹¹ Ghosh Decl., ¶ 13.

1 After significant motion practice and multiple discovery disputes, Defendant Ameron
2 International Corporation filed a Motion for Summary Judgment on April 6, 2018. The Court
3 denied Defendant Ameron International Corporation's motion on June 27, 2018.

4 On June 1, 2018, Plaintiff Montoya filed an Amendment to Complaint, naming Ameron
5 Water Transmission Group, LLC as "Doe 1."

6 On November 11, 2018, Defendants filed an Answer to Plaintiff Miguel Montoya's
7 Class Action Complaint for Damages.

8 On August 6, 2018, Proposed Plaintiff Nicholas Lane filed a Class Action Complaint for
9 Damages against Defendants Ameron Pole Products LLC and National Oilwell Varco, Inc. dba
10 NOV Ameron (now, NOV, Inc.) in the Ventura County Superior Court, thereby commencing
11 the action entitled *Nicholas Lane v. Ameron Pole Products LLC, et al.*, Case No. 56-2018-
12 00515902-CU-OE-VTA ("*Lane Action*").

13 On July 21, 2020, Proposed Plaintiff Nicholas Lane filed a Motion for Leave to File First
14 Amended Class Action Complaint, requesting to add LeCostel Williams as a named plaintiff
15 and NOV Process & Flow Technologies US, Inc. as an additional defendant, to the *Lane Action*.
16 On August 4, 2020, Defendant Ameron Pole Products LLC filed an opposition to the motion.
17 On August 17, 2020, the Court denied the motion.

18 On October 13, 2020, Proposed Plaintiff LeCostel Williams filed a Class Action
19 Complaint for Damages against Defendants National Oilwell Varco L.P., NOV Process & Flow
20 Technologies, Inc., and NOV Process & Flow Technologies, US, Inc. in the Kern County
21 Superior Court, thereby commencing the action entitled *LeCostel Williams v. National Oilwell*
22 *Varco L.P., et al.*, Case No. BCV-20-102399 ("*Williams Action*").

23 On October 23, 2020, Plaintiff Miguel Montoya filed a Motion for Class Certification in
24 the Action. On July 7, 2021, Defendants Ameron International Corporation and Ameron Water
25 Transmission Group, LLC filed an opposition to the motion, and on September 10, 2021,
26 Plaintiff Miguel Montoya filed a reply in support of the motion.

27 ///

28 ///

On or about June 2, 2021, Plaintiff Jose Rosendo Camarillo submitted notice to the LWDA of his intention to seek civil penalties under PAGA, against Ameron Pole Products LLC, and National Oilwell Varco, LP, and any and all affiliates, subsidiaries, parents, directors, officers, and employees, for violations of the California Labor Code and Industrial Welfare Commission Wage Orders.

On or about July 26, 2021, Plaintiff Jose Rosendo Camarillo submitted an additional notice to the LWDA of his intent to seek civil penalties under PAGA, against NOW Oilfield Services, LLC and NOV, Inc., and any and all affiliates, subsidiaries, parents, directors, officers, and employees.

On or about December 2, 2021, Plaintiff Jose Rosendo Camarillo submitted an additional notice to the LWDA of his intent to seek civil penalties under PAGA, against Ameron Pole Products LLC, National Oilwell Varco, L.P., NOV, Inc., NOV Process & Flow Technologies US, Inc, Containment Solutions, Inc., Containment Solutions Services, Inc., and NOW Oilfield Services, LLC, and any and all affiliates, subsidiaries, parents, directors, officers, and employees.

The Parties have agreed that Plaintiff Miguel Montoya will seek leave to file a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Consolidated First Amended Complaint” or “Operative Complaint”) in the *Montoya* Action to add the plaintiffs and claims in the *Lane* Action and *Williams* Action, and Jose Rosendo Camarillo as a named plaintiff and to add his claims (which he asserts against additional defendants), so that preliminary and final approval of the Settlement may be sought in the Action.

Plaintiffs’ core allegations are that Defendants have violated the California Labor Code and Industrial Welfare Commission Wage Orders, by engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and Aggrieved Employees, of, *inter alia*, failing to pay wages (including minimum, regular, overtime, reporting time, paid time off, vacation, and sick pay wages), failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment, failing to timely pay wages upon

1 termination of employment and waiting-time penalties, failing to provide compliant wage
2 statements, failing to maintain requisite payroll records, and failing to reimburse necessary
3 business expenses, and thereby engaged in unfair business practices in violation of California
4 Business and Professions Code section 17200, *et seq.* and conduct that gives rise to civil
5 penalties recoverable under PAGA. As a result of the alleged uniform wage-and-hour practices,
6 Plaintiffs claims that Class Members and Aggrieved Employees were not paid all of the
7 compensation that was owed to them by Defendants. Plaintiffs contend that they, and the Class
8 Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to,
9 penalties pursuant to PAGA), and attorneys' fees.

10 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind
11 associated with any of Plaintiffs' allegations, and further deny that Plaintiffs' claims or the
12 Actions are appropriate for class treatment or representative adjudication for any purpose other
13 than for settlement purposes only.

14 On November 21, 2017, Plaintiff Miguel Montoya propounded multiple sets of
15 discovery requests, including Requests for Production of Documents (Set One), Special
16 Interrogatories (Sets One and Two), and Form Interrogatories-General (Set One) on Defendant
17 Ameron International Corporation. On March 19, 2018, Plaintiff Miguel Montoya propounded
18 Requests for Production of Documents (Set Two), Special Interrogatories (Set Three) on
19 Defendant Ameron International Corporation, and noticed the depositions of Defendants'
20 Person Most Knowledgeable regarding job duties and organizational structure of Defendant
21 Ameron International Corporation. On July 6, 2018, Plaintiff Miguel Montoya propounded
22 Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two),
23 and Form Interrogatories-General (Set One) on Defendant Ameron Water Transmission Group.
24 On July 17, 2018, Plaintiff Miguel Montoya propounded Requests for Production of Documents
25 (Set Two) and Special Interrogatories (Set Three) on Defendant Ameron Water Transmission
26 Group, and noticed the depositions of Defendants' Person Most Knowledgeable regarding job
27 duties and organizational structure of Defendant Ameron Water Transmission Group.
28 Thereafter, on December 26, 2017, April 5, 2018, April 11, 2018, July 9, 2018, August 1, 2018,

1 August 15, 2018, and February 22, 2019, Defendant Ameron International Corporation
2 responded to Plaintiff Miguel Montoya's discovery requests, and on July 19, 2019, December
3 24, 2019, and February 14, 2020, Defendant Ameron Water Transmission Group responded to
4 Plaintiff Miguel Montoya's discovery requests.

5 On October 16, 2018, Proposed Plaintiff Nicholas Lane propounded multiple sets of
6 formal written discovery requests, including Requests for Production of Documents (Set One)
7 and Interrogatories (Set One) on Defendant Ameron Pole Products LLC. On November 20,
8 2018, Proposed Plaintiff Nicholas Lane propounded Requests for Production of Documents (Set
9 One), Special Interrogatories (Sets One and Two), and Form Interrogatories-General (Set One)
10 on Defendant Ameron Pole Products LLC. On October 16, 2018, Proposed Plaintiff Nicholas
11 Lane propounded Requests for Production of Documents (Set One) and Interrogatories (Set
12 One) on Defendant National Oilwell Varco Inc. dba NOV Ameron. On November 5, 2018,
13 Proposed Plaintiff Nicholas Lane noticed the depositions of persons most knowledgeable of
14 Defendant National Oilwell Varco Inc. dba NOV Ameron and percipient witnesses. On
15 November 20, 2018, Proposed Plaintiff Nicholas Lane propounded Requests for Production of
16 Documents (Set One), Special Interrogatories (Sets One and Two), and Form Interrogatories-
17 General (Set One) on Defendant National Oilwell Varco Inc. dba NOV Ameron. On January
18 29, 2019, Proposed Plaintiff Nicholas Lane propounded Requests for Production of Documents
19 (Set One), Special Interrogatories (Sets One and Two), and Form Interrogatories-General (Set
20 One) on Defendant National Oilwell Varco, L.P. Thereafter, on November 19, 2018, and
21 February 5, 2019, Defendant Ameron Pole Products LLC responded to Proposed Plaintiff
22 Nicholas Lane's discovery requests. On January 22, 2019, Defendant National Oilwell Varco
23 Inc. dba NOV Ameron responded to Proposed Plaintiff Nicholas Lane's discovery requests. On
24 March 4, 2019, Defendant National Oilwell Varco, L.P. responded to Proposed Plaintiff
25 Nicholas Lane's discovery requests. Class Counsel also engaged in the *Belaire-West* notice
26 process and received multiple class contact information lists.

27 The Parties have actively litigated the Actions since the *Montoya* Action was
28 commenced on September 20, 2017. On June 7, 2021, the Parties participated in a formal, full-

day mediation conducted by Eve Wagner, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount of \$1,850,000.00 to resolve the Released Class Claims and Released PAGA Claims.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 Six Hundred Forty-Seven Thousand Five Hundred Dollars (\$647,500.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) Settlement Administration Costs, which are currently estimated not to exceed Ten Thousand Dollars (\$10,000) to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Allocation in the amount of Two Hundred Eighty Thousand Dollars (\$280,000.00), of which seventy-five percent (75%), or \$210,000, will be paid to the State of California Labor and Workforce Development Agency ("LWDA Payment") and twenty-five percent (25%), or \$70,000, will be distributed to the Aggrieved Employees ("Employee PAGA Amount"); and (4) payments in the amount of up to Ten Thousand Dollars (\$10,000.00) each to Plaintiff Miguel Montoya and Proposed Plaintiffs Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo (for a combined total of \$40,000) ("Incentive Awards").¹³ The Parties have agreed to retain Phoenix Class Action Administration Solutions ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), based

¹² Settlement Agreement, ¶¶ 79, 80, and 81. If it is determined that the number of Workweeks through the date of mediation (June 7, 2021) actually exceeds 51,923 by more than ten percent (10%) (i.e., exceeds 57,116), then, the Gross Settlement Amount will be increased on a proportional basis by the same number of percentage points above ten percent (10%). Settlement Agreement, ¶ 95.

¹³ *Id.*, ¶¶ 26, 67, 68, and 69.

on the number of weeks that each Class Member was employed by Defendants as a member of the relevant Subclasses during the relevant time periods, which the Settlement Administrator will calculate by counting the number of days of employment between the start and end date within the relevant settlement Subclass and dividing by seven (7) and rounding up—using this methodology, the Settlement Administrator will calculate Ameron International Corporation and Ameron Water Transmission Group, LLC Workweeks, Ameron Pole Products LLC Workweeks, NOV Process & Flow Technologies US, Inc. Workweeks, Containment Solutions, Inc. and Containment Solutions Services, Inc Workweeks, and National Oilwell Varco, L.P. Workweeks of all Settlement Class Members (collectively, “Workweeks”).¹⁴ The Settlement Administrator will divide the final Net Settlement Amount by the total Workweeks to yield the “Class Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Class Workweek Value to yield his or her Individual Settlement Share.¹⁵

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee’s share of the available Employee PAGA Amount (“Individual PAGA Payment”), based on the number of weeks that each Aggrieved Employee was employed by Defendants as a member of the relevant PAGA Subgroup during the period June 2, 2020 to the date of preliminary approval of the Settlement, which the Settlement Administrator will calculate by counting the number of days of employment between June 2, 2020 and the date of preliminary approval of the Settlement, and dividing by seven (7) and rounding up—using this methodology, the Settlement Administrator will calculate Ameron Pole Products LLC PAGA Workweeks, NOV Process & Flow Technologies US, Inc. PAGA Workweeks, Containment Solutions, Inc. and Containment Solutions Services, Inc PAGA Workweeks, and National Oilwell Varco, L.P. PAGA Workweeks of all Aggrieved Employees (collectively, “PAGA Workweeks”).¹⁶ The Settlement Administrator will divide the Employee PAGA Amount (i.e., the 25% of the PAGA Allocation), by the total PAGA Workweeks to yield the “PAGA

¹⁴ Settlement Agreement, ¶ 62.a.

¹⁵ *Id.*, ¶ 62.b.

¹⁶ *Id.*, ¶ 63.a.

Workweek Value,” and multiply each Aggrieved Employee’s individual PAGA Workweeks by the PAGA Workweek Value 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, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if necessary).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 The Parties further agree that the Individual PAGA Payments distributed to each Aggrieved Employee will be allocated as one hundred percent (100%) penalties, will be paid without reduction for taxes and withholdings, and will be reported on an IRS Form 1099 (if necessary). Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares (“Employer Taxes”) in addition to the Gross Settlement Amount.²⁰

Individual Settlement Payment checks issued to Settlement Class Members will contain the following language: “By cashing this check, I am opting into the settlement and release of Released Claims arising under the Fair Labor Standards Act, 29 U.S.C. § 216(b), as part of the class action settlement in *Miguel Montoya v. Ameron International Corporation*, San Bernardino Superior Court, Case No. CIVDS1718377.” Those Settlement Class Members who cash their Individual Settlement Payment check shall be deemed to opt-in for purposes of releasing Released Parties from any Released Class Claims predicated under the FLSA.

The Individual Settlement Payment checks issued to Settlement Class Members and Individual PAGA Payment checks issued to Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of issuance of the check.²¹ Checks that are

¹⁷ Settlement Agreement, ¶ 63.b.

¹⁸ *Id.*, ¶ 64.

¹⁹ *Id.*, ¶¶ 20 and 64.

²⁰ *Id.*, ¶ 15.

²¹ *Id.*, ¶ 65.

not negotiated within the 180-day period will be cancelled.²² If any checks are not cashed within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is cashed in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks have not been cashed by the expiration of the ninety (90) day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with such cancelled checks shall be transmitted to the State of California's State Controller Unclaimed Property Fund, in the name of the individuals whose checks are cancelled, in the appropriate amounts for each such individual.²³ Settlement Class Members whose Individual Settlement Payment checks are uncashed shall, nevertheless, be bound to the Class Settlement, and PAGA Employees whose Individual PAGA Payment checks are uncashed shall, nevertheless, be bound to the PAGA Settlement.

Class Members who wish to be excluded from the Class Settlement must submit a written request for exclusion ("Request for Exclusion") to the Settlement Administrator.²⁴ To be timely, the Class Member must mail a written Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is thirty (30) calendar days from the initial mailing of the Class Notice ("Response Deadline").²⁵ A Request for Exclusion must: (1) contain the case name and number of the *Montoya* Action; (2) state the full name, address, telephone number, and the last four (4) digits of the Social Security Number or Employee Identification Number of the Class Member requesting exclusion; (3) clearly state that the Class Member does not wish to be included in the Class Settlement; and (4) be signed by the Class Member.²⁶ Class Members who submit a valid and timely Request for Exclusion will not be bound by the terms of the Class Settlement.²⁷ Aggrieved Employees are bound to the PAGA Settlement; if an

²² *Ibid.*

²³ *Ibid.*

²⁴ Settlement Agreement, ¶ 76.

²⁵ *Id.*, ¶ 37.

²⁶ *Id.*, ¶ 76.

²⁷ *Id.*

Aggrieved Employee is also a Class Member, he or she will still be bound to the PAGA Settlement irrespective of whether he or she opts out of the Class Settlement.

Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) may object to the Class Settlement in writing, by submitting a written objection (“Objection”) to the Settlement Administrator on or before the Response Deadline.²⁸ The Objection must: (1) contain the case name and number of the *Montoya* Action; (2) state the full name, address, telephone number, and the last four (4) digits of the Social Security Number or Employee Identification Number of the objecting Class Member; (3) include a written statement of all grounds for the objection accompanied by any legal support for such objection; (4) attach copies of any papers, briefs, or other documents upon which the objection is based; and (5) be signed by the Class Member.²⁹ Any Class Member who wishes to appear at the Final Approval Hearing and be heard orally in support of, or to present, an objection to the Class Settlement, may do so.

Class Members and Aggrieved Employees who wish to dispute the number of Workweeks and/or PAGA Workweeks to which they have been credited, as reflected in their respective Class Notices, may do so by mailing a written letter to the Settlement Administrator (“Workweeks Dispute”) on or before the Response Deadline.³⁰ The Workweeks Dispute must: (1) contain the case name and number of the *Montoya* Action; (2) be signed by the Class Member; (3) contain the full name, address, telephone number, and the last four (4) digits of the Social Security Number or Employee Identification Number of the disputing Class Member; (4) clearly state that the individual disputes the number of Workweeks and/or PAGA Workweeks credited to him or her; and (5) include information and/or attached documentation demonstrating that the number of Workweeks and/or PAGA workweeks that he or she contends should be credited to him or her are correct.³¹

²⁸ Settlement Agreement, ¶ 77.

²⁹ *Ibid.*

³⁰ *Id.*, ¶ 78.

³¹ *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.

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

3 The Parties actively litigated the Actions since the *Montoya* Action was commenced on
4 September 20, 2017. Both sides used the pre-mediation time period to investigate the veracity,
5 strength, and scope of the claims.³²

6 Prior to engaging in mediation, Class Counsel conducted significant investigation and
7 formal and informal discovery regarding the facts of the cases, including and not limited to, the
8 exchange, review, and analysis of a large volume of documents and data (in excess of 20,000
9 pages) obtained from Defendants, Plaintiffs, and other sources.³³ The volume of data and
10 documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs’
11 and other Class Members’ employment records, a detailed sampling of Class Members’ time
12 and pay data, list of supervisors of non-exempt employees, list of human resources managers
13 for California locations, organizational charts, multiple class contact lists, multiple versions of
14 Defendants’ employee manuals and agreements (including, and not limited to, arbitration,
15 waiver, severance, and release/settlement-related agreements), Defendants’ Collective
16 Bargaining Agreements, company policy acknowledgements, internal memoranda, hiring
17 checklist, Defendants’ operations and employment practices, procedures, and policies
18 (including but not limited to Defendants’ Code of Business Conduct and Ethics, Business Ethics
19 Policy, Employee-Owned Personal Devices policy, United Steelworkers (USW) Check-Off
20 Authorization, Defendants’ Training Handout and corresponding Evaluation Forms, Meal and
21 Rest Break Schedules, On Duty Meal Agreement, and Employee Dispute Resolution Program
22 forms), among other information and documents.³⁴ Class Counsel interviewed Plaintiffs and
23 other Class Members and Aggrieved Employees to gather facts and to identify potential
24 witnesses.³⁵ Class Counsel propounded multiple sets of formal written discovery requests on
25 Defendants, reviewed Defendants’ responses and supplemental responses thereto, and worked
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27 ³² Ghosh Decl., ¶¶ 12-14.

28 ³³ *Id.*, ¶ 14.

³⁴ *Ibid.*

³⁵ *Ibid.*

with Plaintiff Miguel Montoya and Proposed Plaintiff Nicholas Lane to provide responses and supplemental responses to multiple sets of discovery requests that were propounded by Defendants.³⁶ Class Counsel prepared for and defended the depositions of Plaintiff Miguel Montoya and Proposed Plaintiff Nicholas Lane, Class Counsel noticed the depositions of Defendants' persons most knowledgeable and percipient witnesses, and prepared for and took depositions of an Assistant General Counsel (identified as a person most knowledgeable), Vice President of Human Resources (identified as a person most knowledgeable), and a Human Resources Manager (who was deposed once as a percipient witness and twice as a person most knowledgeable).³⁷ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, motions, and the production of documents and data prior to the mediation.³⁸ Class Counsel also drafted pleadings; researched and drafted opposition papers (in the *Montoya* Action, with respect to demurrer to complaint, multiple motions for sanctions, motion for summary judgment, and ex parte application to stay the proceedings), researched and drafted motion papers (in the *Montoya* Action, with respect to multiple motions to compel further responses to discovery requests and request for monetary sanctions, motion to enforce court's order granting motion to compel and request for monetary sanctions, multiple motions to compel depositions of persons most knowledgeable and request for monetary sanctions, motion to compel deposition of percipient witnesses and request for monetary sanctions, demurrer to answer, motion to strike answer, motion for class certification, and ex parte application to continue deadline to file reply in support of motion for class certification; and in the *Lane* Action, with respect to motion to strike portions of answer (federal court), motion for remand (federal court), motion to strike portions of answer (state court), demurrer to answer (state court), and motion for leave to file amended complaint (state court)); researched and prepared Plaintiffs' mediation brief; and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁹

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

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

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.⁴⁵ The Parties have had the opportunity to interview and obtain information from percipient witnesses.⁴⁶ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs', Class Members', and Aggrieved Employees' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative

⁴⁰ Ghosh Decl., ¶ 13.

⁴¹ *Id.*

⁴² *Ibid.*

⁴³ *Id.*, ¶ 13.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁷ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁸

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

The Settlement, which provides for a Gross Settlement Amount of One Million Eight Hundred Fifty Thousand Dollars and No Cents (\$1,850,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal discovery and exchange of information.⁵⁰ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the cases at issue.⁵¹ Moreover, considering all of the facts and circumstances of the lawsuits and Plaintiffs' claims, the Settlement represents a fair, reasonable, and adequate recovery for the Class and Aggrieved Employees.⁵²

Assuming that the Attorneys' Fees and Costs, Incentive Awards, PAGA Allocation, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for distribution of a Net Settlement Amount that is currently estimated to be Seven Hundred Twenty-Two Thousand Five Hundred Dollars and No Cents (\$722,500.00), to Settlement Class Members.⁵³ The Settlement also provides for distribution of the Employee PAGA Amount of \$70,000 to Aggrieved Employees.

The entire Gross Settlement Amount will be fully disbursed in accordance with the Settlement Agreement, without reversion to Defendants. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks and the amount of each Aggrieved Employee's Individual PAGA Payment will be calculated based

⁴⁷ Ghosh Decl., ¶¶ 14-16 & 22.

⁴⁸ *Id.*, ¶¶ 3-7.

⁴⁹ *Id.*, ¶¶ 13, 16, 18 & 22.

⁵⁰ *Id.*, ¶ 13.

⁵¹ *Id.*, ¶¶ 13; 21-22.

⁵² *Id.*, ¶¶ 13, 16, & 25.

⁵³ *Id.*, ¶ 18.

on his or her PAGA Workweeks.⁵⁴ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members and Aggrieved Employees.⁵⁵ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁶ The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants’ defenses thereto.⁵⁷ As outlined in the Declaration Joanna Ghosh, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

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⁵⁴ Settlement Agreement, ¶ 62.

⁵⁵ Ghosh Decl., ¶¶ 13, 16, & 25.

⁵⁶ *Id.*, ¶¶ 14-15.

⁵⁷ *Id.*, ¶ 22.

⁵⁸ *Id.*, ¶¶ 13, 14 & 16.

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

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

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

⁵⁹ Settlement Agreement, ¶ 83.

This matter involves a class of approximately five hundred twenty-three (523) individuals.⁶⁰ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants, to the Settlement Administrator, through a review of Defendants' employment records regarding hourly and non-exempt employees in California during the relevant time periods. 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 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 in the Actions and the contemplated Consolidated First Amended Complaint. Based on the documents and information obtained through formal and 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

⁶⁰ Ghosh Decl., ¶ 17.

at issue.⁶¹ Plaintiffs' claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay wages (including minimum, regular, overtime, reporting time, paid time off, vacation, and sick pay wages) for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment, failing to timely pay wages upon termination of employment and waiting-time penalties, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶²

Plaintiffs also contend that Defendants' payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶³ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.⁶⁴

Plaintiffs maintain that the outcome of this litigation would be determined by Defendants alleged uniform operations and employment policies and procedures that applied across their hourly-paid or non-exempt employees who worked in California during the relevant time periods. Accordingly, the Court should certify the Class for settlement purposes only.

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

Collectively, Class Counsel have litigated the matter for over four (4) years. Class Counsel engaged in extensive motion practice, including and not limited to preparing and fully briefing a contested motion for class certification in the *Montoya* Action, and they were actively preparing for trial.⁶⁵ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the cases and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendants. Class

⁶¹ Ghosh Decl., ¶ 20.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Id.*, ¶ 13.

Counsel also noticed and took the depositions of Defendants' Person Most Knowledgeable designees and percipient witnesses. Class Counsel reviewed thousands of pages of documents and data⁶⁶ and also interviewed and obtained information from Plaintiffs and other Class Members and Aggrieved Employees, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, motions, discovery, and the production of documents and data prior to mediation.⁶⁷ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁸

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁹

The Settlement establishes a Gross Settlement Amount of One Million Eight Hundred Fifty Thousand Dollars and No Cents (\$1,850,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$647,500.00) and an amount not to exceed one hundred fifty thousand dollars and no cents (\$150,000.00) for costs and expenses.⁷⁰ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort 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 Aggrieved Employees, 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 and Aggrieved Employee with information about the amount allocated toward the Attorneys'

⁶⁶ Ghosh Decl., ¶ 14.

⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 13.

⁶⁹ *Id.*, ¶¶ 3-7.

⁷⁰ Settlement Agreement, ¶ 68.

1 Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided
2 for by the Settlement.⁷¹

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

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

23 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
24 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
25 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45%
26 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
27 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys'
28

⁷¹ Settlement Agreement, Exh. B.

fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷²

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice⁷³ describes the Settlement, the deadlines and procedures to submit an Objection to the Class Settlement, a Request for Exclusion from the Class Settlement, and/or a Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁷⁴

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

⁷² Ghosh Decl., ¶ 23.

⁷³ Settlement Agreement, Exh. B.

⁷⁴ *Ibid.*

proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁵ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁶ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.⁷⁷

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 AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will distribute the Class Notice to the Class Members and Aggrieved Employees and receive and process Request for Exclusions, Objections, or Workweeks Disputes. The Settlement Administrator will also calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members; mail Individual PAGA Payment checks to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees and Costs, Incentive Awards, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁸ The Settlement Administration Costs are currently estimated to be Ten Thousand Dollars (\$10,000) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁷⁹

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*; Ghosh Decl., ¶ 19.

⁷⁹ Settlement Agreement, ¶ 67.

Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸⁰

Within thirty (30) calendar days of preliminary approval of the Settlement by the Court, Defendants will provide the Settlement Administrator with a database containing the following information: the full name, last known mailing address, full Employee Identification Number, and full Social Security number of each Class Member and Aggrieved Employee, and information necessary to determine Workweeks of each Class Member and PAGA Workweeks of each Aggrieved Employee (collectively, "Class List").⁸¹

Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members and Aggrieved Employees via First-Class U.S. Mail.⁸² If a Class Notice is returned as non-deliverable within ten (10) days of initial mailing, with a forwarding address, the Settlement Administrator will resend the Class Notice to the forwarding address.⁸³ If a Class Notice is returned as non-deliverable without a forwarding address, then the Settlement Administrator will conduct a single advanced skip-trace to locate the most current address of the person to whom the Class Notice was addressed, and shall resend the Class Notice to an alternate address found through the skip-trace search. The Settlement Administrator will conduct one (1) supplemental mailing of a returned Class Notice for each Class Member and/or Aggrieved Employee, and re-mail the Class Notice to Class Members and Aggrieved Employees.⁸⁴ The Response Deadline to submit a Request for

⁸⁰ Settlement Agreement, ¶ 73.

⁸¹ *Id.*, ¶ 72.

⁸² *Id.*, ¶ 73.a.

⁸³ *Id.*, ¶ 73.b.

⁸⁴ *Ibid.*

1 Exclusion, Objection, or Workweeks Dispute will be extended five (5) calendar days for those
2 individuals to whom a Class Notice is re-sent.⁸⁵

3 Defendants will make a one-time deposit of the Gross Settlement Amount, together with
4 an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be
5 established by the Settlement Administrator, within thirty (30) calendar days after the Effective
6 Date.⁸⁶ Within seven (7) calendar days of the funding of the Gross Settlement Amount, the
7 Settlement Administrator will distribute: (a) Individual Settlement Shares to Settlement Class
8 Members; (b) Individual PAGA Payments to Aggrieved Employees; (c) LWDA Payment to the
9 Labor and Workforce Development Agency; (d) Court-approved Incentive Awards to Plaintiffs;
10 (e) Court-approved Settlement Administration Costs to itself; and (f) Court-approved Attorneys'
11 Fees and Costs to Class Counsel.⁸⁷

12 The Individual Settlement Payment checks and Individual PAGA Payment checks will
13 remain negotiable for one hundred and eighty (180) calendar days from the date of their
14 issuance.⁸⁸ Checks that are not negotiated within the 180-day period will be cancelled.⁸⁹ If any
15 checks are not cashed within ninety (90) calendar days after mailing, the Settlement
16 Administrator will send a reminder postcard indicating that unless the check is cashed in the
17 next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check
18 if it was lost or misplaced. If any checks have not been cashed by the expiration of the ninety
19 (90) day period after mailing the reminder notice, the Settlement Administrator will, within two
20 hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated
21 with such cancelled checks shall be transmitted to the State of California's State Controller
22 Unclaimed Property Fund, in the name of the individuals whose checks are cancelled, in the
23 appropriate amounts for each such individual.⁹⁰ Settlement Class Members whose Individual
24 Settlement Payment checks are uncashed shall, nevertheless, be bound to the Class Settlement,
25

26 ⁸⁵ Settlement Agreement, ¶¶ 76, 77, and 78.

27 ⁸⁶ *Id.*, ¶ 60.

28 ⁸⁷ *Ibid.*

⁸⁸ *Id.*, ¶ 65.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

and PAGA Employees whose Individual PAGA Payment checks are uncashed shall, nevertheless, be bound to the PAGA Settlement.⁹¹

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR INCENTIVE AWARDS

Plaintiff Miguel Montoya and Proposed Plaintiffs Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Incentive Awards in an amount up to Ten Thousand Dollars and No Cents (\$10,000.00) each to Plaintiff Miguel Montoya and Proposed Plaintiffs Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo (for a combined total of \$40,000).⁹² It is within the Court’s discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Incentive 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.⁹³ For example, Plaintiffs Miguel Montoya and Nicholas Lane expended effort to review and provide response to multiple sets of discovery requests that were propounded by Defendants and to prepare for and attend deposition, and Plaintiff Miguel Montoya provided information to support the motion for class

⁹¹ *Ibid.*

⁹² Settlement Agreement, ¶ 69.

⁹³ Ghosh Decl., ¶ 24; Declaration of Miguel Montoya in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (“Montoya Decl.”), ¶ 4; Declaration of Nicholas Lane in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (“Lane Decl.”), ¶ 4; Declaration of LeCostel Williams in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (“Williams Decl.”), ¶ 4; Declaration of Jose Rosendo Camarillo in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (“Camarillo Decl.”), ¶ 4.

certification filed in the *Montoya* Action. Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁴ Accordingly, it is appropriate and just for Plaintiffs to each receive an Incentive Award for their services which have resulted in a recovery for the Class, State of California, and Aggrieved Employees, in addition to their Individual Settlement Payments and/or Individual PAGA Payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC and Sherman & Sherman, APC as Class Counsel; preliminary appoint and designate Plaintiff Miguel Montoya and Proposed Plaintiffs Nicholas Lane, LeCostel Williams, and Jose Rosendo Camarillo as Class Representatives; appoint Phoenix as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Incentive Awards, LWDA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: June 2, 2022

LAWYERS for JUSTICE, PC

By:



Joanna Ghosh

Attorneys for Plaintiffs

⁹⁴ Ghosh Decl., ¶ 24; Montoya Decl., ¶¶ 3-6; Lane Decl., ¶¶ 3-6; Williams Decl., ¶¶ 3-6; Camarillo Decl., ¶¶ 3-5.